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George J. Danforth
(1875-1952)
George J. Danforth, Jr.
(1909-1991)

May 11, 2004

RECEIVED

MAY 12 2004

South Public Utilities Commission
Capitol Building
1st Floor
500 E. Capitol Ave.
Pierre, SD 57501

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

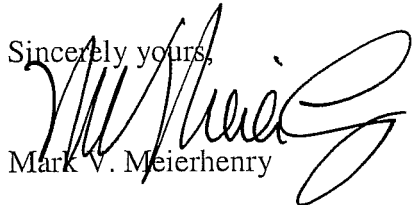
Re: Superior Renewable Energy LLC v. Montana Dakota Utilities Co.

Dear Public Utilities Commission:

Please find enclosed an original and ten copies of Superior Renewable Energy LLC's complaint against Montana Dakota Utilities Co. regarding the Java Wind Project. By copy of this letter our firm has served the same on Montana Dakota Utilities Co. by United States First Class Mail.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,



Mark V. Meierhenry

MM/ai

Danforth, Meierhenry & Meierhenry, L.L.P.

Attorneys at Law

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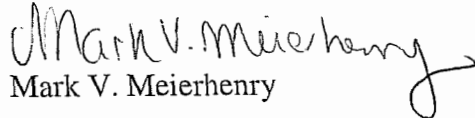
RECEIVED
MAY 12 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: Superior Renewable Energy LLC v. Montana Dakota Utilities Co.

Dear Public Utilities Commission:

Please bill our office for the filing fee.

Sincerely yours,


Mark V. Meierhenry

MM/ai

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT FILED)
BY SUPERIOR RENEWABLE ENERGY LLC)
ET AL. AGAINST MONTANA DAKOTA)
UTILITIES CO. REGARDING THE JAVA)
WIND PROJECT)
_____)

) Docket No. _____

RECEIVED

MAY 12 2004

COMPLAINT

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

I. Introduction

1. Superior Renewable Energy LLC and its wholly owned subsidiary Java LLC, (collectively, the "Complainants") file this Complaint asking the Public Utilities Commission of the State of South Dakota (the "Commission") to assert its jurisdiction and to resolve a dispute between the Complainants and Respondent Montana Dakota Utilities Co. ("MDU") with respect to negotiation of a long term electric power purchase agreement. The electricity will be produced and sold pursuant to the Public Utility Regulatory Policy Act of 1978, 16 U.S.C. § 824a-n (2003) ("PURPA") from a Qualified Facility (as defined in PURPA) with a design capacity greater than 100 kilowatts. The Java Wind Project is located in Walworth County, South Dakota.

II. Complainants and Respondent

2. Complainants' address is:

1600 Smith Street
Suite 4240
Houston, Texas 77002
713-571-8900

3. Respondent's address is:

400 North Fourth Street
Bismarck, North Dakota 58501
701-222-7900

III. Background Facts

4. Superior Renewable Energy LLC ("Superior") is an independent wind power developer active in five states. One of its projects is located in Walworth County, South Dakota. This project is known as the Java Wind Project. The Java Wind Project will have an initial installed nameplate electrical generating capacity of 25.5 megawatts. At the earliest, the Java Wind Project could begin to produce test energy as early as October 15, 2004. Java LLC will own and operate the Java Wind Project. Superior has acted as the operator for the Java Wind Project prior to the formation of Java LLC. Hereafter, all references to Superior in this Complaint shall refer, unless otherwise stated, to both Superior and Java.

5. A plat showing the location of the Java Wind Project is attached as Exhibit "A" to this Complaint. Superior has secured the contract and real property rights needed to build and operate the Java Wind Project from the landowners at the site. These rights typically run for a period of fifty years. The Java Wind Project also includes one section of land owned by the State of South Dakota for the benefit of schools which is under the jurisdiction of the Commissioner of School and Public Lands.

6. The Java Wind Project is located within the service territory of MDU. MDU is an electric utility within the meaning of and subject to PURPA and its implementing federal and state regulations.

