

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 COMPLAINT FILED)
BY SUPERIOR RENEWABLE ENERGY LLC)
ET AL. AGAINST MONTANA DAKOTA)
UTILITIES CO. REGARDING THE JAVA)
WIND PROJECT)
_____)

Docket No. EL04-016

FAX Received NOV 15 2004

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF SUPERIOR
RENEWABLE ENERGY LLC'S AND JAVA LLC'S MOTION TO COMPEL, MOTION TO
SHORTEN TIME FOR RESPONSES TO SUPERIOR'S DISCOVERY REQUESTS AND
MOTION TO EXTEND THE DISCOVERY CUT OFF DATE

Introduction

Complainants Superior Renewable Energy LLC and Java LLC (collectively "Superior") submit this Memorandum Of Points And Authorities in support of two motions filed by Superior in this proceeding. These motions are: (1) Motion to Compel filed on November 8, 2004 asking the Commission to order Respondent Montana Dakota Utilities Co. ("Montana-Dakota") to respond to certain interrogatory requests from Superior relative to Montana-Dakota's power purchase agreements and (2) Motion To Shorten Time For Responses To Superior's Discovery Requests and Motion to Extend Discovery Cut Off filed contemporaneously with this Memorandum.

Superior filed these motions because Montana-Dakota has abruptly reversed course and told Superior and the Commission that contrary to all previous statements, it lacks 70-100 megawatts of electrical energy and capacity and is actively soliciting proposals to satisfy that

shortage.¹ This disclosure occurred in Montana-Dakota's November 5, 2004 supplement to an interrogatory response received by Superior on November 8, 2004. Based on all of Montana-Dakota's disclosures in this supplement, it appears that Montana-Dakota knowingly misrepresented and/or omitted material facts regarding a core issue in this proceeding. That core issue relates to Montana-Dakota's power purchase contracts and how those contracts affect Montana-Dakota's "avoided cost" of energy and capacity.

Regulatory Background

By way of background, "avoided cost" is a term defined in the under the Public Utility Regulatory Policy Act of 1978, 16 U.S.C. § 824a-n (2003) ("PURPA") and the Commission's Decision and Order implementing PURPA in South Dakota. *See In the Matter of the Investigation of the Implementation of Certain Requirements of Title II of the Public Utilities Regulatory Policy Act of 1978 Regarding Cogeneration and Small Power Production*, No. F-3365 (South Dakota Public Utilities Commission Dec. 11, 1982) (hereinafter the "Commission PURPA Order"). Section 210(a) of PURPA requires utilities, like Montana-Dakota, to purchase electricity from Qualified Facilities ("QF's"), like the Java Wind Project, located in their service territory. *See* 16 U.S.C. § 824a-3 (2003).

The price that Montana-Dakota must pay for electricity delivered to it from the Java Wind Facility is less than or equal to the "incremental cost to the electric utility of alternative electric energy." *Id.* The FERC regulations implementing Section 210 (a) of PURPA refer to this rate as the "avoided cost." *See generally* 18 C.F.R. § 292.101(b)(6) (2003); 18 C.F.R. §

¹ Montana-Dakota has now issued a Request for Proposal for this amount of energy and capacity that it sent to all members of the Mid-Continent Energy Marketers Association and the members of the MAPP Reliability Council (hereinafter the "RFP"). A copy of this RFP is attached as Exhibit "A."

292.304 (2003). Avoided costs are to be determined based on a number of factors set forth in 18 C.F.R. § 292.304(e) (2003). Avoided cost generally includes two components: (1) avoided energy cost representing the variable costs associated with the production of electric energy including operating and maintenance expenses that are saved by the electric utility because of deliveries from a QF and (2) avoided capacity cost representing primarily the capital costs of energy generating facilities that are saved by an electric utility because new plants or existing plant improvements become unnecessary as a result of deliveries from a QF.

In the Commission PURPA Order, the Commission found that rates for “long term contracts” (defined to mean greater than ten years’ duration) from QF’s with a design capacity greater than 100 kilowatts “should be set by contract negotiated between the QF and the electric utility.” *Id* at p. 11. The Commission further found that its own role in these negotiations was to assist in “resolving any disputes which arise between the parties.” *Id*. To provide “parameters” for negotiations, the Commission found that “capacity credits included in long-term contract should be based on the avoided cost of base load generation.” *Id* at 12.

The Commission further found that: (1) “capacity credits included in long-term contracts should reflect the average kW supplied by the QF for each month during the utility’s on-peak period,” (2) “capacity credits included in long-term contracts should be made constant over the duration of the contract” and (3) “long-term contracts should include an energy credit based on the average of the expected hourly incremental avoided costs calculated over the hours in the appropriate on-peak and off-peak hours as defined by the utility.” *Id*.

Montana-Dakota's Reversal

There are at least five contracts that Montana-Dakota has identified in interrogatory responses and supplements as contributing energy and capacity to Montana-Dakota's system. Two of them are long-term agreements about which there is presently no dispute, although the relevance of one contract is in serious question considering its age (nineteen years) and its imminent expiration.² The other contracts are all short-term contracts with terms varying from two to six years. Two of those short-term contracts are with the Omaha Public Power District. Montana-Dakota says that both were signed in January 2004. These contracts will hereinafter be referred to as the "OPPD Contracts." The other contract is with NorthPoint Energy Solutions, Inc. ("NorthPoint"). Montana-Dakota admits that this contract was signed on July 15, 2004. This contract will hereinafter be referred to as the "Product K Contract."

Even though the OPPD Contracts are, as it turns out, short-term contracts, Montana-Dakota has consistently, repeatedly and misleadingly relied upon them to represent to Superior and the Commission that it owed Superior nothing for avoided cost of capacity because Montana-Dakota was not short on its supply of capacity. The most recent representation occurred on October 20, 2004 when Montana-Dakota provided Superior and the Commission with its avoided cost calculations.³ In that document, Montana-Dakota stated, "Montana-Dakota will not need additional capacity until 2011." Another example occurred on April 13, 2004, when counsel for Montana-Dakota wrote counsel for Superior and stated, "Montana-Dakota

² One contract is called the Participation Power Purchase/Sale Agreement. It was executed on January 18, 1985 and terminates on October 31, 2006. The second contract is with the Western Area Power Administration. It was entered into in January of 2001 and runs through 2015. See Montana-Dakota's response to Superior Interrogatory No. 1 dated September 1, 2004.

³ A copy of this document is attached as Exhibit "B" and will be hereinafter referred to as the "Avoided Cost Document."

currently has its system capacity requirements satisfied until at least 2011.” See *Letter from Phillip G. Lookadoo to M. Bradford Moody* attached as Exhibit “C.” See also *Superior Complaint* Paragraphs 23-24.

Now Montana-Dakota--with only one month left before the discovery cutoff--has disclosed for the first time that the OPPD Contracts that supposedly provided this capacity in fact contained a contingency based on the need for the parties to obtain firm transmission service to deliver OPPD’s energy and capacity to Montana-Dakota’s service territory.⁴ Moreover, Montana-Dakota further disclosed that it was not successful in obtaining this firm transmission service and knew this fact prior to answering Superior’s interrogatory inquiring about these contracts.⁵ Montana-Dakota nevertheless proceeded to answer this interrogatory as if the OPPD Contracts were delivering energy and capacity to Montana-Dakota’s system and thereby reducing Montana-Dakota’s avoided costs.

