

LAW OFFICES
MAY, ADAM, GERDES & THOMPSON LLP
503 SOUTH PIERRE STREET
P.O. BOX 160
PIERRE, SOUTH DAKOTA 57501-0160

THOMAS C. ADAM
DAVID A. GERDES
CHARLES M. THOMPSON
ROBERT B. ANDERSON
BRENT A. WILBUR
TIMOTHY M. ENGEL
MICHAEL F. SHAW
NEIL FULTON
BRETT KOENECKE

SINCE 1881
www.magt.com

September 29, 2004

OF COUNSEL
WARREN W. MAY
GLENN W. MARTENS 1881-1963
KARL GOLDSMITH 1885-1966

TELEPHONE
605 224-8803

TELECOPIER
605 224-6289

E-MAIL
dag@magt.com

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SEP 29 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Pam Bonrud, Executive Secretary
Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

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

Docket EL04-016
Our file: 0069

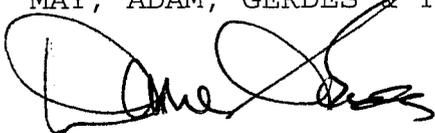
Dear Pam:

Enclosed are original and ten copies of Montana-Dakota's Scheduling
Proposal in the above-entitled docket, which please file.

With a copy of this letter, I am serving copies of the enclosure
upon the service list. Thank you for your assistance.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP



DAVID A. GERDES

DAG:mw

Enclosures

cc/enc: Service List

Don Ball

Douglas Schulz

Phil Lookadoo

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

RECEIVED

SEP 29 2004

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

IN THE MATTER OF THE FILING BY) EL04-016
SUPERIOR RENEWABLE ENERGY LLC)
ET AL AGAINST MONTANA-DAKOTA) **MONTANA-DAKOTA'S**
UTILITIES CO. REGARDING THE) **SCHEDULING PROPOSAL**
JAVA WIND PROJECT)

Montana-Dakota Utilities Co. ("Montana-Dakota"), provides the following comments to the Commission relevant to Superior's now pending motion for a scheduling order, as follows:

1. This proceeding is potentially precedent setting in the State of South Dakota, being the first proceeding to establish the procedure and methodology for the determination of avoided energy costs and avoided capacity costs relevant to the request for a qualified facility for a long-term electric power purchase agreement for electricity produced and sold pursuant to PURPA. The last involvement of this Commission in the subject matter of this proceeding would appear to be the entry by the Commission of its decision and order in Docket F-3365 dated December 14, 1982. Since that time, PURPA rules have changed, and Section 292.403(a), which underpinned the order in F-3365 no longer exists in FERC's current regulations. Moreover, in 1992 FERC eliminated the obligation of electric utilities, except for a handful of California utilities, to make the biennial information filing under Section 133 of PURPA. See Order No. 545, 61 FERC ¶ 61, 207 (November 16, 1999). Thus, the Commission will largely be dealing with a new subject matter in this proceeding.

2. Montana-Dakota does recognize that it is obligated to file certain avoided cost information pursuant to Section 292.302. Discovery is currently underway during which Montana-Dakota has agreed to provide the avoided cost data required by the applicable rules. This is, however, of necessity a complicated area of the law.

3. Discovery is currently underway. Superior has served data requests on Montana-Dakota, which it has answered subject to certain objections dealing with relevancy and the confidentiality

of certain information. Montana-Dakota has served data requests upon Superior, which have also been answered subject to certain objections involving confidentiality. The parties are in the process of working out acceptable confidentiality agreements. It may very well be that the confidentiality agreements will have been completed by the date of the Commission's hearing.

4. In any event, it is anticipated that further discovery will be required subsequent to the exchange of confidential information. Commission staff has just commenced its discovery, having served data requests upon both Montana-Dakota and Superior on September 21, 2004.

5. Because discovery has not yet been concluded, it is difficult to determine the extent to which expert witnesses will be required by the parties. Montana-Dakota believes that neither party has secured or identified expert witnesses to testify in this proceeding. Montana-Dakota's latest information indicates that Commission staff has made no such determination at this time.

6. Based upon the foregoing and the known complexities of the subject matter of this action, Montana-Dakota suggests the following procedural schedule:

December 20, discovery deadline

January 20, Superior prefiled testimony

February 22, MDU and Staff prefiled testimony

March 10, Superior prefiled testimony

March 28, prehearing conference and motions hearing

April 4, hearing, five days in duration.

7. It has been suggested that the hearing should take place during the legislative session. Even if the Commission had time to do so, it is submitted that this is a poor time to have a hearing on such a complex subject. The focus of both Commission and Staff is divided during the legislative session. Demands for testimony and monitoring of legislation would interfere with the hearing process. Acquisition of facilities for a hearing would be difficult; lodging for witnesses and participants at the hearing would be difficult to secure.

WHEREFORE Montana-Dakota prays that the Commission adopt the foregoing procedural schedule.

Dated this 29TH day of September, 2004.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 
DAVID A. GERDES
Attorneys for Montana-Dakota
P.O. Box 160
Pierre, South Dakota 57501-0160
Telephone: (605)224-8803
Telefax: (605)224-6289

CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 29TH day of September, 2004, 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:

MICHELE FARRIS/KEITH SENGER
STAFF ANALYSTS
PUBLIC UTILITIES COMMISSION
500 EAST CAPITOL
PIERRE, SD 57501

KAREN E. CREMER
STAFF ATTORNEY
PUBLIC UTILITIES COMMISSION
500 EAST CAPITOL
PIERRE, SD 57501

MARK V. MEIERHENRY
ATTORNEY AT LAW
DANFORTH, MEIERHENRY & MEIERHENRY, L.L.P.
315 SOUTH PHILLIPS AVENUE
SIOUX FALLS, SD 57104-6318

SUZAN M STEWART
SENIOR MANAGING ATTORNEY
MIDAMERICAN ENERGY COMPANY
PO BOX 778
SIOUX CITY IA 51102-0778

ALAN D DIETRICH
VICE PRESIDENT - LEGAL ADMINISTRATION
AND CORPORATE SECRETARY
NORTHWESTERN CORPORATION
125 SOUTH DAKOTA AVENUE SUITE 1100
SIOUX FALLS SD 57104

STEVEN J HELMERS
SENIOR VICE PRESIDENT AND GENERAL COUNSEL
BLACK HILLS CORPORATION
PO Box 1400
RAPID CITY SD 57709-1400

CHRISTOPHER B CLARK
ASSISTANT GENERAL COUNSEL
NORTHERN STATES POWER COMPANY
D/B/A XCEL ENERGY
800 NICOLLET MALL SUITE 3000
MINNEAPOLIS MN 55402

M. BRADFORD MOODY
ATTORNEY AT LAW
WATT BECKWORTH THOMPSON & HENNEMAN LLP
1010 LAMAR SUITE 1600
HOUSTON TX 77002

LINDA L. WALSH
ATTORNEY AT LAW
HUNTON & WILLIAMS LLP
1900 K STREET NW
WASHINGTON DC 20006


David A. Gerdes