

Michael Green
Wiley Barker
CROWLEY FLECK PLLP
900 N. Last Chance Gulch, Suite 200
Helena, MT 59601
Phone: (406) 449-4165
Fax: (406) 449-5149

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

IN THE MATTER OF the Application of)	REGULATORY DIVISION
Montana-Dakota Utilities Co., a Division of)	
MDU Resources Group, Inc., for Authority to)	DOCKET NO. D2015.6.51
Establish Increased Rates for Electric Service in)	
the State of Montana)	
)	

MONTANA-DAKOTA UTILITIES CO.'S MOTION FOR AN ORDER PROTECTING
INFORMATION REQUEST IN DATA REQUEST PSC-018

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. ("Montana-Dakota"), by and through its counsel, hereby submits to the Montana Public Service Commission ("Commission") this Motion for Protective Order and Brief in Support. This motion is filed pursuant to Admin. R. Mont. 38.2.5001, *et seq.* Montana-Dakota requests a protective order be issued to protect confidential and proprietary information responsive to data request PSC-018. Montana-Dakota integrates into its motion a brief in support.

Montana-Dakota also offers the Affidavits of Darcy J. Neigum, Director of System Operations and Planning for Montana-Dakota, and Stephen Peluso, Vice President of Project

Origination at ALLETE Clean Energy, Inc. (“ACE”), in support of this motion. Mr. Neigum and Mr. Peluso are qualified to testify regarding these issues.

FACTUAL AND PROCEDURAL BACKGROUND

As part of its regular business activities, Montana-Dakota submitted a request for proposal regarding the purchases of capacity and wind energy on March 25, 2013 (“RFP”). Several potential wind projects offered responses to the RFP, including Thunder Spirit Wind, LLC (“Thunder Spirit”). Following a review of responses to the RFP, Montana-Dakota selected Thunder Spirit because it represented the best opportunity for an energy resource based upon its price, contract terms and location.

Montana-Dakota entered into a standard “mutual confidentiality agreement” with all potential wind projects that expressed interest in responding to the RFP (“Confidentiality Agreement”), including Thunder Spirit. A sample copy of that Confidentiality Agreement is attached to the Neigum Affidavit as Exhibit A. Montana-Dakota entered into Confidentiality Agreements with all potential wind projects that expressed interest in responding to the RFP to allow the potential wind projects to candidly provide Montana-Dakota with the highly confidential and proprietary information Montana-Dakota needed to make an optimal business decision and provide Montana energy consumers with the most efficient energy at the best available prices.

Pursuant to the terms of the Confidentiality Agreement, Montana-Dakota is required to keep the following information it received from the potential wind projects secret and confidential: “all information, technical data or know-how, whether written, oral, visual, electronic or in any other form (which may include, without limitation, strategic project development plans, financial information, business plans and records, and project information and records,) disclosed, acquired, or generated as a result of or in connection with the RFP

process” (collectively, “Confidential Information”). Montana-Dakota is required to protect the secrecy of the aforementioned Confidential Information it received in response to the RFP “in a manner no less restrictive than the manner that [Montana-Dakota] protects its own confidential information.” Thus, at the time Thunder Spirit and other potential wind projects submitted their responses to the RFP, Thunder Spirit and the other potential wind projects understood that Montana-Dakota would protect the secrecy of their Confidential Information, including in any proceedings where public disclosure of their confidential and proprietary information was sought.

Montana-Dakota also has signed different versions of Power Purchase Agreements with Thunder Spirit as well as an Asset Purchase Agreement with ACE Wind LLC, a subsidiary of ACE, regarding the Thunder Spirit project. Those agreements all contain terms designating certain information, including proposals and negotiations, the terms of the agreements, the actual charges billed under the agreement and technical and other information regarding the Project provided by Seller to Buyer, as confidential. Montana-Dakota agreed to provide ACE Wind LLC with an opportunity to seek a protective order before disclosing this information. In the interests of staff and Commission time and administrative efficiency, Montana-Dakota seeks a protective order for the information designated as confidential under those agreements, supported by the Peluso Affidavit.

