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February 3, 2005

Pamela Bonrud, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

Re: Docket EL04-032
Our File Number 04-189

Dear Pam:

Enclosed herein are the original and ten copies of the **MEMORANDUM OF LAW IN OPPOSITION TO MOTION FOR SUMMARY DISPOSITION** with attached Affidavit of Kenneth D. Rutledge.

By copy of this letter, I am also serving Alan D. Dietrich with a copy of the same.

Sincerely yours,

Darla Pollman Rogers

Darla Pollman Rogers
Attorney at Law

DPR/ph

Enclosures

CC: Alan D. Dietrich

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FEB 0 3 2005
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION FOR ELECTRICAL SERVICE BY DAKOTA TURKEY GROWERS, LLC, TO HAVE DAKOTA ENERGY COOPERATIVE, INC., ASSIGNED AS ITS ELECTRIC PROVIDER IN THE SERVICE AREA OF NORTHWESTERN ENERGY	Docket No. EL04-032 **MEMORANDUM OF LAW IN OPPOSITION TO MOTION FOR SUMMARY DISPOSITION**

NorthWestern Corporation, doing business as NorthWestern Energy ("NorthWestern"), filed a Motion for Summary Disposition with supporting Memorandum of Law and Affidavits. Dakota Turkey Growers, LLC ("DTG"), opposes NorthWestern's Motion for the following reasons: NorthWestern attempts to define "new location" from the perspective of the electric company pursuant to SDCL 49-34A-42, rather than from the perspective of the new customer pursuant to SDCL 49-34A-56. This is contrary to the rules governing statutory construction and to the guidance of settled case law. In addition, the facts show that the site of DTG's facility is not the same site as Decker farm, further negating NorthWestern's position. DTG submits this Memorandum of Law in opposition to said Motion for consideration by the South Dakota Public Utilities Commission ("PUC").

SUMMARY DISPOSITION

At the outset, DTG would note that this case is not appropriate for summary disposition. NorthWestern has filed a Motion For Summary Disposition of the Petition of DTG pursuant to SDCL 1-26-18 and Commission Rule 20:10:01:02.04. Authority

is granted to the PUC pursuant to SDCL 49-1-11 to grant or deny the motion in accordance with the laws of South Dakota. The standard for summary disposition is well-settled in the State of South Dakota. Summary disposition is proper where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact. Luther v. City of Winner, 2004 SD 1, ¶6, 674 NW2d 339, 343.

DTG asserts by affidavit that it is a new customer at a new location in NorthWestern's service area. The site of the turkey plant (hereinafter the "Facility") is being constructed at a new site or location for DTG. DTG bought the property from the Greater Huron Development Corporation on August 26, 2004, who bought the property from the City of Huron on August 17, 2004. The proposed site is considered a Greenfield site because there are no industrial buildings on the site. In fact, the site where the Facility will be located is bare pasture land. DTG is constructing a new building from the ground up.

The area upon which DTG is building the Facility has recently been re-platted. The Decker farm site was located in the northeast corner of DTG's Outlots 1 and 2 (hereinafter "Plat"). The DTG Facility is located in the southeast corner of the Plat. The area where the Facility is physically located has never had buildings located on it. DTG has never previously been a customer of NorthWestern's in this service area. These assertions are also supported by the Affidavit of Kenneth Rutledge (attached hereto as Exhibit 1), Answers of DTG, LLC and Dakota Energy Cooperative, Inc. to First Interrogatories of NorthWestern Energy and the Petition for Electrical Services submitted by DTG.

NorthWestern asserts in its affidavits and Motion for Summary Judgment that DTG is not seeking electric service in a new location. DTG asserts in its affidavit and this Memorandum of Law in Opposition to the Motion that the Facility is on a new location. Resolution of this issue requires exploration of genuine issues as to material facts. Thus, the Motion For Summary Disposition must be denied, and the PUC must resolve these factual issues at a hearing on the merits.

