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January 6, 2005

South Public Utilities Commission
Capitol Building
1st Floor
500 E. Capitol Ave.
Pierre, SD 57501

Re: Superior Renewable Energy LLC v. Montana Dakota Utilities Co.

Dear Public Utilities Commission:

Enclosed please find the original and ten copies of Superior Renewable Energy LLC's Testimony of John Calaway, Testimony of Jeff Ferguson and Testimony of Kenneth Slater. Please note that Exhibit KJS-4 of Kenneth Slater's Testimony is sealed and confidential. By copy of this letter service is made on the service list.

Sincerely yours,

Mark V. Meierhenry

Mark V. Meierhenry

MM/ai

C: Bradford Moody
Linda Walsh

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 UTILITIES CO. REGARDING THE JAVA WIND PROJECT	Docket No. EL04-016

DIRECT TESTIMONY OF JOHN E. CALAWAY ON BEHALF OF SUPERIOR RENEWABLE ENERGY LLC AND JAVA LLC

Introduction and Background

Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.

A. My name is John E. Calaway. I am the Managing Member of Superior Renewable Energy LLC (Superior). My business address is 1600 Smith Street, Suite 4200, Houston, Texas 77002.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. The purpose of my testimony is to provide the Commission with the factual support for the relief sought by Superior in this proceeding. Specifically, I will address the following: (i) Superior's qualifications as a wind power developer; (ii) Superior's plans to develop the Java Wind Project; (iii) Superior's discussions with Montana-Dakota Utilities Co. (MDU) relative to the Java Wind Project; (iv) my opinion regarding certain aspects of MDU's avoided cost calculations: and (v) the difficulties that Superior has experienced trying to determine MDU's avoided costs.

Q. WHAT EXHIBITS HAVE YOU ATTACHED TO YOUR TESTIMONY?

A. I have included the following items as exhibits to my testimony:

1. Exhibit 1—South Dakota Certificate of Authority for Java LLC
2. Exhibit 2—Plat Showing Location of Java Wind Project
3. Exhibit 3— MISO Interconnection Agreement for Java Wind Project
4. Exhibit 4—FERC Certification of the Java Wind Project as a Qualified Facility under PURPA
5. Exhibit 5—FERC Re-Certification of the Java Wind Project as a Qualified Facility under PURPA
6. Exhibit 6— Letter from Jeff Ferguson to Andrea Stomberg Confirming Use of MAPP Accreditation Guidelines
7. Exhibit 7—Letters From Counsel for MDU Stating That MDU Is Not Short of Capacity
8. Exhibit 8— MDU's Calculation of Avoided Costs
9. Exhibit 9-- MDU's Supplemental Interrogatory Response Regarding Avoided Cost
10. Exhibit 10-- Excerpt From MDU's Interrogatory and Admissions Responses to Superior's Second Set of Interrogatories
10. Exhibit 11— Request for Proposal from MDU for 70-100 of Firm Baseload Capacity

Q. PLEASE PROVIDE A BRIEF OUTLINE OF THE TESTIMONY OF THE OTHER SUPERIOR WITNESSES FILING DIRECT TESTIMONY ON THIS DATE.

A. In addition to my testimony, Mr. Jeff Ferguson Chief Operating Officer will give testimony regarding details of the Java Wind Project, his efforts to secure a power purchase agreement with MDU and related issues. Finally, Superior's expert witness, Mr. Ken Slater, will provide testimony relative to MDU's avoided cost analysis and related issues.

Q. DESCRIBE YOUR PAST EMPLOYMENT.

A. In 1983, I started a company called Edge Petroleum with a petroleum land man and a geologist to develop oil and gas exploration prospects for sale to the industry. Edge Petroleum specialized in prospects located on the Texas Gulf Coast and South Louisiana. We started off very modestly as a privately held company with a couple of smaller projects and

successfully sold them into the industry. Over time, we were able to develop several other additional projects, successfully getting them drilled and explored. We began to expand our capital base through our success. We began to hire additional geologists, geophysicists and land men and became a more aggressive independent exploration production company. In the early 1990's, we had a discovery of about 200 bcf of new reserves in Terrebonne Parish, Louisiana, which was a big boost for our company. We proceeded to find additional reserves by shooting large volumes of 3-D seismic data, in some ways leading the industry in 3-D seismic visualization and interpretation. In 1997, we became a public company on the NASDAQ under the symbol EPEX. The company's name became Edge Petroleum Corporation. The initial market capitalization of the company was about $150 million. It currently is around $400 million plus. I worked there as CEO and chairman of the company for the first three and a half years of Edge's existence as a public company. I then retired to spend more time with my family and to explore possibilities in the renewable energy business.

Q. MR. CALAWAY, COULD YOU TELL US HOW YOUR EXPERIENCE AS THE CHIEF EXECUTIVE OFFICER AND CHAIRMAN OF EDGE PETROLEUM PREPARED YOU FOR YOUR WORK AS THE HEAD OF SUPERIOR RENEWABLE ENERGY?

A. Yes. When I was developing the concept of Superior Renewable Energy, one of the things that became very clear to me was how my experiences over the last twenty years as an executive in an oil and gas exploration company really did prepare me for the challenges associated with developing wind energy projects. For example, one of the critical aspects of developing a wind energy project is to acquire wind rights from the owner of the land where the project is to be located. Many of the skills that I acquired negotiating oil and gas leases are skills that are directly applicable to negotiating the wind agreements with landowners.

Another critical function is the evaluation of technical data. At Edge Petroleum, I was used to dealing with large volumes of data from geologists and geophysicists. In many ways, meteorological data in the wind power business is like geological and geophysical data in the oil business. In both businesses, it is critical to try to quantify and qualify prospects based upon technical merits using this data. Mastery of mapping technology is also very important in both businesses.

Q. CAN YOU DESCRIBE THE ORIGIN OF SUPERIOR?

A. Three years ago, I decided that the economics of wind energy had come of age and that the time was right to enter the industry. I invested some of my own funds together with another individual named Alex M. Cranberg. Mr. Cranberg, a principal at a company called Aspect Energy in Denver, Colorado, is also an oil and gas investor and executive with business activities in other industries as well. I convinced him of the opportunity in wind energy and we put together the original seed capital to fund the company and open our offices. Shortly thereafter, we hired Mr. Jeff Ferguson. Jeff was the manager of renewable energy for Reliant Energy here in Houston. We hired him to provide us with the engineering, economic and overall utility prospective on the industry.

Q. AND TODAY, HOW MANY EMPLOYEES DOES SUPERIOR RENEWABLE ENERGY HAVE?

A. Currently, Superior has seven employees. We have three engineers, a geographical and information systems specialist, two meteorologists and myself.

Q. CAN YOU DESCRIBE ANY OF THE OTHER EMPLOYEE'S EXPERIENCES IN WIND ENERGY DEVELOPMENT?

A. I already told you about Mr. Ferguson's work for Reliant Energy. In addition, we have Jason McDonald, one of our engineers, who worked for another Texas-based wind power developer as a project manager for a 160-megawatt project.

Q. MR. CALAWAY, CAN YOU DESCRIBE SOME OF SUPERIOR'S OTHER WIND PROJECTS BESIDES THE JAVA WIND PROJECT?

A. Superior is currently active in southern California where we are in the very late stages of developing a 51-megawatt project in San Diego County called the Kumeyaay Wind Project. Superior has signed a twenty-year power purchase agreement with San Diego Gas and Electric and has finished all of the environmental issues and the pre-construction design. Construction on the Kumeyaay Project is expected to being in the summer of 2005. In addition to the Kumeyaay Project, we have an additional 3,500 acres adjacent to the Kumeyaay Project which we plan to develop in 2006 as a thirty-megawatt project. We also have a 15,000 acre block in New Mexico with potential for 200 plus megawatts of installed capacity that we believe will begin development next year. We are also actively developing, jointly with Shell Wind Energy, an 8,000 acre project in South Texas on the Gulf Coast. We are 50/50 partners with Shell Wind in this project. The project has 200 megawatt of potential installed capacity. We are also co-developing with Shell Wind several projects in Hawaii. We have been selected by Hawaiian Electric to be 50/50 developers with Shell on Oahu, the largest project on the Hawaiian Islands. And, lastly, we have three project areas that we have under lease in South Dakota with our primary and best prospect in the Java Wind Project that is the subject of this proceeding.

Q. HOW IS SUPERIOR RENEWABLE ENERGY CAPITALIZED?

A. Superior currently has twelve investors that comprise the ownership of the LLC. These investors are in some cases large private companies and in some cases individuals. Many of the owners are active in the energy and real estate fields. Since Superior was created, it has been capitalized adequately for day-to-day development activity and has been successful in lining up additional capital for the time that the development activity bears fruit and a project can be constructed. We have additional capital potentially available through our ownership structure for development of wind power projects. Superior is thus well capitalized and is not expected to experience any capital development shortages.

Q. WOULD YOU DESCRIBE THE RELATIONSHIP IS BETWEEN JAVA, LLC AND SUPERIOR RENEWABLE ENERGY LLC?

A. Java LLC is a Delaware limited liability company whose sole member is Superior Renewable Energy LLC. Java LLC is licensed to do business in South Dakota. A copy of Java LLC's license is attached to my testimony as Exhibit Number 1.

Wind Power in South Dakota

Q. WOULD YOU EXPLAIN WHY YOU FIRST BECAME INTERESTED IN BUILDING A WIND POWER FACILITY IN SOUTH DAKOTA?

A. Anyone who has ever visited South Dakota probably understands immediately that the state has some of the world's best wind resources. The National Renewable Energy Laboratory classifies wind resources nationwide based on extensive study into one of seven classes with Class One being the lowest and Class Seven being the highest. The Java Wind Project is right on the border of being a Class Six and a Class Seven wind site. It has wind speed – the average wind speed on that location – of about 21 miles per hour, seven days a week, 24 hours a day, on average. Those figures are the best that our company has ever

recorded in the United States as we have searched for good wind power development sites. Because of that, we felt very compelled to try to do everything within our power to develop the project, by conducting transmission studies, taking steps to secure transmission capacity and installing five meteorological towers on that location to further refine our understanding of the wind resource.