7. The Java Wind Project is a Qualified Facility ("QF") pursuant to PURPA. A

copy of the document qualifying the Java Wind Project as a QF pursuant to 18 C.F.R. § 292.207 (2003) is attached to this Complaint as Exhibit “B” and incorporated by reference herein for all purposes. Java previously provided copies of this document to this Commission and to MDU pursuant to part (ii) of this regulation.

IV. Regulatory Background

8. Section 210(a) of PURPA requires MDU to purchase electricity from QF’s, like the Java Wind Project, located in their service territory. See 16 U.S.C. § 824a-3 (2003).

9. The price that MDU must pay for electricity delivered to it from a QF is not to exceed the “incremental cost to the electric utility of alternative electric energy.” Id. The FERC regulations implementing Section 210 (a) of PURPA refer to this rate as the “avoided cost.” See generally 18 C.F.R. § 292.101(b)(6) (2003); 18 C.F.R. § 292.304 (2003).

10. Avoided costs are to be determined based on a number of factors set forth in 18 C.F.R. § 292.304(e) (2003). Avoided cost generally includes two components: (1) avoided energy cost representing the variable costs associated with the production of electric energy including operating and maintenance expenses that are saved by the electric utility because of deliveries from a QF (hereinafter “Avoided Energy Costs”) and (2) avoided capacity cost representing primarily the capital costs of energy generating facilities that are saved by an electric utility because new plants or existing plant improvements become unnecessary as a result of deliveries from a QF (hereinafter “Avoided Capacity Costs”).

11. PURPA requires MDU to file with this Commission information on a two-year cycle relative to “avoided cost.” See 18 C.F.R. § 292.303(b)(1)-(3) (2003). This obligation is sometimes referred to hereafter as the “Section 133 Obligation.”

12. As part of its Section 133 Obligation, MDU must file with this Commission and “make available for public inspection” the following information:

(1) the estimated avoided cost on the electric utility’s system, solely with respect to the energy component, for various levels of purchases from qualifying facilities...stated on a cents per kilowatt hour-peak and off-peak periods, by year, for the current calendar year and each of the next five years,

(2) the electric utility’s plan for the addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding 10 years, and

(3) the estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt hour...expressed in terms of individual generating units and of individual planned firm purchases.”

18 C.F.R. § 292.302 (b) (1) (2003).

13. Based on a delegation of authority contained in Section 210(f) of PURPA, the Commission issued a decision and order on December 11, 1982 in which it made certain findings and conclusions relative to avoided cost. See In the Matter of the Investigation of the Implementation of Certain Requirements of Title II of the Public Utilities Regulatory Policy Act of 1978 Regarding Cogeneration and Small Power Production, No. F-3365 (South Dakota Public Utilities Commission Dec. 11, 1982) (hereinafter the “Commission PURPA Order”).

14. In the Commission PURPA Order, the Commission found that “long term contracts” (defined to mean of greater than ten years’ duration) from QF’s with a design

capacity greater than 100 kilowatts “should be set by contract negotiated between the QF and the electric utility.” Id. at p. 11. The Commission further found that its own role in these negotiations was to assist in “resolving any disputes which arise between the parties.” Id. The Commission also found that each electric utility subject to Commission jurisdiction should file a tariff setting rates at which the utility would purchase power from QF’s with a design capacity less than 100 kilowatts.

14. To provide “parameters” for negotiations, the Commission found that “capacity credits included in long-term contract should be based on the avoided cost of base load generation.” Id. at 12. The Commission further found that: (1) “capacity credits included in long-term contracts should reflect the average kW supplied by the QF for each month during the utility’s on-peak period,” (2) “capacity credits included in long-term contracts should be made constant over the duration of the contract” and (3) “long-term contracts should include an energy credit based on the average of the expected hourly incremental avoided costs calculated over the hours in the appropriate on-peak and off-peak hours as defined by the utility.” Id. To aide the parties negotiating an avoided cost contract, the Commission stated that “hourly energy cost data” filed by an electric utility pursuant to its Section 133 Obligation is an appropriate data source for determining avoided energy costs.” Id.

V. History of Contract Negotiations

16. For nearly two years, Superior has attempted to negotiate in good faith with MDU as required by the Commission PURPA Order to obtain a long-term power purchase agreement for electricity produced from the Java Wind Project. These negotiations have been conducted at the leisure of MDU. On numerous occasions, in an

attempt to engage MDU to earnestly put forth an effort in the negotiations, Superior made MDU aware of our qualification under PURPA as a QF as the means to justify a long-term power purchase agreement.

