

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) Docket No. EL16-013
Energy Assigned as its Electric) REPLY TO OPPOSITION
Provider in the Service Area of Bon)
Homme -Yankton Electric Association)

COMES NOW, South Dakota Rural Electric Association ("SDREA") and hereby submits this Reply to the Opposition filed to its Petition to Intervene.

1. As recognized by the party opposing intervention, the rules of this Commission (ARSD 20:10:01:15.05), as well as the rules of South Dakota Civil Procedure, SDCL 15-6-24(A) and 24(B), allow for intervention as a matter of right and for permissive intervention.

2. This Commission has regularly confirmed its position to liberally allow intervention by this Petitioner in other proceedings before it. In Docket EL06-11 this Commission granted SDREA's Petition to Intervene in a large load case. This case was subsequently appealed to the South Dakota Supreme Court. In the Matter of the Petition of Montana Dakota Utilities, 740 NW 2d 873 (S.D. 2007). Also, in EL06-020 and EL08-031 petitions to intervene by SDREA on issues of interest to its membership were granted by this Commission.

3. SDREA regularly appears for and represents its member companies before the legislature to help draft, fashion and promote legislation that applies to the public and investor owned utilities, as well as rural electric utilities and their patrons throughout the state. The statutes under consideration in this case include those which have been subject to SDREA's involvement before the legislature.

4. A. The United States Supreme Court has confirmed the perspective employed by this Commission in allowing associations to be involved in proceedings directly implicating their membership. As in this case, where an association affirms its members have interests threatened by the challenged action and where the association seeks to protect interests of its members which are germane to the organization's purposes, intervention is appropriate. See, Hunt v. Washington State

Apple Advertising Commission, 432 U.S. 333, 342 (1977), and Warth v. Celdin, 422 U.S. 490, at 512 (1975).

In Hunt, the Supreme Court stated in part:

If the Commission were a voluntary membership organization a typical trade association its standing to bring this action as the representative of its constituents would be clear under prior decisions of this Court.

Of course, SDREA is a voluntary membership organization which clearly fits within the parameters established by Hunt.

B. The Hunt holding has been confirmed by the Eighth Circuit in U.S. v. Metropolitan St. Louis Sewer District, 569 F. 3rd 829, 835 (8th Cir. 2009). And its continued vitality has been confirmed by other courts as recently as the federal district court in Puerto Rico Dairy Farmers Association v. Pagan, 35 F. Supp. 3d 210, 216 (D. P.R. 2014).

5. Despite the opponent's suggestion otherwise, this intervention request is not about adding additional attorneys, but rather about protecting the interests of SDREA's member companies. The holding herein can set a precedent that will impact the interests of all of our member companies.

Hence, SDREA respectfully requests that this Commission grant its Petition to Intervene for the reasons set forth in its Petition and in this Reply to the Opposition filed herein.

Respectfully submitted this 26th day of April, 2016.

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CERTIFICATE OF SERVICE

I, Robert C. Riter, certify that a true and correct copy of the above Response to Opposition was emailed to the following on the 26th day of April, 2016:

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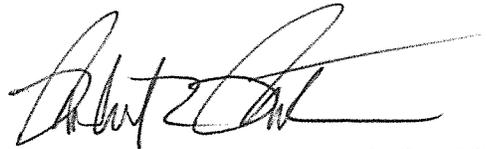
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