

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

IN THE MATTER OF THE PETITION OF)	STAFF’S POST HEARING
SWEETMAN CONST. CO. DBA KNIFE RIVER,)	BRIEF
TO HAVE XCEL ENERGY ASSIGNED AS ITS)	
ELECTRIC PROVIDER IN THE SERVICE)	EL25-032
AREA OF SIOUX VALLEY ELECTRIC)	
)	
)	

STATEMENT OF THE CASE

On September 12, 2025, the South Dakota Public Utilities Commission (Commission) received a petition from Sweetman Const. Co. dba Knife River (Knife River) to have Xcel Energy (Xcel) assigned as its electric provider in the service area of Sioux Valley Electric (Sioux Valley) (Petition). Knife River seeks authorization from the Commission to allow Xcel to serve Knife River’s facility near Corson, South Dakota pursuant to SDCL § 49-34A-56 (commonly referred to as the “large-load statute”). The proposed facility to be served is a rock crushing plant located near Xcel’s Lawrence substation in Minnehaha County and will be served by a 34.5 kV distribution circuit within the service area of Sioux Valley. Knife River Pet. at 1.

Accordingly, Sioux Valley petitioned to intervene in this docket. East River Electric Power Cooperative, Inc. (East River), which delivers wholesale power to Sioux Valley, and Basin Electric Power Cooperative (Basin) (collectively, the “Intervenors”), which “generates electric power which it sells and transmits to East River,” also petitioned to intervene. Pet. to Intervene Basin Electric Power Cooperative. at 1. Xcel petitioned to intervene on October 3, 2025. Sioux Valley, East River, Basin, and Xcel were granted intervention on October 27, 2025. The parties, including Commission Staff (Staff), have been participating in discovery since the docket opened.

On March 5, 2026, the Commission issued its Order for and Notice of Hearing and Order Amending Deadline for Filing of Exhibits and Witness Lists on Knife River’s Petition, to be held on April 13–15, 2026. On April 13, 2026, the Commission conducted the hearing on Knife River’s Petition. On May 26, 2026, the Commission issued an Order Establishing Post-Hearing Briefing Schedule.

LEGAL STANDARD

In making its determination, the Commission must apply the following statute:

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.

SDCL § 49-34A-56.

For ease of understanding, Staff believes the following summation is an accurate portrayal of how the Commission must decide this matter. In order to grant the petition, the Commission, after consideration of the record must find that:

1. Knife River is a new customer at a new location;
2. The proposed facility is located outside municipalities as the boundaries thereof existed on March 21, 1975; AND
3. The proposed rock crushing plant will require electric service with a contracted minimum demand of two thousand kilowatts or more.

The statute requires the Commission to consider all six factors, but it does not specify how they must be weighed. Because the statute gives no weighting guidance, Staff believes the Commission has discretion to determine the importance of each factor.

ANALYSIS

Staff presents the following analysis of the record of the evidentiary hearing.

New customer at new location

The first issue to be determined under this requirement is whether Knife River is a “new customer” at a “new location” as required by the large load statute. Neither the large-load statute nor case law provides a clear definition of what constitutes a “new customer” or “new location” in the context of a large load exception. Accordingly, Staff must look to the intent of the legislature upon enacting SDCL § 49-34A-56. The Supreme Court states that “[t]he intent of the legislature is ‘derived from the plain, ordinary and popular meaning of statutory language.’” *Matter of Nw. Pub. Serv. Co.*, 1997 S.D. 35, ¶ 14, 560 N.W.2d 925, 927. The Supreme Court also states that “[i]t is presumed that the legislature intended provisions of an act to be consistent and harmonious.” *Id.*

Customer is defined under SDCL § 49-34A-1(3) as “any person contracting for or purchasing gas or electric service from a utility.” SDCL § 49-34A-1. Person is defined under SDCL § 49-34A-1 as:

[A] natural person, a partnership, a private corporation, a public corporation, a limited liability company, a municipality, an association, a cooperative whether incorporated or not, a joint stock association, a business trust, any of the federal, state and local governments, including any of their political subdivisions, agencies and instrumentalities, or two or more persons having joint or common interest.

