STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Montana-Dakota Utilities Co.
Electric Service Agreement – Applied Blockchain Approval

Case No. PU-22-371

ORDER

June 6, 2023

Appearances

Commissioners Randy Christmann, Sheri Haugen-Hoffart, and Julie Fedorchak

Paul R. Sanderson, Evenson Sanderson, PC, 1100 College Drive, Suite 5, Bismarck, ND 58501, appearing on behalf of Montana-Dakota Utilities Co.

Brian L. Johnson, Legal Counsel, Public Service Commission, State Capitol, 600 E. Boulevard Avenue, Bismarck, ND 58505, appearing on behalf of Public Service Commission Advocacy Staff.

Stephen A. Campbell, Clark Hill, 500 Woodward Avenue, Suite 3500, Detroit, Mi 48226 appearing on behalf of Intervenor Marathon Petroleum Company LP.

John M. Schuh, General Counsel, Public Service Commission, State Capitol, 600 E. Boulevard Avenue, Bismarck, North Dakota 58505, appearing on behalf of the Public Service Commission Advisory Staff.

Hope L. Hogan, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503 as Procedural Hearing Officer.

Preliminary Statement

On September 21, 2022, Montana-Dakota Utilities Co. (MDU) filed an application for approval of an Electric Service Agreement (ESA) with APLD-ELN-01 LLC (Applied). The ESA provides that Applied would take electric service from MDU under its High Density Contracted Demand Response Rate 45 (Rate 45).

On October 27, 2022, the Commission issued a Notice of Opportunity for Hearing, which provided until December 8, 2022, for receiving written comments or hearing requests. The notice identified the following as issues to be considered:

1. What is the value of MDU's property, used and useful, for the service and convenience of the public in North Dakota?

2. What is the just and reasonable rate of return on MDU's property, used and useful, for the service and convenience of the public in North Dakota?

3. What rates and charges are necessary to provide a just and reasonable rate of return on MDU's property, used and useful, for the service and convenience of the public in North Dakota?

4. Are MDU's rate schedules designed in such a manner that they result in a basis of charge to its customers that is just and reasonable without undue discrimination?

5. Whether the electric service agreement should be approved?

On December 8, 2022, Marathon Petroleum Company LP (Marathon) filed comments.

On January 24, 2023, Applied filed a letter in support of the ESA.

On January 31, 2023, MDU filed an Application to Establish Margin Sharing related to the ESA.

On February 3, 2023, Marathon filed a Petition to Intervene.

On February 22, 2023, the Commission issued an Interim Order approving the ESA on an interim basis. MDU was ordered to use regulatory accounting to track the revenues and expenses resulting from the ESA. The ESA was subject to refund or additional charges pending the outcome. The Commission also approved Marathon's Petition to Intervene.

On March 8, 2023, the Commission issued a Notice of Hearing, scheduling a formal hearing at 8:30 a.m. April 20, 2023, in the Commission Hearing Room, State Capitol, 600 E. Boulevard Avenue, 12th Floor, Bismarck, North Dakota 58505. The notice identified the issues to be considered were:

1. Does the ESA result in just and reasonable rate of return on MDU's property, used and useful, for the service and convenience of the public in North Dakota?

2. Is the ESA designed in such a manner that it results in a basis of charge that is just and reasonable without undue discrimination?

3. Whether the ESA should be approved?

On April 18, 2023, MDU, Advocacy Staff, and Marathon filed a Settlement Agreement resolving all the issues in this proceeding.

On April 20, 2023, the formal hearing was held as scheduled.

Having allowed all interested persons an opportunity to be heard, and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes its:

Findings of Fact

1. MDU is a Delaware corporation, authorized to provide electric service to retail customers in North Dakota.

2. The ESA between MDU and Applied provides for the sale of all electric power required by Applied's high density data center to be located near MDU's Ellendale 345 kV substation near Ellendale, North Dakota. All electric power under the agreement is to be supplied by MDU through a separately metered circuit and pursuant to the MDU's Rate 45. The ESA is in effect for an initial period of five years and will then continue year to year until such time as either party cancels the agreement.

3. The Settlement Agreement proposes a margin sharing agreement that permits MDU to retain a portion of the margin under the ESA with the remainder being passed on to North Dakota customers. The margin sharing would be in addition to certain transmission related revenue that would be credited to customers within Transmission Cost Adjustment Rate 59.

4. The Settlement Agreement proposes an annual Rate 45 margin sharing report. The total margin collected under Rate 45 would be reported, along with the North Dakota customers' share.

5. The customer share of the margin is to be allocated to the rate classes based on the transmission allocation factor from MDU's most recent North Dakota general electric rate case. A per unit credit would then be determined by dividing each rate class's margin sharing amount by the forecasted volumes for each rate class. The margin sharing credit is proposed to appear as a separate line item on each customer's bill based on the usage for that month. MDU proposed a cost of money equal to the three-month Treasury yield on the unrefunded monthly balance.

