

Hamre, John G.

From: Brenda Vitek <bvitek@esattorneys.com>
Sent: Sunday, December 18, 2022 12:37 PM
To: -Info-Public Service Commission; Schuh, John M.; kimrader@radermacherlaw.com
Cc: Paul Sanderson
Subject: RE: Montana-Dakota Utilities Co. - Applied Block Chain - Case No. PU-22-366 and PU-22-370
Attachments: Application for Trade Secret.pdf; MDU7 ESA (Public Version).pdf; MDU12 Revenue Estimate - Data Center (Public version).pdf; MDU15 Rate Comparison (Public version).pdf; MDU7 ESA (PROTECTED INFORMATION – PRIVATE).pdf; MDU12 Revenue Estimate - Data Center (PROTECTED INFORMATION – PRIVATE).pdf; MDU15 Rate Comparison (PROTECTED INFORMATION – PRIVATE).pdf

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Attached for filing and service is MDU's Application for Trade Secret Protection; redacted Exhibits 7, 12, and 15; and Nonredacted Exhibits 7, 12, and 15 marked Protected Information – Private.

Thanks.

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Evenson Sanderson PC
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39 PU-22-370 Filed 12/19/2022 Pages: 11
Prefiled redacted hearing Exhibits MDU-7, MDU-12, and MDU-15
Evenson Sanderson, PC
Paul Sanderson, Evenson Sanderson PC

41 PU-22-366 Filed 12/19/2022 Pages: 11
Prefiled redacted hearing Exhibits MDU-7, MDU-12, and MDU-15
Evenson Sanderson, PC
Paul Sanderson, Evenson Sanderson PC

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HIGH DENSITY CONTRACTED DEMAND RESPONSE ELECTRIC SERVICE AGREEMENT

THIS AGREEMENT made this 1st day of September 2022, by and between APLD ELN-01 LLC [REDACTED], 3811 Turtle Creek Blvd Suite 2100, Dallas, TX 75219 hereinafter referred to as "Customer", and MONTANA-DAKOTA UTILITIES CO., 400 North Fourth Street, Bismarck, North Dakota 58501, hereinafter referred to as "Company".

WITNESSETH:

WHEREAS Company is a public utility engaged in the generation, transmission, and distribution of electric energy for consumption; and

WHEREAS Customer is the owner of a high density data center to be located as shown in Exhibit C and is near the Company's Ellendale 345 Substation near the city of Ellendale, ND; and

WHEREAS Customer desires to purchase electric energy from Company;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein to be kept and performed by the respective parties, the parties hereto agree as follows:

1. CONSTRUCTION OF REQUIRED FACILITIES:

a. The Company shall provide, with the exception of the two (2) 34.5 kV breakers that meet Company specifications which will be supplied by Customer, all labor, materials, and equipment to provide Customer a 34.5 kV dead end structure next to the Southwest corner of the Customer's property line.

b. [REDACTED]

2. [REDACTED]



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[REDACTED]

3. [REDACTED]

[REDACTED]

4. [REDACTED]

[REDACTED]

5. [REDACTED]

[REDACTED]

6. [REDACTED]

[REDACTED]

7. [REDACTED]

[REDACTED]

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[REDACTED]

8. ENERGY SUPPLY: All electric power delivered under this Agreement shall be supplied through a separately metered circuit at whatever primary voltage is available at the point of delivery but not less than 2,400 volts, 60 cycle alternating current, three phase, and Company shall notify Customer of Company Demand Response Events and MISO Capacity and Emergency events as per Paragraph 17.

9. METERS AND METERING: All electric power delivered hereunder shall be metered by Company at the point(s) of delivery shown on Exhibit "C" attached hereto. Company will read the meter(s) and report such meter readings to Customer. Company shall test the meter(s) according to approved rules and tariffs filed with the North Dakota Public Service Commission. Company shall install a recorder in Customer's interruptible circuit to confirm time of interruptions during Demand Response Events. Customer is responsible for cost and installation of the recorder.