SDCL § 49-34A-1. The Merriam-Webster Dictionary defines new as “not old; not the same as the former; and having recently come into existence;” *Merriam-Webster Dictionary*, (June 11, 2026, 9:11 AM), <https://www.merriam-webster.com/dictionary/new>. Therefore, Staff believes the ordinary and plain meaning of “new customer” under Chapter 49-34A is a natural person, partnership, private corporation, public corporation, limited liability company... that is not old, not the same as the former, or having recently come into existence, contracting for or purchasing gas or electric service from a utility. Knife River is an existing customer of both Xcel and Sioux Valley. Evid. Hr'g Tr. 30:20-24. Therefore, under the plain and ordinary reading of the statute, Knife River would not be a “new customer.”

Knife River’s Post Hearing Brief argues that the new plant is a “wholly separate operation” managed differently from the existing sand plant. Post Hr’g Br. at 3. Knife River relies on the Commission’s 1977 Safeguard Metals decision, where a newly created subsidiary operating a foundry was deemed a new customer because it had “a separate and distinct operational purpose at a subsidiary level.” *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*, SD PUC Docket F-3171, Decision and Order (October 13, 1977). However, in that same decision, the Commission also

found that the Safeguard Metal Casting Division was “an entity unto itself” and responsible for contracting for electric service. *Id.* at ¶ 4. Here, Knife River is not a separate legal entity. Even if the proposed rock crushing facility operates independently from the sand plant, any electric service contracts would still be executed by the same entity, Sweetman Construction Co. dba Knife River. Therefore, Staff believes Knife River’s argument fails.

Staff recognizes that this reading is restrictive and could make the statute impractical because many companies operate in multiple states and would be disqualified based solely on past service elsewhere. Staff therefore believes “new customer” should be interpreted in connection with “new location,” meaning an entity taking service at a location not previously served by a utility is a “new customer.” This interpretation better aligns with current public policy and business realities. The Intervenors argue “when it's adjacent, next to an expansion of existing plant, that's not considered a new customer.” Evid. Hr'g Tr. 168:7-11. This shows that even the intervenors believe that there is a correlation between “new customer” and “new location.” However, the Supreme Court has made clear that “[i]f the wording of SDCL [49-34A-56] is in need of revision to accommodate public policy changes in the utility industry, it is the responsibility of the Legislature, rather than the PUC, to change the statute.” *In re W. River Elec. Ass'n, Inc.*, 2004 S.D. 11, ¶ 25, 675 N.W.2d 222, 230. Consequently, the Commission is bound by the statute’s plain meaning, under which Knife River is not a “new customer.”

Because Knife River is not a “new customer,” it cannot qualify for the large-load exception. Staff nevertheless analyzes the remaining factors in case the Commission disagrees. “New location” is also undefined in statute. In support of the argument that Knife River is a new customer at a new location, Clark Meyer of Knife River testified that the proposed site has no existing utility services. Evid. Hr'g Tr. 53:21-24. Staff believes that fact is relevant towards

determining whether this location is a “new location.” For one to argue that Knife River is not a “new location,” it seems evident to Staff that, as a fundamental prerequisite, they would first have to establish some sort of existing utilities at the described location. There are no such utility services at the proposed location or associated rock quarry. Ex. TS-5. Both Xcel and Sioux Valley would have to construct lines to reach the proposed rock crushing facility, which seems to indicate that this is a new location. Evid. Hr’g Tr. 19:3–6.

However, the conveyor belt between the rock quarry and the proposed plant crosses an existing Sioux Valley distribution line and seems to cross a corner of the sand plant’s legal description Ex. MH-5; Ex. TS-5. Mr. Meyer testified that the conveyor belt does not cross any processing facilities and only touches the edge of the mapped area. Evid. Hr’g Tr. 34:20–35:8. The conveyor belt also crosses the sand plant’s water pumping system. Evid. Hr’g Tr. 50:24–51:5. These facts raise questions about whether the site is a new location. If it is not, Knife River is ineligible for the large-load exception. Staff defers to the Commission on this determination.

The Intervenors argue that Knife River identified the project as an expansion in its Conditional Use Permit (CUP) and therefore cannot qualify as a new customer at a new location in this proceeding. Evid. Hr’g Tr. 132:20-23; 163:23–164:1. Staff views this as irrelevant; the CUP process involves different standards and governing bodies. Neither the quarry nor the proposed plant is currently served by a utility. Evid. Hr’g Tr. 133:11-16. Even if considered an expansion, it would be an expansion of an unserved location and therefore still a new location for purposes of this statute.

