

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

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| IN THE MATTER OF THE PETITION OF )<br>SWEETMAN CONST. CO. DBA KNIFE RIVER, )<br>TO HAVE XCEL ENERGY ASSIGNED AS ITS )<br>ELECTRIC PROVIDER IN THE SERVICE )<br>AREA OF SIOUX VALLEY ELECTRIC )<br>)<br>)<br>)<br>) | FINAL DECISION AND<br>ORDER DENYING PETITION<br>PURSUANT TO SDCL 49-<br>34A-56; NOTICE OF ENTRY<br><br><br>EL25-032 |
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**APPEARANCES**

Commissioners Chris Nelson, Kristie Fiegen, and Gary Hanson.

Kristen Edwards, South Dakota Public Utilities Commission, 500 E. Capital Ave., Pierre, South Dakota 57501, appeared as Hearing Examiner.

William Van Camp, Olinger, Lovald, McCahren & Van Camp, P.C, PO Box 66, Pierre, South Dakota 57501, appeared on behalf of Applicant, Sweetman Const. Co. DBA Knife River.

Zeviel Simpser, Vanessa Szalapski, and Riley Conlin, Dorsey & Whitney LLP, 50 South 6<sup>th</sup> Street, Suite 1500, Minneapolis, Minnesota 55402, appeared on behalf of Xcel Energy.

Michael F. Nadolski, Lynn, Jackson, Schultz & Lebrun, P.C., 909 St. Joseph Street, Ste. 800, Rapid City, South Dakota 57701, appeared on behalf of Sioux Valley-Southwestern Electric Cooperative, Inc.

Daniel J. Brown, East River Electric Power Cooperative, Inc., 211 South Harth Ave., Madison, South Dakota 57042, appeared on behalf of East River Electric Cooperative, Inc.

Meredith Moore, Cutler Law Firm, 140 N Phillips Ave., Fourth Floor, Sioux Falls, South Dakota 57101, appeared on behalf of Basin Electric Power Cooperative.

Jennie L. Fuerst, South Dakota Public Utilities Commission, 500 E. Capitol Ave., Pierre, South Dakota 57501, appeared on behalf of the South Dakota Public Utilities Commission Staff.

**PROCEDURAL HISTORY**

On September 12, 2025, Sweetman Const. Co. dba Knife River (Knife River or Petitioner) filed a Petition to have Xcel Energy (Xcel), assigned as its Electric Provider in the Service Area of Sioux Valley Electric (Sioux Valley).

On October 1, 2026, East River Electric Power Cooperative, Inc., (East River) and Sioux Valley, petitioned to intervene. On October 2, 2025, Basin Electric Power Cooperative (Basin) petitioned to intervene. On October 3, 2025, Xcel Energy (Xcel) petitioned to intervene. At its

regularly scheduled Commission meeting on October 23, 2025, the Commission granted intervention to Sioux Valley, East River, Basin, and Xcel.

On November 24, 2025, Knife River filed a Motion for a Procedural Schedule. On December 1, 2025, Staff filed a letter regarding Procedural Schedule. At its regularly scheduled Commission meeting on December 2, 2025, the Commission granted the Motion for a Procedural Schedule.

On March 5, 2026, the Commission issued an Order for and Notice of Evidentiary Hearing and Order Amending Deadline for Filing of Exhibits and Witness Lists. In accordance with the procedural schedule, all parties filed pre-filed testimony.

The Commission held an evidentiary hearing in this matter on April 13, 2026. Following the Evidentiary Hearing, on May 26, 2026, the Commission issued an Order Establishing Post-Hearing Briefing Schedule. Knife River submitted its post-hearing brief on May 15, 2026. Sioux Valley, East River, and Basin submitted their joint post hearing brief on June 12, 2026. Staff submitted its post hearing brief on June 12, 2026. Knife River submitted its reply brief on June 29, 2026. On July 7, 2026, the Commission issued an Order Establishing Date for Decision and Oral Arguments.

On July 14, 2026, at its regularly scheduled meeting, the parties offered oral arguments. After questions of the parties by the Commissioners and public discussion among the Commissioners, the Commission voted unanimously to deny Knife River's Petition to have Xcel Energy assigned as its electric provider in the service area of Sioux Valley Electric

Having considered the evidence of record, applicable law and the arguments of the parties, the Commission makes the following Findings of Fact, Conclusions of Law, and Decision. Citations to the transcript of the evidentiary hearing will be abbreviated "EH" followed by the appropriate page number.

## **FINDINGS OF FACT**

### **I. Parties**

1. The Applicant is Sweetman Const. Co. doing business as Knife River.
2. On October 27, 2025, the Commission granted party status to Sioux Valley, East River, Basin, and Xcel Energy.
3. Commission Staff (Staff) is a party to this matter and fully participated in the docket.
4. All parties appeared through counsel and participated in the evidentiary hearing.