10. POWER UTILIZATION: When multiple phase service is provided, electric power shall be taken and used so that the current will be balanced equally on all phases. Whenever the difference between the currents shall exceed ten percent (10%) of the total amount taken from any one phase, either at the time of minimum or maximum demand, the load shall be so arranged that the unbalanced condition will not exceed ten percent (10%).

11. [REDACTED]

[REDACTED]

12. FORCE MAJEURE: The term "Force Majeure" as used herein, means unforeseeable causes beyond the reasonable control of and without fault or negligence of Customer. If Customer, because of Force Majeure, is rendered wholly or partly unable to perform its obligation under this Agreement, which obligation is to interrupt electric service within ten (10) minutes or less after receipt of notification or signal to interrupt service from Company's electric system control center, then Customer shall be excused by the Force Majeure from paying the penalty described in Paragraph 16 but not from paying for services as described in Paragraph 5, provided that:

1. Customer, within two weeks after the occurrence of the Force Majeure, gives Company written notice describing the particulars of the condition or occurrence which resulted in the Force Majeure;

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2.The suspension of performance is of no greater scope nor of longer duration than is required by the Force Majeure;

3.Obligations of Customer which arose before the occurrence causing the suspension of performance are not excused as a result of the occurrence of Force Majeure; and

4.Customer uses its best efforts to remedy its inability to perform.

11. SERVICE LIABILITY: Company shall not be liable to Customer for any loss or damage caused by or resulting from interruptions or the suspension of service under this Agreement provided Company maintained service to Customer in accordance with accepted engineering practices in the operation of electric utilities.

12. REGULATORY APPROVAL: This Agreement is subject to and contingent upon approval of the North Dakota Public Service Commission, with conditions that are acceptable to both parties. Company agrees to make reasonable efforts to file this Agreement within 15 business days of execution. Customer agrees to provide information and support as needed to assist Company filings to the North Dakota Public Service Commission. Further, this Agreement is subject to and contingent on the receipt of a Certificate of Public Convenience and Necessity from the North Dakota Public Service Commission.

13. GOVERNMENT REGULATION: This Agreement is subject to the jurisdiction of the North Dakota Public Service Commission and any present and future applicable laws and rules dealing with public utilities providing electric service. Any provision herein inconsistent with such laws or rules is amended to comply therewith. Nothing herein shall prevent Company from filing changes to its tariff or to any service schedule that would alter the terms and conditions of service hereunder.

14. LIABILITY: As between the parties hereto, Company shall be liable only for accidents occurring by reason of the operation of its lines and equipment and for injury or damage caused by the negligence of Company's employees and representatives. Customer hereby agrees to indemnify and hold Company harmless from any and all liabilities directly or indirectly caused by/from the installation or operation of Customer's Equipment. Company reserves the right to require proof of liability insurance from Customer.

15. TERM: This Agreement shall remain in full force and effect for an initial period extending for five years from the earlier of the commercial operation date or April 1st, 2023, and year to year thereafter until either party cancels the Agreement. Either party may cancel this Agreement at any time after the initial five-year period, provided that no less than one (1) year written notice is furnished to the other party.

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16. BREACH OF AGREEMENT: If Customer breaches material terms of this Agreement, including Rate 45 attached hereto as Exhibit "A" and any amendments thereto, Company may declare the Agreement null and void and terminate Company's obligations hereunder. Notwithstanding the foregoing, Customer shall have 30 days after receipt of notice of default from Company to cure any breach before this Agreement is terminated. If the breach is caused by Customer's failure to comply with a Demand Response Event order from Company, for reasons other than Force Majeure, Customer shall be responsible for reimbursing the Company for any penalties imposed on the Company by the Midcontinent Independent System Operator ("MISO") for the period of non-compliance based on the Customer's performance during a Company Demand Response Event or MISO Emergency Operations Event. After a second failure to perform, within a 12-Month period, the Customer shall be liable for the penalty and may be moved to the otherwise applicable rate.

