

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

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	<b>EL25-032</b>  <b>KNIFE RIVER’S REPLY BRIEF</b>
--	---

For purposes of this Reply 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.” The Responsive Brief of Staff will be noted as “SB” followed by the appropriate page number. References to the Responsive Brief of the Coops will be noted as “CB” followed by the appropriate page number. References to the Responsive Brief of Xcel will be noted as “EB” followed by the appropriate page number. Knife River’s Post Hearing Brief will be referenced by “KRB” followed by the appropriate page number. References to the hearing transcript and exhibits of the party will be the same as in Knife River’s Post Hearing Brief.

**ARGUMENT**

Looking at all of the matters briefed before the Commission, it seems clear that the only significant issue before the Commission is whether or not this new rock crushing facility of Knife River is a new customer in a new location. The Coops assert that any number of the other conditions or requirements of Commission’s statutory analysis fail as well. Those assertions are refuted not only by Knife River, but by Xcel and Staff and the record clearly focuses the Commission on the aforementioned two considerations as the only that substantively remain.

Any argument that Xcel doesn’t have the ability to serve or is equally able to serve as would be Sioux Valley, all things being considered, is certainly off base. EB at 3. The record is clear that there are no facilities where this new plant will be. KRB at 4, TR 53. To serve

the new plant, Sioux Valley would have to build out a new substation or alternatively upgrade an existing substation and build more service lines. SB at 9, JR-6 at 2. Xcel to serve would have to build out additional lines as well though some of that would be existing upgrades on its system. See, SB at 8-9 and EB at 4.

The issue of whether or not there is a contracted minimum demand load of 2MW that will be needed by Knife River is also easily something Knife River would argue the Commission could set aside. Staff in its analysis correctly points out that that it is a prospective or forward looking requirement in statute as to what will be required by the large load customer once the project is built out. SB at 7. There has not been a dispute at all that the rock crushing plant will have in excess a demand load of 2MW. See, KRB at 6, SB at 7, EB at 2. Again, as pointed out by Knife River, this Commission has previously determined in a large load docket that it is a prospective contractual requirement, not one that puts the cart before the horse (requiring the contract to be in the record and executed before the Commission's entertaining of the territorial exception itself). See KRB 6, F-3171 Findings of Fact at 17, 18.

So, again, in the end, we are down to whether or not the new facility of Knife River is a new customer in a new location. Staff sites the Merriam Webster definition of "new" as "not old; not the same as the former; and not having recently come into existence" SB at 4. Coupled with the definition in 49-34-1, Staff's conclusion is that Knife River here is not a new customer in a new location. SB at 4.

Staff certainly appears to be concerned about the impact of this conclusion beyond this docket and that will be addressed hereafter. But Staff also suggests that an analysis could include new customer in a new location as a single and not disparate consideration. That certainly seems to have merit. Again, to be addressed hereafter.

There should not be any confusion that the new plant is wholly a separate and a distinct operation. CM-1 at 86. In its argument that Knife River is not a new customer in a new location eligible for the large load exemption however, the Coops argue this new plant is only the expansion of an existing quarry. CB at 1. Not only is it argued that Knife River is the same customer expanding its operation, it is an operation that the Coops already provide service to.<sup>1</sup> The reality though of what is being constructed and what exists tells a different story.

---

<sup>1</sup> "...the proposed quartzite rock crushing plant is an expansion of the same site where Sioux Valley already provides services..." CB at 3.

As already stated, the new plant cannot be served by extending the services that the Coops provide the existing sand plant. That is clear in the record before this Commission. SB at 9, JR-6 at 2. And while the testimony of the Coops witnesses and their responsive brief attempt to establish that this is merely an expansion of an existing quarry, the facts do not show that. It is a 100% stand alone operation, CM-1 at 85. It ends up being close to the existing sand plant, there is no argument about that, but that does not establish that it is an extension of that sand plant. It is something different on its own. If this Commission was willing to allow a foundry to attach to an existing facility and consider that to be a new customer, the fact that in a 1400 acre parcel of property acquired over many years a new facility's location that does not overlay an existing plant should not stand as a bar to the efforts of Knife River here. See, F-3171, EB at 2-3.

From a policy perspective you have to consider the implications of the Coops argument. As an example, if an ethanol producer were to build a new facility in the territory of an existing Coop, say Central Electric Cooperation, that very well could be done more than 50 or 100 miles from an already existing plant. Pukwana to Howard is a 110 mile drive. Now at a corporate governance level an ethanol company could create a new subsidiary and fit under the exception found in F-3171. They could. Are they required to? That seems to be what the Coops are arguing here. Although it is incredibly doubtful that they would concede that the formation of a subsidiary here by Knife River would get the minimal relief that is sought.

