

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

<b>IN THE MATTER OF THE COMPLAINT</b>	)	<b>SECOND ORDER FOR AND</b>
<b>FILED BY SUPERIOR RENEWABLE</b>	)	<b>NOTICE OF RESCHEDULED</b>
<b>ENERGY LLC ET AL. AGAINST MONTANA-</b>	)	<b>HEARING FOLLOWING</b>
<b>DAKOTA UTILITIES CO. REGARDING THE</b>	)	<b>CONTINUANCE.</b>
<b>JAVA WIND PROJECT</b>	)	

**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.

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.

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.

A hearing will accordingly be held on this matter beginning at 9:00 A.M. on November 2, 2005, and continuing at 8:30 A.M. on November 3-4, 2005, in Room 412 of the State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota. On the first day, the parties shall appear one-half hour prior to the hearing for the marking of exhibits.

The issues at the hearing, if not decided or amended prior to the hearing on the motion of a party or the Commission, will be the same as set forth in the Second Amended Order for and Notice of Procedural Schedule and Hearing dated January 5, 2005.

The hearing will be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights may be forfeited if not exercised at the hearing. If a party or its representative fails to appear at the time and place set for the hearing, the Final Decision may be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision. As a result of the hearing, the Commission may either grant or deny the relief requested by Superior. The Commission's Final Decision may be appealed to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that a hearing shall be held at the time and place specified above on the issues set forth above except as modified between now and the hearing date by decisions on motions or agreement of the parties.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 18<sup>th</sup> day of August, 2005.

<b>CERTIFICATE OF SERVICE</b>	
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>Delaine Kalbs</u>
Date:	<u>8/18/05</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 *dk*