Q. TO YOUR KNOWLEDGE, ARE THERE ANY WIND POWER FACILITIES COMMERCIALLY OPERATING IN THE STATE OF SOUTH DAKOTA TODAY?

A. Yes, there is a project that I believe is operated by Florida Power and Light in the Highmore area, which is the only commercial, utility class project of which I aware. There is also a very small tribal project that is a couple of megawatts on the Rosebud Indian Reservation.

Q. RELATIVE TO THE SIZE AND QUALITY OF THE WIND RESOURCE IN SOUTH DAKOTA, ARE THE PROJECTS THAT YOU JUST DESCRIBED ANYWHERE CLOSE TO REPRESENTING FULL DEVELOPMENT OF SOUTH DAKOTA'S WIND RESOURCES?

A. No. I would estimate very roughly that the current projects represent less than one percent of the full potential of wind power in the State of South Dakota.

Q. DO YOU HAVE ANY EXPLANATION FOR WHY THE RESOURCE HAS BEEN SO SLOW TO DEVELOP, GIVEN THE QUALITY AND QUANTITY OF WINDPOWER IN SOUTH DAKOTA?

A. Well, I think it is a combination of things really. One, this area historically – particularly South Dakota – has been served by large lignite coal producers from North Dakota who were able to get the large co-ops put together early on and pretty much locked up almost all the transmission capacity in the state. They basically wrapped up the market with relatively inexpensive power, albeit power produced in North Dakota with a less desirable

resource from a pollution standpoint. When wind energy development became attractive in other parts of the country, it wasn't particularly welcomed by some of the existing utility players, in part because of the limited transmission capacity available for new projects and in part because of the long standing preference for coal and lignite production.

Q. OTHER THAN THE JAVA WIND PROJECT, ARE YOU AWARE OF ANY OTHER RECENT ATTEMPTS AT WIND POWER DEVELOPMENT IN SOUTH DAKOTA?

A. While there are other developers certainly working South Dakota because it is recognized as having such truly magnificent wind resources, I am not aware of any projects that have secured transmission rights to move their power to the market like we have.

Q. DO YOU KNOW WHETHER OR NOT THE RESPONDENT MDU HAS EVER SIGNED A POWER PURCHASE AGREEMENT WITH ANOTHER WIND POWER DEVELOPMENT COMPANY?

A. I am aware of another project where MDU signed a power purchase agreement with a developer for a wind project that was supposed to be built in North Dakota, not in South Dakota. I think that the name of the party to the power purchase agreement was Dakota I Power Partners or something like that. I know that the developer was supposed to build a project with an installed capacity of about 20 megawatts. The project was never built, I believe because the price of the power under the contract with MDU was so low that the project just could not be economic, even with the great wind resources available. We knew that MDU was involved with this project because MDU representatives told us about it early on in our efforts to negotiate a power purchase agreement. MDU led us to believe that Superior would be able to secure a power purchase agreement with MDU if and when the Dakota Power Partners project fell through. MDU made us believe we were next in line to

integrate our capacity and energy into their system as soon as it could confirm that the Dakota Power Partners Project would not be built.

Benefits from Wind Power Generation

Q. OTHER THAN THE ELECTRICITY SUPPLY THAT WILL COME TO THE SOUTH DAKOTA SERVICE TERRITORY FOR MDU, WHAT ARE THE OTHER BENEFITS OF WIND POWER GENERATION TO THE CUSTOMERS OF MDU AND TO THE CITIZENS OF THE STATE OF SOUTH DAKOTA FROM THE JAVA WIND PROJECT?

A. First of all, you are talking about a clean energy source, especially compared to existing power plants in the area that burn a very low grade of coal called lignite. These facilities can have a significant adverse affect on air quality. Increasingly, people are concerned about mercury contamination from these plants as well. Also, wind power is renewable in the sense that the wind never stops blowing so you don't have the concern about having to constantly find new energy supply for the power plants like you do for coal fired generators.

Second, there is an economic benefit to locating these generating projects in South Dakota so that some of the money paid for electricity stays here instead of traveling up to North Dakota where most of the generation capacity currently resides. Third, there is also the economic benefit to the landowners where the wind project is located because they receive payments based on the number of towers placed on their land or the amount of electricity produced from towers placed on their land. Finally, there is the economic benefit to government from property taxes that the wind project will pay based on the value of the turbines and other equipment placed on the land. I know that at least one of the sections of

land where the Java Wind Project is to be located is a section set aside by the state for the benefit of schools so there is a benefit here too.

Wind Power Project Development

Q. DESCRIBE HOW SUPERIOR IDENTIFIES AND DEVELOPS THESE WINDPOWER RESOURCES.

A. First, Superior carefully studies all the technical data that is available. Some of it is from the National Renewable Energy Laboratory, some of it is from academic and scientific journals, and some from meteorological towers reporting data publicly. We look at the terrain to determine what might drive the compression of the wind over geographical features. If the wind resource looks attractive at that point, then we next study how the wind resource relates to physical infrastructure that we need to build a successful site, things like the proximity to roads and proximity to transmission systems. If we still like what we see, then we begin studying the transmission capacity to see where we are capable of moving the power after it is produced, basically a market/pricing kind of analysis.

Q. WHAT IS THE NEXT STEP?

A. The next step is to acquire development rights from landowners. If we are successful with this effort, then we begin to deploy meteorological towers. Sometimes these are large 50-meter towers and sometimes they are 30 and even 10-meter towers. The purpose of these towers is to measure the wind speed very accurately at specific sites. We must have a minimum of one year of data in order to understand the wind speed well enough to know whether or not the project is commercial. Once that is done, then we look at the cost of the construction of the project, soliciting indications or bids from turbine manufacturers, construction companies and other third parties with the specialized equipment and labor

necessary to construct a wind power project. We then analyze the relevant federal regulations in regard to how the production tax credit applicable to wind energy works. When we understand all of these different economic parameters together with the wind energy data from the meteorological towers, we employ an elaborate financial model gives us the information to negotiate a power purchase agreement.

Q. CAN YOU DESCRIBE HOW IMPORTANT THE NEGOTIATION OF A POWER PURCHASE AGREEMENT IS TO THE DEVELOPMENT OF A WIND PROJECT LIKE THE JAVA WIND PROJECT?

A. It is extremely important. Most wind energy projects are built with a combination of debt and equity financing. The debt component is possible because of the assured, stable long-term cash flows that come from a long-term power purchase agreement. A project developer needs these contractually assured cash flows to serve as security for any loan or similar debt financing. Without the leverage that comes from debt financing, the rates of return on wind energy projects are usually not high enough to attract the equity needed to build the project.

Q. IS IT POSSIBLE TO OBTAIN FINANCING FOR A CONVENTIONAL WIND ENERGY PROJECT WITHOUT A LONG TERM POWER PURCHASE AGREEMENT?

A. Well, it has not been done in the past to my knowledge, but I think that in the future there will be what we call merchant wind energy facilities. In a merchant facility, the owner is not committed to selling the power under a single long-term contract. Instead, the owner is free to market the power under both short and long term contracts to a variety of purchasers. At this point, however, I believe that the standard of the industry is to have a long-term (i.e., 20-year) power purchase agreement.

Q. WOULD YOU SAY THAT SUCH AN AGREEMENT IS NECESSARY FOR THE DEVELOPMENT OF THE JAVA WIND PROJECT?

A. Yes, unless and until merchant energy facilities become accepted in the industry, I think that we must have a long-term power purchase agreement in order to successfully develop the Java Wind Project.

Q. IF, DURING YOUR NEGOTIATION OF A POWER PURCHASE AGREEMENT, YOU REACH AN IMPASSE WITH THE PURCHASER, WHAT IS THE EFFECT OF SUCH IMPASSE ON YOUR ABILITY TO CONTINUE DEVELOPMENT ACTIVITY ON THE PROJECT?

A. We would definitely have a negative impact on continued ability to develop the project. As I mentioned before, we need the power purchase agreement in order to complete our financing for the project. Inasmuch as we have basically done everything else that we can do prior to obtaining financing commitments, we are dead in the water with respect to further development of the Java Wind Project until the power purchase agreement is in place. Because of the potential expiration of the federal wind power production tax credit, Superior will need to have a power purchase agreement relatively early in the year 2005 to keep the project on track. That credit right now is worth $18 for every megawatt-hour of electricity produced from the Java Wind Project.

Q. WOULD YOU DESCRIBE THIS PRODUCTION TAX CREDIT?

A. The federal wind power production tax credit provides an $18 federal tax credit for every megawatt hour of electricity that the wind power facility produces. This tax credit can be used to offset the alternative minimum tax for the next four years. In addition, the tax credit increases with inflation over the next ten years. In South Dakota and nearby areas, where the actual energy prices are relatively low, the tax credit is absolutely critical for the

economics of any wind project. Unfortunately, the tax credit currently in effect expires at the end of calendar year 2005. Accordingly, the Java Wind Project must be fully commissioned by December 31, 2005 to qualify. For this reason, we are pressing very hard to break the impasse with MDU and finalize a long-term power purchase agreement. We would like to get this resolved quickly so that we can order the transformers and the wind turbines, which are in very high demand right now. Also, prices for steel and other equipment have been rising significantly over the last six months and we do not see this inflationary pressure easing any time soon.