6. The Settlement Agreement proposes that MDU will work with the Commission Staff to conduct a one-time informational MISO Market study regarding the area Locational Marginal Price impacts of the 180 MW of data center load addition into the Ellendale area on ND customers' fuel and purchased power costs. The details of the study will be worked out and agreed upon between MDU and Commission Staff within 90 days of the Commission's Order. The study may include commissioning a third-party

study to model the MISO Market pricing impact of a 180 MW load addition in the Ellendale, ND, area, which can be used to help calculate potential impacts on ND ratepayers' fuel and purchase power costs. If Commission Staff deems a study to be necessary, MDU and North Dakota customers will split the costs of the study up to $50,000, with the funding dollars coming out of MDU and North Dakota Customer's margin sharing. Any costs of the study over $50,000 will be paid solely by MDU. If the Commission orders any future studies on this issue, the funding for any future studies will be allocated in the same manner as described in this paragraph.

7. During the formal hearing, the Commission raised concerns of impacts to MDU's system from service under the ESA. The concerns were corroborated by testimony from Darcy Neigum, Director of System Operations and Planning for MDU. Mr. Neigum testified that the Applied load has the potential to impact the price of energy in the area. Considering this risk, the Commission finds that conducting the MISO Market study is in the public interest.

8. The Settlement Agreement proposes that the sales volumes, investment and costs associated with providing electric service to Applied under Rate 45 shall be excluded from the jurisdictional allocation calculations. To the extent that the jurisdictional allocations are impacted by Applied's Rate 45 sales volumes, investment, or costs, MDU will not seek regulatory recovery for the resultant change in the jurisdictional allocations. If MDU is required to update its jurisdictional allocation calculations by another state based upon the direct impact of Applied sales volumes, MDU shall defend the position to exclude Applied in the jurisdictional allocation calculation but is not precluded from making a filing with the Commission to request a change in jurisdictional allocation factors or amend the ESA if ordered by another state.

9. The Settlement Agreement proposes MISO energy charges shall be settled separately from the aggregated MDU.MDU pricing node and use the specific MDU.ELLNDL_LD pricing node. MDU will pass through all identifiable MISO related costs to serving Applied, including revenue neutrality uplift and ancillary service charges.

10. The Settlement Agreement proposes that if the cost to disconnect and remove the facilities to serve Applied exceeds the value of salvage, the Company will not seek regulatory recovery of the incremental cost.

11. During the formal hearing, the Commission questioned the possibility of passing the margin sharing credit back to North Dakota customers via the Fuel and Purchased Power Adjustment Rate 58 (Rate 58). This method would provide a more contemporaneous return of the credit and act as a hedge against potential increases to the cost of energy for MDU's other North Dakota customers. The Commission finds that applying the margin sharing credit via Rate 58 is inconsistent with the principles of ratemaking.

From the foregoing Findings of Fact, the Commission makes the following:

Conclusions of Law

1. The Commission has jurisdiction in this proceeding.

2. The ESA and margin-sharing agreement result in a just and reasonable rate of return on MDU's property, used and useful, for the service and convenience of the public in North Dakota.

3. The ESA and margin sharing agreement are designed in such a manner that they result in a basis of charge that is just and reasonable without undue discrimination with one exception. A margin sharing credit returned via Rate 58 will better align the credit in rates with causation and collection.

From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

Order

The Commission Orders:

1. MDU's Electric Service Agreement with APLD-ELN-01 LLC is APPROVED for a term of five years beginning March 4, 2023. After the initial five-year term, the contract must be filed with the Commission for review and approval.

2. The Settlement Agreement, attached to this Order and made a part of this Order is adopted and approved with the exception of the credit mechanism, which shall be a credit in the Fuel and Purchased Power Adjustment Rate 58.

3. MDU shall file for Commission approval within 30 days of this Order a tariff change to the Fuel and Purchased Power Adjustment Rate 58 to enable the credit mechanism.

4. MDU shall conduct the study discussed in paragraph 5 of the Settlement Agreement. MDU shall file a report on the status of the study each month until the results of the study are provided to the Commission for review and possible action.