### **II. Procedural Findings**

6. The Procedural History set forth above is hereby incorporated by reference in its entirety in these Procedural Findings. The procedural findings set forth in the Procedural History are a substantially complete and accurate description of the material documents filed in this docket and the proceedings conducted and decisions rendered by the Commission in this matter.

7. At the evidentiary hearing, Knife River called Clark Meyer. Knife River did not call any rebuttal witnesses, however Clark Meyer's prefiled rebuttal testimony was accepted into evidence and available for cross-examination.<sup>1</sup>
8. At the evidentiary hearing, Staff called Joseph Rezac. Staff did not call any rebuttal witnesses.
9. At the evidentiary hearing, Xcel called Steve Kolbeck and Brad Sylliaasen. Xcel did not call any rebuttal witnesses.
10. At the evidentiary hearing, Sioux Valley called Ted Smith. Sioux Valley did not call any rebuttal witnesses. However, Ted Smith's prefiled rebuttal testimony was accepted into evidence and available for cross-examination.<sup>2</sup>
11. At the evidentiary hearing, East River called Mark Hoffman and Scott Shewey. East River did not call any rebuttal witnesses. However, Mark Hoffman's prefiled rebuttal testimony was accepted into evidence and available for cross-examination.<sup>3</sup>
12. At the evidentiary hearing, Basin did not call any witnesses. However, all parties stipulated that the pre-filed testimony of Basin's witness Benjamin Hertz would be part of the record. The Commission accepted this stipulation. Basin did not call any rebuttal witnesses.

### **III. Project Description**

13. The Petition asks the Commission for an order pursuant to SDCL 49-34A-56 that allows Knife River to take electric service from Xcel for its proposed rock crushing plant to be located at 25944 482nd Ave., Brandon, South Dakota.
14. Knife River's proposed rock crushing plant at issue in this docket is on undeveloped portion of its property.<sup>4</sup> However, there are existing Knife River facilities adjacent to the site of the proposed rock crushing plant.
15. The location for the proposed rock crushing plant is within the assigned service area of Sioux Valley.<sup>5</sup>
16. Knife River is currently a customer of Sioux Valley.<sup>6</sup> Sioux Valley currently serves Knife River's existing sand washing plant at an adjacent location which uses the same 911 address.<sup>7</sup>
17. As proposed in the Petition, Knife River's rock crushing plant intended to use a driveway off of 482nd Avenue that is shared with the existing sand washing plant.<sup>8</sup>

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<sup>1</sup> Ex. CM-4.

<sup>2</sup> Ex. TS-8.

<sup>3</sup> Ex. MH-9.

<sup>4</sup> Knife River Pet. at 1.

<sup>5</sup> Id.

<sup>6</sup> Ex. TS-7, 9:209-213.

<sup>7</sup> Knife River Pet. at 1.

<sup>8</sup> Id.

18. The conveyor belt between the rock quarry and the proposed plant crosses an existing Sioux Valley electric distribution line and existing facilities for the existing sand washing plant.<sup>9</sup>
19. Knife River owns the entire 1400-acre parcel that encompasses both the existing sand washing plant and the proposed rock crushing plant.<sup>10</sup>
20. The property taxes for the 1400-acre parcel are sent to the same billing address.<sup>11</sup>
21. The location for the proposed rock crushing plant has not been surveyed, and is not an approved lot by the county.<sup>12</sup>
22. The existing concrete sand washing plant and the proposed quartzite rock-crushing plant are separated by a “plant road that’s used in the plant,” maintained by Knife River, and not open to the public.<sup>13</sup>
23. Knife River’s proposed location for the rock crushing plant was classified as an expansion in the Conditional Use Permit in Minnehaha County.<sup>14</sup>
24. The proposed rock crushing plant and existing Knife River facilities will be owned by Knife River, as a single legal entity.
  - a. Knife River is an existing legal entity which currently takes electric service at different locations from both South Valley and Xcel.<sup>15</sup>
25. The evidence, when weighed as a whole, indicates that the location in question is not a new geographic location.

#### **IV. Applicable Statutes**

26. The following South Dakota Statutes are applicable: SDCL 49-34A-42 and 49-34A-56.
27. The South Dakota Legislature has established exclusive electric service territories in this state pursuant to SDCL 49-34A-42.
28. SDCL 49-34A-56 provides for an exception to the exclusive electric service territories in certain circumstances. This exception is limited to those customers who meet certain threshold criteria and obtain Commission approval after notice and an opportunity for a hearing.

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<sup>9</sup> Ex. TS-5.

<sup>10</sup> EH 40:4-21.

<sup>11</sup> Id. at 18-21.

<sup>12</sup> Knife River Post Hearing Brief at 5.

<sup>13</sup> EH 24:10-21.

<sup>14</sup> Ex. TS-7, 10:235-11:245.

<sup>15</sup> EH 30:20-24.