Following a thorough legal and factual examination, Montana-Dakota and its legal counsel, as well as ACE, have determined that some of the information the PSC has requested in data request PSC-018 is confidential and entitled to protection from public disclosure pursuant to Admin. R. Mont. 38.2.5001, *et seq.* Neigum Affidavit, ¶ 14; Peluso Affidavit, ¶ 10. Specifically, Montana-Dakota believes that Montana-Dakota’s analysis of confidential and proprietary pricing information, financial information, and technical information provided in

response to a RFP by third-parties pursuant to confidentiality agreements should be protected under Montana law. Montana-Dakota believes that the terms of power purchase agreements and asset purchase agreements that Montana-Dakota has entered into with third-parties pursuant to confidentiality agreement also should be protected from public disclosure as required by Montana law.

Montana-Dakota and ACE have considered that the Commission is a public agency and that there is a constitutional presumption of access to documents and information in the Commission's possession. Neigum Affidavit, ¶ 13; Peluso Affidavit, ¶ 9. Montana-Dakota and ACE understand they bear the burden of establishing a *prima facie* showing of confidentiality, factually and legally, and that confidential information is protected only upon Commission approval. Neigum Affidavit, ¶ 13; Peluso Affidavit, ¶ 9.

Montana-Dakota respectfully submits to the Commission that the confidential information identified below is entitled to protection because it contains information that qualifies as a "trade secret" under the Commission's administrative rules, or that it is "otherwise legally protectable." *See* Admin. R. Mont. 38.2.5007(4)(b). Montana law establishes that the Commission "may issue a protective order when necessary to preserve trade secrets . . . or other information that must be protected under law, as required to carry out its regulatory functions." Mont. Code Ann. § 69-3-105(2).

CONTACT PERSON

As required by ARM 38.2.5007(3)(a), communications may be made to the undersigned counsel, at the information listed below, regarding this motion and the items to be protected.

IDENTIFICATION OF CONFIDENTIAL INFORMATION

Montana-Dakota seeks a protective order preventing the disclosure of documents responsive to data request PSC-018. Specifically, Montana-Dakota seeks a protective order preventing the disclosure of the following (collectively, “Confidential Information”):

- 1) Montana-Dakota’s analysis of the Thunder Spirit and other wind proposals submitted in response to the March 2013 RFP;
- 2) Montana-Dakota’s description of the price increases and other PPA amendments that would have been necessary for Thunder Spirit Wind to obtain financing; and
- 3) Montana-Dakota’s description of the differences between the amended PPA Montana-Dakota executed with ACE and the PPA initially executed with Thunder Spirit Wind, as well as the terms of the Asset Purchase Agreement executed with ACE.

FACTUAL AND LEGAL BASIS FOR PROTECTION

The Commission should grant Montana-Dakota’s motion and protect the Confidential Information from public disclosure because it qualifies as “trade secret” under the Commission’s administrative rules or is “otherwise legally protectible.” *See* Admin. R. Mont. 38.2.5007(2). The Confidential Information also complies with the definition of “trade secret” found at Montana Code Annotated § 30-14-402(4) (“‘Trade secret’ means information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy”). Thus, the Confidential Information contains “constitutionally protected property rights.” *Great Falls Tribune Co. v. Great Falls Pub. Sch., Bd. of Trustees, Cascade Cnty.*, 255 Mont. 125, 130, 841 P.2d 502, 505 (1992).

The PSC historically has granted motions to protect information similar to the Confidential Information identified above. For example, the PSC has granted motions to protect information contained in power purchase agreements (“PPA”). *See, e.g.*, D.2001.9.123, Order No. 6371 (protecting “pricing provisions” in a PPA); *see also* D.2001.7.93, Order No. 6361 (protecting “supply bid information resulting from . . . PPA”); *see also* D.2001.10.137, Order No. 6383 (protecting “proprietary and confidential information contained in the Power Purchase Agreement”); *see also* D.2005.2.14, Order No. 6633 (protecting “Exhibit A” attached to PPA). Furthermore, the PSC consistently has protected bidding information submitted to regulated utilities in response to a request for proposal (“RFP”). *See* D.2001.7.93, Order No. 6361 (protecting “supply bid information resulting from [utility’s] Request for Proposals (RFP)”); *see also* D.2013.10.77, Order No. 7334c (protecting “project pricing, organizational structure, energy projections, financial projections, site control, environmental impacts and attributes, and the Site Map” contained in a RFP); *see also* D2015.2.18, Order No. 7395a (protecting information eleven different developers submitted in response to RFP). Finally, the PSC generally has protected “pricing information and technical information” submitted by third-parties to regulated utilities. *See, e.g.*, Docket No. D2013.10.77, Order No. 7334d; *see also* Docket No. D2015.2.18, Order No. 7395c.

