

 **MDU RESOURCES**

GROUP, INC.

1200 West Century Avenue

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Bismarck, ND 58506-5650

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(701) 530-1016

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RECEIVED

MAY 18 2010

May 18, 2010

PUBLIC SERVICE COMMISSION

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

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

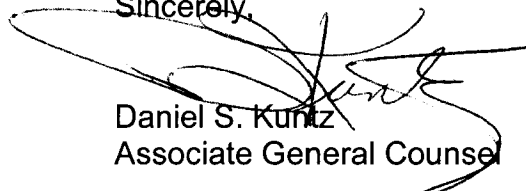
Dear Mr. Nitschke:

Pursuant to the directive of the hearing officer following the hearing on the above two applications held on May 5, 2010, enclosed is an original and seven copies of a proposed Order adopting the Settlement Agreement between Montana-Dakota Utilities Co. and the North Dakota Public Service Commission Advocacy Staff in the above proceedings.

Please acknowledge receipt by stamping or initialing the enclosed duplicate copy of this letter.

Please contact me if you have any questions regarding this filing.

Sincerely,



Daniel S. Kuntz
Associate General Counsel

Enclosure

cc: Annette Bendish
Derrick L. Braaten
Mark Bring

- 40 PU-09-733 Filed 05/18/2010 Pages: 15
Proposed Order Adopting Settlement
Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.
Daniel Kuntz, Assoc. General Counsel
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Proposed Order Adopting Settlement
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Daniel Kuntz, Assoc. General Counsel

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

ORDER ADOPTING SETTLEMENT

_____, 2010

Appearances

Commissioners Kevin Cramer, Tony Clark, and Brian P. Kalk.

Daniel S. Kuntz, Associate General Counsel, MDU Resources Group, Inc., PO Box 5650, Bismarck, ND 58501-5650.

Annette Bendish, Legal Counsel, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, attorney for the Advocacy Staff.

Derrick Braaten, Sarah Vogel Law Partners, 222 North 4th Street, Bismarck, North Dakota 58501-4004, attorney for the Dakota Resource Council and Mark Trechock,.

Illona A. Jeffcoat-Sacco, General Counsel, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, attorney for the Public Service Commission.

Al Wahl, Administrative Law Judge, Office of Administrative Hearings, 1701 North Ninth Street, Bismarck, North Dakota 58501-1882, appearing as hearing officer.

Preliminary Statement

On August 27, 2008, the Commission adopted an order approving the request of Montana-Dakota Utilities Co. (Montana-Dakota) for an advance determination of prudence for its ownership in the proposed Big Stone II Generating Station and associated transmission.

On December 2, 2009, Montana-Dakota filed an application for a determination that Montana-Dakota's continued participation in the Big Stone II Generating Station is no longer prudent, Case No. PU-09-731.

On December 4, 2009, Montana-Dakota filed an application for authority for deferred accounting for 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 increase, Case PU-09-733.

On January 26, 2010, the Commission filed a Request for Administrative Law Judge, and on January 28, 2010 the Office of Administrative Hearings filed a Letter Designating Al Wahl as Administrative Law Judge in these two proceedings.

On March 10, 2010, the Commission issued its Notice of Hearings consolidating Case Nos. PU-09-731 and PU-09-733 for a public hearing on May 5, 2010, and specifying the issues to be considered:

1. The issue to be considered in Case No. PU-09-731 is whether Montana-Dakota's continued participation in the Big Stone II Generating Station is no longer prudent.
2. The issue to be considered in Case No. PU-09-733 is whether authorization for deferred accounting of costs related to efforts in securing new electric generation, including participation in the Big Stone II project, is in the public interest.

On March 19, 2010, the Dakota Resource Council and Mark Trechock filed Petitions to Intervene in Case Nos. PU-09-731 and PU-09-733.

On March 24, 2010, the Commission issued its Orders Granting Intervention to the Dakota Resource Council and Mark Trechock in Case Nos. PU-09-731 and PU-09-733.

On April 14, 2010, Commission Advocacy Staff filed the Settlement Agreement between Montana-Dakota and the North Dakota Public Service Commission Advocacy Staff in Case Nos. PU-09-731 and PU-09-733. The Settlement Agreement provides, among other things, that:

- (a) Montana-Dakota's discontinuation of participation in the Big Stone II 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 II Generation Costs") as detailed in the Settlement Agreement;
- (b) Approximately \$13.9 million represents the total amount of Big Stone II Generation Costs incurred by Montana-Dakota; of which \$9.6 million represents North Dakota's jurisdictional share of such costs;

- (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 the Settlement Agreement;
- (d) Montana-Dakota will forego carrying charges on the Big Stone II Generation Costs during the 36 month recovery period.
- (e) 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 Adjustment Clause (FCA) based on kWhs consumed.
- (f) 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.
- (g) 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 an allowance for funds used during construction (AFUDC) on the construction work in progress (CWIP) 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).
- (h) 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.
- (i) The 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 pending general rate filing request. It shall be Montana-Dakota's burden of proof in any such proceeding to show that cost recovery is appropriate.

On April 29, 2010, Advocacy Staff filed direct testimony of Mike Diller in Case Nos. PU-09-731 and PU-09-733 in support of the Settlement Agreement.

