

OFFICIAL OPINION NO. 76-37, Rate increase for public power in South Dakota

March 29, 1976

Mr. Joe Norton
Executive Secretary
Public Utilities Commission
State Capitol Building
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 76-37

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Dear Mr. Norton:

You have requested an opinion from this office based upon the following factual situation:

The Commission has recently become aware that an out of state public power district which services a part of South Dakota is desirous of increasing its rates in South Dakota.

Thus far, the Commission has proceeded as if it had authority to regulate this public power district, but it has become concerned as to whether or not the authority for such regulation actually does exist.

Based upon the above facts, you ask:

Are public power districts subject to the regulation of the Public Utilities Commission under SDCL 49-34A?

Section 6 of House Bill 823 of the 1976 legislative session redefines the term public utility as defined in §12 of SDCL 49-34A-I:

"Public utility," any person operating, maintaining or controlling in this state equipment or facilities for the purpose of providing gas or electric service to or for the public in whole or in part, in this state; provided, however, the term shall not apply to a municipally owned

electric utility or a rural electric cooperative as defined in §47-21-1 for the purposes of §§49-34A-2 to 49-34A-4, inclusive, 49-34A-6 to 49-34A-41, inclusive, 49-34A-62 and 49-34A-63;

Subdivision (1) of SDCL 49-34A-1 defines the meaning of the term personas follows:

"Person," a natural person, a partnership, a private corporation, a public corporation, a municipality, an association, a cooperative whether incorporated or not, a joint stock association, a business trust, any political subdivision or agency, or two or more persons having joint or common interest;

In reading the above cited provisions together, it appears to me that the Legislature has included public power districts within the regulatory scope of the Public Utilities Commission under SDCL 49-34A. Nothing in SDCL 49-34A exempts such public power districts and by virtue of the above cited broad provisions relating to the scope of the act, it would appear to me that such public power districts are thereby included.

Respectfully submitted,

WILLIAM J. JANKLOW
ATTORNEY GENERAL

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