Under Montana law, “it is a well-established principle of agency law that an agency has a duty to either follow its own precedent or provide a reasoned analysis explaining its departure.” *Waste Mgmt. Partners of Bozeman, Ltd. v. Montana Dep’t of Pub. Serv. Regulation*, 284 Mont. 245, 257, 944 P.2d 210, 217 (1997).

Furthermore, the Confidential Information satisfies all of the necessary criteria for a protective order under the Commission’s rules. It is: (1) information; (2) secret; (3) subject to efforts reasonable under the circumstances to maintain its secrecy; (4) not readily ascertainable by proper

means; and (5) derives independent economic value, or a competitive advantage is derived, from its secrecy. Admin. R. Mont. 38.2.5007(4)(b).

1. The Confidential Information qualifies as “information” under the Commission’s rules.

Under the Commission’s administrative rules, “information” is defined as:

knowledge, observations, opinions, data, facts, and the like, whether recorded or communicated in writing, orally, electronically, or otherwise, and whether provided through pleadings, reports, exhibits, testimony, work papers, or similar items or attachments to such items, or in response to discovery, subpoena, order, audit, investigation, or other request.

Admin. R. Mont. 38.2.5001(3).

The Confidential Information is comprised of knowledge, data and facts that are communicated in writing. Neigum Affidavit, ¶ 7; Peluso Affidavit, ¶ 4. Therefore, the Confidential Information satisfies the first element necessary to qualify for a protective order.

2. The Confidential Information is secret.

The Commission’s administrative rules do not define the term “secret.” The ordinary meaning of “secret” is “something that is kept or meant to be kept unknown or unseen by others.” OXFORD DICTIONARY OF ENGLISH 1608 (3d ed. 2010). The Uniform Trade Secrets Act defines “trade secret” as

information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from **not being generally known to and not being readily ascertainable by proper means by other persons** who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Mont. Code Ann. § 30-14-402(4) (emphasis added).

Montana-Dakota and ACE do not share the Confidential Information or disclose it to the public. Neigum Affidavit, ¶¶ 8, 10; Peluso Affidavit, ¶ 6. Its disclosure is not required by law and is not published or otherwise made publicly available. Neigum Affidavit, ¶ 10; Peluso Affidavit, ¶ 6. Montana-Dakota and ACE have adopted reasonable measures to maintain the

secrecy of the Confidential Information. Neigum Affidavit, ¶ 11; Peluso Affidavit, ¶ 7. As a result, the Confidential Information is not generally known and is not readily ascertainable by other persons. Neigum Affidavit, ¶ 10; Peluso Affidavit, ¶ 6. Therefore, it satisfies the “secrecy” element necessary for a protective order under Admin. R. Mont. 38.2.5007(4)(b)(iii).

3. The Confidential Information is subject to reasonable efforts under the circumstances to maintain its secrecy.

Montana-Dakota and ACE do not share or disclose the Confidential Information. Neigum Affidavit, ¶ 10; Peluso Affidavit, ¶ 6. Montana-Dakota and ACE have enacted policies to protect the secrecy of the Confidential Information. Neigum Affidavit, ¶ 11; Peluso Affidavit, ¶ 7. Montana-Dakota and ACE do not share or disclose the Confidential Information and only those Montana-Dakota and/or ACE employees and representatives with a direct need to know are authorized to access the Confidential Information. Neigum Affidavit, ¶¶ 10-11; Peluso Affidavit, ¶¶ 6-7. Furthermore, Montana-Dakota and ACE have adopted reasonable security measures to maintain the secrecy of the Confidential Information. Neigum Affidavit, ¶ 11; Peluso Affidavit, ¶ 7. For these reasons, the Confidential Information is subject to efforts reasonable under the circumstances to maintain its secrecy.

4. The Confidential Information is not readily ascertainable by proper means.

The Confidential Information is not within the public domain. Neigum Affidavit, ¶ 10; Peluso Affidavit, ¶ 6. Only those Montana-Dakota and ACE employees and representatives with a direct need to know are authorized to access it. Neigum Affidavit, ¶ 11; Peluso Affidavit, ¶ 7. Additionally, Montana-Dakota and ACE have adopted reasonable security measures to ensure that the Confidential Information is not readily ascertainable. Neigum Affidavit, ¶ 11; Peluso Affidavit, ¶ 7. Therefore, Montana-Dakota’s Confidential Information is not readily ascertainable by proper means, as required by Admin. R. Mont. 38.5.5007(4)(b)(v).

