

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

IN THE MATTER OF THE FILING BY)	ORDER GRANTING MOTION
SUPERIOR RENEWABLE ENERGY LLC ET AL.)	TO COMPEL AND
AGAINST MONTANA-DAKOTA UTILITIES CO.)	PROTECTIVE ORDER
REGARDING THE JAVA WIND PROJECT)	
)	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 27, 2004, the Commission issued an Order Granting Motion to Compel.

On November 9, 2004, the Commission received a second Motion to Compel from Superior requesting that MDU be ordered to respond fully to Superior's Interrogatory No.1. On November 15, 2004, the Commission received a Motion to Shorten Time for Responses to Superior Discovery Requests and to Extend Discovery Cut Off Date from Superior. On November 17, 2004, the Commission received a Response to Motion to Compel from MDU.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically § 49-34A-26, ARSD 20:10:01, 16 U.S.C. Chapters 12 and 46, particularly §§ 824a-3 and 2601-2645 and 18 C.F.R. Part 292.

At its regularly scheduled meeting of November 19, 2004, the Commission considered the Motion to Compel. The Commission voted to grant the Motion to Compel and to require that all confidential information disclosed pursuant to such order be treated by the recipient as confidential and that the order contain appropriate protective provisions.

It is therefore

ORDERED, that Superior's second Motion to Compel is granted, and MDU shall respond fully and completely to Superior's Interrogatory No. 1 within seven (7) business days following the date of this order; and it is further

ORDERED, that Superior shall treat Confidential Information provided to it by MDU pursuant to this Order as confidential information subject to the Commission's rules regarding confidential information, the terms and conditions of the Confidentiality Agreement between the parties appended as Exhibit A to Superior's Motion to Compel and to the following additional protective provisions:

1. All Confidential Information disclosed by MDU pursuant to this Order shall be treated as confidential information pursuant to ARSD 20:10:01:39 through 20:10:01:44, except that access to and use of such information by Superior for purposes of preparation for the proceedings in this matter and use in the proceedings shall be permitted subject to the provisions of this Protective Order:

2. All information produced by MDU pursuant to this Order shall be provided to the attorney of record for Superior in this proceeding, who shall be responsible (i) for limiting disclosure only to such third party experts and persons within Superior who have a bona fide need to review such information for purposes of preparing for the proceedings in this case ("Authorized Recipients") and (ii) for the use, return and destruction of the disclosed information as provided by this Protective Order. Superior shall limit its Authorized Recipients to the minimum number of persons necessary to analyze the information and prepare for and present its evidence in this proceeding.

3. Documents disclosed by MDU pursuant to this Order for which MDU seeks confidential treatment shall be stamped or sealed as "Confidential" (Confidential Information). Before any disclosure of Confidential Information shall occur to a Superior Authorized Recipient, Superior's attorney of record shall assure himself that the Authorized Recipient to whom the Confidential Information is to be disclosed has read and understands this Protective Order, has agreed to abide by its terms, and understands that unauthorized disclosure or use of the Confidential Information is prohibited.

4. The Commission shall treat Confidential Information produced pursuant to this Order as confidential information subject to ARSD 20:10:01:39 through 20:10:01:44, provided that such confidential information is marked as confidential. The Commission shall conduct all hearings involving Confidential Information in camera with only Commission employees, the parties' attorneys and the Authorized Recipients present during the portion of the hearing in which such information is offered or discussed. Any person other than Commission employees or the Authorized Recipients who desires to have access to confidential information shall comply with the procedures of ARSD 20:10:01:42 and 20:10:01:43.

5. Persons obtaining access to Confidential Information under this Order shall use the information only in the conduct or settlement of this proceeding and any judicial proceeding arising therefrom, and shall not use such information for any purpose unrelated to this proceeding, including unrelated business, governmental or commercial purposes. Persons obtaining access to Confidential Information under the terms of this Order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed in which all Confidential Information is redacted.

6. If a court or another administrative agency subpoenas or orders production of the Confidential Information, Superior shall promptly notify MDU of the pendency of such subpoena or order.

7. Nothing in this Order shall prevent or otherwise restrict Superior's counsel from rendering advice to their client regarding this proceeding and, in the course thereof, making professional analysis and use of the Confidential Information, provided, that in rendering such advice and otherwise communicating with such client, counsel shall not make disclosure of any confidential fact or assertion except to the Authorized Recipients and only in accordance with the procedures set forth in this Protective Order.

8. The provisions of this order shall not terminate at the conclusion of this proceeding.

9. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of the Confidential Information. Parties shall not duplicate any stamped confidential document except working copies and for filing at the Commission under seal.

10. The parties, their Authorized Recipients and their other employees, agents, consultants and representatives shall be subject to a standard of good faith in their disclosure, receipt, custody and use of the Confidential Information.

11. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), Superior's attorney(s) shall return all copies of Confidential Information and all analyses or other compilations which contain any of the Confidential Information in their possession to MDU's attorneys, or destroy all such Confidential Information and certify, under penalty of perjury, that such destruction has occurred. In the case of analyses or compilations containing Confidential Information, all Confidential Information set forth in such document shall be redacted if the document is to be retained and a copy of the redacted version shall be served on the disclosing party(ies) at least ten (10) days before disclosure of the redacted version is made to anyone other than the Authorized Recipients.

Dated at Pierre, South Dakota, this 24th day of November, 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:	<u><i>Delaine Kolbe</i></u>
Date:	<u>11/24/04</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner

