

Bob Sahr, Chair  
Dustin Johnson, Vice-Chair  
Gary Hanson, Commissioner

## SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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July 14, 2006

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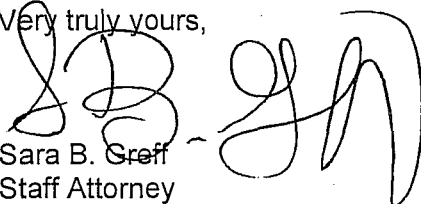
Ms. Margo D. Northrup  
Attorney at Law  
Riter, Rogers, Wattier & Brown, LLP  
P. O. Box 280  
Pierre, SD 57501-0280

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  
Docket EL06-011

Dear Counsel:

Enclosed each of you will find a copy of Staff's Response to FEM's Motion for Summary Disposition with reference to the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

  
Sara B. Greff  
Staff Attorney

Enc.

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

<b>IN THE MATTER OF THE PETITION OF )</b>	<b>STAFF'S RESPONSE TO</b>
<b>MONTANA-DAKOTA UTILITIES CO. FOR )</b>	<b>FEM'S MOTION FOR</b>
<b>APPROVAL TO PROVIDE ELECTRICAL )</b>	<b>SUMMARY DISPOSITION</b>
<b>SERVICE FOR THE NEW NORTH CENTRAL )</b>	
<b>FARMERS ELEVATOR TO BE LOCATED )</b>	<b>EL06-011</b>
<b>NEAR BOWDLE, SOUTH DAKOTA )</b>	

COMES NOW Commission Staff, by and through one of its attorneys, and hereby responds to the Motion for Summary Disposition filed by FEM Electric Association, Inc. (FEM). FEM has moved the Commission for dismissal of the petition filed by Montana-Dakota Utilities Co. (MDU) by granting its Motion for Summary Disposition.

**PROCEDURAL BACKGROUND & FACTS**

On April 12, 2006, MDU filed a petition for large load electrical service. Petitions for intervention were then filed by North Central Farmers Elevator (North Central) and FEM on May 1, 2006. The South Dakota Rural Electric Association (SDREA) also filed a petition to intervene on May, 15, 2006. The Commission, at its May 23, 2006 Commission meeting, granted intervention to all three parties.

On June 22, 2006, FEM filed its Motion for Summary Disposition, along with a supporting Memorandum. FEM with the support of North Central and SDREA is asking the Commission to dismiss MDU's petition for large load electrical service and grant its motion for summary disposition.

North Central is in the process of constructing a new grain handling, multi-unit train loading facility near Bowdle, South Dakota. North Central's new elevator is located in FEM's electrical service territory. FEM has provided service to the area and is currently providing temporary electrical service during construction of the new elevator.

MDU states that the new elevator is a new customer in a new location and will have a contracted minimum demand of 2,000 kilowatts. These requirements withstanding, MDU is

asking the Commission in its petition to serve the new elevator based on SDCL 49-34A-56. FEM disputes MDU's claim that North Central's new elevator will have a minimum demand of electric service of 2,000 kilowatts and states that the demand of electric service will be less than 2,000 kilowatts.

### **STANDARD OF REVIEW**

SDCL 1-26-18, set forth below, addresses the factors the Commission shall consider when determining whether or not to grant FEM's motion for summary disposition.

**1-26-18. Rights of parties at hearings on contested cases--Summary disposition of certain cases.** Opportunity shall be afforded all parties to respond and present evidence on issues of fact and argument on issues of law or policy. However, each agency, upon the motion of any party, may dispose of any defense or claim:

(1) If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and a party is entitled to a judgment as a matter of law; or

(2) At the close of the evidence offered by the proponent of the defense or claim if it determines that the evidence offered by the proponent of the defense or claim is legally insufficient to sustain the defense or claim.

A party to a contested case proceeding may appear in person or by counsel, or both, may be present during the giving of all evidence, may have reasonable opportunity to inspect all documentary evidence, may examine and cross-examine witnesses, may present evidence in support of the party's interest, and may have subpoenas issued to compel attendance of witnesses and production of evidence in the party's behalf. (emphasis added).

