

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Montana Dakota Utilities Co.
Advance Prudence – Heskett 4
Application**

Case No. PU-19-306

**Montana Dakota Utilities Co.
88 MW Turbine - Heskett 4
Public Convenience & Necessity**

Case No. PU- 19-307

**Montana Dakota Utilities Co.
Deferred Accounting – Lewis & Clark 1 Heskett 1 & 2
Application**

Case No. PU-19-317

ORDER ON SETTLEMENT

Appearances

Commissioners Brian Kroshus, Julie Fedorchak and Randy Christmann.

Paul R. Sanderson, Evenson Sanderson, PC, 1100 College Dr., Suite 5, Bismarck, ND, 58501, as Counsel for Montana-Dakota Utilities Co.

Mitchell D. Armstrong, Special Assistant Attorney General, 122 East Broadway Avenue, Bismarck, North Dakota 58502, as Counsel for the Public Service Commission Advocacy Staff.

John M. Schuh, General Counsel, Public Service Commission, 600 East Boulevard Ave., Dept. 408, Bismarck, ND 58505-0480, as Counsel for the Public Service Commission.

Timothy J. Dawson, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, ND 58503, as Procedural Hearing Officer.

Preliminary Statement

On August 28, 2019, Montana-Dakota Utilities Co. (MDU) filed an application for an advance determination of prudence, Case No. PU-19-306, and for a certificate of public convenience and necessity, Case No. PU-19-307, to construct, own and operate an 88 MW simple cycle combustion turbine and associated facilities referred to as Heskett 4.

On September 16, 2019, MDU filed an application for deferred accounting

treatment of costs related to its proposed retirement of the Lewis & Clark Unit 1, Heskett Unit 1 and Heskett Unit 2, Case No. PU-19-317.

On February 21, 2020, Public Service Commission Advocacy Staff (Advocacy Staff) filed testimony regarding the Company's application in Case No. PU-19-306, Case No. PU-19-307, and Case No. PU-19-317.

On March 4, 2020, the Commission consolidated the cases for hearing and issued a Notice of Consolidated Hearing, scheduling a public hearing to begin on April 30, 2020 at 2 pm in the Commission hearing room at the State Capitol, 600 East Boulevard Ave. Bismarck. ND 58505.

The notice identified the following issues:

In Case No. PU-19-306:

1. Whether MDU's proposed resource addition is prudent,
2. Whether the Commission should grant MDU an advance determination of prudence.

In Case No. PU-19-307:

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

In Case No. PU-19-317:

1. Whether MDU's proposed early plant retirements are reasonable and appropriate?
2. Whether MDU's proposal for accelerated depreciation should be approved?

On April 2, 2020, MDU and Advocacy Staff filed a Settlement Agreement with the Commission.

On April 20, 2020, the Commission issued an Amended Notice of Consolidated Hearing, notifying the hearing would be held remotely due to the ongoing Covid-19 emergency.

On April 30, 2020, the hearing was held remotely with the Administrative Law Judge being present in the Commission Hearing Room, State Capitol, 600 E. Boulevard Avenue, 12th Floor, Bismarck, North Dakota 58505, and all Commissioners, parties, counsel, and witnesses appearing remotely.

On June 1, 2020, MDU filed a response to a request made by the Commission at its May 21, 2020, work session.

On July 23, 2020, MDU and Advocacy Staff filed a Modified Settlement Agreement.

Discussion

PU-19-306:

The Modified Settlement Agreement (MSA) states that Heskett 4 is a prudent resource at a total capital expenditure cost up to \$68.7 million excluding allowance for funds used during construction. The MSA provides that MDU may request cost recovery in rates through MDU's Generation Resource Recovery Rider Rate 5 or a general rate case. Both MDU and Advocacy Staff testified that Heskett 4 is a reasonable and prudent resource addition that will provide cost effective and reliable electric generation capacity for MDU and its customers. The Commission finds MDU should be granted an advance determination of prudence for a total Heskett 4 capital expenditure cost of up to 68.7 million excluding AFUDC.

PU-19-307:

The MSA provides a certificate of public convenience and necessity for Heskett 4. Both MDU and Advocacy Staff testified that MDU has the experience and resources necessary to construct, own and operate Heskett 4 and that Heskett 4 is needed to provide reliable and economic electric generation for MDU's customers. The Commission finds that public convenience and necessity will be served by construction and operation of Heskett 4, and that MDU is fit, willing and able to provide service.