STATUTORY CONSTRUCTION

A. Policy Of Territorial Law

DTG does not dispute the basic policies of the Territorial laws, as stated by NorthWestern. In 1975 the South Dakota Legislature enacted the Electric Territorial Law of the State of South Dakota, codified at SDCL §§ 49-34A-42 through 49-34A-59 (the "Territorial Act"), with the intent to eliminate duplication of wasteful spending in all segments of the electrical industry. The Territorial Act gave the PUC the power to assign specific service areas to each utility. The Act was set up to accurately and clearly define the boundaries of the assigned service areas of each electric utility, and grants the right to provide exclusive service. These areas were geographically defined. Every "geographic area" in the State of South Dakota was included within these boundaries.

It is important to note, however, that the assigned service areas of utilities are not absolute. The Territorial Laws also contain several provisions whereby electrical consumers could have their provider changed or could choose what electrical utility served them. SDCL §§ 49-34A-38 through 49-34A-59, In the Matter of the Petition for Declaratory Ruling of Northwestern Public Service Company with Regard to Electric Service to Hub City, 1997 SD 35, ¶ 16, 560 NW 2d 925, 927.

B. Interpretation Of Statute

NorthWestern appears to define "location" from the perspective of the utility company pursuant to SDCL 49-34A-42. Because NorthWestern previously served Decker Farms at a site located near the DTG Facility, NorthWestern claims the site is not a new location. NorthWestern then relies on SDCL 49-34A-42 to claim a continued right to serve the general Decker farm location.

NorthWestern's argument is flawed for three reasons. First of all, whether or not the location is a new one (i.e., never served before) by the utility is not the issue. The issue is whether or not the location is a new site for the customer. To interpret SDCL 49-3A-56 in any other manner renders said statute meaningless. Second, the rights afforded to NorthWestern in SDCL 49-34A-42 must be viewed in conjunction with all of the territorial statutes, including SDCL 49-34A-56. Finally, the actual site of the DTG Facility is not the same as the Decker farm site.

The purpose of statutory construction is to discover the true intention of the law, which is to be ascertained primarily from the language expressed in the statutes. Beck vs. Lapsley, 1999 SD 49 ¶ 3, 593 NW2d 410, 413. The purpose of SDCL 49-34A-56 is to allow large new customers a choice as to who will provide their electric service. It provides an avenue wherein the new customer is not obligated to take service from the electric utility serving the geographic area where it is located. This intent is clearly spelled out in SDCL 49-34A-56. "The plain language of the statute indicated the legislature intended it to . . . provide a new large load customer at a new location an option to be exercised prior to receipt of service." Hub City at 928. (Emphasis added.) This language supports DTG's position that "new location" is to be determined from the perspec-

tive of the customer, i.e., it is a new location or site for the new customer. Although NorthWestern argues that application of SDCL 49-34A-56 is contrary to the intent of the Territorial Act, which is the elimination of duplication of wasteful spending in all segments of the electric utility industry, the Supreme Court declared that SDCL 49-34A-56 serves a different intent of the legislature, and stated:

> A new large user may deprive other customers in a service area of adequate service, or the utility currently providing service to an area may not have sufficient facilities to accommodate the new user. A nearby utility, on the other hand, might have more adequate facilities. Allowing it to serve the large new customer would promote efficiency to both customers and suppliers. The classification of large and small users is thus not arbitrary, and it is rationally related to the purpose of promoting the efficiency that the statute was intended to assure. Matter of Certain Territorial Boundaries (Mitchell Area) F-3105, 281 NW2d 65, 71 (SD 1979).