The motion for summary disposition shall be granted if FEM has demonstrated through pleadings, answers to interrogatories, and admissions on file, together with affidavits, to show that there is an absence of any genuine issue of material fact and that as the moving party it is entitled to summary disposition as a matter of law. See SDCL 1-26-18.

### **ANALYSIS**

FEM raises two issues in its Motion for Summary Disposition. They are:

- 1) Whether the North Central Farmers Elevator Project meets the two thousand kilowatts requirement found in SDCL 49-34A-56.
- 2) Whether MDU has failed to state a claim upon which relief can be granted.

## Two Thousand Kilowatt Requirement

In its Motion for Summary Disposition, FEM claims that the contracted minimum demand for the North Central Elevator is less than two thousand kilowatts. Conversely, in its petition to the Commission, MDU states that the North Central facility will meet the minimum demand of two thousand kilowatts. There seems to be a dispute in the facts regarding this requirement.

South Dakota law allows an electric utility the exclusive right to provide electric service to the customers located within its service territory. SDCL 49-34A-42. There is an exception to this law for new large load customers. SDCL 49-34A-56. The title of the statute is "Large new customers not required to take service from assigned utility – Notice and hearing by commission – Factors considered." *Id.* The statute reads:

Large new customers not required to take service from assigned utility--Notice and hearing by commission--Factors considered. Notwithstanding the establishment of assigned service areas for electric utilities provided for in §§ 49-34A-43 and 49-34A-44, new customers at new locations which develop after March 21, 1975, located outside municipalities as the boundaries thereof existed on March 21, 1975, and who require electric service with a contracted minimum demand of two thousand kilowatts or more shall not be obligated to take electric service from the electric utility having the assigned service area where the customer is located if, after notice and hearing, the Public Utilities Commission so determines after consideration of the following factors:

- (1) The electric service requirements of the load to be served;
- (2) The availability of an adequate power supply;
- (3) The development or improvement of the electric system of the utility seeking to provide the electric service, including the economic factors relating thereto;
- (4) The proximity of adequate facilities from which electric service of the type required may be delivered;
- (5) The preference of the customer;
- (6) Any and all pertinent factors affecting the ability of the utility to furnish adequate electric service to fulfill customers' requirements.

Id.

In support of its contention that North Central does not meet the minimum electrical load statute as set forth in the above statute, FEM in its Petition of Intervention attached an affidavit of Keith Hainy, general manager of North Central. In his affidavit Mr. Hainy states that:

It is my opinion, based upon North Central's analysis and previous experience, that the Bowdle Facility will not require a minimum demand of 2,000 kilowatts. I base this opinion on the electric utility requirements of the Craven Elevator. In 2005, Craven Elevator loaded more BNSF shuttle trains than any other handling facility in South Dakota. Craven Elevator, it uses less than 1,500 kilowatts of power. The Bowdle Facility is not anticipated to handle the volume of grain that the Craven Elevator handles. Thus, I do not believe that the Bowdle Facility will have an electrical demand of more than 2,000 kilowatts.

See Attached Exhibit 1, Affidavit of Keith Hainy. FEM also provided a copy of an electrical service agreement between FEM and North Central as a response to Staff's initial data request. See Attached Exhibit 2, Electrical Service Agreement. The service agreement does not specify a contracted minimum. *Id.* Staff would also point out that the Electrical Service Agreement is not fully executed as well. *Id.*

On the other hand, MDU claims the contracted load will meet the minimum demand of two thousand kilowatts. MDU supports this contention in its response to Staff's Initial Data Request, Request No. 1. See Attached Exhibit 3, MDU's Response to Staff's Initial Data Request.

It is Staff's position as to the issue of whether or not the North Central Elevator meets the minimum electrical load requirement as set forth in SDCL 49-34A-56 is a material fact still in dispute. The petition, along with the affidavit filed and the answers to Staff's data request leave a genuine issue as to a material fact in this matter. Therefore, as to the minimum electrical load requirement it is Staff's opinion that since a material fact is in dispute it is not proper for the Commission to grant summary judgment.

### **MDU Failed to State a Claim**

In its Motion for Summary Disposition, FEM also argues that MDU lacks standing to bring a claim under the statute SDCL 49-34A-56. FEM claims that since North Central is in FEM's

territory and since North Central chooses to be served by FEM, MDU should not be allowed to bring this current action.

