

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Montana-Dakota Utilities Co., a Division
of MDU Resources Group, Inc.
Advance Determination of Prudence
Application**

Case No. PU-06-482

**STAFF RESPONSE TO MONTANA-DAKOTA UTILITIES CO'S. APPLICATION
REQUESTING TRADE SECRET PROTECTION**

On December 1, 2006, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota) filed an Application for Trade Secret Protection requesting a protective order limiting the disclosure of trade secret information included in prefiled direct testimony filed by Montana-Dakota on December 1, 2006. On January 24, 2007, Montana-Dakota filed a Supplemental Application For Trade Secret Protection in support of its December 1, 2006 application. The supplemental application provides further information in support of the application and withdraws the request for trade secret protection for the preliminary Big Stone II Stability Analysis included as Exhibit TR-4 to the prefiled testimony of Timothy J. Rogelstad. The specific information Montana-Dakota seeks trade secret protection for is as follows:

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

A. Cost information regarding Montana-Dakota's generation resources and power purchase agreements contained at page 3-2 of the Generation Expansion Analysis included as Exhibit JAH-2 to the prefiled testimony of James A. Heidel.

B. Preliminary Big Stone II Stability Analysis included as Exhibit TR-4 to the prefiled testimony of Timothy J. Rogelstad. (Montana-Dakota requested trade secret protection

in its December 1, 2006 application but withdrew its request in its January 24, 2007 supplemental application).

C. Big Stone II Transmission Projected Costs included as Exhibit TR-5 to the prefiled testimony of Timothy J. Rogelstad.

D. Big Stone II Power Projected Cost Report included as Exhibit KET-2 to the prefiled testimony of Kermit E. Trout.

2. Explanation of Why the Information Derives Independent Economic Value, Actual or Potential, from not being generally known to other Persons.

A. Energy from Montana-Dakota's generation resources and power purchase agreements is sold in a competitive market administered by the Midwest Independent Transmission System operator, Inc. (MISO) based on the cost of producing the energy. Montana-Dakota states that information regarding the costs of its resource facilities and power purchase contracts would be valuable to other producers that bid their energy for sale into the MISO market.

B. Montana-Dakota states that at the time of its application, the preliminary Big Stone II Stability Analysis had not been posted on the MISO Open Access Same-Time Information System (OASIS) and therefore was confidential. Montana-Dakota has withdrawn its request for trade secret protection because the document has been publicly posted on the MISO OASIS so it is no longer confidential.

C. Montana-Dakota states that the Big Stone II projected costs were prepared by Otter Tail Corporation (Otter Tail) on behalf of the Big Stone II project based upon internal information from other Otter Tail projects and from trade publications. Montana-Dakota states that the information has economic value to potential vendors and contractors who may bid to supply materials and labor for the Big Stone II transmission project or components thereof by having access to the projected cost expectations of the project owners.

D. Montana-Dakota states that the Big Stone II Cost Report prepared by Black & Veatch, the owners' engineer and construction manager, was based upon internally generated information from other Black & Veatch projects and trade publications as well as preliminary Big Stone II bid information from vendors of major equipment components. Montana-Dakota states that the information has economic value to competitors of Black & Veatch in providing services for other clients or potential clients and to potential vendors for the Big Stone II project by having access to preliminary bid amounts included in the project budget for various equipment components.

3. An Explanation of Why the Information is not Readily Ascertainable by Proper Means by other Persons.

A. Montana-Dakota states that it prepares and maintains the cost information on a confidential basis, and that the information is not disclosed to the public or to persons other than its employees and agents who need to know the information for their job responsibilities or to third persons pursuant to agreement to maintain confidentiality of the information.

B. Not Applicable.

C. Montana-Dakota states that the Big Stone II Transmission projected Costs were prepared for the Big Stone II project owners, and that the confidentiality of the information has been maintained by the project owners. The information is not disclosed to the public or to persons other than employees or authorized agents of the project owners who need to know the information to fulfill their responsibilities in connection with the project or to third persons pursuant to agreement to maintain the confidentiality of the information.

D. Montana-Dakota states that the confidentiality of the Big Stone II Cost Report has been maintained by Black & Veatch and the project owners. The information is not disclosed to the public or to persons other than employees or authorized agents of Black & Veatch who need to know the information to fulfill their responsibilities in

connection with the project or to third persons pursuant to agreement to maintain the confidentiality of the information.

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

A. Montana-Dakota states that an entity selling or seeking to sell electricity into the MISO market would obtain economic value from disclosure of the information.

B. Not Applicable.

C. Montana-Dakota states that potential equipment and material vendors and contractors for the Big Stone II transmission project would obtain economic value from the disclosure of the costs.

D. Montana-Dakota states that competitors of Black & Veatch engaged in the engineering and construction management of electric generation stations would obtain economic value from disclosure of the project costs, and that potential equipment vendors for the Big Stone II station would also obtain economic value from disclosure of the costs.

5. A Specific Description of known Competitors and Competitor's Goods and Services that is pertinent to the Tariff or Rate Filing.

A. Montana-Dakota references its response to 4A.

B. Not Applicable.

C. Montana-Dakota references its response to 4C.

D. Montana-Dakota references its response to 4D.

6. A Description of the Efforts used to Maintain the Secrecy of the Information.

A. Montana-Dakota references its response to 3A.

B. Not Applicable.

C. Montana-Dakota references its response to 3C.

D. Montana-Dakota references its response to 3D.

Staff has reviewed Montana-Dakota's request for trade secret protection of financial 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. § 49-05-16(1)(a), a company that applies to the Commission for an advance determination of prudence for construction of an energy conversion facility or transmission facility must file with its application a projection of costs to the date of the anticipated commercial operation of the electric resource addition.

Staff believes that Montana-Dakota's application satisfies the requirements of the law which allows the Commission to grant trade secret protection in this proceeding. The Commission's process provides a means for interested parties to review trade secret documents upon signing a nondisclosure agreement.

For reasons set forth above staff recommends that the Commission grant Montana-Dakota's Application Requesting Trade Secret Protection in this case.

Dated February 1, 2007.



William W. Binek
Chief Counsel