On May 5, 2010, the public hearing was held in the Commission Hearing Room at the State Capitol in Bismarck, North Dakota. At the hearing, Montana-Dakota provided testimony of Andrea L. Stomberg, Vice President-Electric Supply, Garret Senger, Vice President, Controller and Chief Accounting Officer, and Rita A. Mulkern, Regulatory Analysis Manager, in support of the Settlement Agreement. Ms. Stomberg and Mr. Senger testified that as the result of funds received from the disposition of project assets, Montana-Dakota now estimates the North Dakota amount to be recovered is \$9.46¹ million resulting in a rate per Kwh of \$0.00199 with a resulting monthly charge of approximately \$1.49 for a typical residential customer. Ms. Stomberg testified this amount could be further reduced in the future if the project participants are successful in disposing of remaining real estate assets. Mike Diller, Director of Economic Regulation, provided testimony on behalf of the Advocacy Staff in support of the Settlement Agreement. No testimony was offered in opposition to the Settlement Agreement.

On May 12, 2010, Montana-Dakota filed Late-filed Exhibit Nos. MDU-5 through MDU-8 as requested at the hearing on May 5.

Having considered this matter, the Commission finds the Settlement Agreement filed April 14, 2010 is reasonable and should be approved subject to the conditions stated below. Therefore, the Commission issues the following:

Order

1. The Settlement Agreement filed April 14, 2010, a copy of which is attached to this Order and made a part of this Order, is APPROVED, subject to the provisions in Ordering Paragraph 3 below.
2. Montana-Dakota's discontinuation of participation in the Big Stone II Project is prudent pursuant to the Settlement Agreement and N.D. Cent. Code § 49-05-16(5), and Montana-Dakota is authorized to recover the costs reasonably incurred in the Big Stone II project, pursuant to the Settlement Agreement.
3. Montana-Dakota shall, within 15 days, file the applicable rate and documentation supporting calculation of the rate, consistent with this Order and Settlement Agreement, to implement the rate as agreed upon in the Settlement Agreement reflecting cost information available at the time of the rate filing and to become effective for service rendered on and after July 1, 2010. The Commission will not suspend the rate, but will promptly issue a Notice of Opportunity for Hearing on the rate submitted by Montana-Dakota. The Commission Advocacy Staff and any other interested parties shall have the right to review cost information supporting the rate schedule and object to costs not reasonably incurred. Any over- or under-collection of reasonably incurred final costs

¹ Exhibit MDU-4.

resulting from implementation of the rate shall be addressed as provided by the Settlement Agreement.

4. Montana-Dakota's Application for Deferred Accounting regarding costs incurred during its participation in the Big Stone II Project, Case No. PU-09-733, is rendered moot by this Order. Montana-Dakota's Application for Deferred Accounting in Case No. PU-09-733 regarding costs incurred for the Lignite Vision 21 Project and the Milton R. Young III Project shall be considered in Montana-Dakota's currently pending electric rate increase application, Case No. PU-10-124.

PUBLIC SERVICE COMMISSION

**Tony Clark
Commissioner**

**Kevin Cramer
Chairman**

**Brian P. Kalk
Commissioner**

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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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

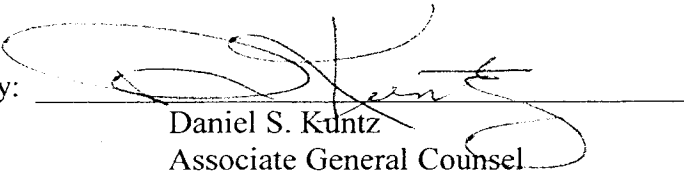
If the Commission Order modifies or conditions approval of this Settlement Agreement, it shall be deemed terminated if either Party files a letter with the Commission within three (3) business days of the date of such Order stating that a condition or modification to the Settlement Agreement is unacceptable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

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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Division of MDU Resources Group, Inc.
Discontinue Prudence of Big Stone II
Application

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AFFIDAVIT OF SERVICE BY FIRST CLASS MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Dorothy Vedvick deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **18th day of May, 2010**, she deposited in the United States Mail, Bismarck, North Dakota, one envelope securely sealed and containing a photocopy of:

Proposed Order Adopting Settlement Agreement

The envelope was addressed as follows:

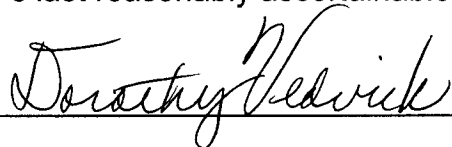
Derrick Braaten
Sarah Vogel Law Partners
222 North 4th Street
Bismarck, ND 58502-5650

Mark Bring
Associate General Counsel
Otter Tail Corporation
215 S Cascade Street
Fergus Falls, MN 56537

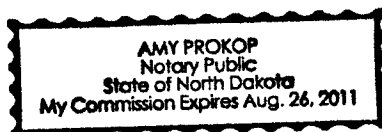
Annette Bendish
Counsel for Advocacy Staff
Public Service Commission
600 E Boulevard Ave., Dept 408
Bismarck, ND 58505-0480

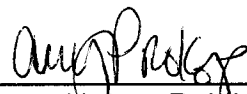
Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **18th day of May, 2010**.



Seal





Notary Public