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January 11, 2005

**RECEIVED**

JAN 12 2005

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

Ms. Pamela Bonrud, Executive Director  
S. D. Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501

Re: Motion for Summary Disposition of NorthWestern Corporation, d/b/a NorthWestern Energy  
Docket No. EL04-32

Dear Ms. Bonrud:

Enclosed please find an original and ten copies of the Motion for Summary Disposition of NorthWestern Corporation, doing business as NorthWestern Energy, with its Exhibits and Certificate of Service. With a copy of this letter, I am serving a copy of the enclosure upon the service list.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Alan Dietrich", written over a white background.

Alan D. Dietrich  
Vice President – Legal Administration &  
Corporate Secretary

CC: Darla Pollman Rogers  
Karen Cremer  
Sara Harens  
Robert Rademacher

**STATE OF SOUTH DAKOTA  
BEFORE THE  
PUBLIC UTILITIES COMMISSION**

**RECEIVED**

JAN 12 2005

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

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

**MOTION FOR SUMMARY DISPOSITION  
OF  
NORTHWESTERN CORPORATION,  
DOING BUSINESS AS  
NORTHWESTERN ENERGY**

NorthWestern Corporation, doing business as NorthWestern Energy (“NorthWestern”), an Intervenor in this matter, hereby moves the Commission for summary disposition of the Petition of Dakota Turkey Growers, LLC (“Dakota Turkey Growers”), pursuant to SDCL 1-26-18 and Commission Rule 20:10:01:02.04 upon the grounds that Dakota Turkey Growers does not meet the qualifying requirements of SDCL 49-34A-56 for a hearing on whether it should be allowed to take electric service from an electric utility other than the electric utility having the assigned service area for the location in question. As demonstrated by the Affidavits of Jay I. Morris and Jeffrey J. Decker, attached hereto as Exhibits A and B, respectively, NorthWestern has been serving the proposed site of Dakota Turkey Growers’ turkey processing plant (the “Plant”) in Beadle County continuously for many years, including service prior to March 21, 1975, and continues to serve the location. Therefore, while Dakota Turkey Growers may be a “new customer” under SDCL 49-34A-56, it is not seeking electric service to a “new location.” In further support of this Motion, NorthWestern has included a Memorandum of Law as Exhibit C hereto.

WHEREFORE, NorthWestern requests that the Commission dismiss the Dakota Turkey Growers' Petition, based upon the information filed herewith, or, if the facts filed herewith are contested by Dakota Turkey Growers, that the Commission schedule an evidentiary hearing upon this Motion for Summary Disposition, allowing NorthWestern to present its facts and arguments as to why such Motion should be approved, and that, following such hearing, the Commission dismisses Dakota Turkey Growers' Petition in this matter.

Dated at Sioux Falls, South Dakota, this 11<sup>th</sup> day of January, 2005.

**NORTHWESTERN CORPORATION,**  
doing business as NorthWestern Energy

By:  \_\_\_\_\_

Alan D. Dietrich  
Its Attorney  
125 S. Dakota Ave.  
Sioux Falls, SD 57104  
Ph. (605) 978-2907  
Fax (605) 978-2910

**CERTIFICATE OF SERVICE**

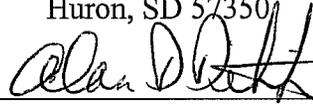
The undersigned hereby certifies that a an original and ten copies of this Request for Dismissal have been served by United States Postal Service first class mail, postage prepaid to Pamela Bonrud, Executive Director, S. D. Public Utilities Commission, 500 East Capitol, Pierre, SD 57501, and that a true and correct copy of this Motion for Summary Disposition was served by United States Postal Service first class mail, postage prepaid to the following parties to this proceeding this 11<sup>th</sup> day of January, 2005:

Darla Pollman Rogers  
Riter, Rogers, Wattier & Brown, LLP  
P. O. Box 280  
Pierre, SD 57501

