



Public Service Commission State of North Dakota

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December 2, 2021

Mr. Steve Kahl
Executive Secretary
ND Public Service Commission
600 E Boulevard Avenue Dept. 408
Bismarck, ND 58505-0480

via Hand Delivery

Re: Case No. PU-21-373
Montana-Dakota Utilities Co.
Financial Incentive – Power Purchase Agreement
Rates

Dear Mr. Kahl:

Enclosed is a copy of the Staff Response to Application for Protection of Information to be filed in the above captioned case.

Best Regards,

A handwritten signature in blue ink, appearing to read "Brian Johnson".

Brian Johnson
Legal Counsel

Enclosure

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Montana-Dakota Utilities Co.
Financial Incentive – Power Purchase Agreement
Rates

Case No. PU-21-373

STAFF RESPONSE TO APPLICATION FOR PROTECTION OF INFORMATION

On August 18, 2021, Montana-Dakota Utilities Co. (MDU) filed an Application for Protection of Information to protect certain information in the captioned case.

The information for which the Company seeks protection includes the Contract Price and Purchase Price regarding a Power Purchase agreement.

The Company states that this information is commercial information because it is “information pertaining to buying and selling of goods and services that has not been previously publicly disclosed and that if the information were to be disclosed . . . would cause substantial competitive injury to the person from which the information was obtained,” as provided in N.D.C.C. § 44-04-18.4(2)(a).

The Company further states that the LCOE and PPA pricing information is trade secret because it is information that “(1) [d]erives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and (2) [i]s the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information,” as provided in N.D.C.C. § 44-04-18.4(2)(d). The Company further states that the information sought to be protected meets the definition of “trade secret” set forth in N.D.C.C. § 47-25.1-01(4). Such information has been marked as TRADE SECRET in MDU's responses to data requests and in the pre-filed testimony submitted by MDU, or may arise or be discussed in the hearing or hearings in this matter.

The application further states that the information could have economic value to potential vendors, contractors, and suppliers who may desire to bid for PPAs or other generation resources to the Company in the future. Potential suppliers would know the what the Company has paid under existing PPAs. Knowledge of the Company's costs and PPA pricing could allow bidders to potentially determine a floor below which no bidder would submit a price. Such a result could be harmful for the Company's customers, now and in the future.

The confidentiality of this information has been maintained by MDU. The information is not disclosed to the public or to persons other than employees or authorized agents who need to know the information to fulfill their responsibilities in connection with the subject matter of the information.

MDU has requested that this, and similar types of this information, be treated as trade secret in all of NSP's regulatory filings and other sharing of this information with governmental entities.

The persons or entities that would obtain economic value from disclosure or use of the information include investors and potential investors in MDU; entities with which MDU currently conducts or may conduct business; and other utilities. Disclosure of the information sought to be protected would provide these persons and entities prior foreknowledge of information not readily available to the public.

Staff believes that MDU's application satisfies the requirements of the North Dakota Century Code for protection of the information, which is the subject of this request.

For reasons set forth above, Staff recommends that the Commission grant the application of MDU to protect certain information filed in the captioned case.

Dated this 2nd day of December 2021.



Brian Johnson
Special Assistant Attorney General Bar ID 07397
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