

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission**            )  
**Montana-Dakota Utilities Co.**        )  
**2017 Natural Gas Rate Increase**    )  
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**Case No. PU-17-295**

**MONTANA-DAKOTA UTILITIES CO.'S POST-HEARING BRIEF**

On July 21, 2017, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., (“MDU” or “Company”) filed an application to increase its rates for natural gas service in North Dakota to provide additional annual revenue of \$5,868,389, or a 5.4 percent increase over current rates. The application was filed pursuant to N.D.C.C. Chapter 49-05 and complied with the filing requirements set forth in N.D.C.C. § 49-05-04.1(2):

A public utility selecting a current or future test year shall present the following information:

- a. A comparison of forecast data to historical period data to demonstrate the reliability and accuracy of the utility’s forecast including a comparison of the prior years’ forecast or budgeted data to actual data for those periods.
- b. A statement that the public utility’s forecast is reasonable, reliable, and was made in good faith and that all basic assumptions used in making or supporting the forecasts are reasonable, evaluated, identified, and justified to allow the commission to test the appropriateness of the forecast.
- c. A statement that the accounting treatment that has been applied to anticipated events and transactions in the forecast is the same as the accounting treatment to be applied in recording the events once they have occurred.

On January 12, 2018, MDU filed a Motion for Continuance of the scheduled hearing to allow it and the other parties the opportunity to consider the implications of the recently enacted Tax Cuts and Jobs Bill Act of 2017 ("Tax Act") would have on MDU's Application. As a result of the Tax Act, MDU reduced its requested additional annual revenue to \$3,575,388, which constitutes a 3.3% increase over current rates.

In support of its Application, MDU filed the direct testimony and exhibits of Nicole Kivisto, Dr. Stephen Gaske, Pat Darras, Tammy Nygaard, Earl Robinson, Matthew Shoemake, Travis Jacobson, Jordan Hatzenbuhler, and Stephanie Bosch, along with corresponding statements, workpapers, and its depreciation study. MDU Ex. 1. MDU also filed rebuttal testimony and exhibits of Gaske, Darras, Jim Kaiser, Jacobson, Hatzenbuhler, and Bosch. MDU Ex. 2 – 7.

A hearing was held on MDU's Application beginning on May 30, 2018, and continuing through June 1, 2018. MDU called nine witnesses to testify at the hearing in support of its Application, which included all the witnesses who submitted pre-filed testimony, with the exception of Robinson. MDU also submitted nine additional exhibits at the hearing and one late-filed exhibit. See MDU Ex. 8 – 19, 50, and 51.

Also present at the hearing and presenting witnesses and evidence were the North Dakota Public Service Commission Advocacy Staff ("Staff"), and intervenors AARP and the Federal Executive Agencies ("FEA"). Staff sought a reduction of MDU's revenue request in the following categories: incentive compensation, return on equity, 2018 pipeline replacement projects, inflation, vehicles and work equipment, aircraft expense, employee housing, and advertising and dues. Staff and AARP were also opposed to MDU's proposal to create a new rate, Rate 94, for its System Safety and Integrity

Program. AARP also opposed the Company's rate design proposal which seeks to collect the proposed rate increase to residential customers through an increase to the basic service charge. Michael P. Gorman presented testimony on behalf of the FEA recommending a lower return on equity than that submitted by the Company. Pat Fahn, the Commission's Director of Public Utilities, also testified at the Hearing on pipeline safety.

For purposes of this Brief, MDU will address only those issues in controversy between the Company, Staff, and the Intervenors. MDU relies upon the prefiled testimony and attached exhibits and statements to support the remainder of its Application to increase its rates for natural gas service in North Dakota.

#### **LEGAL STANDARD**

A public utility is entitled to such rates as will permit it to earn a fair return upon the value of the property which it employs for the convenience of the public. Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n, 262 U.S. 679, 690 (1923); Northern States Power Co. v. Board of R.R. Commrs. of N. Dakota, 298 N.W. 423, 427 (N.D. 1941). The rates must equal those generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties. Bluefield, 262 U.S. at 692. Rates which are not sufficient to yield a reasonable return upon the value of the property used at the time it is being used to render public service are unjust, unreasonable, and confiscatory, and their enforcement deprives the public utility company of its property, in violation of the 14<sup>th</sup> Amendment of the Constitution. Id.

The governing principle for determining rates to be charged by a utility is the right of the public on one hand to be served at a reasonable charge, and the right of the utility on the other to a fair return on the value of its property used in the service. Public Serv. Comm'n v. Montana-Dakota Utils. Co., 100 N.W.2d 140, 144 (N.D. 1959). An investor-owned public utility is entitled to earn revenue that will allow it to meet its expenses and earn a fair and reasonable rate of return for its investors. Montana-Dakota Utils. Co. v. Public Serv. Comm'n, 413 N.W.2d 308, 310 (N.D. 1987). The return on investment which a public utility should be permitted to earn should be reasonably sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economical management, to maintain and support its credit, and enable it to raise money necessary for the proper discharge of its public duties. Bluefield, 262 U.S. at 683. After the value or rate base of the property used and useful in the public utility business is ascertained, next to be ascertained is the amount of the operating expenses as compared with the gross income, after which a conclusion can be drawn as to the rates necessary for a fair return on the property. Montana-Dakota Utils. Co., 100 N.W.2d at 144.

### **BURDEN OF PROOF**

The Staff's recommendation to exclude certain expenses and investment associated with the 2018 pipeline replacement projects, aircraft, and advertising and dues is based upon its position that MDU failed to meet its burden of proof with respect to the necessity and prudence of those expenses. The Staff's position, however, does not reflect a correct application of the burden of proof as an evidentiary standard. The North Dakota

Supreme Court summarized the evidentiary principle of “burden of proof” in Helbling v. Helbling, 541 N.W.2d 443, 445-446 (N.D. 1995):

The burden of proof has two components: the burden of going forward with the evidence and the burden of persuasion. The burden of persuasion, or risk of non-persuasion, does not shift: it remains with the party having the burden of proof. The burden of going forward with the evidence will shift: it may rest . . . at one time upon one party and at another time upon the other. The plaintiff or moving party generally bears the burden of proof. If the party bearing the burden of proof presents evidence strong enough, if uncontradicted, to support a finding in her favor, that party has made a prima facie case. When the party with the burden of proof establishes a prima facie case, “the burden of going forward with the evidence . . . shifts to the defendant. If the defendant can impair the prima facie quality of [i.e., rebut] the case against him, the burden [of going forward] returns to the party having the burden of proof.” If the party having the burden of proof establishes a prima facie case, this party will prevail unless the opposing party offers “proof to the contrary.” (Citations omitted)

In Helbling, the district court held the plaintiff did not meet her burden of proving that a change in the defendant’s child support obligation was justified based upon his net monthly income. The Supreme Court reversed the District Court holding that the plaintiff made a prima facie case for increasing the required child support payments when she showed an increase in the defendant’s income and the District Court erred in failing to shift to the defendant the burden of going forward to rebut the prima facie case. The Court stated that when a party makes a prima facie case, that party will prevail when its opponent fails to offer “proof to the contrary.” Id. at 446.