PUBLIC SERVICE COMMISSION

Sheri Haugen-Hoffart	Randy Christmann	Julie Fedorchak
Sheri Haugen-Hoffart	**Randy Christmann**	**Julie Fedorchak**
Commissioner	**Chair**	**Commissioner**

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

In the Matter of Montana-Dakota Utilities Co. Request to Approve an Electric Service Agreement with APLD-ELN-01 LLC under High Density Contracted Demand Response Rate 45	**Case No. PU-22-371**

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between Montana-Dakota Utilities Co. ("Montana-Dakota" or "Company"), the Advocacy Staff of the North Dakota Public Service Commission ("Advocacy Staff"), and Intervenor Marathon Petroleum Company LP ("Marathon"), collectively referred to as the "Settling Parties". The Settling Parties agree this Settlement Agreement, if approved by the Public Service Commission ("Commission"), would resolve all outstanding issues in this case between the Settling Parties in a manner consistent with the public interest in North Dakota.

PROCEDURAL HISTORY

1. On September 21, 2022, Montana-Dakota filed an application seeking Commission approval of an Electric Service Agreement ("ESA") between Montana-Dakota and APLD-ELN-01 LLC ("Applied" or "Customer") in accordance with the Company's High Density Contracted Demand Response Rate 45. The ESA provides for the sale of electric power to Applied near the Company's Ellendale 345 kV substation near the City of Ellendale. The Applied facility will be a 180-megawatt interruptible load forecasted to use approximately 1.4 billion kilowatt hours per year.

2. On October 27, 2022, the Commission issued a Notice of Opportunity for Hearing, identifying the following issues to be considered in this proceeding:

   1. What is the value of MDU's property, used and useful, for the service and convenience of the public in North Dakota?

   2. What is the just and reasonable rate of return on MDU's property, used and useful, for the service and convenience of the public in North Dakota?

   3. What rates and charges are necessary to provide a just and reasonable rate of return on MDU's property, used and useful, for the service and convenience of the public in North Dakota?

   4. Are MDU's rate schedules designed in such a manner that they result in

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MDU Exhibit 2 - Settlement Agreement - redacted
Montana-Dakota Utilities Co.

EXHIBIT
MDU-2

a basis of charge to its customers that is just and reasonable without undue discrimination?

5. Whether the electric service agreement should be approved?

3. On January 31, 2023, Montana-Dakota filed an Application to Establish Margin Sharing related to the ESA to benefit North Dakota customers, impacted parties, and the Company. [redacted] As part of the ESA, Montana-Dakota's North Dakota customers would not experience any increase in costs as a result of the ESA with Applied.

4. On February 3, 2023, Marathon filed a Petition to Intervene. Marathon had previously filed comments to the Application on December 8, 2022.

5. On February 22, 2023, the Commission issued an Interim Order approving the ESA on an interim basis subject to refund or additional charges pending the final outcome of the proceeding. Montana-Dakota was ordered to use regulatory accounting treatment to track the revenues and expenses resulting from the ESA. The Commission also approved Marathon's Petition to Intervene.

6. On March 8, 2023, the Commission issued a Notice of Hearing setting the hearing in this case for April 20, 2023. The issues to be considered at the hearing are:

1. Does the ESA result in just and reasonable rate of return on MDU's property, used and useful, for the service and convenience of the public in North Dakota?

2. Is the ESA designed in such a manner that it results in a basis of charge that is just and reasonable without undue discrimination?

3. Whether the ESA should be approved?

7. In advance of the hearing, settlement discussions were held between the Settling Parties pursuant to the Commission's Settlement Guidelines dated January 4, 1995. As a result of the settlement discussions, the Settling Parties reached this Settlement Agreement.

8. The Settlement Agreement is supported by the administrative record. Accordingly, the Settling Parties jointly recommend the Commission issue an Order approving this Settlement Agreement in its entirety, without conditions or modifications.

TERMS OF SETTLEMENT AGREEMENT

1. Electric Service Agreement. The Settling Parties recommend the

Commission approve the ESA between Montana-Dakota and Applied. The Settling Parties agree the ESA is designed in such a manner that it results in a basis of charge that is just and reasonable without undue discrimination.

2. Margin Sharing Agreement. [redacted] The Settling Parties agree this margin sharing agreement results in a just and reasonable rate of return on Montana-Dakota's property, used and useful, for the service and convenience of the public in North Dakota.

3. Customer Credit. Montana-Dakota will file annually, no later than February 1, an annual Rate 45 margin sharing report. Within the report, the total margin collected under Rate 45 will be reported, along with the amount to be shared with the Company's North Dakota electric customers. The total margin sharing amount would then be allocated to the Company's various rate classes based on the transmission allocation factor from Montana-Dakota's most recent North Dakota general electric rate case. A per unit credit would then be determined by dividing each rate class's margin sharing amount by the forecasted volumes for each rate class. The Margin Sharing Credit will be reflected as a separate line item on each customer's bill based on the usage for that month.

Montana-Dakota will provide a cost of money equal to the three-month Treasury yield on the unrefunded monthly balance.

