

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

IN THE MATTER OF THE PETITION FOR)	FINAL DECISION AND
ELECTRICAL SERVICE BY DAKOTA TURKEY)	ORDER DETERMINING
GROWERS, LLC TO HAVE DAKOTA ENERGY)	RIGHT TO RECEIVE
COOPERATIVE, INC. ASSIGNED AS ITS)	SERVICE; NOTICE OF ENTRY
ELECTRIC PROVIDER IN THE SERVICE AREA)	
OF NORTHWESTERN ENERGY)	EL04-032

PROCEDURAL HISTORY

On October 18, 2004, the Public Utilities Commission (Commission) received a Petition for Electrical Service (Petition) from Dakota Turkey Growers, LLC (DTG). The Petition requests that the Commission assign Dakota Energy Cooperative, Inc. (Dakota Energy) as the supplier of electrical service to the proposed DTG turkey processing facility within the assigned service area of NorthWestern Energy (NorthWestern) pursuant to SDCL 49-34A-56. Simultaneously with DTG's filing of the Petition, Dakota Energy filed an Affidavit of Joinder joining in the Petition. On October 21, 2004, the Commission electronically transmitted notice of the filing and the intervention deadline of November 5, 2004, to interested individuals and entities. On November 3, 2004, the Commission received a Petition to Intervene and Objection from NorthWestern. At its regularly scheduled meeting on November 30, 2004, the Commission granted intervention to NorthWestern. On January 12, 2005, the Commission received a Motion for Summary Disposition from NorthWestern. On January 13, 2005, the Commission issued its Order for and Notice of Hearing setting the matter for hearing on February 17, 2005, in Huron. On February 2, 2005, the Commission received a Stipulation to Amend Petition signed by DTG and NorthWestern. On February 3, 2005, the Commission received a Memorandum of Law in Opposition to Motion for Summary Disposition from DTG. On February 8, 2005, the Commission received Staff's Response to Motion for Summary Disposition of NorthWestern Corporation. At its duly noticed February 9, 2005, meeting, the Commission heard oral arguments and voted unanimously to deny NorthWestern's Motion for Summary Disposition. On February 17, 2005, the hearing in this matter was held as noticed. On February 24, 2005, the Commission issued an Order Establishing Briefing Schedule. Briefs were submitted by DTG/Dakota Energy, NorthWestern and Staff. At its regular meeting on April 26, 2005, the Commission voted unanimously to approve DTG's Petition with respect to DTG's own facilities, including at a minimum, the proposed plant and office building and future expansions of either of these, but not to approve service at this time with respect to the truck stop.

The Commission has jurisdiction over this matter pursuant to SDCL 49-34A-42, 49-34A-56, 49-34A-58 and 49-34A-59.

Having considered the evidence of record and applicable law, the Commission makes the following Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT

1. DTG was organized as a newly formed limited liability company on August 19, 2003. DTG was organized by turkey growers located primarily in South Dakota in order to undertake to build a processing facility and begin to market their own product to add value to the live product coming through the facility. DTG has never been an electric customer of either NorthWestern or Dakota Energy. DTG will be a new customer of either Dakota Energy or NorthWestern. TR 18-19, 81.

2. DTG will be a "new customer" within the meaning of SDCL 49-34A-56.

3. On August 26, 2004, DTG acquired a parcel of property outside of the city of Huron from the Greater Huron Development Corporation (GHDC) for purposes of constructing the processing facility (Plant), an office building (Office), associated facilities and potentially a truck stop. TR 22-24; DTG Exs 1 and 21. GHDC had in turn acquired the property from the city of Huron who in turn had acquired the property from Jeff and Teresa Decker. TR 21.

4. The property acquired by DTG from GHDC was located outside the boundaries of Huron at the time it was acquired by DTG. TR 46. There was no evidence presented and it was not asserted by any party that the property was within the boundaries of any municipality as they existed on March 21, 1975.

5. At the time the Deckers purchased the property, they purchased it as two separate parcels. TR 234. The Deckers had the portion of the property where their home and associated homestead buildings were located replatted as a separate 10 acre parcel from the remainder of Outlots 1 and 2 so that they could qualify to borrow money through South Dakota Housing for the house. TR 234. The remainder of the property was purchased from the sellers through a contract for deed. TR 235.