Karen Cremer  
S. D. Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501

Sara Harens  
S. D. Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501

Robert Rademacher  
General Manager & Chief Operating Officer  
Dakota Energy Cooperative, Inc.  
East Highway 14  
Huron, SD 57350



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Alan D. Dietrich

STATE OF SOUTH DAKOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION

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

AFFIDAVIT OF JAY I. MORRIS

State of South Dakota )
) SS
County of Beadle )

Jay I. Morris, being first duly sworn upon oath, deposes and says that he is the Huron Area Operations Manager for NorthWestern Corporation, doing business as NorthWestern Energy ("NorthWestern") and makes this Affidavit for and on behalf of NorthWestern, whose Petition to Intervene in this matter was approved by the Commission, and whose Motion for Summary Disposition is filed herewith, and states:

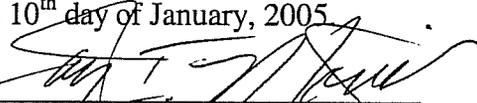
(1) Based upon the information that NorthWestern has been provided by Dakota Turkey Growers, LLC ("Dakota Turkey Growers") for its proposed turkey processing plant (the "Plant"), to be constructed in Beadle County, South Dakota the proposed location of the Plant is the following described property in the assigned service area of NorthWestern:

Dakota Turkey Growers Outlots One (1) and Two (2), a part of the Northeast Quarter (NE1/4) of Section Four (S4), Township One Hundred Ten North (T110N), Range Sixty-One (R61) West of the 5th P.M., (excepting a tract of land in the NE 1/4 of Section 4, Township 110, Range 61 deeded to the City of Huron, a municipal Corporation described as follows: Beginning at a point on the North Right of Way Boundary of the Chicago and North Western Railroad 691 feet, S. 83 Degrees W from its Intersection with the East Boundary of Section 4, thence S 83 Degrees W 210 feet, thence North 222.6 feet, thence East 208.44 feet, thence South 197.0 feet to the place of beginning), Beadle County, South Dakota.

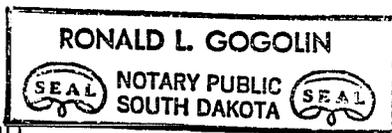
(2) NorthWestern has served this location continuously since prior to March 21, 1975, and continues to provide electric service to the location at this time, formerly serving a farming operation (including the family farm of Jeffrey Decker and his predecessors thereon), and continuing to serve a well on such location. As the property was transferred from Mr. Decker and his wife, as of July 28, 2004, NorthWestern has continued to supply single-phase electric service to accommodate facilities for DTG's contractors at the plant site, and since December 14, 2004 NorthWestern has furnished three-phase electric service for construction of the new plant;

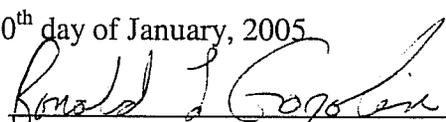
(3) NorthWestern has been the only electric utility to serve this location since March 21, 1975;

Dated at Huron, South Dakota, this 10<sup>th</sup> day of January, 2005.

  
Jay I. Morris, Huron Area Operations Manager  
NorthWestern Corporation, doing business  
as NorthWestern Energy

Subscribed and sworn to before me this 10<sup>th</sup> day of January, 2005



  
Notary Public, South Dakota  
My Commission Expires: 7-30-2010

STATE OF SOUTH DAKOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION

In the Matter of the Petition for Electrical Service )
by Dakota Turkey Growers, LLC to Have )
Dakota Energy Cooperative, Inc. Assigned as its ) Docket No. EL04-032
Electric Provider in the Service Area of )
NorthWestern Energy )

AFFIDAVIT OF JEFFREY J. DECKER

State of South Dakota )
) SS
County of Beadle )

Jeffrey J. Decker, being first duly sworn upon oath, deposes and says that he is employed in the regulatory department of NorthWestern Corporation, doing business as NorthWestern Energy ("NorthWestern") and makes this Affidavit for and on behalf of NorthWestern, whose Petition to Intervene in this matter was approved by the Commission, and whose Motion for Summary Disposition is filed herewith, and states:

(1) Affiant and his family have owned and occupied with their family farm the entire site (the "Decker Farm Site") upon which the Dakota Turkey Growers, LLC ("Dakota Turkey Growers") is building its proposed turkey processing plant (the "Plant"), since 1997. Such Decker Farm Site is made up of the following described property, in the assigned service area of NorthWestern, with such family farm served by NorthWestern for all its electrical requirements:

Dakota Turkey Growers Outlots One (1) and Two (2), a part of the Northeast Quarter (NE1/4) of Section Four (S4), Township One Hundred Ten North (T110N), Range Sixty-One (R61) West of the 5th P.M., (excepting a tract of land in the NE 1/4 of Section 4, Township 110, Range 61 deeded to the City of Huron, a municipal Corporation described as follows: Beginning at a point on the North Right of Way Boundary of the Chicago and North Western Railroad 691 feet, S. 83 Degrees W from its Intersection with the East Boundary of Section 4, thence S 83 Degrees W 210 feet,

thence North 222.6 feet, thence East 208.44 feet, thence South 197.0 feet to the place of beginning), Beadle County, South Dakota.

The Decker Farm Site property was replatted by Affiant in 2004, at the request of Dakota Turkey Growers and the City, but such replatted property continues to be exactly the same property on which the Decker Farm Site was operated. Attached hereto as Exhibit 1 is a drawing of the Decker Farm Site.

(2) Affiant and his family transferred the Decker Farm Site to the City of Huron on July 26, 2004.

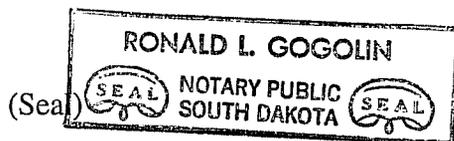
(3) While Affiant's home has been removed from the Decker Farm Site and relocated to another farm site in Beadle County, South Dakota, and thus the electrical service to the home is no longer in use, a well upon the property continued to be used by the Affiant and his family until October 22, 2004, at which time, the electrical service by NorthWestern was transferred from Affiant to the Stellar Group, a consulting firm working for DTG, which Affiant understands continues to be served by NorthWestern with electricity on the Decker Farm Site for a well there, which provides water for the project.

Dated at Huron, South Dakota, this 10<sup>th</sup> day of January, 2005.

Jeffrey Decker  
Jeffrey Decker

Subscribed and sworn to before me this 10<sup>th</sup> day of January, 2005.

