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Honorable Max Gors
Circuit Court Judge
P.O. Box 1238
Pierre, South Dakota 57501-1238

RE: IN THE MATTER OF THE PETITION OF MONTANA-DAKOTA
UTILITIES CO. FOR APPROVAL TO PROVIDE ELECTRICAL SERVICE
FOR THE NEW NORTH CENTRAL FARMERS ELEVATOR TO BE LOCATED
NEAR BOWDLE, SOUTH DAKOTA

Our file: 0069
CIV06-372

Dear Judge Gors:

Enclosed is are original and one copy of Montana-Dakota's
brief on appeal in this matter. With this letter, I am
sending a copy of the brief to counsel of record. Thank you
very much.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY:

DAG:mw

Enclosure

cc/enc: Service List

Don Ball

Dan Kuntz

RECEIVED
OCT 31 2006
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
) SS
COUNTY OF HUGHES) SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE PETITION OF) CIV06-372
MONTANA-DAKOTA UTILITIES CO. FOR)
APPROVAL TO PROVIDE ELECTRICAL)
SERVICE FOR THE NEW NORTH CENTRAL) **MONTANA-DAKOTA'S**
FARMERS ELEVATOR TO BE LOCATED) **BRIEF ON APPEAL**
NEAR BOWDLE, SOUTH DAKOTA)

Montana-Dakota Utilities Co., ("Montana-Dakota"), a division of MDU Resources Group, Inc., by its undersigned counsel, files this brief in support of its position that the South Dakota Public Utilities Commission ("PUC") committed error in granting the motion of FEM Electric Association, Inc., ("FEM") for summary disposition and dismissing Montana-Dakota's petition to serve the North Central Farmers Elevator ("North Central") new grain handling/multi-unit train loading facility ("North Central Facility") to be located near Bowdle, South Dakota. This is an administrative appeal from the Final Decision and Order Granting Summary Disposition and Notice of Decision.

JURISDICTIONAL STATEMENT

The Final Decision and Order Granting Summary Disposition was dated August 24, 2006, and served August 25, 2006. The Notice of Appeal of Montana-Dakota was dated and served September 7, 2006,

and filed with the Hughes County Clerk of Courts on September 8, 2006. Montana-Dakota's Statement of Issues on Appeal as appellant was dated September 12, 2006, and filed on September 13, 2006.

ISSUES DISCUSSED

1. Montana-Dakota, as an electric utility ready, willing and able to provide service superior to that of the incumbent utility, had standing to file a petition to provide service under SDCL § 49-34A-56 upon failure or refusal of the proposed customer to file a petition. The PUC held to the contrary.

2. Disputed questions of material fact precluded summary disposition of the issues presented by Montana-Dakota's petition, and the Commission should have conducted a hearing on the merits. The PUC did not reach the question.

STATEMENT OF THE CASE AND FACTS

Montana-Dakota filed a petition with the PUC under SDCL § 49-34A-56, the large load exception to the Territorial Law, to provide service to a new customer location in FEM's assigned territory. The Agency decided that Montana-Dakota lacks standing to seek relief under the statute and declined to hear the petition on the merits. The Agency's Final Decision and Order Granting Summary Disposition is attached as Exhibit 7.

Bowdle is within Montana-Dakota's service territory and the company provides electric and gas service to customers in Bowdle. The proposed location of the North Central Facility is approximately one-half mile from Montana-Dakota's service territory. As it relates to this location, North Central will be a new customer at a new location.¹ The first contact between Montana-Dakota and North Central occurred in October of 2005, dealing with natural gas service to the proposed North Central Facility. Discussions among Bruce Brekke of Montana-Dakota, Paul Erickson, Manager of FEM, and Keith Hainy, Manager of North Central, over the Bowdle project began in January of 2006. The first contact between Brekke and Erickson involved an inquiry from Erickson as to whether Montana-Dakota considered itself to be eligible to furnish the electric load to the new North Central Facility under the large load statute, SDCL § 49-34A-56.

On January 20 Brekke telephoned Hainy inquiring about the estimated electric load for the site. Hainy referred Brekke to Logan Electric, which faxed a copy of its information concerning motor loads for the new site. Thereafter, on January 27, Brekke and Hainy discussed the fact that based upon the amount of the

¹Montana-Dakota's response to Staff's Data Request 8, Exhibit 1.

proposed load, North Central would have a choice of electric provider. Hainy indicated that he was aware of this and that he had discussed it with Erickson, FEM manager. Hainy advised Brekke that while North Central and FEM were partners on other ventures, he would still be interested in considering Montana-Dakota's proposal. At a meeting on March 17, Hainy indicated to Brekke and Larry Oswald of Montana-Dakota that he was entertaining rate offers from both FEM and Montana-Dakota. Contacts continued between Montana-Dakota personnel and Hainy until he telephoned Larry Oswald on April 11, telling him that North Central would prefer to have FEM serve the new plant. Affidavits of Bruce Brekke and Larry Oswald, attached as Exhibits 2 and 3.

Montana-Dakota's cost estimate to extend electric service to the North Central Facility is \$243,000. Montana-Dakota cost breakdown, attached as Exhibit 4. In contrast, the cost of extending service to North Central is \$650,000. FEM's surface installation cost breakdown attached as Exhibit 5.

Montana-Dakota is a public utility, regulated by the PUC as to territory, rates and conditions of service under SDCL Chapter 49-34A. FEM is a rural electric cooperative regulated by the PUC

under Chapter 49-34A as to territory and as to conditions of service on a limited basis as set forth in SDCL § 49-34A-58.

STANDARD OF REVIEW

The sole basis for the Commission's ruling was whether Montana-Dakota had standing to bring its petition. The question of whether a party has standing is a legal conclusion, which is reviewed under the *de novo* standard. Generally speaking, standing exists where a party has suffered some actual or threatened injury resulting from the alleged illegal conduct of another party, or where a party has some real interest in the subject matter of the controversy. Lewis & Clark Rural Water System, Inc., vs. Seeba, 2006 SD 7, ¶ 38, 709 NW2d 824, 836; Kehn vs. Hoeksema, 524 NW2d 879, 881 (SD 1994).

A SHORT HISTORY OF SOUTH DAKOTA ELECTRIC REGULATION

Prior to 1965, South Dakota was without any formal statewide regulation of electric service in terms of price, conditions of service or territories served. Cities were served either by municipal utilities or public (investor-owned) utilities. Public utilities were required to obtain a franchise from the city, and such regulation of prices as existed was exerted by the city. Municipal utilities were regulated only to the extent that they

were operated by city government. Rural electric cooperatives ("RECs") were not regulated.

In the late 1950's and early 1960's tension developed between the RECs, on the one hand, and the public utilities and municipal utilities on the other hand, concerning the ever increasing entry of RECs into service areas near municipalities. As a consequence, the industry got together and obtained passage of a law governing service areas in 1965. The law established a mediation panel to settle disputes over service areas. Rates and conditions of service continued to be unregulated at the state level. On December 20, 1968, the South Dakota Supreme Court handed down Application of Nelson, 83 SD 611, 163 NW2d 533 (1968), holding the electric mediation board legislation to be unconstitutional because the law as enacted required a circuit judge to be chairman of each mediation board which was convened when a dispute arose.

In 1969 legislation creating an electric consumers council regulating rates, conditions of service and territories was adopted. It was never implemented and was repealed in 1970. This legislation was the legislative response of the public utilities and the municipal utilities to the Supreme Court's invalidation of the first mediation board legislation. It was highly

controversial, vigorously opposed by the RECs, and passed by only one vote in the Senate, when Senator Wendell Leafstedt changed his vote to support the bill.² The resulting firestorm of political controversy doomed the consumers council.