NorthWestern argues that DTG must meet three qualifying factors before a customer can seek to be served by an electric utility different from the electric utility holding the assigned service area. It must (1) be a "new customer," (2) it must be seeking service to a "new location," and (3) it must require electric service with a contracted minimum demand of two thousand kilowatts or more. The statute actually states:

> Notwithstanding the establishment of assigned service areas for electric utilities provided for in §§ 49-34A-43 and 49-34A-44, new customers at new locations which develop after March 21, 1975, located outside municipalities as the boundaries thereof existed on March 21, 1975, and who require electric service with a contracted minimum demand of two thousand kilowatts or more... (Emphasis added) SDCL 49-34A-56.

Accordingly, in order to "qualify," DTG must fit into the category of "new customers at new locations which develop after March 21, 1975," as long as it meets the contracted minimum. DTG squarely meets this definition. It is a new customer at this new location to either NorthWestern or Dakota Energy Cooperative, Inc. The DTG Fa-

cility has been developed at a new site. This site is considered a Greenfield site, which means there are no industrial buildings on the site. DTG has never been at this location before. Further, the actual site of the Facility is being developed on bare ground.

If the PUC adopts NorthWestern's interpretation of the statute, it in effect makes the statute meaningless. A new customer can never develop on a new geographic area not currently assigned to an electric utility, since all territory is assigned to a particular electric utility's service territory. This is an illogical conclusion. Statutes should not be construed in such a way as to render the language meaningless. Weins v. Sproleder, 605 NW2d 488, 1999 SD 10, 2000 SD 10, rehearing denied, certiorari denied 121 S.Ct 63.

A plain, literal reading of SDCL 49-34A-56 supports DTG's argument. To otherwise construe new customers at new locations would require an absurd and unreasonable result. Taking NorthWestern's argument to the extreme, it could have 10,000 acres in one of its assigned service areas and serve one small user on one site within the entire 10,000 acre area. If a new customer built a new large load facility anywhere within the entire 10,000 acre area, under NorthWestern's statutory interpretation, that could never constitute a new location under SDCL 49-34A-56 Clearly, that is not the intent of the Territorial laws taken as a whole.

NorthWestern's reliance on SDCL 49-34A-42 is also misplaced. The rights of NorthWestern (and any other utility) granted in 49-34A-42 are subject to other Territorial laws, including 49-34A-56. The opening phrase of Section 56, "Notwithstanding the establishment of assigned service areas for electric utilities . . ." clearly indicates a

legislative intent that the provisions of Section 56 take precedent over the assigned service area statutes. This has been clearly expressed in South Dakota case law.

In the case of Matter of Certain Territorial Boundaries (Mitchell Area), 281 NW2d 65 (SD 1979), Willrodt challenged the constitutionality of SDCL 49-34A, and in particular alleged it violated South Dakota Constitution Article VI, §12: "No . . . law . . . making any irrevocable grant of privilege, franchise, or immunity shall be passed." In rejecting the constitutional challenge, the Court noted that while SDCL 49-34A-42 does provide for exclusive service areas,

> [t]his statute must be read together with others:
>
> (1) SDCL 49-34A-49 through 49-34A-55 permits a municipality-owned system to purchase facilities of another electric utility operating within the municipal boundaries.
>
> (2) SDCL 49-34A-43 protects the long-standing rights of municipalities to establish electric utilities. See also SDCL 9-39-1 et seq.
>
> (3) **SDCL 49-34A-56 permits the PUC to assign certain large new customers to a utility other than the ones assigned to the service area in which the customer may be located according to specific legislative guidelines.**
>
> (4) SDCL 49-34A-58 authorizes the PUC to assign service areas to other utilities, if the utility presently serving an area does not provide adequate service.
>
> (5) SDCL 49-34A-57 permits a utility to serve its own property within another's assigned service area and permits municipally-owned systems to serve their own public service facilities located outside their own service areas. (Emphasis added.) Id. at 70-71.

The case of In the Matter of the Petition for Declaratory Ruling of Northwestern Public Service Company with Regard to Electric Service to Hub City, 560 NW2d 925 (SD 1997) (hereinafter Hub City), also addressed the necessity of looking at all of the provisions of SDCL Chapter 49-34A.