6. The Plant and Office are currently under construction on the portion of the property which the Deckers had acquired on contract for deed. There are no buildings located on this portion of the property where the Plant and Office are being constructed. TR 24. There was no evidence presented that buildings other than possibly a seasonal fireworks stand had ever been located on this portion of the property. TR 241. There was never any electric service to the building sites of the Plant and Office. TR 241.

7. The DTG Plant and Office are being constructed from the ground up on land that was previously undeveloped farm land. TR 20, 24.

8. NorthWestern is currently providing power to the DTG construction facilities on a temporary basis. When DTG's contractor leaves the site, these services will be removed. TR 67.

9. The Commission finds that the Plant and Office are a "new location which develops after March 21, 1975."

10. Also proposed for possible development on the DTG property is a truck stop. TR 23-24. The property on which the proposed truck stop would be primarily located is the separate 10 acre parcel which the Deckers caused to be separately platted. TR 242. The Decker home and farmstead buildings were located on this parcel of property. TR 43. NorthWestern provided electric service to the Decker farmstead prior to the Deckers' property being purchased by the city of Huron. TR 241. Following the Deckers' sale of the property, their electric service was disconnected and temporary service was installed by NorthWestern to serve DTG's contractor. TR 63-67. Other than the evidence concerning the possible seven to eight days of temporary service to a fireworks stand back in the 1970s and the temporary service to DTG's contractor, this was the only evidence presented of prior electric service to the 10 acre Decker farmstead parcel. TR 241.

11. The truck stop would be under different ownership than the Plant and Office. TR 43. Development of the truck stop is on hold. TR 23.

12. The Commission finds that there is insufficient evidence at this time to find that the truck stop will in fact be a part of DTG as a "customer" and entitled to be included within the territorial assignment exception carved out by SDCL 49-34A-56 or that the truck stop will otherwise be a "new customer."

13. The Commission accordingly does not reach the issue of whether the 10 acre parcel may be properly included with the remainder of the DTG property as part of a "new location" within the meaning of SDCL 49-34A-56. At such time as development is actually proposed on this parcel, the parties will have the opportunity, if they wish, to bring before the Commission the issue of whether such development meets the standards for inclusion within DTG's "location" as set forth by the Court in *Matter of Northwestern Public Service Co.*, 1997 SD 35, 560 N.W.2d 925, Util. L. Rep. P 26,600 (1997) (*Hub City*).

14. With respect to factor (1) of SDCL 49-34A-56, the anticipated demand for electric service for the DTG facilities will exceed 2000 kilowatts and is expected to be about 5000 kilowatts. TR 25-26; 95. This projected demand does not include the truck stop. TR 49. DTG executed an Electric Service Agreement (ESA) with Dakota Energy for the provision of electric service to the DTG facilities. DTG Conf Ex 5. Paragraph 2. of the ESA provides that DTG agrees to purchase and receive from Dakota Energy all of the electric power and energy requirements of the DTG facilities. Paragraph 6.c. of the ESA provides that the minimum contracted demand for billing purposes for the DTG facilities will not be less than 2000 kilowatts regardless of DTG's actual demand or energy requirements for any billing period. DTG Conf Ex 5.

15. DTG facilities will require electric service with a contracted minimum demand of 2000 kilowatts or more.

16. With respect to factor (2) of SDCL 49-34A-56, East River Electric Cooperative (East River) will supply Dakota Energy with the power to be delivered to DTG under its power supply agreements with East River. The power will be generated by Basin Electric Cooperative. East River's power sources are very reliable. TR 124-125. Basin has adequate generation resources to supply the DTG load. TR 124.

17. The transmission and distribution upgrades to be installed by East River and Dakota Energy to serve DTG, together with their existing facilities, will be a reliable energy source for DTG. TR 81, 107, 143.

18. Dakota Energy, through its own existing and planned distribution facilities and those of its generation and transmission suppliers, will have an adequate supply of power available to serve DTG's needs, including expansions to the facilities. TR 124, 122-128, 193, 266.

19. With respect to factor (3) of SDCL 49-34A-56, Dakota Energy will need to upgrade its system to provide the power necessary to operate the plant. The board of Dakota Energy has committed to making these improvements. TR 104. The design includes an upgrade to both the distribution system and the transmission system. TR 82.

