



A Subsidiary of MDU Resources Group, Inc.

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

December 26, 2024

Executive Secretary
North Dakota Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480

**Re: Request for Authorization to Defer External Legal Expenses into a
Regulatory Asset
Case No. PU-24-___**

Montana-Dakota Utilities Co. (Montana-Dakota) herewith submits an original and seven (7) copies of its request to the North Dakota Public Service Commission (Commission) for authorization to defer external legal expenses related to congestion litigation and to record those deferred expenses into a regulatory asset.

Background

Montana-Dakota has customer load located within what is known as the Northwest North Dakota (NWND) Load Pocket. The NWND Load Pocket is within a portion of Southwest Power Pool's (SPP) system that experiences a transmission constraint because it has more load than it has import transmission capacity. For much of 2023, the NWND Load Pocket had approximately 1,500 megawatts (MW) of peak load but only 1,000 MW of importing transmission capability. Montana-Dakota has 150 MW of load and two 115 kV transmission lines (Montana-Dakota SPP Network Facilities) within the NWND Load Pocket. Under the terms of the MDU-SPP Settlement, SPP may use the Montana-Dakota SPP Network Facilities to provide transmission service under the SPP Tariff, rendering all Montana-Dakota service in the NWND Load Pocket service within the SPP transmission network.

In February 2023, the Atlas Power Data Center (Atlas) in Williston, North Dakota (also within the NWND Load Pocket) was commissioned. At the time of commissioning, Atlas had a 90 MW load. By April 2023, Atlas's load was estimated at around 200 MW. Atlas is a customer of Mountrail Williams Electric Cooperative, which is a member of Basin Electric. The additional 200 MW of load from Atlas caused Basin Electric's gasfired generating units to run more frequently than in the past. This increased runtime led to the unavailability of these gas turbines due to the fact that the additional runtime depleted the available hours of the units under their air permits, and also because additional maintenance outages were required for the units. The cumulative impact of the additional load from Atlas, decreased

gas turbine availability, and periods of reduced output from local wind farms resulted in a pre-contingent overload of the Charlie Creek to Watford City Line in anticipation of the loss of the Basin Electric 345 kV line from Charlie Creek to Patent Gate.

In response to this potential overloading, SPP initiated congestion management on a market-to-market basis (M2M Coordination) on the Charlie Creek to Watford City Line. By August 2023, Montana-Dakota began experiencing a spike in market congestion charges from both SPP and the Midcontinent Independent System Operator (MISO) assumedly a result of the constraint on the Charlie Creek to Watford City Line. MISO's Independent Market Monitor (IMM) identified the M2M congestion payments as "unjustified" in its Summer 2023 IMM Quarterly Report and stated that improper congestion management resulted in \$57 million of congestion charges associated with the Charlie Creek to Watford City Line constraint since April in its Fall 2023 IMM Quarterly Report. The MISO IMM further noted that the Charlie Creek to Watford City Line produces only small impacts and M2M Coordination will not and cannot relieve those impacts.

Montana-Dakota estimates that the amount of unjustified duplicative market congestion payments it paid to MISO and SPP for coordination of the Charlie Creek to Watford City Line was \$18 million during 2023 and was later updated to approximately \$21 million.

The NWND Load Pocket reached 1,700 MW of peak load in January 2024, which further exacerbated the issues on the transmission system in this area. In the absence of permanent corrective action, it is possible that Montana-Dakota's customers may be subject to continued and ongoing spikes in market congestion charges from both SPP and MISO in the future.

Complaint Filed with FERC

On January 23, 2024, Montana-Dakota filed a Complaint asking the Federal Energy Regulatory Commission (FERC) in Docket No. EL24-061 for an Order finding that SPP and MISO have violated the terms of the Joint Operating Agreement between MISO and SPP and the Settlement Agreement between Montana-Dakota, SPP and MISO by conducting unwarranted M2M Coordination of congestion on the Charlie Creek to Watford City Line and engaged in unjust and unreasonable coordination practices resulting in Montana-Dakota (and therefore Montana-Dakota's customers) overpaying for duplicative congestion charges. MISO filed a similar Complaint against SPP in FERC Docket No. EL24-085. FERC ultimately rejected both Complaints.