17. MDU nevertheless repeatedly told Superior that the parties should delay substantive negotiations until they knew whether or not another wind power project would be completed during this time period. This project—called the Dakota I Project—was a 20 megawatt facility to be built in Dickey County, North Dakota and to be operated by a developer called Dakota I Power Partners (hereinafter “DPP”). Sometime in 2002, MDU had signed a power purchase agreement with DPP for electricity produced from the Dakota I Project. From its contractual relationship with DPP, MDU knew that DPP was having difficulty meeting a milestone in the power purchase agreement that required DPP to commission the Dakota I Project by December 31, 2003.

18. Late in 2003, David Mangskau, MDU's Special Projects Manager - Energy Supply told Superior that if (and presumably when) DPP failed to reach this milestone, MDU would not have any obligations under the power purchase agreement with DPP. Thereafter, Mangskau told Superior that MDU would then be in a better position to focus on the Java Wind Project. Mr. Mangskau emphasized MDU's preference to spur development of power generating facilities outside North Dakota, including development of facilities like the Java Wind Project in South Dakota.

19. These representations by Mangskau were the primary reason that Superior decided not to declare power purchase agreement negotiations to be at an impasse and to thereafter seek the intervention of the Commission, recognizing that affording MDU this consideration was consuming precious development time. Superior wanted to be certain

that the parties' view of avoided costs under PURPA could not be reconciled in a manner that would allow them to reach consensus on the terms of a long term power purchase agreement.

20. After enduring cycles of encouragement and disappointment over the ensuing three months as information about the fate of the Dakota I Project continued to circulate, Mr. Mangskau called Superior on or about on or about Thursday, April 1, 2004 to announce that MDU had decided not to enter into a contract to purchase wind energy in 2004 from Superior. Mr. Mangskau also told Superior that MDU would not enter into any renegotiation of the power purchase agreement with DPP. These decisions—so clearly an about-face from MDU's previous position—brought all previous negotiations to an end.

21. On or about April 2, 2004 John Calaway, Superior's Chief Executive Officer, spoke by telephone with Dennis Haider, MDU's Executive Vice President - Business Development and Strategic Planning, and Andrea Stromberg, MDU's Vice President - Electric Supply. Mr. Calaway emphasized to Mr. Haider and Ms. Stromberg the need for MDU to re-engage Superior in good faith power purchase negotiations. Mr. Calaway told Mr. Haider and Ms. Stromberg that if no immediate progress could be made, Superior would be left with no choice but to proceed with an expedited avoided cost determination to enable the development of the Java Wind Project. Mr. Calaway agreed to allow MDU until April 7, 2004 to review the situation and provide Superior with its decision.

22. On April 7, 2004, Andrea Stromberg notified Jeff Ferguson, Superior's Chief Operating Officer, that MDU was unwilling to negotiate with Superior for a power

purchase agreement governing the Java Wind Project. Ms. Stromberg asked if Superior still intended to deliver electricity from the Java Wind Project as a QF under PURPA. Jeff Ferguson explained that after nearly two years of unfruitful discussions with MDU, Superior has been left no other commercial means to develop the Java Wind Project but as a QF.

23. Discussions regarding MDU's avoided costs relative to the Java Wind Project thereafter commenced on April 8, 2004 and rapidly reached a final impasse on April 20, 2004. The principle issue between Superior and MDU was—and is—MDU's Avoided Capacity Costs relative to the Java Wind Project. Having thoughtfully considered PURPA and the Commission's PURPA Order, Superior knew that the essence of the negotiation would revolve around MDU's willingness to afford the Java Wind Project capacity credits in accordance with the Mid-Continent Area Power Pool ("MAPP") capacity accreditation procedure for variable generation capacity. Therefore, Superior felt that it was paramount to raise this concern at the onset of the avoided cost negotiation instead of losing additional development time.