The Java Wind Project

Q. DESCRIBE WHERE THE JAVA WIND PROJECT IS LOCATED?

A. The Java Wind Project is located in the north central part of South Dakota, in Walworth County, within the service territory of MDU. Exhibit 2 to my testimony contains a plat showing the location of the Java Wind Project.

Q. WHAT IS THE PROJECTED NAMEPLATE CAPACITY OF THE JAVA WIND PROJECT?

A. Pursuant to the transmission interconnection agreement with the Midwest ISO, Java has the ability to produce 50 megawatts, but right now we plan to build only 31 megawatts of capacity to make it well within MDU's ability to handle.

Q. DESCRIBE THE MIDWEST ISO INTERCONNECTION AGREEMENT.

A. The Midwest ISO is the transmission provider for the area where the Java Wind Project is located. According to FERC regulations, the Midwest ISO is the entity with which Superior must deal in order to establish its right to produce electricity into the transmission grid. We establish that right initially by providing MISO with a transmission study that

demonstrates that the grid can handle the electricity that we plan to produce. Based on that study, we have now entered into an agreement with MISO that will allow us to connect up to 50 megawatts from the Java Wind Project into the MISO controlled transmission grid. In effect, it establishes a reservation or priority for our company to use a certain amount of transmission capacity ahead of future takers. I have attached to my testimony the cover letter from MISO transmitting the fully executed original of the Interconnection and Operating Agreement and also the first page of the agreement as Exhibit 3. I have not attached the entire document because it is quite lengthy. It is available on the FERC's website.

Q. WHAT DO YOU MEAN WHEN YOU SAY "WELL WITHIN MDU'S ABILITY TO HANDLE"?

A. Because of the intermittent nature of the wind resource, the parties have to exercise good operational techniques to keep supply and demand balanced and prevent upsets on the system. While the MISO Agreement confirms that good utility practice would allow us to build 50 megawatts of capacity and deliver that resource into the grid without upsets, the full 50 megawatts would keep the utility working pretty hard to keep everything in balance. As a consequence, we thought that we would be proactive and show MDU our willingness to work with them and be a good partner by building only 31 megawatts and easing their load, so to speak.

Q. WHAT IS THE APPROXIMATE COST OF CONSTRUCTING THE JAVA WIND PROJECT?

A. The facility will cost approximately $41.5 million to complete, most of which will be included in the property tax base of the county in which the facility is located.

Q. IS THERE A ROYALTY OR OTHER FEE PAYABLE TO LANDOWNERS WHERE THE PROJECT IS TO BE LOCATED?

A. Yes, there is. It is approximately $2,500 per turbine per year over the life of the project, payable to the landowner where the turbine is located.

Q. WHAT IS THE PREFERRED OR ANTICIPATED CONSTRUCTION DATE FOR BREAKING GROUND ON THE JAVA WIND PROJECT?

A. Our initial intention was to build the Java Wind Project in 2004. However, when we could not successfully negotiate a power purchase agreement with MDU, we were forced to initiate this proceeding in April of 2004. We hope that we can wrap up this proceeding in March of 2005 and break ground in the summer of 2005, barely in time to take advantage of the federal tax credit.

Q. HOW HAS THIS PREFERRED COMMENCEMENT DATE BEEN IMPACTED BY YOUR INABILITY TO OBTAIN A POWER PURCHASE AGREEMENT WITH MONTANA DAKOTA UTILITY?

A. Well, we have already lost almost a year.

Negotiations with MDU

Q. WHEN DID YOU FIRST BEGIN DISCUSSIONS WITH MDU ABOUT SELLING ELECTRICITY PRODUCED FROM THE JAVA WIND PROJECT?

A. I believe that we first began talking with MDU almost two years ago. That would be about April of 2002.

Q. WHAT WAS YOUR OBJECTIVE IN INITIATING THESE DISCUSSIONS OR NEGOTIATIONS WITH MDU?

A. Initially, our objective was to establish Superior as a first rate wind power developer and an excellent long-term reliable power provider to MDU. From there, we wanted to obtain a long-term power purchase agreement from which both companies would benefit.

Q. WHO ARE THE PEOPLE INVOLVED IN THESE NEGOTIATIONS ON BEHALF OF YOUR COMPANY?

A. Jeff Ferguson and me, with background help from all of the Superior team.

Q. WHEN YOU FIRST APPROACHED MDU REGARDING A POWER PURCHASE AGREEMENT, WERE YOU INTENDING TO BE A QUALIFIED FACILITY (QF) UNDER THE PUBLIC UTILITY REGULATORY POLICY ACTS OF 1978 (PURPA)?

A. No, we thought that MDU would perceive that to be hostile, that we were trying to force our way into the door instead of working together on a consensus approach. Having said that, MDU always knew that the Java Wind Project would qualify as a Qualified Facility under The Public Utility Regulatory Policy Act Of 1978. We just did not become explicitly a Qualified Facility until it became clear that MDU would not even talk to us on any other basis.

Q. WHAT WERE SOME OF THE ISSUES OR CONTRACT TERMS THAT YOU DISCUSSED WITH MDU?

A. There were general discussions about many terms and conditions that you typically see in a power purchase agreement. The main term that we tried to focus on, however, was the price that MDU would pay Superior for the electricity produced from the Java Wind Project.

Q. WITH RESPECT TO ANY OF THESE TERMS OR CONDITIONS, WHERE YOU ABLE TO REACH AGREEMENT WITH MDU?

A. No, we just could not get MDU to engage. The company told us at first to be patient, that everyone needed to wait and see if the Dakota Power Partners wind project would be built. Later, when it became clear that the Dakota Power Partners project would not be built, we just couldn't get MDU to talk in meaningful terms about a power purchase agreement.

Q. WOULD YOU PLEASE SUMMARIZE THE RESULT OF YOUR NEGOTIATIONS WITH MONTANA DAKOTA UTILITIES PRIOR TO

YOUR FILING OF THE JAVA WIND PROJECT AS A QUALIFIED FACILITY UNDER THE PUBLIC UTILITY REGULATORY POLICY ACT OF 1978?

A. We got nowhere. MDU would not negotiate.

Q. WHEN DID YOU FIRST CONSIDER FILING AS A QF?

A. We always knew that the Java Wind Project would qualify as a QF under PURPA. So did MDU. We decided to make it official, in April of 2004 when we despaired of making any progress with MDU on the power purchase agreement.

Q. WHAT WERE YOUR REASONS FOR ULTIMATELY DECIDING TO FILE AS A QF?

A. We were still hopeful that we could reach a consensus solution but we also knew that PURPA required MDU to purchase the electricity from the Java Wind Project at MDU's avoided cost.

Q. HAVE YOU RECEIVED A COPY OF THE SELF-CERTIFICATION BACK FROM THE FEDERAL ENERGY REGULATORY COMMISSION?

A. Yes.

Q. WHAT WAS THE DATE OF THE FILING FOR SELF-CERTIFICATION?

A. We sent it to the FERC on April 14, 2004. The FERC file stamped and returned it to us on April 15, 2004.

Q. HAVE YOU ATTACHED A COPY OF THE ORIGINAL NOTICE OF SELF-CERTIFICATION AS AN EXHIBIT TO YOUR TESTIMONY?

A. Yes, I have attached it as Exhibit Number 4.

Q. SINCE YOU ORIGINALLY FILED FOR QUALIFIED FACILITY STATUS UNDER THE PUBLIC UTILITY REGULATORY POLICY ACT OF 1978, HAVE YOU HAD ANY REASON TO RECERTIFY YOUR JAVA WIND PROJECT?

A. Yes.

Q. PLEASE DESCRIBE THE DIFFERENCE BETWEEN THE JAVA WIND PROJECT AS ORIGINALLY CERTIFIED, AND THE JAVA WIND PROJECT AS IT IS RECERTIFIED?

A. We increased the installed or nameplate capacity of the Java Wind Project to 31.5 megawatts.

Q. WHAT WAS THE DATE OF THE AMENDED FILING FOR SELF-CERTIFICATION?

A. We sent it to the FERC on August 23, 2004. The FERC file stamped and returned it to us on August 25, 2004.

Q. HAVE YOU ATTACHED A COPY OF THE AMENDED SELF-CERTIFICATION AS AN EXHIBIT TO YOUR TESTIMONY?

A. Yes, I have attached it to my testimony as Exhibit Number 5.

Q. ARE THERE ANY INTERCONNECTION OR TRANSMISSION ISSUES OF WHICH YOU ARE AWARE ASSOCIATED WITH THE INCREASED SIZE OF THE JAVA WIND PROJECT?

A. No, as I testified previously, our interconnection agreement with MISO allows us to connect up to 50 megawatts of installed capacity.

Q. LET'S RETURN NOW TO YOUR NEGOTIATIONS WITH MDU. FOLLOWING YOUR DECISION TO CERTIFY THE JAVA WIND PROJECT AS A QUALIFIED FACILITY, DID YOU ATTEMPT TO RECOMMENCE NEGOTIATIONS WITH MDU?

A. Yes, we did.

Q. WHAT ISSUES DID YOU DISCUSS WITH MDU AFTER YOU FILED AS A QUALIFIED FACILITY?

A. We tried to focus on the price that MDU would pay Superior for energy and capacity from the Java Wind Project. The capacity issue required some technical discussion about accreditation, basically the way that the parties would determine the amount of capacity that

MDU would pay for after taking into account the intermittent nature of the wind resource. Because we told MDU explicitly that we intended to operate the Java Wind Project as a QF, however, all of the discussions took place in the avoided cost language of PURPA, rather than the simpler language of price.

Q. WHAT DO YOU MEAN BY "AVOIDED COST LANGUAGE OF PURPA"?

A. As I understand PURPA, a utility, in this case MDU, must purchase electricity produced from a QF, in this case the Java Wind Project, at a price not to exceed the utility's avoided cost. Avoided cost is a term defined in the FERC regulations implementing PURPA. I think that there is additional meaning of "avoided cost" found in the Commission's Decision and Order implementing PURPA. When you apply these regulations to MDU, what you end up with is a "not to exceed" price for energy and capacity produced from the QF. That is the terminology that we used when we tried to reach agreement with MDU regarding the price to be paid for electricity produced from the Java Wind Project.