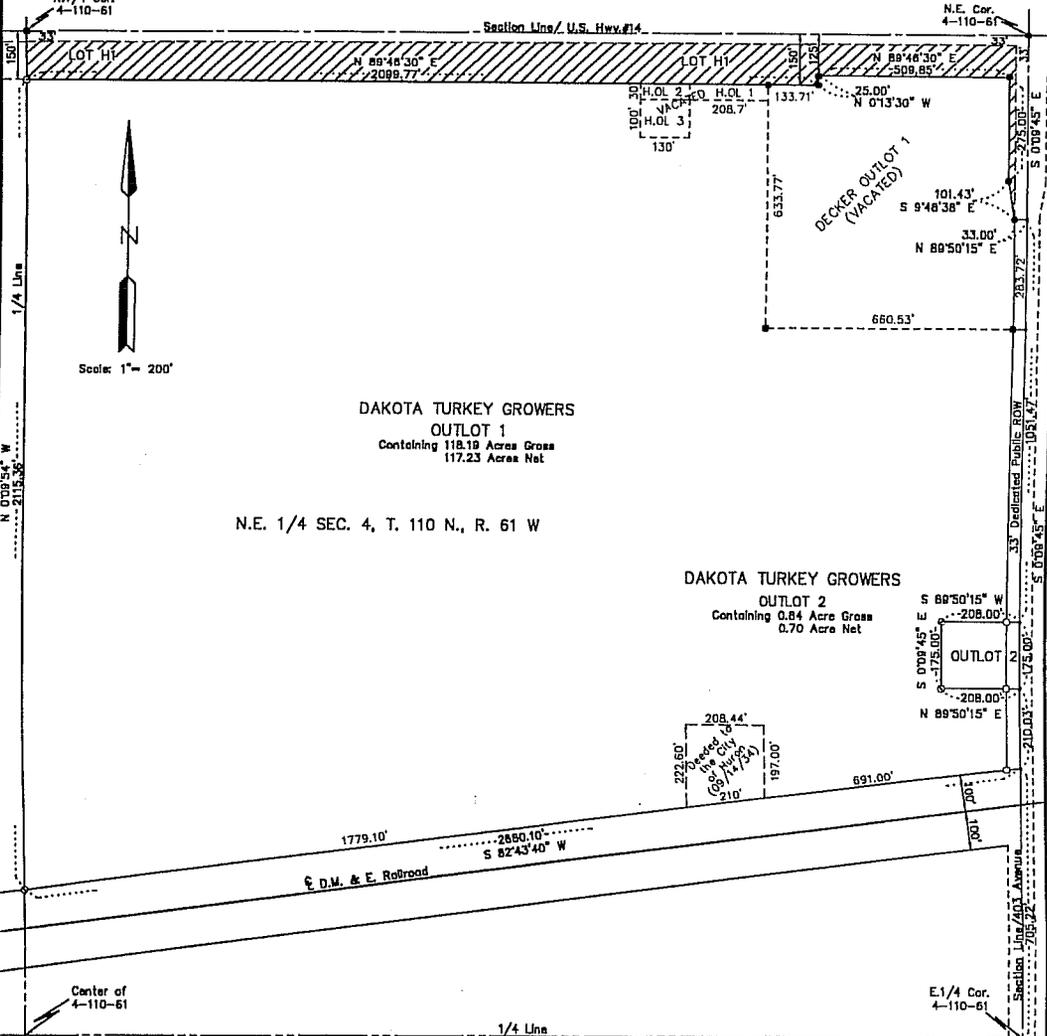
Ronald L. Gogolin  
Notary Public, South Dakota  
My Commission Expires: 7-10-2010



**DAKOTA TURKEY GROWERS OUTLOTS 1 AND 2**

(DAKOTA TURKEY GROWERS OUTLOTS 1&2 A.D.W.G 06/10/04)

A PART OF THE NORTH EAST 1/4 OF SECTION 4, TWP. 110 NORTH, RGE. 61 WEST OF THE 5TH P.M., BEADLE COUNTY, SOUTH DAKOTA



DAKOTA TURKEY GROWERS  
OUTLOT 1  
Containing 118.18 Acres Gross  
117.23 Acres Net

N.E. 1/4 SEC. 4, T. 110 N., R. 61 W

DAKOTA TURKEY GROWERS  
OUTLOT 2  
Containing 0.84 Acres Gross  
0.70 Acres Net

PIERCE & HARRIS ENGINEERING CO. INC.  
MASONIC BLDG. HURON, S.D.

- ↑ DENOTES IRON MONUMENT RECOVERED
- ↑-O DENOTES IRON MONUMENT SET
- ↑ DENOTES STEEL SPIKE FOUND
- ↑ DENOTES STEEL SPIKE SET
- ↑ DENOTES BEARINGS TAKEN FROM THE PLAT OF DECKER OUTLOT 1

**OWNER'S CERTIFICATE**

KNOW ALL MEN BY THESE PRESENTS that the City of Huron, Jeffrey J. Decker and Teresa M. Decker owners and proprietors of the following described property situated in the State of South Dakota and the County of Beadle to wit:

A part of the North East Quarter (NE 1/4) of Section Four (4), Township One Hundred Ten North (T. 110 N.), Range Sixty One West (R. 61 W.) of the Fifth Principal Meridian (5th P.M.), Beadle County, South Dakota.