The same principle holds true in utility rate cases. Courts have explained that a utility bears the initial burden to establish that its proposed rates are just and reasonable; however, once a utility makes a showing of the costs necessary to provide service under its proposed charges, it has established a prima facie case, and “the burden then shifts

to others to show that the costs incurred by the utility are unreasonable because of inefficiency or bad faith.” See Apple Canyon Lake Prop. Owners' Ass'n v. Ill. Commerce Comm'n, 985 N.E.2d 695, 712 (Ill. App. 2013).

Along with the burden of proof, the Commission must consider the appropriate “standard of proof” in an administrative proceeding under the North Dakota Administrative Agency’s Practices Act at N.D.C.C. Chapter 28-32. As the party with the burden of proof in this administrative proceeding, MDU has the burden of proving by a “preponderance of the evidence” that it is entitled to the requested increase in rates. Sjostrand v. North Dakota Workers Compensation Bureau, 2002 N.D. 125, ¶¶ 24-30, 649 N.W.2d 537. The function of a standard of proof is to instruct the factfinder concerning the degree of confidence the factfinder should have in the correctness of facts or conclusions for a particular type of adjudication. North Dakota State Board of Medical Examiners v. Hsu, 2007 N.D. 9, ¶ 16, 726 N.W.2d 216. The standard of proof serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision. Id. The “preponderance of the evidence” standard of proof is met by evidence which is more convincing or of greater weight than the opposing evidence; namely, evidence which as a whole shows a fact to be proved is more probable than not. Kraft v. North Dakota State Board of Nursing, 2001 N.D. 131, ¶ 21, 631 N.W.2d 572. As applicable to this proceeding, the preponderance of evidence standard does not require evidentiary proof of irrefutable mathematical certainty, nor does it require evidentiary proof beyond a reasonable doubt, as required in criminal proceedings, or even evidentiary proof of a clear and convincing nature. See Sjostrand, supra. It certainly does require proof of a negative which is the practical effect of Staff’s position on certain issues. Helbling, supra.

The preponderance of the evidence in this case establishes that MDU is entitled to the requested rate relief. Assertions or arguments by Staff that MDU did not meet its burden of proof are not evidence. These assertions and arguments neither contradict the factual evidence presented by MDU nor do they meet Staff's burden of going forward with factual evidence. Through its application as supported by the direct pre-filed testimony of its witnesses, MDU established a prima facie case for its requested general increase in rates. See N.D.C.C. § 49-05-04.1.

### **System Safety Integrity Program**

MDU has implemented a proactive pipeline replacement plan to enhance system safety and reliability, referred to as its System Safety and Integrity Program ("SSIP"). As part of its SSIP, MDU is proposing a structured replacement program for Early Vintage Steel Pipe ("EVSP"), Early Vintage Plastic Pipe ("EVPP"), Low Pressure Systems and the relocation of inside meters, all of which are known for higher safety risks as identified by MDU's Distribution Integrity Management Plan ("DIMP"). To fund this replacement plan going forward, the Company in its Application is requesting the implementation of a cost recovery mechanism for the pipeline replacement plan, which allows the Company to proactively address aging infrastructure while potentially avoiding costly rate cases and providing customers with more gradual rate increases over time. MDU's SSIP would bring all the interested parties together in an effort to develop cost-efficient solutions to these very pressing public safety concerns.

The evidence at the hearing established approximately 25% of Montana-Dakota's entire natural gas system is over 50 years old. The depreciation study filed by the

Company indicated some of its existing natural gas facilities are in excess of 100 years old. The estimated costs to replace an aging pipeline infrastructure will be substantial.

MDU is proposing the implementation of a cost recovery mechanism for the SSIP, Rate 94. Under Rate 94, MDU would file annually with the Commission a portfolio of projects and costs that the Company plans to undertake in the upcoming year under the SSIP. See MDU Ex. 1, Bosch Testimony, pg. 4. MDU would then true-up the actual costs of the SSIP projects the following year. Id. Under its proposal, MDU would not be permitted to recover any revenue for these SSIP projects until they were approved by the Commission. The revenue requirement for the SSIP projects would be allocated to the various rate classes, excluding the Minot Air Force Base and transmission level customers, based upon each class' respective allocation established in this rate case. Id. The proposed Rate 94 recovery mechanism would be very similar to the recovery mechanism in the North Dakota electric riders for environmental and transmission projects.

Both Staff and AARP oppose the SSIP rate recovery mechanism. They argue the current system of recovering these projects in a traditional rate case should continue. Under the current system, the Company comes in years after the projects have been completed seeking recovery. The Commission has no input into the proposed projects or costs prior to construction. The rate cases are very costly and time consuming, and result in large increases in rates.

The proposed SSIP recovery mechanism would promote a collaboration between the Commission, the Company, and other interested parties starting with the Company's annual proposed filing in March of its projects and costs to be undertaken in that year and

continuing through final approval of the rate to be effective in October of that same year. This process will create an open dialog before these projects even begin construction to ensure the best practices are being utilized and ensure funds spent are targeting the appropriate projects. This collaboration with the Commission and other interested parties will allow all parties to share information on new technologies and research in industry. More importantly, under MDU's Rate 94 proposal, the Company will not be permitted to recovery any revenue under the rate recovery mechanism unless the SSIP projects are approved by the Commission. The Company will also true-up the actual costs of each project to ensure the costs were appropriate and there is no over-recovery. Clearly, this is a better procedure to address the public safety concerns of an aging infrastructure, while ensuring the funds for such projects are appropriate.

