

**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.)**

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND
ORDER GRANTING
INTERVENTION**

EL16-013

On April 1, 2016, the South Dakota Public Utilities Commission (Commission) received a petition from Dakota Plains Ag Center, LLC (Dakota Plains) for a service territory exception pursuant to SDCL 49-34A-56. On April 27, 2016, at 9:30 A.M., in Room 414 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota, the Commission heard arguments on the Petition of South Dakota Rural Electric Association (SDREA) to Intervene.

The Commission, having considered the petition to intervene, all records and documents on file herein, the applicable law, the arguments of counsel, and good cause appearing therefore, now makes and files the following Findings of Fact and Conclusions of Law and Order:

FINDINGS OF FACT

1. Dakota Plains filed a Petition for Electric Service on April 1, 2016, requesting to have NorthWestern Energy Corporation d/b/a NorthWestern Energy (NorthWestern) assigned as the supplier of electrical service at the site referenced below.
2. Dakota Plains states it is constructing and will operate a grain terminal with rail service at a site near Yankton, South Dakota.
3. The proposed grain terminal will be at a site located in the following tract of land in Yankton County, South Dakota:

Lot One (1), Dakota Rail Park Subdivision, located in Section Twenty-one (21), Township Ninety-four (94) North, Range Fifty-six (56) West of the 5th P.M., Yankton County, South Dakota as per plat recorded in book S20, Page 132.
4. On April 7, 2016, the Commission electronically transmitted notice of the filing and the intervention deadline of April 22, 2016, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv.
5. On April 8, 2016, the Commission received a Petition to Intervene from NorthWestern and Bon Homme Yankton Electric Association, Inc. (Bon Homme).
6. On April 11, 2016, the Commission considered the petitions to intervene of NorthWestern and Bon Homme. No objections were made to the petitions to intervene and the Commission granted the petitions to intervene.

7. On April 12, 2016, the Commission issued an Order Granting Intervention.
8. On April 22, 2016, the Commission received a Petition of SDREA to Intervene.
9. SDREA is an organization comprised of member electric cooperatives in South Dakota.
10. On April 25, 2016, Dakota Plains filed its Opposition to Petition of SDREA to Intervene.
11. On April 26, 2016, SDREA filed its Reply to Opposition.
12. The Commission finds that members of SDREA, as electric cooperatives, have interests that are peculiar to them as this case involves the applicability and interpretation of the large load exception of SDCL 49-34A-56 that specifically affects electric cooperatives. The Commission finds that SDREA has met the requirements to be granted intervention.

From the foregoing Findings of Fact, the Commission now makes the following:

CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically 49-34A-56, and ARSD 20:10:01:15.02 through 20:10:01:15.05.
2. SDCL 1-26-17.1 limits itself to entities that are specifically entitled to intervene but does not eliminate intervention by other parties under the general authority of the Commission's rules cited in the preceding paragraph.
3. ARSD 20:10:01:15.02 and 15.05 guides the Commission in consideration of petitions to intervene.
4. SDREA has met the requirements to be granted intervention.
5. The Commission concludes that the Petition to Intervene of SDREA will not prejudice the rights of Dakota Plains to proceed with its underlying Petition for Electric Service.
6. Good cause to grant intervention to SDREA under the Commission's rules has been shown.
7. The Commission grants the Petition of SDREA to Intervene.
8. In the event any Finding of Fact above should properly be a Conclusion of Law or a Conclusion of Law should properly be a Finding of Fact, each shall be treated as such irrespective of its improper classification.

Based on the foregoing Findings of Fact and Conclusions of Law, it is therefore

ORDERED, that the Petition of SDREA to Intervene is hereby granted.
(Commissioner Hanson dissenting.)

Dated at Pierre, South Dakota, this 20th day of May, 2016.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.
By: <u>Relayne West</u>
Date: <u>5-20-16</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Chris Nelson
CHRIS NELSON, Chairman

Kristie Fiegen
KRISTIE FIEGEN, Commissioner

GARY HANSON, Commissioner
(dissenting)