Has caused part of the same to be platted as "DAKOTA TURKEY GROWERS OUTLOTS 1 AND 2" and does hereby certify that they are the unqualified owners of all the land included in the plat hereon drawn and that said land is free from any encumbrance whatsoever, and that development of this land shall conform to all existing applicable zoning, subdivision and erosion and sediment control regulations and that they have requested the preparation of this plat in compliance with the laws for the State of South Dakota; in witness whereof said Mary A. Pearson, Mayor, City of Huron, and Jeffrey J. Decker and Teresa M. Decker have set their hands this \_\_\_ day of \_\_\_\_\_ A.D., 2004.

City of Huron, Mary A. Pearson, Mayor

Jeffrey J. Decker

Teresa M. Decker

STATE OF SOUTH DAKOTA)  
COUNTY OF BEADLE )SS

On this \_\_\_ day of \_\_\_\_\_ A.D., 2004 before me, a Notary Public, personally appeared Mary A. Pearson, Mayor, City of Huron who, by me duly sworn, did say that they are the owners named in the foregoing instrument and that she acknowledged said instrument for the purpose therein stated.

Notary Public, My Commission Expires \_\_\_\_\_

STATE OF SOUTH DAKOTA  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

In the Matter of the Petition for Electrical Service )  
by Dakota Turkey Growers, LLC to Have )  
Dakota Energy Cooperative, Inc. Assigned as its ) Docket No. EL04-032  
Electric Provider in the Service Area of )  
NorthWestern Energy )

MEMORANDUM OF LAW  
IN SUPPORT OF  
MOTION FOR SUMMARY DISPOSITION

NorthWestern Corporation, doing business as NorthWestern Energy (“NorthWestern”), in support of its Motion for Summary Disposition with regard to the Petition for Electrical Service of Dakota Turkey Growers, LLC (“Dakota Turkey Growers”), submits the following Memorandum of Law for consideration by the South Dakota Public Utilities Commission (the “Commission”):

POLICY OF TERRITORIAL LAW

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 Law”), finding that “the elimination of duplication and wasteful spending in all segments of the electric industry would promote the public interest,” Matter of Certain Territorial Electric Boundaries (Mitchell Area), 281 N.W. 2d 65 (S.D. 1979). The Territorial Law provided a process in which assigned service areas would be established for each electric utility: investor-owned, rural electric and municipal, and each electric utility was given the “exclusive right to ‘provide electric service at retail . . . to each and every present and future customer in its assigned service area.’” Matter of NorthWestern Public Service Co., 560 N.W.2d 925 (S.D. 1997). As the Supreme Court stated

further in that case, “[t]he standard of guidance under SDCL 49-34A is the ‘elimination of duplication and wasteful spending’ in all segments of the electric utility industry.”

### **NORTHWESTERN’S SERVICE TO THE LOCATION**

In this matter, and as the Affidavits of Mr. Morris and Mr. Decker demonstrate, NorthWestern has continuously served the property that Jeffrey Decker and his family have owned and operated (the “Decker Farm Site”), while it was owned and operated by them, and while it was owned and operated by their predecessors continuously since prior to March 21, 1975. The property that has been acquired, for the purpose of serving as the site for the Dakota Turkey Growers processing plant, is exactly the same geographical area as that owned by Mr. Decker and his family. NorthWestern served the Decker Farm Site location on March 21, 1975, the operative date of the Territorial Law (and, in fact, served the location prior to that time), and has served it continuously since March 21, 1975.

There is very recent South Dakota Supreme Court guidance on the definition of the word “location” as it appears in the Territorial Law. In a case decided by the Supreme Court in January 2004, Electric Association, Inc. for a Declaratory Ruling Regarding Service Territory Rights Concerning Black Hills Power, Inc. and West River Electric Association, Inc., 2004 S.D. 11, 675 N.W.2d 222 (S.D. 2004), the Supreme Court was faced squarely with an electric territorial issue whose outcome depended upon the meaning of the word “location” in the Territorial Law. In that case, the Supreme Court rejected an argument by West River Electric Association that “the protected right to serve pre-existing ‘locations’ should be viewed as a ‘narrow exception’ to a ‘general rule’ prohibiting the extension of service.” Instead, the Supreme Court held that the word “location” in the Territorial Act did not mean a “level of

electric service,” but should mean the “geographical area.” In other words, even if an electrical supplier was serving a smaller load at a location, that still qualifies as service to that location.

