SERVICE LIST

Mr. Daniel S. Kuntz
Associate General Counsel
MDU Resources Group, Inc.
P. 0. Box 5650
Bismarck, ND 58506-5650
Dan.Kuntz@MDUResources.com

Mr. Richard J. Savelkoul
Felhaber Larson Fenton & Vogt, PA
Counsel for Commission Advocacy Staff
444 Cedar Street, Suite 2100
St. Paul, MN 55101-2136
rsavelkoul@felhaber.com

Mr. James D. Roache'
707 1st Street SW
Crosby, ND 58730

Illona A. Jeffcoat-Sacco General Counsel
Public Service Commission 600 E. Boulevard Ave., Dept. 408 Bismarck, ND 58505-0480 701-328-2407 (fax: 701-328-2410) ijs@nd.gov

Missouri Valley Resource Council Reply Brief

Contents

I. <u>Introduction</u>

Missouri Valley Resource Council decided to intervene in this case to support rate recovery by Montana Dakota Utilities for its two most recent wind projects Cedar Hills in North Dakota and Diamond Willow in Eastern Montana. Missouri Valley Resource Council works to promote clean and renewable energy throughout North Dakota. MVRC believes MDU's investments in wind energy provide necessary protections to ratepayers in an environment of regulatory uncertainty regarding carbon. In addition, the wind resources in question have provided benefits to ratepayers prior to the rate increase and will continue to provide benefits to ratepayers in the future.

MDU's wind projects pass the "use and useful" test that is required for rate recovery. Previous decisions by the North Dakota PSC have allowed rate recovery for similar wind projects constructed by both Otter Tail Power and Northern States Power. In addition, the final order from the Big Stone II advanced determination of prudence hearing determined that although wind plus natural gas power were not least cost resources that such resources should be a part of future additions of energy generation for Montana Dakota Utilities. Not allowing MDU to recover for this wind sets a very poor and contradictory precedent with regard to future investments in wind power by North Dakota Utilities.

In this brief, first I will outline Missouri Valley Resource Council's involvement in the rate case. Second I will respond to MDU's brief. Third I will reply to the PSC

Advocacy staff brief. Fourth I will discuss Missouri Valley Resource Council's stance on MDU's rate recovery for its wind investments.

II. Missouri Valley Resource Council Involvement

On April 19, 201,0 Montana Dakota Utilities filed an application to raise general electric rates with the North Dakota Public Service Commission.

On June 16, 2010, Montana Dakota Utilities filed its interim rate compliance tariff.

On June 25, 2010, The North Dakota Public Service Commission approved Montana Dakota's Interim rates.

On July 13, 2010, Members of Missouri Valley Resource Council attended an informal meeting with MDU and the Public Service Commissioners regarding the rate increase.

On October 21, 2010, Missouri Valley Resource Council submitted its petition to intervene in the rate increase hearing on behalf of its members and MDU ratepayers.

November 1, 2010, Scott Skokos of Dakota Resource petitions to practice before the commission on behalf of Missouri Valley Resource Council.

November 4, 2010, Scott Skokos and members of Missouri Valley Resource Council attend a settlement agreement meeting with the PSC advocacy staff and representatives from MDU. MVRC decides to intervene in favor of MDU's wind investments.

November 8-November 12, MVRC participated as an intervenor in the formal hearing regarding MDU's application for a general increase in electric rates.

III. Response to Montana Dakota Utilities Brief

a. Inconsistency of the PSC Advocacy Staff

Montana Dakota's arguments in favor of rate recovery for their wind investments are well justified in their post hearing brief. Throughout the hearing it became clear that the PSC Advocacy Staff could not prove that the wind was not "used and useful", even Mr. Mathai. The only real argument with merit against the wind was whether or not MDU's wind investments were used and useful was whether or not the wind projects were built to meet the Montana Renewable Energy Mandate.

In their post-hearing brief MDU addresses whether or not the wind was built to meet the Montana Renewable Energy Portfolio Standard. MDU argues that Advocacy Staff took a predetermined stance to disallow the wind projects because of a preconceived notion that the projects were built to meet the Montana Renewable Portfolio Standard.[1] In addition, MDU proved that Mr. Mathai, lacked knowledge of North Dakota laws to make the assumptions he had made throughout his determinations against rate recovery for the wind.[2] In addition, MDU exposes Mr. Mathai's poor analysis of the North Dakota Recycled and Renewable Energy Objective. MDU argues that the North Dakota Recycled and Renewable Energy

---

[1] MDU post-hearing brief Pg. 14
[2] Id.