20. The distribution system is a standard loop feed with two separate lines coming into the facility. DTG Ex 17. This provides redundancy to assure a continuous power source. TR 101. The improvement costs are set forth in DTG Conf Ex 19. TR 110-111.

21. East River has also committed to upgrade its facilities. TR 111. East River currently has a line about three miles east of the DTG Plant. It plans to tap off the existing line and build a line about three to three and one-half miles to DTG. East River will then put in a three-way motorized switch and existing line with basic tap in and build down about three miles to a substation located adjacent to the DTG Plant. This will provide an on-site substation immediately adjacent to the Plant. The substation will have a remote monitoring control system or SCADA to monitor power quality, loading and other data. TR 127-129; DTG Ex 13. East River will also provide an alternate feed that will come from the Morningside substation. With the improvements, the Morningside substation will

be used for backup or emergency situations. The costs to East River were given in DTG Conf Ex 19.

22. The energy to be supplied to DTG by Dakota Energy will be provided to Dakota Energy through East River from Basin Electric's fossil fuel generation resources. Dakota Energy will not provide DTG with WAPA power under its preference power allocation, and DTG's use will not dilute Dakota Energy's customers' share of their WAPA allocation. TR 85-86.

23. The rates that Dakota Energy will charge DTG are sufficient to recover its costs associated with serving the DTG load and will provide a margin above costs that will benefit the members of the cooperative. TR 83. Dakota Energy's and East River's costs to serve DTG will not be an economic detriment to their customers and are anticipated to be beneficial in the long run for the members. TR 82-83, 90-91, 142-143. Dakota Energy does not anticipate that service to DTG will result in increased rates for its other customers. TR 82, 91.

24. Dakota Energy's electric system will be enhanced and improved by the improvements made to provide electric service to the DTG Plant and Office and such service will benefit the cooperative and its members economically and will not raise rates for other customers.

25. With respect to factor (4) of SDCL 49-34A-56, Dakota Energy's headquarters is located right across Highway 14 from the DTG property. TR 28, 71. East River's transmission facilities from which it will supply the DTG facilities are located approximately three to three and one-half miles east of the DTG site. TR 127.

26. Although there is evidence in the record that NorthWestern has facilities that are closer to the DTG site than the East River facilities, the Commission finds that the distance to be constructed by East River to serve DTG is not significant enough for the Commission to deny DTG's request for service from Dakota Energy on that basis.

27. With respect to factor (5) of SDCL 49-34A-56, several of DTG's members, and particularly the colony members of DTG that are served by DTG, had fairly strong feelings that if the offers of Dakota Energy and NorthWestern were competitive, DTG should choose Dakota Energy. TR 34.

28. DTG's unambiguous preference is to be served by Dakota Energy. TR 36. DTG was aware that this election, if approved by the Commission, would in all likelihood be irrevocable and permanent under the holding of *Hub City*. TR 277; DTG Conf Ex 5, Paragraph 7.c.

29. With respect to factor (6) of SDCL 49-34A-56, the Commission finds that most of the pertinent factors have been addressed in the findings pertaining to factors (1) - (5). Two other factors merit mention. Dakota Energy has had previous experience successfully serving large loads. TR 71-72. East River and Dakota Energy have access to financing to cover the cost of constructing the facilities needed to serve DTG from either the USDA's Rural Utility Service or the National Rural Utilities Cooperative Finance Corporation. TR 138-139, 141-142.

30. NorthWestern's evidence also demonstrated that it would have an adequate power supply to serve DTG, that its system would be enhanced thereby, that it could serve the DTG load at a competitive price without expected rate effects on other ratepayers, that its distribution facilities were already in close proximity to DTG and that it had rapidly dispatchable generation in close proximity to the DTG facilities. TR 163-174, 189-193.

31. NorthWestern offered evidence of several advantages of its proposed service over that of Dakota Energy. It would have only 5.46 miles of transmission line exposure to fault interruption

compared with 76 miles of exposure on Dakota Energy's line. TR 169-171. Dakota Energy's redundant short term transmission line, totaling approximately 50 MW will have 44.5 miles of exposure. TR 172. NorthWestern has two gas fired generators located in close proximity to the Plant that are capable of black start operation and could very rapidly return power to the DTG Plant in the event of a transmission outage. TR 189-192. Lastly, the system improvements required for NorthWestern's service to the Plant would be less costly than those of Dakota Energy and East River. TR 134-136, 176-177; DTG Conf Ex 11 and 19.

