

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Montana-Dakota Utilities Co.
Advance Determination of Prudence – 88 MW Simple
Cycle Combustion Turbine
Application**

Case No. PU-11-395

**Montana-Dakota Utilities Co.
88 MW Combustion Turbine
Public Convenience & Necessity**

Case No. PU-11-396

**STAFF RESPONSE TO THE REQUEST OF MONTANA-DAKOTA UTILITIES CO.
FOR TRADE SECRET PROTECTION**

On December 13, 2011 Montana-Dakota Utilities Co. (MDU) filed an application for a trade secret protective order under North Dakota Administrative Code section 69-02-09-01 for protecting against public disclosure trade secret information as defined by North Dakota Century Code section 47-25.1-01(4). Applicants provided the following to support its application:

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

Portions of the Initial Testimony of Advocacy's Staff Witness, Richard S. Hahn, contains information which MDU feels is Trade Secret. Specifically:

- Page 19 starting at line 15 – discussion regarding an Air and Water Permitting Feasibility Study dated June 2011;
- Page 23 starting at lines 10 and 12 – discussion regarding a response to Montana-Dakota's 2010 Request for Proposals (RFP) for electric generation resources;
- Page 25 starting at line 13 – discussion regarding a response to MDU's 2010 RFP for electric generation resources;
- Page 26 starting at lines 7, 16, 18 and 21 – discussion regarding a response to MDU's 2010 RFP for electric generation resources;

32 PU-11-396 Filed 12/13/2011 Pages: 6
Staff Response to the Request of MDU for Trade Secret Protection
Public Service Commission Staff

45 PU-11-395 Filed 12/13/2011 Pages: 6
Staff Response to the Request of MDU for Trade Secret Protection
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- Page 27 starting at line 2 – discussion regarding a response to MDU’s 2010 RFP for electric generation resources.
- Page 27 starting at lines 10 and 13 – discussion regarding a draft MISO System Impact Study associated with a response to MDU’s 2010 RFP for electric generation resources;
- Page 28 starting at lines 4 and 6 – discussion regarding response to MDU’s 2010 RFP for electric generation resources;
- Exhibit RSH-7 – cost information including information derived from responses to MDU’s 2010 RFP for electric generation resources.

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

Applicants stated that the above-referenced information is not publicly available. The information regarding the environmental screening analysis was prepared by a consulting engineering firm specifically for MDU at MDU’s expense. The information provided in response to the RFP issued by MDU in June 2010 was provided by the respondents on a confidential basis. The information, therefore, is not readily ascertainable by proper means by other persons.

The information is confidential to the respondents because it reflects their value of their generation resource, or MDU’s evaluation of those resources, and could affect respondent’s negotiations for the sale of these resources to other parties or potential negotiations to the RFP that responses would be kept confidential. Breach of that assurance could expose MDU to liability and would impact MDU’s ability to solicit responses to future requests for proposals. MDU treats the proposals as confidential; they are not provided to third parties and are only provided to those employees of MDU who have a need to know the information to perform their responsibilities.

Competitors of the respondents to the RFP would have an opportunity to obtain economic value from disclosure or use of the information, to the detriment of the respondents and the customers served by MDU. If the information is made publicly available, competitors use the information to disadvantage the respondents in dealings with MDU or other entities seeking generation resources. Competitors of the consulting engineering firm that provided the permitting feasibility study could derive economic value from the information provided by the consulting engineer and used in the screening analysis.

Finally, the draft MISO Impact Study was performed under the direction of MISO by a third party and provided to MDU, on a confidential basis, as a participant in the ad hoc study group formed to review the study scope, methodology, models and results.

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

Please see explanation in paragraph 2 above.

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

Please see explanation in paragraph 2 above.

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

Applicants provided no specific description or identification of known competitors.

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

Please see Staff's response under paragraph 2 above.

Staff has reviewed Applicants' request for trade secret protection of the information. N.D.C.C. § 47-25.1-01(4) 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 North Dakota Administrative Code section 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 because it is germane to the construction of the 88 MW Simple Cycle Combustion Turbine. Applicants indicate that the information was prepared pursuant to agreements that require its continued confidentiality, or otherwise could materially alter future negotiations with contractors. The information, therefore, is not readily ascertainable by proper means by other persons.

Staff believes that the 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 the

Applicants' request for trade secret protection.

Dated this 13th day of December, 2011.



Mark Gruman
Special Assistant Attorney General
Advocacy Staff
North Dakota Public Service Commission

CERTIFICATE OF SERVICE

Montana-Dakota Utilities Co.)
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Montana-Dakota Utilities Co.)
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I hereby certify that a true and correct copy of the foregoing **STAFF RESPONSE TO THE REQUEST OF MONTANA-DAKOTA UTILITIES FOR TRADE SECRET PROTECTION** was, on 13 December 2011, electronically provided to the following:

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Dated this 13th day of December 2011



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