

Kolbo, Delaine

From: David A. Gerdes [DAG@MAGT.COM]
Sent: Wednesday, October 27, 2004 11:17 AM
To: Karen.Cremer@state.sd.us; Delaine.Kolbo@state.sd.us
Cc: bmoody@wbtlp.com
Subject: RE: Order to Compel; MDU; Superior Complaint; Our file; 0069

Karen, to shorten this up, I am sending this to Brad Moody. I don't think "the parties" need the order, Superior needs the order. It is Superior's motion. While we are cooperating to the extent that we are not actively opposing the order, we cannot have an order look like we are advocating the entry of the order, which is the connotation of "parties must have."

While it was apparently removed somewhere along the line, my suggestion was to have "Superior" in the place of "MDU." If that is unacceptable to Brad, how about this construction for the entire sentence: "In order for MDU to respond to Superior's interrogatories Nos. 23 c-h and 28c without being in breach of this confidentiality agreement, a Commission order to compel production from MDU is necessary."

Dave Gerdes; dag@magt.com
May, Adam, Gerdes & Thompson
PO Box 160; 503 South Pierre Street
Pierre, SD 57501-0160
605/224-8803; fax 605/224-6289

-----Original Message-----

From: Karen.Cremer@state.sd.us [mailto:Karen.Cremer@state.sd.us]
Sent: Wednesday, October 27, 2004 8:07 AM
To: Delaine.Kolbo@state.sd.us; David A. Gerdes
Subject: FW: Order to Compel; MDU; Superior Complaint; Our file; 0069

Delaine-will you make this latest change?

Dave-any problem with Moody's addition?

-----Original Message-----

From: Brad Moody [mailto:Bmoody@wattbeckworth.com]
Sent: Tuesday, October 26, 2004 4:27 PM
To: Karen.Cremer@state.sd.us
Cc: Mark Meierhenry (E-mail); Linda L. Walsh (E-mail)
Subject: RE: Order to Compel; MDU; Superior Complaint; Our file; 0069

Thanks, Karen. My suggested changes are in red. I agree with Mr. Gerdes that it is Superior's motion but I think that the order should make it clear that the motion to compel arose because of MDU's problem with the confidentiality agreement.

Brad

-----Original Message-----

From: Karen.Cremer@state.sd.us [mailto:Karen.Cremer@state.sd.us]
Sent: Tuesday, October 26, 2004 4:17 PM
To: Brad Moody
Subject: FW: Order to Compel; MDU; Superior Complaint; Our file; 0069

Dave's corrections are in blue.

Subject: RE: Order to Compel; MDU; Superior Complaint; Our file; 0069

Karen, the order should not sound like Montana-Dakota is advocating granting of the order. It is Superior's motion and they have asked for the relief. I would recommend the language set forth below.

Subject: Order to Compel

Here is a draft of the Order to Compel. Feel free to make whatever changes are needed. Please reply to all parties so that everyone gets a chance to see the changes. Call if you have any questions.

**IN THE MATTER OF THE FILING BY SUPERIOR RENEWABLE ENERGY LLC
ET AL. AGAINST MONTANA-DAKOTA UTILITIES CO. REGARDING THE
JAVA WIND PROJECT)**

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ORDER GRANTING MOTION TO COMPEL

EL04-016

On May 12, 2004, Superior Renewable Energy LLC (Superior) and its wholly owned subsidiary, Java LLC, filed a petition requesting the Commission to settle a dispute regarding the long term purchase price of electricity generated from a Qualified Facility pursuant to the Public Utility Regulatory Policy Act of 1978.

On May 13, 2004, the Commission electronically transmitted notice of the filing and the intervention deadline of May 28, 2004, to interested individuals and entities. On May 27, 2004, the Commission received a Petition to Intervene from Montana-Dakota Utilities Co. (MDU). At a regularly scheduled meeting of June 8, 2004, the Commission granted intervention to MDU. On June 15, 2004, the Commission received a Petition to Intervene Out of Time from MidAmerican Energy Company (MidAmerican), on June 17, 2004, the Commission received a late filed Petition to Intervene from NorthWestern Corporation (NorthWestern), and on June 18, 2004, the Commission received a late filed Petition to Intervene from Black Hills Power, Inc. (BHP). At a regularly scheduled meeting of June 22, 2004, the Commission granted intervention to MidAmerican, NorthWestern and BHP. On July 16, 2004, the Commission received a late filed Petition to Intervene from Northern States Power Company d/b/a Xcel Energy (Xcel). At a regularly scheduled meeting of August 17, 2004, the Commission granted intervention to Xcel. On September 1, 2004, the Commission received a Motion for Notice and Order and proposed Notice and Order from Superior. On September 29, 2004, the Commission received a Scheduling Proposal from MDU. On October 4, 2004, the Commission received an Answer from MDU. On October 6, 2004, the Commission received a Motion to Compel and proposed Order on Motion to Compel from Superior. On October 12, 2004, the Commission received an Objection to Proposed Filing Fee Assessment from MDU.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-34A and ARSD 20:10:01:15.05.

At its regularly scheduled meeting of October 12, 2004, the Commission considered the Motion to Compel. Representatives of Superior and MDU explained that MDU has a confidentiality agreement with other parties involving a North Dakota Vision 21 Feasibility Study, which is the subject of Superior's data requests. ~~that was conducted in North Dakota.~~ In order for MDU to respond to Superior's interrogatories Nos. 23 c-h and 28c without being in breach of this confidentiality agreement, ~~MDU~~ the parties must

have ~~an~~ the Commission's Order to Compel production from MDU ~~from the Commission~~.
The Commission voted to grant the Motion to Compel.

Mr. Smith, Commission counsel, requested that the Commission assess a filing fee pursuant to SDCL 49-1A-11. After some discussion on the assessment of a filing fee, this matter was deferred

It is therefore

ORDERED, that the Motion to Compel shall be granted.

Dated at Pierre, South Dakota, this _____ day of October, 2004.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: _____

Date: _____

(OFFICIAL SEAL)

**BY ORDER OF THE
COMMISSION:**

ROBERT K. SAHR, Chairman

GARY HANSON, Commissioner

JAMES A. BURG, Commissioner