5. The Confidential Information derives independent economic value from its secrecy or a competitive advantage is derived from its secrecy.

The Commission's administrative rules establish that Montana-Dakota and/or ACE must derive some economic value or competitive advantage from the Confidential Information's secrecy. *See* Admin. R. Mont. 38.2.5007(4)(b)(vi). Montana-Dakota, ACE, and the third-party entities who responded to Montana-Dakota RFPs obtain economic value and a competitive advantage from keeping the Confidential Information secret. Neigum Affidavit, ¶¶ 15-17; Peluso Affidavit, ¶ 11. Montana-Dakota is able to solicit highly confidential and proprietary information from third-party vendors due to Montana-Dakota's close working relationship with those third-parties, as well as Montana-Dakota's investment of the substantial time and money necessary to establish those essential business relationships. Neigum Affidavit, ¶ 15.

Disclosing the Confidential Information to the public would damage the economic interests of Montana-Dakota because Montana-Dakota would be less likely to receive highly confidential and proprietary information in response to future RFPs; thus, Montana-Dakota would not have access to all information necessary to make good business decisions. Disclosing the Confidential Information to the public also would damage the economic interests of ACE, Thunder Spirit, and the other third party wind projects by providing their competitors with an advantage they would not otherwise have and that would allow them to know and undercut those wind projects' proposals in future bidding processes. Neigum Affidavit, ¶ 16; Peluso Affidavit, ¶ 12.

Finally, disclosure of the Confidential Information ultimately would harm the bidding process, and those who benefit from it—Montana-Dakota's Montana energy consumers. Maintaining the confidentiality of proprietary information allows Thunder Spirit, and other bidders, to provide candid bidding information. This in turn allows Montana Dakota to make optimal business decisions, which ideally provide Montana energy consumers with the most

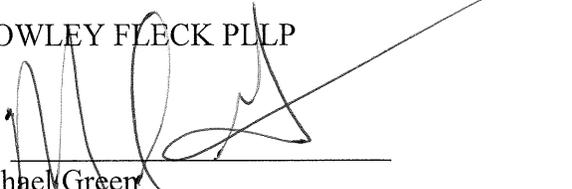
efficient energy at the best available prices. Public disclosure of this information would have a chilling effect on future bidding processes as bidding parties would be reluctant to submit confidential information for consideration. As a result, Montana energy consumers would ultimately be harmed. Neigum Affidavit, ¶ 17.

CONCLUSION

For the foregoing reasons, Montana-Dakota respectfully requests the Commission grant its motion for protective order.

Dated this 9th day of October, 2015.

CROWLEY FLECK PLLP

By: 

Michael Green
900 N. Last Chance Gulch, Suite 200
Helena, MT 59601
Telephone: (406) 449-4165
Fax: (406) 449-5149
Email: mgreen@crowleyfleck.com

Attorneys for Montana-Dakota

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2015, the foregoing Montana-Dakota Utilities Co.'s Motion For An Order Protecting Information Request in Data Request PSC-018 was served via electronic and U.S. mail on:

Mr. Will Rosquist
Utility Division
Montana Public Service Commission
1701 Prospect Avenue
PO Box 202601
Helena, MT 59620-2601
kwhitney@mt.gov

Thorvald A. Nelson
Holland & Hart LLP
6380 South Fiddlers Green Circle
Suite 500
Greenwood Village, CO 80111
tnelson@hollandhart.com

Nikolas S. Stoffel
Holland & Hart LLP
6380 South Fiddlers Green Circle
Suite 500
Greenwood Village, CO 80111
nsstoffel@hollandhart.com

Albert Clark
142 Buccaneer Drive
Leesburg, GL 34788
aclark154@yahoo.com

John Wilson
J W Wilson & Associates Inc.
1601 N. Kent Street, Suite 1104
Arlington, VA 22209-2105
john@jwwa.com

Robert Nelson
Monica Tranel
Montana Consumer Counsel
111 North Last Chance Gulch, Suite 1B
Box 201703
Helena, MT 59620-1703
robnelson@mt.gov
mtranel@mt.gov

Charles Magraw
501 8th Ave
Helena, MT 59601
c.magraw@bresnan.net

David Wooley
Keyes, Fox & Wiedman LLP
436 14th Street, Suite 1305
Oakland, CA 94612
dwooley@kfwlaw.com