Objective are legislatively enacted directives for how utilities must operate.[3] Members of Missouri Valley Resource Council share MDU's stance that the North Dakota Renewable and Recycled Energy Objective is a directive that must be followed closely by North Dakota Utilities. Specifically the North Dakota Century Code directs utilities to have ten percent of their energy from recycled and renewable sources. [4] With the Diamond Willow and Cedar Hills wind projects, MDU made great strides to meeting the state renewable and recycled energy objective. As a result, Montana Renewable Portfolio Standard notwithstanding the investments made in wind by MDU show a good faith effort to meet a North Dakota legislative directive and are deserving of rate recovery.

In their post-hearing brief MDU proves that their investments in wind were not out of the ordinary. For example, both Otter Tail Power and Northern States Power constructed wind projects and received rate recovery from the ND Public Service Commission in the very recent past.[5] In addition, MDU references the Big Stone II final order, which illustrates how the ND Public Service Commission has explicitly stated that wind should be part of power resource planning process regardless of whether or not it was a least-cost resource.[6] From these findings it can be inferred that MDU made a prudent decision to build wind much like other North Dakota Public Utilities. Yet, interestingly the PSC Advocacy Staff was against cost recovery for MDU's wind investments. As a result, the Public Service Commission's

---

[3] MDU post-hearing brief Pg. 16
[4] ND century Code 49-02-28
[5] NSP and OTP
[6] Case North Dakota PU-06-482 Final Order and Findings and Facts Paragraph 116

determinations in MDU's case appear to be inconsistent with past decisions regarding wind. In addition, the Public Service Commission Advocacy Staff's decision to not allow recovery for MDU's wind investments contradicts previous PSC directives following the Big Stone II decision.

b. Benefits: If not wind then what?

MDU's brief shows how wind provides benefits to its customers. MDU's wind investments provide protection from price volatility of fuel costs and MISO market costs, as well as providing a resource that will not be regulated by future carbon legislation. [7] There is no doubt that fuel costs will increase in the future and MISO market prices are not completely certain.[8] In addition, future carbon regulations are on the horizon and having a renewable resource will provide protection to North Dakotans from the costs of carbon regulation.[9]

Lastly, MDU's brief asks the Public Service Commission the important question if not this wind then what?[10] As an intervenor in the hearing, Missouri Valley Resource Council continually pondered this same question. MDU explained the costs of each of its wind projects as evidenced by Darcy Neigum's testimony comparing the wind projects to the recently failed Big Stone II Coal project and other resources such as natural gas and MISO market purchases. Neigum's comparisons showed that

---

[7] MDU brief Pg. 9
[8] See Transcript Pg. 221 Line 4-14
[9] "EPA Moves to Cut Carbon for Climate." *Duluth News Tribune | Duluth, Minnesota.* Web. 29 Dec. 2010. <http://www.duluthnewstribune.com/event/article/id/187169/>.
[10] MDU brief pg. 22

wind clearly had a lower levelized cost than the other generation sources.[11] If wind had the cheapest costs as was stated by Mr. Neigum then what does the Advocacy Staff want MDU to build to reduce its current energy deficit? When Andrea Stomberg, Vice President of Electric Supply was asked during the hearing about MDU's investment in wind as a means to diversify energy resources, Ms. Stomberg addressed the idea of building new coal by stating:

We can't build coal in today's environment. We have a capacity deficit, we have an energy deficit, we -- we have some contracts right now which are an important part of our resource portfolio, and wind is just another important part of that.[12]

With coal no longer being a viable option as evidenced by the failure of the Big Stone II Power Project, and by the fact that no new coal power plants have been constructed since 2008, it is apparent that renewable energy has now become a viable energy resource. Companies like MDU that invest in wind understand the current movement of the energy market.[13] Is the PSC Advocacy Staff asking a company that has current energy deficit to continue to make energy market purchases from MISO and other sources, rather than building new safer energy generation such as wind? Leaving the company at the will of outside markets and the price fluctuations that exist in those markets will inevitably cause uncertainty with regard the MDU's energy supply and overall costs of business. Throughout their testimony MDU continually asserted that wind provides a resource that

---

[11] MDU brief pg. 21-22
[12] See Transcript P. 327 Lines 1-6
[13] Case North Dakota PU-06-482 Final Order and Findings and Facts Paragraph 116

provides protection from fuel price volatility.[14] It is apparent that the Advocacy Staff never took the benefits of wind into account in their analysis in the proceedings. For example when asked about fuel cost associated with wind, Mr. Mathai, the Advocacy Staff's primary witness stated that wind had fuel costs, when it is clear to most experts that wind has no fuel costs.[15] As a result, it is clear that the Advocacy Staff came in with a predetermined notion regarding wind generation and as a result never once answered the question: If not wind, then what?

