

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Montana Dakota Utilities Co., a Division  
of MDU Resources Group, Inc.  
Electric Rate Increase Application

Case No. PU-16-666  
OAH File No. 2016-0597

**ORDER GRANTING TRADE SECRET PROTECTION**

1. Montana Dakota Utilities Co., a Division of MDU Resources Group, Inc. ("MDU" or the "Company"), applied for trade secret protection on February 9, 2017, which was then filed with the PSC on February 10, 2017, pursuant to N.D. Admin. Code § 69-02-09-01, and requested a protective order in accordance with the provisions of the N.D. Admin. Code and § 44-04-18.4 (1) and (2).

2. The trade secret information identified by their application may be offered as evidence for the hearing and is currently sought by PSC Advocacy Staff in Discovery. These items include (A) a confidential Settlement Agreement with the SD Public Utilities Commission, (B) information related to electric transmission systems that are critical infrastructure, and (C) confidential pricing information and infrastructure data related to its Lewis & Clark generating station near Sidney, MT.

3. Commission staff on March 2, 2017, as required by N.D. Admin. Code § 69-02-09-03, have made a prima facie recommendation that the information is relevant for the hearing of this case both opposing request A and not opposing requests B & C for trade secret protection as defined by N.D.C.C. § 47-25.1-01(4).

4. Request A relates to a Discovery Information Request 3.5 which seeks the South Dakota Public Utilities Commission settlement agreement with the company which has been designated as confidential by that state agency. The Commission staff

argues such records would have to be open in North Dakota pursuant to 44-04-18, N.D. Cent. Code. The parties have not briefed the issue but I have concerns about full faith and credit, comity, and respect for another state's confidentiality agreement. For that reason, I am at this point temporarily preserving the trade secret protection for A as well. I ask both parties to further brief this issue and provide me their arguments by April 2. I am hesitant without more to make public a confidential filing with another sovereign state.

5. With respect to items B and C, and because also there is no opposition from Commission staff, I conclude the information for which trade secret protection is sought is confidential and not readily discoverable. It is either critical infrastructure or confidential pricing information which needs to be kept confidential and has not been previously "publicly disclosed" as provided in N.D.C.C. § 44-04-18.4(2)(a). Such material could be of unfair advantage to competitors if not protected or could have economic value to potential suppliers, vendors, or other competitors. The information is not readily ascertainable by other proper means to such competitors, vendors, suppliers, or other persons.

6. If competitors, vendors or other suppliers had access to such confidential information, it could adversely affect prices for future material or services and drive up costs to the ultimate disadvantage of consumers and rate payers. N.D. Cent. Code § 44-04-18.4.

7. This Hearing Officer has fully reviewed and considered the application of MDU and the recommendations of commission staff, and determines that the information is relevant for the hearing of this case, that the information is trade secret as

defined by N.D.C.C. § 47-25.1-01(4), and that the information sought by discovery requests 3.10 and 3.17 is entitled to protection pursuant to and in accordance with the provisions of N.D.C.C. ch. 47-25.1 and N.D. Admin. Code ch. 69-02-09, all as set forth above;

**As noted in paragraph 4 above, I request further briefing with respect to Request 3.5 as to the confidential settlement agreement with South Dakota.**

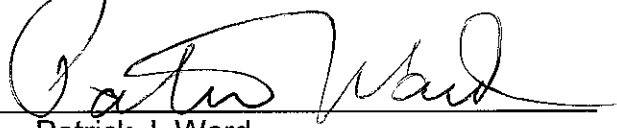
**IT IS, THEREFORE,**

**ORDERED** that MDU is hereby granted trade secret protection pursuant to and in accordance with the provisions of N.D.C.C. ch. 47-25.1 and N.D. Admin. Code ch. 69-02-09 for the information identified in this Order; and it is further

**ORDERED** that this order shall not constitute precedent for a determination of entitlement to trade secret protection for any information submitted upon any subsequent application. This order is subject to revision with respect to issue A as noted above.

Dated: March 6, 2017

NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

By:   
Patrick J. Ward  
Administrative Law Judge

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Montana Dakota Utilities Co., a Division  
of MDU Resources Group, Inc.  
Electronic Rate Increase Application

Case No. PU-16-666  
OAH File No. 2016-0597

**CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the ORDER GRANTING  
TRADE SECRET PROTECTION was emailed to the following:

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and that the original ORDER GRANTING PETITION TO INTERVENE was mailed by U.S. Mail to:

John Hamre  
Public Service Commission  
600 East Boulevard Avenue  
Bismarck, ND 58505

Dated at Bismarck, North Dakota, this 15<sup>TH</sup> day of March, 2017.

State of North Dakota  
OFFICE OF ADMINISTRATIVE HEARINGS

By: 

Patrick J. Ward ID#03626

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