Montana-Dakota repeated this material omission in the Avoided Cost Document. In that document, Montana-Dakota again listed the OPPD Contracts as “existing power purchase contracts” without disclosing the failure to obtain firm transmission service. Relying on the OPPD Contracts, Montana-Dakota stated “Montana-Dakota will not need additional capacity until 2011.” As a result, Montana-Dakota claimed that the avoided cost of capacity payable to Superior for the years 2005-2009 was \$0.00/kw/yr. See *Avoided Cost Document*, pp. 3-4.

⁴ Superior received a copy of Montana-Dakota’s disclosure on November 8th. It came only after Superior informed Montana-Dakota that it intended to file a motion to compel with the Commission regarding Montana-Dakota’s refusal to produce the OPPD Contracts. A copy of this disclosure is attached as Exhibit “D.”

⁵ In its November 5th attempt to supplement its interrogatory responses, Montana-Dakota admitted that it knew on July 15, 2004 that it was not successful in obtaining firm transmission service. Montana-Dakota answered Superior’s interrogatories requests on September 1, 2004, over a month later.

In its supplemental response to Superior's interrogatory, Montana-Dakota also disclosed for the first time that it had signed the Product K Contract. Even though Montana-Dakota signed this contract on July 15, 2004 before it answered Superior's interrogatory, it made no mention of it in either its initial response on September 1, 2004 or in the Avoided Cost Document. When it disclosed the existence of the Product K Contract, Montana-Dakota failed to provide any of the detailed information about the contract requested in Superior's interrogatory. Although Montana-Dakota claims in its supplement that it "would purchase" specified quantities of energy and capacity under the Product K Contract, its use of the subjunctive verb suggests that those purchases may not yet have commenced.⁶ Montana-Dakota did not explain how, if at all, it believed execution of the Product K Contract affects its calculation of avoided capacity costs contained in the Avoided Cost Document.

Even if Montana-Dakota is currently purchasing energy and capacity pursuant to the Product K Contract, the amounts are insufficient to satisfy Montana-Dakota's needs for "firm capacity that will serve as a base load resource." *See RFP* at page 1. Montana-Dakota defines "firm capacity" as that which is available at all times and under all conditions. The amount of capacity sought by Montana-Dakota is 70-100 megawatts. Even though Superior has been trying to obtain a power purchase agreement with Montana-Dakota for over two years now, there was no mention in the RFP of the Java Wind Facility and its position as a willing and able provider of

⁶ Montana-Dakota used the same subjunctive verb tense in its September 1, 2004 response to Superior's Interrogatory No. 1 and will no doubt claim that the use of the word "would" makes this response truthful on its face. Although this claim may be correct from a grammatical point of view, it ignores the omission of the material fact regarding the inability of Montana-Dakota to obtain firm transmission service. It also does not solve the problem created when Montana-Dakota explicitly relied upon the OPPD Contracts in its October 20, 2004 calculation of avoided costs.

energy and capacity under PURPA. The RFP seems to say that Superior, the Java Wind Facility and Montana-Dakota's obligations under PURPA to take energy and capacity do not even exist.

Argument

The events of the past week are not supposed to happen. The Commission's Administrative Rules obligate the parties who come before the Commission to answer questions and respond to discovery truthfully and completely. Although it is difficult to determine at this time the extent to which Montana-Dakota acted deliberately as opposed to carelessly or even innocently, even a friendly reading of Montana-Dakota's representations and omissions to Superior and to the Commission relative to the OPPD Contracts leads to the conclusion that Montana-Dakota failed to deliver truthful and complete responses. Similarly, Montana-Dakota's failure to identify the Product K contract in response to Superior's interrogatory requests was a material omission of a fact that is highly relevant to a core issue in this proceeding.

To camouflage its efforts to hide these facts, Montana-Dakota has continually resisted Superior's efforts to discover information about Montana-Dakota's power purchase contracts. When Superior first asked for the contracts, Montana-Dakota objected, claiming them to be "business confidential." When Superior signed a confidentiality agreement to eliminate concerns about confidentiality, Montana-Dakota still refused to produce the contracts on the grounds that Superior was entitled only to "data" about the contracts and not the contracts themselves. When Superior—in an effort to compromise—asked Montana-Dakota to disclose certain highly relevant data about the contracts, Montana-Dakota refused again, proposing instead to disclose only limited information about the contracts. When Superior rejected this proposal and informed Montana-Dakota that Superior intended to file a motion to compel, Montana-Dakota tried again

to make only a limited disclosure about the contracts, this time by insisting that it be allowed to withhold information “in existing power purchase agreements that may compromise its negotiating technique or strategy.”⁷

Setting aside for the moment how Montana-Dakota acted with respect to these contracts, the most important question is how the facts disclosed in Montana-Dakota’s last minute revelation affect avoided cost. Even Montana-Dakota would have a difficult time arguing at this point that the OPPD Contracts have any bearing on avoided cost. Considering that not one milliwatt of energy or capacity has been or apparently will be delivered to Montana-Dakota under these contracts, the fact of their existence is only further proof that Montana-Dakota was so desperate to obtain capacity that it would expend substantial time and effort on contracts that had a reasonable chance of never taking effect. This behavior hardly seems like the behavior of a company that has no “need [for] additional capacity until 2011.”

The Product K Contract presents a more difficult situation. As of the date of this Memorandum of Points and Authorities, Montana-Dakota has not informed either Superior or the Commission of the extent to which Montana-Dakota believes that the Product K Contract is relevant to an avoided cost calculation. Having submarined the existence of this contract until this week, it is simply impossible to tell whether Montana-Dakota relied upon it in calculating avoided cost, whether Montana-Dakota ignored it in calculating avoided cost or whether Montana-Dakota now intends to rely upon it and supplement its avoided cost calculations.

⁷ This last proposal was made by electronic mail from counsel for Montana-Dakota to counsel for Superior on November 9, 2004. Superior rejected that proposal, in part because the requested basis for withholding information was so general that it could be used as a basis for Montana-Dakota to continue to withhold documents and information relevant and material to this proceeding.

Another important question raised by Montana-Dakota's November 5th supplement to Superior's interrogatory requests relates to Montana-Dakota's compliance with the Commission's rules and the closely related question of Montana-Dakota's good faith in its dealings with Superior over the Java Wind Facility. PURPA and the Commission Decision and Order require Montana-Dakota to negotiate with Superior and act at all times in good faith. *See, e.g. Policy Statement Regarding the Commission's Enforcement Role Under Section 210 of the Public Utility Regulatory Policies Act of 1978*, 23 FERC ¶ 61,304 (1983); *see also Central Iowa Power Cooperative, et al.*, 108 FERC ¶ 61,282 at P 10 (2004). Montana-Dakota's repeated efforts to secure alternative sources of energy and capacity in order to tell Superior that its needs are filled through 2011 hardly sounds like good faith behavior. Moreover, this behavior has occurred repeatedly, first with the OPPD Contracts, then with the Product K Contract and now with the RFP. Montana-Dakota's subsequent misrepresentations and omissions of material facts to make Superior and the Commission believe that at least some of these efforts had been successful only increases Montana-Dakota's bad faith.

Montana-Dakota's failure to respond accurately and completely may also subject Montana-Dakota to sanctions for violations of the Commission's rules regarding discovery. Generally, "Discovery rules are designed to compel the production of evidence and to promote, rather than stifle, the truth finding process." *Dudley v. Huizenga*, 667 N.W.2d 644 (S.D. 2003). Regarding a court's powers over discovery, "A trial judge has authority to compel discovery and to impose sanctions.... However, [this function] is designed to compel *production* of evidence and to promote, rather than stifle, the truth finding process." *Kuper v. Lincoln-Union Electric Company*, 557 N.W.2d 748, 1996 SD 145 (S.D. 1996), citing *Magbuhat v. Kovarik*, 382 N.W.2d

43, 46 (S.D.1986). The authority of the trial court concerning sanctions is flexible and allows the court broad discretion with regard to sanctions imposed for failure to comply with statutory mandates and discovery orders. *Schwartz v. Palachuk*, 597 N.W.2d 442 (S.D.1999); *Chittenden & Eastman Co. v. Smith*, 286 N.W.2d 314, 316 (S.D.1979).

