

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

<p>IN THE MATTER OF THE PETITION FOR SWEETMAN CONST. CO. D/B/A KNIFE RIVER, TO HAVE XCEL ENERGY ASSIGNED AS ITS ELECTRIC PROVIDER IN THE SERVICE AREA OF SIOUX VALLEY ELECTRIC</p>	<p style="text-align:center">EL25-032</p> <p style="text-align:center">KNIFE RIVER'S POST HEARING BRIEF</p>
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For purposes of the post-hearing brief, Sweetman Const. Co. d/b/a Knife River will be referred to as “Knife River”, Xcel Energy will be referred to as “Xcel”, Sioux Valley Electric will be referred to as “Sioux Valley”, East River Electric will be referred to as “East River”, Basin Electric will be referred to as “Basin”, collectively, Sioux Valley, East River, and Basin, will be referred to as the “Coops”, the South Dakota Public Utilities Staff will be referred to as “Staff”, and the South Dakota Public Utilities Commission will be referred to as the “Commission.” References to the hearing transcript for the hearing before the Commission on April 13, 2026, will be referenced by the notation “TR” followed by the page number being referenced. Exhibits of the parties will be referred to as done at hearing, as an example, Clark Meyer Exhibit 1, “CM-1”.

INTRODUCTION

KNIFE RIVER files this Post Hearing Brief pursuant to the order of the Commission. Knife River seeks to have Xcel provide power to a new rock crushing plant it intends to build outside of Corson, South Dakota. The Commission is being asked to allow Knife River to receive electrical service from Xcel Energy inside the territory of Sioux Valley pursuant to the large load exception found in SDCL 49-34A-56. After reaching out to both Sioux Valley and Xcel, Knife River made a business decision and elected to have Xcel service its new plant. The Commission must now consider the statutory factors found in the large load exception to the Territorial Integrity Act. The testimony demonstrated and based on the record before it, the Commission should grant Knife River the ability to receive electrical service at its new plant from Xcel.

When looking at the six factors listed in SDCL 49-34A-56¹, including the prerequisites to get to the six factors listed in statute, there are in essence nine issues the Commission must consider. Those nine issues for the Commission to consider will be discussed in this brief.

ISSUES TO BE CONSIDERED

I. Whether the location is outside municipal boundaries as they existed on March 21, 1975.

Frankly, this issue should have been stipulated to prior to hearing. It was stated clearly on behalf of Knife River, by its Manager Clark Meyer, at hearing that the location of the new plant is not within the boundaries of the City of Brandon or the City of Corson. TR 17. This fact was not disputed by Sioux Valley's witness. TR 133. Nor was it disputed by the witness for East River. TR 165. Staff further analyzed the location provided by Knife River and determined it to be outside of municipal boundaries. JR-2 at 6:5-6.

II. Whether Petitioner is a new customer within the meaning of SDCL 49-34A-56.

In analyzing this issue the Commission needs to consider that the happenstance of a rock quarry resource near a sand plant that has been in place and operating for decades does not obviate the fact that the proposed plant is an entirely new operation.

Knife River, over a good amount of time, has acquired over 1400 acres outside of Corson, South Dakota. TR 40. As Clark Meyer testified, the existing sand plant has been operating for approximately 25 years. TR 39-40. Clark Meyer's testimony was clear and has been uncontested that soon there will no longer be a sand plant at its current location outside

¹ 49-34A-56. Large new customers not required to take service from assigned utility--Notice and hearing by commission--Factors considered.

Notwithstanding the establishment of assigned service areas for electric utilities provided for in §§ 49-34A-43 and 49-34A-44, new customers at new locations which develop after March 21, 1975, located outside municipalities as the boundaries thereof existed on March 21, 1975, and who require electric service with a contracted minimum demand of two thousand kilowatts or more shall not be obligated to take electric service from the electric utility having the assigned service area where the customer is located if, after notice and hearing, the Public Utilities Commission so determines after consideration of the following factors:

- (1) The electric service requirements of the load to be served;
- (2) The availability of an adequate power supply;
- (3) The development or improvement of the electric system of the utility seeking to provide the electric service, including the economic factors relating thereto;
- (4) The proximity of adequate facilities from which electric service of the type required may be delivered;
- (5) The preference of the customer;
- (6) Any and all pertinent factors affecting the ability of the utility to furnish adequate electric service to fulfill customers' requirements.

Source: SL 1975, ch 283, § 44.

of Corson. All the infrastructure of the sand plant will be removed and gone in a short period of time. TR 43, 44 & 52.