24. MDU's stated position to Superior (expressed through MDU's counsel) is that MDU is not short long-term generation capacity. Superior strongly believes that as a result of the purchase from the Java Wind Project, that MDU will avoid long-term Capacity Costs and Energy Costs. Each party has interpreted the Commission's guidance for negotiating power purchase agreements between the utility and the QF differently, activating the Commission's role to resolve this dispute.

25. In making any avoided cost determination, however, the Commission should know that the parties have already agreed to use the Mid-Continent Area Power Pool

("MAPP") capacity accreditation procedure for variable generation capacity. Stated simply, this procedure statistically calculates the capacity that can be accredited to the Java Wind Project for the purposes of reliability in conjunction with meeting a utility's load and capability responsibility. After Superior proposed to MDU that the parties use the MAPP procedure, MDU agreed on or about April 20, 2004.

26. The Java Wind Project comprises one of the most energetic wind resources in South Dakota if not in the entire Great Plains. The seasonal consistency of the wind is a unique anomaly. Because of the unique nature of the wind resource, the Java Wind Project will provide a meaningful summer and winter capacity contribution to MDU for the life of the project. Moreover, the landowner agreements give Superior the right to operate the Java Wind Project for the next fifty years. When considering the non-depleting nature of the wind resource, ability to repower the project, pace of wind turbine technology advancement and displacement of harmful emissions from the burning of fossil fuels, the long-term benefits and proper translation to avoided Capacity Cost and Energy Cost is of real consequence to the public interest and warrants the Commission's attention.

VI. Relief Requested

Based on the foregoing, Superior requests that the Commission grant the following relief:

27. Order MDU to file with the Commission and to disclose to Superior all of the information relative to avoided costs that MDU is required, by PURPA and the Commission's PURPA Order, to file and disclose. Superior believes that this list of information should include, but not be limited to, all of the information required to be filed and disclosed pursuant to MDU's Section 133 Obligation, including the most recent

Integrated Resource Plan filed in North Dakota on July 1, 2003, the most recent installed cost (\$/kW), burner tip fuel costs (\$/MMbtu), projected heat rate (MMbtu/kWh), projected annual capacity factor and operation and maintenance costs (\$/MWh), including water consumption and the cost to operate any emissions reducing technology, of MDU's coal fired power plant being studied (attached to this Complaint as Exhibit "C") in western North Dakota, existing capacity and energy purchase contracts and terms of any proposed new contracts and hourly system load data for the last five years to determine the time of day when MDU's summer and winter load peak is predominately set.

28. Order MDU to file with the Commission and disclose to Superior all work papers and information used by MDU to calculate the monthly capacity payment of \$14.50/kW-mo for MDU's tariff sheet "Long Term Power Purchase Rate 97 Time Differentiated" as filed with the Commission on or about June 3, 2003. Although this rate, as required by FERC, is filed for generators of 100 kW or less, the methodology used to calculate this rate has merit and can provide valuable insight into the avoided Capacity Cost determination.

29. Furthermore, in light of the avoided costs of harmful emissions generated from the burning of fossil fuels that are real and are creditable as emissions reductions for regulatory purposes, Order MDU to file with the Commission and disclose to Superior MDU's forecast of annual emissions by constituent to include, but not limited to, NOX, SO2, mercury, PM10 and VOC, associated with the proposed coal-fired generation capacity addition as well as for MDU's existing coal-fired generation capacity.

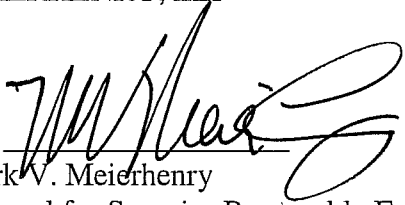
30. Hold a hearing on an expedited basis to consider the information and avoided

cost criteria set forth in this Complaint and in the Commission's PURPA Order to determine the avoided costs over the life of the Java Wind Project that MDU must pay Superior for electricity generated from the Java Wind Project.

31. Grant to Superior such other relief as is necessary for Superior to obtain a power purchase agreement with MDU for electricity produced from the Java Wind Project on terms acceptable to Superior and MDU but in all events consistent with the requirements of PURPA and the SDPUC PURPA Order.

