

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Montana-Dakota Utilities Co., a Division of MDU  
Resources Group, Inc.  
Advance Determination of Prudence – 88 MW Turbine  
Application**

**Case No. PU-11-395**

**Montana-Dakota Utilities Co., a Division of MDU  
Resources Group, Inc.  
88 MW Combustion Turbine  
Public Convenience and Necessity**

**Case No. PU-11-396**

**ORDER ON SETTLEMENT**

**April 11, 2012**

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

Daniel S. Kuntz, Associate General Counsel, P.O. Box 5650, 1200 West Century Ave., Bismarck, North Dakota 58506-5650, and Paul Sanderson, Zuger Kirmis & Smith, P.O. Box 1695, Bismarck, North Dakota 58502-1695, appearing on behalf of Montana-Dakota Utilities Co.

Mark Gruman, Legal Counsel, Public Service Commission, State Capitol, 600 East Boulevard Ave., Bismarck, North Dakota 58505, appearing on behalf of Public Service Commission Advocacy Staff.

Illona A. Jeffcoat-Sacco, General Counsel, Public Service Commission, State Capitol, 600 East Boulevard Ave., Bismarck, North Dakota 58505, appearing on behalf of Public Service Commission Advisory Staff.

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

**PRELIMINARY STATEMENT**

On July 7, 2011, Montana-Dakota Utilities Co. (Montana-Dakota) filed an application for an advance determination of prudence to construct, own, and operate an 88 MW simple cycle combustion turbine (Project), Case No. PU-11-395. Also on July 7, 2011, Montana-Dakota filed an application for a certificate of public convenience and necessity to construct, own, and operate the same 88 MW simple cycle combustion turbine, Case No. PU-11-396. The Project includes a simple cycle combustion turbine which will be used primarily as a capacity and peaking power resource. The Project also includes the facilities necessary to interconnect the generator to the transmission system, and a 10-inch natural gas pipeline to provide fuel for the turbine. The Project is

proposed to be located near Mandan, North Dakota adjacent to Montana-Dakota's Heskett Station. The total cost of the Project, including the Allowance for Funds Used During Construction ("AFUDC") is estimated to be \$85.6 million with North Dakota's allocated share of the estimated cost of the Project approximately \$58.2 million. The 88 MW simple cycle combustion turbine is anticipated to be available for commercial operation on March 1, 2015.

On September 7, 2011, the Commission issued a Notice of Filing and Notice of Intervention deadline of October 14, 2011. No parties intervened in these proceedings.

On October 26, 2011, the Commission issued a Notice of Consolidated Hearing consolidating these two cases for hearing beginning January 10, 2012. The Notice specified the issue to be considered in Case No. PU-11-395 was whether the proposed resource addition is prudent. The Notice specified the issues to be considered in Case No. PU-11-396 are:

1. Whether public convenience and necessity will be served by construction, ownership and operation of the facility.
2. Whether the applicant is fit, willing and able to provide service.

The Commission held a consolidated hearing on the Applications on January 10, 2012 in the Commission Hearing Room.

On January 18, 2012, the Applicants filed a copy of the Settlement Agreement executed by Montana-Dakota and Advocacy Staff recommending Commission approval of the ADP application and issuance of a Certificate of Public Convenience and Necessity to Montana-Dakota.

On January 27, 2012, the Commission issued a Notice of Opportunity for Hearing on the Settlement Agreement.

Having considered the entire record in this matter, the Commission finds the 88 MW simple cycle combustion turbine project is a prudent resource addition to meet the needs of Montana-Dakota for electric generation capacity to serve its electric distribution customers. The Commission further finds the public convenience and necessity will be served by Montana-Dakota's construction, ownership and operation of the 88 MW simple cycle combustion turbine project and that Montana-Dakota is fit, willing and able to provide service.

