

STATE OF SOUTH DAKOTA  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

In the Matter of the Complaint filed by        )        CE07-001  
Michael McCreight, Mitchell, South         )  
Dakota, Against NorthWestern Energy        )

**NORTHWESTERN ENERGY’S RESPONSE TO COMPLAINT AND EMERGENCY  
PETITION OF MICHAEL McCREIGHT AND MOTION TO DISMISS**

**COMES NOW** NorthWestern Corporation d/b/a NorthWestern Energy (NWE) by and through its attorney of record, Brett Koenecke of May, Adam, Gerdes & Thompson of Pierre, South Dakota, and for its Response to the Complaint in the Emergency Hearing Petition, and Motion to Dismiss filed by Michael McCreight, states as follows:

1. Michael McCreight has complained to the Commission that NWE has wrongfully refused to serve the Stardust Motel property in Mitchell, South Dakota, at 200 E. Havens Ave and 710 and 712 S. Lawler. For the reasons and upon the points and authorities stated below, NWE denies the allegations of the Complainant, puts him to his strict proof thereof, and asks the Commission to dismiss the motion, and the Petition in its entirety.

2. The Stardust Motel is currently owned by a resident of Mitchell named Nicolas Antonie (Nick). Nick does business under the name of StarDust Properties and also under the name G.N.A. Properties, LLC. StarDust Properties includes more than just the Stardust Motel which is the source of this complaint. Upon information and belief, G.N.A. Properties, LLC is a South Dakota limited liability company registered with the South Dakota Secretary of State but not in good standing because of failure to file annual reports. Nick owns other properties in Mitchell as well.

3. Nick has contracted with NWE to provide electric and gas services to several properties that he owns or controls and in which he rents out rooms to individuals. Stardust Motel is a residential motel located in Mitchell. It is a commercial enterprise as it relates to Nick, or to the complainant.

4. Nick has failed to pay the reasonable tariff charges to NWE for a number of months resulting in a total outstanding bill of \$23,508, \$8706.02 of which relates to the Stardust Motel as proposed to be leased. Pursuant to tariff and Commission rule, these properties owned

and controlled by Nick were disconnected on May 1. Upon information and belief, the water service provided by the City of Mitchell to the same properties was shut off on or about the same date. Nick owes the City approximately \$5,000 for water services to the properties and the City is refusing to turn the water back on until such time as the bill is paid and the check clears.

5. Several of the residents have been in contact with NWE seeking to have the utilities transferred into their own names at these and other properties. On information and belief, in most if not all cases, Nick has made representations to the tenants such that reimbursement would be forthcoming for the utility charges of NWE, should the utilities be transferred.

6. Mr. McCreight has alleged that he has leased the property from Nick in order to enter into business himself. However, it is thought that Mr. McCreight is Nick's relative (Upon information and belief, McCreight lives with Nick's mother in Mitchell.) and simply another "straw man" put forth by Nick in an attempt to get the electricity and gas turned back on without having to satisfy the outstanding charges.

7. NWE has heard at least two stories from Mr. McCreight as to his interest in the properties. He provided NWE with a "lease" for the properties, which lease does not at all make clear whether he was leasing them from Nick in order to live there or to operate them as commercial properties. The second story provided to NWE is the one found in the Petition before the Commission, that he had an expectancy of a lease. However the complaint postdates the lease. McCreight, has told the Commission that he does have a lease and an expectation of rehabbing the properties for ultimate occupation, either by himself or by subtenants. However, upon information and belief, the title to the properties is so clouded and unmarketable that NWE believes not only is service economically unfeasible, but the competing stories provided by McCreight as to the lease or expectation of a lease from Nick to himself are evidence of nothing more than further attempts by Nick at putting a straw man up to secure utility service. No one would lease or purchase these properties, given the apparent situation with respect to the license, title and back taxes, foreclosures, etc.

NWE has ordered a title search on the properties and would expect to be able to provide the Commission with evidence at evidentiary hearing that title to the properties is not marketable. Further, the intended or proposed lease amount at \$1,200 per month creates a number of questions as to the lease economics and lends itself to the proposition that there is no expectation that McCreight has indeed leased the properties to operate or rehab them himself.

Without a license, tenants, or water, or marketable title, how does McCreight intend to do anything other than incur costs which can't be repaid? Answer: he can't.

8. More recently, NWE employees have observed extension cords running between some properties at the Stardust Motel (710 and 712 S. Lawler Ave.) and the properties nearby which have been disconnected, which extension cords are not only unsafe but appear to be theft of services. Services at those buildings are in the names of other people, thought to be tenants at this point, and who were given services before NWE caught on to the scheme.