The evidence presented by Staff's own expert, Karl Pavlovic, established that 39 States (plus the District of Columbia) have already adopted specific rate recovery mechanisms for accelerating pipeline replacement. See PSC Ex. 20, Ex. KRP-1, pg. 19. The U.S. Department of Energy Report contains a compendium of the 39 State's rate recovery programs that have been adopted as compiled by the American Gas Association. See id., pages 37 – 65. Staff's own expert testified he would be in support of an accelerated rate recovery mechanism if the appropriate parameters were in place. Dr. Pavlovic testified certain States, including Massachusetts and Maryland, have adopted beneficial accelerated rate recovery mechanisms to accelerate pipeline replacement.

Company witnesses testified MDU is willing to work with the Commission and Staff to further refine the Rate 94 tariff that would help address the concerns expressed, such

as a filing fee to cover the Commission's staff expense in reviewing the Company's filing or the vagueness of Rate 94's applicability on types of projects included.

The Commission was also presented with the 2013 NARUC Resolution, "Encouraging Natural Gas Line Investment and the Expedited Replacement of High-Risk Distribution and Service Lines", which encouraged State Regulatory Commissions to adopt rate recovery mechanisms that encourage replacing the most vulnerable pipelines as quickly as possible. See MDU Ex. 11. The NARUC Resolution recognized that alternative rate recovery mechanisms help expedite the replacement of aging pipeline systems by promoting more-timely rate recovery for investments in infrastructure, safety and reliability. Id. NARUC specifically stated, "The adoption of alternative rate policies may be very effective for advancing critical safety and reliability infrastructure upgrades." Id.

MDU recognizes the magnitude of the work and costs of replacing a rapidly aging pipeline infrastructure and can no longer kick this can down the road. The reactive approach of only replacing infrastructure when there is an issue will not solve this problem. This Commission has the authority to address these pressing safety issues and the time is now to take action. MDU urges adoption of the SSIP program and rate recovery mechanism so the parties can start working together to formulate the solution to this growing problem.

### **2018 PIPELINE REPLACEMENT PROJECTS**

As part of its Application, MDU is seeking recovery of the 2018 pipeline replacement projects that have already begun. These 2018 replacement projects include replacing early vintage low-pressure steel mains and fittings in the communities of

Gladstone, Fairview, New Salem, and Taylor, and replacement of early vintage Aldyl-A plastic pipe installed between 1971 and 1982 in the communities of Gladstone, Fairview, New Salem, Eldridge, Barlow, and Cleveland. See MDU Ex. 3, pg. 7. The total cost of these 2018 replacement projects was estimated at \$5,553,154, with only about \$800,000 of that total attributable to the replacement of Aldyl-A plastic pipe and some material testing. See MDU Ex. 5, pg. 3.

The standard for evaluating a utility's plant additions is that, in the absence of peculiar and extraordinary conditions, such as a more costly plant than the public service of the community requires, or the erection of a plant at an actual, though extravagant, cost, or the purchase of one at an exorbitant or inflated price, the actual amount of money invested is to be taken as the basis and, upon this amount, a return must be allowed. Bluefield, 262 U.S. at 689. The Commission, for the purpose of ascertaining the reasonableness of the rates, shall investigate and determine the value of the property of every public utility used and useful for the service and convenience of the public. Northern States Power, 298 N.W. at 427. When the use of a utility's property is imminent, although not actual, its value may be taken into account in rate base. Id. The North Dakota Supreme Court recognized the doctrine of imminent use applies where rates are being fixed for the future and the property in question will be used for the public service during the time in which the rates will be applicable. Northern States Power, 13 N.W.2d at 788. In a utility rate case, "the rate base should be adjusted to include facilities in imminent or present use at the end of the test year." In re Montana-Dakota Utils. Co., 102 N.W.2d 329, 341 (N.D. 1960).

MDU's Vice President of Gas Operations, Pat Darras, testified regarding the need for the 2018 replacement projects and how the projects were selected. MDU introduced its updated SSIP Project Plan for 2018, which identified how these projects were selected for replacement in 2018. See MDU Ex. 3, Ex. PCD-2, pages 9 – 10. Mr. Darras explained that, pursuant to the Pipeline and Hazardous Materials Safety Administration ("PHMSA") regulations, MDU adopted a Distribution Integrity Management Program ("DIMP") in order to better understand its distribution system and potential threats based upon eight threat categories. See MDU Ex. 10. MDU ran its DIMP model and these projects were identified as posing higher risks. See MDU Ex. 3, Ex. PCD-2, pages 9 – 10. MDU provided the summaries of the DIMP model, including risk scores for these projects, as part of its SSIP document. Id. Based upon the results of the DIMP model and consultation with the MDU's numerous subject matter experts, the Company selected these projects for replacement in 2018. Id. Mr. Darras testified the 2018 replacement projects were determined to be necessary and prudent projects by the Company's operations team. Mr. Darras also testified that the 2018 replacement projects are already underway and completion of all projects is expected in 2018.

Pat Fahn, the Commission's Director of Public Utilities, also testified at the Hearing regarding the PHMSA regulations. Mr. Fahn testified PHMSA requires the utility to develop a DIMP program to demonstrate an understanding of a utility's system and to assist in identifying threats to the system. He testified a utility is required to evaluate and rank the risks posed to its system. Under the PHMSA regulations, a utility is then to take the DIMP data and identify and implement measures to correct the risks posed to the system. MDU's procedures in identifying the 2018 replacement projects through its DIMP

model as part of its SSIP program is consistent with the PHMSA requirements as identified by Mr. Fahn.

Staff seeks a disallowance of all of costs associated with MDU's 2018 replacement projects arguing they are not "reasonable, necessary and prudent". See PSC Ex. 21, pg. 2. In support of its disallowance, Staff offers the testimony of Dr. Karl Pavlovic. There has been no demonstration by Staff that Dr. Pavlovic has any expertise in pipeline operations and the PHMSA regulations. Dr. Pavlovic has a bachelor, masters and doctorate degrees in Philosophy. See PSC Ex. 20, Attachment A, pg. 1. Dr. Pavlovic is not an engineer and has no professional experience operating a natural gas pipeline in compliance with PHMSA regulations. Id. At the hearing, Dr. Pavlovic could not explain any rationale for why Staff was seeking a complete disallowance of the 2018 replacement projects on the grounds they are not reasonable, necessary, and prudent, and why none of the 2017 replacement projects, identified by the same DIMP model, were being challenged on the grounds of reasonableness, necessity, or prudence. It was clear Staff's only opposition to these projects was their philosophical objection because MDU identified the 2018 replacement projects as part of its SSIP program.

