



*A Subsidiary of MDU Resources Group, Inc.*

400 North Fourth Street  
Bismarck, ND 58501  
701-222-7900  
www.montana-dakota.com

October 2, 2023

Executive Secretary  
North Dakota Public Service Commission  
State Capitol Building  
Bismarck, ND 58505-0480

Re: APLD ELN-02 Electric Service Agreement  
Case No. PU-23-\_\_\_\_\_

Montana-Dakota Utilities Co. (Montana-Dakota or Company), herewith submits for Commission approval an original and seven (7) copies of an Electric Service Agreement (Agreement) between Montana-Dakota and APLD ELN-02 LLC (Applied Digital or Customer) in accordance with paragraph 1 of the General Terms and Conditions provision of the Company's High Density Contracted Demand Response Rate 45 schedule that states "[t]he customer shall execute an electric service agreement with the Company which shall be filed and approved by the North Dakota Public Service Commission." Select provisions of the Agreement and this transmittal letter contain trade secret information and therefore, in accordance with N.D. Century Code §69-02-09-02, an Application for Trade Secret Protection is included herein as Attachment A. A single un-redacted copy of the trade secret information is being provided in a sealed envelope marked "Protected Information - Private".

This is the second High Density Contracted Demand Response Rate 45 (Rate 45) Electric Service Agreement (ESA or Agreement) entered into by and between Montana-Dakota and Applied Digital. The first agreement was filed on September 21, 2022 in Case No. PU-22-371 and approved by the Commission on June 6, 2023. This second ESA was entered into on September 25, 2023 [REDACTED]

[REDACTED]. An application for a Certificate of Public Convenience and Necessity for electric service to this second facility is also being filed with the Commission under its own cover letter. This second Ellendale facility is within the Company's service territory as provided for in the Service Area Agreement entered into by and between Montana-Dakota and Dakota Valley Electric Cooperative filed with the Commission on July 20, 2023 in Case No. PU-23-272.

Applied Digital is a publicly traded company who designs, develops and operates next-generation data centers across North America that provide digital infrastructure solutions to the rapidly growing high performance computing (HPC) industry. This new

facility will mark the fourth facility within the state for Applied Digital and the second facility at Ellendale and is expected to host HPC resources for the growing artificial intelligence industry. The new facility is expected to be energized Fall 2024.

The Agreement, provided herein as Attachment B, provides for the sale of all electric power required by the data center to be located near the Company's Ellendale 345 kV substation near the city of Ellendale, North Dakota and is adjacent to Applied Digital's first Ellendale data center facility, as shown on the map included as Exhibit C to the ESA. The Agreement provides that:

[REDACTED]

The Agreement shall remain in effect for an initial period of five years from the earlier of the commercial operation date or September 1, 2024. The agreement may be extended upon mutual agreement of both parties for an additional five year term subject to approval of the Commission with conditions acceptable to both parties.

Montana-Dakota believes the attached Agreement meets the requirements outlined in High Density Contracted Demand Response Rate 45 and that the electric service

provided under the Agreement will provide a net benefit to all North Dakota customers. Therefore Montana-Dakota respectfully requests Commission approval of the attached Electric Service Agreement with Applied Digital.

Montana-Dakota has included a check in the amount of \$10,000.00 for the filing fee in accordance with the requirements of Section 49-05-05 of the North Dakota Century Code.

Please refer all inquiries regarding this filing to:

Mr. Travis R. Jacobson  
Director of Regulatory Affairs  
Montana-Dakota Utilities Co.  
400 North Fourth Street  
Bismarck, North Dakota 58501  
[Travis.Jacobson@mdu.com](mailto:Travis.Jacobson@mdu.com)

Also please send copies of all written inquiries, correspondence, and pleadings to:

Mr. Paul Sanderson  
Vice President, Chief Legal Officer & Secretary  
MDU Resources Group, Inc.  
P.O. Box 5650  
Bismarck, North Dakota 58506-5650  
[Paul.sanderson@mduresources.com](mailto:Paul.sanderson@mduresources.com)

Montana-Dakota respectfully requests that this filing be accepted as being in full compliance with the filing requirements of this Commission.

Sincerely,



Travis R. Jacobson  
Director of Regulatory Affairs

Attachments

cc: Garret Senger  
Paul Sanderson

# **Attachment A**

## **Application for Trade Secret Protection**

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

In the Matter of MONTANA-DAKOTA )  
UTILITIES CO.'s Request to Approve )  
an Electric Service Agreement with ) Case No. PU-23-\_\_\_\_  
APLD ELN-02 LLC under High Density )  
Contracted Demand Response Rate 45 )

APPLICATION FOR TRADE SECRET PROTECTION

Pursuant to N.D. Admin. Code § 69-02-09-01, Montana-Dakota Utilities Co. (Montana-Dakota) respectfully requests that the Commission issue a trade secret protective order under N.D. Admin. Code § 69-02-09-04 and N.D. Cent. Code §44-04-18.4(1 & 2). The purpose of the requested protective order is to protect against public disclosure of trade secrets as defined by N.D. Cent. Code § 47-25.1-01(4) .

