

MONTANA-DAKOTA UTILITIES CO.  
A Division of MDU Resources Group, Inc.

Before the Public Utilities Commission of South Dakota

Docket No. EL04-016

Direct Testimony  
Of  
Donald R. Ball

1 Q. Would you please state your name, business address and position?

2 A. Yes. My name is Donald R. Ball and my business address is 400  
3 North Fourth Street, Bismarck, North Dakota 58501. I am the Assistant  
4 Vice President - Regulatory Affairs of Montana-Dakota Utilities Co.  
5 (Montana-Dakota), a Division of MDU Resources Group, Inc.

6 Q. Would you please describe your duties as Assistant Vice President -  
7 Regulatory Affairs?

8 A. As Assistant Vice President - Regulatory Affairs, I have executive  
9 responsibility for all activities falling under the jurisdiction of various  
10 regulatory agencies. This includes, among other things, the areas of  
11 revenue requirements, rate administration and rate design.

12 Q. Would you please outline your educational and professional background?

13 A. I graduated from Black Hills State College, Spearfish, South Dakota, in  
14 1969 with a Bachelor of Science degree in Business Administration, with  
15 emphasis on accounting. I began my career with Montana-Dakota in  
16 September of 1969 at the Company's Rapid City, South Dakota office. I  
17 held various positions in the Company before achieving my present

1 position in February 2003.

2 Q. Have you testified in other proceedings before regulatory bodies?

3 A. Yes, I have. On a number of occasions, I have presented testimony  
4 before the Commissions in Montana, North Dakota, South Dakota and  
5 Wyoming. I have also testified before the Federal Energy Regulatory  
6 Commission (FERC) regarding Montana-Dakota's rates and purchased  
7 gas cost adjustments.

8 Q. What is the purpose of your testimony?

9 A. The purpose of my testimony is to address a jurisdictional cost  
10 allocation matter and explain how Montana-Dakota has fully addressed  
11 the issues for hearing numbered 1 through 4 and 8 set forth in the  
12 Commission's October 26, 2004 Notice of Investigation Under SDCL 49-  
13 34A-26; Order For and Notice of Procedural Schedule and Hearing  
14 (October 26, 2004 Order and Notice). I will also identify the other  
15 witnesses who will present testimony on behalf of Montana-Dakota in this  
16 proceeding.

17 Q. Would you please address the jurisdictional cost allocation matter?

18 A. Yes. The jurisdictional cost allocation matter relates to the fact that  
19 Montana-Dakota operates an integrated or interconnected electric system  
20 with respect to generation and bulk power transmission that covers  
21 customers served in Montana, North Dakota and South Dakota. In each  
22 state Montana-Dakota's cost of providing service to its customers includes  
23 a proportionate share of the costs of generation and bulk power

1 transmission. Montana-Dakota also operates its generation and bulk  
2 power transmission facilities on a system-wide basis for the benefit of  
3 customers served in all three states. As Superior's proposed project is  
4 located in South Dakota, Montana-Dakota is concerned that the price and  
5 terms under which it is ultimately required to take Superior's power must  
6 be recoverable in electric service rates. To address this concern  
7 Montana-Dakota believes that the costs of any obligations imposed on  
8 Montana-Dakota by the Commission under any contract with Superior  
9 must be conditioned on such costs being recoverable in Montana, North  
10 Dakota and South Dakota. Alternatively, South Dakota customers must  
11 be required to bear any shortfall in the recovery of such costs by Montana-  
12 Dakota or the scope of the Commission's order must be limited to sales of  
13 electric service in South Dakota which is the limit of the Commission's  
14 ratemaking authority over the parties.

15 Q. Turning now to how Montana-Dakota has fully addressed the issues for  
16 hearing numbered 1 through 4 and 8 of the Commission's October 26,  
17 2004 Order and Notice, would you please address Issue 1?