Q. OF THE ISSUES THAT YOU DISCUSSED WITH MDU, WERE YOU ABLE TO REACH AGREEMENT ON ANY OF THEM?

A. Yes, I believe we agreed on how the mechanism for determining the amount of capacity that the Java Wind Project should be credited under any power purchase agreement. That mechanism is the MAPP accreditation procedures for intermittent generators like wind facilities.

Q. WHAT IS "MAPP?"

A. MAPP is short for Mid-Continent Area Power Pool. To quote from MAPP's website: "The Mid-Continent Area Power Pool (MAPP) is an association of electric utilities and other electric industry participants. MAPP was organized in 1972 for the purpose of pooling

generation and transmission. MAPP is a voluntary association of electric utilities who do business in the Upper Midwest. Its members are investor-owned utilities, cooperatives, municipals, public power districts, a power marketing agency, power marketers, Regulatory Agencies, and independent power producers." MDU is a member of MAPP.

Q. WHAT ARE MAPP ACCREDITATION PROCEDURES?

A. The accreditation procedures are technical guidelines for taking into account the fact that, in determining its capacity needs, a utility does not look at an intermittent generating resource in the same way that it looks at generating resources that are "on" when you want them. Those guidelines take into account many different factors to make it possible for utilities to reach an "apple to apples" comparison of capacity contributions made by different types of generators.

Q. IS THERE ANY MEMORIALIZATION OF YOUR UNDERSTANDING WITH MDU WITH RESPECT TO MAPP ACCREDITATION PROCEDURES?

A. There is no formal memorialization but, after Andrea Stomberg told Jeff Ferguson over the phone that MDU would be willing to use MAPP accreditation procedures, he wrote to her and reiterated Ms. Stomberg's statement to him that MDU "would be willing to use the MAPP accreditation procedure for determining avoided capacity in our PPA." A copy of that letter is attached as Exhibit 6. To my knowledge, since Mr. Ferguson wrote this letter, neither Ms. Stomberg nor MDU has taken any action or made any statement to contradict this position.

Q. APPROXIMATELY HOW MUCH TIME TRANSPIRED BETWEEN WHEN YOU RECOMMENCED NEGOTIATIONS WITH MDU AND WHEN YOU REACHED AN IMPASSE?

A. It was not very long. I think within a couple of weeks we knew that MDU would not pay us anything for capacity from the Java Wind Project.

Q. WITH RESPECT TO YOUR NEGOTIATIONS WITH MDU BOTH BEFORE AND AFTER YOU CERTIFIED THE JAVA WIND PROJECT AS A QF UNDER THE PUBLIC UTILITIES REGULATORY POLICY ACT OF 1978, WAS THERE A CONSISTENT THEME OR POSITION TAKE BY MDU WITH RESPECT TO ITS CAPACITY NEEDS?

A. MDU has consistently taken the position in its discussions with Superior that MDU was not short of capacity on its system. As a result, MDU told us repeatedly that there would be no avoided cost or any other kind of payment attributable to capacity from the Java Wind Project.

Q. CAN YOU GIVE ME ANY SPECIFIC EXAMPLES OF WHEN MDU TOOK THIS POSITION WITH YOU?

A. MDU took this position verbally when we tried to negotiate a power purchase agreement after we certified the Java Wind Project as a QF under PURPA. There is also a letter from MDU's legal counsel sent on or around April 13, 2004, in which MDU's counsel represented to Superior's counsel that "Montana-Dakota currently has its system capacity requirement satisfied until at least 2011." There is a follow up letter from MDU's counsel on April 20, 2004 in which he repeats this assertion. Copies of both letters are attached as a single Exhibit Number 7.

Q. CAN YOU THINK OF ANY OTHER EXAMPLES?

Yes. Until very recently in this proceeding, MDU has stated in its interrogatory responses and related documents that there are five contracts contributing capacity and energy to MDU's system. Two of them are long-term agreements about which there is no dispute, at least

insofar as they appear in fact to contribute energy and capacity to Montana-Dakota System.

Q. CAN YOU TELL US ABOUT THE TWO LONG-TERM CONTRACTS?

A. One of the contracts 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. These contracts were originally identified by MDU in response to Superior's interrogatory No. 1 dated September 1, 2004. They were provided to Superior and the Commission after the Commission granted Superior's motion to compel with respect to these contracts. They are considered confidential documents under the Commission's order granting Superior's motion to compel.

Q. YOU SAID THAT THERE WERE OTHER CONTRACTS BESIDES THESE TWO. IS THAT CORRECT?

A. Yes. The other three contracts were all identified by MDU as short-term contracts with terms varying from two to six years. Two of those contracts were with the Omaha Public Power District. MDU says that both were signed in January 2004. For convenience, I will refer to these contracts in my testimony as the "OPPD Contracts." These contracts likewise are considered confidential documents under the Commission's order granting Superior's motion to compel.

Q. IS THERE ANOTHER CONTRACT?

A. Yes. After Superior filed a motion to compel with the Commission asking the Commission to order MDU to produce all of its power purchase agreements, MDU supplemented its initial interrogatory responses on or about November 5, 2004 and disclosed for the first time that it had also executed a contract with NorthPoint Energy Solutions, Inc.

MDU admitted in this interrogatory supplement that the contract with NorthPoint was signed on July 15, 2004. Again, for convenience, I will refer to this contract as the "Product K Contract" throughout my testimony.

Q. WHY ARE THESE SHORT-TERM CONTRACTS WITH THE OMAHA PUBLIC POWER DISTRICT AND NORTHPOINT ENERGY SOLUTIONS, INC. IMPORTANT?

A. As I understand the Commission's implementation of PURPA, I am not certain that short-term capacity contracts have a great deal of relevancy. Nevertheless, I know that MDU consistently and repeatedly relied upon the OPPD Contracts to represent to Superior and the Commission that it owed nothing to Superior for the avoided cost of capacity. Basically, MDU said that these contracts fulfilled all of its capacity needs and therefore no capacity costs would be avoided if MDU took delivery of capacity from the Java Wind Project.

Q. WHEN DID MONTANA-DAKOTA MAKE THESE REPRESENTATIONS WITH RESPECT TO THE SHORT-TERM CONTRACTS?

A. The most recent representation occurred on October 20, 2004, when MDU provided Superior and the Commission with its avoided cost calculations. For convenience, I will refer to this document henceforth in my testimony as the "Avoided Cost Document," which is attached as Exhibit 8.

Q. WHERE IS THERE A REPRESENTATION ABOUT MDU'S CAPACITY IN THE AVOIDED COST DOCUMENT?

The first place occurs on Page 3 of the Avoided Cost Document. There MDU states "Montana-Dakota will not need additional capacity until 2011." Further down on Page 3 and on Page 4 of the Avoided Cost Document, Montana-Dakota relies on the OPPD Contracts to state that its avoided cost capacity payable to Superior for the years 2005 through 2009 was

zero dollars per kilowatt per year.

Q. OTHER THAN YOUR CONCERN ABOUT THE SHORT-TERM NATURE OF THE CONTRACTS, IS THERE SOME OTHER REASON WHY MDU'S RELIANCE ON THE OPPD CONTRACTS IS TROUBLESOME TO YOU?

A. Yes, it turns out that the OPPD Contracts have never been effective. On November 5, 2004, MDU supplemented its interrogatory responses to Superior and disclosed for the first time that the OPPD Contracts contained a significant contingency that had to be fulfilled in order for the contracts to become effective. This contingency related to the need for the parties to obtain firm transmission service so that OPPD could deliver the contracted for energy and capacity to MDU's service territory. I have attached a copy of this interrogatory supplement to my testimony as Exhibit 9.

Q. WAS THIS CONTINGENCY EVER SATISFIED?

A. No, not that I am aware. MDU later admitted in its November 5, 2004 supplemental disclosure that it was unsuccessful in obtaining this firm transmission service. MDU also admitted that it knew this fact prior to providing the Avoided Cost Document to Superior and to the Commission. MDU made these disclosures only after Superior informed MDU that it intended to file a motion to compel, asking the Commission to allow Superior to examine these contracts.

Q. IS IT YOUR UNDERSTANDING THAT THE OPPD CONTRACTS THAT FORMING AT LEAST SOME OF THE BASIS FOR MDU'S AVOIDED COST CALCULATIONS ARE NOT EFFECTIVE?

A. To the best of my knowledge, that's correct. MDU, through interrogatory responses to Superior's second set of interrogatories, confirmed that no additional efforts are being made to obtain firm transmission service and therefore that no additional energy or capacity is being

delivered or paid for under these OPPD contracts. Nevertheless MDU says in subsequent interrogatory responses that it stands by the information contained in the Avoided Cost Document. When Superior asked MDU to admit or deny that its avoided cost calculations in the Avoided Cost Document were "true and complete and not misleading in any respect," MDU objected to the admission but went on to state that "the response was true and complete." I have attached a copy of the interrogatory and admission responses as Exhibit Number 10 to my testimony.

Q. IF THE OPPD CONTRACTS AREN'T EFFECTIVE, HOW CAN THEY HAVE ANY IMPACT ON MONTANA-DAKOTA'S AVOIDED COST?

A. I don't think they can. I do not understand how MDU can in good faith show the OPPD Contracts as having any impact on MDU's avoided costs

Q. ASSUMING THAT MDU RELIED ON THE OPPD CONTRACTS BELIEVING AT THE TIME THAT IT WOULD BE ABLE TO SATISFY THE TRANSMISSION CONTINGENCY, WOULD YOU EXPECT MDU TO RECALCULATE ITS AVOIDED COSTS ONCE IT BECAME CLEAR THAT MDU WOULD NOT BE ABLE TO SATISFY THIS CONTINGENCY?