The South Dakota legislature in 1975 took it upon itself to enact the "South Dakota Territorial Integrity Act" (Act), SDCL 49-34A. The goal behind the passage of the Act was to eliminate the duplication and wasteful spending in all areas of the electric utility industry. *In the Matter of Northwestern Public Service Company*, 1997 SD 35, 560 NW2d 925 citing *In the Matter of Establishing Certain Territorial Elec. Boundaries (Mitchell Area)*, 281 NW2d 65, 70 (SD 1979).

As a means to accomplish its goal, the legislature established exclusive territories or "assigned service areas," and assigned each utility to an area. *Northwestern*, 560 NW2d at 927. Each utility was given the exclusive right to "provide electric service at retail to each and every present and future customer in its assigned service area." *Id.* citing SDCL 49-34-42. Statutorily there exist only certain provisions where electrical consumers may have their provider changed. Those provisions are, SDCL 49-34A-38 through SDCL 49-34A-59. MDU, through its petition, is asking the Commission to consider the large load customer exception in SDCL 49-34A-56 and let it serve North Central.

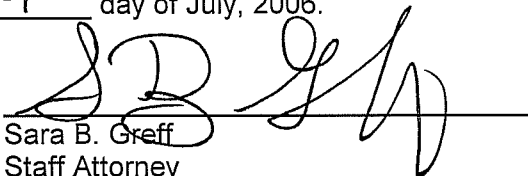
It is FEM's contention that MDU lacks standing to bring this petition under SDCL 49-34A-56. "In general, standing is established if a party shows 'that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant.'" *H & W Contracting, LLC v. City of Watertown*, 2001 SD 107, ¶ 9, 633 NW2d 167, 171 citing *Agar School Dist. No. 58-1 v. McGee*, 527 NW2d 282, 284. Therefore, for MDU to have standing it must show some actual injury or threatened injury caused by illegal conduct of FEM.

In its opinion, Staff would submit that MDU does not have standing to bring the current action. MDU has not shown it has suffered any actual or threatened injury from FEM's actions. Nor has MDU shown that FEM's actions are in fact unlawful.

**CONCLUSION**

Wherefore, Staff respectfully submits that the new North Central Elevator should remain a customer of FEM.

Dated at Pierre, South Dakota, this 14 day of July, 2006.

  
\_\_\_\_\_

Sara B. Greff  
Staff Attorney  
South Dakota Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501  
(605)773-3201

**CERTIFICATE OF SERVICE**

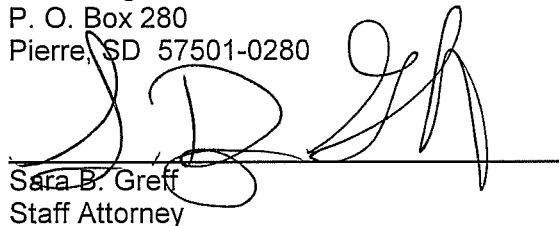
I hereby certify that copies of Staff's Response to FEM's Motion for Summary Disposition were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the addresses shown below on this the 14 day of July, 2006.

Mr. David A. Gerdes  
Attorney at Law  
May, Adam, Gerdes & Thompson LLP  
P. O. Box 160  
Pierre, SD 57501-0160

Mr. Carlyle E. Richards  
Attorney at Law  
Richards & Oliver  
P. O. Box 114  
Aberdeen, SD 57402-0114

Ms. Darla Pollman Rogers  
Attorney at Law  
Riter, Rogers, Wattier & Brown, LLP  
P. O. Box 280  
Pierre, SD 57501-0280

Ms. Margo D. Northrup  
Attorney at Law  
Riter, Rogers, Wattier & Brown, LLP  
P. O. Box 280  
Pierre, SD 57501-0280

  
\_\_\_\_\_

Sara B. Greff  
Staff Attorney

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION  
FOR DESIGNATION OF MONTANA-  
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 NUMBER EL06-011

AFFIDAVIT OF KEITH HAINY

State of South Dakota        )  
  ) ss  
County of Edmunds            )

I, Keith Hainy, having been first duly sworn upon my oath, state as follows:

1. I am the General Manager of North Central Farmers Elevator ("North Central"), which is located in Ipswich, South Dakota. North Central is planning to build a new grain handling facility in Bowdle, South Dakota (the "Facility" or the "Bowdle Facility").