18 A. Yes. The Commission stated that:

19 "The issues at the hearing, if not decided prior to the hearing on the  
20 motion of a party or the Commission, will be: 1. Whether MDU  
21 should be required to file with the Commission all of the information  
22 relative to avoided costs that MDU is required by 16 U.S.C. § 2643,  
23 18 CFR § 292.302(b)(1)-(3) and the SDPUC PURPA Order to file  
24 and disclose?"

25  
26 With respect to 16 U.S.C. § 2643, federal regulations, at 18 CFR §  
27 290.102, require all nonexempt electric utilities to file the data required by

1 section 133(a) of the Public Utility Regulatory Policies Act of 1978, 16  
2 U.S.C. § 2643, with their state regulatory authorities. However, under §  
3 290.101, Montana-Dakota is an exempt utility and has not been required  
4 to file the section 133 data for a number of years. As such, Montana-  
5 Dakota should not be required to file the section 133 information. I have  
6 included the relevant regulations as Exhibit No. \_\_\_\_ (DRB-1). Page one of  
7 the exhibit contains the two referenced sections and page two of the  
8 exhibit shows "Appendix A" which clearly denotes Montana-Dakota as an  
9 exempt utility. I should also mention that the section 133 data  
10 requirements were significant and dealt with all costs (generation,  
11 transmission and distribution) of serving the various customer classes at  
12 retail. Much of the section 133 data, even if available, would be  
13 inapplicable in the context of this proceeding.

14 With respect to the information required by § 292.302(b)(1)-(3) and  
15 the SDPUC PURPA Order, Montana-Dakota has routinely filed similar  
16 information with the Commission as part of the annual update of its  
17 qualifying cogeneration and small power production tariffs denoted as  
18 Montana-Dakota Rates 95, 96 and 97. These filings are publicly available.

19 Q. Would you please address Issue 2 of the Order and Notice?

20 A. Yes. Issue 2 is whether the information referred to in issue 1  
21 should in any case be required to be disclosed to Superior. With respect  
22 to the section 133 data, Montana-Dakota does not have that data  
23 available as it was long ago exempted from filing such information.

1 Therefore, it is not able to disclose such information to Superior or to  
2 anyone else. With respect to the section 292 data and the SDPUC  
3 PURPA Order information, Montana-Dakota has already supplied such  
4 information to Superior as part of this proceeding and also provides similar  
5 information in its annual update filing with the Commission for its qualifying  
6 cogeneration and small power production rates. In this proceeding  
7 Montana-Dakota advised the parties regarding the provision of the section  
8 292 data in its "Guidelines for Montana-Dakota's Data Response" which  
9 was included with Montana-Dakota's responses to Superior's first set of  
10 interrogatories. A copy of those guidelines is attached to this testimony as  
11 Exhibit No. \_\_\_\_ (DRB-2).

12 Q. Would you please discuss Issue 3?

13 A. Yes. Issue 3 is,

14 "Whether the information required to be filed and/or disclosed pursuant  
15 to Issues 1 and 2 must include any or all of the following information:  
16 a. MDU's Integrated Resource Plan filed in North Dakota on  
17 July 1, 2003?  
18 b. With respect to MDU's in-service and planned generation  
19 facilities, including the coal-fired power plant currently being  
20 studied for construction in western North Dakota:  
21 (i) The most recent installed (or planned) cost (\$/KW)  
22 (ii) Burner tip fuel costs (\$/Mmbtu)  
23 (iii) Heat rate (Mmbtu/kwh)?  
24 (iv) Annual capacity factor?  
25 (v) Operation and maintenance costs, including the cost  
26 to operate any emissions control technology?  
27 (vi) Water consumption?  
28 c. Existing capacity and energy purchase contracts?  
29 d. Terms of any proposed new contracts?  
30 e. Hourly system load data for the last five years?"  
31

1           With respect to a., Montana-Dakota provided a copy of the  
2 Integrated Resource Plan to Superior in Response No. 3 to Superior's first  
3 set of Interrogatories. Montana-Dakota has routinely provided the  
4 Commission with a copy at the same time it is filed in North Dakota.

5           With respect to the items noted in b., Montana-Dakota provided the  
6 required information for the coal fired plant under study in western North  
7 Dakota in its responses to Superior's first set of interrogatories, questions  
8 numbered 23 through 28 and in its responses to Superior' third set of  
9 interrogatories, questions numbered 3 through 8. With respect to in-  
10 service generating facilities, Montana-Dakota provided relevant  
11 information in accordance with its "Guidelines for Montana-Dakota's  
12 Response" shown in Exhibit No. \_\_\_\_ (DRB-2). On October 20, 2004  
13 Montana-Dakota provided a calculation of its Estimated Avoided Costs  
14 which included a number of confidential work papers and input information  
15 related to the items in Issue 3 b. I should also note that the testimony and  
16 exhibits of Mr. Kee, another company witness, will address certain  
17 information related to item b.

18           With respect to Issue 3 c., Montana-Dakota provided copies of its  
19 existing capacity and energy purchase contracts on December 3, 2004 in  
20 compliance with the Commission's November 24, 2004 Order Granting  
21 Motion to Compel and Protective Order. All contracts were submitted as  
22 confidential information.

1                   With respect to Issue 3 d., the only proposed new contract is the  
2 one with Superior and that information is included in the testimony and  
3 exhibits of Mr. Kee.

4                   With respect to Issue 3 e., Montana-Dakota provided the relevant  
5 information in accordance with the guidelines in Exhibit No. \_\_\_\_ (DRB-2)  
6 on October 20, 2004 as part of its Estimated Avoided Cost Calculations.

7 Q.           Would you please address Issue 4 of the Commission's October 26, 2004  
8 Order and Notice?

9 A.           Yes. Issue 4 is:

10                   "Whether MDU should be required to file with the Commission and  
11 disclose to Superior all work papers and information used by MDU  
12 to calculate the monthly capacity payment of \$14.50/kw mo. set  
13 forth as tariffed rate in MDU State of South Dakota Electric Rate  
14 Schedule, Section No. 3, Sheet Nos. 30 – 30.2, "Long Term  
15 Purchase Rate 97 Time Differentiated"?

16  
17                   As part of its annual update filing with the Commission, Montana-  
18 Dakota routinely provides the referenced information including work  
19 papers supporting the filing. None of this information is considered  
20 confidential and it is publicly available. Montana-Dakota also provided  
21 information relevant to this issue in its responses to Superior's first set of  
22 interrogatories in questions numbered 5 through 8 and 15.

23 Q.           Would you please discuss Issue 8?

24 A.           Yes. Issue 8 is,

25                   "Whether Superior should be awarded attorney fees and costs as  
26 "terms" for MDU's failure to fulfill the purpose of PURPA and the  
27 SDPUC PURPA Order?"  
28

1 I have been advised by Counsel that the Commission does not  
2 have the authority to make such an award. Montana-Dakota is willing to  
3 brief the matter if the Commission desires.

4 Q. Would you please identify the other witnesses who will testify on behalf of  
5 Montana-Dakota in this proceeding?

6 A. Yes. In addition to me, Andrea L. Stomberg, Vice President  
7 Electric Supply for Montana-Dakota and Mr. Edward D. Kee, a member of  
8 the management group of PA Consulting Group, Inc. will provide  
9 testimony on behalf of Montana-Dakota.

10 Q. Does complete your testimony?

11 A. Yes, it does.

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

\_\_\_\_\_)  
IN THE MATTER OF THE FILING BY )  
SUPERIOR RENEWABLE ENERGY LLC ET AL. )  
AGAINST MONTANA-DAKOTA UTILITIES CO. )  
REGARDING THE JAVA WIND PROJECT )  
\_\_\_\_\_)

EL04-016

AFFIDAVIT

County of Burleigh  
State of North Dakota

Donald R. Ball, being first duly sworn, deposes and says that the Testimony of Donald R. Ball submitted in the above-captioned proceeding was prepared by him, with the assistance of others working under his direction and supervision, that he is familiar with the contents thereof, and that the statements set forth therein are true and correct to best of his knowledge, information and belief.