> Statutes are to be read *in pari materia*. It is presumed that the legislature intended provisions of an act to be consistent and harmonious . . . In 1975 the legislature enacted the "South Dakota Territorial Integrity Act" (Act), now codified at Chapter 49-34A . . . the legislature granted each utility the exclusive right to "provide electric service at retail . . . to each and every present and future customer in its assigned service area." SDCL 49-34A-42. . . . The Act contains several provisions whereby electric consumers may have their provider changed. SDCL 49-34A-38 through 49-34A-59. Hub City at 14-16. (Emphasis added.)

Obviously, SDCL 49-34A-56 is one of those statutes which provides a choice to the consumer. Therefore, the exclusive assigned service area of NorthWestern, as articulated in 49-34A-42, is subject to the provisions of Section 56 and other statutes.

SDCL §§ 49-34A-42 and 56 can be read in harmony. An electric utility has the exclusive right to serve customers in an area until one of the other provisions in the Territorial Act trumps that right. Such is the case when a large new company moves into and develops in a new area.

If on the other hand the PUC believes these two statutes contradict one another, the Supreme Court has given guidance on how to rectify that. In Matter of Certain Territorial Elec. Boundaries (Aberdeen), 281 NW2d 72 (SD 1979), the Supreme Court determined that when SDCL 49-34A-42 and 44 were read separately, they seemed contradictory.

> Obviously, the PUC cannot set boundaries under the guidelines of SDCL 49-34A-44 without disrupting rights to serve customers that may have vested under SDCL 49-34A-42. It is our duty to reconcile any such apparent contradiction and to give effect, if possible, to all of the provision under consideration, construing them together to make them harmonious and workable. North Central Investment Co. v. Vander Vorste, 135 NW2d 23 (1965). This requires that the exclusive rights provision of SDCL 49-34A-42, as well as the equidistant concept of SDCL 49-34A-43, must yield to a boundary determination according to the guidelines of SDCL 49-34A-44, whenever the PUC find that the utility's lines are intertwined. Having determined that the electric lines were intertwined in the entire disputed area, the PUC was required to

> determine service boundaries according to the SDCL 49-34A-44 guidelines. Id at 761.

Just as in Matter of Certain Territorial Elec. Boundaries (Aberdeen), the provisions of SDCL 49-34A-42 must yield to the provisions of SDCL 49-34A-56 in order to make both statutes harmonious and workable. In addition, in the Matter of Clay Union Electric Corporation, 300 NW 2d 58, 62 (SD 1980), the Supreme Court stated, "The protection of existing service rights in SDCL 49-34A-42 is subordinate to the legislative intent to allow the utilities, with the consent of the PUC, to agree by contract to designated service areas and customers to be served."

CASE LAW

Case law does not support NorthWestern's strained interpretation of location. The Hub City case, *supra,* involved a manufacturing plant built in 1977 and operated by Safeguard. The plant was located in the assigned service area of NWPS and was served by NWPS. That same year, a division of Safeguard (Division) built an addition (a foundry) onto the manufacturing plant. Division petitioned the PUC for service by Northern Electric Company (NEC), based on SDCL 49-34A-56. Division claimed to be a new customer (the foundry owned by Division) at a new location (an addition to the manufacturing plant) and a large load. NWPS intervened in opposition and following a hearing, the PUC assigned NEC as the foundry's electric supplier.

> The plain language of the statute (SDCL 49-34A-56) indicates the legislature intended it to . . . provide a new large load customer at a new location an option to be exercised prior to receipt of service. Hub City at 929.

Clearly, the PUC's interpretation of the foundry as a new customer at a new location completely contradicts NorthWestern's interpretation of new location. In the Hub City

case, NWPS was already serving a customer (the manufacturing plant) in its service area. That did not, however, according to the PUC, give it the right to serve the foundry on the basis of it not being a new location. As was the foundry in the Hub City case, DTG is "a new large load customer at a new location" that is exercising its statutory option to select a supplier outside of the assigned service area prior to receipt of service.