32. NorthWestern, however, cannot meet factor (5) of SDCL 49-34A-56 at all since DTG has expressed an unambiguous preference for Dakota Energy.

33. Despite NorthWestern's asserted advantages, we find that DTG should be allowed to receive its service for the Plant and the Office from Dakota Energy as it has requested. We do not find, based upon the record in this proceeding, that the incumbent supplier's service offering is necessarily irrelevant under SDCL 49-34A-56, as it offers a comparison against which the competitor's service adequacy and the other factors can be measured. We do find, however, that the customer's preference deserves to be shown significant deference and that the deficiency of the selected utility's offering should be clearly demonstrated to override the customer's preference.

34. That is not the case here. No pronounced deficiency was shown to exist in Dakota Energy's proposed service. Dakota Energy demonstrated that it can provide adequate and reliable service, as NorthWestern's own witness admitted. Although NorthWestern's improvement costs were lower, the rates offered by both utilities were comparable. DTG Conf Ex 3. Both Dakota Energy and NorthWestern clearly have the capability to provide the required power to the DTG facilities. TR 32. The differentiating factor is the customer's preference, which in this case was grounded upon professional analysis of the utilities' offerings by a highly qualified construction management firm and the simple yet meaningful desire of DTG's members to receive their electric service from the cooperative utility and its transmission cooperative in which many of them also have an ownership interest. TR 20, 34-36.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL 49-34A-42, 49-34A-56, 49-34A-58 and 49-34A-59.

2. DTG will be a new customer of Dakota Energy.

3. There is insufficient evidence in the record to conclude that the proposed truck stop will be owned or otherwise sufficiently connected to DTG for it to be considered part of DTG's new customer facilities at this time. At such time as additional developments are in the actual implementation phase, DTG may request a ruling from the Commission as to its right to receive electric service from Dakota Energy under the principles set forth in *Hub City*.

4. DTG's Plant and Office and associated facilities are a new location which develops after March 21, 1975.

5. DTG's Plant and Office and associated facilities will have a contracted demand of at least 2000 kilowatts.

6. DTG's preference as the customer is to receive its electric service from Dakota Energy.

7. In considering the six factors set forth in SDCL 49-34A-56, the Commission concludes that it may consider evidence of NorthWestern's proposed service offering in evaluating Dakota

Energy's service for adequacy and the other five factors. The Commission further concludes, however, that the primary inquiry is into the preferred utility's service and its capabilities with respect to the six factors.

8. The Commission has considered the six factors set forth in SDCL 49-34A-56 and concludes that DTG has a need for highly reliable electric service of up to 5000 kilowatts or more, that Dakota Energy has an adequate and reliable power supply to provide such service, that being permitted to serve DTG will result in beneficial improvements to Dakota Energy's electric system and to its customers without burdening its existing customers, that Dakota Energy through its transmission cooperative East River has facilities in reasonable and technically and economically feasible proximity to DTG, that DTG's preference is to receive its electric service from Dakota Energy, that Dakota Energy has had prior experience in successfully serving large load customers and that Dakota Energy has access to financing resources to complete its proposed system improvements.

It is therefore

ORDERED, that Dakota Turkey Growers, LLC shall be permitted to receive its electric service for its turkey processing plant, its headquarters office building and the associated facilities and expansions thereto from Dakota Energy Cooperative, Inc.; and it is further

ORDERED, that the truck stop referenced in the proceeding and other developments not owned by DTG or part of the DTG plant and office facilities are not approved to receive electric service from Dakota Energy at this time.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Final Decision and Order was duly entered on the 23rd day of May, 2005. Pursuant to SDCL 1-26-32, this Final Decision and Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 23rd day of May, 2005.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u>Melaine Kalbo</u>
Date: <u>5/23/05</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Robert K. Sahr
ROBERT K. SAHR, Commissioner

Dustin M. Johnson
DUSTIN M. JOHNSON, Commissioner