Kelly Crandall
Keyes, Fox & Wiedman LLP
1400 16th St
16 Market Square, Suite 400
Denver, CO 80202
kcrandall@kfwlaw.com

Jack Pous
14 Shell Avenue SE
Ft. Walton Beach, FL 32548
jpous@ducinc.net

Electronic Service Only:
ppenn@hollandhart.com
aclee@hollandhart.com
crmayers@hollandhart.com



CROWLEY FLECK PLLP

Service Date: October 9, 2015

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

IN THE MATTER OF MONTANA-DAKOTA) REGULATORY DIVISION
UTILITIES CO., a Division of MDU Resources)
Group, Inc., for Authority to Establish Increased) DOCKET NO. D2015.6.51
Rates for Electric Service)
)
)
)

AFFIDAVIT OF Stephen Peluso

STATE OF MN)
)
) :ss
County of St Louis)

I, Stephen Peluso declare and state under penalty of perjury as follows:

1. I am the VP Project Director of ALLETE Clean Energy, Inc. ("ACE"). I am familiar with the information the Public Service Commission (the "Commission") is seeking in this docket in data request PSC-018. I have personal knowledge of the facts stated herein. Any opinions expressed herein are based on my experience, as well as my knowledge of the information.

2. ACE's principal place of business is 30 West Superior St
Duluth, MN 55802
Suite 200

3. As part of its regular business activities, ACE acquired the equity in Thunder Spirit Wind, LLC ("Thunder Spirit"), and entered into binding agreements (the "Agreements") regarding the sale of the Thunder Spirit generating project to Montana-Dakota Utilities (the "Project").

4. The Agreements contain information which ACE considers confidential, including proposals and negotiations; the terms of the agreements, the actual charges billed under the agreement and technical and other information regarding the Project provided by ACE and

Thunder Spirit to Montana-Dakota including pricing and commercial terms of a competitive nature. (the "Confidential Information").

5. The Agreements contain provisions protecting the Confidential Information from disclosure, requiring notice and an opportunity to seek a protective order prior to disclosure. Montana-Dakota has agreed to seek a protective order through its own motion in this matter to avoid the need for ACE or Thunder Spirit to seek intervention. This affidavit is submitted to establish that the Confidential Information is entitled to protection in this matter.

6. ACE has not otherwise shared the Confidential Information or disclosed the Confidential Information to the public. Disclosure of the Confidential Information is not required by law and is not published or otherwise made public. Thus, the Confidential Information is not readily ascertainable by proper means.

7. ACE has adopted reasonable measures to maintain the secrecy of the Confidential Information: securing its business offices and facilities, restricting access via individual access cards, locking main building doors, locking file cabinets, password-protecting computer files, limiting access to information within ACE to only those with a need to know, and using automated e-mail encryption. ACE also shreds confidential documents that are no longer in use. Thus, the Confidential Information is subject to efforts reasonable under the circumstances to maintain its secrecy.

8. In this docket, the Montana Public Service Commission ("PSC") has requested public disclosure of information regarding the Agreements in data request PSC-018(b).

9. ACE has considered that the Montana Public Service Commission ("Commission") is a public agency and that there is a constitutional presumption of access to documents and information in the Commission's possession. ACE understands Montana-Dakota

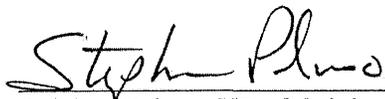
bears the burden of establishing a *prima facie* showing of confidentiality, factually and legally, and that confidential information is protected only upon Commission approval.

10. Prior to requesting Montana-Dakota seek a protective order, ACE engaged in a thorough legal and factual examination to determine whether the information about the Agreements requested in data request PSC-018 is confidential and proprietary. ACE has made a good faith determination that the Agreements contain confidential and proprietary trade secrets entitled to protection against public disclosure pursuant to Admin R. Mont. 38.2.5001, *et. seq.*

11. The Confidential Information derives independent economic value from its secrecy, and ACE also derives economic value from its secrecy as is relates to future competitive bidding circumstances.

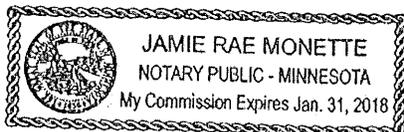
12. Disclosing the Confidential Information to the public would damage ACE's economic interests by providing its competitors with an advantage they would not otherwise have by disclosing ACE's pricing and cost structures.