The equipment utilized by the existing sand plant will not in any manner be used for the new rock crushing plant. TR 53², 189. This is undisputed. There is no intermingling of any infrastructure or components of the sand plant with the anticipated new rock crushing plant. TR 33. They are stand alone, separate operations. CM-1 at 86.

Knife River considers the new plant a wholly separate operation that is managed at a corporate level differently from the existing sand plant operation.³ TR 54. This decision by Knife River stands this new plant alone. As stated it stands alone from an infrastructure perspective. It stands alone as a purpose for which it will be constructed. See, CM-1, 58-71 which describes what the sand plant literally does. See, CM-1, 76-84 which describes what the new rock crushing plant literally will do. The manner in which Knife River handles the operation internally, coupled with its location and purpose demonstrate the new plant is a new customer.

In the Matter of the Determination of Electrical Supply by Either Northwestern Public Service Company or Northern Electric Cooperative to Safeguard Metals Division, Safeguard Automotive Corporation, a Commission decision issued in 1977 (F-3171), this Commission determined that a foundry built onto the existing manufacturing plant was a new customer in a new location. See, F-3171, also see *Matter of Northwestern Public Service Co.*, 560 NW2d 925, 926 (SD 1997). In the decision, this Commission found that the subsidiary corporation created to manage the new attached foundry would qualify as a new customer. It did so because the subsidiary, the foundry, would have a separate and distinct operational purposes at the subsidiary level. See, F-3171 decision and order dated October 13, 1997, generally. The aforementioned testimony of Clark Meyer established that Knife River intends to and will do the same internally with the new rock crushing plant. The rationale of the

² Q: Are there other pieces of equipment that are used now for the sand facility that are going to be used for the rock crushing facility?

A: There's none. TR 53, CM-1, 88-89.

³ Q: You were asked by Commission Feigen about the corporate structure of Knife River and this new facility...

A: Yeah. We have different business profit centers throughout the company and it's a brand new profit center. The Corson sand washing facility is a -- got its own P & L, its own asset list. The Corson rock crushing facility will have its own P & L, asset list, equipment's (sic) assigned to it. Totally separate on the sheets. TR 54; 1-11. Clark Meyer.

Commission in the foundry example should be the same as is before the Commission now with the new proposed plant. It will operate independently, be accounted for independently and will survive the closure of the sand plant.

What is clear in the record is that this is a new plant and it is not simply an extension of a sand plant that Sioux Valley could tie a line in to. Sioux Valley admits that it cannot provide service to the new plant with its existing facilities. TR 123. Regardless of the provider, all new utility infrastructure to service the new plant will need to be constructed. TR 53. Sioux Valley admits what is undisputed, where the new plant will be, that no customer is receiving electric services today. TR 132.⁴

Arguments that a choice of language in the Conditional Use Permit Application would be relevant under the analysis done by the Commission are misplaced. The conditional use permit requirements of Minnehaha County for the new plant are wholly contained in the ordinances and permitting process of Minnehaha County itself. Local permitting requirements are not referenced in SDCL 49-34A-56 nor are they relevant to the analysis the Commission must undergo to review the large load request of Knife River. The choice of language in that Conditional Use Permit Application was done for reasons wholly to address the matters in Minnehaha County and not to be argued in an analysis under the large load exception before the Commission. This new plant is a new customer to whomever were to serve it.

III. Whether the Electric Load is located at a new location within the meaning of SDCL 49-34A-56.

A good deal of the discussion at hearing on the location concerns of the new plant had to do with parcels located and described on Exhibit CM-3 and the legal description utilized in that Exhibit. In looking closely again at Exhibit CM-3, the blue shaded area noted as the “concrete sand washing plant” is encompassing the legal descriptions so noted. Specifically, W1/2NE1/4 and S1/2 VAC 259th St ROW Lying ADJ (Ex Sundenga’s Tract 1) 23 102 48 Brandon TW; and E1/2NE1/4 & S1/2 VAC 259th St ROW Lying ADJ (Ex Lot H-1) 23 102 48

⁴ Q: Does Sioux Valley currently serve any customer at this location?

A: Yes.

Q: The location of the quartzite rock crushing plant, you...

A: No, with services at the sand washing plant.

Q: But not at the rock crushing plant, correct?

A: Correct. TR 131-132; 24-25, 1-7. Ted Smith.

Brandon Twp. The description contains no metes and bounds but rather is a legal description based on a traditional quarter section methodology under the Public Land Survey System (“PLSS”), thus necessitating the square corners (although in the Exhibit they appear rounded). The area was not surveyed, and is not a surveyed and approved lot by the county. It is a split of a quarter section using the PLSS. Using that methodology squares it in its nature. Legal descriptions to a corner in essence.