A. It certainly seems that way to me, but Montana-Dakota has never provided Superior with any other avoided cost calculation other than the calculations shown in the Avoided Cost Document.

Q. IS THERE ANYTHING MISLEADING TO YOU ABOUT THE INFORMATION CONTAINED IN THE AVOIDED COST DOCUMENT?

A. Yes. I think that MDU's failure to disclose to Superior and to the Commission that the OPPD Contracts were contingent upon firm transmission capacity is misleading. I think it is particularly misleading because this contingency was never fulfilled, and MDU admits that it knew this contingency was unfulfilled at the time it prepared the Avoided Cost Document.

I also think the Avoided Cost Document is misleading to the extent it expressly or impliedly relies upon the OPPD Contracts to derive an avoided cost of capacity equal to zero dollars per kilowatt hour per year for the years 2005 through 2009.

Q. DO YOU THINK THAT MONTANA-DAKOTA'S SUPPLEMENTAL INTERROGATORY RESPONSES ON NOVEMBER 5, 2004 CORRECTED THESE MISREPRESENTATIONS?

A. Not entirely. Although MDU admitted that the OPPD Contracts were not effective, MDU never showed Superior or the Commission how this situation affected its avoided cost of capacity. Having relied upon the OPPD Contracts originally to determine an avoided cost of capacity, it seems to me that MDU should have disclosed to Superior and the Commission how its avoided cost of capacity changed as a result of the OPPD Contract situation. Instead, MDU in its most recent responses to Superior's second set of interrogatories appears to stand by its avoided cost calculation. Finally, having disclosed the existence of the Product K Contract, I would have expected MDU to show Superior and the Commission how this contract affected MDU's avoided cost of energy and capacity. If MDU believes that the Product K Contract has no effect on the avoided cost of energy and capacity, I would expect MDU to disclose that fact as well.

Q. YOU'VE TOLD US ABOUT MDU'S POSITION THAT IT HAS NO AVOIDED COST OF CAPACITY AT LEAST THROUGH 2009, IS THERE ANYTHING ELSE TO MAKE YOU BELIEVE THAT MDU'S STATED POSITION REGARDING ITS CAPACITY NEEDS IS INCORRECT?

A. Yes. At about the same time that MDU supplemented its interrogatory responses and admitted that the OPPD Contracts were not and have never been effective, MDU also disclosed that it had sent out a Request For Proposals (RFP) to many companies for "firm capacity that will serve as a base load resource." MDU's RFP appears to begin an effort by

MDU to purchase additional energy and capacity for its system. It also appears to be a solicitation by MDU to other companies asking them to provide informally terms and conditions under they would be willing to provide to MDU the requested amount of capacity and energy identified in the request for proposal.

Q. HOW MUCH CAPACITY DID MONTANA-DAKOTA SOLICIT IN ITS RFP?

A. The RFP seeks the acquisition of 70 to 100 megawatts of firm capacity and associated energy. A copy of the RFP is attached as Exhibit 11.

Q. IS THERE ANY MENTION OF THE JAVA WIND PROJECT IN THE RFP?

A. No, there is no mention of the Java Wind Project in the RFP whatsoever.

Q. WHY IS THIS OMISSION IMPORTANT OR RELEVANT TO YOU?

A. It seems relevant and important in several ways. First, the Java Wind Project will contribute under MAPP accreditation guidelines firm capacity to MDU's system. It seems to me that having filed as a Qualified Facility under PURPA and commenced good faith negotiations with MDU long before this RFP circulated, MDU is under some obligation to acknowledge that any capacity purchased under the RFP process should be net of the capacity delivered by the Java Wind Project.

Q. HOW CONSISTENT IS THE RFP WITH MDU'S PRIOR STATEMENTS TO YOU REGARDING ITS CAPACITY NEEDS?

A. The RFP is inconsistent with MDU's stated position to Superior that it is not short of capacity on its system. It now appears that MDU is short of capacity and has been for some time.

Q. HOW DOES THE RFP FIT WITH YOUR PRIOR DEALINGS WITH MDU REGARDING THE JAVA WIND PROJECT?

MDU's RFP appears to be part of a consistent pattern of behavior engaged in by MDU to avoid contracting with Superior for energy and capacity produced from the Java Wind Project. Now that we have been able to review MDU's contracting history through the discovery process, it appears that almost as soon as Superior contacted MDU regarding the Java Wind Project, MDU began to solicit alternative power purchase agreements with third parties. The timing of these negotiations with third parties together with the amount contracted for suggests to me at least that MDU knew that it was short of capacity when Superior first contacted it and tried to avoid dealing with Superior by securing its capacity elsewhere. Alternatively, MDU tried to obtain this capacity in an effort to establish a more favorable position with respect to its avoided cost. This behavior makes me question whether MDU ever negotiated with Superior in good faith with respect to a power purchase agreement for the Java Wind Project.

Q. IS THERE ANY OTHER BEHAVIOR BY MDU THAT YOU BELIEVE WAS NOT IN GOOD FAITH?

A. During the time that Mr. Ferguson and I were attempting to negotiate with MDU, it appeared to be stalling for time. It would never commit itself to any definitive position saying that it needed additional time to discuss issues within its own organization. It now appears that MDU was using this time at least in part not to negotiate with Superior but instead to negotiate with OPPD.

Also, I think that the various representations regarding MDU's capacity needs and its avoided cost of capacity were not offered in good faith. To me, good faith requires that interrogatory responses and representations from counsel be full, fair and complete disclosures of facts that are the subject of inquiry or dispute. Failing to tell Superior and the

Commission about the lack of firm transmission capacity with respect to the OPPD Contracts and further representing that these contracts nevertheless had some bearing or impact on MDU's avoided cost of capacity seems misleading and therefore not in good faith.

Q. WHAT IS YOUR UNDERSTANDING OF MDU'S REGULATORY OBLIGATIONS TO DISCLOSE ITS AVOIDED COSTS TO THE COMMMISSION AND THE PUBLIC PURSUANT TO THE PUBLIC UTILITY REGULATORY POLICY ACT OF 1978?

A. My general understanding is that PURPA requires MDU as a utility to file with the Commission for public inspection certain information relative to MDU's avoided costs. I understand these regulations require MDU to update these filings periodically in order to keep the information current. I understand that these regulations have been in place for quite some time.

Q. WHAT INFORMATION REGARDING MDU'S AVOIDED COSTS WERE ON FILE WITH COMMISSION BEFORE YOU BROUGHT THIS PROCEEDING?

A. For Qualified Facilities with a design capacity of less than 100 kilowatts, MDU filed a tariff that was based on MDU's avoided cost. To my knowledge, there was none of the other required information on file with Commission that related to MDU's avoided costs, or at least avoided cost information to which Superior or any member of the public could gain access.

Q. HOW DID MDU'S FAILURE TO DISCLOSE ITS AVOIDED COSTS TO THE COMMMISSION AND THE PUBLIC PURSUANT TO THE PUBLIC UTILITY REGULATORY POLICY ACT OF 1978 COMPLICATE YOUR NEGOTIATIONS WITH MDU FOR A POWER PURCHASE AGREEMENT?

A. The absence of avoided cost information from MDU on file with the Commission greatly complicated Superior's negotiations for a power purchase agreement with MDU. Without such information, Superior was forced to engage in a one-sided negotiation with

MDU where MDU held all of the relevant information and Superior basically held none. It was very frustrating. We had some general sense of MDU's avoided costs but had no way to reduce that sense to concrete terms that could be negotiated in a power purchase agreement. I believe that the absence of complete and accurate avoided cost information on file with the Commission has significantly increased Superior's legal and expert witness fees in this proceeding. Arguably, this proceeding would not have been necessary if MDU had filed the required avoided cost information with the Commission.

Q. CAN YOU EXPLAIN WHY THIS PROCEEDING AND THE ENSUING LEGAL AND EXPERT WITNESS FEES WOULD NOT HAVE BEEN NECESSARY IF MDU HAD FILED ITS AVOIDED COST INFORMATION WITH THE COMMISSION?

A. If MDU had filed this information with the Commission, and such information was complete and accurate, the main issue that brought Superior and MDU to an impasse in their negotiations for a power purchase agreement—namely price--would not have been an issue. Superior would have been able to examine the avoided cost information filed with the Commission and thereby have a much better sense of the maximum price that MDU could be expected to pay under PURPA. From there, we would have expected to be able to complete our power purchase agreement without involving the Commission. I hesitate a little here because even after initiating this proceeding, Superior has experienced considerable difficulty obtaining complete and accurate avoided cost information from MDU.

Q. IF THE COMMISSION DETERMINES THAT YOU SHOULD BE REIMBURSED FOR YOUR LEGAL FEES, WOULD YOU BE WILLING AND ABLE TO PROVIDE THE COMMISSION WITH EVIDENCE OF THE AMOUNT OF FEES AND EXPENSES THAT YOU HAVE INCURRED?

A. I can provide the Commission with the invoices submitted to me by the law firms and the consulting firm that Superior has retained for this proceeding, along with evidence that the invoices have been paid.

Q. WHAT ADDITIONAL DEVELOPMENT ACTIVITY HAVE YOU BEEN ABLE TO UNDERTAKE FOR THE JAVA WIND PROJECT, GIVEN YOUR CONTINUING INABILITY TO SEE ACCURATE AND COMPLETE AVOIDED COST?