The testimony and evidence presented by Mr. Darras established the 2018 replacement projects were identified through the procedures set forth by the PHMSA regulations. MDU's engineering and pipeline operations teams identified all relevant data and determined the 2018 replacement projects were necessary. MDU's decision to proceed with the 2018 replacement projects was supported by the Commission's own witness, Mr. Fahn, who confirmed MDU followed the appropriate protocols as set forth by PHMSA for selecting replacement projects. Staff has failed to present any competent

evidence that the 2018 replacement projects were not reasonable and prudent or somehow constituted an abuse of discretion by the Company. The Commission should not substitute its judgment for the judgment of the utility's management in the business operations of the utility. See Northern States Power v. PSC of North Dakota, 13 N.W.2d 779, 782 (N.D. 1944). Accordingly, the costs for the 2018 replacement projects should be included in the Company's rate base in this case.

### **INCENTIVE COMPENSATION**

Staff recommended a disallowance of 60 percent of MDU's expenses for incentive compensation for all employees. Staff's expert, Dante Mugrace, argued incentive-based compensation should be disallowed because it is designed to benefit the Company's shareholders. See PSC Ex. 24, pg. 11. Contrary to Staff's argument, there is no evidence to support Staff's assertion that MDU's incentive compensation program is not a prudent business decision conducted in good faith by the Company's Management.

Mr. Mugrace testified that the basis for selecting the arbitrary 60 percent reduction was the Commission's Order in MDU's 2010 electric rate case, PU-10-124. See PSC Ex. 24, pg. 11. However, a review of MDU's 2010 electric rate case shows that while Advocacy Staff was seeking a 60 percent disallowance of incentive compensation, a "black box" settlement was entered into between MDU and Advocacy Staff that did not specifically identify any agreement on any disallowance of MDU's expenses for incentive compensation. See PU-10-124, Docket Entry 167 (Settlement Agreement between MDU and Advocacy Staff). At no time did MDU agree to any reduction of its incentive compensation, let alone an arbitrary 60 percent reduction sought by Staff. See MDU Ex. 4, pg. 2. More importantly, Advocacy Staff agreed as part of the Settlement that the

“Agreement does not establish any principle or precedent . . . for this or any future proceeding.” Id., at ¶ 6. Moreover, the Commission’s Order adopting the Settlement Agreement did not mention incentive compensation nor specifically disallow any portion of MDU’s incentive compensation expenses. See PU-10-124, Docket Entry 186. It is improper for Staff to rely upon a 2010 “black box” settlement agreement as the basis for this Commission adopting a 60 percent disallowance of MDU’s incentive compensation in this case.

The North Dakota Supreme Court has spoken on at least two occasions regarding the Commission’s authority to adjust utility operating expenses for ratemaking purposes. In an early decision regarding the scope of the Commission’s ratemaking authority, the Court examined a reduction by the Commission in NSP’s legal expense of \$8,476 on the grounds that the Commission felt \$3,000 should be sufficient. Northern States Power, 298 N.W. at 433. In overruling the Commission, the Court stated:

There is no question but that the Company, during that year spent for legal services the amount it claimed should be allowed annually for legal expense. . . . There is no testimony in the record which challenges the prudence or the good faith of the Company’s management in the incurring of these charges, nor is there any evidence which indicates that the cost of legal services will be a less sum in the future. It was the duty of the Commission to allow an amount which in its judgment was sufficient for the purpose. In the exercise of that judgment, however, it could not disregard the evidence and substitute for its judgment of the evidence its judgment of what the Company ought to be able to do. The Commission “is not the financial manager of the corporation, and it is not empowered to substitute its judgment for that of the directors of the corporation; nor can ignore items charged by the utility as operating expenses, unless there is an abuse of discretion in that regard by the corporate officers.” [Citations omitted]

Id., at 433-434. To disallow an operating expenditure, the Commission must prove an abuse of discretion on the part of management resulting from a showing of inefficiency or improvidence or from extravagant or unnecessary costs. Charles F. Phillips, Jr., The Regulation of Public Utilities Theory and Practice, Chapter 7, 1984.

The scope of the Commission's authority to disallow operating expenses was again revisited in Montana-Dakota Utilities Co. v. Public Service Commission, 413 N.W.2d 308, 316 (N.D. 1987). In Montana-Dakota, the Court was asked to review the Commission's disallowance of a portion of MDU's employee compensation plan. The Court reversed the Commission disallowance of MDU's employee compensation expenses holding:

In reaching this conclusion, we recognize that ***the overall employment compensation package between MDU and its employees is a matter left largely to the deference and judgment of management through its collective bargaining arrangement.*** See Central Main Power Co. v. Public Utilities Commission, 405 A2d 153 (Me. 1979), cert. denied, 447 U.S. 911, 100 S.Ct. 2999, 64 L.Ed. 2d 862 (1980).

Id. (emphasis added). The Central Maine Power case relied upon by the North Dakota Supreme Court is also instructive. In that case, the Supreme Court of Maine cited a line of cases holding that the function of a public service commission is that of control and not management. The matter of employee compensation calls for the exercise of judgment on the part of the management and good faith on its part is presumed. While these expenses are to be scrutinized by the Commission, they should not be disallowed or reduced unless it clearly appears they are excessive or unwarranted or incurred in bad faith. Id. at 175-179. The Court also cited with approval the concurring opinion in Re General Telephone Co. of Florida, 19 PUR 4th 227, 267 (Fla. P.S.C. 1977) which

recognized that regardless of the type of employer, it is almost universal practice that employees receive some part of their total remuneration in a form other than cash:

Whether these forms of remuneration are called concessions, fringe benefits, employee discounts, or some other name, and whether or not they are required by law, all of them accrue to the benefit of the employee. They have a bearing upon whether or not the person (management or craft) will trade his skills and work he can perform for a total package of remuneration (cash plus noncash).