Regardless of the blue box, Clark Meyer testified that nothing runs from the sand plant to the rock plant. TR 24-25, 52. He testified clearly that nothing from the sand plant is going to be used for the new plant. There will be no intermingling of infrastructure. TR 53. A conveyor for the new plant shown on CM-5 does cross where the existing sand plant conveyor is, but that sand conveyor is going to be decommissioned this summer. TR 32. So, if a conveyor for the proposed, and yet to be constructed new plant, happens to be in one rendering possibly touching on a portion of the blue square where no infrastructure or facilities will exist for the sand plant, that should not change the Commission’s analysis of whether or not this is a new location.

Certainly, Knife River in its exhibit could have used metes and bounds to restrict the size even further to the literal foot print of the facilities of the sand plant, it could have surveyed the location to include the sand plant facilities only; it chose not to for this hearing as such a demonstration was thought to be irrelevant. On the proposed schematic shown as CM-5, if that discussed conveyor were to be built as referenced and actually touch any of the blue area referenced on CM-3 it is again happenstance. And will not be an overlaying of existing facilities or infrastructure of the existing sand plant.

An effort was made at the hearing by the Coops to argue all the property shown on CM-3 was the same operation. The respective plants and their respective resources are not adjacent. The exhibits clearly show that. East River amended its testimony at the hearing and now claims that the entire property owned by Knife River is one single quarry. TR 155, 164. Even though the property itself is in excess of 1400 acres. TR 40. And the distance between the rock quarry resource and the sand resource is in excess of 7,300 feet. CM-4 at 20. The claims are made by East River even though its witness has never been on the property itself. TR 164. These claims should be disregarded.

East River claims that the facility is not green field because dirt has been moved on it. TR 159. But that does not change the fact that there has not been any utility infrastructure on that property to date. TR 192. CM-1 at 93. CM-4 at 18. In fact, the location was until a short time ago nothing but a pasture. TR 53. Sioux Valley, the Coop servicing the sand plant,

acknowledges no one is getting electric service at this location. TR 131-132. This is a new location within the meaning of SDCL 49-34A-56.

IV. The electric service requirements of the load to be served.

Clark Meyer was clear in his testimony, that the load for the new plant is in excess of 11 megawatts. TR 45. However, it has been pointed out that there is no written contract between Xcel and Knife River at this point for a provision of electrical services to its new plant. TR 29.

From the testimony of East River, it is their argument to the Commission that a signed Electric Service Contract must be entered into by Xcel and Knife River before this Commission has the ability to entertain the matter before it. TR 151, 154. East River attempts to make this actually jurisdictional. This, even though Sioux Valley acknowledges that the new facility, when constructed, will have an electrical service need, which at that point will be contracted, in excess of 2 megawatts. TR 123, 124. This matches the testimony of Clark Meyer wherein he stated that the facility will need a contracted demand load in excess of 2 megawatts. TR 51, 52. CM-1 at 103. Staff agrees. JR-2; 6 at 22.

A plain reading of the statute should allow the Commission to quickly move aside the argument of East River that acts as the cart being placed well ahead of the horse. Xcel does not have the ability to service the Knife River facility without a determination by this Commission that the large load exception request of Knife River is warranted. The statute in its plain meaning would require nothing more than as a condition of the exception being granted, Knife River is found to require at its new plant a contracted demand load of 2 megawatts. It does not need a signed written agreement at this point on a yet to be built plant in a territory Xcel, as of now, does not have the ability to provide service to. The prospective contract execution further was clearly contemplated by the Commission in its determination in *F-3171*. See, *F-3171 findings of fact at 17, 18*.

V. The availability of an adequate power supply.

Whether or not Xcel has an adequate power supply should be easily set aside as a concern by this Commission after the hearing and based on the record before it. Xcel testified that it has well in excess the generation capacity needed to serve this plant. TR 58. Xcel simply would not need additional capacity to serve this plant. BLS-1 at 2:22. Xcel further testified that it has more requests for power currently in the Sioux Falls metro area than this plant would require. TR 87 and 97. Commission staff said that it had “no doubt” that Xcel had the ability to service the load of Knife River. TR 190. See also, JR-2:9 at 3.

Even Sioux Valley testified at hearing that if Xcel said it the ability to serve, they don't doubt it. TR 134.

VI. The development or improvement of the electric system of the utility seeking to provide the electric service, including the economic factors relating thereto.

