

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



In the Matter of the Application of)
MONTANA-DAKOTA UTILITIES CO.,)
a Division of MDU Resources Group,) Case No. PU-16-666
Inc., for Authority to Establish)
Increased Rates for Electric Service)

**MONTANA-DAKOTA UTILITIES CO.'s BRIEF IN SUPPORT
OF APPLICATION TRADE SECRET PROTECTION**

On February 9, 2017, Montana-Dakota Utilities Co., a Division of MDU Resources Group Inc. ("Montana-Dakota") filed an Application for Trade Secret Protection pursuant to N.D. Admin. Code § 69-02-09-01. One of the items of information Montana-Dakota sought protection for was a confidential settlement agreement with the South Dakota Public Service Commission ("South Dakota Settlement"). The South Dakota Settlement was designated confidential by the South Dakota Public Service Commission and it is not available to the general public.

On March 2, 2017, PSC Advocacy Staff filed a response to Montana-Dakota's Application opposing trade secret protection for the South Dakota Settlement. Staff opposes the trade secret protection because it would not be protected under North Dakota's open records law.

On March 15, 2017, the Administrative Law Judge issued an Order Granting Trade Secret Protection with respect to the two categories of information which were not objected to by Staff. However, with respect to the South Dakota Settlement, the Judge expressed concerns about the full faith and credit that should be afforded to another State's confidentiality order. The Judge requested briefing from the parties on this issue.

Pursuant to the Judge's request, Montana-Dakota files this Brief supporting its application for trade secret protection of the South Dakota Settlement.

The present dispute should be governed by the Full Faith and Credit Clause of the the United States Constitution. Article IV, § 1, of the Constitution provides, "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State." The U.S. Supreme Court explained the Full Faith and Credit Clause applies to State Administrative proceedings and its purpose is served by giving preclusive effect to state administrative factfinding rather than leaving courts of second forum, state or federal, free to reach conflicting results. University of Tennessee v Elliott, 478 US 788 (1986). The North Dakota Supreme Court has recognized this State is bound by the Full Faith and Credit Clause of the Consitution, even when the laws of the other State may conflict with North Dakota's law. See 1st Summit Bank v. Samuelson, 1998 ND 113, ¶ 37, 580 N.W.2d 132 (holding North Dakota is required to give full faith and credit to a Pennsylvania judgment, regardless of our own policy or law).

In the present case, the South Dakota Public Service Commission and Montana-Dakota entered into a confidential settlement agreement pursuant to South Dakota law. Under the South Dakota Administrative Rules, the South Dakota Public Service Commission had the authority to enter into a confidential settlement agreement. See S.D. Admin. R. 20:10:01:42. The fact that the North Dakota Public Service Commission may not have the same legal authority to enter into a confidential settlement agreement does not invalidate the confidential South Dakota Settlement. Nor has Staff presented any compelling legal authority as to why the South Dakota Public Service Commission's South Dakota Settlement is not entitled to Full Faith and Credit under North Dakota law. See

1st Summit Bank, 1998 ND 113, at ¶ 37 (recognizing North Dakota is required to give full faith and credit to foreign State's decisions regardless of our own policy or law).

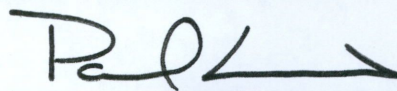
It should also be noted that the information sought to be disclosed by Staff is a confidential settlement agreement. The South Dakota Settlement did not constitute a binding decision by the Commission that would have any precedential value in the present case. Montana-Dakota anticipates Staff intends to try to use a confidential settlement to argue it has some precedential value in the present case. Such an argument is improper and further supports the decision to apply trade secret protection to the settlement agreement.

For the foregoing reasons, Montana-Dakota respectfully requests that the ALJ issue a trade secret protective order for the confidential South Dakota Settlement under N.D. Admin. Code § 69-02-09-04 and N.D.C.C. § 44-04-18.4(1) and (2).

Dated this 3rd day of April, 2017.

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AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

The undersigned, being duly sworn, deposes and says that: I am a United States citizen, over 18 years of age, and on April 3, 2017, I served a copy of the attached:

**Montana-Dakota Utilities Co.'s Brief in Support of Application for
Trade Secret Protection**

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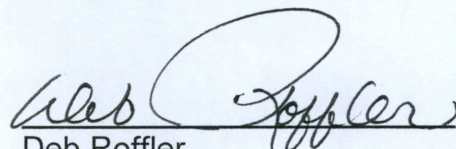
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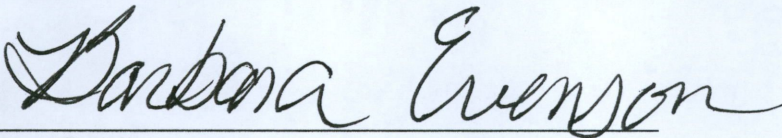
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Subscribed and sworn to before me, today, April 3, 2017.



Notary Public