Based upon this timely and controlling precedent, the mere fact that the Dakota Turkey Growers’ electrical needs will be much greater than the use by Mr. Decker for his farm does not change the fact that NorthWestern has been serving the location. As the Supreme Court noted, in citing an earlier decision, In re Certain Territorial Electrical Boundaries (Aberdeen City Vicinity), 281 N.W.2d 72, 78 (S.D. 1979), the Territorial Law includes “no express or implied exceptions based upon the nature of the customer or the *extent* or duration of the service provided.”

The South Dakota Attorney General, in an opinion issued shortly after the Territorial Law was approved, Attorney General Opinion No. 75-135, similarly defined “location” in terms of a geographical area. Under a territorial law similar to South Dakota’s in the State of Illinois, the construction of the term “location” was considered by the Illinois State Appellate Court, which, in Coles-Moultrie Elec. Coop. V. Ill. Commerce Comm., 394 N.E.2d 1068 (Ill.App. 4<sup>th</sup> 1979), held that the term must be construed to mean a geographic area. The Illinois Court in Coles-Moultrie found it compelling that the property was exactly the same tract as that previously owned. In further support of the “geographical area” definition, SDCL 49-34A-1(1) defines the term “assigned service area” as “the geographical area in which the boundaries are established as provided in 49-34A-42 . . . .” Based upon the rulings of the Supreme Court, particularly the ruling in the Black Hills & Western Electric case, NorthWestern submits that the Dakota Turkey Growers’ Plant site is a location served by NorthWestern and not a “new location” under SDCL 49-34A-56.

## NORTHWESTERN & CLAY UNION CASE

A case came before the Commission, and eventually the Supreme Court, Matter of Clay Union Electric Corporation, 300 N.W.2d 58 (S.D. 1980), involving the issue of service to a farmhouse at a location upon which a larger commercial customer was seeking service in a case involving NorthWestern and a rural electric cooperative. That case involved a customer receiving service from the REA (“Clay Union”) in NorthWestern’s assigned service area, based on service prior to March 21, 1975. In its decision in the Matter of Clay Union Electric Corporation, supra, this Commission found that provision of single-phase service to a farmhouse allowed the same utility to provide service to a new aluminum extruding plant located partially on the land formerly owned by the previous homeowner and on additional lands acquired by the business, all within another utility’s (NorthWestern’s) assigned service area.

The Sixth Circuit Court (which reversed the Commission’s ruling in the case) and the Supreme Court (which affirmed that Circuit Court opinion) held that NorthWestern should serve the plant, not because of a finding that it was a “new location” but because the Commission-approved contract between Clay Union and NorthWestern further limited the rights of Clay Union with regard to service to “new connections” in the NorthWestern assigned service area. In Clay Union, the Supreme Court held that, while cooperative would have had the right to continue to serve a “location” under SDCL 49-34A-42 for which it was serving a customer when the Territorial Law was enacted, i.e. March 21, 1975, the limiting agreement entered into by Clay Union and NorthWestern further limited Clay Union’s rights within NorthWestern’s assigned service area. Under that agreement either electric utility could continue to “service existing structures and outlets” but could make no “new connections or hookups.” Because the new business was not an existing structure or outlet, Clay Union could not serve it within

NorthWestern's assigned service area. The Supreme Court noted that "[t]his agreement took away the right the utilities had under SDCL 49-34A-42 where they were allowed to serve present and future customers in the assigned service area," Matter of Clay Union Electric Corporation, supra. Thus, the Supreme Court clearly recognized that the "location" rights which exist under the statute, absent a contrary contractual provision.