32. Award attorney fees and costs to Superior Renewable Energy as "terms" for MDU's failure to fulfill its duty to fulfill the purpose of the Commissioners Rules and PURPA.

Respectfully Submitted,
DANFORTH, MEIERHENRY &
MEIERHENRY, LLP

By: 
Mark V. Meierhenry
Counsel for Superior Renewable Energy
LLC


315 S. Phillips Avenue
Sioux Falls, SD 57104
Phone: (605) 336-3075
Fax: (605) 336-2593

Of Counsel:
M. Bradford Moody
James Thompson
Watt, Beckworth & Thompson L.L.P.
1010 Lamar, Suite 1600
Houston, Texas 77002
Phone: 713-650-8100
Fax: 713-650-8141

VERIFICATION

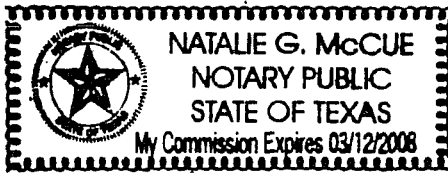
STATE OF TEXAS §
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COUNTY OF HARRIS §

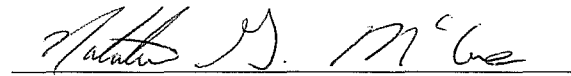
BEFORE ME, the undersigned authority, on this day personally appeared Jeff Ferguson, Chief Operating Officer of Superior Renewable Energy LLC, on behalf of Superior Renewable Energy LLC and, as Superior Renewable Energy LLC is the sole member of Java LLC, Java LLC, who being first duly sworn by me upon his oath deposed and said that he has read the foregoing Complaint and that the facts contained therein are within his personal knowledge and are true and correct, except where statements state they are based on information obtained from other persons.



Jeff Ferguson

SUBSCRIBED AND SWORN TO BEFORE ME the undersigned authority on this 10 day of May, 2004.





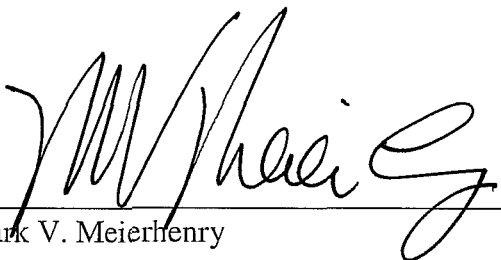
Notary Public
In and for the State of Texas

Commission Expires: 3/12/08

CERTIFICATE OF SERVICE

This is to certify that on May ~~12th~~ 2004, a copy of this document was forwarded to the Respondent Montana Dakota Utilities Co. at the following address by United States certified mail, return receipt requested, in accordance with South Dakota Codified Law:

Montana Dakota Utilities Co.
Attn: Cynthia J. Norland
Acting General Counsel and Secretary
400 North Fourth Street
Bismarck, North Dakota 58501



Mark V. Meierhenry

Exhibit "A" Java Prospect, South Dakota



Superior Renewable Energy LLC

Exhibit "B"



Superior Renewable Energy LLC

Delivered via Federal Express

April 14, 2004

Magalie Roman Sales, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

FILED
OFFICE OF THE
SECRETARY
2004 APR 15 A 10:15
FEDERAL ENERGY
REGULATORY COMMISSION

Subject: Notice of Self-Certification as a Qualifying Facility
Java LLC, a Delaware company

QF04-104-000

Dear Secretary Sales:

Pursuant to 18 C.F.R. § 292.207(a)(1) of the Federal Energy Regulatory Commission's ("FERC") regulations, enclosed please find an original and fourteen (14) copies of a "Notice of Self-Certification of Qualifying Facility Status for Small Power Production Facility" on behalf of Java LLC, ("Applicant"). In accordance with FERC regulations, Java, LLC has served copies of this filing to the electric utilities with which it expects to be interconnected and the state regulatory authority.

Please assign a Qualifying Facility docket number and return one copy of this filing to the undersigned marked to indicate the time and date of the filing in your office. Thank you for your assistance in this matter. If you have any questions please do not hesitate to contact me.