I.

The information for which the Company seeks trade secret protection includes the following items:

- Transmittal Letter – includes select provisions from Electric Service Agreement that have been identified as trade secret.
- Attachment B – select provisions of the Electric Service Agreement containing rate- and cost-related information as well as information related to the customer's operational details.

High Density Contracted Demand Response Rate 45 provides for an individualized rate structure that is reflective of each customer's load characteristics but also ensures the recovery of any incremental costs incurred by the Company for the provision of electric service to such customer. Therefore, it should be noted that the information presented in the above identified documents includes confidential pricing and cost information and has been marked "TRADE SECRET". The information should not be disclosed or released to the public and that, if the information were released, competitors would be able to benefit from the information to the detriment of the

Company and its customers. Energy bills for facilities housing high density computer processing technology can be significant and therefore subject to competition, not only locally but throughout the globe.

II.

The above-referenced information is not publicly available and is confidential business information prepared specifically for Montana-Dakota. Vendors and competitors would have an opportunity to obtain economic value from disclosure or use of the information, to the detriment of Montana-Dakota. If publicly available, vendors could use the information to their advantage in contract negotiations, while competitors could use the information to leverage their positions in the marketplace to Montana-Dakota's detriment.

In accordance with N.D. Admin. Code § 69-02-09-02, one copy of the trade secret material is provided in the enclosed sealed envelope labeled PROTECTED INFORMATION – PRIVATE.

Dated this 2<sup>nd</sup> day of October 2023.

MONTANA-DAKOTA UTILITIES CO.



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Travis R. Jacobson  
Director of Regulatory Affairs

# **Attachment B**

## **Electric Service Agreement**

HIGH DENSITY CONTRACTED DEMAND RESPONSE ELECTRIC SERVICE AGREEMENT

THIS AGREEMENT made this 25<sup>th</sup> day of September 2023, by and between APLD ELN-02 LLC, 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 230 kV Trans 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 all labor, materials, and equipment to provide Customer service to a dead end structure at Customer's property line as Shown in Exhibit C.

b. [REDACTED]

c. [REDACTED]

2. [REDACTED]



[REDACTED]

6. [REDACTED]

[REDACTED]

7. [REDACTED]

[REDACTED]

8. [REDACTED]

[REDACTED]

9. 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



[REDACTED]

13. 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 17 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;
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.

14. 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.

15. REGULATORY APPROVAL: This Agreement is subject to and contingent upon approval of the NDPSC, with conditions that are acceptable to both parties. Company agrees to make reasonable efforts to file this Agreement within 75 business days of execution. Customer agrees to provide information and support as needed to assist Company filings to the NDPSC. Further, this Agreement is subject to and contingent on the receipt of a Certificate of Public Convenience and Necessity from the NDPSC.

16. GOVERNMENT REGULATION: This Agreement is subject to the jurisdiction of the NDPSC 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.

17. 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.

18. TERM: This Agreement shall remain in full force and effect for a period extending for five (5) years from the earlier of the commercial operation date or September 1<sup>st</sup>, 2024. This Agreement may be extend upon mutual agreement of both Parties for an additional five (5) year term subject to approval of the NDPSC with conditions acceptable to both Parties. The Parties agree that all terms and conditions of this Agreement will extend to additional term unless mutually agreed changes by the Parties are determined necessary.

19. TERMINATION: This Agreement may be terminated by the Customer for any reason prior to the commercial operation date, at which time the Customer shall pay the Company for all expenses, subject to Section 1, incurred by the Company for executing its obligations under this Agreement. Company may terminate this Agreement should Customer not submit payments as described in Sections 1. Company may terminate this Agreement if commercial operation is not achieved prior to March 31, 2025, unless mutually agreed by the Parties to extend the commercial operation date.

20. 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 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.

21. RESOLUTION OF DISPUTES: 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 19.

22. ARBITRATION: Any controversy, dispute or claim involving or arising under this Agreement which cannot be resolved pursuant to Section 20 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 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.

23. 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.

24. 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.

25. 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, subject to any required approval by the NDPSC.

26. 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

To Customer: Chief Financial Officer  
Applied Digital Corporation  
#2100, 3811 Turtle Creek Blvd  
Dallas, TX 75219

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

27. Governing Law and Venue: This agreement shall be governed by and construed in accordance with the laws of the State of North Dakota. Any litigation arising out of or relating to this Agreement that is not resolved in arbitration will be conducted exclusively in federal or state courts in the State of North Dakota and the Parties agree and consent to jurisdiction in North Dakota.

28. 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 and CEO

CUSTOMER

APLD ELN-02 LLC

  
A76581005118168

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

David Rench  
Chief Financial Officer

# Exhibit A

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



## Montana-Dakota Utilities Co.

400 N 4<sup>th</sup> Street  
Bismarck, ND 58501

### State of North Dakota Electric Rate Schedule

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NDPSC Volume 5  
Original Sheet No. 30

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#### HIGH DENSITY CONTRACTED DEMAND RESPONSE Rate 45

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#### Availability:

In all communities served for electric service to data center-type facilities housing high density computer processing technology where customers have (1) an expected demand of at least 10,000 Kw per month metered at a single delivery point and (2) an expected minimum load factor of 85%. Company must be able to interrupt customer's service under this rate schedule for up to 200 hours annually or as included in the electric service agreement. Customers who do not maintain these service requirements will have their service moved to the otherwise applicable rate schedule.