A. MDU's failure to provide Superior with accurate avoided cost information has essentially brought a development activity with respect to the Java Wind Project to a halt. The avoided cost information that MDU was supposed to provide forms the basis for the price terms contained in the power purchase agreement. Without some certainty regarding these price terms, Superior has been unable to pursue financing of the Java Wind Project. Until Superior can confirm that MDU's avoided costs are high enough to support development of the Java Wind Project, it would not be prudent to expend capital on additional development activities.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

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 UTILITIES CO. REGARDING THE JAVA WIND PROJECT	Docket No. EL04-016

AFFIDAVIT

County of Harris
State of Texas

John E. Calaway, Managing Member, Superior Renewable Energy LLC (Superior), being first duly sworn, deposes and says that the Direct Testimony of John E. Calaway on Behalf of Superior and Java LLC 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 the best of his knowledge, information and belief.

John E. Calaway

Subscribed and sworn before me

this 5th day of January 2005.

Notary Public

NATALIE G. McCUE
NOTARY PUBLIC
STATE OF TEXAS
My Commission Expires 03/12/2008

My Commission Expires: 03/12/2008

State of South Dakota

OFFICE OF THE SECRETARY OF STATE

Certificate of Authority
Limited Liability Company

ORGANIZATIONAL ID #: FL002162

I, Chris Nelson, Secretary of State of the State of South Dakota, hereby certify that duplicate of the Application for a Certificate of Authority of **JAVA LLC (DE)** to transact business in this state duly signed and verified pursuant to the provisions of the South Dakota Limited Liability Company Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Authority and attach hereto a duplicate of the application for certificate of authority.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this November 15, 2004.

Chris Nelson

Chris Nelson
Secretary of State

Exhibit "A"
Java Prospect, South Dakota

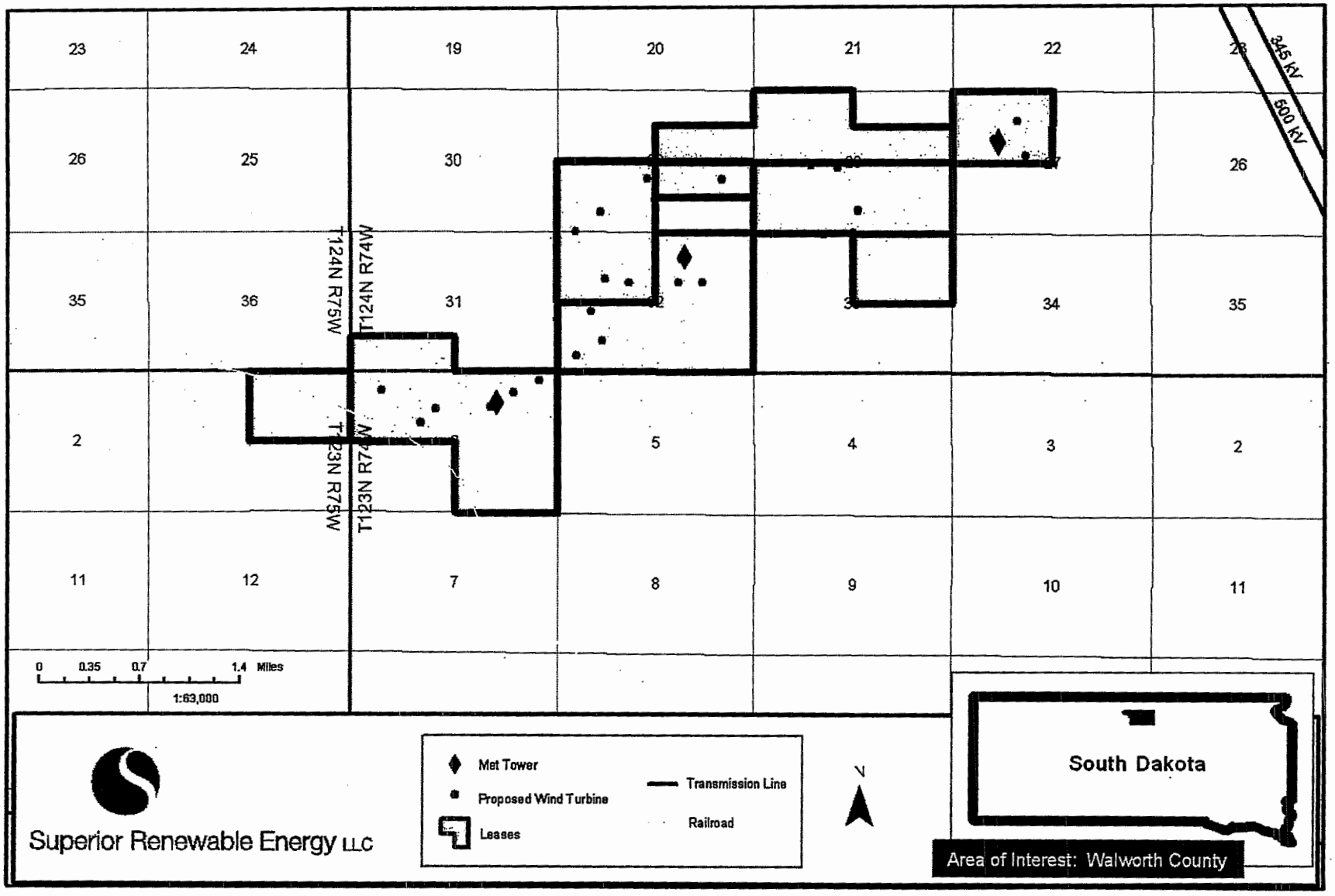

Exhibit 2
To The
Testimony of John E. Calaway

Exhibit 3
To The
Testimony of John E. Calaway

SALLY L. CLORE
Contracts Administrator
Direct Dial: 317-249-5716
E-mail: sclore@midwestiso.org

MISO MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.

October 26, 2004

Jeff Ferguson, Chief Operating Officer
Superior Renewable Energy, LLC
1600 Smith Street, Suite 4240
Houston, TX 77002

Re: Interconnection and Operating Agreement

Dear Mr. Ferguson:

Enclosed please find a fully executed original of the Interconnection and Operating Agreement among Montana-Dakota Utilities Co., Superior Renewable Energy, LLC, and the Midwest Independent Transmission System Operator, Inc.

Also, enclosed please find a copy of the FERC filing concerning the above-referenced document.

Please let me know if you have any questions or if I can be of further assistance.

Sincerely,

Sally L. Clore

Enclosures

Original Sheet Number 1

MISO Project G297 Queue Number 37664-01

INTERCONNECTION AND OPERATING AGREEMENT

entered into by the

Midwest Independent Transmission System Operator, Inc.

Montana-Dakota Utilities Co.,

and

Superior Renewable Energy, LLC

entered into on the 8th day of October, 2004

Exhibit 4
To The
Testimony of John E. Calaway

Superior Renewable Energy LLC

FILED
OFFICE OF THE
SECRETARY

2004 APR 15 A 10:15

FEDERAL ENERGY
REGULATORY COMMISSION

Delivered via Federal Express

April 14, 2004

Magalie Roman Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

QF04-104-000

Subject: Notice of Self-Recertification as a Qualifying Facility
Java LLC, a Delaware company

Dear Secretary Salas:

Pursuant to 18 C.F.R. § 292.207(a)(1) of the Federal Energy Regulatory Commission's ("FERC") regulations, enclosed please find an original and fourteen (14) copies of a "Notice of Self-Certification of Qualifying Facility Status for Small Power Production Facility" on behalf of Java LLC, ("Applicant"). In accordance with FERC regulations, Java, LLC has served copies of this filing to the electric utilities with which it expects to be interconnected and the state regulatory authority.

Please assign a Qualifying Facility docket number and return one copy of this filing to the undersigned marked to indicate the time and date of the filing in your office. Thank you for your assistance in this matter. If you have any questions please do not hesitate to contact me.

Respectfully,

Java LLC, a Delaware limited liability company
By: Superior Renewable Energy LLC,
Its Manager

By: _____
Name: Jeff Ferguson

cc: Montana Dakota Utilities Co.
Attn: Andrea Stromberg
Vice President of Electric Supply
400 North Fourth Street
Bismarck, North Dakota 58501

South Dakota Public Utilities Commission
Capitol Building, 1st floor
500 East Capitol Avenue
Pierre, SD 57501-5070

1800 Smith, Suite 4240, Houston, TX 77002
713-571-9900 Fax 713-571-8004
www.superiorrenewable.com

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Java LLC **Docket No. QF__-____-____**

NOTICE OF SELF-CERTIFICATION AS A QUALIFYING SMALL POWER PRODUCTION FACILITY

FORM 556

Pursuant to 18 C.F.R. Section 292.207 (2003) of the Federal Energy Regulatory Commission ("FERC") regulations, Java LLC (the "Applicant"), hereby submits this Notice of Self-Certification of Qualifying Small Power Production Facility to certify its proposed wind generating facility ("Facility") as a qualifying small power production facility under the Public Utility Regulatory Policies Act of 1978, as amended. The Facility has not previously been certified with FERC.

PART A: GENERAL APPLICANT INFORMATION

1a. Full Name:

Java LLC

1b. Full Address:

1600 Smith St., Suite 4240
Houston, TX 77002

1c. Ownership of the Facility:

The facility will be owned and operated by Java LLC ("Java"), a Delaware limited liability company, wholly owned by Superior Renewable Energy LLC ("Superior"), a Delaware limited liability company. Neither Superior nor Java have any ownership interest held, directly or indirectly, by any electric utility or electric utility holding company, or by any person engaged in the generation or sale of electric power, other than from QF's or exempt wholesale generators ("EWG's), or by any entity or person that has any ownership or operating interests in any facilities used for the generation of electric power, other than QF's or EWG's. Furthermore, neither Superior nor Java have any ownership or operating interests in, directly or indirectly, any electric utility or electric utility holding company, or in any entity engaged in the generation or sale of electric

power, other than from QF's or EWG's, or in any entity that has any ownership or operating interests in any facilities used for the generation of electric power, other than QF's and EWG's. In addition, there is no stream of benefits from the Facility that will be received by an electric utility or an electric utility holding company over the life of the Facility.

Accordingly, neither Java nor Superior is primarily engaged in the generation or sale of electric energy within the meaning of 18 C.F.R. Section 292.206 (2003). No electric utility, electric utility holding company, or any combination thereof, within the meaning of 18.C.F.R. Section 292.202(n) (2003) owns more than fifty per cent of the proposed Facility.

1d. Signature of authorized individual evidencing accuracy and authenticity of information provided by applicant:

Name: Jeff Ferguson
Chief Operating Officer
Superior Renewable Energy, LLC,
Manager of Java LLC

2. Communication:

Correspondence concerning this Application should be addressed to the following persons:

Name:	Jeff Ferguson
Telephone number:	713-571-8900
Mailing Address:	1600 Smith St., Suite 4240 Houston, TX 77002

3a. Facility Location:

State:	South Dakota
County:	Walworth County
City or town:	Java
Street Address:	N/A

3b. Utility:

The Facility will interconnect with Montana Dakota Utilities ("MDU"), sell energy and capacity to MDU, and receive supplementary power, backup power, maintenance power and/or interruptible power from MDU.

4a. Description of Principal Facility Components:

The Facility is a wind-powered generation facility consisting of multiple wind turbine generators for a gross nameplate capacity not to exceed 51 MW. The Facility will initially consist of 17 wind turbine generators each having a capacity of 1.50 megawatts ("MW"). The Facility's turbines will be mounted on towers no more than 80 meters high and spaced at least 800 feet apart.

A substation will be either installed on the site or at the Interconnection Point with MDU. The substation transformer will step up the voltage from the collection system level at 34.5 kV to 115 kV.

4b. Power Production Capacity:

The maximum gross nameplate capacity of the Facility will not exceed 51 MW and the maximum net capacity of the Facility will not exceed 51 MW at the Interconnection Point.

4c. Installation and operation dates of the Facility:

It is expected that installation of the equipment comprising the Facility will commence on or about July 2004, production of test electricity will commence on or about October 15, 2004 and commercial operation will commence sometime in December 2004.

4d. Primary Energy Input:

The Facility's primary energy input is wind.

5. Fossil Fuel Energy Input:

No fossil fuel energy will be used by the Facility to generate electricity.

6. Other characteristics:

There are no other particular characteristics that might bear on the qualifying status of the Facility.

PART B: DESCRIPTION OF THE SMALL POWER PRODUCTION FACILTY

7. Fossil Fuel Use:

No fossil fuel will be used by the Facility; therefore, fossil fuel use will not exceed 25% of the total annual energy input.

8. Adjacent Facilities:

There is not a "non-eligible facility", as defined in Section 3(17)(E) of the Federal Power Act located within one mile of the Facility, whether owned by Applicant, any affiliate or upstream owner of Applicant, or otherwise.

PART C: DESCRIPTION OF THE COGENERATION FACILITY

Not applicable.

Exhibit 5
To The
Testimony of John E. Calaway

ORIGINAL

WATT BECKWORTH
THOMPSON & HENNEMAN, L.L.P.
(A REGISTERED LIMITED LIABILITY PARTNERSHIP)
ATTORNEYS AT LAW

1010 LAMAR, SUITE 1600
HOUSTON, TEXAS 77002

TELEPHONE (713) 650-8100
FACSIMILE (713) 650-8141

BRAD MOODY
bmoody@wattbeckworth.com
(713) 333-9108

August 23, 2004

FILED
OFFICE OF THE
SECRETARY
2004 AUG 25 A 10:15
FEDERAL ENERGY
REGULATORY COMMISSION

Delivered via Federal Express

Magalie Roman Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

QF04-104-001

Subject: Notice of Self-Recertification as a Qualifying Facility
Java LLC, a Delaware company

Dear Secretary Salas:

Pursuant to 18 C.F.R. § 292.207(a)(1) of the Federal Energy Regulatory Commission's ("FERC") regulations, enclosed please find an original and fourteen (14) copies of a "Notice of Self-Recertification as a Qualifying Small Power Production Facility" on behalf of Java LLC ("Java"). In accordance with FERC regulations, Java has served copies of this filing to the electric utilities with which it expects to be interconnected and to the state regulatory authority.

Please return one copy of this filing to the undersigned marked to indicate the time and date of the filing in your office. Thank you for your assistance in this matter. If you have any questions please do not hesitate to contact me.

Respectfully,

M. Bradford Moody

BM/sw
Enclosure

{00003230.DOC}

cc: Java LLC
Attn: Jeff Ferguson
1600 Smith Street, Suite 4240
Houston, Texas 77002
w/encl.

Montana Dakota Utilities Co.
Attn: Andrea Stromberg
Vice President of Electric Supply
400 North Fourth Street
Bismarck, North Dakota 58501
w/encl.

South Dakota Public Utilities Commission
Capitol Building, 1st floor
500 East Capitol Avenue
Pierre, SD 57501-5070
w/encl.

ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Java LLC	§	**Docket No. QF04-104-000**

NOTICE OF SELF-RECERTIFICATION AS A QUALIFYING SMALL POWER PRODUCTION FACILITY

1. Pursuant to 18 C.F.R. §292.207(a), Java LLC ("Java") hereby submits this Notice of Self-Recertification as a Qualifying Small Power Production Facility in order to recertify its proposed wind generating facility to be located in Walworth County, South Dakota (the "Facility") as a qualifying small power production facility under the Public Utility Regulatory Policies Act of 1978, as amended.

2. The Facility was previously certified with FERC by Notice of Self-Certification as a Qualifying Small Power Production Facility filed April 15, 2004 (the "Notice of Self-Certification").

3. Whereas Paragraph 4a of Part A of the Notice of Self-Certification indicated that the Facility will initially consist of 17 wind turbine generators each having a capacity of 1.50 megawatts ("MW"), the Facility will now initially consist of 21 wind power turbine generators each having a capacity of 1.50 MW.

4. Signature of authorized individual evidencing accuracy and authenticity of information provided by Java:

Name: Jeff Ferguson
Title: Manager of Java LLC and
Chief Operating Officer of
Superior Renewable Energy, LLC

Exhibit 6
To The
Testimony of John E. Calaway

Superior Renewable Energy LLC

VIA FAX 701-222-7606 AND CERTIFIED MAIL---RRR

April 14, 2004

Montana Dakota Utilities Company
Attn: Andrea Stomberg
Vice President of Electric Supply
400 North Fourth Street
Bismarck, North Dakota 58501

Re: Java Wind Facility—Power Purchase Agreement

Dear Ms. Stomberg:

Our counsel received late yesterday evening the attached letter from your Washington, D.C. attorney Phillip Lookadoo. In connection with determining the capacity component of our contemplated power purchase agreement, Mr. Lookadoo says that your company "currently has its system capacity requirements satisfied until at least 2011." This statement appears to answer definitively the question that I asked in my letter to you yesterday, namely whether "the Java Wind Facility should receive a capacity credit in the PPA based on long-term base load generation that is applied constantly over the life of the (PPA)." As I read your attorney's letter, MDU is unwilling to pay Superior anything (at least through 2011) for capacity avoided as a result of electric sales from the Java Wind Facility.

If I am correct, then once again our negotiations with MDU for a PPA from the Java Wind Facility are at an impasse. Superior believes that your company's avoided costs are not in fact zero through 2011 and that failure to pay Superior for capacity avoided during that time period as a result of electricity delivered from the Java Wind Facility would be inconsistent with your company's obligations under PURPA and implementing federal and state regulations. Moreover, your attorney's statement is difficult to reconcile with your previous statement to me that your company would be willing to use the MAPP accreditation procedure for determining avoided capacity in our PPA.

Accordingly, I believe that the parties' best course of action will be to seek the assistance of the South Dakota Public Utilities Commission in breaking that impasse. If your company would like to reconsider its position or if I have misunderstood what your lawyer wrote, please advise me immediately.

Superior Renewable Energy LLC

Thank you for your prompt attention to this matter.

Very Truly Yours,

Jeff Ferguson
Chief Operating Officer
Superior Renewable Energy LLC

JF: nm
Encl.
cc: M. Bradford Moody
Watt, Beckworth & Thompson LLP

Andrea Stomberg – Certified Mail Receipts

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PS Form 3800, January 2001 — See Reverse for Instructions

Exhibit 7
To The
Testimony of John E. Calaway

Thelen Reid & Priest LLP
Attorneys At Law

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SENT VIA FAX

April 13, 2004

M. Bradford Moody, Esq.
Watt, Beckworth & Thompson, L.L.P.
1010 Lamar, Suite 1600
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bmoody@wbtllp.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

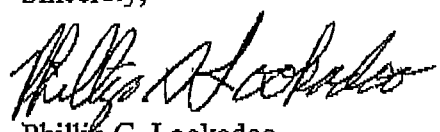
(ii) Not discriminate against qualifying cogeneration and small power production facilities.

(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.

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

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April 20, 2004

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713-650-8100, Ext. 108

Re: **Proposed Java Wind Facility**

Dear Mr. Moody:

On behalf of Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. ("Montana-Dakota"), I am writing to respond to two letters dated April 13, 2004 ("April 13 Letter") and April 14, 2004 ("April 14 Letter"), from your client, Superior Renewable Energy LLC ("Superior"). Both the April 13 Letter and the April 14 Letter were addressed to Ms. Andrea Stomberg, Vice President of Electric Supply of Montana-Dakota, and were sent by Mr. Jeff Ferguson, Chief Operating Officer of Superior. Montana-Dakota hereby acknowledges receipt of both Mr. Ferguson's April 13 Letter and his April 14 Letter. Also, Montana-Dakota wishes to thank you for providing a copy of Superior's Notice of Self-Recertification as a Qualifying Facility, which was filed at the Federal Energy Regulatory Commission ("FERC") on April 15, 2004, in the name of Java LLC.

Montana-Dakota has asked that I provide the attached spreadsheet that was reported to the Mid-Continent Area Power Pool ("MAPP") as of January 1, 2004, for inclusion in the 2004 MAPP Regional Reliability Council Report on Coordinated Bulk Power Supply Program (EIA-411). It is Montana-Dakota's understanding that MAPP submitted this EIA-411 report to the North American Electric Reliability Council ("NERC") and the U.S. Department of Energy's Energy Information Administration ("EIA") on April 1, 2004. See attached spreadsheet. In support of the previous statements made to Superior regarding the electric capacity requirements of Montana-Dakota, the attached spreadsheet demonstrates that the electric capacity required to serve Montana-Dakota's projected load are fully satisfied until calendar year 2011.

Montana-Dakota wishes to reiterate the points made in my letter to you dated April 13, 2004, that while Montana-Dakota is obligated not to discriminate against qualifying facilities ("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. In addition, under the South Dakota Public Utility Commission's ("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.

As demonstrated in the attached spreadsheet filed with MAPP, NERC and the EIA, Montana-Dakota has satisfied its system capacity requirements until at least 2011. Accordingly, Montana-Dakota will not avoid or defer any capacity costs prior to 2011 by purchasing the output from Superior's proposed Java LLC facility.

Although such purchases will not enable Montana-Dakota to avoid capacity costs prior to 2011, Montana-Dakota has not yet been able to determine the energy costs that could be avoided by Montana-Dakota's purchasing the output of Superior's proposed Java LLC facility. In her letter to Mr. Ferguson of April 8, 2004, Ms. Stomberg requested wind and generation data from Superior, so that Montana-Dakota may begin the process of calculating Montana-Dakota's energy costs that would be avoided by purchasing electric energy from Superior's Java LLC project. Please advise when Montana-Dakota can expect to receive such data.

Montana-Dakota looks forward to receiving from Superior the wind and generation data forecast for its Java LLC facility, as previously requested by Ms. Stomberg. 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

Historical and Projected Demand and Capacity - Summer

		Actual 2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
1	Internal Demand in MW (3-2)	472	466	470	474	479	483	488	492	496	501	505
2	Standby Demand	0	0	0	0	0	0	0	0	0	0	0
3	Total Internal Demand	472	466	470	474	479	483	488	492	496	501	505
4	Direct Control Load Management	0	0	0	0	0	0	0	0	0	0	0
5	Interruptable Demand	2	2	2	2	2	2	2	2	2	2	2
6	Net Internal Demand (3-4-5)	471	464	468	473	477	482	486	490	495	499	504
7	Schedule L Purchases	0	0	0	0	0	0	0	0	0	0	0
8	Committed Resources (9+10+11+12)	473	475	475	475	475	475	475	475	475	475	475
9	Distributed Generator Capacity (1 MW or greater)	0	0	0	0	0	0	0	0	0	0	0
10	Other Capacity (1 MW or greater)	473	475	475	475	475	475	475	475	475	475	475
11	Distributed Generator Capacity (less than 1 MW)	0	0	0	0	0	0	0	0	0	0	0
12	Other Capacity (less than 1 MW)	0	0	0	0	0	0	0	0	0	0	0
13	Uncommitted Resources	0	0	0	0	0	0	0	0	0	0	0
14	Total Capacity (8+13)	473	475	475	475	475	475	475	475	475	475	475
15	Inoperable Capacity	0	0	0	0	0	0	0	0	0	0	0
16	Net Operable Capacity (14-15)	473	475	475	475	475	475	475	475	475	475	475
17	Total Capacity Purchases	69	74	84	94	83	93	103	103	3	3	3
18	Full Responsibility Purchases (Firm)	3	8	18	28	3	3	3	3	3	3	3
19	Participation Purchases	66	66	66	66	80	90	100	100	0	0	0
20	Total Capacity Sales	0	0	0	0	0	0	0	0	0	0	0
21	Full Responsibility Sales	0	0	0	0	0	0	0	0	0	0	0
22	Participation Sales	0	0	0	0	0	0	0	0	0	0	0
23	Adjustment for Remotely Located (totally owned or shared) Generating Unit(s)	0	0	0	0	0	0	0	0	0	0	0
24	Planned Capacity Resources (16+17+23-20)	542	550	560	570	558	568	578	578	478	478	478
25	Adjusted Net Capability (14+19+23-22)	540	542	542	542	555	565	575	575	475	475	475
26	Annual System Demand	470	470	468	473	477.2	481.6	486	490.4	494.8	499.2	503.6
27	Monthly Adjusted Net Demand (6-7-18+21)	468	456	451	445	475	479	483	488	492	496	501
28	Annual Adjusted Net Demand (26-18+21)	468	463	451	445	474	479	483	488	492	496	501
29	Net Reserve Capacity Obligation (28 x 15%)	70	69	68	67	71	72	72	73	74	74	75
30	Total Firm Capacity Obligation (27+29)	538	526	518	512	546	551	556	561	566	571	576
31	Surplus or Deficit(-) Capacity (25-30)	2	16	24	30	10	15	20	15	-90	-96	-101
14	Total Capacity (07+12)	473	475	475	475	475	475	475	475	475	475	475
14.1	Nuclear	0	0	0	0	0	0	0	0	0	0	0
14.2	Hydro	0	0	0	0	0	0	0	0	0	0	0
14.3	Pumped Storage	0	0	0	0	0	0	0	0	0	0	0
14.4	Geothermal	0	0	0	0	0	0	0	0	0	0	0
14.5	Steam	366.9	366.8	366.8	366.8	366.8	366.8	366.8	366.8	366.8	366.8	366.8
14.5.1	Coal	366.9	366.8	366.8	366.8	366.8	366.8	366.8	366.8	366.8	366.8	366.8
14.5.2	Oil	0	0	0	0	0	0	0	0	0	0	0
14.5.3	Gas	0	0	0	0	0	0	0	0	0	0	0
14.5.4	Dual Fuel	0	0	0	0	0	0	0	0	0	0	0
14.6	Combustion Turbine	106.3	108.5	108.5	108.5	108.5	108.5	108.5	108.5	108.5	108.5	108.5
14.6.1	Oil	0	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
14.6.2	Gas	106.3	106.7	106.7	106.7	106.7	106.7	106.7	106.7	106.7	106.7	106.7
14.6.3	Dual Fuel	0	0	0	0	0	0	0	0	0	0	0
14.7	Combined Cycle	0	0	0	0	0	0	0	0	0	0	0
14.7.1	Oil	0	0	0	0	0	0	0	0	0	0	0
14.7.2	Gas	0	0	0	0	0	0	0	0	0	0	0
14.7.3	Dual Fuel	0	0	0	0	0	0	0	0	0	0	0
14.8	Other	0	0	0	0	0	0	0	0	0	0	0
14	Total Capacity (07+12)	473.2	475.3	475.3	475.3	475.3	475.3	475.3	475.3	475.3	475.3	475.3

ATTACHMENT

Attached hereto is the spreadsheet data that was submitted by Montana-Dakota to the Mid-Continent Area Power Pool ("MAPP") as of January 1, 2004, for inclusion in the 2004 MAPP Regional Reliability Council Report on Coordinated Bulk Power Supply Program (EIA-411). It is Montana-Dakota's understanding that MAPP submitted this EIA-411 report to the North American Electric Reliability Council and the U.S. Department of Energy's Energy Information Administration on April 1, 2004.

Exhibit 8
To The
Testimony of John E. Calaway

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.

EXHIBIT D

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.

EXHIBIT D

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

		With 31.5 MW Wind Farm		
Year		On-Peak	Off-Peak	Total
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.

EXHIBIT D

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 = $2,138 / kW in 2003$

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

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

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 x 0.13637 = $338.33 / 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

Year	Avoided Capacity Costs ($/kW-Year)
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 D

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

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

Exhibit 9
To The
Testimony of John E. Calaway

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

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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Pierre, SD 57501

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MONTANA-DAKOTA UTILITIES CO.
SUPERIOR RENEWABLE ENERGY, LLC
SECOND DATA REQUEST
DATED NOVEMBER 15, 2004
DOCKET NO. EL04-016

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.**

Responses:

1. Admit.
2. Deny. The Product K contract was not included in Exhibit A calculations.
3. Montana-Dakota objects to this request because it is argumentative and does not call for Montana-Dakota to admit or deny any facts. Without waiving the objection, and seeking to fairly meet the substance of the requested admission, Montana-Dakota states that the response was true and complete.

4. Montana-Dakota objects to this request because it is argumentative and does not call for Montana-Dakota to admit or deny any facts. Without waiving the objection, and seeking to fairly meet the substance of the requested admission, Montana-Dakota states that the response was true and complete.
5. Deny. The contracts specify the period available to secure firm transmission which time extends to December 31, 2004.
6. Admit.
7. Admit.
8. Based on Montana-Dakota's current load forecast, the Electric Load Forecast 2004-2023 published in December, 2003, and projected accredited capability as of October 1, 2004, without purchases of energy and capacity under the Product A, J and K Agreements, Montana-Dakota would need additional capacity on its integrated electric system as follows:
   2004- Deny
   2005- Deny
   2006- Deny
   2007- Admit
   2008- Admit
   2009- Admit
9. Admit.
10. Deny. The Product J agreement is for short-term seasonal capacity which would not be considered base load capacity however, the Product A agreement is specific to named coal units, and could be considered base load capacity.

Exhibit 11
To The
Testimony of John E. Calaway

MONTANA-DAKOTA
UTILITIES CO.
A Division of MDU Resources Group, Inc.
400 N Fourth Street
Bismarck, ND 58501

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.