South Dakota courts take discovery abuses very seriously. Indeed, a willful failure to answer interrogatories may be used as a justification for dismissing an action. *Schwartz v. Palachuk*, 597 N.W.2d 442, (S.D.1999); *Van Zee v. Reding*, 436 N.W.2d 844, 845 (S.D.1989) (citing *Denton v. Mr. Swiss of Missouri, Inc.*, 564 F.2d 236 (8th Cir.1977); *Fox v. Studebaker-Worthington, Inc.*, 516 F.2d 989 (8th Cir.1975). Montana-Dakota's disclosure on November 8, 2004 that it knew on July 15, 2004 that it lacked transmission service for the OPPD Contracts certainly makes its subsequent representations and omissions regarding the OPPD contracts look willful. Additional discovery by Superior, however, is necessary to determine exactly what happened and why.

Also, SDRP 15-6-33(a) requires interrogatory responses to be verified by the party preparing them and objections to interrogatories signed by the attorney making them. Montana-Dakota's initial interrogatory responses include a cover letter signed by Donald R. Ball, Assistant Vice-President—Regulatory Affairs but does not contain language of verification. Similarly, even though Montana-Dakota lodged numerous objections to these interrogatories, none of them were signed by an attorney for Montana-Dakota. Given the present situation, these shortcomings seem like more than mere oversight. Superior should be entitled to full discovery to obtain the facts about why Montana-Dakota failed to verify any of its interrogatory responses

together with all of the other circumstances surrounding Montana-Dakota's misrepresentations and omissions regarding the OPPD Contracts and the Product K Contract.

For these reasons, Superior has prepared a new set of discovery requests that are narrowly tailored to obtain answers to some of the questions raised by Montana-Dakota's last minute and still incomplete disclosures. Those discovery requests were served contemporaneously with this Memorandum of Points and Authorities and are attached as Exhibit "E." Because Montana-Dakota chose not to supplement its interrogatory responses until November 5th, however, there is very little time left before the discovery cut-off of December 6th for Superior to follow up on this discovery.⁸ Moreover, if experience is any guide, Montana-Dakota will likely object to many of the requests, drag out negotiations to resolve the dispute, force Superior to file more motions to compel, and respond to ill-considered threats from Montana-Dakota's counsel.⁹ For all of these reasons, Superior has requested that the Commission shorten the regular thirty-day response time and order Montana-Dakota to answer the discovery within fifteen days from the date of service.

⁸ For example, depending on the answers Superior receives to its new discovery requests, it may be necessary to take depositions of the Montana-Dakota personnel who negotiated the OPPD Contracts and/or the Product K Contract. Superior may also require depositions of the Montana-Dakota personnel who provided answers and supplements to the initial Superior interrogatory requests.

⁹ On November 12, Montana-Dakota's law firm sent to counsel for Superior a letter containing wild accusations of not using the "proper and legal discovery process" and "tortious and intentional interference with Montana-Dakota's business relationship with OPPD." This letter apparently resulted from a phone call made by counsel for Superior on November 11, 2004 to Dale Widoe, Vice President of the Omaha Public Power District. After Superior's counsel disclosed to Mr. Widoe that he was a lawyer representing Superior in this proceeding and further disclosing the substance of Montana-Dakota's November 5th supplement (none of which was submitted under even the color of confidentiality), Mr. Widoe proceeded voluntarily to tell counsel for Superior all about his negotiations with Montana-Dakota for the OPPD Contracts. A copy of the letter from Montana-Dakota's counsel and the reply letter from counsel for Superior is attached as Exhibits "F" and "G," respectively.

As set forth in Superior's November 8th Motion to Compel, Superior is, and has always been, entitled to review the Montana-Dakota power purchase contracts and the information relating to those contracts. Having asked for them on July 16, 2004, they should have been produced by September 1, 2004, the response date resulting after Superior granted Montana-Dakota a two-week extension of time to respond. Montana-Dakota's efforts to stonewall Superior over the contracts combined with Montana-Dakota's continuing failure to make complete and truthful responses has created a two month delay in Superior's ability to prepare its case. Requiring Montana-Dakota to respond to Superior's outstanding discovery requests two weeks sooner than otherwise required under the Commission's rules will not eliminate this lost time. It will, however, materially increase the likelihood that Superior will be able to absorb the requested information and follow up with respect to any matters that are not resolved in Montana-Dakota's responses prior to the current deadlines for filing testimony.

For the same reasons, Superior has asked the Commission to extend the discovery cut off to allow additional time to complete this new round of discovery. Superior has believed all along that the parties could comfortably conduct discovery while preparing their pre-filed testimony, particularly if that discovery was intended for the purpose of preparing rebuttal testimony. Because Montana-Dakota's last minute disclosures have forced a whole new round of discovery, Superior believes that the Commission should allow Superior extra time to determine the circumstances surrounding these disclosures and whether or not the disclosures are, in fact, accurate and complete. Having forced Superior to expend substantial time and resources to obtain information to which Superior has been entitled all along, Montana-Dakota can hardly complain about any extra burden placed on it by an extension of the discovery cut off.

Conclusion

For the reasons set forth in this memorandum, Superior respectfully requests that the Commission grant Superior's Motion to Compel with respect to Superior's Interrogatory Request No. 1 and also grant Superior's Motion to Shorten Time and to Extend the Deadline for Discovery Cutoff, or alternatively, to order such other relief as this Commission sees fit to grant.

Respectfully submitted,

DANFORTH, MEIERHENRY & MEIERHENRY, L.L.P.

By: _____


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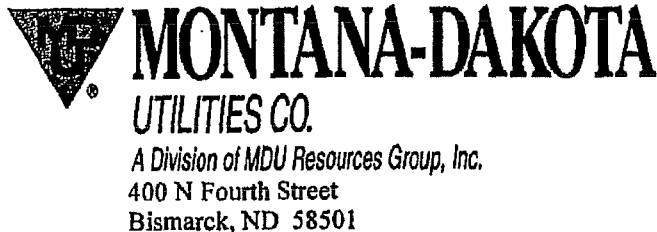


EXHIBIT "A"
Memorandum of Points and
Authorities of Superior Renewable
Energy et al.

October 25, 2004

Members of the Mid-Continent Energy Marketers Association
Members of the MAPP Reliability Council

Dear Sir/Madam:

Montana-Dakota Utilities Co. (Montana-Dakota), a division of MDU Resources Group, Inc., is interested in receiving proposals for power supply to provide 70 - 100 MW of firm capacity and associated energy to Montana-Dakota's integrated electric system for the time period beginning November 1, 2006 and ending December 31, 2010. The enclosed Request for Proposals (RFP) requests a written response concerning your organization's interest in providing such power supply resources.

All correspondence should be sent to:

Montana-Dakota Utilities Co.
400 North Fourth Street
Bismarck, North Dakota 58501-4092
Attn: Hoa V. Nguyen
E-mail: hoa.nguyen@mdu.com
Phone: (701) 222-7656
Fax: (701) 222-7806

If your organization intends to submit a proposal, please send a notice of intent to bid to Montana-Dakota by **November 12, 2004**. If your organization submits a proposal, it will be due by 5:00 pm Central Standard Time on **December 17, 2004**.