It is uncontroverted that incentive compensation provided by MDU is an integral part of the total remuneration package provided to its employees. See MDU Ex. 4, pg. 3. Jim Kaiser, MDU's Director of Human Resources, testified the Company's Total Reward Philosophy has two components of cash compensation for employees, base pay and incentive compensation. Id. Incentive compensation has been part of MDU's overall employee compensation plan for the past twenty years. Mr. Kaiser testified the incentive compensation is critical in attracting and retaining highly skilled employees necessary for the Company's operations. Id. He also testified that MDU's incentive compensation pay range and targets are compared to and are similar to those of other comparable companies in the labor market. Mr. Kaiser testified that the 2017 American Gas Association Compensation Survey for the North Central Region showed thirteen of fifteen participating gas utilities also provided incentive compensation to all levels of the utility's employees, similar to MDU's Total Rewards program. Id., at pg. 4; and JEK Ex. 1. Mr. Kaiser also explained that MDU hires an independent third-party, Aon Hewitt, to review its Total Rewards compensation program, including incentive compensation. Id., at pg. 5 – 6; and JEK Ex. 2. The results of the Aon Hewitt report show MDU's incentive compensation plan is well designed and utilizes high quality and established external

sources to ensure the program aligns well with other industries that compete for these highly skilled employees. Id., at pg. 6. The Aon Hewitt report determined MDU's Total Rewards Plan, including employee incentive compensation, is slightly below other comparable peer groups, but was currently within market competitive levels. Id., at pages 9 – 11.

There is no evidence that MDU's employee incentive compensation package is excessive, unwarranted or implemented in bad faith. Rather, the evidence is undisputed that such incentive compensation packages are typically offered to employees and that base salary compensation would need to be increased if incentive compensation was removed from the total remuneration package. See MDU Ex. 4, pg. 5. Mr. Kaiser testified that removal of incentive compensation and increasing base wages would result in cost increases for the Company and, ultimately, its customers. Id.

Staff's expert, Mr. Mugrace, did not offer any evidence to suggest MDU's current salaries are at reasonable levels without incentive compensation and he offered no opinion of whether management abused its deference and judgment with respect to incentive compensation. The Staff's proposed arbitrary exclusion of 60 percent of legitimate expenses without any showing that the amounts included in the test year were excessive or incurred in bad faith is without merit. The decision regarding how best to compensate its employees to attract and retain highly qualified individuals is a decision that is left to Management and should not be interfered with absent a showing of an abuse of discretion on the part of the Company. See Northern States Power v. PSC of North Dakota, 13 N.W.2d 779, 782 (N.D. 1944) (holding "The Commission should not substitute its judgment for the judgment of the owners in the business affairs of the utility").

## RETURN ON EQUITY

In its Application, MDU is seeking an allowed rate of return of 7.542 percent, with a 10.0 percent return on equity. MDU presented the prefiled direct and rebuttal testimony of Dr. Gaske in support of these percentages. Staff's expert, Dr. Marlon Griffing, testified at hearing that the updated ROE should be set at 9.50 percent, an increase of 0.27 percent from his earlier testimony. FEA's expert, Mike Gorman, testified the ROE should be 9.10 percent.

The United States Supreme Court has held that in determining "what annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts." Bluefield, 262 U.S. at 692. The rate-making process of fixing "just and reasonable" rates, involves a balancing of the consumer and the investor interests, as the investor has a legitimate concern with the financial integrity of the company whose rates are being regulated. Federal Power Com. v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944) (stating the ROE to the investor should be sufficient to assure confidence in the financial integrity of the company so as to maintain its credit and attract capital).

Both in their prefiled testimony and testimony at the Hearing, the three expert witnesses presented varying calculations and methods used to reach their respective opinions as to the appropriate ROE. The determination of a fair rate of return on common equity is accomplished by using the current market cost of common equity in order to ensure that the return is adequate to attract capital and is commensurate with returns available on other investments of similar risk. See MDU Ex. 1, Gaske direct, pg. 8. Determining the market cost of common equity is "a relatively complicated task that

requires analysis of many factors and some degree of judgment by an analyst.” Id. The three experts used many of the same calculations and input factors, including use of the discounted cash flow method. There were also numerous variations between each of the three experts that resulted in the differing range of proposed ROE. However, it is important to note that it is “the result reached, not the method employed”, that is controlling in determining what is a “just and reasonable rate”. Hope Natural Gas, 320 U.S. at 602.

One factor that was consistent between the three experts is that they all selected essentially the same group of natural gas distribution proxy companies for comparison. Because MDU’s natural gas distribution operations must compete for capital with many other potential projects and investments, “it is essential that the Company have an allowed return that matches returns potentially available from other similarly risky investments.” See MDU Ex. 1, Gaske direct, pg. 16. The evidence presented at the hearing established that three of the proxy companies had Commission determined ROEs within three months of the hearing in this case. Atmos Energy was awarded a ROE of 9.70 percent on May 3<sup>rd</sup> in Kentucky, and Spire Missouri and Missouri Gas Energy were both awarded ROEs of 9.80 percent in Missouri on February 21<sup>st</sup>. See MDU Ex. 14.

One distinct difference between the three experts was that Dr. Gaske included a gas utility risk premium and that analysis confirmed that a 10.0 percent return on equity is required by natural gas companies under current market conditions. Dr. Gaske testified MDU faces a higher business risk due to its smaller size and slower customer growth. FEA’s expert also noted the higher risk factor presented by MDU, recognized by the varying credit ratings. Mr. Gorman presented evidence establishing that 66 percent of

gas utilities had a higher credit rating than MDU's BBB+ credit rating in 2017, and no utilities had a lower credit rating. See FEA Ex. 29, pg. 12. Mr. Gorman also noted that the natural gas proxy group selected had an average bond rating from S&P of A-, which was higher than the bond rating for MDU Resources of BBB+. Id., at pg. 29. Mr. Gorman also testified that the bond rating for Atmos Energy was an A, and it was awarded a 9.70 percent ROE less than 30 days prior to the hearing in this case.

Staff's expert also presented evidence establishing the average ROE awarded to natural gas utilities in fully litigated proceedings in 2017 was 9.82 percent, with a median award of 9.50 percent. See PSC Ex. 22, MFG-15. In 2016, the average ROE awarded to natural gas utilities in fully litigated proceedings was 9.59 percent, with a median award of 9.50 percent. Id. Likewise, FEA's expert presented evidence that the average ROE in natural gas rate case decisions in 2017 was 9.75 percent, which he adjusted to 9.61% by excluding a ROE determination for an Alaska utility. See FEA Ex. 29, pg. 11.

Staff and AARP's proposed ROE's of 9.50 and 9.10 percent are too low to constitute just compensation for the use of the Company's property employed to render natural gas service to North Dakota customers. See Bluefield, 262 U.S. at 695 (overturning the West Virginia Public Service Commission's ROE as being "substantially too low to constitute just compensation"). The evidence presented at the hearing establishes that MDU should be entitled to a ROE higher than those larger companies in the proxy group. Considering the recent trend of ROE awards for comparable natural gas utilities, MDU's proposed 10.0 percent ROE is much closer to being a fair and just rate or return necessary for the Company.