PU-19-317:

The MSA grants MDU's request for deferred accounting treatment for costs associated with the retirement of the Lewis & Clark Unit 1, Heskett Unit 1 and Heskett Unit 2 generating stations.

The MSA states that the costs of retiring Lewis & Clark 1, Heskett 1 and Heskett 2 should be deferred with the corresponding annual reduction in revenue requirements credited against the accelerated depreciation and decommissioning costs (offset by deferred income taxes and including the authorized rate of return applied to the unamortized balance) and the employee related costs (employee related costs shall be

recovered without the application of a rate of return to the unamortized balance). Revenue recovery will be included and evaluated in MDU's generation resource recovery mechanism until the revenue recovery is reflected in base rates in a general rate case.

The Commission finds the MSA's proposal for deferred accounting treatment for costs associated with the retirement of the Lewis & Clark Unit 1, Heskett Unit 1 and Heskett Unit 2 generating stations should be approved.

Having considered this matter, the Commission finds the Modified Settlement Agreement is reasonable and acceptable and should be approved. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Modified Settlement Agreement filed July 23, 2020, is APPROVED. A copy of the Modified Settlement Agreement is attached to this Order and made part of this Order.
2. Certificate of Public Convenience and Necessity Number 5944 is issued to MDU for Heskett 4.

PUBLIC SERVICE COMMISSION

		
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Julie Fedorchak Commissioner	Brian Kroshus Chairman	Randy Christmann Commissioner

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

Certificate of Public Convenience and Necessity

Certificate Number 5944

This is to certify that public convenience and necessity require, and permission is granted for Montana-Dakota Utilities Co., to construct, own and operate an 88 MW simple cycle combustion turbine in Morton County, North Dakota.

This certificate is issued in accordance with the Order of this Commission dated August 5, 2020 in Case No. PU-19-307, and is subject to the conditions and limitations noted in the Order.

This certificate is conditioned upon Montana-Dakota Utilities Co. securing the franchise or other authority of the proper municipal or other public authority for the exercise of these rights and privileges.

Bismarck, North Dakota, August 5, 2020.

ATTEST:

PUBLIC SERVICE COMMISSION



Executive Secretary



Commissioner

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

Montana-Dakota Utilities Co.)
Advance Determination of Prudence –) Case No. PU-19-306
Heskett 4 Application)

Montana-Dakota Utilities Co.)
Certificate of Public Convenience and) Case No. PU-19-307
Necessity- Heskett 4 Application)

Montana-Dakota Utilities Co.)
Deferred Accounting - Lewis & Clark 1,) Case No. PU-19-317
Heskett 1 and Heskett 2 Application)

MODIFIED SETTLEMENT AGREEMENT

This Modified Settlement Agreement is entered into on this 23 day of July 2020 by and between the North Dakota Public Service Commission Advocacy Staff (Advocacy Staff) and Montana-Dakota Utilities Co. (Montana-Dakota or the Company) (collectively, the Settling Parties). The Parties have entered into this Modified Agreement to address the Company's requests in the above referenced cases and to implement jointly supported outcomes. The Settling Parties agree this Settlement Agreement, replaces the Settlement Agreement submitted to the Commission on April 2, 2020 in the above referenced cases and if approved by the North Dakota Public Service Commission (Commission) resolves all issues in the above-referenced cases in a manner consistent with the public interest.

I. PROCEDURAL BACKGROUND

On August 28, 2019, Montana-Dakota filed an Application for an Advance Determination of Prudence (Case No. PU-19-306) and for a Certificate of Public Convenience and Necessity (Case No. PU-19-307) to construct, own and operate an 88 MW Frame type simple cycle combustion turbine and associated facilities hereinafter

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Executed Modified Settlement Agreement
Montana-Dakota Utilities Co. / Public Service Commission
Garret Senger / Mitch Armstrong

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Executed Modified Settlement Agreement
Montana-Dakota Utilities Co. / Public Service Commission
Garret Senger / Mitch Armstrong

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Montana-Dakota Utilities Co. / Public Service Commission
Garret Senger / Mitch Armstrong

referred to as Heskett 4. Montana-Dakota provided the direct testimony of Mr. Darcy J. Neigum, Mr. Alan L. Welte and Mr. Travis R. Jacobson along with related information supporting the need and prudence of Heskett 4, the selection process for Heskett 4 and the estimated cost of Heskett 4 with its Application.