29. Pursuant to SDCL 49-34A-56, Knife River, as the Petitioner, has the burden of proof to establish by a preponderance of the evidence that:
- i. Knife River is a new customer.
  - ii. The proposed plant location is a new location which developed after March 21, 1975.
  - iii. The proposed rock crushing plant is located outside municipalities as the boundaries thereof existed on March 21, 1975.
  - iv. Knife River will require electric service with a contracted minimum demand of two thousand kilowatts or more.
30. Once those requirements are met, the Commission shall consider the following factors pursuant to SDCL 49-34A-56:
- i. The electric service requirements of the load to be served.
  - ii. The availability of adequate power supply.
  - iii. The development or improvement of the electric system of the utility seeking to provide the electric service, including the economic factors relating thereto.
  - iv. The proximity of adequate facilities from which electric service of the type required may be delivered.
  - v. The preference of the customer.
  - vi. Any and all pertinent factors affecting the ability of the utility to furnish adequate electric service to fulfil customers' requirements.

#### **V. General**

31. The Commission finds it was not proven by a preponderance of the evidence that Knife River is a new customer as required by SDCL 49-34A-56.
32. The Commission finds it was not proven by a preponderance of the evidence that the proposed rock crushing plant is at a new location.
33. The Commission finds that the Petition of Sweetman Const. Co. Dba Knife River, to have Xcel Energy Assigned as its Electric Provider in the service area of Sioux Valley Electric should be denied.
34. To the extent that any Conclusion of Law set forth below is more appropriately a finding of fact, that Conclusion of Law is incorporated by reference as a Finding of Fact.

Based on the foregoing Findings of Fact, the Commission hereby makes the following:

#### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the subject matter and parties to this proceeding under SDCL Ch. 49-34A. Based on the findings made on Knife River's burden of proof under SDCL 49-34A-56, the Commission has authority to grant, or deny, the Petition of Sweetman Const. Co. Dba Knife River, to have Xcel Energy Assigned as its Electric Provider in the service area of Sioux Valley Electric.
2. Under SDCL 49-34A-56, a petitioner must first establish it is a new customer.

3. Knife River is an existing customer of Sioux Valley; therefore, Knife River is not a new customer under SDCL 49-34A-56.
4. Under SDCL 49-34A-56, a Petitioner must, as a threshold matter, establish that the location is a new location.
  - a. The conveyor belt for the proposed rock crushing plant crosses existing facilities for the existing sand washing plant.
  - b. Knife River owns the entire 1400 acres of land where the existing sand plant is located, and the proposed rock crushing plant would be located.
5. The South Dakota Supreme Court has held that the term "location" refers to a geographical area.<sup>16</sup>
6. Knife River's proposed location is not a new location under this statute.
7. The standard of proof is by a preponderance of the evidence.
8. Knife River has failed to satisfy its burden of proof that it is a new customer, or that this is a new location under SDCL 49-34A-56 and is not entitled to have Xcel Energy Assigned as its Electric Provider in the service area of Sioux Valley Electric as provided in SDCL 49-34A-56.
9. Because the Commission finds that Knife River is not a new customer and the proposed plant is not a new location, the threshold requirements of SDCL 49-34A-56 are not met. Therefore, Knife River cannot utilize SDCL 49-34A-56, and the Commission need not rule on the six factors found in SDCL 49-34A-56.

### **FINAL DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Commission hereby denies the Petition of Sweetman Const. Co. Dba Knife River. The Commission unanimously finds that the Petitioner failed to satisfy its burden of proof with respect to the requirement of being a new customer at a new location pursuant to SDCL 49-34A-56.

It is therefore

ORDERED, that the Petition is hereby denied.

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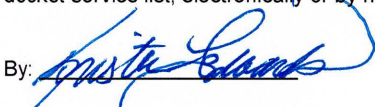
<sup>16</sup> *In re W. River Elec. Ass'n, Inc.*, 2004 S.D. 11, ¶ 22, 675 N.W.2d at 228.

### NOTICE OF ENTRY AND OF RIGHT TO APPEAL

PLEASE TAKE NOTICE that this Final Decision and Order was duly issued and entered on the 23<sup>rd</sup> day of July 2026. 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. Pursuant to ARSD 20:10:01:30.01, an application for a rehearing or reconsideration may be made by filing a written petition with the Commission within 30 days from the date of issuance of this Final Decision and Order; Notice of Entry. Pursuant to SDCL 1-26-31, the parties have the right to appeal this Final Decision and Order to the appropriate Circuit Court by serving notice of appeal of this decision to the circuit court within 30 days after the date of service of this Notice of Decision.

#### 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, electronically or by mail.

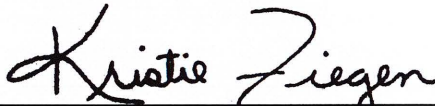
By: 

Date: 23 July 2026

BY ORDER OF THE COMMISSION:



CHRIS NELSON, Chairman



KRISTIE FEIGEN, Commissioner



GARY HANSON, Commissioner