## INFLATION

Staff seeks to disallow \$166,188 of MDU's expenses on the grounds the Company improperly applied a 2.2% inflation factor to these miscellaneous expenses. The specific categories of expenses which Staff seeks to exclude, include subcontract labor (\$37,569), materials (\$33,623), building rental (\$21,057), software maintenance (\$10,835), and all other miscellaneous O&M (\$63,104). See MDU Ex. 5, pg. 2. MDU's 2.2% inflation factor was less than the approximately three percent annual increases for O&M expenses the Company had been experiencing since the last rate case. See MDU Ex. 1, Kivisto Testimony, pg. 12 (stating MDU's O&M expenses have increased approximately three percent per year since the last rate case).

In preparation of its Application, MDU prepared its 2018 future test year revenue requirement in a manner consistent with previous gas and electric rate filings, which include reasonable estimates of inflation. See MDU Ex. 5, pg. 8. MDU used actual known calculations of expenses when that calculation was available, but included a reasonable inflation rate on certain miscellaneous categories of smaller O&M expenses which would have been impossible to accurately predict for the future test year. The Company's 2.2% inflation rate for 2018 was based upon an average of six reliable published sources. Id., at pg. 9.

While the North Dakota Supreme Court has not addressed the issue of the use of an inflation rate on miscellaneous expenses, the South Dakota Supreme Court addressed this exact issue in South Dakota Pub. Utils. Comm'n v. Otter Tail Power Co., 291 N.W.2d 291 (S.D. 1980). In that case, Otter Tail proposed an inflation adjustment to its operating costs, which averaged the Consumer Price Index and the Wholesale Price Index inflation

rates. Id., at 295. The South Dakota PUC found Otter Tail's inflation adjustment was not based upon measurable change and, therefore, disallowed the inflation adjustment. Id., at 296 (noting the PUC acknowledged Otter Tail will sustain increased operating costs due to inflation). The South Dakota Supreme Court agreed with the district court that the PUC's decision to disallow any inflation adjustment for Otter Tail's operating costs was unrealistic and unwarranted. See id. (affirming the district court's holding that the PUC's disallowance of the inflation adjustment was an arbitrary, capricious and wholly unwarranted exercise of discretion); see also Nichols & Welch, Ruling Principles of Utility Regulation, Ch. 8 at 52 (1964) (stating "Inflation is a factor that cannot and must not be ignored in a rate proceeding).

Staff's proposed disallowance of MDU's inflation adjustment was based upon Mr. Mugrace's assertion that the "increases are not known and measurable and do not reflect the true cost of doing business". See PSC Ex. 25, pg. 8. Mr. Mugrace's argument ignores the evidence presented by MDU that its O&M expenses have increased approximately three percent per year since the last rate case. MDU's use of an inflation factor of 2.2% is less than the Company's actual and demonstrated O&M expense increases since the last rate case. Mr. Mugrace's argument also ignores the fact that the miscellaneous expenses included in the July 2017 Application are based upon a 2018 future test year, so by their very nature, they would not be specifically known at the time the Application was filed. Mr. Mugrace's "known and measurable" argument was also specifically rejected by the South Dakota Supreme Court in the Otter Tail case. See 291 N.W.2d at 296 (rejecting the PUC's disallowance of an inflation adjustment on the grounds it was not "measurable"). Moreover, Staff failed to present any evidence at the hearing to

contradict MDU's assertion that there would be an increase in these expenses in the 2018 test year.

The use of a recognized inflation factor is a reasonable means of estimating cost increases for the broad categories containing many small expenses incurred by numerous vendors. The use of a recognized inflation factor for a future test year is consistent with previous gas and electric rate filings before this Commission. There is no rational basis for disallowing MDU's proposed 2.2% inflation adjustment on these limited categories of expenses.

### **AIRCRAFT**

Staff also seeks to disallow the expenses, and related rate base inclusion, for the Company's use of its corporate aircraft. Mr. Mugrace testified there is no reason MDU should be utilizing a corporate aircraft for its North Dakota gas operations and instead personnel could fly commercial or take the train. In his Surrebuttal Testimony served on May 3, 2018, Mr. Mugrace also argued the disallowance was appropriate because the Company failed to provide any evidence comparing the cost of the corporate aircraft versus the associated costs of commercial air travel. PSC Ex. 25, pg. 10. No change was proposed in this case and aircraft expense did not result in a rate increase. The corporate aircraft has been included in rates pursuant to earlier Commission decisions for decades.

Staff's proposed revenue requirement disallowance is \$110,000. MDU Ex. 13, page 11. However, Staff's rate base adjustment included a reduction to Plant In-Service of \$786,486. PSC Ex. 25, pg. 60. At the same time, Staff showed a reduction to Accumulated Depreciation of only \$3,343 (see PSC Ex. 25, Schedule DM-18) and no

adjustment to Accumulated Deferred Income Taxes, both are reductions to rate base. The Company's aircraft has been in use for decades. MDU Ex. 13, page 11. The Accumulated Depreciation as of December 31, 2016 was \$459,697 and the Accumulated Deferred Income Tax balance was \$120,233 at that same time. Therefore, Staff's revenue requirement impact is significantly overstated.

In addition, Mr. Mugrace recommended a disallowance of expenses related to MDU/FutureSource in the amount of \$169,840 (Incentive of \$182,790 offset by Other of \$12,949). PSC Ex. 24, pg. 49. In Surrebuttal Testimony, Mr. Mugrace testified that the Incentive was duplicative and, therefore, made an adjustment to remove the \$182,790. PSC Ex. 24, pg. 9 and Sch. DM Surr-5. The resulting adjustment should have been an increase to the Company's request but Mr. Mugrace presented his adjustment as a reduction to the Company's request resulting in an error in the revenue requirement in the amount of \$25,898.

At the hearing, Ms. Kivisto testified the corporate aircraft is used sparingly and only when justified by the cost savings compared to commercial travel. Ms. Kivisto testified she personally signs off on any proposed flights and analyzes the cost between the private flight and commercial airfare. MDU also submitted evidence of the comparison forms Ms. Kivisto submits regarding any use of the corporate aircraft. MDU Ex. 17.