9. Finally, on Thursday, May 17, Erica Foss, a resident of one of the properties, attempted to apply for service in her own name at 717 S. Sanborn, again a Nick Antonie controlled property. Previously Foss had a request (which was granted on May 1 before NWE had a full understanding of the scheme Nick was putting forward) for service at 712 S. Lawler in Mitchell. The May 17<sup>th</sup> request was to have service taken out of her name at 712 S. Lawler and transferred to 717 S. Sanborn. At 717 S. Sanborn, Linda Lane had placed the service in her own name earlier in May, ostensibly at Nick's request, and has since transferred the service out of her name. Foss has a chargeoff with NWE from some years back. NWE believes that Erica's request to gain service at the Sanborn address was a fraudulent attempt to maintain service and advised her of the level of the bills on average \$400 per month and almost \$1,000 during the winter months. NWE required a \$900 deposit from Foss, on which she hesitated and said she'd have to give it some thought. Very shortly thereafter, Tony Antonie - upon information and belief, Nick's father - called into the NWE contact center late on May 17 to pay the deposit for Erica. Together, the Antonies and business organizations controlled by them owe NWE over \$30,000 on Mitchell SD properties. Tony's act to pay Erica's deposit is simply further evidence of the scheme and the lengths to which the Antonies have gone to cajole tenants into obtaining services on their behalf.

11. NWE alleges that these tenants are not likely being told the full story with respect to the Antonies' intentions with regard to their other financial problems and payment of bills raising serious question as to the feasibility of providing service.

### **Rules**

12. The Commission's rules for refusal of service are found in ARSD 20:10:20:01, 02, and 09. NWE relies in part on (3) of 20:10:20:01 for its refusal of service.

(3) Where an applicant, although not personally liable to the utility, is attempting to return service to an indebted household, and no attempts are forthcoming to liquidate the debt of that household.

While NWE contends that the property is not residential as to the Antonies and are in fact, commercial, as the Antonies' business is renting or leasing of apartments and motel space to tenants, it is perfectly clear that there are no attempts forthcoming to liquidate the debt, and the applicant is attempting to return service. NWE submits that this is a clear application of the spirit of this rule to the facts at hand.

To allow a property owner to put up a straw man and a sham of a "lease" in a scheme to avoid payment and keep the services on is a tortured reading of the rules, and not in the best interests of the utility or anyone other than one seeking something for nothing.

13. NWE would also argue at evidentiary hearing that 20:10:20:01(5) may apply concerning evasion of payment, interference with service facilities, and violation of service regulations.

14. NWE would also contend that none of the reasons deemed insufficient for refusal in ARSD 20:10:20:02 apply in the circumstances. NWE again contends that the properties are not residential as to either of the Antonies, or McCreight. The rule at sub 3 doesn't apply because this is not a dwelling as to the complainant.

15. Finally, the Commission's landlord and tenant rule is found at ARSD 20:10:20:09:

If service is provided at an address different from the mailing address of the bill or if the utility has reason to know that a landlord and tenant relationship exists and the landlord, as a customer of the utility, would otherwise be subject to disconnection of service, the utility may not disconnect service until the following actions have been taken:

(1) The utility, after providing notice as required in this chapter, shall offer the tenant the opportunity to apply for service in the tenant's own name if it is economically feasible to provide such service. If the tenant declines to apply for service, the utility may disconnect service pursuant to this chapter;

(2) A utility shall not attempt to recover from a tenant, or condition service to a tenant upon, the payment of any outstanding bills or other charges of the landlord.

While this matter as to McCreight is not a disconnection, the rule is instructive. NWE alleges that it's not economically feasible for McCreight to take the property by lease from

Antonie/Stardust Properties. It's clearly not economically feasible for NWE to provide the service which has been requested by McCreight or by anyone else with respect to the properties. There is no evidence that McCreight (or the other applicants) have leases in hand with subtenants, licenses to operate from the state, or the other resources or utilities which will provide the economic wherewithal to provide for the payment of future utility charges, let alone the back charges. The owners and operators of the property to date owe NWE tens of thousands of dollars for services rendered but unpaid. They owe others thousands of dollars as well. Simply put, the applicant can't afford the service, has no legal way of collecting for the service from the tenants or guests, if any there are, and thus NWE has no hope of being paid for the requested services.

It is obvious but bears restatement that NorthWestern is in business to serve customers. NorthWestern wants to provide services, and in return wants to be paid for those services. That hasn't been the case here and cannot be the case going forward. The services rendered in the past must be paid for, and into the future.

**WHEREUPON**, NWE requests that the Commission grant its Motion to Dismiss the Complaint and hold it for naught, or in the alternative, set the matter for evidentiary hearing, at which time NWE, while not bearing the burden of proof, will muster the evidence required to sustain the position stated herein.

DATED this \_\_\_\_ day of May, 2007.

MAY, ADAM, GERDES & THOMPSON LLP

BY: \_\_\_\_\_

BRETT KOENECKE  
Attorneys for NorthWestern Energy  
503 S. Pierre Street  
PO Box 160  
Pierre, SD 57501

## CERTIFICATE OF SERVICE

Brett Koenecke of May, Adam, Gerdes & Thompson LLP hereby certifies that on the \_\_\_\_\_ day of May, 2007, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above captioned action to the following at their last known addresses, to-wit:

Michael B. McCreight  
124 West 1<sup>st</sup>  
Mitchell, SD 57301

Lori Urinko  
Paralegal  
NorthWestern Energy  
125 S. Dakota Avenue  
Sioux Falls, SD 57104

Pam Bonrud  
Director, Regulatory Affairs - SD/NE  
NorthWestern Energy  
125 S. Dakota Avenue  
Sioux Falls, SD 57104

---

BRETT KOENECKE