#### Billing:

As specified in the electric service agreement entered into by and between the Company and customer and approved by the North Dakota Public Service Commission. Customers taking service under this rate schedule shall be billed any and all incremental costs required to provide electric service to customers each month.

#### Payment:

Bills will be considered past due if not paid by the due date shown on the bill. Past due bills are subject to a late payment charge in accordance with the provisions of Rate 100 or any amendments or alterations thereto.

#### General Terms and Conditions:

1. The customer shall execute an electric service agreement with the Company which shall be filed and approved by the North Dakota Public Service Commission. Any changes to a customer's bill that were not identified or anticipated at the time the agreement was entered into with the customer shall be included in an addendum to the agreement and filed with the North Dakota Public Service Commission.
2. The electric service agreement shall have a minimum term of three years but not exceed five years.
3. The electric service agreement shall include
  - a. The number of hours a customer may be interrupted in an annual period.

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Date Filed: June 12, 2023

Effective Date: Service rendered on and  
after July 1, 2023

Issued By: Travis R. Jacobson  
Director - Regulatory Affairs

Case No.: PU-22-194

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



## Montana-Dakota Utilities Co.

400 N 4<sup>th</sup> Street  
Bismarck, ND 58501

### State of North Dakota Electric Rate Schedule

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NDPSC Volume 5  
Original Sheet No. 30.1

#### HIGH DENSITY CONTRACTED DEMAND RESPONSE Rate 45

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- b. The length of time (in minutes) in which the customer must interrupt service following receipt of Company signal.
  - c. The firm load amount not subject to interruption.
  - d. The deposit amount required prior to the commencement of service under this rate schedule.
4. The Company reserves the right to require the customer to install adequate equipment so that at all times it can operate its facilities to maintain a power factor between 97% lagging and 97% leading.
5. The customer is responsible for the remote terminal unit (RTU) equipment, if applicable, installation and upgrade costs located between the customer's generator, or load control system, and the Company's energy management control system. The Company shall notify the customer when an RTU upgrade is required and the customer shall be given the opportunity to decide whether the RTU upgrade (RTU upgrade event) is installed. If the RTU upgrade is not installed, the customer's Rate 45 service shall be terminated and the customer moved to the otherwise applicable rate.
6. The Company may request the customer to interrupt at any time during an annual period beginning June 1 of each year and ending May 31 of the following year.
7. The penalty for non-performance when the Company requests the customer to interrupt will be the greater of \$10.00 per Kw applicable to the demand specified in the electric service agreement with the Company or the appropriate reallocation of any penalties imposed on the Company by the Midcontinent Independent System Operator (MISO) during the period of non-performance. 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.

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Date Filed: June 12, 2023

Effective Date: Service rendered on and  
after July 1, 2023

Issued By: Travis R. Jacobson  
Director - Regulatory Affairs

Case No.: PU-22-194



**Montana-Dakota Utilities Co.**

400 N 4<sup>th</sup> Street  
Bismarck, ND 58501

**State of North Dakota  
Electric Rate Schedule**

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NDPSC Volume 5  
Original Sheet No. 30.2

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**HIGH DENSITY CONTRACTED DEMAND RESPONSE Rate 45**

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8. The Company may request a summer and winter performance test each year, lasting up to one hour in length, to test the customer's interruption capability. Scheduled performance tests shall not count against the hour limit identified in the customer's electric service agreement. Two failures to perform, within a 12-month period, may result in the customer being moved to the otherwise applicable rate.
9. Additional terms and conditions may be added or amended from time-to-time with written notice to the customer to comply with MISO's load modifying resource (LMR) eligibility for the Company's utilization. The customer shall have the option of accepting the additional program rules provided by the Company or be moved to the otherwise applicable rate.
10. The Company shall require a contribution in aid of construction (CIAC) from the customer, in advance of the construction of any facilities, in the amount of the Company's estimated cost of installing and furnishing such service facilities, including the cost to disconnect and remove the same facilities. The final billing will reflect credit for the salvage value of materials used in providing electric service to customer's facilities. Any deficiency in such advance payment shall be paid by the customer upon presentation of a bill by the Company. Any amount deposited in excess of final billing by the Company will be refunded to the customer.
11. The foregoing schedule is subject to Rates 100-112 and any amendments or alterations thereto or additional rules and regulations promulgated by the Company under the laws of the state.

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<b>Date Filed:</b> June 12, 2023	<b>Effective Date:</b> Service rendered on and after July 1, 2023
<b>Issued By:</b> Travis R. Jacobson Director - Regulatory Affairs	<b>Case No.:</b> PU-22-194

EXHIBIT B

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
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### Exhibit C

