

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

In the Matter of the Petition for Electrical Service    )  
by Dakota Plains Ag Center, LLC to have            )  
NorthWestern Energy Assigned as its                )     Docket No. EL16-013  
Electric Provider in the Service Area of            )  
BonHomme – Yankton Electric                         )

**DAKOTA PLAINS AG CENTER, LLC’S  
MEMORANDUM IN SUPPORT OF  
MOTION TO QUASH SUBPOENA  
DUCES TECUM**

COMES NOW the Petitioner, by and through May, Adam, Gerdes, & Thompson, LLP,  
and submits this memorandum regarding Intervenor’s request for privileged and confidential  
documents held by Southeastern Electric.

**INTRODUCTION AND BACKGROUND**

Petitioner was served with the Subpoena Duces Tecum dated May 25, 2016. See attached  
Subpoena. The Subpoena commands production of Petitioner’s information related to its  
electricity consumption at its Beardsley location. The Subpoena requests information that is  
outside the scope of discovery and is not relevant to the proceeding at hand. Accordingly, the  
Petitioner requests that the Subpoena Duces Tecum be quashed in its entirety.

**LEGAL STANDARD**

The scope of discovery is defined by SDCL 15-6-26(b), which reads in part that  
“[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the  
subject matter involved in the pending action...” However, a court shall limit discovery if “the  
discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other

source that is more convenient, less burdensome, or less expensive[.]” SDCL 15-6-26(b). Additionally, upon motion by any party from whom discovery is sought, the court may make any order which justice requires to protect a party from “annoyance, embarrassment, oppression, or undue burden or expense.” SDCL 15-6-26(c). “The extent of discovery permitted by either side rests in the discretion of the court.” *Lien v. Lien*, 2004 SD 8, ¶33, 674 N.W.2d 816, 827. The South Dakota Supreme Court has recognized that “[i]f a subpoena duces tecum is over-broad, it may be quashed.” *State v. Chavez*, 2002 SD 84, ¶ 26,649 N.W.2d 586, 595. Privileged matters are generally outside the scope of discovery. SDCL 15-6-26(b).

### CONCLUSION

The Subpoena in this case requests information that is prohibited from disclosure except in very limited circumstances. The information requested is confidential and not relevant to the matter at hand. For these reasons, the Petitioner respectfully requests the Subpoena be quashed.

Dated this 27 day of May, 2016

MAY, ADAM, GERDES & THOMPSON LLP

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