At hearing there were several objections made by Knife River concerning the efforts of the Coops to present testimony about the development and improvement of their electrical systems. They also sought to testify as the financial differences of their offer(s) to Knife River vs the offer of Xcel. SDCL 49-34A-56(4) states that the Commission needs to determine the “the development or improvement of the electric system *of the utility seeking to provide the electric service*, including economic factors relating thereto... (emphasis added). The utility seeking to provide service here is Xcel and Xcel only.

As the Supreme Court pointed out in *Hub City* the large load exception statute is not an appropriate place for consideration of competing service providers. *Matter of Northwestern Public Service Co.*, 560 NW2d 925 (SD 1997). Rather, it exists for a customer to avail itself of the statute and seek a provider in the electrical service territory of an incumbent. *Id* at 928. It is true that one of the historical factors in the creation of the territory law and the large load exception was an effort to avoid unnecessary duplication of services.⁵ So while appropriate for the Commission to consider a duplication of services, it is inappropriate for the Commission to consider the development or improvement of the utility systems of the Coops relating to the petition of Knife River.

Similarly, an analysis or consideration by this Commission of the rate differential or competing offer(s) to Knife River falls outside of the Commission's implied powers. In *Hub City*, the Commission considered a change in circumstances of a customer as grounds for allowing a previous SDCL 49-34A-56 assignment to be set aside. The Court disagreed. Stating the intent of the SDCL 49-34A-56 and the scope of the Commission in determining an exemption to the Territory Integrity Act was “to do nothing more than provide a new large load customer at a new location an option to be exercised prior to receipt of service.” *Id* at 928. “Nothing more” does not allow a competitive analysis here. There exists no basis to

⁵ “In 1975 the legislature enacted the “South Dakota Territorial Act” (Act), now codified at Chapter 49-34A. The policy underlying the Act was elimination of duplicate and wasteful spending in all segments of the electric service industry.” *Id*, quoting, *Matter of Certain Territorial Elec. Boundaries (Michell Area)*. 281 NW2d 65, 70 (SD 1979).

have this Commission consider whether the build out of the Sioux Valley network would be improved by serving the new plant. Or if the rate offer was a better deal for Knife River.

From the outset, the testimony of Mark Hoffman for East River was irrelevant. As was the testimony of Scott Shewey. Mark Hoffman states in his prefiled testimony that its very purpose is to demonstrate East River's ability to provide power to Sioux Valley so it can serve Knife River's new plant. MH-8; 1-2; 11-12, 13-14. Improvements of Sioux Valley's system, if it were to serve Knife River's new plant referenced in Ted Smith's prefiled testimony are also not relevant. TS-7; 260-318. Scott Schewey's testimony on a rate comparison of the hypothetical competitive offer(s) is also irrelevant. TR 176-78.

It is plainly not relevant to the Commission's determination of Knife River's request to have Xcel serve its new facility what a hypothetical build out would look like for Sioux Valley. Neither Sioux Valley nor Xcel have facilities to serve the new plant. TR 123, BLS -1: 1, 2@ 25-27, 1-8. Knife River is asking the Commission under SDCL 49-34A-56(3) to allow Xcel to serve. Not Sioux Valley. Sioux Valley wishes to turn the ruling in MDU⁶ around. Asking the Commission to examine its hypothetical buildout as being considerably better to its network, in a sense, and cheaper to the customer than that of Xcel.

In *MDU*, Montana-Dakota sought to have it declared the electric service provider for a new large load customer. Against the will of the customer and in the assigned service territory of the Cooperative the customer wanted to take service from. MDU wanted to argue, regardless of choice, it was in a better position to provide service. MDU sought to have the Commission engage in a competitive analysis. The Commission declined to engage in such a review and that decision was upheld on review. See, *Id*, generally.

The Commission, in its decision in MDU, stated in its conclusions of law 7 regarding the efforts of MDU in the docket, that, "(t)his position is unsupported by either logic or precedent and turns the statute of its head. In *Hub City*, the Court succinctly stated: "The plain language of the statute indicated the legislature intended to do nothing more than provide a new large load customer at a new location an option..." " *EL 06-011 Final Decision and Order, quoting Hub City @928*. The Coops want this Commission to engage where it did not in *EL 06-011*. The Commission should refuse the offer to do so.

That argument of the Coops and the objection of Knife River aside, it is clear that Xcel provides service to its existing customers close to the proposed plant in the City of Brandon. TR 57. There was also testimony at the hearing and a review of BLS-4 that

⁶ *In Re Montan Dakota Utilities Co., 740 NW2d 873 (SD 2007)*.

established that the provision of service to the Knife River plant would increase reliability of the Xcel network in the area and provide additional flexibility as needed by the upgrade of existing facilities that Xcel has. See TR 58, 79 and 94. Xcel can clearly serve the new plant. And any consideration by the Commission of their ability to do so should be easily answered.

