
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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

JOINDER OF SDREA TO MOTION FOR
SUMMARY JUDGMENT

South Dakota Rural Electric Association (“SDREA”) by its undersigned counsel files this Joinder to Motion for Summary Judgment filed by Bon Homme – Yankton Electric Association, Inc (“B-Y Electric”). SDREA is an organization comprised of member electric cooperatives in South Dakota. B-Y Electric is one of its member electric cooperatives. SDREA is devoted to the protection of the interests of its member electric cooperatives and their customers.

In the current matter, Dakota Plains Ag Center, LLC (“Dakota Plains”) has filed a Petition to have NorthWestern Corporation, doing business as NorthWestern Energy, to be its electric service provider. The site of Dakota Plains is located in the exclusive service territory of B-Y Electric.

In 1975, our Legislature adopted the “South Dakota Territorial Act”. Under the Territorial Act, an electric utility is allowed to exclusively provide service to all new and existing customers in their respective territories unless a statutory exception is met. In Re. Montana-Dakota Utilities Co, 2007 SD 104, 740 NW2d 873; citing In the Matter of Establishing Certain Territorial Elec. Boundaries (Mitchell Aera), 281 NW2d 65, 70 (SD 1979). The Territorial Act was adopted to protect the public interest by elim-

ination of unnecessary duplication of facilities and to promote efficient and economical use and development of the electric system.

From the onset of this matter, SDREA and its members have questioned whether this is in fact a large load as defined in the statute. From the limited discovery that has been completed to date¹, SDREA asserts that this facility does not meet the statutory requirements 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. Second of all, this customer does not require electric service with a contracted minimum demand of two thousand kilowatts or more. Without reaching those two threshold questions, the Commission does not reach determination of the factors identified in SDCL 49-34A-56.

SDREA submits that this docket has important policy considerations and has the potential of greatly impacting all of SDREA's member cooperatives and electric companies in the State of South Dakota. SDREA's interest in this docket include ensuring that the purposes of the Territorial Act are not eroded. SDREA urges the Commission to uphold the integrity of the Territorial Act and determine, as a matter of law, that indeed, as the statute states, a customer must require electric service with a contracted minimum demand of two thousand kilowatts or more. This is not a mere recital, but a condition precedent of the Commission determining that the statute applies. If the definition of large load is not met, the customer is not allowed to choose its electric service provider. On its face, Dakota Plains has not met that burden. Not only hasn't it shown

¹ The Procedural Schedule requires that Summary Judgment Motions are filed before discovery is complete. Additional fact discovery is still contemplated by the parties. Written discovery has not been completed and depositions in this matter are scheduled for June 7, 8, and 9.

that it has a large load, it has not even contracted for electric service consistent with a large load. Neither its stated use or its contract comply with the terms of the statute.

SDREA urges the Commission to ensure that Dakota Plains (and future similar facilities) be required to meet the statutory framework regarding large loads and specifically the statutory prerequisite that the proposed facility has a contracted minimum demand in excess of the statutory threshold of two thousand kilowatts. SDCL 49-34A-56. The issues presented in the Application directly affect all of its member companies, and their consumers. SDREA requests that the Commission examine the Petition of Dakota Plains in this docket in a manner that does not result in an erosion of South Dakota's territorial laws, which would be detrimental to member companies and to the consumers of South Dakota.

WHEREFORE, SDREA requests that the Commission grant Summary Judgment in favor of B-Y Electric.

Dated this 27 day of May, 2016.

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