After repealing the consumers council, the 1970 legislature also reenacted the electric mediation board, providing that a public utility commissioner be the chairman, and thus the deciding vote, of the mediation board. This law continued in operation until 1975. None of the three groups in the electric business were happy with the manner in which the mediation board operated. Also, the public utilities began having serious disputes with municipalities over regulation of the utility business. It was extremely difficult for the utilities to cope with the Balkanized, diverse municipal regulatory environment which became ever more complex. Cities refused what were viewed as necessary rate increases by the public utilities.

As a consequence, in 1975 all segments of the industry compromised and agreed upon the current framework for public utility regulation. The current Commission now regulates rates and

²This occurred after Leafstedt's infamous airplane ride with Governor Frank Farrar to "check his cattle" over the weekend. The passage of the act is generally credited as being one of the major reasons for Farrar's defeat when he ran for a second term as Governor. Leafstedt was not reelected.

conditions of service for public utilities. It has limited regulation over conditions of service for municipal utilities and RECs under SDCL § 49-34A-58. Beyond removal of the bitter pill of rate regulation of RECs from the consumers council legislation, the other significant part of this comprehensive settlement of the differences among the three segments of the industry involved the agreement concerning service areas. As a part of that process, maps were adopted by the Commission delineating the service areas of each entity. Historically, this settlement has been viewed as pretty much "cast in stone." At the time it was viewed as a needed settlement of a longstanding headache among the three segments of the industry. The ultimate blueprint was the subject of intense negotiation and drafting to arrive at a final legislative product.

ARGUMENT AND AUTHORITIES

1. Montana-Dakota had standing to initiate a proceeding under the large load statute.

The Commission ruled that Montana-Dakota ". . ." has no standing to assert legal rights or contest legal obligations on North Central's behalf, and . . . has no standing to assert North Central's right under SDCL § 49-34A-56 to relief from its obligation to take service for a new facility from the assigned service provider."

Reduced to its essence, the large load statute provides that ". . . new customers at new locations . . . shall not be obligated to take electric service from the electric utility having the assigned service area where the customer is located if . . ." the Commission concludes the alternate utility prevails in six factors. Properly viewed, the statute can be read as being consistent with the overall purpose of the territorial law. The South Dakota Supreme Court has repeatedly emphasized the overriding purpose of the 1975 Act known as the "South Dakota Territorial Integrity Act" codified as SDCL Ch. 49-34A ("Territorial Act"). In Matter of NorthWestern Public Service Company, 560 NW2d 925, 1997 SD 35, the court stated

The policy underlying the Act was "elimination of duplication and wasteful spending in all segments of the electric utility industry." [Citation omitted] To accomplish that end, exclusive territories designated "assigned service areas," were established for each utility. [Citation omitted] To ensure the integrity of a territory, the legislature granted each utility the exclusive right to "provide electric service at retail . . . to each and every present and future customer in its assigned service area." SDCL § 49-34A-42. Id., 560 NW2d at 927, ¶ 15.

Neither the large load statute nor any other portion of Chapter 49-34A provides for consumer preference, although that is the essence of the position taken by Staff and FEM. Our Supreme

Court decided that in the Willrodt case: "An individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself." Willrodt vs. Northwestern Public Service Co., 281 NW2d 65, 72 (SD 1979). Statutorily, customer choice is recognized only as stated in the large load statute, that is, it is one of six factors of co-equal importance. Nothing in the large load statute, or for that matter in Chapter 49-34A, exalts customer preference over the other five factors.

In its decision, the Commission concludes that Montana-Dakota has no standing to assert legal rights on North Central's behalf. Montana-Dakota agrees, because Montana-Dakota has standing in its own right to ask for relief under the large load statute. Nothing in the Territorial Act suggests that only the customer may utilize the statute. And to do so eviscerates the most fundamental goal of the Territorial Act, the "elimination of duplication and wasteful spending in all segments of the electric utility industry." This case is a perfect example of the aberration which would be created by permitting only the customer to utilize the statute. Montana-Dakota's proof, had it been permitted to go to hearing on the merits, shows that the cost of extending electric service to the

new facility will be \$243,000, while, in response to the same question from staff, FEM puts its price at \$650,000, assuming it can tap onto MDU's Glenham to Bowdle transmission line.³

Montana-Dakota has standing because it is a utility with whom the proposed customer communicated and negotiated prices. The Commission's decision permits an individual customer to flout the overriding purpose of the Territorial Integrity Act and force wasteful spending and duplication.

Given the history of the drafting of the act, the overriding purpose of the act and the principles of statutory interpretation, the large load statute simply cannot be interpreted in the manner suggested by FEM or the Commission. As to statutory construction, our Supreme Court recently stated in Moore vs. Michelin Tire Co., Inc., 1999 SD 152, ¶ 16, 603 NW2d 513, 518, as follows:

Each statute must be construed according to its manifest intent as derived from the statute as a whole, as well as other enactments relating to the same subject. Words used by the legislature are presumed to convey their ordinary, popular meaning, unless the context or the legislature's apparent intention justifies departure. When conflicting statutes appear, it is the responsibility of the court to give reasonable construction to both, and to give effect, if possible, to all provisions under consideration, construing them together to make them harmonious and workable. However,

³As FEM knows, Montana-Dakota declined to permit the tap. Presumably, this runs FEM's cost even higher.

terms of a statute relating to a particular subject will prevail over general terms of another statute. Finally, we must assume that the legislature, in enacting a provision, had in mind previously enacted statu[t]es relating to the same subject. [Citations omitted.]

The large load statute must be construed according to its manifest intent, which the Supreme Court has declared on several occasions. Nothing in the statute suggests that it is for only the use of the customer, and the courts have a responsibility to give effect to all portions of the statute.

It has been argued that the terminology ". . . new customers at new locations . . . shall not be obligated to take . . ." bespeaks an option given exclusively to customers. However, that language can just as easily be viewed as describing a condition, that is, if that condition exists and the new customer starts shopping for a supplier, the superior offer would prevail under the six factors thus preserving the overall objective of the large load statute. Rationally, the legislature had to envision a competitive situation to provide for the six factors.

Clearly, had the customer in this docket filed a petition on behalf of Montana-Dakota and had FEM intervened and established a superior proposal under the six factors, FEM would prevail under the view that the Commission has historically taken. For it not to

work the same way where the customer has invoked the statute, shopped both utilities but chosen the territorial suitor (and been able to veto the test of the overriding purpose of the legislation by not signing a petition) clearly flies in the face of established legal authority.

Moreover, while addressing an equal protection challenge, the Willrodt court clearly agreed with this view and adopted Montana-Dakota's interpretation of the statute. At 281 NW2d 71 the court stated:

Appellants further contend they are denied equal protection of the law in that SDCL 49-34A arbitrarily discriminates against them in the assignment of their property for electrical service. Because they are new small electrical users, the PUC was not authorized to take into consideration their preference as customers, whereas SDCL 49-34A-56(1) and (5) provide for consideration of such matters in the assignment of new electrical users requiring a contracted minimum demand of 2,000 kilowatts or more. The classification is that of large new consumers in an assigned area. Within the guidelines established by SDCL 49-34A-56, the PUC may allow a supplier from outside an assigned area to serve large new customers. The same standard applies to all such customers and utilities. (Emphasis supplied)

In this passage the court identifies subsections (1) and (5) of the statute in drawing the distinction between small users who cannot state a preference in provider and large customers who may do so. No reference is made to the body of the statute and the court

states the issue is a matter of "preference," not choice. Further, essential to the equal protection analysis the court emphasizes that all customers and utilities are within the standard. It is the Commission that chooses, not the customer.

The discussion in the next paragraph emphasizes again that the Commission, not the customer, chooses the provider:

A new large user may deprive other customers in a service area of adequate service, or the utility currently providing service to an area may not have sufficient facilities to accommodate the new user. A nearby utility, on the other hand, might have more adequate facilities. Allowing it to serve the large new customer would promote efficiency to both customers and suppliers. Id at 71.

