

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

IN THE MATTER OF MONTANA- ) REGULATORY DIVISION  
DAKOTA UTILITIES CO., a Division of )  
MDU Resources Group, Inc., for Authority ) DOCKET NO. D2015.6.51  
to Establish Increased Rates for Electric )  
Service ) ORDER NO. 7433c

**PROTECTIVE ORDER**

**PROCEDURAL HISTORY**

1. On June 25, 2015, Montana-Dakota Utilities Co. (MDU) filed an *Application for Authority to Establish Increased Rates for Electric Service in the State of Montana* with the Montana Public Service Commission (Commission). The Commission issued a *Notice of Application and Intervention Deadline* on July 8, 2015, and granted intervention to the Montana Consumer Counsel (MCC), The Alliance For Solar Choice, and the Montana Large Customer Group (LCG) (Parties) on August 6, 2015.

2. LCG issued data requests LCG-060 and 062 on October 21, 2015, requesting that MDU produce various credit reports from Standard and Poor's, Moody's, and Fitch Ratings. On November 6, 2015, MDU filed a *Motion for an Order Protecting Information Requested in Data Requests LCG-060 to -062* (Motion). According to MDU, it is not rated by Moody's so there are no responsive materials, but it is rated by Standard & Poor's and Fitch Ratings. Mot. p. 2 (Nov. 6, 2015). The Motion was noticed on the Commission's weekly agenda.

3. Staff Attorney Laura Farkas was appointed as examiner for the limited purpose of disposing of discovery disputes (including objections to data requests and motions to compel) and motions for protective order in this proceeding. Order 7433 ¶ 15 (Sept. 8, 2015).

**FINDINGS OF FACT**

4. MDU seeks to protect "third-party credit reports responsive to Data Requests LCG-060 to -062." Mot. p. 4. These third-party credit reports are copyrighted works of Standard

& Poor's and Fitch Ratings and unauthorized reproduction and dissemination of these works may be prohibited by federal copyright law 17 U.S.C. § 106 according to MDU. MDU argues that the Commission should grant MDU's motion and protect the information from public disclosure because it is "otherwise legally protectable under Admin. R. Mont. 38.2.5007(2). MDU requests the protective order to limit its potential exposure to liability for contributory copyright infringement. Standard & Poor's and Fitch Ratings have agreed to allow MDU to produce hard copies of the reports to the Commission and requesting Parties, but have not authorized posting the third-party reports on the Commission's website. Ring Affidavit, ¶ 10.

5. MDU "has considered that the [Commission] is a public agency and that there is a constitutional presumption of public access to documents and information in the Commission's possession." *Id.* at 3.

6. MDU has offered to produce the documents to the Commission and Parties. The Commission recognizes that MDU by providing copies to the Commission for publication on the Commission's website may expose MDU and possibly the Commission to liability for copyright infringement. Therefore, the Commission will not require MDU to file the documents electronically. MDU is still required to provide the Commission and the Parties copies of the materials requested by the LCG. In lieu of electronic filing, MDU must electronically file a statement identifying and describing each document.

### CONCLUSIONS OF LAW

7. The Montana Constitution imposes "an 'affirmative' duty on government officials to make all of their records and proceedings available to public scrutiny." *Great Falls Tribune v. Mont. Pub. Serv. Commn.*, 2003 MT 359, ¶ 54, 319 Mont. 38.

8. The Commission "may issue a protective order when necessary to preserve.. other information that must be protected under law, as required to carry out its regulatory functions." Mont. Code Ann. § 69-3-105(2) (2015).

9. A request for protective order must include "a complete and specific nonconfidential identification, description, and explanation of the information, item by item or by category of items which are alike, of all information for which protection is requested." Mont. Admin R. 38.2.5007(3)(b). For purposes of this Protective Order, paragraph 4 describes the information that MDU seeks to protect.

10. MDU has made a *prima facie* showing that the information described in paragraph 4 consists of information subject to copyright protection that cannot be filed electronically in the docket and posted online. The Commission has previously determined that certain copyrighted information be provided directly to the Commission and the Parties and not posted electronically. *See* Docket No. D2009.9.129/D2007.7.82, Order No. 7046b, ¶12. Therefore the information involving credit reports need only be provided by hard copy to the Commission and the Parties to this docket.

### ORDER

IT IS HEREBY ORDERED THAT:

11. MDU's *Motion* is GRANTED;
12. MDU must provide the information consistent with this Protective Order within three calendar days of the service date of this Protective Order;
13. The Commission waives paragraph 5 of Procedural Order 7433 with respect to the credit reports. Information submitted in accordance with this Protective Order shall not be filed electronically or posted on the Commission's website.

DONE AND DATED this 18<sup>th</sup> day of November, 2015.



Justin Kraske for  
Laura J. Farkas  
Hearings Officer

ATTEST:



Sandy Scherer  
Assistant Commission Secretary  
(SEAL)



Protective Orders and Protection of Confidential Information

**Nondisclosure Agreement**

(7-26-00)

ARM 38.2.5012

Docket No. D2015.6.51, Order No. 7433c

Order Action Date: November 18, 2015

I understand that in my capacity as counsel or expert witness for a party to this proceeding before the commission, or as a person otherwise lawfully so entitled, I may be called upon to access, review, and analyze information which is protected as confidential information. I have reviewed ARM 38.2.5001 through 38.2.5030 (commission rules applicable to protection of confidential information) and protective orders governing the protected information that I am entitled to receive. I fully understand, and agree to comply with and be bound by, the terms and conditions thereof. I will neither use nor disclose confidential information except for lawful purposes in accordance with the governing protective order and ARM 38.2.5001 through 38.2.5030 so long as such information remains protected.

I understand that this nondisclosure agreement may be copied and distributed to any person having an interest in it and that it may be retained at the offices of the provider, commission, consumer counsel, any party and may be further and freely distributed.

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Typed or Printed Name

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Signature

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Date of Signature

Business Address:

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\_\_\_\_\_  
Employer

\_\_\_\_\_  
Party Represented