

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Montana-Dakota Utilities Co., a
Division of MDU Resources Group, Inc.
Discontinue Prudence Big Stone II
Application**

Case No. PU-09-731

**Montana-Dakota Utilities Co., a
Division of MDU Resources Group, Inc.
Deferred Accounting - Big Stone II
Application**

Case No. PU-09-733

**Otter Tail Power Company
Deferred Accounting - Big Stone II
Application**

Case No. PU-09-739

**Otter Tail Power Company
Discontinue Prudence Big Stone II
Application**

Case No. PU-10-30

AFFIDAVIT OF SERVICE BY REGULAR MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

John Hamre deposes and says that:

he is over the age of 18 years and not a party to this action and, on the **20th** day of **April, 2010**, he deposited in the United States Mail, at Bismarck, North Dakota, **nine** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the following:

Settlement Agreement (MDU, Case No. PU-09-731 and Case No. PU-09-733)

The envelopes were addressed as follows:

Mr. Daniel S. Kuntz
Associate General Counsel
MDU Resources Group
PO Box 5650
Bismarck, ND 58502-5650

Mr. Bruce Gerhardson
Associate General Counsel
Otter Tail Power Company
215 S Cascade Street
Fergus Falls, MN 56537

Derrick Braaten
Sarah Vogel Law Partners
222 North 4th Street
Bismarck, ND 58501-4004

Sara G. McGrane
Felhaber, Larson, Fenlon & Vogt, P.A.
Attorneys for Large Industrial Group
444 Cedar Street, Suite 2100
St. Paul, MN 5 5101

Mr. Donald Ball
Vice President Regulatory Affairs
Montana-Dakota Utilities
400 N 4th Street
Bismarck, ND 58501

Ms. Bernadeen Brutlag
Manager Regulatory Services
Otter Tail Power Company
215 S Cascade Street
Fergus Falls, MN 56537

Mr. Richard J. Savelkoul, Attorney
Falhaber Larson Fenlon & Vogt PA
444 Cedar St, Ste 2100
St Paul, MN 55101-2136

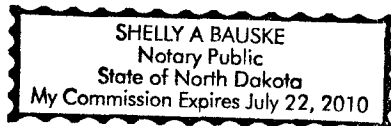
Mr. Larry Schedin
LSS Resources, LLC
1137 Plymouth Building
12 S 6th Street
Minneapolis, MN 55402

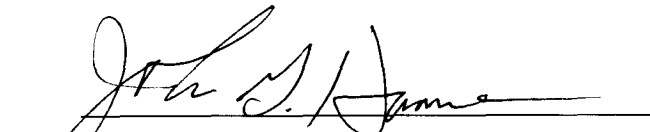
Ms. Kavita Maini
KM Energy Consulting LLC
961 N Lost Woods Road
Oconomowoc, WI 53066


Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **20th** day of **April, 2010**.

SEAL







Notary Public



Public Service Commission
State of North Dakota

COMMISSIONERS

Kevin Cramer
Tony Clark
Brian P. Kalk

Executive Secretary
Darrell Nitschke

April 14, 2010

Darrell Nitschke
Executive Secretary
600 East Boulevard, Dept 408
Bismarck, ND 58505-0480

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
Web: www.nd.gov/psc
E-mail: ndpsc@nd.gov
Phone 701-328-2400
Toll Free 1-877-245-6685
Fax 701-328-2410
TDD 800-366-6888 or 711

Re: Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.
Discontinue Prudence Big Stone II
Application
Case No. PU-09-731

and

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.
Deferred Accounting – Big Stone II
Application
Case No. PU-09-733

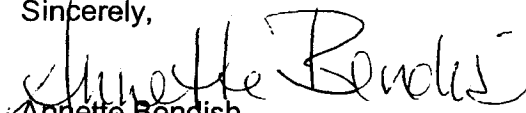
Dear Mr. Nitschke:

Enclosed is a Settlement Agreement reached between Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. and the North Dakota Public Service Commission Advocacy Staff in the above proceedings.

The Parties ask the Commission to approve the Settlement Agreement and are available to provide any additional information the Commission may require.

Please contact us with any questions.

Sincerely,


Annette Bendish

Counsel for Advocacy Staff

Enclosure

23 **PU-09-733** Filed: 4/14/2010 Pages: 9
Settlement Agreement

Public Service Commission Advocacy Staff
Annette Bendish, Counsel for Advoc. Staff

23 **PU-09-731** Filed: 4/14/2010 Pages: 9
Settlement Agreement

Public Service Commission Advocacy Staff
Annette Bendish, Counsel for Advoc. Staff

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Montana-Dakota Utilities Co., a Division
of MDU Resources Group, Inc.
Discontinue Prudence Big Stone II
Application

Case No. PU-09-731

Montana-Dakota Utilities Co., a Division
of MDU Resources Group, Inc.
Deferred Accounting – Big Stone II
Application

Case No. PU-09-733

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between the North Dakota Public Service Commission Advocacy Staff (“Staff”) and Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (“Montana-Dakota”) (collectively, “the Parties”). The Parties agree that except as expressly provided herein, this Settlement Agreement resolves all outstanding issues in the above-captioned proceedings.