If you have any questions concerning this letter and the attached RFP, please call Hoa Nguyen at (701) 222-7656 or Kayla Kaul at (701) 222-7913.

Sincerely,

Andrea Stomberg
Vice President-Electric Supply

MONTANA-DAKOTA UTILITIES CO.
REQUEST FOR PROPOSALS FOR CAPACITY AND ENERGY

Montana-Dakota Utilities Co. (Montana-Dakota) is requesting proposals for the purchase of capacity and energy from November 1, 2006 through December 31, 2010. Montana-Dakota's intent is to acquire, through this Request for Proposal (RFP), a firm power supply resource or resources for its integrated electric system in the states of Montana, North Dakota, and South Dakota to meet growing customer demand.

Montana-Dakota is a division of MDU Resources Group, Inc. which is a multidimensional natural resources company comprised of natural gas and oil production, construction materials and mining, a natural gas pipeline, electric and natural gas utilities, utility services, energy services, and domestic and international independent power production. Montana-Dakota operates electric power generation, transmission, and electric and natural gas distribution facilities which provide retail energy to customers in 276 communities in Minnesota, Montana, North Dakota, South Dakota, and Wyoming.

Energy/Capacity Amount

Montana-Dakota is seeking 70 to 100 MW of capacity and associated energy for all hours from November 1, 2006 through December 31, 2010. A respondent may, however, submit a proposal for a time frame beginning November 1, 2006 that may be shorter or longer than the specified time period. Although Montana-Dakota is requesting proposals for capacity and energy for both Summer (May 1-October 31) and Winter (November 1-April 30) seasons, proposals for only the Summer seasons will be considered.

A proposal must include firm capacity that will serve as a baseload resource, i.e., that capacity must be dispatchable and have an annual capacity factor of 80 percent or greater. For the purposes of this RFP, firm capacity is defined as that which is available at all times and under all conditions. The proposed capacity must be able to be accredited by the Mid-Continent Area Power Pool at full amount.

Transmission Service/Losses

The respondents to this RFP are responsible, in cooperation with Montana-Dakota, to secure transmission service to transport and deliver power to Montana-Dakota's integrated electric system. Transmission service arrangements and responsibility for losses associated with the delivery of energy will be addressed during the negotiation of the agreement.

Energy Pricing

Montana-Dakota prefers to have one energy price in dollars per megawatt-hour (\$/MWh) for each year of the proposal. The respondents may, however, choose the energy pricing that is most appropriate for them. One example is separate energy prices for on-peak (5 x 16), weekends (2 x 16 and NERC holidays), and off-peak (7 x 8) time for each month of the proposal.

Capacity Pricing

Montana-Dakota prefers to have one capacity price in dollars per kilowatt-month (\$/kW-Month) for each year of the proposal. The respondents may, however, choose the capacity pricing that is most appropriate for them.

Bidding Process

To be considered as a candidate to supply Montana-Dakota's integrated electric system with firm capacity and energy for the period listed, a party must submit a notice of intent to bid by **November 12, 2004**. The final proposal will be due by 5:00 pm Central Standard Time on **December 17, 2004**. All correspondence, including questions pertaining to this RFP, must be sent to:

Montana-Dakota Utilities Co.
400 North Fourth Street
Bismarck, North Dakota 58501-4092
Attn: Hoa V. Nguyen
E-mail: hoa.nguyen@mdu.com
Phone: (701) 222-7656
Fax: (701) 222-7845

Montana-Dakota reserves the right at its sole discretion to reject any and all proposals. Montana-Dakota further reserves the right to negotiate with any respondent or group of respondents in an attempt to secure the preferred power supply option to serve its integrated electric system customers.

Disclosures

Montana-Dakota reserves the right to modify this RFP. All respondents will be notified of modifications to the RFP.

This document does not in any way obligate Montana-Dakota to enter into any agreement or to proceed with any transactions. Montana-Dakota may terminate discussions or negotiations regarding this document at any time. It is understood that information, terms and conditions set forth in this document are subject to negotiations, and completion and incorporation into a definitive confirmation letter and/or contract and no forthcoming transaction should be deemed executed until a definitive confirmation letter and/or contract is executed by an authorized agent of both parties.

EXHIBIT "B"
Memorandum of Points and
Authorities of Superior Renewable
Energy et al.
Montana-Dakota Utilities Co.
ESTIMATED AVOIDED COSTS
October 20, 2004

The purpose of this paper is to provide:

1. The estimated avoided costs on Montana-Dakota's system, solely with respect to the energy component, for power purchase from a 31.5 MW (nameplate) wind farm for the current calendar year 2004 and each of the next 5 years; and
2. The estimated capacity costs at the completion of Montana-Dakota's planned capacity additions and planned capacity firm purchases during the succeeding 10 years.

A detailed description of the assumptions used in the calculations of these energy and capacity avoided costs is also given.

ENERGY AVOIDED COSTS

The estimated energy avoided costs provided in this paper are the marginal costs, or system lambdas, on Montana-Dakota's system for power purchase from a 31.5 MW (nameplate) wind farm. At a certain customer load level, or the corresponding generation level to meet that customer demand, marginal cost is the cost of generating the "next" megawatt-hour (MWh) of the customer load. Montana-Dakota uses the PROSYM model to calculate the marginal costs.

PROSYM Model

The PROSYM Chronological Production Modeling System is a computer model used for electric utility analysis and accounting. This computer model simulates the operations of Montana-Dakota's electric generating resources to meet the customer demand on an hour-by-hour basis. The data input to the model consists of:

- Forecast hour-by-hour customer demand for the time period under study;
- Operational characteristics such as capacity, forced outage rate, maintenance schedule, and heat rate; and cost data such as fixed and variable operating and maintenance costs, and fuel costs for Montana-Dakota's electric generating resources; and
- Data for the power purchases from the wholesale market.

For each hour under consideration, as in real life situations, PROSYM dispatches the generating resources economically to meet customer demand and wholesale purchase obligations while maintaining system reliability at that hour. When dispatching the generating resources, the model takes into account their maintenance schedules, which are time periods when they are planned to be down for regular maintenance, as well as their forced outage rates, which are the probability they are down due to mechanical failures. The fuel costs, maintenance and operating costs, and other pertinent information are calculated at each hour and then summed for monthly or yearly periods for reporting purposes.

Assumptions on the Wind Farm

The hourly generation profile, or "Gross Production of Farm (MW)" information, of the 31.5 MW (nameplate) wind farm provided by Superior on October 6, 2004 was used in this calculation. Those data, given for May 1, 2003 to September 22, 2004, were modeled in PROSYM, as follows:

1. Data for the most recent time period September 2003 - August 2004 were chosen to represent the wind farm's generation output for a typical calendar year. This period was used for all the years under consideration.
2. At each hour, the wind farm's output X megawatt (MW) was assumed to be used to replace an amount of Montana-Dakota's generation sufficient to serve X / 1.15 MW of load, taking into account the MAPP minimum reserve requirement of 15 percent.
3. Montana-Dakota's hourly load profile was reduced by the corresponding amounts calculated in Step 2 for all hours. The hourly load values are rounded off to the nearest MW numbers because generating units are dispatched based on whole MW increments.
4. The resulting hourly load profile was used as input to the PROSYM model to calculate Montana-Dakota's marginal costs.