Respectfully,

Java LLC, a Delaware limited liability company
By: Superior Renewable Energy LLC,
Its Manager

By: 
Name: Jeff Ferguson

cc: Montana Dakota Utilities Co.
Attn: Andrea Stromberg
Vice President of Electric Supply
400 North Fourth Street
Bismarck, North Dakota 58501

South Dakota Public Utilities Commission
Capitol Building, 1st floor
500 East Capitol Avenue
Pierre, SD 57501-5070

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Java LLC

Docket No. QF _____

**NOTICE OF SELF-CERTIFICATION AS A QUALIFYING SMALL POWER
PRODUCTION FACILITY**

FORM 556

Pursuant to 18 C.F.R. Section 292.207 (2003) of the Federal Energy Regulatory Commission ("FERC") regulations, Java LLC (the "Applicant"), hereby submits this Notice of Self-Certification of Qualifying Small Power Production Facility to certify its proposed wind generating facility ("Facility") as a qualifying small power production facility under the Public Utility Regulatory Policies Act of 1978, as amended. The Facility has not previously been certified with FERC.

PART A: GENERAL APPLICANT INFORMATION

1a. Full Name:

Java LLC

1b. Full Address:

1600 Smith St., Suite 4240
Houston, TX 77002


1c. Ownership of the Facility:

The facility will be owned and operated by Java LLC ("Java"), a Delaware limited liability company, wholly owned by Superior Renewable Energy LLC ("Superior"), a Delaware limited liability company. Neither Superior nor Java have any ownership interest held, directly or indirectly, by any electric utility or electric utility holding company, or by any person engaged in the generation or sale of electric power, other than from QF's or exempt wholesale generators ("EWG's), or by any entity or person that has any ownership or operating interests in any facilities used for the generation of electric power, other than QF's or EWG's. Furthermore, neither Superior nor Java have any ownership or operating interests in, directly or indirectly, any electric utility or electric utility holding company, or in any entity engaged in the generation or sale of electric

power, other than from QF's or EWG's, or in any entity that has any ownership or operating interests in any facilities used for the generation of electric power, other than QF's and EWG's. In addition, there is no stream of benefits from the Facility that will be received by an electric utility or an electric utility holding company over the life of the Facility.

Accordingly, neither Java nor Superior is primarily engaged in the generation or sale of electric energy within the meaning of 18 C.F.R. Section 292.206 (2003). No electric utility, electric utility holding company, or any combination thereof, within the meaning of 18 C.F.R. Section 292.202(n) (2003) owns more than fifty per cent of the proposed Facility.

1d. Signature of authorized individual evidencing accuracy and authenticity of information provided by applicant:


 Name: Jeff Ferguson
 Chief Operating Officer
 Superior Renewable Energy, LLC,
 Manager of Java LLC

2. Communication:

Correspondence concerning this Application should be addressed to the following persons:

Name: Jeff Ferguson
 Telephone number: 713-571-8900
 Mailing Address: 1600 Smith St., Suite 4240
 Houston, TX 77002

3a. Facility Location:

State: South Dakota
 County: Walworth County
 City or town: Java
 Street Address: N/A

3b. Utility:

The Facility will interconnect with Montana Dakota Utilities ("MDU"), sell energy and capacity to MDU, and receive supplementary power, backup power, maintenance power and/or interruptible power from MDU.

4a. Description of Principal Facility Components:

The Facility is a wind-powered generation facility consisting of multiple wind turbine generators for a gross nameplate capacity not to exceed 51 MW. The Facility will initially consist of 17 wind turbine generators each having a capacity of 1.50 megawatts ("MW"). The Facility's turbines will be mounted on towers no more than 80 meters high and spaced at least 800 feet apart.

A substation will be either installed on the site or at the Interconnection Point with MDU. The substation transformer will step up the voltage from the collection system level at 34.5 kV to 115 kV.

4b. Power Production Capacity:

The maximum gross nameplate capacity of the Facility will not exceed 51 MW and the maximum net capacity of the Facility will not exceed 51 MW at the Interconnection Point.

4c. Installation and operation dates of the Facility:

It is expected that installation of the equipment comprising the Facility will commence on or about July 2004, production of test electricity will commence on or about October 15, 2004 and commercial operation will commence sometime in December 2004.