IV. Response to Advocacy Staff Brief

The main difference between the Advocacy Staff's position and MDU's position in this rate case is a matter of short term v. long term. MDU's investments in wind are an investment with the future in mind. For example MDU cites future carbon regulations, rising fuel costs, and issues with the MISO market as the main justification for their wind.[16] Whereas the PSC Advocacy Staff's main justification is that the wind was not a good investment for 2010.

The main argument of the Public Service Commission Advocacy Staff against the wind is that it was not least-cost. Least-Cost does not always mean it is the best investment for the ratepayers. For example if MDU invested in natural gas instead of wind, the costs of the natural gas may be cheaper in the short run, but over the life

---

[14] See Transcript Pgs. 468 lines 23-25 and Pg. 469 Lines 1-11
[15] id.
[16] Id.

of the resource the fuel costs will inevitably make it more expensive than a zero fuel resource such as wind.[17]

One clear flaw in the PSC Advocacy Staff's arguments is that for a resource to be 'used and useful' it must be least cost. MDU attorney Dan Kuntz exposed this flaw in the Advocacy Staff's interpretation of "use and useful" in his cross-examination of Mr. Mathai. Mr. Kuntz described to Mr. Mathai a scenario involving transmission lines, where a company can build more costly underground lines or less costly overhead lines. Both kinds of lines have their positives and negatives. Mr. Kuntz then asked Mr. Mathai if he thought that a company should be allow recovery for more costly underground lines even if the company made their determination based on factors other than cost? Mr. Mathai responded by stating that the commission must consider several factors including when determining whether the resource used and useful, and is the resource least cost or reasonable cost.[18] Mr. Mathai's understanding of how regulators are supposed to operate in this context is lacking. Reasonable cost and least cost should not be considered concurrently. Reasonable cost would mean that the cost to construct something is similar to the amount a related business or industry would incur to construct the same type of project.[19] Least cost means that the project is the least cost of all resource when looking at all alternatives. The fact that a resource is not least-cost does not mean it is not 'used and useful'.

---

[17] Tegen, Suzanne. "Wind v. Coal." *NREL* (2007). Web. 1 Jan. 2011. <http://www.windpoweringamerica.gov/pdfs/workshops/2007_summit/tegen.pdf>.
[18] Cohen, George M. *IMPLIED TERMS AND INTERPRETATION IN CONTRACT LAW*. University of Virginia, 1999. Print.

V. Missouri Valley Resource Council Stance

Missouri Valley Resource Council urges the Public Service Commission to allow MDU full rate recovery for its wind investments. Missouri Valley Resource Council is against rate recovery through a renewable rider.

a. Full Rate Recovery for Wind

MDU should be allowed full rate recovery for its wind for the following reasons: first MDU has proven its wind resources passes the used and useful test, second the ruling against rate recovery for wind is inconsistent.

The wind that MDU built is clearly used and useful. Currently, Montana Dakota Utilities serves 105,000 customers across 4 states. Approximately 75,000 of those customers are located in North Dakota.[20] Because MDU operates in 3 states serving over 100,000 customers it uses an integrated transmission system to serve all of its jurisdictions. In his testimony MDU President Dave Goodin states that in integrated system it would be highly inefficient and costly to use a system that would separate generated electricity based on state borders.[21] The wind that MDU constructed was built in Montana and North Dakota. Although some of the wind was built in Montana it is still used in the MDU integrated system, which benefits all MDU customers,

---

[20] See Transcript Pg. 38 Lines 5-6

[21] See Transcript Pg. 132 Lines 4-13

including those customers living in North Dakota. As a result, it is hard to argue that this wind has not been used to provide electricity to North Dakota ratepayers.