Most importantly, the court's discussion recognizes the overarching purpose of the Territorial Act, something the Commission failed to do. Giving the customer a veto over the critical analysis of what is best for the system as a whole is inconsistent with everything the Act stands for.

A North Dakota case furnishes yet another reason the large load statute should not be interpreted to be invoked only by the customer. In Montana-Dakota Utilities Co. vs. Johanneson, 153 NW2d 414 (N.D., 1967), the North Dakota Supreme Court declared that portion of the newly-adopted "Territorial Integrity Law" unconstitutional which permitted a veto on public utility service

by the absence of consent by the rural electric cooperative nearest the rural area proposed to be served, where the law otherwise permitted the North Dakota Commission to grant a certificate of public convenience and necessity upon a proper showing and customer request. The court ruled that to place such power in the hands of a nonregulated competitive class of citizens was an unlawful delegation of legislative authority. Here, similarly permitting the whim of a prospective customer, after having dealt with two utilities, to frustrate the overriding goal of the Territorial Act to eliminate duplication and wasteful spending would also unconstitutionally delegate legislative power. Proper statutory interpretation by adopting Montana-Dakota's position will make all provisions "harmonious and workable" and cure any constitutional infirmity.

Finally, and perhaps most importantly, one can ask rhetorically if it in fact was the intent of the drafters of this legislation to give the customer under the large load statute an option exercisable only by the customer, why was customer preference included as one of the six determinative factors? The customer already had the veto in the statute's body under the view of the statute taken by both the Commission and FEM, making the

same factor below in the statute surplusage. Considering the back drop of the events leading to its formulation, the statute works correctly and honors the "manifest intent as derived from" the Territorial Act as a whole under Montana-Dakota's interpretation.

2. Questions of material fact precluded summary disposition by the Commission.

SDCL § 1-26-18 provides for summary disposition of cases in a manner consistent with SDRCP 56(c). Under both the rule and the statute the existence of a question of material fact precludes summary judgment, or summary disposition. In this case, FEM contended that the contracted load is less than 2,000 kilowatts and that the large load statute confines those who can petition under the statute to the new customer seeking service. Given the fact that it is clear under the previous discussion that Montana-Dakota has standing and that a "veto" by the customer under the large load statute is not consistent with the statutory framework established by the territorial law, the Commission should be directed to hear this matter. Under Montana-Dakota's evidence there is clear, credible evidence that the contracted minimum demand is greater than 2,000 kilowatts. This came from two sources. First, from the electric contractor who provided the information to Montana-Dakota at the direction of Keith Hainy, Manager of North Central. The

second source of information came from a letter provided by East River Power Cooperative putting the peak load for the new facility at an estimated 2.5 megawatts (2,500 kilowatts). See attached Exhibit 6, Montana-Dakota's response to Staff's first data requests.

CONCLUSION

Montana-Dakota has standing as an electric utility legally positioned under the large load statute to provide service to the customer within the meaning of the statute. The customer negotiated with the utility, obtained prices and caused the utility to believe it was in the running to provide service based upon the six performance factors in the statute. Unquestionably, standing would exist had the customer signed a petition. To suggest that the customer by not signing a petition, which is not otherwise required by the statute, can frustrate the overriding intent of the Territorial Act flies in the face of reason and constitutes an unreasonable interpretation of the statute. Rules of statutory interpretation require that all aspects of the statute and statutes on the same subject be given effect. If that admonition is followed, Montana-Dakota clearly has standing. Given Montana-Dakota's standing, the Commission should have gone to hearing on

the matter if for no other reason than that clearly relevant evidence proffered by Montana-Dakota would establish prima facie justification for a petition under the statute.

REQUEST FOR ORAL ARGUMENT

Montana-Dakota requests oral argument of the appeal.

Dated this 30th day of October, 2006.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAVID A. GERDES
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CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 30th day of October, 2006, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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Pierre, South Dakota 57501

Kara Van Bockern
Staff Attorney
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David A. Gerdes

**MONTANA-DAKOTA UTILITIES CO.
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION STAFF
FIRST DATA REQUEST
DATED MAY 2, 2006
DOCKET NO. EL06-011**

Request No. 8

Has any customer been served at the existing site?

Response:

Prior to October 2005 there was a minimal facility roadside park in the SE 1/4 of the SW ¼ of Section 20.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF) DOCKET NO. EL06-011
MONTANA-DAKOTA UTILITIES CO.)
FOR APPROVAL TO PROVIDE ELECTRICAL)
SERVICE FOR THE NEW NORTH CENTRAL) AFFIDAVIT OF BRUCE BREKKE
FARMERS ELEVATOR TO BE LOCATED)
NEAR BOWDLE, SOUTH DAKOTA,)

State of South Dakota)
)ss
County of Walworth)

Bruce Brekke, being first duly sworn, deposes and says that he is the Mobridge District Manager of MDU, including the Bowdle area, and that he makes this affidavit for use in the above-entitled matter.

1. Montana-Dakota was first contacted regarding serving natural gas to the Bowdle site for North Central Farmers Elevator in October of 2005.

2. In January of 2006 I received a telephone call from Paul Erickson, Manager of FEM Electric, visiting about a seasonal load of at least 2000 kilowatts for North Central Farmers Elevator. He asked how MDU interpreted the large load statute and how FEM would proceed to request a tap of MDU's transmission line. I indicated I would check on this and get back to him.

3. On January 20, 2006, I telephoned Keith Hainy, Manager of North Central Farmers Elevator, inquiring about the estimated electric load for the site. Keith referred me to Logan Electric, which faxed a copy of his information concerning motor loads for the new site.

4. On January 27, 2006, I telephoned Keith Hainy indicating to him that he had a choice in electric provider based upon the amount of the proposed load at the new site in Bowdle. Keith indicated he was aware of this, that he and the FEM Manager, Paul Erickson, had discussed it. Keith stated that, while North Central Farmers Elevator and FEM were partners on other ventures, he would

still be interested in considering Montana-Dakota's proposal. He specifically inquired about an interruptible rate to eliminate demand charges.

5. On January 30 I returned Paul Erickson's inquiry and advised him that Henry Ford was the contact to request a tap of MDU's transmission line. He indicated he would forward the information to East River Electric.

6. On April 27, 2006, I attended a meeting involving location of the gas line which would feed the new Bowdle site. I again advised Paul Erickson that MDU believed it had the superior offer and was entitled to provide service to the territory under the large load exception.

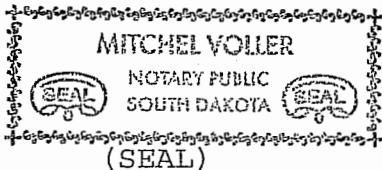
Further affiant sayeth naught.

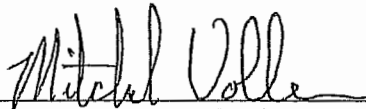
Dated this 14 day of July, 2006.



Bruce Brekke

Subscribed and sworn to before me this 14 day of July, 2006.





Notary Public

Notary Print Name: Mitchel Voller
My Commission Expires: March 24, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF) DOCKET NO. EL06-011
MONTANA-DAKOTA UTILITIES CO.)
FOR APPROVAL TO PROVIDE ELECTRICAL)
SERVICE FOR THE NEW NORTH CENTRAL) AFFIDAVIT OF LARRY OSWALD
FARMERS ELEVATOR TO BE LOCATED)
NEAR BOWDLE, SOUTH DAKOTA,)

State of North Dakota)
)ss
County of Burleigh)

Larry Oswald, being first duly sworn, deposes and says that he is a Customer Energy Consultant for Montana-Dakota Utilities Co. and that he makes this affidavit for use in the above-entitled matter.

