

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE FILING BY) EL04-016
SUPERIOR RENEWABLE ENERGY LLC) MONTANA-DAKOTA'S
ET AL AGAINST MONTANA-DAKOTA) CONFIDENTIALITY
UTILITIES CO. REGARDING THE) AGREEMENT
JAVA WIND PROJECT)

This Confidentiality Agreement is made as of the 29th day of September, 2004, between Superior Renewable Energy, LLC, Java LLC (collectively "Superior") and Montana-Dakota Utilities Co. ("Montana-Dakota").

RECITAL

1. Montana-Dakota hereby states that it will, under the terms of the following Confidentiality Agreement, allow inspection and review of certain data and information claimed by Montana-Dakota to be of a confidential nature to the signators of this Agreement. The information covered by this Confidentiality Agreement is any information sought to be reviewed and required to be disclosed pursuant to agreement, rule or order in the referenced proceeding.

2. In connection with this case Superior desires to have access to and to review certain documents of Montana-Dakota mentioned in paragraph 1 of the Recital.

3. Montana-Dakota submits that many, if not all, of the documents Superior wishes to review contain confidential information, trade secrets, proprietary information and/or other information which, if disclosed to competitors of Montana-Dakota or others, could result in irreparable damage and injury to Montana-Dakota.

4. The parties desire to provide a means by which the documents described in Recital number 1 can be provided to Superior for review without resulting in irreparable damage or injury to Montana-Dakota.

THEREFORE, Superior and Montana-Dakota agree as follows:

1. For purposes of this Agreement, the following terms shall be defined in the following manner:

- (a) "Documents" shall mean and include all documents, data, information, studies, computer programs, and other matters both written and electronic furnished in response to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery that are claimed to be a trade secret or confidential in nature and furnished under the terms of this Agreement, as constituting trade secret, confidential, commercial, and financial information (here referred to as "confidential"), and shall neither be used nor disclosed except for the purpose of this proceeding, and solely in accordance with this Agreement. Any and all documents, records or graphic matters of any kind whatsoever shall extend to any subsequent compilation, summary, quotation, or reproduction thereof prepared at any subsequent time in any subsequent form or proceeding, in whole or in part.

To the extent there may be information which Montana-Dakota believes requires extraordinary protection beyond that provided for in this Agreement, Montana-Dakota shall file the information with the Commission, only, under seal together with a motion seeking such extraordinary protection. The motion shall state the grounds for seeking the relief and advise all other parties of the request together with a description of the subject matter of the material at issue, including the identity and date of authorship.

- (b) "Confidential Information" shall mean and include any documents and all contents thereof which are marked "CONFIDENTIAL," "PROPRIETARY" or so identified in some similar manner by Montana-Dakota.
- (c) "Use of Confidential Information and Persons Entitled to Review." All confidential information made available pursuant to this Agreement may be disclosed to the Commission and its staff from time to time as part of this proceeding; provided, however, that access to any specific confidential information also may be authorized by counsel for Superior, solely for the

purpose of this proceeding, to those persons indicated by Superior as being its employees, experts or advisors with a need to know in order to participate in the above captioned matter. For purposes of this Agreement, disclosure shall be strictly limited to persons employed or retained by Superior who are directly involved in this case as an employee, attorney, advisor, expert, or witness for Superior. Such persons shall be hereinafter referred to as "Authorized Persons."

- (d) "Disclose," "make disclosure of" or "disclosure" shall mean and include the dissemination to any person, firm, corporation or other entity of the contents of a document, whether that dissemination is by means of the transmittal or transfer of the original or a copy of that document or any verbal or other dissemination of the contents of said document. No access to confidential information shall be authorized under the terms of paragraph 1(c) of this Agreement until the Authorized Person signs a Nondisclosure Agreement in the form that is attached and incorporated as Exhibit A. The Nondisclosure Agreement shall require the persons to whom disclosure is to be made to certify in writing that they have read this Agreement and agree to be bound by its terms. The Nondisclosure Agreement shall contain the signatory's full name, permanent address, and employer, and the name of the party with whom the signatory is associated. This Nondisclosure Agreement shall be delivered to counsel for the providing party and the Commission at the time of review of the documents, or as soon thereafter as practicable.

2. All Confidential Information and the disclosure thereof shall be subject to the following restrictions:

- (a) Superior shall not disclose any Confidential Information to anyone other than an Authorized Person(s) for the sole purpose of his or her review, analysis, participation and decision making in the above-captioned matter.
- (b) The foregoing notwithstanding, Superior may not disclose Confidential Information to an Authorized Person(s) unless, prior to the disclosure of such Confidential Information, said

Authorized Person(s) has signed a Nondisclosure Agreement as set forth in Article 1 (d) above.

3. Confidential Information will be marked as such and delivered to counsel. Any information sent unmarked and later determined by the sender to be confidential shall thereafter be treated as confidential information by the recipient, upon notice in writing.

4. In the event Superior objects to Montana-Dakota's designation of a document or its contents as Confidential Information, the materials shall be treated as Confidential Information until a contrary ruling by the Commission, or if appropriate, a Court of competent jurisdiction. Prior to the time any objection to a designation of Confidential Information is brought before the Commission or a court of competent jurisdiction for resolution, Superior and Montana-Dakota shall attempt to resolve the objection by agreement. If Montana-Dakota and Superior are unable to reach an agreement, then either of them may bring the objection before the Commission or court of competent jurisdiction in accordance with the applicable rules of that forum. The party bringing the objection before the Commission or court of competent jurisdiction has the burden of satisfying the Commission or court of the need for protection or production.