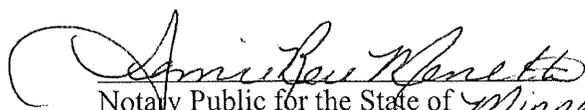
Dated this 9th day of October, 2015.


Stephen Peluso, VP of Origination

SUBSCRIBED and SWORN to before me this 9 day of October 2015.

(SEAL)




Notary Public for the State of Minnesota
Printed Name: Jamie Rae Monette
Residing at: Dakota, MN
My Commission Expires: 1/31/2018

Service Date: October 9, 2015

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

IN THE MATTER OF MONTANA-DAKOTA) REGULATORY DIVISION
UTILITIES CO., a Division of MDU Resources)
Group, Inc., for Authority to Establish Increased) DOCKET NO. D2015.6.51
Rates for Electric Service)
)
)

AFFIDAVIT OF DARCY J. NEIGUM

STATE OF NORTH DAKOTA)
)
) :ss
County of Burleigh)

I, Darcy J. Neigum, declare and state under penalty of perjury as follows:

1. I am the Director of System Operations and Planning for Montana-Dakota Utilities Co. ("Montana-Dakota"), a Division of MDU Resources Group, Inc. As Director of System Operations and Planning, I have managerial responsibility for overseeing the day-to-day operations of Montana-Dakota's electric control center and System Operations & Planning Department. I am familiar with the information the Public Service Commission (the "Commission") is seeking in this docket in data request PSC-018. I have personal knowledge of the facts stated herein. Any opinions expressed herein are based on my experience, as well as my knowledge of the information.

2. My principal place of business is 400 North Fourth Street, Bismarck, North Dakota 58501.

3. As part of its regular business activities, Montana-Dakota submitted a request for proposal regarding the purchases of capacity and wind energy on March 25, 2013 ("RFP").

4. Several potential wind projects offered responses to the RFP, including Thunder Spirit Wind, LLC (“Thunder Spirit”). Following a review of responses to the RFP, Montana-Dakota selected Thunder Spirit because it represented the best opportunity for an energy resource based upon its price, contract terms and location.

5. Montana-Dakota entered into a standard “mutual confidentiality agreement” with all potential wind projects that expressed interest in responding to the RFP (“Confidentiality Agreement”), including Thunder Spirit. A copy of that Confidentiality Agreement is attached to this affidavit as Exhibit A.

6. Montana-Dakota entered into Confidentiality Agreements with all potential wind projects that expressed interest in responding to the RFP to allow the potential wind projects to candidly provide Montana-Dakota with the highly confidential and proprietary information Montana-Dakota needed to make an optimal business decision and provide Montana energy consumers with the most efficient energy at the best available prices.

7. Pursuant to the terms of the Confidentiality Agreement, Montana-Dakota is required to keep the following information it received from the potential wind projects secret and confidential: “all information, technical data or know-how, whether written, oral, visual, electronic or in any other form (which may include, without limitation, strategic project development plans, financial information, business plans and records, and project information and records,) disclosed, acquired, or generated as a result of or in connection with the RFP process” (collectively, “Confidential Information”).

8. Pursuant to the terms of the Confidentiality Agreement, Montana-Dakota is required to protect the secrecy of the aforementioned Confidential Information it received in

response to the RFP “in a manner no less restrictive than the manner that [Montana-Dakota] protects its own confidential information.”

9. Thus, at the time Thunder Spirit and other potential wind projects submitted their responses to the RFP, Thunder Spirit and the other potential wind projects understood that Montana-Dakota would protect the secrecy of their Confidential Information, including in any proceedings where public disclosure of their confidential and proprietary information was sought.

10. Montana-Dakota has not otherwise shared the Confidential Information or disclosed the Confidential Information to the public. Disclosure of the Confidential Information is not required by law and is not published or otherwise made public. Thus, the Confidential Information is not readily ascertainable by proper means.

11. Montana-Dakota has adopted reasonable measures to maintain the secrecy of the Confidential Information: securing its business offices and facilities, restricting access via individual access cards, locking main building doors, locking file cabinets, password-protecting computer files, and using automated e-mail encryption. Montana-Dakota also shreds confidential documents that are no longer in use. Thus, the Confidential Information is subject to efforts reasonable under the circumstances to maintain its secrecy.