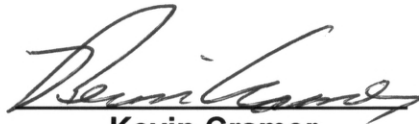
The Commission further finds that the Settlement Agreement filed January 18, 2012, is reasonable, in the public interest, and should be approved. Therefore, the Commission issues the following:

### **Order**

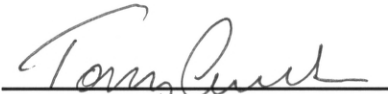
The Commission orders:

1. The Settlement Agreement filed with the Commission on January 18, 2012, a copy of which is attached to this Order and made a part of this Order, is APPROVED.
2. Subject to the terms and conditions of this Order and the January 18, 2012 Settlement Agreement, Montana-Dakota's investment in and construction of the 88 MW simple cycle combustion turbine project is prudent.
3. Subject to the terms and conditions of this Order and the January 18, 2012 Settlement Agreement, , a certificate of public convenience and necessity is issued for Montana-Dakota's construction and ownership of the 88 MW simple cycle combustion turbine project and associated natural gas pipeline.
4. The Settlement and this Order will have no precedential effect on any existing or future ADP determinations.

**PUBLIC SERVICE COMMISSION**



**Kevin Cramer**  
Commissioner



**Tony Clark**  
Chairman



**Brian P. Kalk**  
Commissioner

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

<b>Montana-Dakota Utilities Co., a Division</b>	)	
<b>of MDU Resources Group, Inc.</b>	)	
<b>Advance Determination Of Prudence – 88</b>	)	<b>DOCKET NO. PU-11-395</b>
<b>MW Turbine</b>	)	
<b>Application</b>	)	
	)	
<b>Montana-Dakota Utilities Co., a Division</b>	)	
<b>of MDU Resources Group, Inc.</b>	)	<b>DOCKET NO. PU-11-396</b>
<b>88 MW Combustion Turbine</b>	)	
<b>Public Convenience and Necessity</b>	)	
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**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into this 15<sup>th</sup> day of January, 2012, by and between the North Dakota Public Service Commission Advocacy Staff (“Advocacy Staff”) and Montana-Dakota Utilities, Co., a Division of MDU Resources Group, Inc. (“Montana-Dakota”) (collectively the “Settlement Parties”). The Settlement Parties agree this Settlement Agreement, if approved by the Public Service Commission (“Commission”), resolves the issues in the above-captioned proceedings in a manner consistent with the public interest.

**BACKGROUND**

These proceedings involve the applications of Montana-Dakota for an advance determination of prudence (“ADP”), Case No. PU-11-395, and a certificate of public convenience and necessity, Case No. PU-11-396, for its construction, ownership and operation of an 88 megawatt simple cycle combustion turbine (“88 MW CT” or “Project”).

The Project includes a simple cycle combustion turbine which will be used primarily as a capacity and peaking power resource. The Project also includes the facilities necessary to interconnect the generator to the transmission system, and a 10-inch natural gas pipeline to provide fuel for the turbine. The Project is proposed to be located near Mandan, North Dakota adjacent to Montana-Dakota's Heskett Station. This site was chosen based on the results of a site evaluation that considered the type of combustion turbine, natural gas supply, electric transmission interconnection, water supply, environmental permitting, and other factors.

To provide the natural gas required to fuel the 88 MW CT, Montana-Dakota will construct a 24 mile pipeline from the Northern Border Pipeline near St. Anthony, ND to the Heskett site. Montana-Dakota proposes to purchase gas from marketers that have secured firm transportation service on Northern Border. Montana-Dakota will pay a reservation fee that will entitle it to have "on-call" access to the gas on short-term notice when needed for electric peaking service.

The total cost of the Project, including the Allowance for Funds Used During Construction ("AFUDC") is estimated to be \$85.6 million with North Dakota's allocated share of the estimated cost of the Project approximately \$58.2 million. The 88 MW CT is anticipated to be available for commercial operation on March 1, 2015. A number of studies, permits and agreements will need to be completed during 2012 and early 2013. Construction is anticipated to start in 2013.