Estimated Energy Avoided Costs

As a result of the PROSYM runs, the estimated energy avoided costs in dollars per megawatt-hour (\$/MWh) for the on-peak and off-peak periods for the winter and summer seasons are shown in Table 1. The on-peak and off-peak time periods are as defined in Montana-Dakota's Rate 97 on file with the South Dakota Public Utilities Commission.

**Table 1: Estimated Energy Avoided Costs
(\$/MWh)**

<u>Year</u>		<u>With 31.5 MW Wind Farm</u>		
		<u>On-Peak</u>	<u>Off-Peak</u>	<u>Total</u>
2004	Winter	14.88	11.68	
	Summer	15.85	11.82	
	Annual			13.38
2005	Winter	14.22	12.02	
	Summer	14.69	11.47	
	Annual			12.97
2006	Winter	14.69	12.37	
	Summer	15.36	12.32	
	Annual			13.55
2007	Winter	14.80	12.44	
	Summer	15.92	12.24	
	Annual			13.71
2008	Winter	14.73	12.52	
	Summer	15.74	12.32	
	Annual			13.70
2009	Winter	14.96	12.55	
	Summer	15.46	12.33	
	Annual			13.69

CAPACITY AVOIDED COSTS

The estimated capacity avoided costs provided in this paper are based on Montana-Dakota's current plan for resource additions.

Montana-Dakota's Current Plan for Resource Additions

Montana-Dakota's existing power purchase contracts include the following:

1. Power purchased from the Antelope Valley Station Generating Unit No. 2,
2. Capacity received from Western Area Power Administration,
3. Peaking capacity purchased from Omaha Public Power District, and
4. Baseload capacity and energy purchased from Omaha Public Power District.

With these power purchase contracts and its existing generating units, Montana-Dakota will not need additional capacity until 2011. The company is studying the feasibility of constructing a coal-fired baseload unit, known as the Lignite Vision 21 (LV 21) Project, in the year 2010. For the purpose of this estimation of capacity avoided costs, the LV 21 unit is considered as the planned capacity addition in 2010.

Assumptions on the Lignite Vision 21 Unit in 2010

The LV 21 unit, rated at 175 MW, is estimated to cost \$374.2 million in 2003 dollars, or

$$\$374,200,000 / 175,000 = \$2,138 / \text{kW in 2003\$}$$

Assuming an escalation rate of 2.15% per year for the construction cost, the estimated capacity costs in 2010 dollars would be:

$$\$2,138 \times 1.0215^7 = \$2,481 / \text{kW in 2010\$}.$$

Montana-Dakota's current levelized fixed charge rate calculated for a book life of 33 years (for a baseload unit) is 13.637%. Therefore, the annual cost in 2010\$ for the LV 21 unit is:

$$\$2,481 \times 0.13637 = \$338.33 / \text{kW-Year}$$

Estimated Capacity Avoided Costs

As a result of Montana-Dakota's current plan for capacity additions and based on the assumptions for the LV 21 unit, the estimated capacity avoided costs in dollars per kilowatt (\$/kW) are shown in Table 2.

Table 2: Estimated Avoided Capacity Costs

<u>Year</u>	<u>Avoided Capacity Costs (\$/kW-Year)</u>
2005	0.0
2006	0.0
2007	0.0
2008	0.0
2009	0.0
2010	338.33
2011	338.33
2012	338.33
2013	338.33
2014	338.33

EXHIBIT "C"

**Memorandum of Points and
Authorities of Superior Renewable
Energy et al.**

Phillip G. Lookadoo
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plookadoo@thelenreid.com

Thelen Reid & Priest LLP
Attorneys At Law

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April 13, 2004

M. Bradford Moody, Esq.
Watt, Beckworth & Thompson, L.L.P.
1010 Lamar, Suite 1600
Houston, TX 77002
bmoody@wbtlp.com
713-650-8100, Ext. 108

Re: **Proposed Java Wind Facility**

Dear Mr. Moody:

My firm represents Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. ("Montana-Dakota"). Montana-Dakota hereby acknowledges receipt of your letter of April 8, 2004 ("April 8 Letter"), addressed to Andrea Stomberg, Vice President-Electric Supply, that was sent to Montana-Dakota on behalf of your client, Superior Renewable Energy LLC ("Superior").

Your April 8 Letter refers to the mandatory obligations of electric utilities under the Public Utility Regulatory Policies Act ("PURPA") to purchase electric energy from electric generators that satisfy the requirements of a Qualifying Facility ("QF") under PURPA and the implementing Regulations of the Federal Energy Regulatory Commission ("FERC") thereunder. In the April 8 Letter, you indicate that Superior has asked you to "invoke Superior's rights under PURPA" and "Superior is fully prepared and does now exercise its rights under this law."

As you acknowledge in your April 8 Letter, Section 292.207(a)(1)(ii) of the FERC's Regulations (18 C.F.R. 292.207(a)(1)(ii)) under PURPA requires Superior to file with FERC, and "serve on each electric utility with which it expects to ... sell electric energy to," a notice of self-certification of QF status ("Notice of Self-Certification") with respect to the proposed Java Wind Facility.

As a precursor to assessing whether Superior is entitled to invoke the rights reserved for QFs under PURPA, Montana-Dakota suggests that Superior must first provide a copy to Montana-Dakota of Superior's Notice of Self-Certification, that has been filed with the FERC, thereby enabling Montana-Dakota to assess whether Superior has met the requirements of a QF. Montana-Dakota looks forward to reviewing Superior's Notice of Self-Certification for the Java

Wind Facility. Do you have an approximate date by which Montana-Dakota can expect to receive a file-stamped copy of that Notice of Self-Certification after it has been filed at the FERC?

Your April 8 Letter also indicates that "Superior intends to negotiate with [Montana-Dakota] in good faith within the parameters set forth by the SDPUC toward a mutually acceptable power purchase agreement for the Java Wind Facility ... [and that] these negotiations must be concluded with[in] the next two weeks."

While Montana-Dakota recognizes the obligation of an electric utility under PURPA to purchase electric energy generated by a QF, Montana-Dakota does not believe that it has an obligation to complete, nor does Montana-Dakota believe that the parties could complete, negotiation of a mutually acceptable power purchase agreement within the next two weeks.

Nevertheless, upon receipt of Superior's Notice of Self-Certification, Montana-Dakota will begin the process of assessing the appropriate avoided-cost purchase price applicable to any mandatory purchase obligation that Montana-Dakota has under PURPA with respect to the Java Wind Facility.

Montana-Dakota hereby notifies Superior that it will determine its applicable avoided cost obligation with respect to the Java Wind Facility by utilizing the following regulatory requirements applicable to Montana-Dakota.

The South Dakota Public Utilities Commission ("SDPUC") has indicated that electric utilities subject to its jurisdiction, including Montana-Dakota, are encouraged to negotiate a mutually acceptable power purchase agreement with a QF, by which the electric utility will purchase the electric energy generated by such QF. In addition, as referenced in your letter, the SDPUC issued an order on December 14, 1982, designated No. F-3365, regarding the avoided costs applicable to electric utilities subject to the regulation of the SDPUC. In Section VI.E of that same order, the SDPUC stated that (See page 17 of that order):

"The Commission finds that the capacity credits to be included in any purchase rates, whether contractual or otherwise, should be based on capacity actually avoided, and if the purchase does not enable a utility to avoid capacity costs, capacity credits should not be allowed."