5. In the event Superior desires to disclose Confidential Information to a person, firm, corporation or entity other than an Authorized Person, Superior shall designate the Confidential Information it wishes to disclose, identify the persons or entities to whom it wishes to make disclosure and advise Montana-Dakota in writing of its desire to make such disclosure. If, after Montana-Dakota's receipt of such communication from Superior, Montana-Dakota and Superior are unable to agree on the terms and conditions of such disclosure, such disclosure may be made only on such terms and conditions as the Commission or, if appropriate, a Court of competent jurisdiction may order.

6. Nothing in this Agreement shall preclude Montana-Dakota from using or disclosing any of Montana-Dakota's Confidential Information for any purpose or to any person.

7. Nothing in this Agreement shall preclude Montana-Dakota from refusing to make any disclosure of any Confidential Information to Superior even if Superior agrees that such disclosure shall be in accordance with the terms of this Confidentiality Agreement. If Confidential Information is withheld by Montana-Dakota pursuant to this Article 7, Montana-Dakota shall provide Superior with a written statement regarding the basis for withholding the Confidential Information together with a description of the subject matter of the material at issue, including the identity and date of authorship.

8. All persons who are afforded access to any confidential information by reason of this Agreement shall neither use nor disclose the confidential information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of this proceeding, and then solely as contemplated here, and shall take all reasonable precautions to keep the confidential information secure and in accordance with the purposes and intent of this Agreement.

9. Any disclosure of confidential information by Montana-Dakota pursuant to this Agreement shall not act as a waiver of Montana-Dakota's right to question, challenge, and object to the admissibility of any and all data, information, studies, and other matters furnished under the terms of this Agreement or a Commission issued Protective Order on the grounds of relevancy or materiality.

10. This Agreement shall in no way constitute a waiver of the rights of any party or person to contest any assertion or finding of trade secret, confidentiality, or privilege, or to appeal any determination of the Commission or assertion by a party.

11. The provisions of this Agreement are specifically intended to apply to information supplied by Montana-Dakota to Superior pursuant to this proceeding, and to any nonparty in possession or control of information belonging to Montana-Dakota that supplies documents, testimony, or other information pursuant to process issued by the Commission.

12. Within ten (10) days after the final disposition of the case, including any and all appeals therefrom, all hard copy, other

originals and any reproductions of all documents containing Confidential Information subject to this Confidentiality Agreement shall either be returned to Montana-Dakota or destroyed.

13. The provisions of this Confidentiality Agreement, insofar as they restrict the disclosure and use of Confidential Information governed by this Confidentiality Agreement, shall, without the written permission of Montana-Dakota or further order of the Commission or, if appropriate, a court of competent jurisdiction, continue to be binding after the conclusion of the case.

14. The obligations of this agreement do not apply to any Confidential Information which:

(a) at the time of disclosure to the recipient or thereafter has become part of public knowledge or literature without breach of the said obligations by the recipient;

(b) the recipient can show was in its possession at the time of disclosure, as evidenced by written records in existence at that time, and was not acquired by it under an obligation of confidence; or

(c) the recipient can show was received by it after the time of disclosure hereunder from a third party (other than one disclosing on behalf of Montana-Dakota, Superior or their affiliates) who could lawfully do so and who did not derive the Confidential Information from Montana-Dakota, Superior or any of their affiliates; provided, however, that

(d) the foregoing exceptions (a) through (c), inclusive, do not apply to (i) specific information merely because it is embraced by or included with other information which falls within any one or more of such exceptions; or (ii) any combination of information merely because specific information (but not the combination itself) falls within any one or more of such exceptions.

15. In the event that Superior or any Authorized Person acting for Superior is required or requested by any court, legislative or administrative body to disclose any Confidential Information, then the recipient, party or Authorized Person will

promptly and prior to disclosure notify Superior and Montana-Dakota and shall provide full documentation concerning the disclosure sought, so that an appropriate protective order can be sought and/or other action can be taken if possible. In the event that a protective order is not, or cannot be, obtained, then

(a) Superior or any Authorized Person acting for Superior may disclose to the appropriate body that portion of the Confidential Information which it is advised by written outside legal advice it is legally required to disclose and shall use reasonable efforts to obtain assurances that confidential treatment will be accorded the Confidential Information; and

(b) Superior or any Authorized Person acting for Superior shall not be liable for such disclosure unless the disclosure was caused by or resulted from a previous disclosure by the recipient or its representatives that was not permitted by this Agreement.

16. The attorneys for the parties to this Confidentiality Agreement have authority to sign the Agreement and to bind the companies and their employees to the terms herein.

WHEREFORE, the undersigned have set their hands and seals as of the first date set forth above.

MAY, ADAM, GERDES & THOMPSON

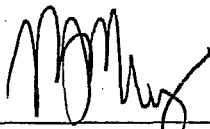
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EXHIBIT A

NONDISCLOSURE AGREEMENT

The undersigned executes this Nondisclosure Agreement for all purposes contemplated by Superior Renewable Energy LLC and Montana-Dakota Utilities Co. in their Confidentiality Agreement dated the _____ day of September, 2004, as follows:

1. I certify in writing that I have read the aforesaid Confidentiality Agreement between the parties.

2. I agree to be bound by the terms of that Confidentiality Agreement.

Dated this _____ day of September, 2004.

Printed Name: _____

Permanent Address: _____

Employer: _____

Name of the Party with whom associated: _____