Regardless, the fact is Knife River's testimony has been that the existing sand plant is operated separately, on a separate accounting system and managed differently than the rock crushing facility, KRB at 3, TR 54. The analysis of the Commission in F-3171 holds true in all instances other than a wholly owned subsidiary being created. This omission should not alter the rationale that allowed an attached foundry to be found to be a new customer in a new location. One plant, the sand facility, is going to be gone in a short order of time while the new facility will survive for hopefully decades to justify the cost and expense of putting it in place. TR 43, 44 and 52. Each plant is run for its own purpose. For its own mission and useful life.

The unintended outcome and impact of the standard sought to be applied against Knife River appears to be Staff's concern. Even in determining that the new facility of Knife River is not a new customer, the analysis of what is a new customer could be in the end

overly restrictive in a broader sense and application.<sup>2</sup> We have to assume, as has been argued here, the Legislature didn't intend unreasonable outcomes with its statutory construction. The denial of the exception here is that unreasonable outcome in Knife River's opinion.

If the conclusion of Staff and the Coops is that denial of the territory exception is what the Legislature intended, this forces us to consider that there is no relief to Knife River of now arguably an economically unwise decision to build in a location. They are left with the alternative of forming a subsidiary which they could have done. See, TR at 54. Or they could build outside of the territorial footprint of a specific Cooperative to obtain a more financially advantageous arrangement increasing the viability of a plant moving forward. Or they could simply pay the additional Five Million Dollars (\$5,000,000.00) plus upfront for the Coops costs. CM-128, 9. Upfront and not over the life of the project. The rock resource in this case is where it is at. Mines go where the resource is close to in this instance rail, or other off-loading site.

This is not the situation as was argued by the Coops where we have an existing customer in a current location who based on a change of circumstances or a change of financial concerns is trying to change a current service provider. The sand plant of Knife River is and will be getting the service it has. Nor is it a modification of a location argument as was dealt with in the *West River Electrical Association*<sup>3</sup> case. This is very different than the *Northwestern*<sup>4</sup> analysis, nothing has changed here with the existing sand plant. The rock crushing plant is something new and is being created. Truly, "it is something new that did not exist".

As a case of first impression<sup>5</sup>, the Commission can read the statutory definition of "Customer" found in 49-34A-1 and the common definition of "New" together, finding arguably that the Knife River facility fits the definition. Is the legal entity the same as the owner of the sand plant? Yes. Is the rock plant now something that heretofore did not exist? Yes. Leaving Knife River's policy argument aside, the large load statute could have simply

---

<sup>2</sup> Staff states regarding a its new customer analysis: *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 therefor 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.* SB at 5.

<sup>3</sup> *In re, West River Electric Association W. River Electric Association Inc.* 675 NW2nd 222 (SD 2004)

<sup>4</sup> *Northwestern*, 560 NW2nd 925 (SD 1997)

<sup>5</sup> Staff correctly points out, "[n]either the large-load statute nor caselaw provides a clear definition of what constitute as "new customer" or "new location" in the context of a large load exception." SB at 3.

said “Customer”. It does not. Finding that this new plant is under the analysis suggested a “new customer in a new location” certainly would not be an absurd result in statutory analysis.

The Coops analysis of the *West River* as it relates to this docket is problematic. True, that was a geographic concept analysis the Commission considered but the Coops here again try to take this 1400 acre tract which involves of course multiple tracts acquired over multiple transactions and make it into the same footprint for service. The difference is in the *West River* case that was a service territory carve out at the time for Black Hills Energy within the existing service area of the cooperative. That is not what is proposed here, rather it is a service territory exception for this new plant in a new location that is the sought exception. This is a separate location and there is no direct overlay of the facilities. The Coops cannot serve this new plant of Knife River’s without building completely new infrastructure. All of Knife River’s property near Corson is in Sioux Valley’s Territory. The exception sought is only for the new plant. The *West River* analysis is not relevant.

Regarding judicial estoppel, and the CUP of Knife River in Minnehaha County, we believe Staff has this correct. SB at 6. The interactions between Knife River and Minnehaha County by the Coops have been boiled down to snippets of language leaned on as argument. Simply a few choice, superfluous, words without identifying either in argument or the record what the impact or meaning of those terms are for purposes of obtaining a conditional use permit. The Coops attempt to use that language now and claim that they have been harmed evidently under the *Wilcox* standard by the use of that language, avoiding what the import of that language is at a county level because that is not in the record. The Coops were not parties to the CUP process. Under *Wilcox v. Vermeulen*, 781 NW2nd (SD 2010), the Coops do not meet the standard expressed, rather they argue dicta loosely applies.