What the PSC Advocacy Staff should be examining is whether or not the investment in MDU's investment in wind was reasonable in comparison to other wind resources in the region, not whether MDU should have been investing in a completely different power generation sources like coal or natural gas on a purely least-cost basis. Mr. Mathai and the advocacy staff analysis failed to make any comparisons to the cost of similar wind projects other than the cost to construct new wind in Montana v. North Dakota. For example Mr. Mathai in his pre-filed testimony argued that wind is more expensive in Montana than North Dakota and used that conclusion as one of the reasons why Diamond Willow was not a reasonable investment. In addition, Mr. Mathai advocated against recovery for Cedar Hills because the company did not fulfill the burden of proof to justify the need for the wind power, when MDU is currently an energy deficit company and relies heavily on purchases from the MISO market.[22]

For example, in 2008 order regarding MDU's Big Stone II project, in the final findings and facts it was asserted that, "Even though CCGT and Wind is not currently the least cost resource, the resource planning activities of Ottertail and Montana Dakota indicate that wind generation should be a part of the future generation resources for both companies"[23] This directive shows the inconsistency with regard

---

[22] See Transcript Pg. 99 Lines 1-11
[23] Case North Dakota PU-06-482 Final Order and Findings and Facts Paragraph 116

to the PSC. In 2008, wind should be a part of future generation resources, yet in 2010 MDU must fight to get rate recovery for their wind projects. This exposes inconsistency within the Public Service Commission.

The inconsistent nature of the Advocacy Staff's decision to not allow rate recovery is further exposed by the fact that rate recovery was given to wind projects commissioned by Northern States Power (NSP) and Otter Tail Power (OTP) in the past two years.[24] Mr. Mathai admitted to not even examining the NSP wind project rate recovery documents prior to making his recommendations against MDU's wind.[25] How can a hired consultant make a consistent determination about a rate recovery for a wind project without the knowledge of how the commission had dealt with similar wind projects? The clear answer is that Mr. Mathai's lack of knowledge of how the Commission dealt with similar cases caused him to make an inconsistent judgment regarding MDU's wind investments. Mr. Mathai's lack of wind rate recovery case history in North Dakota, coupled with the inability of the commission to follow its own recommendations regarding wind generation from the findings and facts from the Big Stone II proceedings, expose the contradictory and inconsistent nature of the PSC Advocacy Staff's position to not allow rate recovery for Diamond Willow and Cedar Hills.

---

[24] Case North Dakota PU-06-482 Final Order and Findings and Facts Paragraph 116

[25] See Transcript P. 801 lines 14-20

b. MVRC Opposition to Recovery Through a Renewable Rider

Missouri Valley Resource Council is against rate recovery through a renewable rider. Missouri Valley Resource Council's opposes the use of a renewable rider because recovery via a rider vilifies renewable energy as an extra line-item cost appearing on customer's bills. Such a line item will likely cause MDU customers who are already angry at their increased bill to place additional blame on wind energy. Rate increases for coal generation and natural gas historically have not been recovered through a rider. Wind has very few environmental and economic drawbacks in comparison to fossil fuel generation. The cost of fuel for wind is zero, wind creates no air or water pollution, wind causes no proven health externalities, and wind requires a shorter list of permitting requirements. Both coal and natural gas have many more hurdles and externalized costs than wind. Coal and natural gas generation create health externalities, water pollution, air pollution, and contribute heavy emissions of Greenhouse Gases.[26] In addition, coal and natural gas require a litany of permitting requirements, and require increasingly expensive fossil fuels to operate.[27] As a result, it is the stance of MVRC that if wind must be recovered through a rider that fossil fuel energy sources must also be recovered through a rider to highlight the additional externalized costs of fossil fuel generation.

26

27

VI. Conclusion

Missouri Valley Resource Council's involvement in this rate case was to promote rate recovery for wind projects. It is Missouri Valley Resource Council's stance that Montana Dakota Utilities has proven beyond a reasonable doubt that its wind projects are 'used and useful' to North Dakotans. In addition, MDU testified to the numerous benefits from its wind with regard to the current market of regulatory uncertainty with regard to carbon emissions. The PSC Advocacy Staff's position against the wind projects is not justified with proper evidence. Mr. Mathai, a hired consultant of the Advocacy Staff, was not given the proper background information to make a proper judgment on these proceedings. Mr. Mathai's position against rate recovery for the wind is inconsistent with the rate recovery decisions made by the commission with regard to Northern States Power and Otter Tail Power. In addition, Mr. Mathai and the Advocacy Staff's recommendation against this wind is also contrary to the directive that was set by the legislature when they passed the Renewable and Recycled Energy Objective. Missouri Valley Resource Council strongly believes that wind should not be recovered through a rider. Wind energy has little external costs and no fuel costs. When externalities and total fuel costs are taken into account the cost of wind is clearly lower than other energy sources such as coal and natural gas. As a result, Missouri Valley Resource Council urges the commission to allow MDU rate recovery for its wind as a part of a general rate increase, not in the form of a rider.