

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

**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
ASSOCIATION, INC.**

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**STAFF’S RESPONSE TO MOTION TO
COMPEL**

EL16-013

Staff is not involved in the discovery dispute at hand and, therefore, takes no position on the ultimate outcome of the Motion to Compel. However, because the motion does require some discussion of the statute at issue in this docket in order to make a determination of what information is relevant, Staff does feel it important to discuss that portion of the motion.

Staff does concur with Bon Homme Yankton Electric Association, Inc.’s (B-Y) discussion of the broad legal interpretation of discoverable information pursuant to SDCL 15-6-26(b). The South Dakota Supreme Court has held that the statute concerning discovery should be liberally construed. See *Bean v. Best*, 76 S.D. 462, 80 N.W.2d 565, 566. “All relevant matters are discoverable unless privileged.” *Kaarup v. St. Paul Fire and Marine Insurance Co.* 436 N.W.2d 17, 20 (S.D. 1988). The Court has further held that “discovery [cannot] be denied on the ground that materials sought [cannot] legally become part of [the] action.” *Id.* “The purpose of discovery is to examine information that may lead to admissible evidence at trial.” *Id.* quoting 8 C. Wright and A. Miller, Federal Practice and Procedure, § 2008 (1970).

The element of SDCL 49-34A-56 that has risen to the forefront is whether Dakota Plains Ag Center, LLC (Dakota Plains) requires electric service with a contracted minimum demand of

two thousand kilowatts or more. Therefore, it is tempting to determine the meaning of this element in order to determine what is admissible and what information could lead to admissible evidence. However, the parties have not stipulated to narrowing of the issues at this point. All of the elements of SDCL 49-34A-56 remain in play.

SDCL 49-34A-56(6) provides for a very broad analysis. It requires the Commission to consider “[a]ny and all pertinent factors affecting the ability of the utility to furnish adequate electric service to fulfill customers’ requirements.” Because this is so broad, it is conceivable that a great deal of information could come in under this factor.

Thus, Staff recommends the Commission decline to interpret the meaning of “contracted minimum demand” at this point; as such a narrowing of the issues is not required for discovery. Because SDCL 49-34A-56(6) presents the broadest issue, it makes sense to consider potentially admissibility under that issue. The more narrow issue will undoubtedly be addressed at a later motion hearing.

Dated this 3rd day of June, 2016.



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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of May, 2016, I served via electronic mail, true and correct copies of **Staff's Response to Motion to Compel** upon all persons listed on the service list.



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