

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Montana-Dakota Utilities Co.  
Natural Gas Rate Increase  
Application**

**Case No. PU-04-97**

**ADVOCACY STAFF RESPONSE TO TRADE SECRET APPLICATION**

On July 4, 2004, Montana-Dakota Utilities Co., a division of MDU Resources Group ("MDU) filed an application for a protective order limiting the disclosure of certain trade secret information provided by MDU in response to Discovery Requests by the Public Service Commission's Advocacy Staff (Advocacy Staff) and is included within the direct testimony and exhibits of Charles W. King to be filed on behalf of the Advocacy Staff. In support of its application, Granite provided information as follows:

**1. A General Description of the Nature of the Information Sought to be Protected.**

The information MDU seeks to protect includes:

- A. Confidential information on pages 15-17 of the Direct Testimony of Charles W. King stating the amounts paid by MDU under its incentive compensation plans to its various employee groups and describing factors and characteristics of those plans.
- B. Confidential information on pages 25-28 of the Direct Testimony of Charles W. King stating the percentage increases in annual compensation to officers and other employees since 1999.

- C. Confidential information on page 4 of Exhibit CWK-1 to the Direct Testimony of Charles W. King stating the amounts paid by MDU under its incentive compensation plans to its various employee groups and describing the factors and characteristics of those plans.
- D. Confidential information on page 8 of Exhibit CWK-1 to the Direct Testimony of Charles W. King stating the number of employees within MDU's various employee groups and the average compensation and average annual percentage compensation increase for each group since 1999.

**2. An Explanation of Why the Information Derives Independent Economic Value, Actual or Potential, From not Being Generally Known to Other Persons.**

MDU states that the confidential information contained in the testimony and exhibits describes the average annual amounts, annual percentage increases, and the factors and characteristics of MDU's incentive plans for its various employee groups, and that it also describes the number of employees within MDU's employee groups and the average compensation and average annual percentage compensation increases for each group since 1999. MDU states that the information is confidential and proprietary to MDU and is not publicly disclosed, that the information is sensitive, and that its public disclosure would place MDU at a competitive disadvantage in attracting and retaining employees. MDU states that if the information is disclosed publicly, it would disadvantage MDU because the information reflects specifics regarding MDU's compensation programs, particularly compensation programs for MDU's executives and officers.

**3. An Explanation of Why the Information is Not Readily Ascertainable by Proper Means by Other Persons.**

MDU states that the information is proprietary to MDU, and is available only to those employees and representatives of MDU who have a need to know the information to perform their duties and responsibilities. MDU states that it does not disclose the information outside the company except pursuant to the terms of agreements and orders to maintain the confidentiality of the information.

**4. A General Description of the Persons or Entities that would Obtain Economic Value from Disclosure or Use of the Network.**

MDU states that competitors or potential competitors of MDU for qualified and experienced employees in the field's of electric and natural gas distribution would obtain economic value from the disclosure or use of the information.

**5. A Specific Description of Known Competitors and Competitors' Goods and Services that are Pertinent to the Tariff or Rate Filing.**

MDU states that competitors and potential competitors of MDU for electric and natural gas employees include all investor owned utilities and rural electric cooperatives in North Dakota and any other state in the United States.

**6. A Description of the Efforts Used to Maintain the Secrecy of Information.**

MDU references No. 3 above.

Staff has reviewed MDU's request for trade secret protection of compensation information. N.D.C.C. § 47-25.1-01 defines the term "trade secret" as follows:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper

means by, other persons who can obtain economic value from its disclosure or use; and

b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

N.D. Admin. Code § 69-02-09-04 requires that the “commission staff examine the information and application and make a prima facie recommendation of whether the information is relevant and a trade secret under the definition of trade secret in North Dakota Century Code section 47-25.1-01.”

The information is relevant to the application because, under N.D.C.C. § 49-05-06, the company applying for a rate increase has the burden to show that the increased rate is just and reasonable. Compensation plans for officers and employees including incentive compensation plans and bonuses are a critical part of a rate filing. The whole purpose of the rate proceeding is to convince the Commission to allow the company to collect rates to cover the costs associated with the implementation of these plans from ratepayers. The manner in which MDU compensates its employees is an important part of a rate case, and it is information that MDU’s ratepayers are entitled to see.

In order to qualify for trade secret protection, other persons must obtain economic value from the disclosure or use of the information. MDU asserts that competitors for experienced employees would obtain economic value from disclosure or use of the information. MDU identifies its competitors as all investor owned utilities, rural electric cooperatives and other providers of electric or natural gas utility service. Competition, as used in the context of the Commission’s rule, is generally understood to mean competition between parties in the sale of goods or services and not in the trading or acquisition of employees. Therefore, the information is not trade secret.

In order to qualify for trade secret protection, the information must be of economic value to others. The information MDU seeks to protect does not identify individual salaries or bonuses. The information relates to amounts paid under incentive plans to various employee groups, percentage increases in annual compensation to officers and other employees, numbers of employees within the various employee groups and the average compensation and average annual percentage compensation increase for each group since 1999. Release of this information cannot place MDU at a competitive disadvantage in attracting and retaining employees because the information is not specific to any individual employee. Therefore, the information is not trade secret.

Employees are not property of MDU—they are people who have a right to change jobs at their discretion. MDU has a compensation package that it presumably has determined is fair to its employees and will be adequate to recruit and employ personnel. Disclosure of such information does not inhibit MDU in recruiting or retaining employees. Since the plans are of such importance to MDU, it is logical to assume that MDU uses this information in its recruiting retention efforts. Employees and potential employees of MDU are not likely required to sign confidentiality agreements concerning compensation. Therefore, MDU has no way to maintain confidentiality.

The information should not be protected under the guise that it will be beneficial to MDU's competitors. Staff does not recall a single instance in at least the past fifteen years where a public utility has claimed trade secret protection for information relating to compensation for officers and employees of the company. The information may very well be sensitive from MDU's perspective because of public reaction to the amounts being paid, but that is not justification for trade secret protection.

MDU has not made a showing that it is entitled to trade secret protection under North Dakota law for this information. For reasons set forth above, staff recommends that the Commission deny MDU's Application Requesting Trade Secret Protection in this case.

Dated July 15, 2004.

---

William W. Binek  
Counsel for Advocacy Staff

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Montana-Dakota Utilities Co.  
Natural Gas Rate Increase  
Application**

**Case No. PU-04-97**

**AFFIDAVIT OF SERVICE BY E-MAIL**

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Sandra L. Scott** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **15<sup>th</sup> day of July, 2004**, she sent by e-mail.

**STAFF RESPONSE TO TRADE SECRET APPLICATION**

To:

***See Attached***

Each address shown is the respective addressee's last reasonably ascertainable e-mail address.

Subscribed and sworn to before me  
this **15th day of July, 2004**.

---

Notary Public

SEAL

July 15, 2004

Ms. Ilona A. Jeffcoat-Sacco  
Executive Secretary  
Public Service Commission  
600 E Boulevard Ave. Dept. 408  
Bismarck, ND 58505-0480

RE: **Montana-Dakota Utilities Co.  
Natural Gas Rate Increase  
Application  
Case No. PU-04-97**

Dear Ms. Jeffcoat-Sacco:

Enclosed for filing in the above referenced case is the original and seven copies of the **Staff Response to Trade Secret Application**.

Thank you.

Sincerely,

William W. Binek  
Chief Counsel

WWBsIs  
Enclosure

C: Parties of Record