The evidence presented at the hearing established MDU's expenses for use of the corporate aircraft are just and reasonable. Therefore, the burden shifted to Staff to show that the costs incurred by the utility are unreasonable because of inefficiency or bad faith. See Helbling, 541 N.W.2d at 445-446; see also Apple Canyon Lake Prop. Owners' Ass'n, 985 N.E.2d at 712. Staff failed to provide any evidence that the use of the corporate

aircraft was unreasonable or resulted in an extravagant or unnecessary costs. "The Commission is not the financial manager of the corporation and it is not empowered to substitute its judgment for that of the directors of the Company; nor can it ignore items charged by the utility as operating expense unless there is an abuse of discretion in that regard by the corporate officers." Northern States Power, 298 N.W. at 434. Absent such evidence of the improper use of the corporate aircraft, Staff has failed to meet its burden establishing the Company's proposed corporate aircraft expenses are an abuse of discretion and should be disallowed.

The record presented at the hearing does not support a finding that the Company's expenses incurred with the use of the corporate aircraft were unreasonable or an abuse of discretion. Rather, the testimony of Ms. Kivisto and MDU Ex. 17 establish that the use of the corporate aircraft in certain circumstances is more economical for ratepayers than the equivalent commercial air travel and associated costs. Based upon the evidence presented at the hearing, there exists no basis to encroach on management's determination to use the corporate aircraft.

### **ADVERTISING AND DUES**

Staff also seeks a disallowance of 50 percent of MDU's advertising expense (\$67,051) and a certain portion of the Company's dues expense (\$6,844). The Staff's proposed disallowance of MDU's advertising expenses and dues was based upon the testimony of Mr. Mugrace. With respect to the advertising, Mr. Mugrace testified at the hearing that he did not understand the Company's workpapers and he could not be expected to read ten pages of workpapers provided by the Company, therefore, he proposed a straight 50 percent disallowance of all advertising, including the Company's

811 and child safety advertising. With respect to MDU's industry dues, Mr. Mugrace arbitrarily sought a disallowance of those dues for the Consortium of Energy Efficiency, the Energy Solutions Center, and the Utility Solid Waste Activities Group.

The issue of a broad disallowance of a utility company's dues has previously been addressed by the North Dakota Supreme Court. See Northern States Power, 298 N.W. at 434. In Northern States Power, the Commission made the general statement that "some, but not all, of [the dues] are properly chargeable to operating expenses" and reduced the company's expenses from \$4,638.94 to \$3,000. Id. In reviewing the Commission's action, the Court held:

The inconsistency is patent. The finding is that donations for some unstated purposes are not properly allowable as expenses and the allowance is for a reduced sum for all purposes including the unstated improper ones. If the Commission had concluded that some of the donations were improper, it should have pointed them out specifically and if it thought that some of the contributions were so large as to constitute an abuse of discretion on the part of the Company's officers, it should have said so. The action which the Commission did take is simply an attempt to control the discretion of the Company's management. This was in excess of the powers of the Commission.

Id. "The Commission is not the financial manager of the corporation and it is not empowered to substitute its judgment for that of the directors of the Company; nor can it ignore items charged by the utility as operating expense unless there is an abuse of discretion in that regard by the corporate officers." Id.

Mr. Jacobson testified on behalf of the Company with respect to the prudence of the advertising and dues expenses. He explained the Company's Application did not seek any expenses for charitable donations or gifts. Rather the advertising and dues were important to the company and served legitimate company interests. Mr. Mugrace is

certainly not in a better position than MDU's management to determine the reasonableness and prudence of which industry organizations MDU should belong. Staff failed to meet its burden of establishing the advertising and dues expenses were unreasonable or imprudent.

### **VEHICLES AND WORK EQUIPMENT**

Staff is seeking a reduction to the Company's projected capital additions in the amount of \$1,333,095 equating to a reduction in rate base of \$666,549 representing the average of the beginning and ending plant in service balances associated with vehicles and work equipment.

At the hearing, Mr. Jacobson indicated that he did not generally disagree with the reduction in that Mr. Mugrace based his reduction on a refinement of the capital additions provided by the Company during the discovery process. Mr. Mugrace presented his adjustment in Direct Testimony at Schedule DM-17 with references to 2-18 and 2-19 response in PSC Ex. 24. However, Mr. Mugrace chose to accept only the refinements which reduced the capital additions while ignoring the refinements which increased the capital additions.

MDU Ex. 13, page 20 shows the appropriate reduction to capital additions of \$1,304,151 that would result in a rate base reduction of \$652,076, or an increase in rate base of \$14,473 from that recommended by Staff. At the hearing, Mr. Mugrace indicated agreement with the Company's numbers and the associated increase to rate base.

Staff is seeking two operating expense adjustments associated with refinement of the vehicles and work equipment capital additions. The first adjustment was a reduction to vehicles and work equipment expense as a component of O&M in the amount of

\$24,041. Mr. Mugrace's adjustments were summarized by Mr. Jacobson on MDU Ex. 13, page 17. At the hearing, Mr. Jacobson indicated that he did not agree with Mr. Mugrace's methodology in calculating the amount but generally did not disagree with the amount.

The second adjustment is a reduction to depreciation expense in the amount of \$38,488. Mr. Jacobson's Direct Testimony in MDU Ex. 1 at page 10, lines 9 -18, indicates that depreciation expense is included in clearing accounts and recorded in O&M expense as a part of a project in which vehicles and work expense is used. This was further supported at the hearing where Mr. Jacobson reiterated the Company's long-standing practice and that the depreciation expense included on the Company's income statement did not include the depreciation expense associated with vehicles and work and, therefore, it is inappropriate to accept the reduction of \$38,488.

### **EMPLOYEE HOUSING**

During the Bakken oil boom, MDU was faced with a crisis regarding finding and retaining employees to work in Western North Dakota. When it reached the point that the Company could not find employees to provide safe and reliable service for its customers, MDU made the decision to purchase manufactured homes to house its employees in Western North Dakota. As was discussed in Mr. Jacobson's rebuttal testimony, this was not a problem unique to MDU, as numerous employers were forced to become landlords in order to attract and retain employees. See MDU 5, pg. 15. When the housing market caught up following the peaks of the Bakken boom, MDU sold the manufactured homes at a loss.