4. Reporting Requirement. The Settling Parties agree Montana-Dakota will work with the Commission Staff to conduct a one-time informational MISO Market study regarding the area LMP pricing impacts of the 180 MW of data center load addition into the Ellendale area on ND ratepayers' fuel and purchased power costs. The details of the study will be worked out and agreed upon between Montana-Dakota and Commission Staff within 90 days of acceptance of this Settlement Agreement by the Commission. The study may include commissioning a third-party study to model the MISO Market pricing impact of a 180 MW load addition in the Ellendale, ND area which can be used to help calculate potential impacts on ND ratepayers' fuel and purchase power costs. If Commission Staff deems a study to be necessary, Montana-Dakota and North Dakota customers will split the costs of the study up to $50,000, with the funding dollars coming out of Montana-Dakota and North Dakota Customer's margin sharing. Any costs of the study over $50,000 will be paid solely by Montana-Dakota. If the Commission orders any future studies on this issue, the Settling Parties agree the funding for any future studies will be allocated in the same manner as described in this paragraph.

5. Jurisdictional Allocation. Montana-Dakota agrees that the sales volumes, investment and costs associated with providing electric service to Applied Digital under Rate 45 shall be excluded from the jurisdictional allocation calculations. To the extent that the jurisdictional allocations are impacted by Applied Digital's Rate 45 sales volumes, investment or costs, Montana-Dakota shall not seek regulatory recovery for the resultant

change in the jurisdictional allocations. This provision shall not preclude Montana-Dakota's ability to update its integrated system jurisdictional allocators to reflect any and all changes exclusive of the direct impact of Applied Digital. If Montana-Dakota is required to update its jurisdictional allocation calculations by another state based upon the direct impact of Applied Digital sales volumes, Montana-Dakota shall defend the position to exclude Applied Digital in the jurisdictional allocation calculation but is not precluded from making a filing with the Commission to update the jurisdictional allocation factors or amend the ESA if ordered by another state.

6. MISO charges. MISO energy charges shall be settled separately from the MDU.MDU pricing node and use the MDU.ELLNDL_LD CP pricing node pricing. Montana-Dakota agrees it will pass through all identifiable MISO related costs to serving Applied, including revenue neutrality uplift and ancillary service charges.

7. Montana-Dakota agrees that if the cost to disconnect and remove the facilities to serve Applied exceeds the value of salvage, the Company will not seek regulatory recovery of the incremental cost.

OTHER TERMS AND CONDITIONS

A. Basis of Settlement. It is agreed this Settlement Agreement is a negotiated settlement agreement subject to approval by the Commission. This Settlement Agreement does not establish any principle or precedent, nor adopt or recommend any specific type or amount of expense or rate base for this or any future proceeding, nor any principle or precedent regarding rate design methodology.

B. Effect of the Settlement Negotiations. It is understood and agreed that 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 this case or otherwise, except as provided by law. In the event the Commission does not approve this Settlement 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 this case or otherwise.

C. Applicability and Scope. This Settlement Agreement shall be binding on the Settling Parties, and their successors, assigns, agents, and representatives. Consistent with the Commission's settlement guidelines, this Settlement Agreement does not set policy or overturn precedent. This Settlement Agreement shall not in any respect constitute an agreement, admission or determination by any of the Settling Parties as to the merits of any specific allegation or contention made by the Settling Parties in this proceeding.

D. Effective Date. This Settlement Agreement shall be effective on the date of the Commission Order approving the Settlement Agreement.

E. Modification. If the Commission's Order modifies or conditions approval of this Settlement Agreement, it shall be deemed terminated if any Settling Party files a letter with the Commission within three (3) business days of notice of such Order stating that a condition or modification to the Settlement Agreement is unacceptable to such party.

CONCLUSION

The Settling Parties agree the terms of this Settlement Agreement are a result of negotiations between the Settling Parties, and are in the public interest. For these reasons, the Settling Parties urge the Commission to approve the Settlement Agreement.

Dated this 17th day of April, 2023.

MONTANA-DAKOTA UTILITIES CO.

By: Garret Senger
Its:

Garret Senger
Executive Vice President – Regulatory Affairs,
Customer Service & Administration

Dated this 17th day of April, 2023.

NORTH DAKOTA PUBLIC SERVICE ADVOCACY STAFF

By: ____________________
Its: Brian Johnson
Special Assistant Attorney General Bar ID 07937
North Dakota Public Service Commission
600 East Boulevard Avenue Dept. 408
Bismarck ND, 58505
701-328-2407

Dated this 17th day of April, 2023.

MARATHON PETROLEUM COMPANY LP
By: MPC Investment LLC, its general partner

By: ______________________________
Its: SVP, GFVC

MP JLH SS

Approved as to form.

PUBLIC DOCUMENT - NOT PUBLIC (OR PRIVILEGED) DATA HAS BEEN EXCISED