12. In this docket, the Montana Public Service Commission (“PSC”) has requested public disclosure of “MDU’s analysis of the Thunder Spirit and other wind proposals submitted in response to the March 2013 RFP” in data request PSC-018(b).

13. Montana-Dakota has considered that the Montana Public Service Commission (“Commission”) is a public agency and that there is a constitutional presumption of access to documents and information in the Commission’s possession. Montana-Dakota understands it

bears the burden of establishing a *prima facie* showing of confidentiality, factually and legally, and that confidential information is protected only upon Commission approval.

14. Prior to requesting this protective order, Montana-Dakota engaged in a thorough legal and factual examination to determine whether the information requested in data request PSC-018(b) is confidential and proprietary. With the assistance of legal counsel, Montana-Dakota has made a good faith determination that the documents responsive to data request PSC-018(b) contain confidential and proprietary trade secrets entitled to protection against public disclosure pursuant to Admin R. Mont. 38.2.5001, *et. seq.*

15. The Confidential Information derives independent economic value from its secrecy, and both Montana-Dakota and the potential wind projects that provided Confidential Information to Montana-Dakota also derive economic value from its secrecy. Montana-Dakota is able to solicit highly confidential and proprietary information from third-party vendors due to Montana-Dakota's close working relationship with those third-parties, as well as Montana-Dakota's investment of the substantial time and money necessary to establish those essential business relationships.

16. Disclosing the Confidential Information to the public would damage the economic interests of Montana-Dakota because Montana-Dakota would be less likely to receive highly confidential and proprietary information in response to future RFPs; thus, Montana-Dakota would not have access to information necessary to make good business decisions. Disclosing the Confidential Information to the public also would damage the economic interests of Thunder Spirit and the other third party wind projects by providing their competitors with an advantage they would not otherwise have and that would allow them to know and undercut those wind projects's proposals in future bidding processes.

17. Finally, disclosure of the Confidential Information ultimately would harm the bidding process, and those who benefit from it—Montana-Dakota's Montana energy consumers. Maintaining the confidentiality of proprietary information allows Thunder Spirit, and other bidders, to provide candid bidding information. This in turn allows Montana Dakota to make optimal business decisions, which ideally provide Montana energy consumers with the most efficient energy at the best available prices. Public disclosure of this information would have a chilling effect on future bidding processes as bidding parties would be reluctant to submit confidential information for consideration. As a result, Montana energy consumers would ultimately be harmed.

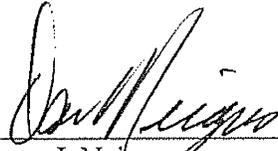
18. Montana-Dakota has also signed different versions of Power Purchase Agreements with Thunder Spirit as well as an Asset Purchase Agreement with ACE Wind LLC, a subsidiary of Allete Clean Energy, Inc., regarding the Thunder Spirit project. Those agreements all contain terms designating certain information, including proposals and negotiations, the terms of the agreements, the actual charges billed under the agreement and technical and other information regarding the Project provided by Seller to Buyer, as confidential. Montana-Dakota agreed to provide ACE Wind LLC with an opportunity to seek a protective order before disclosing this information.

19. In the interests of staff and Commission time and administrative efficiency, Montana-Dakota seeks a protective order for the information designated as confidential under those agreements, supported by the separate Affidavit of Stephen Peluso, Vice President of Project Origination at ALLETE Clean Energy, Inc.

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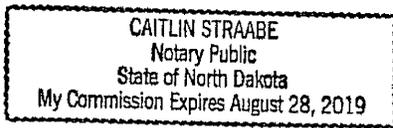
Dated this 9th day of October, 2015.



Darcy J. Neigum
Director of System Operations and Planning
Montana-Dakota Utilities Co.

SUBSCRIBED and SWORN to before me this 9th day of October 2015.

(SEAL)



Notary Public for the State of North Dakota, Burleigh
Printed Name: Caitlin Straabe
Residing at: Burleigh County
My Commission Expires: 8/28/2019

Exhibit C – Form of Confidentiality Agreement

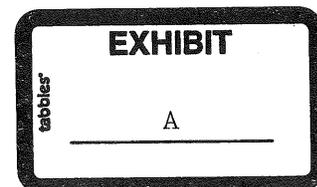
MUTUAL CONFIDENTIALITY AGREEMENT

Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc., having its principal place of business at 400 North 4th Street, Bismarck, ND 58501 ("Montana-Dakota") and _____, having its principal place of business at _____ ("Respondent"), are discussing details related to the Respondent's reply to a Request for Proposal ("RFP") that Montana-Dakota has issued regarding the purchases of capacity and energy dated October 1, 2012. In the course of the discussions about the RFP each party may disclose certain confidential or proprietary information ("Proprietary Information") to the other party.