On October 10, 2024, Montana-Dakota requested that the FERC grant rehearing and direct the relief requested in the January 23, 2024 Complaint. The request for rehearing was denied.

Montana-Dakota believes that FERC erred in its initial decision in Docket Nos. EL24-061 and EL24-085 and the associated rehearing requests. As noted earlier, Montana-Dakota is also concerned that without a favorable outcome in its Complaint in Docket No. EL24-061 that the mechanism which caused the Charlie Creek to Watford City Line constraint could reoccur in the future due to the potential load additions announced by Basin Electric and its members. The failure of FERC to overturn SPP's view of congestion management in the NWNLD Load Pocket under the MISO-SPP JOA has significant implications for Montana-Dakota's North Dakota customers.

It is Montana-Dakota's view that the Company will likely prevail in an appeal of FERC's decision and customers will receive refunds of duplicative market congestion charges. For that reason, Montana-Dakota plans to file a Petition for Review with the Eighth Circuit Court of Appeals. The Petition will request a review of the two interrelated Orders in Docket Nos. EL24-061 and EL24-085 and the associated denial of rehearing requests with an anticipated filing date in early January 2025.

Recovery of Congestion Costs

The congestion charges incurred by Montana-Dakota have been included in the Company's monthly and annual Fuel and Purchased Power Adjustment Rate 58 filings. To prevent a significant increase in the monthly Rate 58 charge to customers, Montana-Dakota filed in Case No. PU-23-330 to waive the monthly filing requirement, thereby providing stability in customers' cost of energy. The Commission approved the Company's request on October 24, 2023. In March 2024, in Case No. PU-24-010, Montana-Dakota requested recovery of the congestion charges over a non-standard 24-month period, also to mitigate and smooth these costs increases for its customers. This request was approved by the Commission on March 27, 2024.

External Legal Costs

Montana-Dakota has incurred nearly \$550,000 in external legal fees associated with its previously mentioned Complaint in FERC Docket No. EL24-061 and the associated rehearing request. Montana-Dakota expects that it will spend an additional \$500,000 associated with the Petition for Review with the Eighth Circuit Court of Appeals. Montana-Dakota's North Dakota jurisdictional share is approximately 73% of total costs incurred.

Request for Deferral, Establishment of Regulatory Asset

Montana-Dakota's external legal fees resulting from its filings at the FERC represent extra costs incurred outside the usual course of business. As noted above, the Company has been authorized to recover the congestion charges as a part of Fuel and Purchased Power costs from customers and, Montana-Dakota's

recovery of duplicative congestion charges, if successful, would be provided as a credit to customers through the same mechanism. Given these unusual and infrequent costs have been incurred for the benefit of customer, Montana-Dakota now requests the Commission allow deferred accounting and the creation of a regulatory asset for the external legal fees incurred with its Complaint and external legal fees that will be incurred to file the Petition for Review with the Eighth Circuit Court of Appeals.

Montana-Dakota expects that, if successful, North Dakota customers would receive the benefit of duplicative charges received less external legal fees incurred. In the event the Company does not prevail, Montana-Dakota will request recovery of the external legal fees in a separate filing.

In summary, Montana-Dakota has incurred and anticipates a significant level of future external legal fees related to improper congestion management in the NWND Load Pocket. The Company is concerned that, without a favorable decision in EL24-061, its customers will be subject to ongoing congestion charges. The congestion charges are currently being recovered from customers through the Fuel and Purchased Power Adjustment. Damages recovered, if successful, as a result of the Company's actions are for the benefit of customers. Therefore, Montana-Dakota now requests for deferred accounting and the creation of a regulatory asset for the external legal fees.

Please contact me at 701.222.7855 or travis.jacobson@mdu.com with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Travis R. Jacobson". The signature is written in a cursive style with a large initial 'T'.

Travis R. Jacobson
Director of Regulatory Affairs

cc: J. Schuh, North Dakota Public Service Commission