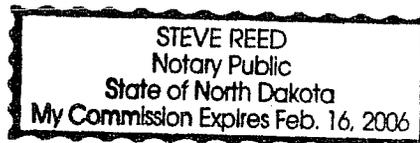
*Donald R. Ball*

Donald R. Ball

Subscribed and sworn before me  
this 31<sup>st</sup> day of January 2005.

*Steve Reed*

Notary Public



My Commission expires: 02/16/06

**Subpart A—Coverage, Compliance and Definitions****[¶ 25,001]****§ 290.101 Applicability and exemptions.**

(a) Except as provided in paragraph (b), this part shall apply to each electric utility, in any calendar year, if the total sales of electric energy by such utility for purposes other than resale exceed 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

(b) The Commission exempts from compliance with this part any utility:

- (1) Listed by name in Appendix A to this part; or
- (2) That has total sales of electric energy for purposes other than resale of less than 2 billion kilowatt-hours per year.

.01 Subsection (a), 48 F.R. 55438 (December 13, 1983); subsection (b), 49 F.R. 4938 (February 9, 1984).

.05 *Historical record.*—Section 290.101 originated in 44 F.R. 33847 (6/13/79), effective 7/15/79, and was republished without change in 44 F.R. 58687 (10/11/79), effective 10/29/79.

Section 290.101, appearing in 44 F.R. 58687 (10/11/79), effective 10/29/79, read as follows until its amendment in 48 F.R. 55438 (12/13/83), effective 2/21/84:  
**§ 290.101 Coverage**

This part shall apply to each electric utility, in any calendar year, if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

Subsection (b)(1), appearing in 48 F.R. 55438 (12/13/84), effective 2/21/84, read as follows until its amendment in 49 F.R. 4938 (2/9/84), effective 2/6/84:

(1) Listed by name in Appendix A to the part; and

**[¶ 25,002]****§ 290.102 Information gathering and filing.**

All nonexempt electric utilities must file the data required by section 133(a) of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2643, with their state regulatory authorities. All nonexempt, nonregulated electric utilities shall, to the extent the data are collected and compiled, make these data publicly available. All nonexempt electric utilities shall file an affidavit with the Commission certifying that the requisite state filing was made. All nonexempt, nonregulated electric utilities shall file an affidavit with the Commission certifying that the data were made publicly available.

.01 57 F.R. 53991 (November 16, 1992).

.05 *Historical record.*—Section 290.102 originated in 44 F.R. 33847 (6/13/79), effective 7/15/79, and read as follows until its amendment in 44 F.R. 58687 (10/11/79), effective 10/29/79:

Each utility covered under this part shall gather and report information specified in Subparts B, C, D and E of this part as follows:

(a) *Information gathering and filing.* Each electric utility shall gather and report such information in accordance with § 290.103 and shall file an original and one copy of the infor-

mation with the Federal Energy Regulatory Commission (Commission) and an additional copy of the information with any State regulatory authority for such utility. The utility shall retain additional copies of such information for a period of 5 years from the date of filing with the Commission, shall make copies of such information available for public inspection at the principal offices of the utility and shall provide copies to the public at the cost of reproduction.

(b) *Form of the information.* Such information shall be submitted on suitable standard forms prescribed by the Commission or in any

Federal Energy Regulatory Commission

**§ 290.102 ¶ 25,002**

## [¶ 25,105]

**Appendix A—Nonexempt Electric Utilities**

Electric utilities that are not exempt from Part 290, as of the date of publication of the Commission's Order No. 545 are as follows:

Department of Water and Power of the City of Los Angeles, California

Pacific Gas & Electric Company

San Diego Gas and Electric Company

Southern California Edison Company

Western Area Power Administration

.01 57 F.R. 53991 (November 16, 1992).

