

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Montana-Dakota Utilities Co.**  
**Deferred Accounting – Congestion Litigation**  
**Application**

**Case No. PU-24-388**

**ORDER**

**July 16, 2025**

**Preliminary Statement**

On December 26, 2024, Montana-Dakota Utilities Co. (MDU) filed an application for deferred accounting treatment for incurred and future external legal expenses associated with the congestion litigation related to their Northwest North Dakota (NWND) Load Pocket.

On January 8, 2025, the Commission issued a Notice of Opportunity for Hearing (Notice) that provided until February 24, 2025, for receiving comments or requests for hearing. The Notice identified the issue to be considered in this proceeding is whether the Commission should grant deferred accounting treatment for the costs of the litigation. No responses were received.

On March 26, 2025, the Commission discussed this matter with MDU during an Informal Hearing.

On April 11, 2025, MDU filed supplemental information requested during the Informal Hearing.

**Discussion**

MDU's application states that it has incurred approximately \$21 million in costs related to congestion on the Charlie Creek flow gate during 2023.

MDU anticipated this issue due to MDU's NWND Load Pocket being serviced by Basin Electric Power Cooperative's (Basin) transmission system. When Basin joined Southwest Power Pool (SPP) in 2015, MDU filed comments and ultimately reached a settlement agreement with Basin to address these concerns at that time.

MDU stated the Atlas Power Data Center (Atlas), a new customer load approved by both Basin and SPP, had added 200 MW of load to an already transmission-constrained system. MDU identified this as the proximate cause of the congestion charges. MDU's April 11, 2025, supplemental filing indicated MDU's load had decreased

by approximately 7.7% between 2018 and 2024 which further supports their contention that Basin's load was responsible for the congestion.

On January 23, 2024, MDU filed a complaint with the Federal Energy Regulatory Commission (FERC) asserting that SPP and the Midcontinent Independent System Operator (MISO) had violated the terms of their Joint Operating Agreement and the terms of the settlement agreement between MDU, SPP and MISO by conducting unwarranted market-to-market (M2M) coordination on the Charlie Creek to Watford City line, resulting in duplicative charges of \$21 million.

On October 10, 2024, MDU requested rehearing and direct relief from FERC, which was denied. MDU subsequently filed a Petition for Review with the Eighth Circuit Court of Appeals, from which no response has yet been received. MDU estimated the total external legal expenses incurred at the time of this application to be approximately \$550,000, with an additional \$500,000 expected related to the appeal, for a total of \$1,050,000. MDU has requested deferred accounting treatment to allow them to recover these expenses.

Having considered the matter, the Commission finds these expenses were prudently incurred and the potential recovery of these expenses would entirely benefit customers rather than shareholders. Therefore, the Commission issues the following:

### Order

The Commission Orders:

1. MDU's application for deferred accounting treatment for external legal expenses related to this case is APPROVED.
2. MDU will recover these expenses through the Fuel and Purchased Power Adjustment utilizing actual expenses paid by the month they were paid.
3. MDU must file an amended application for any expenses exceeding \$1,050,000 that it wishes to recover.

### PUBLIC SERVICE COMMISSION

  
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Commissioner

  
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