17. RESOLUTION OF DISPUTTES: Prior to the initiation of arbitration, any controversy, dispute or claim between the parties involving or arising under this Agreement first shall be referred for resolution to a senior representative of each party. A party claiming that a dispute has arisen must give written notice within a reasonable period of time to the other party describing the dispute and designating the party's senior representative. Upon receipt of a notice describing the dispute, the other Party shall within ten (10) business days designate its senior representative to the notifying party. The senior representatives so designated shall attempt to resolve the dispute on an informal basis as promptly as practicable. If the dispute has not been resolved within thirty (30) days after the notifying party's notice was received by the other party, or within such other period as the parties may jointly agree, the parties shall submit the dispute to arbitration in accordance with the arbitration procedure set forth in Section 18.

18. ARBITRATION: Any controversy, dispute or claim involving or arising under this Agreement which cannot be resolved pursuant to Section 16 shall be submitted to binding arbitration by one arbitrator qualified by education, experience or training to render a decision upon the issues in dispute and who has not previously been employed by either party, and does not have a direct or indirect interest in either party or the subject matter of the arbitration. Such arbitrator shall either be mutually agreed upon by the parties within thirty (30) days after written notice from either party requesting arbitration, or failing agreement, the arbitration shall be conducted by a panel of three arbitrators having the qualifications set forth in the preceding sentence, one to be selected by each party and the third arbitrator to be selected by the two arbitrators selected by the parties. If either party fails to notify the other party of the arbitrator selected by it within ten (10) days after receiving notice of

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the other party's arbitrator, or if the two arbitrators selected fail to select a third arbitrator within ten (10) days after notice is given of the selection of the second arbitrator, then such arbitrator shall be selected under the expedited rules of the American Arbitration Association (the "AAA"). The parties shall divide equally the cost of the hearing, and each party shall be responsible for its own expenses and those of its counsel or other representative. The commercial arbitration rules of the AAA shall apply to the extent not inconsistent with the rules specified above. Unless otherwise agreed to by the parties, all arbitrations shall be held in Bismarck, North Dakota.

19. ACCESS: Customer hereby grants Company access to the property of Customer for manual interruptions of service, if necessary, and for the servicing and maintenance of Company's equipment. If Company installs equipment for remote interruption of service, Customer shall comply with Paragraph 3 of the General Terms and Conditions contained in Rate 45. Customer shall provide a visibly open, gang-operated, load break disconnect switch, capable of being locked in an open position that will completely isolate Customer's Equipment from Company's system. Location of the gang-operated load break disconnect switch may also be located on the Company's system. Such disconnect switch shall be installed in a place easily accessible to Company at all times.

TWENTY-FOUR HOUR COMMUNICATIONS: Because of the periodic need to interrupt electric service for a Company Demand Response Event or MISO Emergency Operations Event, Customer shall provide contact information for at least two Customer Representatives at least fifteen (15) days prior to the commercial operation date. The Customer Representatives should be reachable on a 24-hour basis.

Any change in the foregoing names and numbers shall be provided to Company immediately in writing.

20. ASSIGNMENT: With the written approval of Company, which will not be unreasonably withheld, Customer may assign its rights and obligations under this Agreement to any subsequent owner or operator of Customer's facility.

21. NOTICES: Notices required hereunder, other than oral or telephone interruption orders, shall be in writing and shall be sent to the respective addresses below:

To Company:	Vice President – Electric Supply
	Montana-Dakota Utilities Co.
	400 North Fourth Street
	Bismarck, ND 58501

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To Customer:

Chief Financial Officer
Applied Blockchain Inc.
#2100, 3811 Turtle Creek Blvd
Dallas, TX 75219

22. ENTIRE AGREEMENT: This is the entire agreement between the parties hereto and may be amended only by written agreement, properly executed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

COMPANY

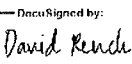
MONTANA-DAKOTA UTILITIES CO.