1. A meeting was held on March 17, 2006, regarding electric service with Keith Hainy, North Central Farmers Elevator Manager, in Ipswich, South Dakota. Bruce Brekke and I attended from MDU. Among other things, Bruce and I explained to Keith that MDU is committed to serving them at their Bowdle terminal and in order to assess the possibility of MDU providing service we would need to discuss the connected load and load profile. Bruce and I explained the process that would have to happen in order for MDU to provide service to the new plant. Keith seemed to be open to the idea and explained that he was entertaining rate offers from both MDU and FEM. Keith supplied billing data for a smaller plant located near Craven that he felt would be somewhat similar to the operation of the Bowdle plant. He also stated that they are planning to install a generator and would prefer an interruptible rate. Bruce and I left stating we would work on a rate offering and get back to him in 10 days or so.

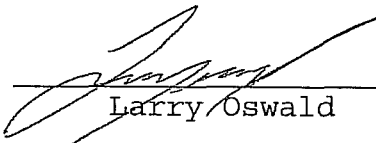
2. Another meeting was held with Keith Hainy on April 6, 2006. Among other things, we presented a proposed rate to him and discussed how this rate would impact plant operations if our projections were not on track. Keith believed that the kilowatt hour consumption estimate was high due to his belief that motors on

the plant were designed to do the same job as the Craven plant only in half the time. Keith indicated that FEM had a very similar estimate of kilowatt hours. Keith wanted us to rework the rate and get back to him. We again stated to him that MDU is committed to serve the new plant and would like his support. We also stated to him that we planned to proceed with our filing to serve the new plant even without their support because we believed MDU was in a better position to serve the plant because of proximity and reliability.

3. On April 11 Keith Hainy called me and indicated that he had decided to prefer FEM to serve the new plant. I again reiterated to Keith that MDU was committed to serve the new plant and that MDU was still planning the filing to serve the load.

Further affiant sayeth naught.

Dated this 14 day of July, 2006.

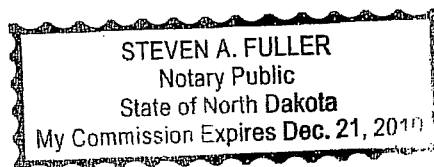

Larry Oswald

Subscribed and sworn to before me this 14 day of July, 2006.


Notary Public

(SEAL)

Notary Print Name: Steven A. Fuller
My Commission Expires:
12-21-2010



**MONTANA-DAKOTA UTILITIES CO.
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION STAFF
FIRST DATA REQUEST
DATED MAY 2, 2006
DOCKET NO. EL06-011**

Request No. 3

Please provide a cost breakdown of the service installation costs.

Response:

Montana-Dakota's cost estimate of extending electric to the new Bowdle Terminal is summarized in the table below:

½ Mile of 41.6 kV transmission line	\$24,000
Construction of Substation	69,000
All Substation Equipment	<u>150,000</u>
Total Extension Costs	\$243,000

As proposed to North Central the rate would be for primary service and all transformer and primary metering costs would be the responsibility of North Central. The projected total cost to North Central is \$39,500.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION
FOR DESIGNATION OF MONTANTA-
DAKOTA UTILITIES CO. AS
ELECTRIC SERVICE PROVIDER FOR
THE NEW NORTH CENTRAL
FARMERS ELEVATOR LOCATION IN
BOWDLE, SOUTH DAKOTA AS A
LARGE LOAD CUSTOMER

Docket No. EL06-011

RESPONSES TO STAFF'S INITIAL
DATA REQUESTS OF FEM

1. Explain in detail why you believe the contracted minimum demand of the customer is less than 2,000 kilowatts.

Answer: FEM's belief that the contracted minimum demand of the customer is less than 2,000 kilowatts is based upon two things. First, it is based upon FEM's analysis of the Craven Elevator, which is owned by North Central Farmers Elevator (North Central) and is a current customer of FEM. The Craven Elevator has an average load of less than 1,000 kilowatts per month, for 10 months of the year. During peak demand (2 months of the year), the Craven Elevator uses less than 1500 kilowatts of power. The new North Central Facility to be located in Bowdle is similar in nature and capacity to the Craven Elevator, so FEM believes the demand will be similar to that of the Craven Elevator, which is less than 2000 kilowatts of contracted minimum demand. FEM's belief as to the size of the load is also based upon discussions with Keith Hainy, Manager of North Central. The analysis of the size of the load performed by the owners of the new Facility is the same as FEM's analysis.

2. Please provide a copy of the service contract proposed to the customer.

Answer: A copy of the service contract with the customer is attached as Staff Exhibit A.

3. Please provide a cost breakdown of the service contract proposed to the customer.

Answer: The service installation costs of the Facility are approximately as follows:

Transmission line and substation	\$530,000.00
On-site distribution facilities	<u>120,000.00</u>
Total	\$650,000.00 ¹

¹ These estimated costs are based upon the assumption that East River will tap into MDU's Glenham to Bowdle transmission line, pursuant to the Common Use and Interconnection Agreement between MDU and Basin Electric.

4. Explain in detail the adequacy of your power supply to serve this new large load customer.

Answer: FEM has an adequate power supply available for the Bowdle Facility in that Basin Electric Power Cooperative, Inc. (Basin Electric) and East River Electric Power Cooperative, Inc. (East River), cooperatively owned by FEM and others, have large generation and transmission facilities in existence and under construction that will provide adequate power supply for distribution by FEM to North Central's Bowdle Facility and other similar consumers. Basin Electric can generate an adequate supply of power to the area to be served. East River can transmit the power to FEM by tapping into MDU's transmission line or by utilizing its own transmission line approximately three miles from the Facility site (Roscoe facility). Thus with Basin Electric and East River providing generation and transmission services and FEM's distribution of said electric services to the customer, FEM has the ability to provide electrical services that will be more than adequate to meet the requirements of the Bowdle Facility.

5. Please explain in detail the electric service requirements of the customer.

Answer: FEM will provide two 2000 KVA transformers with 277/480 volt electric service to the Facility to meet the electric service requirements of the customer. With diversity, the monthly load will be no greater than 1500 kilowatts.

6. Please explain in detail what redundancy and protection from outages your system offers the customer.

Answer: FEM's system offers redundancy by installation of two transformers on the site. In addition, there will be a back-up distribution circuit from East River's Roscoe, South Dakota facility, which is approximately 12 miles away.

FEM's system offers protection from outages in the following ways:

- (1) Pursuant to the service contract between the parties, the customer has agreed to purchase a 1,000 kW back-up generator. This generator is currently on order.
- (2) The load can be segregated between two separate transformers, either one of which will be able to serve the entire Facility.
- (3) FEM will provide a back-up distribution circuit from East River's Roscoe Facility.

7. Please explain in detail the proximity of adequate facilities from which electric service may be delivered to the customer.

Answer: Basin Electric has a Common Use and Interconnection Agreement with MDU, and said Agreement allows East River to tap in to MDU's transmission lines. Pursuant to said Agreement, East River will tap in to MDU's Glenham to Bowdle 41.6 KV transmission line. East River will build ½ mile of 41.6 KV transmission line to a new 41.6 to 12.47 KV substation located on the site of the new Facility. As an alternative, East River will build a substation adjacent to its 41.6 KV Bowdle to Roscoe transmission line, and FEM will construct approximately 3 miles of 12.47 KV distribution line to the site.

8. Please describe in detail any and all pertinent factors affecting the ability of FEM to furnish adequate electric service to the customer.

Answer: FEM currently serves the Craven Elevator, which is the largest facility of this type in the area. FEM also serves 9 Hutterite colonies, which are large and critical loads. FEM has adequate capacity to serve these loads, in addition to the new Facility at Bowdle. FEM is the local service provider and has demonstrated that it has adequate crews and equipment to service the new Bowdle Facility.

9. Please provide a map showing FEM lines, substations, etc. that would supply power to the customer and provide redundancy.

Answer: A preliminary map is attached as Staff Exhibit B. A more detailed map will be provided when available.