.05 *Historical record.*—Appendix A originated in 48 F.R. 55438 (12/13/83), effective 2/21/84, and was amended in 49 F.R. 4938 (2/9/84), effective 2/6/84, by adding more utilities to the lists of investor-owned and publicly owned utilities.

Appendix A, appearing in 49 F.R. 4938 (2/9/84), effective 2/6/84, was amended in 49 F.R. 23609 (6/7/84), effective 6/4/84, by deleting, in the list entitled "Investor-Owned Utilities", "Dallas Power and Light Company", "Texas Electric Service Com-

pany" and "Texas Power and Light Company", and by adding in the list entitled "Investor-Owned Utilities", in appropriate alphabetical order, the name "Texas Utilities Electric Company".

Appendix A, originated in 48 F.R. 55438 (12/13/83), effective 2/21/84, and amended by 49 F.R. 4938 (2/9/84), effective 2/6/84 and by 49 F.R. 23609 (6/7/84), effective 6/4/84, read as follows until its removal by 57 F.R. 53991 (11/16/92), effective 12/16/92:

**Appendix A—Exempt Utilities**

Electric utilities that are exempt from Part 290 pursuant to the Commission's Order No. 353, are as follows:

**Investor-Owned Utilities**

Arizona Public Service Company  
Arkansas Power & Light Company  
Baltimore Gas & Electric Company  
Black Hills Power & Light Company  
Carolina Power & Light Company  
Central Hudson Gas and Electric Corporation  
Central Louisiana Electric Company  
Central Power & Light Company  
Central Tele. & Utility Corporation  
Commonwealth Electric Company  
Connecticut Light & Power Company  
Consolidated Edison Company of New York  
Consumers Power Company  
Delmarva Power & Light Company  
Detroit Edison Company  
Duke Power Company  
El Paso Electric Company  
Empire District Electric Company  
Florida Power & Light Company  
Georgia Power Company  
Gulf Power Company  
Gulf States Utilities Company

Houston Lighting & Power  
Illinois Power Company  
Indiana & Michigan Electric Company  
Iowa Electric Light & Power Company  
Iowa-Illinois Gas & Electric Company  
Iowa Power and Light Company  
Iowa Southern Utilities Company  
Kansas Power & Light Company  
Kentucky Power Company  
Kentucky Utilities Company  
Kingsport Power Company  
Louisiana Power & Light Company  
Louisville Gas & Electric Company  
Madison Gas & Electric Company  
Massachusetts Electric Company  
Michigan Power Company  
Minnesota Power & Light Company  
Mississippi Power Company  
Mississippi Power & Light Company  
Missouri Public Service Company  
Monongahela Power Company  
Montana-Dakota Utilities Company  
Montana Power Company  
Narragansett Electric Company  
New Orleans Public Service, Inc.  
Northern Indiana Public Service Company

Federal Energy Regulatory Commission

¶ 25,105

**MONTANA-DAKOTA UTILITIES CO.  
SUPERIOR RENEWABLE ENERGY, LLC  
DATA REQUEST  
DATED JULY 16, 2004  
DOCKET NO. EL04-016**

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Exhibit No. \_\_\_\_\_ (DRB-:  
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**Guidelines for Montana-Dakota's Data Response:**

In determining an electric utility's avoided costs under the Public Utility Regulatory Policies Act ("PURPA"), the South Dakota Public Utilities Commission ("South Dakota PUC"), in its Order F-3365 issued on December 14, 1982 (at page 13 thereof), found that the "data required to be filed under Section 133 of PURPA" by an electric utility was an appropriate source for determining that utility's avoided energy costs. In 1982, Montana-Dakota and other electric utilities were required to file substantial amounts of data, for retail ratemaking purposes, under Section 133 of PURPA. Today, however, there is no longer any "data required to be filed under Section 133 of PURPA" by Montana-Dakota. In fact, the most recent data required to be filed by Montana-Dakota under Section 133 of PURPA was filed nearly two decades ago and would not be relevant to any inquiry by Superior today.

