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April 30, 2004

Doug Decker  
Legislative Research Council  
State Capitol  
500 East Capitol  
Pierre, SD 57501-5070

RE: H-D Electric Cooperative, Inc. Petition for Declaratory Ruling—SD Banking  
Commission

Dear Doug:

I am enclosing for your information a copy of the Proposed Findings of Fact,  
Conclusions of Law, and Declaratory Ruling in the above-entitled matter.

Sincerely,



Jack C. Magee  
Chief Legal Counsel

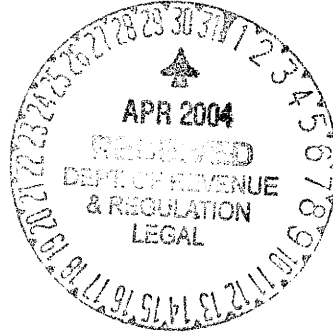
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Enclosures



**BUREAU OF ADMINISTRATION  
OFFICE OF HEARING EXAMINERS**

PMB 01261  
210 EAST 4TH STREET  
PIERRE, SD 57501-1538  
(605) 773-6811  
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April 29, 2004

Mr. Dennis D. Evenson  
Attorney at Law  
Gunderson, Evenson, Boyd, Knight and Stoltenburg, LLP  
415 Third Ave. South  
P.O. Box 977  
Clear Lake, SD 57226-0977

Mr. Jack Magee  
Legal Counsel  
South Dakota Department of Revenue and Regulation  
445 E. Capitol Avenue  
Pierre, SD 57501

**RE: H-D Electric Cooperative, Inc. Petition for Declaratory Ruling—SD  
Banking Commission  
DOB 4-6**

Dear Counsel:

Please find enclosed the signed Findings of Fact, Conclusions of Law and Declaratory Ruling in this matter entered by the South Dakota Banking Commission in its regular meeting April 20, 2004.

This letter will serve as service by mail upon you.

Thank you for your assistance in this matter.

Sincerely,

Julie M. Johnson

Enc.

Cc: Roger Novotny

**STATE OF SOUTH DAKOTA  
SOUTH DAKOTA BANKING COMMISSION  
DEPARTMENT OF REVENUE AND REGULATION**

**IN THE MATTER OF  
THE PETITION FOR A  
DECLARATORY RULING BY  
H-D ELECTRIC COOPERATIVE  
INC., CLEAR LAKE, SOUTH  
DAKOTA**

**PROPOSED  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DECLARATORY RULING**

**DOB 4-6**

This matter came on for a public hearing before the South Dakota Banking Commission, on April 20, 2004, at 1:00 p.m., in Room 412, State Capital Building, Pierre, South Dakota, Julie M. Johnson, Administrative Law Judge, presiding. H-D Electric Cooperative, Inc., through its legal counsel, Dennis D. Evenson, filed a written Petition for Declaratory Ruling with the Commission, pursuant to ARSD 20:07:02:01.

The purpose of the Petition for Declaratory Ruling is to declare and determine whether receipt, and subsequent return, of certain customer security deposits constitutes the business of banking, and thus whether a certificate of authority from the Commission, under SDCL Title 51A, is required.

Pursuant to ARSD 20:07:02:02, the South Dakota Banking Commission acted on the Petition through a contested case hearing process held on April 20, 2004. Legal counsel for the Petitioner chose not to appear in person before the Commission at the hearing. Legal Counsel for the Division of Banking, Jack C. Magee, did appear and did call one witness, Roger Novotny, Director, South Dakota Division of Banking, South Dakota Department of Revenue and Regulation. Mr. Novotny testified under oath on the record. No other exhibits or evidence were offered or received.

The entire Banking Commission was present in person, and a quorum was present at all times, including Chairman, Jeffory Erickson; Vice Chairman John Lillibridge; Paul Christen, Dick Westra and Doyle Estes. A court reporter was present and transcribed the proceedings, and the proceedings were tape recorded and made a part of the minutes of the meeting. On motion duly made, and seconded, the Banking Commission unanimously issued this Declaratory Ruling.

The Commission considered the testimony of all witnesses and having duly considered and examined all the evidence after reviewing the record in the above-entitled matter.