10. Please explain in detail why the customer prefers FEM as an electric service provider.

Answer: The customer has indicated its preference of FEM as an electric service provider for the following reasons:

- (a) FEM and North Central are local businesses and provide services to the same people.
- (b) FEM and North Central are both cooperatives, and are thus owned by the same local patrons.
- (c) The new Facility will be located within FEM's certified service area. As the local service provider, FEM is better able to respond in a timely manner to the service needs of the Facility.
- (d) Keith Hainy, Manager of North Central, has an existing business relationship with FEM. Mr. Hainy is well aware of FEM's demonstrated ability to provide excellent services to the Craven facility and Mr. Hainy wants to expand the business relations between FEM and North Central to the Bowdle Facility.

- (e) Mr. Hainy has done an analysis of the electric service needs of the Bowdle Facility and knows it is not a biddable load. FEM is thus entitled to serve the Bowdle Facility, even if North Central preferred otherwise, which it clearly does not.

11. Please provide a breakdown of the projected load.

Answer: FEM has not yet completed a final breakdown of the projected load. FEM will supplement this response upon completion of the final breakdown.

12. Provide the rate that will be applicable to service the load.

Answer: The rate applicable to serve the load is included in the last 3 pages of the Service Contract, Staff Exhibit A.

ELECTRIC SERVICE AGREEMENT

This Agreement made and entered into April 13, 2006, by and between FEM Electric Association, Ipswich, South Dakota (hereinafter called the Cooperative) and North Central Farmers Elevator, Ipswich South Dakota (hereinafter called the Customer).

WITNESSETH:

WHEREAS, the Customer is constructing a grain handling facility located in Edmunds County, South Dakota (hereinafter called the Facility); and

WHEREAS, the Customer desires to have the Cooperative provide all of the electric power and energy requirements of the Facility and the Cooperative is willing and able to provide these requirements.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, the Cooperative and the Customer agree as follows:

1. Description of Facility:

The Facility shall include the Customer-owned grain handling facility, multi-unit train loading facility and related facilities located in Section 20, Township 123N, Range 73W, Edmunds County, South Dakota.

2. Agreement to Sell and Purchase:

The Cooperative hereby agrees to sell and deliver to the Customer and the Customer agrees to purchase and receive from the Cooperative all of the electric power and energy requirements of the Facility upon the terms and conditions hereinafter provided.

3. Service Characteristics:

- a. Service Delivery. Service hereunder shall be provided at multiple service locations at the Facility, consisting of two - 2000 kVA 12,470-277/480V transformers. The Cooperative shall install or cause to be installed, operated, and maintained 3/4 miles of 41.6 kV transmission line, a 41.6/12.47 kV substation, 2 - 2,000 kVA padmount transformers, approximately 1 (one) mile of 15 kV underground distribution line, and associated distribution switchgear.
- b. Capacity. The Cooperative shall provide the Facility with up to 4,000 kVA of electrical service capacity. Service to loads above 2,500 kVA shall require an amendment to this Agreement.

- c. Interruptible Service. Service hereunder shall be interruptible as described in the attached Rate Schedule. Power interruptions may also occur as the result of planned and coordinated maintenance and circumstances beyond the control of the Cooperative as provided for in Section 4i of this Agreement.

4. **Service Conditions and Requirements:**

- a. Cooperative-Owned Facilities. The Cooperative will furnish or cause to be furnished, installed, and maintained all electric equipment and facilities required to deliver electric power and energy to the Customer for the Facility to the point of connection. The point of connection shall be the secondary terminals of the Customer's transition cabinets. Electric service equipment furnished, installed, operated, and maintained by the Cooperative, as identified in Section 3a, on the property of the Customer shall remain the property of the Cooperative and may be removed upon termination or retirement of service.
- b. Customer-Owned Facilities. The Customer shall be solely responsible for the design, installation, maintenance, and safety of any and all Customer-supplied electric facilities or equipment. The Customer shall provide and maintain the necessary protection equipment to protect its own facilities from harm from any electrical cause as well as to protect the Cooperative's equipment and members from any damages, interruption of service, or faulty service due to faults or operations of the Customer's equipment.
- c. Customer-Owned Generation. Customer-owned generators shall be operated only during periods (1) of load control as signaled by the Cooperative; (2) when electric service from the Cooperative is not available; (3) to safeguard against potential power interruptions; or (4) for the required testing and maintenance of the Customer's electric facilities and equipment. Except during load transfers between the Customer's generators and the Cooperative's electric system, the generators shall not be operated in parallel with the Cooperative's system. Specific interconnection requirements will be consistent with Cooperative policy.
- d. Location of Cooperative Facilities. The Customer will provide to the Cooperative suitable locations for the installation of electric facilities on the property of the Customer. The Customer shall provide the Cooperative or its power supplier, at no cost, a Warranty Deed for the substation property and permanent easements for all electric power supply facilities located on site, including but not limited to, in and out transmission and distribution lines to permit multiple use of said facilities, on-site distribution lines and distribution transformer/switchgear sites. The Customer will provide site grading for the substation at no cost to the Cooperative and further will provide a concrete pad for all distribution transformers and switchgear in accordance with specifications provided by the Cooperative.
- e. Accessibility to Cooperative Facilities. Duly authorized representatives of the Cooperative shall be permitted to enter on the property of the Customer to the

extent necessary to maintain and service electric facilities at all reasonable times in order to carry out the provisions of this Agreement.

- f. Operation of Cooperative Equipment. The Customer will not interfere with the operation of any Cooperative-owned electric equipment or facilities, including any metering or communication equipment. The Customer shall advise the Cooperative as soon as possible if the Customer discovers any apparent problem with the condition or functioning of the Cooperative's equipment or facilities.
- g. Operation of Customer Equipment. The Customer's electric service, electric facilities, and load characteristics will conform to the National Electric Code and National Electric Safety Code, IEEE/ANSI standards, and Prudent Utility Practice. If the operation of any of the Customer's equipment causes power quality or operational problems to the Cooperative's electric system, the Customer shall promptly correct or remove the cause of the problem. If the Customer does not eliminate the problem, the Cooperative can correct or remove the problem from the electric system and the Customer will be responsible for the costs. The Customer shall notify the Cooperative immediately if the Customer discovers that the condition or operation of any of the Customer-supplied electric equipment or facilities may pose a risk to any persons or property.
- h. Cooperative Membership. The Customer shall be a member of the Cooperative.
- i. Hold Harmless. If the supply of electric power and energy provided by the Cooperative should fail or be interrupted, or become defective, through (a) compliance with any law, ruling, order, regulation, requirement or instruction of any federal, state or municipal governmental department or agency or any court of competent jurisdiction; (b) Customer action or omissions; or (c) acts of God, fires, strikes, embargoes, wars, insurrection, riot, equipment failures, operation of protective devices, or other causes beyond the reasonable control of the Cooperative, the Cooperative shall not be liable for any loss or damages incurred by the Customer or be deemed to be in breach of this Agreement. The Customer acknowledges that the delivery of electric power and energy may at times be subject to interruption by causes beyond the control of the Cooperative, including weather conditions, vandalism, accidents, and other interruptions, and that the Customer assumes the risk of those potential interruptions. The Cooperative will use its best efforts to return the interrupted electric service in the shortest reasonable time under the circumstances.

5. **Metering:**

- a. Point of Metering. Metering will measure the demand and energy of the total Facility and will be located on cooperative facilities, either inside or outside the substation.

- b. Metering Responsibility. All meters shall be furnished, installed, maintained, and read by the Cooperative or its power supplier.
- c. Meter Testing Procedure. The metering shall be tested at least once every two years for accuracy. If any test discloses the inaccuracy of said meters to the extent of more than two percent (2%) fast or slow, an adjustment in billing, according to the percentage of inaccuracy found, shall be made for the period elapsed subsequent to the date of the last preceding test.
- d. Meter Failure. Should the metering equipment at any time fail to register proper amounts or should the registration thereof be so erratic as to be meaningless, the capacity and energy delivered shall be determined by the Cooperative from the best information available.