BACKGROUND

These proceedings involve two separate but related matters: (1) Montana-Dakota’s request for a determination that its continued participation in the Big Stone II project is no longer prudent, filed with the Commission on December 2, 2009; and, (2) Montana-Dakota’s request, filed with the Commission on December 4, 2009, for authority for deferred accounting of costs related to Montana-Dakota’s efforts in securing new electric generation, primarily the Big Stone II Generating Station, until disposition of its next general electric rate case.

The Big Stone II project was a proposed multi-owner coal-fired generating plant to be located at the site of the existing Big Stone Generating Plant near Big Stone city, South Dakota. Prior to Otter Tail Power Company’s (OTP) withdrawal from the project in September 2009, Montana-

Dakota had a 26.54% share of the project and a corresponding responsibility for shared project costs.¹

In June of 2005, Montana-Dakota entered in to project agreements with six other utilities for purposes of pursuing the project.² At that time, the participants applied for the necessary permits, began preliminary engineering work, and began other development work for the project. The Commission issued an Advance Determination of Prudence for Montana-Dakota's participation in the project in August 2008, in Case No. PU-06-482, for a minimum of 121.8 MW up to a maximum of 133 MW and proportionate ownership share of the associated transmission electric resource additions. The Commission's order was based on an updated analysis by the Big Stone II participants for the cost of a 500 MW to 580 MW facility with an on-line date of mid-2013. Also, other permits were received from the South Dakota Public Utilities Commission ("SDPUC"), who approved the project Site Permit in July 2006, and the Minnesota Public Utilities Commission ("MPUC"), who issued a Certificate of Need ("CON") for the Big Stone II transmission lines in March 2009. The project also obtained a Water Allocation Permit, Air Permit, and other necessary permits, and completed a Federal Environmental Impact Statement for the project. Where applicable, these permits were generally based upon a generating plant capacity of between 500 and 600 MW. Montana-Dakota has incurred approximately \$13.9 million for the permitting, engineering and other development activities for the project to date. The North Dakota jurisdictional share of the total costs is 69.351586% or approximately \$9.6 million.³

On September 11, 2009, OTP withdrew from further participation in the project. Montana-Dakota was one of four remaining participants after OTP's withdrawal. The remaining

¹ Or more precisely 26.544622425% based on Montana-Dakota's proportion of committed off-take: 116 MW of a total of 437 MW committed. Montana-Dakota's share of the project increased after Great River Energy ("GRE") and Southern Minnesota Municipal Power Agency ("SMMPA") withdrew from the project in September 2007. Without new participants to make up for GRE and SMMPA, Montana-Dakota's proportionate share of off-take was larger than its original share of 19.3333% of a total 600 MW committed.

² Preliminary investigation of the feasibility of a second unit at the Big Stone site and other project activities had been undertaken before the project group agreements were finalized and executed.

³ The jurisdictional allocation percentage is based on the system twelve month peak demand factor, or 69.351586% to North Dakota.

participants sought but were unable to obtain commitments from new project participants largely because of regulatory, legislative and environmental concerns affecting the project as well as the economic downturn. On November 2, 2009, Montana-Dakota and the other remaining participants determined it was no longer feasible to continue the development of the Big Stone II project as the project size, reflecting the remaining participants' combined MW shares, was smaller than the designed and permitted plant size. Thus, the project lacked the envisioned economies of scale, and the validity of the permits issued for a larger size plant was in question. The costs related to Montana-Dakota's efforts in securing new electric generation fall generally into the following cost categories: Engineering, project development, permitting, legal, other expenditures, and Allowance for Funds Used During Construction ("AFUDC"). In addition to the Big Stone II project costs, the costs include \$2.1 million associated with the Lignite Vision 21 Project and \$332,000 associated with the Milton R. Young III Project.

TERMS

Montana-Dakota and the Commission Advocacy Staff (collectively "the Parties") agree to the provisions as defined below and supported by this Settlement Agreement.

I. Recovery of Costs related to the Big Stone II Project

The Parties agree that:

- A. Montana-Dakota's discontinuation of participation in the project is prudent and therefore Montana-Dakota should be authorized to recover the portion of costs related to the Big Stone II generation project ("Big Stone II Generation Costs") as detailed in this Section I.