In this circumstance, when the initial assigned service areas were determined in 1976, pursuant to the Territorial Law, no service area agreement was submitted to the Commission, pursuant to SDCL 49-34A-43 (see the Commission Decision and Order in Docket F-3104, dated July 1, 1976, In the Matter of Establishing Certain Territorial Electric Boundaries with the State of South Dakota (Pierre Area), attached hereto) by Beadle Electric Cooperative (Dakota Energy Cooperative, Inc.'s predecessor) and NorthWestern, and the two electric utilities' assigned service areas were determined by the Commission based upon the proposed maps submitted by the parties. Therefore, the rights of NorthWestern and Dakota Energy are those expressly provided by statute in SDCL 49-34A-42, including NorthWestern's right to serve at retail "each and every location where it is serving a customer as of March 21, 1975" in its assigned service area.

A determination that a geographic area served is not a location is not only inconsistent with the Supreme Court's holding in Electric Association, Inc. for a Declaratory Ruling Regarding Service Territory Rights Concerning Black Hills Power, Inc. and West River Electric Association, Inc., supra, it also is inconsistent with the policy underlying the Territorial Law, and would result in a stranding of existing investments with no alternative future use for that investment. NorthWestern's position in this matter is stronger than Black Hills in that case. In this case, the Decker Family Farm was not an existing customer within the rural electric

cooperative's assigned service area; it was a customer served by NorthWestern in its own assigned service area. To allow Dakota Turkey Growers to treat this geographical area as a "new location" ignores the plain meaning of the word "location" and is contrary to the Territorial Law policy of avoiding duplication of facilities in areas already served.

#### **SDCL 49-34A-56**

The South Dakota Legislature, in including SDCL 49-34A-56 in the Territorial Law, provided, for a specific classification of electric utility customers, special rights, and such classification has been ruled by the Supreme Court as constitutional, Matter of Certain Territorial Electric Boundaries (Mitchell Area), *supra*. The statute does have 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 rights. Those three qualifying factors are: (1) it must 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. If it meets all three factors, it may petition the Commission, and following notice and a hearing, the Commission will then determine the appropriate electric utility supplier, based upon six factors set forth in the statute. NorthWestern submits that Dakota Turkey Growers has failed to meet the second qualifying factor because the location for the proposed Plant is the Decker Farm Site (not a new location).

The requirement within SDCL 49-34A-56 for the first two qualifying factors is the same reason that the Territorial Law was approved, i.e. to eliminate duplicate and wasteful spending by electric utilities. The customer must be a new customer, because if it is an existing customer, an investment has already been made to serve that customer by an electric utility, and disconnecting that electric utility's lines in order to reconnect the lines of another electric utility

would be a duplication and provide for a wasteful spending of funds by both. As made clear in the Supreme Court's ruling in Matter of NorthWestern Public Service Co., supra, the customer only has the right to petition to be served by another electric supplier, different from the electric supplier to whom the geographical area is assigned, when it first obtains electric service. Once a geographical area is served by the electric utility for whom the area has been assigned, that utility is entitled to serve all present and future customers within that geographical area.

In the same way, a customer must be seeking service to a new location. Where an electric utility already serves the location, that utility should not be forced to disconnect its wires and forfeit that geographical area it has been serving. The Territorial Law was intended to protect existing investments by electric utilities, and forcing NorthWestern to lose its long-time investment in facilities at this location is contrary to the intent of the Territorial Law and would result in duplication and wasteful spending by both utilities.

### **CONCLUSION**

A customer must meet the three criteria of SDCL 49-34A-56 before it can qualify for consideration of its petition to be served by another utility. It must be (1) a "new customer," (2) seeking service to a "new location," and (3) with an electrical load of 2 megawatts or higher. If it meets all three criteria, a customer has an opportunity to have the Commission consider six factors in determining the proper electrical supplier for that customer. Without meeting all three criteria, the six factors should never be heard.