The Clay Union case (Matter of Clay Union Electric Corporation, 300 NW2d 58 (SD 1980)), contrary to NorthWestern's analysis, affirms DTG's interpretation of location, even though the case involved contractual arrangements rather than SDCL 49-34A-56. Clay Union and NWPS had an agreement designating exclusive service areas within disputed territory east of Yankton. Within the agreement, each utility was granted the right to continue to serve existing structures and outlets, but no new connections or hookups could be made within the designated service areas of the other utility. Clay Union served existing structures and outlets of the Foss farmhouse, which was located in NWPS's designated exclusive area. Thereafter, a new customer, Alumax, purchased the Foss property, the farmhouse was removed, and an aluminum plant was constructed. NWPS claimed the right to serve Alumax pursuant to the agreement, because it constituted a new structure. Clay Union claimed the right to continue to serve an "existing" structure, as the Alumax plant was not a new connection or hookup.

The PUC found in favor of Clay Union on the basis of SDCL 49-34A-42:

> The PUC concluded that from the evidence presented a finding could be made that the Alumax plant site constituted the same location as the farmhouse. . . . Clay Union at 60.

Clay Union's argument and the PUC's finding are almost identical to NorthWestern's argument in the current case. NorthWestern argues that the DTG Facility site constitutes

the same location as the Decker farm site. The Circuit Court, upheld by the Supreme Court, rejected that argument and found the PUC's finding to be clearly erroneous in light of the evidence. The aluminum plant was a new structure and a new connection or hookup; this is comparable to a new location under SDCL 49-34A-56, which statute was never discussed in Clay Union. Thus NorthWestern was entitled to serve the plant, pursuant to the agreement between the parties.

While the current case does not involve an agreement between the parties, the Clay Union case gives clear direction on what constitutes a new location. The Court disagreed and overturned the finding that the Alumax plant site, reconstructed on the same location as a farmhouse, constituted the same location. DTG's argument is even stronger, because the DTG plant is not the same location as the Decker farm, and the Commission should reject NorthWestern's argument.

Further, the recent Supreme Court opinion of Electric Association, Inc. for a Declaratory Ruling Regarding Service Territory Rights Concerning Black Hills Power, Inc. and West River Electric Association, Inc., 2004 SD 11, 675 NW2d 222, does not support NorthWestern's interpretation of location in the current case. That case did not involve an interpretation of SDCL 49-34A-56. There is nothing shown from the decision that it was even raised by either party. Of course, it would not have been as Black Hills Power already served the entire plant involved so it was neither a new customer for the electric provider nor was it a new location. West River urged the Court to adopt an interpretation of "location" centered upon service, and Black Hills urged the Court to hold that "location" is a geographical site.

NorthWestern construes West River Electric to support its argument that the phrase "new location" is defined as a geographic area where an electric utility has never previously served a customer. By urging the PUC to adopt this definition, NorthWestern is asking the PUC to ignore the plain meaning of the statute. NorthWestern is urging the Commission to add an element of service to the plain meaning of location.

It is important to note that the Court in West River Electric was not defining "new location" under SDCL 49-34A-56, but "location" under SDCL 49-34A-42. The Supreme Court interpreted SDCL 49-34A-42 to determine the plain meaning of the phrase "the exclusive right to provide electric service at retail at each and every location where it is serving a customer." The Court found the phrase did not contain a restriction that may limit the right to provide only a level of electric service under a particular distribution system. "Location" only denotes a place where something is or could be located, a site. It does not have any other attached meaning. It is not a term that describes a level of service. It does not include an additional element of service. It is not a geographic area that has never been previously served by NorthWestern.