Staff seeks a disallowance of losses incurred on the sale of employee housing resulting in a reduction in rate base of \$774,487 (PSC Ex. 24, Schedule DM-16) as well

as the associated annual amortization of the losses of \$39,717 (PSC Ex. 24, Schedule DM-13). The impact to the revenue requirement, inclusive of the rate base and income statement adjustments, was determined by Mr. Jacobson to be approximately \$84,000. MDU Ex. 13, pg. 5. The acquisition of employee housing was required in order to provide safe and reliable service at a time when no other housing alternatives were available. The Company's proposal in this proceeding was based on the currently approved methodology employed in its North Dakota electric operations as the employee housing units requested in this proceeding are the same units requested in Case No. PU-16-666, the Company's' most recent electric case.

The Staff's proposed disallowance of losses on the sale of employee housing was based on Mr. Mugrace's assertion that the Company should have utilized other options but he failed to provide evidence that other options were available. Mr. Jacobson provided supporting evidence that Montana-Dakota was just one of many companies that experienced difficulties recruiting and retaining employees as a result of housing shortages. MDU Ex. 5, pg. 14. A number of other employers in the region also purchased housing units as a least cost option to be able to maintain an adequate workforce. The reality was that MDU was faced with an employee shortage due to the lack of housing in Western North and it made a legitimate business decision to address the requirement that it provide safe and reliable service to its customers.

Montana-Dakota included gains on the sale of buildings as a rate base deduction along with an amortization of the gain over a twenty-year period as shown in MDU Ex. 1, Statement L, page 17. The gains on the sale of buildings occurred in western North Dakota prior to any losses on the sale of employee housing. Staff did not take exception

to the treatment of the Company's proposal to include a rate base deduction and a reduction in operating expense related to the amortization of the gain.

Finally, at the hearing, Mr. Mugrace indicated that the housing should be shown on the income statement. However, Mr. Mugrace has recommended the disallowance of the losses in the rate base as well as the income statement. Based on his testimony, the Company properly recorded the amortization in the income statement.

For these reasons, MDU requests the Commission refuse to disallow the losses incurred on the sale of the manufactured homes. MDU was forced to provide housing in order to attract employees in a difficult business climate. This was a decision made by management that should not be overturned by the Commission.

### **RATE DESIGN**

All the parties in the case agreed that MDU's proposed revenue allocation is reasonable and should be adopted. In its Application, MDU proposes no change to the rate design for the residential customer class and for the proposed increase to the class to be collected through the Basic Service Charge as is currently authorized. While FEA and Staff support the current straight fixed variable rate design, AARP opposes the increase the residential fixed charge and instead argues the increase should be applied in a new volumetric energy charge.

In MDU's last natural gas rate case, PU-15-90, the Commission adopted a straight fixed variable rate design, in which MDU recovers all non-gas residential customer revenues through a fixed customer charge. See Findings of Fact, Conclusions of Law, and Order in PU-15-90. In that case, this Commission rejected the AARP's argument that a fixed charge will discourage conservation, explaining the recovery of all distribution or

non-gas costs assigned to the residential class through a fixed charge rate will not significantly discourage conservation because the majority of the average bill for a Residential customer will continue to be recovered on a volumetric basis. Id. This Commission specifically concluded there were multiple benefits of recovering residential customer's non-commodity costs through a fixed monthly charge:

- Utility profits are decoupled from sales volumes, thus eliminating any disincentive for the utility to promote conservation among residential customers.
- Residential billing is simplified by removal of both the distribution delivery volumetric charge and the Distribution Delivery Stabilization Mechanism.
- Seasonal differences in utility revenues and customer bills are stabilized as winter gas bills are lessened while summer bills are increased.
- The impact of significantly colder-than-normal weather on customer bills is mitigated without requiring the application of the Distribution Delivery Stabilization Mechanism.
- Fluctuations in the utility's earnings as the result of weather fluctuations and customer conservation are mitigated, improving budgeting and planning.
- Revenues are better matched to the system design and investment required to serve each residential customer with a typical service line, meter and regulator at the same average cost.
- Inequities and cross subsidies between high usage and low usage customers are reduced, particularly with respect to customers using natural gas as a backup energy source during peak periods.
- Customers receive a proper price signal as distribution costs are predominantly fixed.
- Monthly utility charges are more transparent and less confusing.

Id.

Jordan Hatzenbuhler testified for the Company on this issue. Hatzenbuhler testified that the costs to serve the low-usage customer and the high usage customer is essentially the same. See MDU Ex. 6, pg. 9. The current fixed rate system for the residential class is simple for the customers to understand, mitigates the impacts of abnormal weather, and maintains the ability of customers to save the conservation

measures. Id., at pg. 10. He also explained neither MDU's distribution system nor the makeup of the residential customer class have changed since the last rate case in a way that would make the straight fixed variable rate design improper. Id., at pg. 9. Moreover, all of the benefits the Commission relied on in adopting this rate design in 2015 are still present and support its continued use in this case. Id., at pg. 7 – 8.

The evidence presented at the hearing supports the continued use of a straight fixed variable rate design to recover all non-gas residential customer revenues through a fixed customer charge. No compelling rationale exists for this Commission to revert back to a volumetric charge after approving MDU's implementation of a straight fixed variable rate design in 2015. Accordingly, MDU respectfully requests the Commission adopt its request to maintain the current rate design for the residential customer class and to allocate any rate increase to the class through the basic service charge component of the existing rate.

## **CONCLUSION**

For the reasons set forth in this Brief, the evidence presented at the Hearing and materials in its Application, MDU respectfully requests the Commission grant its Application to increase its rates for natural gas service in North Dakota to provide additional annual revenue of \$3,575,388, which constitutes a 3.3% increase in rates. In addition, MDU requests the Commission approve the adoption of Rate 94 which will allow a cost recovery mechanism for the Company's pipeline replacement plan. MDU's SSIP, including the rate recovery mechanism, will allow the Company to proactively address its aging infrastructure while potentially avoiding costly rate cases and providing customers with more gradual rate increases over time. MDU's SSIP would bring all the interested

parties together in an effort to develop cost-efficient solutions to these very pressing public safety concerns. MDU urges adoption of the SSIP program and rate recovery mechanism so the Commission and parties can start working together to formulate the solution to this growing public safety concern.

Dated this 22<sup>nd</sup> day of June, 2018.

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**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission            )**  
**Montana-Dakota Utilities Co.        )**  
**2017 Natural Gas Rate Increase     )**  
**Siting Application                    )**

**Case No. PU-17-295**

**CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the following:

**Montana-Dakota Utilities Co.'s Post-Hearing Brief**

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