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DEC 29 2004

CONTRACT BETWEEN
SYNAPSE ENERGY ECONOMICS, INC.
AND

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

This Contract is entered into this 21st day of December, 2004, between the South Dakota Public Utilities Commission (Commission) and Synapse Energy Economics, Inc. (Contractor), of 22 Pearl Street, Cambridge, Massachusetts 02139. The terms and conditions are as follows:

1. **Scope of Services:** Contractor agrees to provide consulting services to the Staff of the Commission in the following Commission Docket: EL04-016, In the Matter of the Complaint Filed by Superior Renewable Energy, LLC, et. al. (Superior) against Montana Dakota Utilities, Company (MDU) Regarding the Java Wind Project.

Contractor agrees to assist Commission Staff in: the review of Superior's pre-filed testimony, the review of MDU's pre-filed testimony, the review of intervenor's pre-filed testimony, the drafting of discovery questions, the drafting of direct testimony, responding to data requests regarding testimony, drafting sur-rebuttal testimony if necessary, preparing briefs and reply briefs, preparing cross-examination of expert witnesses, and settlement discussions. Contractor shall also be responsible for: assessing the methodologies taken by MDU in estimating avoided costs, reviewing detailed inputs and outputs of MDU's PROSYM model runs, performing additional model runs with inputs and assumptions developed by Contractor should MDU be willing to agree to this approach, assessing the proposal for estimating capacity credit for the proposed wind project.

Contractor shall also be prepared to attend hearings, present testimony and respond to cross examination. Specifically, Contractor Witness, Tim Woolf, shall prepare, file, and present testimony and exhibits related to the issues and inputs surrounding the avoided costs involved in Docket EL04-016. Contractor shall provide general assistance on the filing when requested to do so by Commission Staff.

The scope and tasks to be performed shall be consistent with Contractor's proposal dated December 13, 2004, to Commission Staff. Contractor agrees to coordinate their filings with Commission Staff and as directed by Commission Staff, shall consult Commission Staff on requests for MDU and Superior data and other submissions or requests to MDU, Superior or intervenors. Contractor agrees to complete all tasks and filings within time frames as determined by Commission Staff.

It is understood and agreed that the role of Commission Staff, and in turn the role of the Contractor, shall be to advocate the public interest as Commission Staff views that public interest.

2: **Maximum Reimbursement:** The Commission agrees to reimburse the

Contractor for satisfactory completion of Contractor's services in an amount not to exceed **Sixty-two thousand three hundred and thirty seven dollars and no cents (\$62,337.00)**. Services shall be paid for on the basis of time actually spent working on the case and for actual out-of-pocket costs at rates consistent with Contractor's proposal to Commission Staff dated December 13, 2004, which is incorporated by reference into this document and attached as Exhibit A.

If the Contractor desires to increase the maximum reimbursement under this paragraph, Contractor must notify the South Dakota Public Utilities Commission Executive Director in writing not less than thirty (30) days before monthly billings reach the maximum reimbursement. The Commission reserves the right to deny any request for an increase and may hold the Contractor to the maximum reimbursement in the original contract or amendment.

3. Reimbursement: The Commission agrees to reimburse the Contractor upon satisfactory progress toward completion of the tasks outlined in Paragraph 1 of this Contract. Payment up to the amount specified in the Maximum Reimbursement paragraph herein shall be made in monthly installments and shall be based on the monthly financial report as described herein. A copy of the Contractor's hourly fee schedule is set forth in the proposal attached to this Contract as Exhibit A.

A monthly invoice shall be submitted by the Contractor which shall describe the nature of the work performed and show, for each consultant, the hours worked and associated fees and list all charges for Contractor's out-of-pocket expenses. Receipts for such expenses shall be available to the Commission upon request. This information is for the express purpose of internal auditing by the Commission. When requesting payment, the time period or phase of service covered will be indicated on the face of the invoice.

The Contractor may not receive progress payments more frequently than monthly. Progress payments shall be based on services rendered and no payment may be made in advance of services rendered. It is agreed that the Commission may withhold ten percent of each progress payment until the satisfactory completion of the contract. Invoices for services rendered shall be sent to the South Dakota Public Utilities Commission, Deputy Executive Director, State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501, within ten (10) days of the calendar month billed.

4. Consideration: The consideration to be paid the Contractor as provided herein shall be in compensation for all Contractor's services incurred in the performance hereof.

5. Change in Scope of Services: If the scope of services under this Contract is modified to require additional work not herein contemplated and such modification is approved by the parties herein prior to performance and a written amendment to this

Contract is drawn identifying the approved changes, an authorization of additional funds will be made by the Commission and the maximum amount will be appropriately increased.

6. **Indemnity:** The Contractor agrees to indemnify, defend and hold harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Contract.

7. **Independent Contractor:** The Contractor and the agents of the Contractor in performance of this Contract shall act in an independent capacity and not as officers, employees or agents of the Commission.

8. **Contract Not Assignable:** This Contract is not assignable by the Contractor, either in whole or in part, without the written consent of the Commission.

