

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

IN THE MATTER OF THE COMPLAINT)	ORDER GRANTING MOTION
FILED BY SUPERIOR RENEWABLE)	FOR RECONSIDERATION,
ENERGY LLC ET AL. AGAINST MONTANA-)	SCHEDULING HEARING
DAKOTA UTILITIES CO. REGARDING THE)	DATES, DIRECTING PRE-
JAVA WIND PROJECT)	HEARING CONFERENCE AND
)	DENYING REQUESTS FOR
)	AFFIRMATIVE RELIEF
)	EL04-016

On May 12, 2004, Superior Renewable Energy LLC and its wholly owned subsidiary, Java LLC, (Superior) filed a complaint (Complaint) 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 its regularly scheduled meeting on 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 its regularly scheduled meeting on 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 its regularly scheduled meeting on 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. On November 24, 2004, the Commission issued an Order Granting Motion to Compel and Protective Order.

By its Second Amended Order for and Notice of Procedural Schedule and Hearing dated January 5, 2005, the hearing in this matter was scheduled to begin on March 21, 2005. In response to the joint motion of the parties at the commencement of the hearing, the Commission voted unanimously to grant the request for continuance, and on March 21, 2005, the Commission issued an Order Continuing Hearing continuing the hearing until the further notice from the Commission. The parties subsequently notified the Commission that they had failed to reach a settlement and requested the hearing in the matter be rescheduled. The Commission determined that the earliest dates on which a four day hearing could be scheduled was August 2-5, 2005. The hearing was to begin on August 2, 2005. On July 21, 2005, the Commission received a Motion for Continuance from Superior. At its regularly scheduled meeting of July 28, 2005, the Commission voted unanimously to grant the Motion for Continuance.

By its Second Order for and Notice of Rescheduled Hearing Following Continuance dated August 18, 2005, the hearing in this matter was scheduled to begin on November 2, 2005. On September 16, 2005, the Commission received a Deferral Motion from MDU. On September 27, 2005, the Commission received a Response to Deferral Motion and a Request for Affirmative Relief from Superior. On September 29, 2005, the Commission received a Motion to Lodge Decision from Superior. On October 3, 2005, the Commission received an Affidavit of Jeff Ferguson on behalf of Superior, Commission Staff's Response to MDU's Deferral Motion, and MDU's Reply to Superior's Comments on the Deferral Motion and Request for Affirmative Relief. At its regularly scheduled meeting of October 4, 2005, the Commission voted unanimously to grant the Deferral Motion and on October 5, 2005, issued its Order Granting Motion for Continuance. The Commission did not rule on Superior's Requests for Affirmative Relief.

On October 7, 2005, the Commission received Superior's Motion for Reconsideration. On October 12, 2005, the Commission received MDU's Reply to Superior's Motion for Reconsideration. On October 14, 2005, the Commission received Superior's Supplemental Memorandum in Support of Motion for Reconsideration. On October 21, 2005, the Commission received Staff's Response to Motion for Reconsideration and MDU's Reply to Superior's Supplemental Memo Supporting Motion for Reconsideration. On October 27, 2005, the Commission received MDU's Supplemental Reply to Superior's Supplemental Memo Supporting Motion for Reconsideration.

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 1, 2005, the Commission considered the Motion for Reconsideration and Superior's Request for Affirmative Relief in the form of an order finding that MDU has an "existing" obligation under PURPA and an order to show cause against MDU. The Commission voted unanimously to grant the Motion for Reconsideration, to schedule the matter for hearing on December 13-16, 2005, to direct the parties to confer immediately following issuance of this Order to resolve any

pre-hearing scheduling issues, to deny, without prejudice, Superior's request for an order finding that MDU has an "existing" obligation under PURPA and to deny Superior's request for an order to show cause. It is therefore

ORDERED, that the Motion for Reconsideration is granted, that a hearing shall be scheduled and noticed for December 13-16, 2005, that the parties shall confer immediately following issuance of this Order to resolve any pre-hearing scheduling issues, that Superior's request for an order finding that MDU has an "existing" obligation under PURPA is denied, without prejudice, and that Superior's request for an order to show cause is denied.

Dated at Pierre, South Dakota, this 4th day of November, 2005.

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>Melaine Kalbs</u>
Date:	<u>11/4/05</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Robert K. Sahr
ROBERT K. SAHR, Vice Chairman

Dustin M. Johnson
DUSTIN M. JOHNSON, Commissioner *ok*