- B. Approximately \$13.9 million represents the total amount of Big Stone II Generation Costs incurred by Montana-Dakota to date; of which \$9.6 million represents North Dakota's jurisdictional share of such costs.⁴

⁴ Id.

- C. The recovery of Big Stone II Generation Costs will occur over 36 months, beginning with the first day of the first calendar month by which implementation can practically be achieved by Montana-Dakota following the Commission's approval of this Settlement Agreement.
- D. Montana-Dakota's recovery will be in the form of an annual rate that shall be established based on an amount equal to one-third of the estimated total recovery, divided by the estimate of retail energy sales (in kWh) over the twelve-month period for which the rate will be in effect, to arrive at a rate per kWh. This rate will be applied to all customer bills as part of the Fuel Clause Adjustment ("FCA") based on kWhs consumed.
- E. At least 30 days prior to the end of each annual period, Montana-Dakota shall make a report to the Commission to show the total amount to be recovered, as well as the amount recovered and the amount of actual kWh retail energy sales for the period (up to the time of the report). Montana-Dakota will also calculate any amount of over- or under-collection (based on actual amounts up to the time of the report and estimated sales for the remainder of the annual period), and that amount (the "True-up Amount") shall be added to or subtracted from the amount to be recovered in the next annual period. Any True-up Amount remaining at the end of the 36 month recovery period shall be collected from customers (for any under-collection) or refunded to customers (for any over-collection) through the FCA surcharge adjustment.
- F. Montana-Dakota shall include in its total recovery amount a monthly carrying charge on the North Dakota share of Big Stone II Generation Costs for the period from November 2, 2009 (the date in which it ceased accumulating AFUDC on the construction work in progress balance) up until when the recovery of costs commences as described in paragraph C. above. The carrying charge shall be Montana-Dakota's rate of return as approved in its most recent rate case (10.016 percent).
- G. An estimate of the rate described above based on an assumed implementation date of June 1, 2010, a North Dakota balance of \$10.2 million including carrying charges

through May 31, 2010 and projected kWh sales is \$0.00214 per kWh, or \$1.61 per month for a typical residential customer using 750 kWh.

II. Recovery of Costs related to the Lignite Vision 21 Project and Milton R. Young III Project

The Parties agree this settlement is without prejudice to Montana-Dakota's inclusion of recovery for costs related to the Lignite Vision 21 Project and the Milton R. Young III Project in its next general rate filing request. It shall be Montana-Dakota's burden of proof in any such proceeding to show that cost recovery is appropriate.

III. Miscellaneous

A. Basis of Settlement Agreement

It is agreed this Settlement Agreement is a negotiated settlement agreement subject to approval by the Commission.

B. Effect of the Settlement Negotiations

It is understood and agreed that all offers of settlement and discussions related to this Settlement Agreement are privileged and may not be used in any manner in connection with proceedings in this case or otherwise, except as provided by law. In the event the Commission does not approve this Settlement Agreement, the Settlement Agreement will not be admissible as evidence in this or any other proceeding and no part thereof may be used by any party for any purpose in this case or in any other.

C. Applicability and Scope

This Settlement Agreement shall be binding on the Parties, and their successors, assigns, agents, and representatives. Consistent with the Commission's settlement guidelines, this Settlement Agreement does not set policy or overturn precedent. This Settlement Agreement shall not in any respect constitute an agreement, admission or determination by any of the Parties as to the merits of any specific allegation or contention made by the Parties in this proceeding.

D. Effective Date

This Settlement Agreement shall be effective on the date of the Commission Order approving the Settlement Agreement.

E. Modification

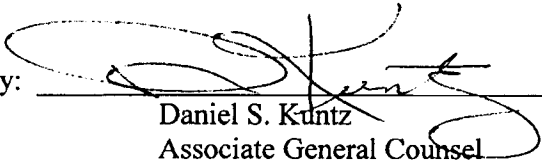
If the Commission Order modifies or conditions approval of this Settlement Agreement, it shall be deemed terminated if either Party files a letter with the Commission within three (3) business days of the date of such Order stating that a condition or modification to the Settlement Agreement is unacceptable to such Party.

CONCLUSION

The Parties have agreed to the forgoing terms to resolve the contested issues in the above-captioned proceedings. These terms are a result of negotiations between the Parties, are in the public interest and will result in reasonable electric rates. For these reasons, the Parties urge the Commission to approve the Settlement Agreement.

[Signature Pages Follow]

**Montana-Dakota Utilities Co.,
a Division of MDU Resources Group, Inc.**

By: 
Daniel S. Kuntz
Associate General Counsel

Dated this 14th day of April 2010.

North Dakota Public Service Commission Staff

By: Annette Bendish
Annette Bendish
Counsel to Advocacy Staff

Dated this 14 day of April 2010.