**NOW, THEREFORE**, the South Dakota Banking Commission does hereby enter the following Findings of Fact, Conclusions of Law, and Declaratory Ruling:

### **FINDINGS OF FACT**

1. H-D Electric Cooperative, Inc. (hereinafter "H-D Electric Cooperative") is a member owned rural electric cooperative operating in South Dakota.
2. H-D Electric Cooperative's membership is comprised of home, farm, business and commercial consumers in Hamlin and Deuel counties as well as a portion of Brookings, Clark, Codington, Grant, and Kingsbury counties in South Dakota and Yellow Medicine and Lincoln Counties in Minnesota.
3. H-D Electric Cooperative requires new members to submit a deposit to secure the payment of their monthly bills. The deposit is returned with interest after one year if a member establishes a payment history showing payment of bills on a timely fashion.
4. On March 23, 2004, H-D Electric Cooperative submitted a Petition for Declaratory Ruling requesting the Banking Commission to determine whether security deposits received from customers constitutes the business of banking as defined in SDCL Title 51A.

Based on the Findings of Fact, the South Dakota Banking Commission enters the following:

### **CONCLUSIONS OF LAW**

1. The South Dakota Banking Commission has jurisdiction over this matter. The Office of Hearing Examiners has authority to conduct a contested case hearing in this matter pursuant to SDCL 1-26 and 1-26D.
2. H-D Electric Cooperative is not a licensed bank pursuant to SDCL Title 51A.
3. A "bank" is "any corporation authorized under this title to engage in the business of banking or in the combined business of a bank and trust company or in the combined business of a bank with trust powers[.] SDCL 51A-1-2(1).
4. "Banking" is "the business of receiving deposits, discounting commercial paper, or buying and selling exchange, and any other activity authorized by this title[.] SDCL 51A-1-2(3).
5. A "deposit" means "the unpaid balance of money or its equivalent, including

"deposits subject to check"; "dividends unpaid"; "savings deposits"; "special deposits"; "trust deposits"; "certified checks" and "cashier's checks outstanding"; "demand certificates of deposit"; "time certificates of deposit"; "collections made but not remitted"; and "due to other banks," on which the bank is primarily liable except "overdrafts on correspondents"; or other terms of like import. If any bank has borrowed money on its bills payable, pursuant to a contract which grants permission to the loaning bank to appropriate and to apply any credit balance which the books of the loaning bank show to be due or owing to the borrowing bank, to be credited on such bills payable without regard to the date of maturity thereof, the money received on such bills payable by such borrowing banks shall be deemed "deposits."

6. Receipt of a security deposit by an electric cooperative to ensure payment of a customer bill is not a deposit as defined by SDCL 51A-10-1 and does not constitute the business of banking as defined in SDCL title 51A.
7. An electric cooperative's return of a security deposit with interest to a customer after one year if the customer establishes a payment history showing that they pay their bills on a timely basis does not constitute the business of banking as defined in SDCL title 51A.

Based on the Findings of Fact and Conclusions of Law, the South Dakota Banking Commission enters the following:

### DECLARATORY RULING

An electric cooperative's receipt of a security deposit to ensure payment of a customer's monthly bill and the subsequent return of such deposit with interest if the customer establishes a payment history showing that they pay their bills in a timely manner does not constitute the business of banking as defined in SDCL title 51A, and therefore, does not necessitate a certificate of authority from the Commission.

Dated this 20th day of April, 2004.

SOUTH DAKOTA BANKING COMMISSION



Chairman

ATTEST:

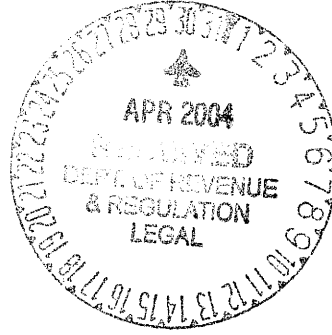


Division of Banking



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April 29, 2004



Roger Novotny  
Director of Banking  
South Dakota Division of Banking  
217½ West Missouri  
Pierre, SD 57501

RE: In the Matter of the Petition for a Declaratory Ruling by H-D Electric  
Cooperative Inc., Clear Lake, South Dakota  
DOB 04-06

Dear Mr. Novotny:

I am returning the complete hearing record to you.

If you have any questions, please feel free to contact me.

Sincerely,

Diana Campbell  
Hearing Examiner

Cc: Jack Magee, Chief Counsel, Department of Revenue & Regulation