9. **Alteration and Oral Agreements:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein may be binding on any of the parties hereto.

10. **Interpretation of Inconsistencies:** In the interpretation of this Contract, any inconsistencies between the terms hereof and the attachments shall be resolved in favor of the terms hereof.

11. **Subcontracts:** Contractor shall submit any subcontracts which he proposes to enter into to the Commission for its prior written approval before the Contractor enters into the same. No work may be subcontracted without the prior approval of the Commission. Upon the termination of any subcontract, the Commission shall be notified immediately.

12. **Retention of Contractor's Records:** The Contractor shall retain all records relating to direct expenses reimbursed to the Contractor hereunder and to hours of employment on this Contract by any employee of Contractor for which the Commission is billed. Such records shall be maintained for a period of three years after termination of this Contract and shall be available for inspection at any reasonable time by personnel authorized therefore by the State of South Dakota.

13. **Relationship of Commission Staff and Contractor:** Commission Staff will be permitted to work side-by-side with Contractor's Staff to the extent and under conditions that may be directed by the Executive Director of the Commission.

14. Contractor Responsible for Performance of Services: Contractor will not be permitted to utilize Commission personnel for the performance of services which are the responsibility of Contractor unless such utilization is previously agreed to in writing by the Executive Director and any appropriate adjustment in price is made. No charge will be made to Contractor for the services of Commission employees while performing coordinating or monitoring functions.

15. Disclosure and Confidentiality: The Contractor will not disclose data or disseminate the contents of any final or preliminary report or testimony, in any form, in regard to this Contract without express written consent of the Commission. Permission to disclose information on one occasion shall not authorize Contractor to further disclose such information or disseminate the same on any other occasion.

If requested by the Commission, the Contractor shall require each of its employees or officers who will be involved in the performance of this Contract to agree to the above terms in a form to be approved by the Commission and shall supply the Commission with evidence thereof.

Each subcontract shall contain provisions similar to the foregoing, related to the confidentiality of data and non-disclosure of the same.

16. Data is Property of the Commission: Data developed for this Contract shall become the property of the Commission. It shall not be disclosed without the permission of the Executive Director. Each final report submitted shall also become the property of the Commission and shall not be disclosed except in such manner and time as the Executive Director may direct.

17. Amendment: The timing for the performance of the tasks and items contained herein, the total contract price, the date for completion of the Contract, as well as, all other terms not specifically accepted may only be altered by formal written amendment of this Contract.

18. Waiver: No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative; that is, in addition to every other remedy provided therein or by law. The failure of the Commission to enforce, at any time, any of the provisions of the Contract shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Contract or any part thereof, or the right of the Commission to hereinafter enforce each and every such provision.

19. Time is Critical: Time is of the essence in this Contract. In the event Contractor shall fail to perform the agreements on its part to be performed at the time fixed for performance of such respective agreements by the terms of this Contract or by any extension, the Commission may, at its election, terminate the Contract. Such termination shall be in addition to and not in lieu of any other legal remedies provided

by this Contract or by law.

20. Breach of Contract: In the event of any breach of this Contract, the Commission may, without any prejudice to any of its other legal remedies, terminate this Contract in accordance with the provisions of the Termination paragraph of this Contract.

21. Duration of Contract: Unless otherwise specifically provided by the terms of this Contract or by amendment thereof, the duration of this Contract shall be one year from the contract date.

22. Termination: The Commission may terminate this Contract, should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided, upon five days written notice to the Contractor. In such event, the Commission shall pay the Contractor only the reasonable value of the services theretofore rendered by the Contractor as may be agreed upon by the parties or determined by a court of law. In the event of such termination, the Commission may proceed with the work in any manner deemed proper by the Commission. The Commission's cost of securing substituted performance shall be deducted from any sum due the Contractor under this Contract, with the balance, if any, to be paid the Contractor upon demand.

23. Payments Include All Taxes: Payments to be made to the Contractor, as specified herein, shall include all taxes of any description, federal, state and municipal assessed against the Contractor by reason of this Contract.

24. Workers' Compensation Insurance: The Contractor hereby warrants that it carries workers' compensation insurance for all of its employees who will be engaged in the performance of this Contract and agrees to furnish to the Commission satisfactory evidence thereof at any time the Commission may request.

25. South Dakota Law Controlling: It is expressly understood and agreed that this Contract shall be governed by the laws of the State of South Dakota, both as to interpretation and performance. Otherwise, as specified herein, no document or communications passing between the parties hereto shall be deemed a part of this Contract.

APPROVED AS TO FORM:

Karen E. Cremer
Karen E. Cremer, Assistant Attorney General

12/29/04
DATE

COMMISSION:

Robert K. Sahr
ROBERT K. SAHR
Chairman

Gary Hanson
GARY HANSON
Commissioner

James A. Burg
JAMES A. BURG
Commissioner

CONTRACTOR:

By:

Tim Woolf
Tim Woolf
Synapse Energy Economics, Inc.,

12/21/04
Date

its Vice President.