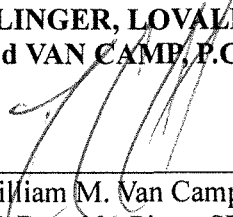
*Wilcox*, as an aside, was a wrongful death fund dispersal dispute. The parties were co-plaintiffs that later disagreed on how recovered proceeds should be split. One party argued the other party, its former co-plaintiff, shouldn’t be able to change a position later by offering a subsequent expert in the distribution proceeding. The Court’s majority in determining this was a dispute of evidence admissibility when not properly proffered suggested the trial court may have been wrong using judicial estoppel as a reason for denying the admission of the expert testimony, but it did not matter. *Id* at 469. The vigorous dissent filed by Justice Saber is interesting. Though not relevant to the matter at hand. Nor is the *Wilcox* case and the analysis offered of it.

## CONCLUSION

For the reasons stated herein, the Post Hearing Brief previously filed by Knife River and the record before the Commission, Knife River should be granted the right to be provided electric service by Xcel at its new rock crushing plant pursuant to SDCL 49-34A-56.

Dated this 29<sup>th</sup> day of June, 2026.

**OLINGER, LOVALD, MCCAHERN  
and VAN CAMP, P.C.**



---

William M. Van Camp  
PO Box 66 - Pierre SD 57501  
Telephone: 605-224-8851  
*Attorneys for Knife River*

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing in the above-entitled action was delivered by electronic mail this 29th day of June, 2026, to the following:

Ms. Leah Mohr  
Executive Director  
South Dakota Public Utilities Commission  
500 E Capitol Ave.  
Pierre, SD 57501  
[Leah.Mohr@state.sd.us](mailto:Leah.Mohr@state.sd.us)  
605-773-3201

Mr. Daniel J. Brown  
Attorney  
East River Electric Power Cooperative  
211 South Harth Ave.  
PO Box 227  
Madison, SD 57042  
[dbrown@eastriver.coop](mailto:dbrown@eastriver.coop)  
605-256-4536

Mr. Joseph Rezac  
Staff Analyst  
South Dakota Public Utilities Commission  
500 E Capitol Ave.  
Pierre, SD 57501  
[Joseph.Rezac@state.sd.us](mailto:Joseph.Rezac@state.sd.us)  
605-773-3201

Ms. Meredith Moore – Representing  
Basin Electric Power Cooperative  
Attorney  
Cutler Law Firm  
140 N. Phillips Ave. Fourth Floor  
Sioux Falls, SD 57101  
[meredithm@cutlerlawfirm.com](mailto:meredithm@cutlerlawfirm.com)  
605-335-4950


Ms. Jennie L. Fuerst  
Staff Attorney  
South Dakota Public Utilities Commission  
500 E Capitol Ave.  
Pierre, SD 57501  
[Jennie.Fuerst@state.sd.us](mailto:Jennie.Fuerst@state.sd.us)  
605-773-3201

Mr. Steven T. Kolbeck  
State Director  
Xcel Energy  
500 W Russell Street  
PO Box 988  
Sioux Falls, SD 57101  
[Steven.T.Kolbeck@XcelEnergy.com](mailto:Steven.T.Kolbeck@XcelEnergy.com)  
605-339-8350

Mr. Zeviel Simpser – Representing Xcel  
Energy Partner  
Dorsey & Whitney LLP  
50 South 6<sup>th</sup> Street, Suite 1500  
Minneapolis, MN 55402  
[Simpser.Zev@dorsey.com](mailto:Simpser.Zev@dorsey.com)  
612-492-6129

Mr. Michael F. Nadolski – Representing  
Sioux Valley-Southwestern Electric  
Cooperative, Inc. – Attorney  
Lynn, Jackson, Schultz & Lebrun, PC  
909 St. Joseph St., Ste 800  
Rapid City, SD 57701  
[mnadolski@lynnjackson.com](mailto:mnadolski@lynnjackson.com)  
605-342-2592

Ms. Christine Marquis  
Regulatory Administrator  
Xcel Energy  
414 Nicollet Mall – 401, 7<sup>th</sup> Floor  
Minneapolis, MN 55401  
[Regulatory.Records@xcelenergy.com](mailto:Regulatory.Records@xcelenergy.com)  
651-528-0365



---

William M. Van Camp