2. The Bowdle Facility is located within the assigned service territory of FEM Electric Association, Inc. ("FEM"). North Central is a current customer of FEM, as is North Central's grain handling plant located in Craven, South Dakota ("Craven Elevator").

3. I have been engaged in ongoing negotiations with FEM for provisioning of electric service to the Bowdle Facility. As current FEM customers, it is North Central's desire to expand its current business relationship with FEM by having FEM provide electric services to the Bowdle Facility.



4. Montana Dakota Utilities Company ("MDU") will provide natural gas to the Bowdle Facility. MDU asked to be allowed to submit a bid for electric service to the Bowdle Facility, which MDU assumed was a large load.

5. I did not take any action on MDU's proposal. Instead, I entered into an agreement for electrical services to the Bowdle Facility with FEM on or about April 13, 2006. In this Electrical Service Agreement, there is not a specified contracted minimum load of over two thousand kilowatts.

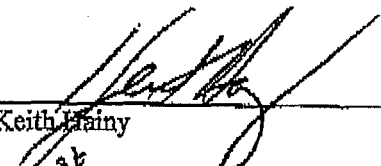
6. It is my opinion, based upon North Central's analysis and previous experience, that the Bowdle Facility will not require a minimum demand of 2,000 kilowatts. I base this opinion on the electric utility requirements of the Craven Elevator. In 2005, Craven Elevator loaded more BNSF shuttle trains than any other handling facility in South Dakota. Craven Elevator, it uses less than 1,500 kilowatts of power. The Bowdle Facility is not anticipated to handle the volume of grain that the Craven Elevator handles. Thus, I do not believe that the Bowdle Facility will have an electrical demand of more than 2,000 kilowatts.

8. In addition to not being a large biddable load under SDCL § 49-34A-56, it is North Central's clear and stated preference for FEM to be the electric service provider of the Bowdle Facility, which is evidenced by the Electric Service Agreement between the parties. Because the Bowdle Facility is within FEM's service territory, no Commission action is necessary, and North Central did not petition the Commission for approval of an alternative electric service provider.

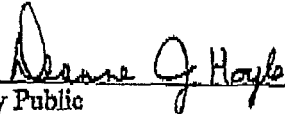
9. Time is of the essence for construction of the electrical sub-station to serve the Bowdle Facility, and it is a great hardship to my company to be involved in unnecessary

litigation improperly initiated by a competing electric service provider. I request that the Commission dismiss the petition of MDU because 1) this load is not over 2,000 kilowatts, and 2) it is North Central's preference to have FEM serve the Bowdle Facility.

DATED this 21<sup>st</sup> day of June, 2006.

  
\_\_\_\_\_  
Keith Hainy

Subscribed and sworn to before me this 21<sup>st</sup> day of June, 2006.

  
\_\_\_\_\_  
Notary Public  
My commission expires: 4-3-2011  
Notary Print Name: Deanne J Hoyle

(SEAL)

## EXHIBIT 2

**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.

\_\_\_\_\_

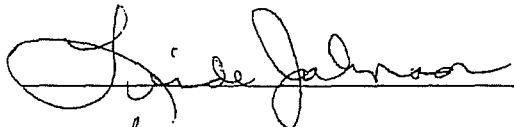
By: \_\_\_\_\_


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**

A H  
Rock

**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 ~~3/4~~**

**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 ~~5/8~~**

**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 -  
Sottd

- 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**

1.99 m

2-190' mds  
20' pcp  
8220' or more

16' x 2



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**

21 MW

2.7 MW

130'wd -  
20' P.R





# **EAST RIVER**

**ELECTRIC POWER COOPERATIVE**

121 Southeast First St.  
Madison, SD 57042

P.O. Box 227  
Telephone (605) 256-4536

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

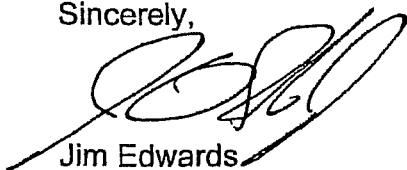
-2-

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,

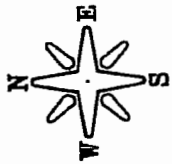


Jim Edwards  
Assistant General Manager Operations

JE/jc

Enc.

