

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

In the Matter of the Petition for Electrical
Service by Dakota Plains Ag Center, LLC
to have Northwestern Energy Assigned as its
Electric Provider in the Service Area of
Bon Homme Yankton Electric

**Motion for Summary Judgment
by Bon Homme Yankton
Electric Association, Inc.**

Docket EL16-013

Bon Homme Yankton Electric Association, Inc. (“Cooperative”) moves the Commission pursuant to SDCL § 15-6-56(c) for summary judgment. Specifically, Cooperative is entitled to summary judgment and a dismissal of the Petition filed by Dakota Plains for the following reasons:

1. To succeed in a petition brought to the PUC under SDCL § 49-34A-56, the petitioning customer must “require electric service with a contracted minimum demand of two thousand kilowatts or more.” The Electric Distribution Service Agreement (the “Agreement”) between Northwestern Energy (“Northwestern”) and Dakota Plains Ag Center, LLC, (“Dakota Plains”), does not include any minimum monthly demand. In fact, the term “demand” is not used one time in the Agreement, despite the fact that “demand” is a common unit of billing within the industry and is also a billing unit under North Western’s “Rate 34” schedule, which is the applicable rate schedule as expressly stated in the Agreement. Since there is no minimum monthly demand (i.e., KW) requirement in the Agreement, Dakota Plains has no “contracted minimum demand” as required by SDCL § 49-34A-56.

2. Alternatively, Dakota Plains has provided no evidence to establish that its proposed Napa Junction facility is a 2,000KW demand facility. Nothing in the Agreement addresses facility demand, and there is no similarly sized grain handling facility in South Dakota that even approaches a 2,000KW demand at peak, let alone on a “minimum” basis. Dakota Plains’ Beardsley facility, which Dakota Plains represented to Cooperative would have a comparable load to the new facility, has a peak usage of only 1,316KW based on information previously provided by Dakota Plains to Cooperative. , when considered in a light most favorable to Dakota Plains, will not prove that Dakota Plains Napa Junction facility will require a minimum demand of two thousand kilowatt hours or more.

For the foregoing reasons, and based on the authority cited in the Brief In Support of Motion for Summary Judgment filed by Cooperative simultaneously with this Motion, Cooperative is therefore entitled to judgment as a matter of law and the petition of Dakota Plains should be dismissed.

Dated this 27th day of May, 2016.

/s/Sheila S. Woodward

Sheila S. Woodward

Nicholas G. Moser

Johnson, Miner, Marlow, Woodward & Huff, Prof. LLC

200 West Third St.

PO Box 667

Yankton, SD 57078

(605) 665-5009

Email: sheila@jmmwh.com; nick@jmmwh.com