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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE PETITION  
FOR ELECTRICAL SERVICE BY DA-  
KOTA PLAINS AG CENTER, LLC TO  
HAVE NORTHWESTERN ENERGY  
ASSIGNED AS ITS ELECTRIC PRO-  
VIDER IN THE SERVICE AREA OF  
BONHOMME-YANKTON ELECTRIC

DOCKET NUMBER EL16-013  
  
SDREA'S RESISTANCE TO MOTION  
IN LIMINE AND MOTION TO QUASH

South Dakota Rural Electric Association ("SDREA") by its undersigned counsel files this Resistance to Motion in Limine and Motion to Quash filed by Dakota Plains. SDREA is an organization comprised of member electric cooperatives in South Dakota. Intervenor, Bonhomme-Yankton Electric Association ("B-Y"), is one of its member electric cooperatives.

On May, 26, 2016, Dakota Plains filed a Motion in Limine requesting an Order from the South Dakota Public Utilities Commission ("Commission") "restricting or forbidding testimony on the meaning of the statute SDCL 49-34A-56 and testifying as to the electrical use need and demand of any facility other than the proposed Dakota Plains facility". Dakota Plains also filed a Motion to Quash a Subpoena B-Y had served primarily requesting electrical use and demand of another, similar facility operated by Dakota Plains.

B-Y has filed a Brief in Resistance to Dakota Plains' Motion in Limine and Resistance to the Motion to Quash. Those Briefs set forth the accurate legal standards governing the allowance of parties to an action to conduct discovery. Accordingly, SDREA joins into the Oppositions filed by B-Y and incorporates the documents by their

reference as if set forth herein. SDREA will, accordingly, keep its arguments limited to new information.

The Motion to Quash and the Motion in Limine both address, presumably, Dakota Plains' desire to keep evidence out relating to the electrical use need and demand of comparable facilities including its own sister facility, the Beardsley facility. The Motion to Quash attempts to restrict access to this information during the discovery process and the Motion in Limine attempts to restrict access to this information at the hearing. SDREA submits both are improper.

The crux of this case is that the parties have two different interpretations of how SDCL 49-34A-56 should be applied. SDREA has submitted that there is a material issue of disputed fact on whether this is in fact a large load as defined in the statute. SDREA asserts that this facility does not meet the statutory requirements of SDCL 49-34A-56 in two fundamental ways. First of all, the Electric Distribution Service Agreement does not include a contracted minimum demand of two thousand kilowatts or more and second of all, this customer does not require electric service with a contracted minimum demand of two thousand kilowatts or more.

The parties are still in the discovery phase of the case. In the discovery phase, all parties are allowed to seek discovery that may support their theories of the case or interpretation of the statute. The proper standard for ruling on a discovery motion is whether the information sought is "relevant to the subject matter involved in the pending action...." SDCL 15-6-26(b)(1). This phraseology implies a broad construction of "relevancy" at the discovery stage because one of the purposes of discovery is to examine information that may lead to admissible evidence at trial. 8 C. Wright and A. Miller, *supra*,

§ 2008. Further, the scope of pretrial discovery is, for the most part, broadly construed. *Bean v. Best*, 76 S.D. 462, 80 N.W.2d 565 (1957). Specifically, SDCL 15–6–26(b) provides, “Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action...”. The statute further provides, “it is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence”. *Id.* To not allow intervenors to conduct discovery relevant to their case would be improper. This Commission will have the opportunity to rule on the admissibility of evidence at the hearing. To preclude Parties from pursuing discovery of evidence is premature and impermissibly permits discovery in accordance with the statute.

Likewise, granting a Motion in Limine at this early stage of the discovery process would be improper. A Motion in Limine in a non-jury case is unusual because it requires that the factfinder (i.e. the Commission) review the very evidence the movant is seeking to exclude. Our Courts have said, “The purpose of a motion in limine is to prevent prejudicial evidence, argument or reference from reaching the ears of the jury. However, a trial court’s ruling on a motion in limine is preliminary and may change depending on what actually happens at trial”. *St. John v. Peterson*, 837 NW 2d 394, SD 2013. At this stage in the case, the very evidence Dakota Plains is requesting to exclude from the hearing has not been fully identified in discovery.

WHEREFORE, SDREA requests that the Commission resist the Motion in Limine and Motion to Quash filed by Dakota Plains.

Dated this 3 day of June, 2016.

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