Montana-Dakota seeks a certificate, pursuant to N.D.C.C. Chapters 49-03 and 49-03.1, that the public convenience and necessity will be served by Montana-Dakota's construction and ownership of the Project, including the natural gas pipeline, and that Montana-Dakota is fit, willing and able to provide utility service from the Project. Montana-Dakota also seeks an

advance determination pursuant to N.D.C.C. § 49-05-16 that the Project is a prudent and needed resource addition to meet Montana-Dakota's electric generation needs. N.D.C.C. § 49-05-16(7) provides there is rebuttable presumption that the Project is prudent because it is located in North Dakota.

Montana-Dakota is currently a net buyer of capacity and energy from others to meet customer demand and energy requirements. When Montana-Dakota's current capacity purchase agreement expires in 2015, Montana-Dakota is forecasted to be deficit 149.5 MW of capacity to meet customer demand requirements. This capacity deficit is forecasted to grow until a new third party purchase agreement is secured or a new capacity resource is constructed. The 149.5 MW represents 25 percent of the capacity requirements that Montana-Dakota will need to service peak customer demand.

Electric Generation Expansion Analysis System ("EGEAS") modeling runs were used by Montana-Dakota to determine the least cost resource expansion plan to meet future customer demand and energy requirements under various scenarios. The EGEAS modeling runs used for Montana-Dakota's 2011 Integrated Resource Plan ("2011 IRP") included Montana-Dakota's existing generation resources, current purchased capacity and energy agreements, and current demand and energy forecast data. The only generation resource retirements in the study timeframe were the Williston Combustion turbines scheduled for retirement in 2011. Future supply resource options in the EGEAS model included results from a 2010 Request for Proposals (2010 RFP); self-build generating resources including coal, gas, and wind; new demand side-management programs; and a Big Stone Station resource which included the costs of the plant's required air quality control system upgrade equipment. Of the identified proposals, one was a power purchase agreement from a combustion turbine facility located in Illinois. This proposal

was not considered viable by Montana-Dakota as it contained a 20 year term and the resource would be located three states away from Montana-Dakota's service territory. Under the Midwest ISO's recently filed capacity auction and resource adequacy construct, this resource would be located two capacity zones away from Montana-Dakota's service territory and the capacity credits may have delivery issues and incur additional costs to meet Montana-Dakota's customer demand requirements. In addition, Montana-Dakota provided testimony and exhibits that construction of the 88 MW CT at Mandan would avoid transmission charges that Montana-Dakota would otherwise be required to pay the Western Area Power Administration commencing in 2016. Those charges would not be avoided by the proposed power purchase agreement for the Illinois resource.

In addition to being a cost effective generation resource, the 88 MW CT constructed on Montana-Dakota's integrated system and owned by Montana-Dakota, in contrast to those located outside of this system, particularly those located outside the states of Montana-Dakota's service territory, provide other benefits to customers and communities including:

- Increased system reliability,
- Job creation and employment opportunities,
- Additional state income tax revenue
- Additional local property tax revenue,
- Indirect revenue additions to local communities from purchases of materials and services, and
- Longer term cost certainty

Montana-Dakota filed testimony in support of its applications for the ADP and Certificate of PC&N for the Project. Advocacy Staff reviewed Montana-Dakota's submissions, conducted discovery and independent analysis, and filed testimony regarding its assessment and recommendations. The Commission held a hearing on the Applications on January 10, 2012 in the Commission Hearing Room in which it heard testimony from Montana-Dakota and Advocacy Staff. Administrative Law Judge Al Wahl presided at the hearing.

Following the hearing, Montana-Dakota and Advocacy Staff conferred for settlement negotiations. In consideration of all the record evidence of these proceedings, the Settlement Parties agree to the following subject to approval of this Settlement Agreement by the Commission.