Under Section 292.302(b) of the FERC's Regulations (18 CFR 292.302(b)), Montana-Dakota is obligated to make available data from which avoided costs may be derived.<sup>1</sup> Montana-Dakota has responded to the following interrogatories in accordance with Section 292.302(b).

To the extent that Superior has asked Montana-Dakota to disclose data that does not constitute Avoided Energy Cost Data as defined in Section 292.302(b)(1) or Avoided Capacity Cost Data as defined in Section 292.302(b) (2) and (3), Montana-Dakota objects to providing any such data as irrelevant to the purpose of this proceeding before the South Dakota PUC.

Thus, for example, data relevant to its Avoided Capacity Cost Data relates to Montana-Dakota's planned purchases, additions, and retirements of capacity and the

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<sup>1</sup> Under Section 292.302(b) of the Federal Energy Regulatory Commission's ("FERC") Regulations (18 CFR 292.302(b)), an electric utility is required to "make available data from which avoided costs may be derived, not later than ... June 30, 1982, and not less often than every two years thereafter, ... to its State regulatory authority, and shall maintain [such data] for public inspection."

Section 292.302(b)(1) requires the provision of "the estimated avoided cost on the electric utility's system, solely with respect to the energy component, for various levels of purchases from qualifying facilities ... stated on a cents per kilowatt-hour basis, during daily and seasonal peak and off-peak periods by year, for the current calendar year and each of the next 5 years."

Section 292.302(b)(2) requires the provision of "the electric utility's plan for the addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding 10 years."

Section 292.302(b)(3) also requires the provision of "the estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit. These costs shall be expressed in terms of individual generating units and of individual planned firm purchases."

**MONTANA-DAKOTA UTILITIES CO.  
SUPERIOR RENEWABLE ENERGY, LLC  
DATA REQUEST  
DATED JULY 16, 2004  
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costs thereof over the next 10 years. Accordingly, any data related to Montana-Dakota's existing generation facilities and its existing firm purchases of capacity are only relevant to Avoided Capacity Cost Data to the extent that any such existing generation facility is planned for retirement in the next 10 years or any existing firm capacity purchase is set to expire in the next 10 years. That limited information is provided herein, but copies of any existing firm capacity purchase contracts are not relevant to any such determination of Avoided Capacity Cost Data and will not be provided.

Montana-Dakota will provide information regarding its planned capacity additions, planned firm capacity purchases, and planned facility retirements during the next 10 years, and the anticipated costs thereof, as it is required to do under Section 292.302(b) of FERC's Regulations, because this information constitutes Montana-Dakota's Avoided Capacity Cost Data.

Similarly, Montana-Dakota will provide the data that indicates its estimated avoided cost of energy on a cents per kWh basis during daily and seasonal peak and off-peak periods by year for the current year and the next 5 years, as it is required to do under Section 292.302(b) of FERC's Regulations, because this information constitutes Montana-Dakota's Avoided Energy Cost Data. Montana-Dakota will not, however, provide copies of any contracts under which it purchases fuel for its generation facilities or purchases electric energy in the marketplace, because those markets are unregulated and disclosing its contracts and individual prices there under could severely jeopardize Montana-Dakota's ability to procure fuel and energy at competitive prices for its customers in the future.

In addition, data related to the environmental emissions of Montana-Dakota's existing operations do not relate directly to Montana-Dakota's estimated costs of "energy" during the next 5 years and, therefore, do not constitute Avoided Energy Cost Data. Similarly, data related to the environmental emissions of any planned power plant do not relate directly to Montana-Dakota's estimated costs of planned capacity additions during the next 10 years and, therefore, do not constitute Avoided Capacity Cost Data.