On September 16, 2019, Montana-Dakota filed an application, along with supporting information, for deferred accounting treatment of costs related to its proposed retirement of the Lewis & Clark Unit 1, Heskett Unit 1 and Heskett Unit 2 until disposition of its next general electric rate case.

Advocacy Staff conducted discovery and on February 21, 2020, submitted the testimony of Mr. James Heidell with the PA Consulting Group regarding the Company's application in Case Nos. PU-19-306 and PU-19-307. Mr. Heidell recommended that the Commission grant an ADP for Heskett 4 subject to certain qualifications. Advocacy Staff also conducted discovery and on February 21, 2020, submitted testimony by Mr. Joel Jeanson with the PA Consulting Group in Case No. PU-19-317 regarding Montana-Dakota's application for deferred accounting treatment for costs associated with the plant retirements scheduled to occur in 2021 and 2022. Mr. Jeanson recommended that the Commission authorize all identified costs proposed by Montana-Dakota for deferred accounting treatment subject to certain qualifications.

On February 28, 2020, the Company submitted the testimony of Mr. Joseph Geiger adopting the testimony originally filed by Mr. Alan Welte in Case Nos. PU-19-306 and PU-19-307.

On March 4, 2020, the Commission issued its Notice of Consolidated Hearing in the above captioned Cases. Pursuant to the Notice of Consolidated Hearing, the above

captioned Cases were consolidated for hearing on April 30, 2020, and the following issues were identified to be considered: (1) Whether Montana-Dakota's proposed resource addition is prudent; (2) Whether the Commission should grant Montana-Dakota an advance determination of prudence; (3) Whether public convenience and necessity will be served by construction and operation of the facilities; (4) Whether Montana-Dakota is fit, willing and able to provide service; (5) Whether Montana-Dakota's proposed early plant retirements are reasonable and prudent; and (6) Whether Montana-Dakota's proposal for accelerated depreciation should be approved.

II. TERMS OF SETTLEMENT

The Settling Parties agree to the provisions as defined below and supported by the records in the above-entitled matters.

A. Grant of Heskett 4 ADP.

1. Testimony and exhibits and the 2019 Integrated Resource Plan submitted by Montana-Dakota, and analysis conducted by Advocacy Staff, demonstrate that Montana-Dakota has a need for additional generation resources to replace the Lewis & Clark 1, Heskett 1 and Heskett 2 generating units and Heskett 4 is a reasonable and prudent resource addition that will provide cost effective and reliable electric generation capacity for Montana-Dakota and its customers. Heskett 4 is a prudent resource at a total capital expenditure cost up to \$68.7M million excluding AFUDC (Heskett 4 Authorized Amount). Heskett 4 is reasonable and prudent up to the Heskett 4 Authorized Amount. No determination of prudence has been made with respect to costs exceeding \$68.7M.

2. The Settling Parties agree that the Heskett 4 ADP shall be binding for ratemaking purposes in accordance with N.D.C.C. § 49-05-16 and Montana-Dakota may request Commission approval of the actual Heskett 4 cost up to the Heskett 4 Authorized Amount including AFUDC, as allocated to North Dakota, in rates through Montana-Dakota's Generation Resource Recovery Rider Rate 56 or a general rate case.
3. In the event the total actual cost of Heskett 4, excluding AFUDC, exceeds the Heskett 4 Authorized Amount, the Settling Parties agree that Montana-Dakota may seek approval from the Commission to include in rates the capital additions derived from the actual capital expenditures above the Heskett 4 Authorized Amount upon a showing to the Commission that such capital expenditures are reasonable and prudent. The burden of proof to demonstrate the reasonableness of capital expenditures above the Heskett 4 Authorized Amount shall be on Montana-Dakota. Recovery of the total capital cost including AFUDC, as allocated to North Dakota, may occur through Montana-Dakota's Generation Resource Recovery Rider Rate 56 or a general rate case.

B. Grant of Heskett 4 Certificate of Public Convenience & Necessity.

1. Testimony and exhibits submitted by Montana-Dakota, and analysis conducted by Advocacy Staff, demonstrate that Montana-Dakota has the experience and resources necessary to construct, own and operate Heskett 4 and that Heskett 4 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 Heskett 4 and Montana-Dakota is fit, willing and able to provide electric service. A Certificate of Public Convenience and Necessity for Heskett 4 should be issued.