By: 

Nicole Kivisto
President & CEO

CUSTOMER

APLD ELN-01 LLC

By: 

A70581D9E118169...
David Rench
Chief Financial Officer

Margin and Revenue Estimate - Applied Blockchain Data Processing Center
Pricing using Average MISO Energy Charge for MDU Load Node

Ellendale 345 kV substation

<u>Plant Information</u>			Firm load	
			%	
Total Peak Demand		180,000	5.5%	
Annual Load Factor		95.0%		
Monthly kWh		123,120,000		
Annual kWh		1,477,440,000		
			ESA Contract Rate	Total
ESA Contract Revenue		Projected		
		<u>Annually</u>	<u>Monthly</u>	
MDU Charges	\$	17,603,040	\$	1,466,920
MISO Pass Through Charges	\$	51,685,582	\$	4,307,132
Total Cost				
	\$	69,288,622	\$	5,774,052
All in Average \$/kWh	\$	0.047		

Margin and Revenue Estimate - Applied Blockchain Data Processing Center
Pricing using Average MISO Energy Charge for Ellendale LMP (Day Ahead)

Ellendale 345 kV substation

<u>Plant Information</u>			Firm load	
			%	
Total Peak Demand		180,000	5.5%	
Annual Load Factor		95.0%		
Monthly kWh		123,120,000		
Annual kWh		1,477,440,000		
			ESA Contract Rate	Total
ESA Contract Revenue		Projected		
		<u>Annually</u>	<u>Monthly</u>	
MDU Charges	\$	17,603,040	\$	1,466,920
MISO Pass Through Charges	\$	17,143,034	\$	1,428,586
Total Cost				
	\$	34,746,074	\$	2,895,506
All in Average \$/kWh	\$	0.024		

Montana-Dakota and Dakota Valley Rate Comparison - Data Center

Data Center Load Comparison

Total Peak Demand (KW)	180,000	Total Peak Demand (KW)	180,000
Annual Load Factor	95.0%	Annual Load Factor	95%
Monthly kWh	123,120,000	Monthly kWh	124,830,000
Annual kWh	1,477,440,000 (360 days per year)	Annual kWh	1,497,960,000 (365 Days Per year)

Montana-Dakota ESA - MDU Load Node Average Energy Charge			
Projected			
<u>ESA Contract Revenue</u>	<u>Annually</u>	<u>Monthly</u>	
MDU Charges	\$ 17,603,040	\$	1,466,920
MISO Pass Through Charges	\$ 51,685,582	\$	4,307,132
Total Cost	\$ 69,288,622	\$	5,774,052

Dakota Valley Large Data Center Rate			
Projected			
<u>Rate Revenue</u>	<u>Annually</u>	<u>Monthly</u>	
Base Rate	\$ 2,400	\$	200
Demand Charge (kW)	\$ 46,180,800	\$	3,848,400
Energy Charge (kWh)	\$ 47,671,079	\$	3,972,590
Distribution Tax	\$ 1,198,368	\$	99,864
Total Cost	\$ 95,052,647	\$	7,921,054

Dakota Valley Difference To Montana-Dakota

\$ 25,764,025 \$ 2,147,002

All in Average \$/kWh \$ 0.047

All in Average \$/kWh \$ 0.063

Dakota Valley Margin \$ 937,127

Montana-Dakota ESA - Ellendale LMP Average Pricing			
Projected			
<u>ESA Contract Revenue</u>	<u>Annually</u>	<u>Monthly</u>	
MDU Charges	\$ 17,603,040	\$	1,466,920
MISO Pass Through Charges	\$ 17,143,034	\$	1,428,586
Total Cost	\$ 34,746,074	\$	2,895,506

Dakota Valley Large Data Center Rate with Demand Response credit			
Projected			
<u>Rate Revenue</u>	<u>Annually</u>	<u>Monthly</u>	
Base Rate	\$ 2,400	\$	200
Demand Charge (kW)	\$ 37,540,800	\$	3,128,400
Energy Charge (kWh)	\$ 47,671,079	\$	3,972,590
Distribution Tax	\$ 1,198,368	\$	99,864
Total Cost	\$ 86,412,647	\$	7,201,054

Dakota Valley Difference To Montana-Dakota

\$ 51,666,573 \$ 4,305,548

All in Average \$/kWh \$ 0.024

All in Average \$/kWh \$ 0.058

Dakota Valley Margin \$ 937,127