Moreover, Section 292.304(e) of the FERC's Regulations (18 C.F.R. 292.304(e)) specifies various factors to be considered in determining the avoided costs for establishing rates for purchases from QFs, including:

"(2) The availability of capacity or energy from a qualifying facility during the system daily and seasonal peak periods, including:

- (i) The ability of the utility to dispatch the qualifying facility;
- (ii) The expected or demonstrated reliability of the qualifying facility;

- (iii) The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirement and sanctions for non-compliance;
 - (iv) The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities;
 - (v) The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;
 - (vi) The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system; and
 - (vii) The small capacity increments and the shorter lead times available with additions of capacity from qualifying facilities; and
- (3) The relationship of the availability of energy or capacity from the qualifying facility as derived in paragraph (e)(2) of this section, to the ability of the electric utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use;"

In reviewing the requisite regulations, Montana-Dakota must also be mindful of the requirements of Section 292.304(a) of FERC's Regulations, namely that:

- "(1) Rates for purchases shall:
- (i) Be just and reasonable to the electric consumer of the electric utility and in the public interest; and
 - (ii) Not discriminate against qualifying cogeneration and small power production facilities.
- (2) Nothing in this subpart requires any electric utility to pay more than the avoided costs for purchases."

While Montana-Dakota is obligated not to discriminate against QFs, Montana-Dakota is also clearly obligated under FERC Regulations to purchase electric energy from QFs at prices that are just and reasonable to Montana-Dakota's electric consumers and that do not exceed Montana-Dakota's avoided costs. Under the SDPUC regulatory requirements, Montana-Dakota is obligated to not provide capacity credits to a QF if the purchase does not enable Montana-Dakota to avoid capacity costs. Montana-Dakota currently has its system capacity requirements satisfied until at least 2011.

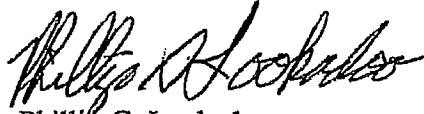
April 13, 2004

Page 4

Thelen Reid & Priest LLP

Montana-Dakota looks forward to receiving from Superior a copy of the applicable Notice of Self-Certification, after Superior has filed such Notice of Self-Certification with the FERC. Thereafter, Montana-Dakota looks forward to discussing these matters further with Superior.

Sincerely,



Phillip G. Lookadoo
Counsel for
Montana-Dakota Utilities Co.

Cc: Andrea L. Stomberg, V.P., Electric Supply
Douglas W. Schulz, Senior Attorney and Assistant Secretary

PGL/dec

EXHIBIT "D"
Memorandum of Points and
Authorities of Superior Renewable
Energy et al.



MONTANA-DAKOTA

UTILITIES CO.

A Division of MDU Resources Group, Inc.

400 North Fourth Street
Bismarck, ND 58501
(701) 222-7900

November 5, 2005

Pam Bonrud
Executive Secretary
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Re: Docket No. EL04-016

Dear Ms. Bonrud:

Montana-Dakota Utilities Co. (Montana-Dakota), a Division of MDU Resources Group, Inc., submits the following information to advise the parties to the above-captioned proceeding of two events.

1. Montana-Dakota hereby supplements its response to Superior's first set of interrogatories dated July 16, 2004, Request No. 1. In that request, Superior asked for existing energy and capacity purchase contracts underlying data submitted to MAPP as of January 2004 for inclusion in the MAPP Regional Reliability Council Report on Coordinated Bulk Power Supply Program (EIA-411), for line 18, full responsibility purchases. Montana-Dakota provided a general description of the existing contracts as defined in the request.

Please be advised that there is one other contract that does not meet the criteria in the request. That contract is with NorthPoint Energy Solutions Inc., (NorthPoint), a wholly-owned subsidiary of Saskatchewan Power Corporation. This agreement was signed on July 15, 2004, because Montana-Dakota and OPPD were not successful in obtaining firm transmission service related to the OPPD contracts referenced in the original response to Superior's Request No. 1. Following is a general description of the NorthPoint contract.

Product K System Participation Power Exchange Service. In July 2004, Montana-Dakota signed a Product K System Participation Power Interchange Service Agreement with NorthPoint Energy Solutions Inc., a wholly-owned subsidiary of Saskatchewan Power Corporation. Under the agreement Montana-Dakota would purchase from NorthPoint the following amounts of seasonal

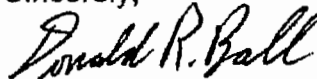
capacity and associated hourly energy, when scheduled.

- 15 MW for May through October, 2005,
- 25 MW for May through October 2006.

2. Montana-Dakota hereby notifies the parties to this proceeding that, because of the apparent unavailability of firm transmission service related to Montana-Dakota's power purchase contracts with OPPD, Montana-Dakota has issued the attached RFP seeking proposals for 70 to 100 MW of firm capacity for the time period beginning November 1, 2006 and ending December 31, 2010.

Please acknowledge receipt by stamping or initialing the duplicate copy of this letter attached hereto and returning the same in the enclosed self-addressed, stamped envelope.

Sincerely,



Donald R. Ball
Assistant Vice President
Regulatory Affairs

cc: Service list

Montana-Dakota Utilities Co.
Docket No. EL04-016
Service List

Pam Bonrud (Original plus 11 copies)
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SD Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

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Assistant General Counsel
Northern States Power Company
800 Nicollet Mall, Suite 3000
Minneapolis, MN 55402

EXHIBIT "E"
Memorandum of Points and
Authorities of Superior Renewable
Energy et al.
**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE COMPLAINT FILED)	
BY SUPERIOR RENEWABLE ENERGY LLC)	
ET AL. AGAINST MONTANA DAKOTA)	Docket No. EL04-016
UTILITIES CO. REGARDING THE JAVA)	
WIND PROJECT)	

SUPERIOR RENEWABLE ENERGY LLC'S AND JAVA LLC'S SECOND SET OF
INTERROGATORIES, DOCUMENT REQUESTS AND REQUESTS FOR ADMISSIONS

TO: Montana-Dakota Utilities Co. ("MDU" or "you")

You are hereby requested to respond to the following discovery requests in accordance with SDRP 15-6-33(a) and (b), 33 15-6-34 (a) and (b), and 15-6-36(a) and the attached General Instructions and Definitions. Your response must be submitted within 30 days or such shorter time as may be required by the Commission.

GENERAL INSTRUCTIONS AND DEFINITIONS

A. General Instructions

1. A copy of your responses should be sent to the following:

Jeff Ferguson
Chief Operating Officer
Superior Renewable Energy LLC
1600 Smith, Suite 4240
Houston, TX 77002
Tel: (713) 571-8900
Fax: (713) 571-8004
ferguson@superiorrenewable.com

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M. Bradford Moody
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1010 Lamar, Suite 1600
Houston, TX 77002
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Fax: (713) 650-8141
bmoody@wbtlp.com

2. In connection with any claim of privilege or other discovery immunity, list all information and documents withheld under the claim of privilege and, for each, state:
 - a. a summary of the information and documents sufficient for there to be a determination as to their status;
 - b. the privileges or discovery immunities being interposed and how the privileges apply;
 - c. the age of the information and, for documents, their date, number of pages, and number and title of attachments;
 - d. the name and address of the person that collected or created the information and wrote, prepared or signed the documents;
 - e. the name and address of the recipients of the information and documents; and
 - f. the name and address of the custodians of the information and documents and the name and location of the files containing the documents.
3. If you assert that documents or information responsive to any of these discovery requests have been discarded or destroyed, state when and explain why any such document or information was discarded or destroyed, and identify the person directing the discarding or destruction. If a claim is made that the discarding or destruction occurred pursuant to a discarding or destruction program, identify and produce the criteria, policy or procedures under which such program was undertaken.
4. In response to each discovery, provide information from corporate and individual files plus.
5. In the event there is no information or document responsive to an discovery request, so state.
6. Each discovery request is continuing in nature and requires supplemental responses as soon as further information is obtained that is responsive to the request.
7. For each response that is generated by a computer or data storage mechanism, separately state:
 - a. the name of the program or file from which the information came;

