

**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                    )       Docket No. EL16-013  
Electric Provider in the Service Area of                )  
BonHomme – Yankton Electric                                )

**DAKOTA PLAINS AG CENTER, LLC’S  
OBJECTION TO BON HOMME YANKTON ELECTRIC ASSOCIATION, INC.  
MOTION TO COMPEL**

COMES NOW the Petitioner, by and through May, Adam, Gerdes, & Thompson, LLP,  
and objects to Bon Homme Yankton, Inc.’s (herein “B-Y”) Motion to Compel. Petitioner  
supports its objection as follows:

1. While the Supreme Court has indicated, “the scope of pretrial discovery is, for the most part, broadly construed,” discovery is not without boundaries. Bean v. Best, 80 N.W.2d 565 (SD 1957). “Application for discovery must contain facts showing or indicating a reasonable probability that documents...contain material evidence.” *Id.* The proper standard is to determine whether the information sought is “relevant to the subject matter involved....” Kaarup v. St. Paul Fire and Marine, Ins. Co., 436 N.W.2d 17 (SD 1989). The information B-Y seeks is not relevant.

2. B-Y Interrogatories 9, 10 and 11 seek various details regarding Petitioner’s estimated 15 and 30 minute electrical demand for the facility for each month of the calendar year. In a similar request, B-Y Request for Production 4 seeks peak, monthly usage and other projections of electric requirement.

As far as demand goes, the only relevant information for the Commission to examine is what is called for pursuant to SDCL 49-34A-43. As the statute specifies; whether the Petitioner, “requires electric service with a contracted minimum demand of two thousand kilowatts or more” is the beginning and end of the inquiry. As such, nothing more than identifying the Petitioner’s demand, which is specified in the contract between Petitioner and Northwestern Energy contract is relevant.

There is no requirement in law that the customer demand power at 2mW for any given period of time. There is no requirement that an average or other measure of demand be met. Those words are not in the statute. The statute simply requires a contract for electricity at a demand of at least 2mW. As a result, the 15 and 30 minute demand details are irrelevant and it is not reasonable to believe such information is material. In addition the peak, monthly and other projections of use are irrelevant. Rather, it is only the contracted demand that is relevant. Contracted demand was provided by Petitioner.

3. B-Y Interrogatories 12, 13, and 14 and Request for Production 2 and 3 seek various details regarding a different facility at a different location known as “Beardsley.”

Petitioner contracted with Northwestern Energy to meet its demand needs. Petitioner based that contract on its operational and equipment needs. An analysis of the similarities and differences between the facility at issue and the “Beardsley” facility is irrelevant. This proceeding has nothing to do with the Beardsley facility and an attempt to turn this docket into a study of comparable facilities does not help the Commission with the statutory analysis. Discovery is not without boundaries and the discovery process should not be used as a means of cluttering the record or distracting from the real issue.

For the above reasons, the Petitioner respectfully requests the Commission deny B-Y's Motion to Compel.

Dated this 3 day of June, 2016

MAY, ADAM, GERDES & THOMPSON LLP

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### **CERTIFICATE OF SERVICE**

Kara Semmler, of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 3 day of June, 2016 she electronically filed with the PUC Filing system, and she provided a true and correct copy of the foregoing in the above-captioned action to the Service List in PUC Docket EL16-013.

/s/ Kara Semmler  
KARA SEMMLER