4d. Primary Energy Input:

The Facility's primary energy input is wind.

5. Fossil Fuel Energy Input:

No fossil fuel energy will be used by the Facility to generate electricity.

6. Other characteristics:

There are no other particular characteristics that might bear on the qualifying status of the Facility.

PART B: DESCRIPTION OF THE SMALL POWER PRODUCTION FACILITY**7. Fossil Fuel Use:**

No fossil fuel will be used by the Facility; therefore, fossil fuel use will not exceed 25% of the total annual energy input.

8. Adjacent Facilities:

There is not a "non-eligible facility", as defined in Section 3(17)(E) of the Federal Power Act located within one mile of the Facility, whether owned by Applicant, any affiliate or upstream owner of Applicant, or otherwise.

PART C: DESCRIPTION OF THE COGENERATION FACILITY

Not applicable.

EXHIBIT C

EPA, N.D. AIR DEAL ON COAL PLANTS BLASTED AS NATIONAL THREAT BEFORE PAPERS SIGNED

February 19, 2004

In a move with major national implications, North Dakota Gov. Mike Hoeven Friday announced a deal with the U.S. Environmental Protection Agency to resolve a five-year-old air quality dispute involving current and future coal-fired power plants.

Although it will not actually be signed for another two weeks, the agreement was immediately blasted by environmental groups who said it would worsen air quality in the state, reverse 30 years of federal policy, and threaten the air surrounding national parks and other pristine preserves nationwide.

The deal, which refines Prevention of Significant Deterioration standards and air quality measurement issues between federal regulators and the state, is expected to impact both existing facilities and up to 850 MW of new coal-fired capacity.

Hoeven, who said the North Dakota Dept. of Health has worked on the deal since 2001, will sign a Memorandum of Understanding (MOU) with EPA Administrator Michael O. Leavitt in Washington in two weeks.

"What's important to remember is that the [computer] modeling [used in determining pollution levels] will now reflect actual emissions, and we are confident that it will show we are in compliance with EPA regulations," Hoeven said. "That sets the stage for new investments in our energy industry and real progress in our rural communities."

The battle has centered on air quality at the Theodore Roosevelt National Park, the Lostwood National Wildlife area, and other "pristine" parts of the state, which environmental interests contend are being damaged by power plant emissions. Dave Glatt, chief of the North Dakota Health Dept.'s environmental section, said air quality in the North Unit of Theodore Roosevelt National Park has steadily improved since the early 1980s based on actual monitoring data. North Dakota is one of only 16 states in the nation that meet all national ambient air quality standards, he said.

However the Dakota Resource Council, which opposes the deal, said SO₂ emissions in the state have nearly tripled since 1976.

Glatt said North Dakota will use "draft alternative modeling," employing advanced meteorology rather than the current requirement based on only five years of National Weather Service data. The deal also acknowledges that actual air quality monitoring

data is a significant indicator of air quality in Class I areas [such as the parks] and plays a key role in evaluating modeling results.

He said issues surrounding PSD involve measuring changes in Class I area air quality and are not health based.

Hoeven said he and Leavitt finalized the agreement the weekend of the 7th, and will sign formal documents in two weeks. The Washington, DC-based Clean Air Trust immediately denounced the deal as a "hazy Friday the 13th precedent" by the Bush Administration that reverses 30 years of case law upheld by the U.S. Supreme Court.

"EPA has opposed this for five years," said Frank O'Donnell, executive director of the trust co-founded by the late U.S. Senator Edmund Muskie. "It is a change that will reverberate from coast to coast." He said the deal guts Clean Air Act provisions "designed to keep national parks and other treasured lands from being shrouded by smog and soot," and accused the Hoeven administration of consistently siding "with energy producers against clean air protections."

An MDU spokesman expressed hope that the deal could help move forward two projects it is studying, a plant of up to 250 MW MDU would build in western North Dakota and a project involving a coalition led by the Bismarck-based utility that would involve a 600-MW coal-fired plant alongside up to 100-MW of wind turbines.

"We haven't seen the final agreement," said the spokesman, who attended the governor's press conference. "We are hopeful that should we decide to go ahead, this would help alleviate some of the permitting issues."

POWER - 02/19/2004

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