Mark Hoffman of East River further argues the site is not new because the sand-washing plant and proposed facility share a 911 address. Ex. MH-8 at 8:159-162. He acknowledged,

however, that Knife River could obtain a separate address once the facility is built. Evid. Hr’g Tr. 163:8-11. Staff does not view the 911 address issue as dispositive.

Located outside municipalities as the boundaries thereof existed on March 21, 1975

Staff provided a map in Exhibit JR-1 showing that the proposed rock-crushing plant is located outside municipal boundaries. Ex. JR-1. No party has disputed this fact. *See generally* Evid. Hr’g Tr. (showing no party contests this).

Contracted minimum demand of two thousand kilowatts or more

Knife River must show that it “will require electric service with a contracted minimum demand of two thousand kilowatts or more” to qualify under SDCL § 49-34A-56. In its Petition, Knife River states that it is negotiating an Electric Service Agreement (ESA) with Xcel that “has a contracted minimum demand in excess of two thousand kilowatts.” Knife River Pet. at 1-2. Mark Hoffman with East River argues that there must be a contract in place to meet the statutory requirement. Evid. Hr'g Tr. 151:5-7. However, the statute specifically states, “will require electric service with a contracted...,” this language is forward looking and is dispositive of that argument. Staff believes that no contract is needed to meet the requirement of the statute. Rather, Knife River needs to show that they will require a contracted minimum demand of 2,000 kW or more. In response to Staff’s data request 1-1, Knife River stated that the anticipated load of the proposed plant is 11 MW. Ex. JR-5. That is well in excess of 2,000 kW. Additionally, the pre-filed testimony of Clark Meyer states “[t]he load is well in excess of the 2 MW required by SDCL 49-34A-56.” Ex. CM-1 at 6:103.

Staff has no concerns with Knife River meeting this requirement.

Staff next analyzes the six statutory factors, but does not offer an ultimate recommendation, as that determination rests solely with the Commission.

1. The electric service requirements of the load to be served;

Clark Meyer of Knife River testified that the Knife River load is more than the 2,000-kilowatt requirement. Evid. Hr'g Tr. 20:8-9.

The Intervenors dispute the demand requirement based on the lack of a contract. However, Ted Smith of Sioux Valley testified that they believe the new plant meets the 2 MW threshold. Evid. Hr'g Tr. 123:18–124:5. Mark Hoffman of East River also testified that he believes the demand would be 11MW. Evid. Hr'g Tr. 165:12-14. As stated above, the lack of an executed contract is not dispositive.

To Staff's knowledge, the electric service requirements of Knife River would not change based on who provides service.

2. The availability of an adequate power supply;

Steve Kolbeck of Xcel testified that “[w]e actually have over 10,000 megawatts of load in the five-state area. We can easily serve that load.” Evid. Hr'g Tr. 58:2-8.

In response to Staff's Data Request to Sioux Valley, Sioux Valley stated, “[t]here is a robust 115 kV transmission system in the area operated by Sioux Valley's supplier East River which has ample capacity to service the 11 Megawatt load.” Ex. JR-6 at 1.

Staff has no concerns with Xcel or Sioux Valley having 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;

In prefiled testimony, Brad Sylliaasen of Xcel stated that Xcel could serve the load by constructing approximately 10 miles of 34.5-kV distribution infrastructure along the route shown in Exhibit BLS-1, with service originating from the Lawrence Substation. The project would use an existing substation transformer, though the substation would require an additional feeder bay.

Ex. BLS-1 at 1:25-2:8. Steve Kolbeck testified that this buildout could reduce costs and improve reliability in nearby service areas such as Garretson and Brandon. Evid. Hr’g Tr. 56:23–57:4; 58:13–16.

In response to Staff’s data request, Sioux Valley stated that serving the 11-MW load would require a system expansion, including a minimum of two dedicated feeders, substation upgrades or construction of a new substation, and potentially a new 115-kV transmission line. Ex. JR-6 at 1-2. Sioux Valley’s Ted Smith testified that these upgrades would not improve Sioux Valley’s distribution system and may require its customers to subsidize the project despite receiving no benefit. Evid. Hr’g Tr. 135:10–13; 135:19–136:6.