The Territorial Law was designed, and has been interpreted by the Commission and the Supreme Court to eliminate and avoid duplication and wasteful spending by electric utilities. The proposed site for the Dakota Turkey Growers' Plant is the Decker Farm Site, and NorthWestern was serving such site since on March 21, 1975, and has continued to provide

service to such site continuously since that date, including continuing service at this time (both to an electrical load that has been served for the Decker farming operation and for service to the contractor building the Plant). Because NorthWestern has already been serving this location, it is not a “new location”, and therefore Dakota Turkey Growers does not qualify to file a petition under SDCL 49-34A-56. Furthermore, forcing NorthWestern to remove its lines and allowing Dakota Energy to build lines to serve the Plant would result in the duplication and wasteful spending that the Territorial Law was designed to prevent. NorthWestern submits that this matter should be dismissed.

Respectfully submitted this 11<sup>th</sup> day of January, 2005.

NORTHWESTERN CORPORATION,  
doing business as NorthWestern Energy

By: 

Alan D. Dietrich  
Its Attorney  
125 S. Dakota Ave.  
Sioux Falls, SD 57104  
Ph. (605) 978-2907  
Fax (605) 978-2910

AT A REGULAR SESSION of the Public Utilities Commission of the State of South Dakota, held in its offices, in the City of Pierre, the Capital, this 1st day of July, 1976.

PRESENT: Commissioners Weiland, Ecker and Klinkel

IN THE MATTER OF ESTABLISHING )	
CERTAIN TERRITORIAL ELECTRIC )	<u>DECISION AND ORDER</u>
BOUNDARIES WITHIN THE STATE )	(F-3104)
OF SOUTH DAKOTA (PIERRE AREA). )	

This matter having come on for hearing after due notice on the 25th day of May, 1976, at the hour of 1 o'clock p.m. in Room 468 of the Capitol Building in Pierre, Hughes County, South Dakota, and the Commission having heard all the testimony and examined all records and documents, and being fully advised in the premises, and for good cause shown, the following Findings of Fact, Conclusions of Law and Order are hereby entered:

FINDINGS OF FACT

I.

That proposed electrical territorial maps on record covering the areas at issue herein were served on all parties hereto.

II.

That no objection was made to said proposed electrical territorial maps by the parties hereto and said parties concurred therein except as specifically enumerated hereafter.

III.

That Beadle Electric Cooperative has submitted a proposed map designating certain additional service areas it requests to be included within its territorial boundaries. Northwestern Public Service Company takes exception to said additions.

IV.

That the more credible testimony at the hearing establishes that customers of all parties hereto would receive better service in the disputed areas from Beadle Electric Cooperative because of location and proximity of facilities, adequacy of service and general convenience.

V.

That the more credible testimony at the hearing establishes that customers of all parties hereto are best served and most benefited by the territorial boundaries enumerated in the above-referenced proposed maps and by the Commission's determination of the disputed territorial boundaries.

VI.

That the Official Electrical Territorial Maps attached hereto and being incorporated as if set forth in full herein constitutes the aforementioned proposed maps and the Commission's determination of the disputed territorial boundaries.

CONCLUSIONS OF LAW

I.

That the territorial boundaries enumerated in the attached Official Electrical Territorial Maps are just, reasonable and fair to all parties hereto and their customers.

II.

That the Commission hereby establishes said territorial boundaries set forth in said map as the assigned service area or areas for each electric utility being a party hereto pursuant to SDCL 49-34A-44.

III.

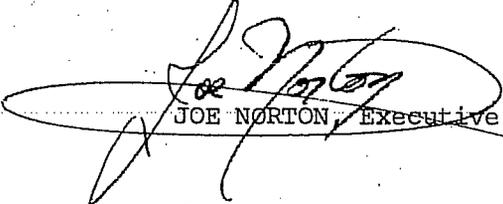
That the attached Official Electrical Territorial Maps have been prepared to accurately and clearly show the boundaries of the assigned service area of each electric utility being a party hereto.

ORDER

It is hereby:

ORDERED, that the territorial boundaries enumerated in the attached Official Electrical Territorial Maps be, and the same hereby are, established as the assigned service area or areas of each electric utility being a party hereto.

BY ORDER OF THE COMMISSION:

  
JOE NORTON, Executive Secretary

(OFFICIAL SEAL)