6. Rates and Payment:

- a. Rate Schedule Application. The Customer shall pay the Cooperative for service rendered hereunder at the rates and upon the terms and conditions set forth in the Rate Schedule attached to and made a part of this Agreement and any revisions thereto or substitutions thereof adopted by the Cooperative's Board of Directors.
- b. Payment Arrangements. All charges for service shall be paid to the Cooperative by electronic funds transfer, which will be initiated by the Cooperative on the day when the billing is completed for the preceding month's electric bill. If said transfer is rejected (or the Cooperative is unable to complete it for any reason), the Customer will be notified and the Cooperative may discontinue service to the Customer upon giving eight (8) days written notice to the Customer of its intention to do so, provided, however, that such discontinuance of service shall not relieve the Customer of any obligations under this Agreement. During the term of this Agreement, the parties may negotiate alternative payment arrangements that are agreeable to both parties.
- c. Disputed Bills. The Customer shall pay all bills for services and/or energy in a timely manner and in accordance with billing procedures established by the Cooperative even though said charges may be disputed. If it is determined that the Customer is entitled to a refund or credit for a disputed bill, the Cooperative shall, in addition to the principal amount refunded or credited, pay interest on said amount at the rate authorized for interest on judgments in the State of South Dakota. Neither party shall be obligated to settle disputes by arbitration or mediation without the mutual consent of the parties.

7. Commencement and Termination:

- a. Commencement Date. This Agreement shall be in effect as of the date executed and the Customer's obligation to purchase electric service hereunder shall

commence upon the startup of the commercial operation of the Facility but no later than _____, 2006, whichever occurs first.

- b. Minimum Facilities Charge Obligation. In the event that this Agreement is terminated and the Customer ceases to use the facilities described in Section 3a, the Customer agrees to pay to the Cooperative the equivalent of ten years (120 months) of facilities charges that the Customer would have paid if the agreement would have remained in effect for the first ten years, less facilities charge payments already made by the Customer prior to termination.
- c. Default and Termination. The Customer shall be in default if it fails to timely pay for service under this Agreement, if it breaches any other of its obligations to the Cooperative, or if it becomes the subject of bankruptcy or insolvency proceedings. If the Customer fails to cure that default within ten (10) days after the Customer receives written notice of default from the Cooperative, the Cooperative may, at its sole option, suspend or terminate its further performance under this Agreement, disconnect electric service to the Customer, terminate this Agreement, or take other action to address the Customer's default. This provision shall not limit the Cooperative's right to take immediate action to suspend services if the Customer's act or omission interferes with the safe and efficient operation of the Cooperative's electric system, nor shall it limit the Cooperative's right to pursue any other or further remedy available to it by law.

8. Security Agreement for Customer Obligations:

To secure the Customer's performance of its obligations to the Cooperative under this Agreement, the Customer hereby grants the Cooperative a security interest in any of the Cooperative's patronage capital credits owned or hereafter accrued by the Customer. The Customer agrees to sign and deliver a Uniform Commercial Code (UCC) financing statement and such other and further documents, as the Cooperative shall reasonably request to perfect and continue this security interest.

9. Patronage Capital Credits:

Service under the rates provided for in this Agreement is subject to a special allocation of capital credits to the Customer by the Cooperative. This will take into account the reduced cost allocation associated with the rates that are included in this Agreement. Based on this special allocation, Capital Credits will be minimal. For the purpose of this Agreement, the Customer acknowledges that they are not a natural person under South Dakota law.

10. Disclaimer of Warranty and Limitation of Liability:

Each party shall be responsible for its own facilities and personnel provided or used in the performance of this Agreement. Neither the Cooperative nor the Customer shall be responsible to the other party for damage to or loss of any property, wherever located,

unless the damage or loss is caused by its own negligence or intentional conduct or by the negligence or intentional conduct of that party's officers, employees, or agents, in which case the damage or loss shall be borne by the responsible party. The Cooperative shall not be responsible or liable to the Customer or to any other party for any indirect, special or consequential damages, or for loss of revenues from any cause.

11. **Indemnification:**

The Customer agrees to indemnify and holds the Cooperative harmless from and against any liability for any claims or demands arising out of property damage, bodily injury, or interruptions to the Customer's electric service caused by electric equipment or facilities owned by the Customer, or the Customer's possession, use, or operation of electric equipment or facilities.

12. **General:**

a. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and shall be governed by the laws of the State of South Dakota.

b. Notices. All notices under this Agreement shall be given in writing and shall be delivered personally or mailed by first class U.S. mail to the respective parties as follows:

To Customer:

Mr. Keith Hainy, Manager
North Central Farmers Elevator
P. O. Box 366
Ipswich, South Dakota 57451

To Cooperative:



Paul Erickson, Manager
FEM Electric Association, Inc.
PO Box 468
Ipswich, South Dakota 57451

c. No Waiver. No course of dealing nor any failure or delay on the part of a party in exercising any right, power or privilege under this Agreement shall operate as a waiver of any such right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies, which a party would otherwise have.

- d. Entire Agreement/Amendment. This Agreement represents the entire Agreement between the parties with respect to the matters addressed in this Agreement, except as provided in the Cooperative's bylaws, rules, and regulations applicable to similarly situated customers, which are incorporated herein. This Agreement may be changed, waived, or terminated only by written agreement signed by both parties as set forth herein.
- e. Assignment. The Cooperative may assign this Agreement to an affiliate or affiliates of the Cooperative, to a partnership(s) in which the Cooperative or an affiliate has an interest, or to any entity which succeeds to all or substantially all the Cooperative's assets by sale, merger or operation of law. The Customer may not assign this Agreement without the written consent of the Cooperative, which consent will not be unreasonably withheld.
- f. Severability. Should any part, term or provision of this Agreement be, by a court of competent jurisdiction, decided to be illegal or in conflict with any applicable law, the validity of the remaining portions or provisions shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives, all as of the day and year first above written.

Attest: _____ FEM ELECTRIC ASSOCIATION, INC.
 _____ By: _____
 Title: _____ Title: _____

Attest: _____ NORTH CENTRAL FARMERS ELEVATOR
 By: 
 Title: Bookkeeper Title: General Manager

RATE SCHEDULE
North Central Farmers Elevator Bowdle Facility

AVAILABILITY

Available to the North Central Farmers Grain Handling Facility located in the Section 20, Township 123N, Range 73W, in Edmunds County, South Dakota, for commercial operation of the facility. This schedule is not available for startup or construction power and is subject to the established rules and regulations of the Cooperative.

This rate is subject to an interconnection agreement with MDU.

TYPE OF SERVICE

Multiple deliveries of alternating current, 60 cycle, 277/480 volt three-phase.

MONTHLY RATE

The Customer shall pay the Cooperative for service hereunder at the following rates and conditions. The following is the Rate Components schedule through the year 2010.

	2006	2007	2008	2009	2010
	Guaranteed	Guaranteed	Guaranteed	Guaranteed	Estimated
Non-coincident Demand Charge Above 3,200 kW (kW per month)	\$12.00	\$12.00	\$12.00	\$12.00	\$12.00
Coincident Demand Charge (kW per month)	\$12.00	\$12.00	\$12.00	\$12.00	\$12.00
Monthly Facilities Charge	\$8,000	\$8,000	\$8,000	\$8,000	\$8,000
Energy Charge (kWh per month)	\$.02580	\$.02580	\$.02580	\$.02580	\$.03200

RATE GUARANTEE

The monthly demand, facilities and energy charges specified above are guaranteed to remain unchanged for the years 2006 through 2009. If the Cooperative makes additional investments in the electric transmission, substation or distribution facilities serving the Facility during the term of this rate guarantee, the rate shall be adjusted accordingly. However, the rates may be adjusted at any time by the amount of any new or increased level to current local, state, or Federal taxes or fees.