#### **TERMS OF SETTLEMENT**

1. Prudence Determination. Testimony and exhibits submitted by Montana-Dakota, and analysis conducted by Advocacy Staff, demonstrate that Montana-Dakota has a need for additional generation resources and the Project is a reasonable and prudent resource addition that will provide cost effective and reliable electric generation capacity and energy for Montana-Dakota and its customers. An order of ADP for the Project should be issued.
2. Public Convenience and Necessity. Testimony and exhibits submitted by Montana-Dakota, and analysis conducted by Advocacy Staff, demonstrate that Montana-Dakota has the experience and resources to construct, own and operate the Project. Testimony and exhibits submitted by Montana-Dakota and analysis conducted by Advocacy Staff demonstrate the Project is needed to provide reliable and economic electric generation for Montana-Dakota's customers. Public Convenience and Necessity will be served by

Montana-Dakota's construction and ownership of the Project, and Montana-Dakota is fit, willing and able to provide electric service. A Certificate of Public Convenience and Necessity for the Project should be issued.

3. RFP Notification. Montana-Dakota intends to issue a Request for Proposals for additional electric generation resources in 2012 ("2012 RFP"). Montana-Dakota will provide reasonable notice of not less than thirty (30) days to the Public Service Commission Staff prior to issuance of the 2012 RFP. Montana-Dakota will provide reasonable opportunity for the Public Service Commission Staff to review the 2012 RFP and responses received thereto subject to the Public Service Commission Staff maintaining the confidentiality of trade secret information received in response to the 2012 RFP.
4. Semi-annual Reporting. Montana-Dakota will submit reports to the Commission at least semi-annually regarding the status of the Project, the amounts and types of costs incurred with respect to the Project, and any changed circumstances that will materially affect the cost, schedule or installation of the Project.
5. ADP Amendment. An order for ADP will be issued and interpreted pursuant to N.D.C.C. § 49-05-16 as amended by Chapter 347, § 1 of the 2011 North Dakota Session Laws notwithstanding that the application for ADP was filed prior to the effective date of Chapter 347, § 1 of the 2011 North Dakota Session Laws.
6. No Precedential Effect. The Settlement will have no precedential effect on any existing or future ADP determinations.
7. Reservation of Rights. Montana-Dakota reserves any rights under state and federal law or equity not specifically waived in the Settlement.

8. Basis of Settlement Agreement. It is agreed this Settlement Agreement is a negotiated Settlement Agreement subject to approval by the Commission.
9. 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 the 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 for any purpose in this or any other case.
10. Applicability and Scope. This Settlement Agreement is binding on Montana-Dakota and Advocacy Staff, and their successors, assigns, agents, and representatives. This Settlement Agreement does not set policy or overturn precedent. Except as specifically provided herein, this Settlement Agreement does not constitute an agreement, admission or determination by Montana-Dakota or Advocacy Staff as to the merits of any specific allegation or contention made by Montana-Dakota and Advocacy Staff in these proceedings. This Settlement Agreement supersedes all prior settlement negotiations and agreements between Montana-Dakota and Advocacy Staff in these proceedings.
11. Effective Date. This Settlement Agreement is effective on the date of the Commission Order approving the Settlement Agreement.
12. Modification. If the Commission Order modifies or conditions approval of this Settlement Agreement, it shall be deemed terminated if either Montana-Dakota or the Advocacy Staff files a letter with the Commission within five (5) business days of the date of such Order stating that a condition or modification to the Settlement Agreement is unacceptable to such party.

**CONCLUSION**

Montana-Dakota and Advocacy Staff agree to the forgoing terms to resolve the contested issues in the captioned proceedings. These terms are a result of negotiations between the Settlement Parties, are in the public interest, and will result in prudently incurred costs for the benefit of North Dakota customers. For these reasons, Montana-Dakota and Advocacy Staff respectfully urge the Commission to approve the Settlement Agreement.

Dated this 18<sup>th</sup> day of January 2012.

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

By: *Paul Stenberg* <sup>DK</sup>

Its: VP Electric Supply

Dated this 19<sup>th</sup> day of January 2012.

North Dakota Public Service Commission  
Advocacy Staff

By: *Matt Murr*

Its: Legal Counsel