- b. how the data is stored (punch cards, tapes, discs, etc.) and how it can be transmitted and retrieved; and
 - c. the identity of the persons who collected or entered the information into the computer or data storage mechanism.
8. Each written response, document or objection should designate the corresponding discovery request, and subpart or portion of the data request under which it is being provided. For this purpose, begin each page with a new data request first, followed by the corresponding response. No more than one response should appear on a page. Where the information or document responds to more than one request, a duplicate need not be provided. You need only cross-reference.
 9. As to any discovery request consisting of a number of separate subparts or portions, a complete response is required to each subpart or portion as if the subpart or portion were propounded as a separate request.
 10. Whenever an interrogatory specifically requests an answer rather than the identification of documents, an answer is required and the production of documents in lieu thereof will not substitute for an answer.
 11. The terms "and" and "or" should be construed either disjunctively or conjunctively whenever appropriate in order to bring within the scope of each discovery request any information or document which might otherwise be considered to be beyond its scope.
 12. The singular form of a word should be interpreted as plural, and the plural form of a word should be interpreted as singular whenever appropriate in order to bring within the scope of each discovery request any information or document which might otherwise be considered to be beyond its scope.

B. Definitions

1. Any reference to Montana-Dakota Utilities Co. ("MDU" or "you") includes all merged or consolidated predecessors or predecessor in interest; subsidiaries past or present; and employees, officers, directors, agents, consultants, attorneys, and all persons acting under contractual arrangements with or acting or purporting to act on behalf of MDU.
2. "Document" should be interpreted to include, but not limited to, the original or any copy, of any written or retrievable matter, including electronic media, electronic mail, or data of any kind, however produced or reproduced, to which you have or have had access. The final version as well as each draft of each document should be produced separately. Any document that is not exactly

identical to another document for any reason, including, but not limited to, marginal notations or deletions, should be considered to be a separate document. As to any document related to the matters addressed herein that is not in your possession but that you know or believe to exist, you are requested to identify or indicate to the best of your ability its present or last known location or custodian.

3. "Person" should be interpreted to include every natural person, corporate entity, partnership, association (whether formally organized or ad hoc), joint venture, cooperative, municipality, commission, governmental body or agency.
4. "Relating to" should be interpreted to mean presenting, discussing, commenting on, analyzing, or mentioning in any way.
5. "Correspondence" should be interpreted to include, but not limited to, all letters, telexes, facsimiles, telegrams, E-mail or other electronic communication, messages, memoranda or other written communications.
6. "Communications" should be interpreted to include, but not limited to, all forms of communication, whether written, printed, electronic, oral, pictorial or otherwise, including testimony or sworn statement.

INTERROGATORIES

1. With respect to the Product K agreement referenced in your November 5, 2004 supplement to Superior's Request No. 1 (hereinafter the "Product K Agreement"), please specify the following details for each of the years 2003-2013:
 - a. When was the agreement fully executed by each party?
 - b. What is the start date, end date and terms of the purchase?
 - c. What is the capacity payment in \$/kW-month and \$/kW-year?
 - d. What months of the year is the capacity being purchased?
 - e. What is the energy payment in \$/MWh?
 - f. Are there any additional transactional costs, for example transmission or ancillary service costs?
 - g. What are the nominating and/or scheduling provisions of all contracts, including but not limited to any periodic nomination provisions and or any other provisions that provide flexibility to modify the amount of capacity being purchased?
 - h. What are the termination provisions in the agreement?
2. With respect to the Product K Agreement, explain in detail the reasons why its existence and terms were not disclosed to Superior in your September 1, 2004 response to Superior's interrogatories, including an explanation of any changes in the factual or legal basis for not disclosing the Product K Agreement between the time of your July 16, 2004 response and your November 5, 2004 effort to supplement your response.
3. With respect to the Product K Agreement:
 - a. state whether the contract is conditioned or contingent in any way in order for sales to commence, including but not limited to successful efforts by anyone to secure firm transmission service.
 - b. If yes, state whether the condition or contingency has been met or fulfilled and the date upon which it was met or fulfilled, and if not, the efforts currently being made to meet or fulfill the condition or contingency.
4. With respect to all agreements identified by you in your September 1, 2004 response to Superior's Interrogatory No. 1 or in your November 5, 2004 supplemental response to Superior's Interrogatory No. 1:

- a. Who are the signatories for each party?
 - b. What is the time period during which negotiations were initiated and completed?
 - c. What are the effective dates?
 - d. What amendments or notices have been executed or sent by either party?
 - e. What is the term, including any cancellation terms and conditions?
 - f. Is any capacity purchased under the contract firm capacity or peaking capacity and if so, how much is firm capacity and how much is peaking capacity?
 - g. Who are the individuals who negotiated the contracts on behalf of MDU and on behalf of the other parties to the contracts? State whether any of these individuals were aware of Superior's efforts to obtain a power purchase agreement with MDU at the time of the negotiations or execution of the contract.
 - h. What, if any, "out" provisions or similar provisions are in the contracts that would enable either party to take more, less or none of the maximum quantity specified in the contracts for either energy or capacity?
 - i. What are the actual amounts of energy and capacity received by MDU under the contracts relative to the energy and capacity amounts for such contracts listed by MDU in its November 5th supplement to its interrogatory responses?
5. Identify all individuals involved in the preparation and drafting of your September 1, 2004 response to Superior's Interrogatory No. 1.
 6. Identify all individuals involved in the preparation and drafting of your November 5, 2004 supplement to Superior's Interrogatory No. 1.
 7. State whether or not your September 1, 2004 response to Superior's Interrogatory No. 1 was under oath and, if so, the individual giving such oath.
 8. State whether or not your November 5, 2004 response to Superior's Interrogatory No. 1 was under oath and, if so, the individual giving such oath.
 9. Describe all efforts to secure firm transmission service related to the contracts between you and the Omaha Public Power District listed in Exhibit "A" ("the OPPD Contracts"), including but not limited to the dates upon which you communicated with transmission service providers to obtain transmission relative to the OPPD Contracts and the dates upon which transmission service providers communicated with you with respect to the OPPD Contracts.

10. State whether or not you are still trying to secure firm transmission service related to the OPPD Contracts and, if so, the status of your efforts.
11. State whether you intend to purchase energy and/or capacity under the OPPD Contracts if you are unable to secure firm transmission service, including in your answer a description of the terms of any alternative transmission service that would be used to secure the energy and/or capacity.
12. With respect to the Request for Proposal ("RFP") attached to your November 5, 2004 supplement to Superior's Interrogatory No. 1:
 - a. State the date upon which MDU decided to issue the RFP.
 - b. Identify each individual at MDU involved with the decision to issue the RFP.
 - c. State whether or not the capacity and energy that the Java Wind Facility will contribute to MDU's integrated electric system was taken into account in determining the amount of capacity and energy solicited in the RFP and, if so, the amount of such capacity and energy.
 - d. If your answer to 13c is that the capacity and energy from the Java Wind Facility was not taken into account, state the reasons why they were not taken into account.
 - e. Identify each entity that has responded to the RFP with a notice of intent to bid and state the amounts of energy and capacity and any other material terms and conditions identified in the intent to bid.
13. If you have denied any request for admission set forth below, explain in detail the reason for your denial.

