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October 3, 2005

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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

Dear Counsel:

Enclosed each of you will find a copy of Commission Staff's Response to MDU's Deferral Motion in the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

Karen E. Cremer
Staff Attorney

KEC:dk
Enc.

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

IN THE MATTER OF THE FILING BY)	COMMISSION STAFF'S
SUPERIOR RENEWABLE ENERGY LLC ET)	RESPONSE TO MDU'S
AL. AGAINST MONTANA-DAKOTA UTILITIES)	DEFERRAL MOTION
CO. REGARDING THE JAVA WIND PROJECT)	EL04-016

On May 12, 2004, Superior filed a complaint against MDU. A procedural order was issued on October 26, 2004, setting March 21-25, 2005, as hearing dates. On March 18, 2005, the parties requested a continuance which was granted. The hearing was then scheduled for August 2-5, 2005. On July 21, 2005, Superior requested another continuance. On September 16, 2005, Montana-Dakota Utilities Co. (MDU) filed its deferral motion. MDU requested that the Commission defer further proceedings in this docket until the Federal Energy Regulatory Commission (FERC) decides the issues pending before it in a petition for declaratory order, Docket No. EL05-143-000, before it concerning the obligation of Alliant Energy Corporate Services, Inc. to enter into a new contract or obligation to purchase energy from a Qualified Facility (QF) in view of the newly-enacted § 210 (m) of the Public Utility Regulatory Policies Act of 1978, as amended (PURPA), 16 U.S.C. § 824a-3(m), enacted as part of the Energy Policy Act of 2005 (EP Act 2005) and signed into law on August 8, 2005. Superior Renewable Energy LLC (Superior) filed its Response to Deferral Motion and Request for Affirmative Relief on September 29, 2005.

The issue before the Commission is whether there exists an obligation by MDU to purchase electric energy from a qualified facility in light of the passage of the Energy Policy Act of 2005.

There are two subparagraphs of the EP Act 2005 that address this issue, subparagraph 1 and 6. Subparagraph 1 of EP Act 2005 amended Section 210 of PURPA states as follows:

(1) OBLIGATION TO PURCHASE. -- After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that the qualifying cogeneration facility or qualifying small power production facility has nondiscriminatory access to-- (A) (i) independently administered, auctionbased day ahead and real time wholesale markets for the sale of electric energy; and (ii) wholesale markets for long-term sales of capacity and electric energy; or (B) (i) transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and (ii) competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, shortterm and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity to sell exists, the Commission shall consider, among other factors, evidence of transactions within the relevant market; or (C) wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in subparagraphs (A) and (B).

Subparagraph 6, which deals with existing rights and remedies, provides:

(6) NO EFFECT ON EXISTING RIGHTS AND REMEDIES. -- Nothing in this subsection affects the rights or remedies of any party under any contract or obligation, in effect or pending approval before the appropriate State regulatory authority or non-regulated electric

utility on the date of enactment of this subsection, to purchase electric energy or capacity from or to sell electric energy or capacity to a qualifying cogeneration facility or qualifying small power production facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

In this docket MDU is not faced with a new obligation, its obligation already existed. Superior's complaint in this matter was filed in May 2004 in accordance with PURPA and the South Dakota Public Utilities Commission's Order F-3365. MDU had received a demand from Superior, a self-certified QF, to purchase electricity at the required avoided cost price. The obligation to purchase electric energy or capacity from Superior existed before the August 8, 2005, passage of the Energy Act and that obligation remains today. Commission Staff would support that an obligation arose at that time.

Commission Staff would recommend that MDU's Deferral Motion be denied, that the Commission find that MDU has an existing obligation, and that the Commission deny Superior's request for an order to show cause.

Dated at Pierre, South Dakota, this 3rd day of October, 2005.



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CERTIFICATE OF SERVICE

I hereby certify that copies of Commission Staff's Response to MDU's Deferral Motion were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the addresses shown below on this the 3rd day of October, 2005.

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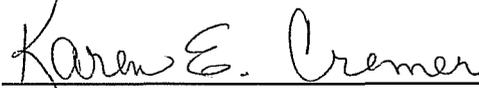
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