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



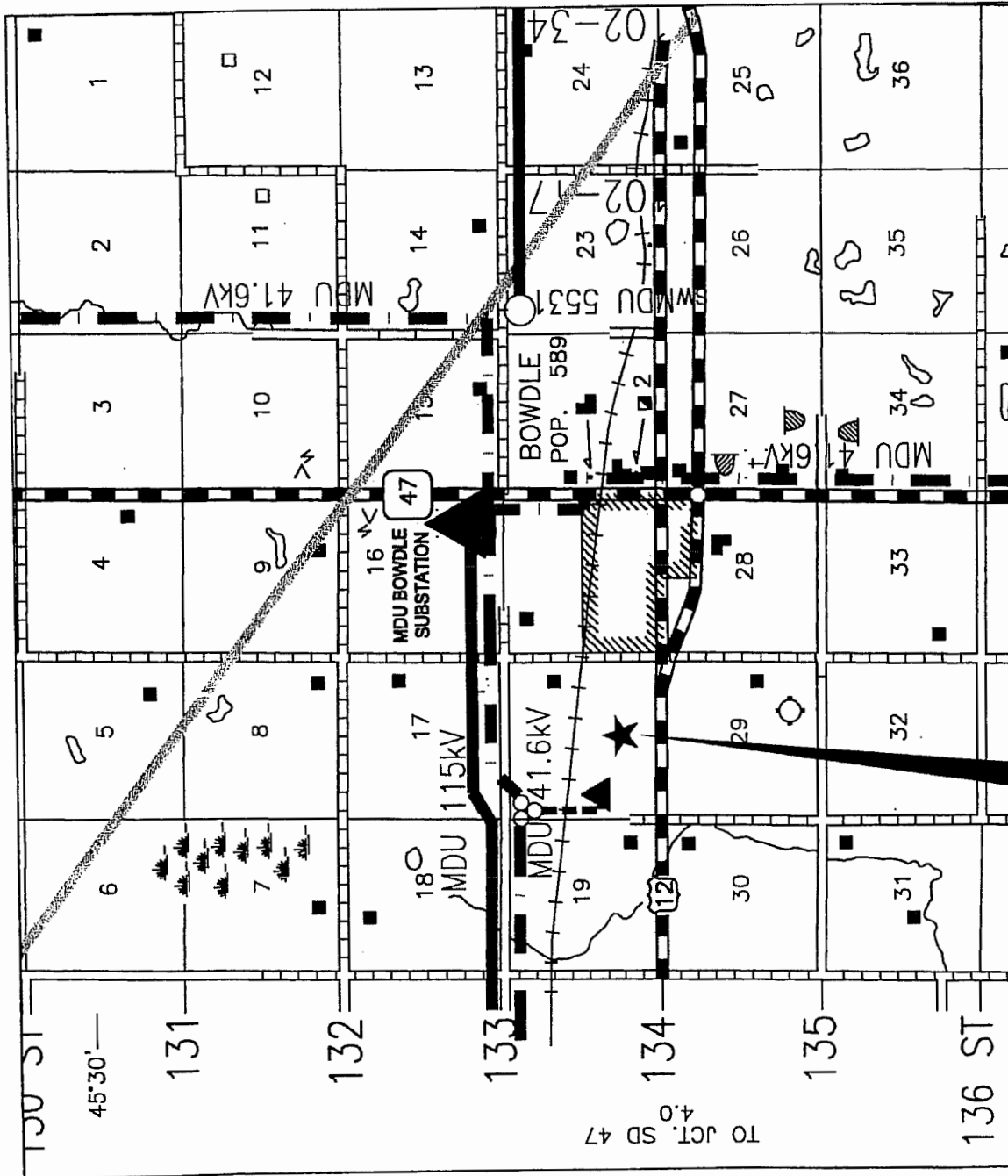
**LEGEND**

- EAST RIVER 11568KV SUBSTATION
- EAST RIVER 6912.47KV SUBSTATION
- NEW EAST RIVER 41.6/12.47KV SUBSTATION
- EXISTING EAST RIVER - 41.6KV 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