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

In testimony, Steve Kolbeck from Xcel stated that 10 miles of 34.5 would need to be built to get to a meter for them. Evid. Hr’g Tr. 60:24-25. Brad Sylliaasen also testified that “other than the last, I’m going to say, two miles approximately, it is all existing service territory where we have existing facilities that will be, for the most part, upgraded to today’s standards, new infrastructure in some cases.” Evid. Hr’g Tr. 95:5-9. A map of the 10-mile line and what it entails is found in Exhibit BLS 3.

In response to Staff’s first Data Request, Sioux Valley stated:

East River currently has a 115 kV transmission line approximately 1.25 miles west of a proposed new substation site that has been previously discussed with Knife River. Given Knife River’s request, Sioux Valley proposed to serve the 11 Megawatt load by constructing approximately 1.25 miles of 115 kV transmission line, a new distribution substation, and initially, two 7.2/12.47 kV distribution circuits.

Ex. JR-6 at 2.

5. The preference of the customer;

At the evidentiary hearing, Clark Meyer of Knife River testified that after reading the testimony provided by the Intervenors regarding the different payment and infrastructure options, it is still Knife River's preference to have Xcel serve the proposed rock crushing plant. Evid. Hr'g Tr. 32:24-33:4. In its Petition, Knife River also states “[p]etitioner has a strong preference to be served by Xcel.” Knife River Pet. at 2. It is clear that Knife River prefers Xcel provide service rather than Sioux Valley.

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

The Intervenors argue that safety is a concern. Evid. Hr'g Tr. 120:1–5. Sioux Valley’s Ted Smith testified that intermingling lines poses a risk because its employees are not trained to work around high-voltage facilities. Evid. Hr'g Tr. 128:14–129:5. However, he also acknowledged that Sioux Valley, Basin, and East River already operate intermingled lines without safety issues and that Sioux Valley could hire or train employees to work in such environments. Evid. Hr'g Tr. 136:17–24; 137:11–15. Knife River’s Clark Meyer testified that the sand plant will shut down and relocate, eliminating any concern about overlapping facilities. Evid. Hr'g Tr. 43:11–19; 44:12–15. Staff therefore does not view safety as a dispositive issue, as reasonable mitigation measures exist.

Another factor is duplication of facilities and wasteful spending. Sioux Valley’s counsel, Mike Nadolski, argued that granting the petition would contribute to duplication and wasteful spending rather than eliminate it. Evid. Hr'g Tr. 14:7–9; 15:3–8. But both Xcel and Sioux Valley would need to build new infrastructure to serve the load regardless of which utility is

selected. Evid. Hr’g Tr. 19:3–6. Staff therefore sees no risk of duplicating facilities. Evid. Hr’g Tr. 196:8–14.

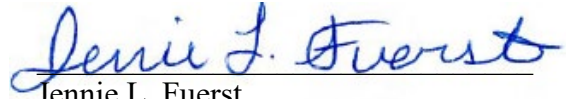
As noted earlier, Sioux Valley’s buildout would not improve its distribution system and could require its customers to subsidize infrastructure that provides them with no benefit. Evid. Hr’g Tr. 135:10–136:6. By contrast, Xcel customers will not pay for the proposed buildout, and Xcel customers would benefit from improved reliability. Evid. Hr’g Tr. 56:23-57:4; 58:10-16; 72:24-73:5; 78:5-10; 80:17-24; 81:18-24; 95:15–23. For these reasons, Staff believes that denying the petition and requiring Sioux Valley to serve the plant would result in wasteful spending. Staff acknowledges that the PUC does not regulate the spending of the Coops. However, wasteful spending is a factor the Commission has the authority to consider, per the admission of Sioux Valley’s counsel, Mike Nadolski.

CONCLUSION

The very existence of SDCL § 49-34A-56 is a legislative acknowledgment that strict territorial exclusivity is not always in the public interest, particularly for large, new industrial loads. The Commission’s role is not to preserve territory assignments at all costs, but to determine when deviation better serves the public interest in reducing wasteful spending and the duplication of services. This docket presents precisely that circumstance. If the Commission determines that Knife River is a new customer, and that the proposed rock crushing plant is a new location, then it seems clear that Xcel’s petition should be granted.

However, if the Commission determines that Knife River is not a new customer and/or the proposed rock crushing plant is not a new location based on the factors listed above, they will not be eligible to receive service from Xcel under SDCL § 49-34A-56.

Dated this 12th day of June, 2026



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