In West River Electric the property had not been platted or subdivided; however, in the present case a replat was filed establishing new outlots upon the property. Further in West River Electric the entire location and the purposes for which it was intended to be used were served by the existing electrical provider, so there was neither a new location nor a new customer as there is in the present case. In West River Electric, Black Hills Power specifically asked the court to adopt the holding that in order to be a separate location, there must be some feature of the property which would set it apart from the surrounding parcels. A public road, a body of water, or a legal division (such as platting or

subdividing the land) all could serve to distinguish one location from the surrounding area. Id. at ¶ 26 (footnote 5) (citing Coles-Moultrie Elec. Coop v. Illinois Commerce Com'n., 394 NE2d 1068 (Ill.App 4th 1979)). The Supreme Court specifically refused to consider the question because it was not properly presented to the Court. Because of these important distinctions, the West River Electric case is not controlling legal precedent in the interpretation of "new location" under SDCL 49-34A-56. Also, because the property involved herein was replatted after acquisition by the new customer, the Coles-Moultrie case supports DTG's argument that a new location is involved.

SDCL 47-34A-56 was obviously intended to allow for the promotion of new businesses at new locations which could provide benefit for the state and the area where the business commences operation. The interpretation sought by NorthWestern would stifle progress and competition, which are clearly necessary for our state to attract new businesses.

If NorthWestern's interpretation of SDCL 47-34A-56 is affirmed, the ability of South Dakota's communities to compete for new large load companies seeking to locate in South Dakota when fiscally feasible circumstances exist would be significantly curtailed. This interpretation would be inconsistent with the obvious intent of the legislature as reflected in its adoption of SDCL 47-34A-56.

Further guidance in the interpretation of "location" can be found from states with territorial laws similar to South Dakota's laws. In City of LaGrange vs. Georgia Power Company, 363 SE2d 286 (Ga 1987), the City and Power Company filed a petition for declaratory ruling before the Georgia Public Service Commission (PSC) to determine which electric company had the right to provide electric service to a new indus-

trial customer. Both utilities (City and Power Company) were authorized to serve the location.

The Georgia Territorial laws generally provided for assignment of electric suppliers by geographical location, but the statute also gave "large load" consumers the right to choose among authorized suppliers, similar to SDCL 49-34A-56. The statute also provided, "every electric supplier shall have the exclusive right to continue serving premises lawfully served by it on March 29, 1973, or thereafter." The City contended that since it lawfully provided service to the premises during construction, it had the exclusive right to continue serving the premises. The PSC and the Court did not agree.

> The City provided electric service to the temporary construction site in question here, a construction site, which at that time did not qualify as a large load consumer; thus, no choice was involved in the selection of the provider of electric service to that site. The City now seeks to extend that temporary provision of electric service to the permanent premises on the basis that it has been "grandfathered" into the exclusive right to provide such service by subsection (b). We are not persuaded by the City's interpretation of the statute, which would deprive certain large load consumers in situations such as the one here of their statutory right to choose a provider of electric service under subsection (a), thus eviscerating that entire subsection and the intention of the legislature in enacting it. Under the City's interpretation, customer choice would be eliminated whenever temporary service is provided to construction sites under other parts of the Act. The new large load customer here would be "locked in" to the choice made by the City—a party not totally without self-interest in that it is also the beneficiary of this choice, since it is the supplier chosen. Thus, the evident purpose, and indeed the plain words of subsection (a) of OCGA §46-3-8, would be rendered meaningless; there would be no customer choice. Id. at 288.

In the current case, NorthWestern seeks to "lock in" services to DTG by claiming its service to Decker farm or to a well of the former farm temporarily utilized by Stellar Group (the independent firm constructing the DTG Facility) gives it the exclusive right to continued service at a site in proximity to that location. That makes the consumer

choice granted to new large load customers in SDCL 49-34A-56 meaningless, as there could never be a new location as long as there was any previous service on any portion of the property.