REQUESTS FOR ADMISSIONS

1. Admit or deny that MDU relied upon the OPPD Contracts in calculating the avoided cost of capacity shown on Exhibit "A."
2. Admit or deny that MDU relied upon the Product K contract in calculating the avoided cost of capacity shown on Exhibit "A."
3. Admit or deny that MDU's September 1, 2004 response to Superior's Interrogatory Request No. 1 was true and complete and not misleading in any respect.
4. Admit or deny that all of the information contained in Exhibit "A," including but not limited to the avoided costs of capacity shown on Table 2, is true and complete and not misleading in any respect.

5. Admit or deny that the OPPD Contracts contain a term or condition that provides for a twelve-month period to secure firm transmission service.
6. Admit or deny that at or before the time at which you answered Superior's interrogatories on July 16, 2004, you knew that the parties' performance under the OPPD Contracts was conditioned or otherwise contingent upon MDU and/or OPPD obtaining firm transmission service.
7. Admit or deny that at or before the time at which you answered Superior's interrogatories on July 16, 2004, you knew that no such firm transmission service had been obtained.
8. For each of the years 2004, 2005, 2006, 2007, 2008 and 2009, admit or deny that without purchases of energy and capacity under the OPPD Contracts and the Product K Agreement, MDU needs additional capacity on its integrated electric system.
9. Admit or deny that the capacity that is the subject of the Product K Agreement is not base load generating capacity.
10. Admit or deny that the capacity that is subject of the OPPD Contracts is not base load generating capacity.

DOCUMENT REQUESTS

1. The Product K Agreement and any Documents Relating to the information requested in Interrogatory No. 1 regarding the Product K Agreement, including Correspondence, Communications, drafts, amendments and notices.
2. All Documents Relating to MDU's decision to issue the RFP, including but not limited to Correspondence (including but not limited to electronic mail) and Communications that discusses the RFP in relation to the Java Wind Facility or this proceeding.
3. All Documents Relating to the information sought by Interrogatory Nos. 1-5 (inclusive) and 10-13 (inclusive) or to the information contained in your answer to Interrogatory Nos. 1-5 (inclusive) and 10-13 (inclusive).

Respectfully submitted,

DANFORTH, MEIERHENRY & MEIERHENRY, L.L.P.

By: _____

Mark Meierhenry
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Attorneys for Superior Renewable Energy LLC and Java LLC

EXHIBIT "F"

Memorandum of Points and
Authorities of Superior Renewable
Energy et al.

LAW OFFICES
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November 12, 2004

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1010 Lamar, Suite 1600
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RE: MONTANA-DAKOTA UTILITIES CO.; SUPERIOR COMPLAINT
Docket EL04-016
Our file: 0069

Dear Brad:

Our client, Montana-Dakota Utilities Co. ("Montana-Dakota"), has been informed that you are attempting to interfere in the business relationship between Montana-Dakota and Omaha Public Power District ("OPPD"), by contacting OPPD directly and requesting information about Montana-Dakota's avoided costs and the pricing provisions in OPPD's confidential power purchase agreements with Montana-Dakota rather than using the proper and legal discovery process in the South Dakota Public Utilities Commission ("SDPUC") proceeding in Docket EL04-016.

As you have been informed by Montana-Dakota, the power purchase agreements between Montana-Dakota and OPPD are subject to a confidentiality clause. Your actions are highly improper and cast Superior Renewable Energy LLC ("Superior") in an extremely bad light as to its motives. Furthermore, your communications with OPPD may constitute a tortious and intentional interference with Montana-Dakota's business relationship with OPPD.

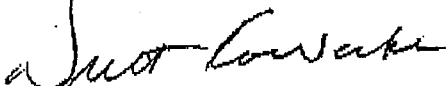
M. Bradford Moody
November 12, 2004
Page 2

We hereby demand that you and Superior immediately cease and desist from any further communication with OPD or any other Montana-Dakota business relationships. We further demand that you, as Superior's counsel provide us with written assurances within three (3) business days after receipt of this letter that neither you or Superior will communicate with existing business relationships of Montana-Dakota outside the approved SDPUC discovery process. In the absence of the receipt of such assurances, Montana-Dakota intends to take any and all action deemed appropriate to protect their rights.

Nothing in this letter waives any remedy Montana-Dakota may have, at law or in equity.

Yours truly,

MAY ADAM, GERDES & THOMPSON LLP



BY:

DAG:mw

cc: Service List (Michele Farris, Keith Senger, Karen E. Cremer, Mark V. Meierhenry, Suzan M. Stewart, Alan D. Dietrich, Steven J. Halmers, Christopher B. Clark, Linda L. Walsh)
Andrea Stomberg
Don Ball
Doug Schulz
Phil Lookadoo
Amy Comer

EXHIBIT "G"
Memorandum of Points and
Authorities of Superior Renewable
Energy et al.
WATT BECKWORTH
THOMPSON & HENNEMAN, L.L.P.
(A REGISTERED LIMITED LIABILITY PARTNERSHIP)
ATTORNEYS AT LAW

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BRAD MOODY
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November 15, 2004

*Via Facsimile (605)224-6289
and First Class Mail*

David A. Gerdes, Esq.
May, Adams, Gerdes & Thompson LLP
503 South Pierre Street
Pierre, South Dakota 57501

Re: In The Matter of the Filing by Superior Renewable Energy LLC Against
Montana Dakota Utilities Co. Regarding the Java Wind Project, PUC Docket No.
EL04-016

Dear Mr. Gerdes:

This letter is a response to your firm's letter to me dated November 12, 2004. I am responding today not because I believe you have any right to demand any response (much less a response within the three business days set forth in your letter) but because I want the Commission to see both your letter and this letter before hearing Superior's Motion to Compel Friday.

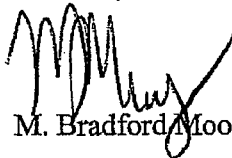
First, there is nothing improper or illegal about contacting third parties to discuss matters related to this proceeding, including the Omaha Public Power District ("OPPD"). In fact, such contacts are a part of practically every civil and administrative proceeding in which I have participated. So there could be no confusion, I told Dale Widoe at OPPD at the beginning of my call who I was, who I represented and what your client disclosed to Superior and the Commission on November 5, 2004. None of that information was subject to the parties' confidentiality agreement. Having further disclosed that information to the Commission first on September 1, 2004 and again on November 5, 2004, it is now a part of the public record. Mr. Widoe voluntarily chose to talk with me about the contracts between Montana-Dakota and OPPD. If Montana-Dakota believes that there is some breach of a confidentiality obligation in the contract, Montana-Dakota should discuss that with OPPD, not me.

David A. Gerdes, Esq.
November 15, 2004
Page 2 of 2

Second, my conversation with Mr. Widoe might not have even occurred if Montana-Dakota had answered Superior's discovery request in an accurate and complete fashion instead of attempting to "supplement" its responses last week by doing a complete about-face on the OPPD contracts. Having given Superior a very good reason to doubt Montana-Dakota's credibility with respect to these contracts, I'm sure you can understand why I might want to talk to OPPD to see what else was missing or inaccurate about Montana-Dakota's "supplement."

Third, with respect to your characterization of my conversation with Mr. Widoe as "a tortious interference with Montana-Dakota's business relationship with OPPD," I think that a detailed response would give more dignity to this allegation than it deserves. Suffice to say that I hope you are familiar with applicable law dealing with the consequences of filing a frivolous lawsuit.

Sincerely,



M. Bradford Moody

MBM:ds

cc: Superior Renewable Energy LLC
Attn: John Calaway
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Service List