VII. The proximity of adequate facilities from which electric service of the type required may be delivered.

It was undisputed at hearing and in the record before the Commission that neither Sioux Valley nor Xcel has facilities available to serve the new plant of Knife River. There was testimony of the need to build by Sioux Valley either a new substation or alternatively require upgrades at an existing substation and additional lines to serve this new plant. TR 113, 117. Xcel submitted testimony about the build out it would intend to do under its proposal to serve the plant. BLS-1 at 1,2: 26-27, 1. Staff did not think this was a consideration that was materially different, Xcel vs Sioux Valley, as neither could serve without new facilities being built and no duplication of service would be created with either serving. See, TR 196. Knife River would agree.

VIII. The preference of the customer.

Considering the preference of Knife River, testimony was clear from Clark Meyer that this was a business decision for Knife River based on the information it was given by both Xcel and the Coops. TR 37. The Coops wanted the Commission to go down a road of second-guessing Knife River's decision and create through the hearing process the ability to reopen or force Knife River to consider their alternative proposals. TR 65, 161, 162, 166, 167. The Coops go so far as to ask this Commission to literally set aside the choice of Knife River as being uninformed and thus an illegitimate or invalid choice. TR 61.⁷ This is exactly what this Commission and the Court in *MDU*, in the situation of an IOU attempting to argue the Customer didn't know best, refused to entertain.

Customer choice resides with the Customer. It is not a proper matter before the Commission or argument that could be made here by the utility which is seeking to force a customer to use one service provider over another. The large load exception in SDCL 49-34A-56 exists to provide the customer an option and to seek to obtain service, if it so chooses, from another provider. Knife River here has so chosen. If Knife River had chosen

⁷ Q:...it seems to be you want to argue that Knife River has not made an informed decision in choosing Xcel to provide electrical services here and as such, their preference should be disregarded. Am I fairly characterizing your testimony?

A: You're correct. T161; 6-11, Mark Hoffman.

after its meetings with Sioux Valley to take service from it, there would have been nothing before the Commission. Instead, Sioux Valley made an offer, evidently (though not relevant) not its best offer. Now it seeks another bite of the apple.⁸ The admonitions of Commissioners Nelson and Fiegen were well put. Xcel made its best offer to Knife River because it had to. The Coops did not, but admit they now wish they had. TR 142-43.

IX. Any and all pertinent factors affecting the ability of the utility to furnish adequate electric service to fulfill customers' requirements.

It doesn't seem to Knife River that there are any pertinent factors relating to the ability of Xcel to serve this new plant that haven't been argued or pointed out herein. Again, this requirement of the Commission for consideration of other pertinent factors relates to Xcel, by the language of the code and decisions of the Court in its interpretation of SDCL 49-34A-56. Any other factors relating to the Coops are irrelevant.

CONCLUSION

It was discussed at hearing and in the prefiled testimony of staff that companies should be able to determine their provider in situations such as was before Knife River based in large part on their own economic judgment. TR 191, JR-2 at 9:25-28. This ability will aid in development in this state with large load customers and related projects. If it is the policy of this state that a new large load project of a current customer, as argued by the coops, binds that project to the incumbent provider, regardless of costs, location or the nature of the operation, that would be unfortunate. Did the legislature intend a new plant built near an existing operation (or switch), or hypothetically 30 or more miles away, to be captive to the incumbent. Will a new large load be forced to look elsewhere? It seems in the root of the argument of the Coops that the only offer they gave Knife River was the one Knife River was required to take for its new plant. Until Knife River filed this present action based on their business judgment. Now it appears the Coops don't want to appear unreasonable to the Commission. Other offers have arisen. CM-1 at 136-140. The implication of this decision

⁸ Q:...It appears to me that your position is in this instance that you should be able to put on the table what the East River, Sioux Valley offer would be to Knife River had it known it all along and ask this Commission to determine whether or not Xcel's offer is equipoise, better or worse. Is that fair?

A: I don't think we were given the opportunity to provide an alternative.

Q: And so you're seeking that alternative here?

A: Through our testimony we provide it. TR 161-162; 22-25, 1-7. Mark Hoffman

are broad. And at the same time chilling. This new plant is a new large load customer in a new location. Xcel should easily be able to serve it.

Dated this 15th day of May, 2026.

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CERTIFICATE OF SERVICE

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