The form of the rate is guaranteed through 2016. The rate form shall be a monthly facilities charge, an energy charge, and demand charges if applicable as described under the Billing Demand section which follows this section.

BILLING DEMAND

The billing demand shall be equal to the Customer's contribution to the monthly billing demand from the Cooperative's power supplier, as determined by a demand meter or otherwise, and adjusted for power factor.

The Customer is required to follow the load management strategy under the 5/7 Interruptible Rate. The Customer's total load must be removed from East River's billing peak in the months of January, February, June, July, August, November and December of each year when called to do so via East River's load management signal. In the other five months, the Customer will be credited its half-hour demand coincident with East River's billing peak. Failure to shed load when called to do so will result in a charge for all the Customer's on peak demand coincident with East River's billing peak, and a "strike." For any strike the Customer receives that results in an accumulation of three or more strikes in any 24-month rolling period, the demand charge will be tripled for the Customer's demand coincident with East River's billing peak.

The Customer is limited to 2,500 kW non-coincident peak in any billing period. Demands above 2,500 kW are subject to a demand charge.

MINIMUM BILLING DEMAND

None

FACILITY CHARGE

The facility charge shall be \$8,000 per month, totaling \$96,000 per year. There is no required minimum energy usage.

The facility charge is based on the Customer being the only electric load being served from the facilities being constructed as set forth in Section 3.a. In the event, additional customers are provided service from these facilities, the Cooperative will review the facility charge to the Customer and will make any appropriate adjustments.

POWER FACTOR ADJUSTMENT

The Customer agrees to maintain unity power factor as nearly as practicable. The demand charge may be adjusted to correct for average power factors less than five percent (5%) unity (lagging) or greater than five percent (5%) unity (leading) by increasing the measured demand one percent (1%) for each one percent (1%) by which the average power factor is less than five percent (5%) unity (lagging) or more than five percent (5%) unity (leading).

STATE AND MUNICIPAL TAXES

All applicable state and municipal sales tax and any other non-ad valorem taxes imposed on electric energy sales shall be applied to monthly bills rendered under this rate schedule unless the consumer is exempt from said tax or taxes.

TERMS OF PAYMENT

In the event the current monthly bill is not paid in accordance with the payment dates indicated on the bill, a late payment penalty in effect at the time shall apply.

EFFECTIVE: _____, 2006

**MONTANA-DAKOTA UTILITIES CO.
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION STAFF
FIRST DATA REQUEST
DATED MAY 2, 2006
DOCKET NO. EL06-011**

Request No. 1

Explain in detail why you believe the contracted minimum demand is greater than 2,000 kilowatts.

Response:

Montana-Dakota believes that the contracted minimum demand is greater than 2,000 kW due to information provided to Montana-Dakota by Logan Electric, the electrical contractor for the new terminal, and information provided to Montana-Dakota by East River Electric Power Cooperative. Given this information, Montana-Dakota's proposed service contract requires a contracted demand minimum of 2,000 kW per month.

As shown in Attachment A on a facsimile from Logan Electric dated January 17, 2006 the total design motor horsepower is expected to be 2,674 for the current plant size and an additional 949 motor horsepower is expected for future expansion. Using the standard conversion factor of 0.746 horsepower per kW the connected load would be 1,995 kW and 708 kW respectively. This connected motor load does not include any power requirements for other end use devices such as, but not limited to lighting, computers, and miscellaneous building load.

Also shown in Attachment B is a letter dated February 21, 2006 from East River Electric Power Cooperative to Montana-Dakota requesting an interconnection with Montana-Dakota on the Glenham to Bowdle 41.6 kV transmission line to serve the new Bowdle Terminal. As stated in the letter, East River estimated the peak load for the Bowdle Terminal to be 2.5 MW (2,500 kW) from October to January/February and 1.5 MW (1,500 kW) the remaining months of the year.

Bid # 1

sheet 2 of 4

NCFE BOWLDE

60 HP Pile Fill Conveyor

4 H
Rack

200 HP Load-out Leg/(Soft Starter)

15 HP Hydraulic Pump

400 A Breaker/Dryer 260 HP

30 A Breaker/Sampler

40 HP Transfer (Pit) Conveyor

150 HP East Receiving Leg/(Soft Starter)

150 HP West Receiving Leg/(Soft Starter)

75 HP Wet Leg/(Soft Starter)

40 HP Pile Reclaim

5 HP Screener Fill Conveyor

5 HP ~~VFD~~ Screener Unload

60 HP Dry Leg 35

40 HP East Top Fill 10,000

100 HP East Top Fill 20,000/(Soft Starter)

30 A Breaker/Manlift 10 HP

10 HP Wet Bin Unload Conveyor

60 HP East Bottom Unload Belt 50

75 HP West Bottom Unload Belt/(Soft Starter)

30 A Breaker/Gates- 2-Ways

**IEC Self-Protected Starters 32A, Reversing, Without Isolator,
With Overload Module, 110VAC Coil, Not Switchgear mounted,
Shipped Seperate (4 3/4 HP) (21 1/2 HP)**

15 A Breaker/Distributor #1

15A Breaker/Distributor #2

100 HP West Top Fill 20,000/(Soft Starter)

50 HP West Top Fill 10,000

25 HP West Pit Conveyor (Receiving)

20 HP ~~VFD~~ East Pit Conveyor (Receiving)

20 HP Wet Bin Fan #1

20 HP Wet Bin Fan #2

100 A Breaker/XFMR

100 A Breaker (Roof Fans)

**IEC Intregal Self-Protected Starters 32A, Non Reversing, Without
Isolator, With Overload Module, 110VAC Coil, Not Switchgear
Mounted, Shipped Seperate, 22 - 2HP Total (Roof Fans)**

10 HP Scalper

50 HP 90' Bin Bottom Fan #1

50 HP 90' Bin Bottom Fan #2

50 HP 90' Bin Bottom Fan #3

50 HP 90' Bin Bottom Fan #4

50 HP 90' Bin Bottom Fan #5

sheet 3 of 4

Bid # I can't.

60 hp -
Sottol

- 50 HP 90' Bin Bottom Fan #6
- 50 HP 90' Bin Bottom Fan #7
- 50 HP 90' Bin Bottom Fan #8
- 50 HP 90' Bin Bottom Fan #9
- 50 HP 90' Bin Bottom Fan #10
- 50 HP 90' Bin Bottom Fan #11
- 50 HP 90' Bin Bottom Fan #12
- 50 HP 90' Bin Bottom Fan #13
- 50 HP 90' Bin Bottom Fan #14
- 50 HP 90' Bin Bottom Fan #15
- 50 HP 90' Bin Bottom Fan #16
- 50 HP 90' Bin Bottom Fan #17
- 50 HP 90' Bin Bottom Fan #18
- 50 HP 90' Bin Bottom Fan #19
- 50 HP 90' Bin Bottom Fan #20

2,674 Total HP
Plus Dry 50 KVA XFMR

1.97

2-190-
2-190-
2-190-

1/11/91



TOTAL P.04

Bid # 2

sheet 4 of 4

**NCFE BOWDLE
FUTURE EXPANSION**

- 30A Breaker (Electric Gates)**
- 60 Top Pile Conveyor**
- 40 Bottom Pile Reclaim**
- 100 Top Conveyor 20,000/(Soft Starter)**
- 50 Top Conveyor 10,000**
- 75 Bottom Bin Reclaim/(Soft Starter)**
- 50 Bottom Fans #1**
- 50 #2**
- 50 #3**
- 50 #4**
- 50 #5**
- 50 #6**
- 50 #7**
- 50 #8**
- 50 #9**
- 50 #10**
- 50 #11**
- 50 #12**
- 60 A Breaker (Top Fans)**

949 Total HP

71.4 MW

2.7 MW

130 MW -
P.M.
20. P.R



February 21, 2006

Mr. Henry Ford
Electric Transmission Manager
Montana-Dakota Utilities
400 North Fourth Street
Bismarck, ND 58501-4092

Subject: Proposed New Interconnection with Montana Dakota Utilities
Glenham to Bowdle 41.6 kV Transmission Line

Dear Mr. Ford:

As we discussed during our telephone conversation on February 3, a new grain handling/multi-unit train loading facility is currently under construction one mile west of Bowdle, South Dakota in the electric service territory of FEM Electric. FEM Electric is a member system of East River Electric Power Cooperative (East River). East River is responsible for providing the necessary transmission facilities and interconnections for FEM Electric to serve this new electric load.