Even more on point is the case of Rural Electric Convenience Company vs. Illinois Commerce Commission, 371 NE2d 1143 (Il 1977). Rural Electric Convenience Company (Rural Electric) brought an action before the Illinois Commerce Commission (ICC) alleging they were entitled to provide electric service to the Freeman coal company at its new building site. Illinois territorial law entitled electric suppliers to furnish service to customers at locations it was serving on the effective date of the Act, similar to SDCL 49-34A-42. Illinois law also had a large load exception that involved a separate regulatory procedure to determine which supplier could best furnish the proposed service to the large load.

The effective date of the territorial law in Illinois was July 2, 1965. Rural Electric claimed it was serving the site of the Freeman coal mine (Section 23) on that date. Rural Electric presented evidence that it was furnishing the former owner of Section 23, a farmer, with electrical service, and thus was entitled to continue to serve that location. The Court rejected Rural Electric's argument:

> Even if Rural Electric was in fact furnishing rural and domestic power to the section, we do not conclude that farm buildings served by low voltage distribution lines and a coal mine requiring a 34.5 KV line can be equated as the same customer at the same location under the intent of section 5 of the Electric Supplier Act. Id. at 1145.

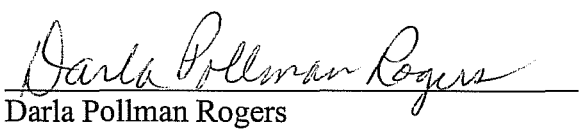
While this case was remanded on other grounds, the Court's interpretation of section 5 was not disturbed in the subsequent rulings.

As the foregoing cases demonstrate, DTG meets the statutory criteria of SDCL 49-34A-56: it is a new customer at a new location, and it clearly is a large load customer. Courts have recognized that to interpret the statute otherwise would render large load consumer choice meaningless. The provisions of SDCL 49-34A-56 apply, "notwithstanding the provisions of" SDCL 49-34A-42.

CONCLUSION

NorthWestern has misconstrued the plain meaning of SDCL 49-34A-56 by a strained and unreasonable definition of "location" tied to SDCL 49-34A-42. The plain language of SDCL 49-34A-56 supports the assertion that DTG is a new customer at a new location. DTG requests that the Motion for Summary Disposition be denied because (1) there is a genuine issue of material act, and (2) as DTG qualifies as a new customer at a new location, it is allowed to choose to receive service from Dakota Energy Cooperative, Inc.

Respectfully submitted this third day of February, 2005.



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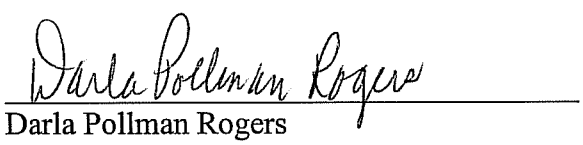
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached **MEMORANDUM OF LAW IN OPPOSITION TO MOTION FOR SUMMARY DISPOSITION** was served via the method(s) indicated below, on the seventeenth day of December, addressed to:

Karen Cremer, Staff Attorney	( )	First Class Mail
South Dakota Public Utilities Commission	(X)	Hand Delivery
500 East Capitol Avenue	( )	Facsimile
Pierre, South Dakota 57501	( )	Overnight Delivery
	( )	E-Mail
Sara Harens, Staff Attorney	( )	First Class Mail
South Dakota Public Utilities Commission	(X)	Hand Delivery
500 East Capitol Avenue	( )	Facsimile
Pierre, South Dakota 57501	( )	Overnight Delivery
	( )	E-Mail
Michele Farris, Utilities Analyst	( )	First Class Mail
South Dakota Public Utilities Commission	(X)	Hand Delivery
500 East Capitol Avenue	( )	Facsimile
Pierre, South Dakota 57501	( )	Overnight Delivery
	( )	E-Mail
Alan D. Dietrich	(X)	First Class Mail
Northwestern Corp.	( )	Hand Delivery
125 South Dakota Ave., #1100	(X)	Facsimile
Sioux Falls, South Dakota 57104	( )	Overnight Delivery
	( )	E-Mail

Dated this third day of February, 2005.



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