

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF the Petition of
Montana-Dakota Utilities Co., a Division of
MDU Resources Group, Inc., for Certification
of Eligible Renewable Resources and
Community Renewable Energy Resources

UTILITY DIVISION
DOCKET NO. D2012.3.24

MOTION IN LIMINE

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. ("Montana-Dakota") respectfully moves the Commission, *in limine*, for the entry of a order controlling the remainder of these proceedings as described herein. It integrates with its motion its brief in support of the motion.

BACKGROUND

This matter was previously decided by the Commission in its Order 7221, issued on July 10, 2012. On July 19, 2012, Montana-Dakota challenged the order both on procedural and substantive grounds. To resolve the procedural challenge, the Commission granted reconsideration of its order, and stayed it pending the outcome of a contested case hearing. Notice of Commission Action dated August 8, 2012.

On September 10, 2012, the Commission issued Procedural Order 7221a to govern the contested case proceedings in the docket, setting the matter for a contested case hearing to be held on November 9, 2012. Although the Montana Consumer Counsel has intervened in docket, it pre-filed no testimony, and indicated that it did not need to attend, and would not attend, the November 9, 2012 hearing. The only testimony in this proceeding is the pre-filed testimony of Mr. Darcy Neigum, and Ms. Theresa Addison, filed in support of the relief requested by Montana-Dakota in the proceeding.

As of this writing, there is a very adverse weather report for the night before and day of the hearing, one which raises the possibility of unsafe travel conditions. Since there are no adverse witnesses which it needs to cross examine at hearing, Montana-Dakota does not need to physically attend a hearing to protect its fair hearing rights. A contested case decision based upon a stipulated record is sufficient and acceptable to Montana-Dakota as a reasonable manner of proceeding in this docket.

REQUESTED ORDER *IN LIMINE*

Montana-Dakota respectfully requests that the Commission issue an order, *in limine*, which specifies as follows:

- (1) That the record in this case, for purposes of rendering a contested case decision in accordance with the Montana Administrative Procedures Act, Sections 2-4-601, MCA *et seq*, shall consist of:
 - (A) The pre-filed testimony of Mr. Darcy Neigum and Ms. Theresa Addison, and;
 - (B) The Data Responses previously submitted by Montana-Dakota in response to Commission discovery.
- (2) That the contested case hearing scheduled on November 9, 2012, be permanently vacated.
- (3) That Montana-Dakota will submit a final brief in support of its position on or before November 30, 2012.

Counsel for the Montana Consumer Counsel has authorized counsel for Montana-Dakota to represent to the Commission that it has no objection to the grant of this motion.

CONCLUSION

The Commission should grant the requested Motion *in Limine*.

Dated this 7th day of November 2012.

HUGHES, KELLNER, SULLIVAN & ALKE, PLLP

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Attorneys for Montana-Dakota Utilities

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that a copy of the foregoing **MOTION *IN LIMINE*** was served upon the following by mailing a true and correct copy thereof on this 7th day of November 2012, addressed as follows:

**MONTANA CONSUMER COUNSEL
PO BOX 201703
HELENA MT 59620-1703**

John Alke
John Alke