In order to serve this new facility, East River is requesting an interconnection to Montana-Dakota Utilities' (MDU) 41.6 kV Glenham to Bowdle transmission line under the Interconnection and Common Use Agreement between MDU and Basin Electric Power Cooperative. As a member/owner of Basin Electric, East River is a participant in this Agreement.

The peak load for the new facility is estimated to be 2.5 MW during the months of October through January/February and 1.5 MW the remaining months of the year. The largest motor at the facility is a 260 HP motor. All motors larger than 50 HP are to have soft start capabilities. The facility is scheduled to begin operation in the fall of 2006.

As shown on the attached drawing, the site of this new facility is adjacent to MDU's 41.6 kV Glenham to Bowdle transmission line in Section 20, Township 123 North, Range 73 West, Edmunds County, South Dakota.

To serve the facility, East River is proposing to build approximately one half mile of 41.6 kV transmission line from MDU's 41.6 kV line to a new 5 MVA 41.6 to 12.47 kV East River substation. The substation would have revenue quality metering on the low-side bus of the substation. The new transmission line and substation would be constructed

Mr. Henry Ford

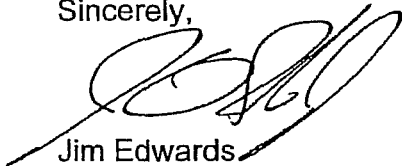
-2-

February 21, 2006

by East River personnel and would be at East River's expense. East River is presently working on a proposed design for interconnecting to MDU's 41.6 kV line. Once the proposed design is completed, East River will forward the engineering drawings and specifications on to you for MDU's review and approval.

If there are any questions or additional information is required in order for MDU to proceed with this request for a new interconnection, please contact either myself at (605) 256-8002 or jedwards@eastriver.coop or Dan Wall, East River's Manager of Transmission and Engineering Services at (605) 256-8005 or dwall@eastriver.coop. I greatly appreciate your prompt attention to this request.

Sincerely,

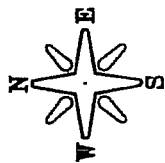


Jim Edwards
Assistant General Manager Operations

JE/jc

Enc.

cc: Dan Wall
Ken Booze
Larry DeKramer
Paul Erickson, FEM Electric
Mike Risan, Basin Electric



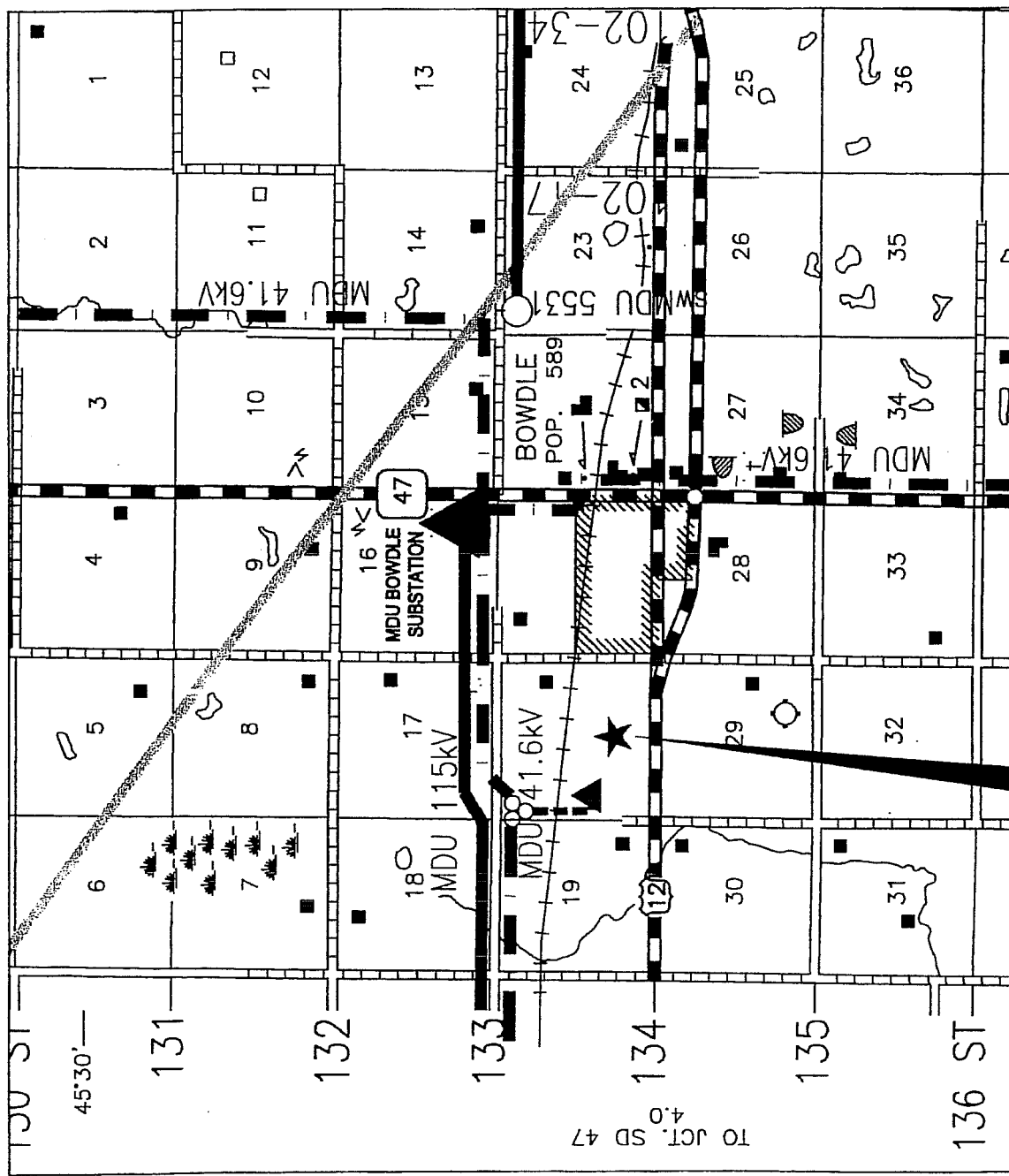
LEGEND

- EAST RIVER 115/66KV SUBSTATION
- EAST RIVER 69/12.47KV SUBSTATION
- NEW EAST RIVER 41.8/12.47KV SUBSTATION
- EXISTING EAST RIVER - 41.8KV LINES
- NEW EAST RIVER 69KV LINE
- NEW THREE WAY LINE SWITCH
- NORTH CENTRAL FARMERS ELEVATOR
- W.A.P.A. 115KV SUBSTATION
- BASIN 230KV SUBSTATION
- W.A.P.A. - 115KV LINE
- W.A.P.A. - 230KV LINE
- BASIN - 230KV LINE
- BASIN - 345KV LINE
- BASIN - 500KV LINE



Your Touchstone Energy Cooperative

**NORTH CENTRAL FARMERS
GRAIN HANDLING FACILITY**



**NORTH CENTRAL FARMERS
GRAIN HANDLING FACILITY**

2-9-06
NCF ELEVATOR

45°30'

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134

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136 ST

TO JCT. SD 47
4.0

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MDU BOWDLE
SUBSTATION

MDU 115KV

MDU 41.6KV

BOWDLE
POP. 589

MDU 5531

MDU 41.6KV

MDU 41.6KV

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