C. Grant of Deferred Accounting - Lewis & Clark 1, Heskett 1 and Heskett 2.

1. The Settling Parties agree Montana-Dakota has met the standard for deferred accounting treatment for the costs associated with the retirement of the Lewis & Clark Unit 1, Heskett 1 and Heskett 2 generating stations.
2. The Settling Parties agree that the costs deferred shall be subject to approval by the Commission in a future application and only those costs above what is currently recovered through rates shall be recoverable.
3. The Settling Parties agree that, for revenue recovery, the annual reduction in revenue requirement resulting from retiring the Lewis & Clark 1, Heskett 1 and Heskett 2 units will offset (be credited against) the accelerated depreciation and decommissioning costs of those units (offset by excess deferred income taxes and including the authorized rate of return applied to the unamortized balance) and the employee related costs (employee related costs shall be recovered without the application of a rate of return to the unamortized balance). Revenue recovery will be included and evaluated in Montana-Dakota's generation resource cost recovery mechanism until the revenue recovery is reflected in base rates in a general rate case.

IV. OTHER TERMS AND CONDITIONS

A. Basis of Settlement.

This Agreement is a negotiated agreement subject to approval by the Commission. This Agreement does not establish any principle or precedent for this or any future proceeding. The Parties reserve for themselves all rights at law and equity not specifically addressed by this Agreement.

B. Support for Settlement.

The Parties agree to affirmatively support and advocate for the Commission's adoption of this Agreement without modification.

C. Effect of Negotiations.

All offers of settlement and discussions related to this Agreement are privileged and may not be used in any manner in connection with proceedings in the above referenced Cases or otherwise, except as provided by law or by mutual agreement of the Parties. In the event the Commission does not adopt this Agreement, it shall not constitute part of the record in this proceeding and no part thereof may be used by any Party for any purpose in the above referenced Cases or in any other.

D. Applicability and Scope.

This Agreement shall be binding on the Parties, and their successors, assigns, agents, and representatives. Consistent with the Commission's settlement guidelines, this Agreement does not set policy or overturn precedent. This Agreement shall not constitute an agreement, admission, or determination by any of the Parties as to the merits of any specific allegation or contention made by the Parties in the above referenced Cases. This Agreement supersedes all previous agreements in the above referenced Cases. This Agreement is not intended to impact the final outcome of any other pending Case before the Commission.

E. Effective Date.

This Agreement shall be effective on the date of the Commission Order approving this Agreement.

F. Modification.

If the Commission modifies or conditions approval of this Agreement, it shall be deemed terminated if either Party files a letter with the Commission within five business days of the parties' receipt of such Order stating that a condition or modification to this Agreement is unacceptable to such Party.

G. Counterparts.

This Agreement may be executed in counterparts by Montana-Dakota and Advocacy Staff, each of which when so executed will be an original, but all of which together will constitute one and the same instrument.

CONCLUSION

The Parties have agreed to the foregoing terms to resolve outstanding issues in the above captioned proceedings and provide for the efficient prosecution of unresolved issues. These terms are a result of negotiations between the Parties, are in the public interest, and will result in just and reasonable rates. For these reasons, the Parties urge the Commission to approve this Agreement.

[SIGNATURE PAGES FOLLOW]

Authorized representatives of the Parties having caused this Settlement Agreement to be duly executed as of the date first set forth above.

Montana-Dakota Utilities Co.

North Dakota Public Service Commission
Advocacy Staff

By: Garout Singer

By: _____

Its: EUP Regulatory Affairs

Its: _____

[SIGNATURE PAGE TO SETTLEMENT AGREEMENT
CASE NOS. PU-19-306, PU-19-307, PU-19-317]

Authorized representatives of the Parties having caused this Settlement Agreement to be duly executed as of the date first set forth above.

Montana-Dakota Utilities Co.

North Dakota Public Service Commission
Advocacy Staff

By: _____

By: *Matthew D. Stoy*

Its: _____

Its: *Counsel*

[SIGNATURE PAGE TO SETTLEMENT AGREEMENT
CASE NOS. PU-19-306, PU-19-307, PU-19-317]