For purposes of this Mutual Confidentiality Agreement, Proprietary Information shall mean all information, technical data or know-how, whether written, oral, visual, electronic or in any other form (which may include, without limitation, strategic project development plans, financial information, business plans and records, and project information and records,) disclosed, acquired, or generated as a result of or in connection with the RFP process. Proprietary Information shall also include this Mutual Confidentiality Agreement and the terms and conditions set forth herein.

A. In consideration of Montana-Dakota and Respondent agreeing to supply each other Proprietary Information relating to the RFP process and in consideration of both parties entering into the exchange of information and/or discussions relating to the RFP process, Montana-Dakota and Respondent each agree that it, its corporate affiliates, and each of their respective directors, officers, employees, lenders, and professional advisors (each individually "Representatives"):

1. Will keep secret and confidential the Proprietary Information supplied to the other party and any discussions and negotiations about the RFP process except as herein provided and in a manner no less restrictive than the manner that the receiving party protects its own confidential information;
2. Will use the Proprietary Information only for the purpose of participating in, evaluating and negotiating the RFP process;
3. Will disclose the Proprietary Information only to its Representatives who need to know the Proprietary Information for the purpose of participating in, evaluating and negotiating the RFP process;



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4. Will not, whether or not the Parties enter into definitive agreements, disclose to any third party (other than its Representatives) any of the Proprietary Information, other than the Proprietary Information which is in, or independently comes into, the public domain;
5. Will not, engage in any transactions of any kind or description whatsoever with regard to or using the Proprietary Information during the term of this Agreement without the written consent of the other party;
6. Will, if requested in writing, promptly destroy or return any of the Proprietary Information provided without keeping any copies, except portion of the Proprietary Information that is found in analyses, compilations, studies or other documents prepared by Montana-Dakota and its employees, representatives, consultants and counsel may be held by Montana-Dakota and kept subject to the terms of this Agreement, or destroyed ; and
7. Will promptly notify the other party if any of the Proprietary Information conveyed to it is required to be disclosed by reason of law or legal process and will cooperate with the other party regarding any action which the other party (at the other party's sole cost and expense) may elect to take to challenge the legality or validity of such requirement.

B. Montana-Dakota and Respondent also acknowledge and agree:

1. Proprietary Information which is provided will not be considered to be Proprietary information if that information is (i) in the other party's possession prior to disclosure, (ii) is in the public domain prior to disclosure, or (iii) lawfully enters the public domain through no violation of this Mutual Confidentiality Agreement.
2. No agreement for a power purchase agreement or other transaction shall be deemed to exist unless and until a Definitive Transaction Agreement has been executed and delivered by the parties. The term "Definitive Transaction Agreement" does not include this Mutual Confidentiality Agreement, a letter of interest or any other preliminary written agreement, nor does it include any verbal agreement;
3. Neither party makes any representation or warranty regarding the completeness or accuracy of any information provided to the other; any and all such representations and warranties shall be made in a written, executed agreement and will then be subject to the provisions thereof;

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4. Money damages would not be a sufficient remedy for a breach of this Mutual Confidentiality Agreement and the injured party is entitled to specific performance and injunctive or other equitable relief and remedies for any breach; such remedies shall not be the exclusive remedies but shall be in addition to all other remedies available at law or in equity;
5. Neither party will make any announcement of the status of the Respondent's reply to the RFP or of any negotiations with respect to a possible power purchase agreement without the prior written consent of the other;
6. This Mutual Confidentiality Agreement is governed by the laws of the state of North Dakota; and
7. The obligations under this Mutual Confidentiality Agreement shall be continuing and shall survive the termination of the RFP process and any discussion or negotiations between the parties, but that all obligations of the parties hereunder will expire two years from the date of this Mutual Confidentiality Agreement.

The parties have executed this Mutual Confidentiality Agreement as of _____, 2012.

MONTANA-DAKOTA UTILITIES CO.
a Division of MDU Resources Group, Inc.

By: _____

By: _____

Title: _____

Title: _____