

**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 )



**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into on this 30th day of March 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 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, 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 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. Montana-Dakota may seek recovery of the approved costs through the Generation Resource Recovery Rider.
3. The Settling Parties agree that the accelerated depreciation costs, offset by excess deferred taxes, and decommissioning costs approved to be recovered shall be amortized over 15 years with the authorized rate of return applied.
4. The Settling Parties agree that the employee related costs approved to be recovered shall be amortized over 5 years.

**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: Garret Senger

By: \_\_\_\_\_

Its: Garret Senger  
EVP - Regulatory Affairs,  
Customer Service & Administration

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: Mitchell D. Amstrong

Its: \_\_\_\_\_

Its: Advocacy Staff Counsel

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

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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 1, 2020, I served a copy of the attached:

**Settlement Agreement**

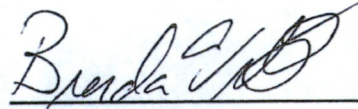
by placing a true copy in a postage paid envelope or envelopes addressed to each person named below, at the address stated below, which is the last known address of the addressee, and by depositing said envelope in the United States mail at Bismarck, North Dakota.

Darrell Nitschke  
Public Service Commission  
600 East Boulevard Avenue, Dept. 480  
Bismarck, ND 58505-0480

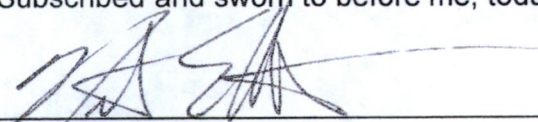
ALJ Timothy J. Dawson  
Administrative Law Judge  
2911 North 14<sup>th</sup> Street, Suite 303  
Bismarck, ND 58503

Mitchell D. Armstrong  
Special Assistant Attorneys General for PSC  
Advocacy Staff  
P.O. Box 460  
Bismarck, ND 58502-0460

Karl Liepitz  
MDU Resource Group  
1200 W. Century Ave  
Bismarck, ND 58503

  
\_\_\_\_\_  
Brenda Vitek

Subscribed and sworn to before me, today, April 1, 2020.

  
\_\_\_\_\_  
Notary Public

NILS EBERHARDT  
Notary Public  
State of North Dakota  
My Commission Expires April 3, 2022