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

In re Montana-Dakota Utilities Co. Application for Authority to Establish Increased Rates for Electric Service	Docket 2022.11.099 September 21, 2023

Final Order 7876f

Procedural History

1. On November 4, 2022, Montana-Dakota Utilities Co. ("MDU") filed with the Montana Public Service Commission ("Commission") its Application for Authority to Establish Increased Rates for Electric Service ("Application"). In the Application, MDU requested an annual revenue increase of $10,499,415, reflecting a return on equity ("ROE") of 10.5% and an overall rate of return ("ROR") of 7.525%. The requested increase represented an 18.9% increase over adjusted test year electric sales revenues.

2. MDU's Application included an Application for Interim Increase in Electric Rates ("Interim Request"). The Interim Request sought an annual revenue increase of $1,716,219 for electric service, which was approximately 16% of the total Application proposal, on an interim basis.

3. On January 14, 2023, the Commission granted MDU's Interim Request, and the requested interim rates became effective on February 1, 2023. Interim Order 7876a (Jan. 25, 2023).

4. On December 22, 2022, the Montana Consumer Counsel ("MCC") and Denbury Onshore, LLC ("Denbury") were granted intervention in this proceeding.

5. On June 12, 2023, MDU, MCC, and Denbury filed a Stipulation and Settlement Agreement ("Stipulation") with the Commission. The parties agreed that the Stipulation "resolve[s] all issues raised by the parties" in this proceeding. Stip. 1.

6. On June 13, 2023, the Commission held a public listening session on MDU's Application in Miles City, Montana.

7. On July 25, 2023, the Commission held a public listening session on MDU's Application and the Stipulation in Sidney, Montana.

8. During a regularly scheduled work session on August 8, 2023, the Commission approved the Stipulation, as discussed below.

Findings of Fact

9. MDU provides electric services to approximately 127,000 retail customers in portions of Montana, North Dakota, and South Dakota. In Montana, MDU provides electric utility services to approximately 25,500 electric customers in 30 communities and employs 146 employees who live and work throughout the state. Test. Nicole A. Kivisto 3 (Nov. 4, 2022).

10. MCC is authorized by law to represent the interests of the consuming public in Commission proceedings. Mont Code. Ann. § 69-2-204(2).

11. Denbury is a large customer that purchases electricity and receives electric transmission and distribution service from MDU. Denbury Onshore LLC's Petition to Intervene, ¶¶ 1, 3 (Dec. 12, 2022).

12. On June 2, 2023, MDU filed a Motion for an Order Protecting Information Requested in Data Request MCC-160; MCC-161(a), (b), (c), and (d); MCC-162; MCC-166; and MCC-176(d) and (e) ("Motion"). The parties, however, entered their Stipulation without a ruling on MDU's Motion. The Commission finds that the allegedly confidential information requested in those data requests is not material to the analysis below, and therefore finds the Motion moot.

I. The Application

A. Revenue Requirement

13. In its Application, MDU requested to increase its revenue requirement by $10,499,415 based on a requested ROE of 10.5% and a corresponding ROR of 7.525%. MDU supported its recommended ROE by applying cost of equity estimation methodologies including the Discounted Cash Flow ("DCF") model and a Capital Asset Pricing Model ("CAPM"), among others. Test. Ann E. Bulkley 2 (Nov. 4, 2022); Reb. Test. Bulkley 4-6 (May 19, 2022).

14. To demonstrate that its proposed ROE is comparable to the returns earned by other businesses with similar risks, MDU relied on a proxy group of companies that are both publicly traded and comparable to MDU in certain fundamental business and financial respects. Test. Bulkley 24. MDU analyzed 36 companies and ultimately selected 15 that were relative to the risk of MDU's electric operations. *Id.* at 25-29. MDU's analysis results in an ROE range of 9.75% to 10.75%. In rebuttal, MDU provided support to its ROE by providing a table of authorized ROEs in the U.S. for the past 3 years that ranged from 9.00% to 10.60%. Reb. Test. Bulkley 9-11.

15. MDU's original requested revenue requirement and ROE would result in approximately a $16.96 per month increase for the typical residential customer. Test. Ronald J. Amen 56 (Nov. 4, 2022). During discovery, MDU updated its revenue requirement in response to the closure of one of its industrial customers, Sidney Sugars. Data Req. Resp. Denbury-042 (Mar. 15, 2023). The updated revenue requirement increased the Company's original revenue requirement request by $1,033,996 and resulted in an overall revenue requirement request of $11,533,670. *Id.*

16. Among other things, MDU's requested revenue requirement included a rate base pro forma adjustment of $13,504,478 for the retirements of its Lewis and

Clark Unit 1 and Heskett Units I & II power plants ("Retired Coal Assets"). Appl. Stmt. E Rule 38.5.143, 6 (Nov. 4, 2022). MDU requested to recover the $13,504,478 amortized over a 10-year period, resulting in a $2,085,960 annual increase to its revenue requirement. This amount also included the return on the unamortized plant balance. *See* Data Req. Resp. PSC-022 attach. A (Mar. 13, 2023). MDU also sought to include a $15,243,163 pro forma adjustment for its new 88-megawatt simple cycle combustion turbine known as Heskett Unit IV and the costs associated with the interconnection of Heskett Unit IV. Test. Joseph E. Geiger 2-3 (Nov. 4, 2022); Appl. Stmt. C, Rule 38.5.123 at 16 (Nov. 4, 2022).

17. MCC argued that MDU should receive approval to increase its revenue requirement only by $3,556,380, based on a 9.10% ROE and a 6.821% ROR. Cross Intervenor Test. Mark Garrett 5-6 (May 19, 2023); Test. Randall Woolridge 4 (Apr. 7, 2023). Denbury argued that MDU should receive approval to increase its revenue requirement by $3,781,920, based on the same ROE and ROR MCC proposed. Test Kevin C. Higgins 6 (Apr. 7, 2023); Test. Woolridge 4. MCC and Denbury submitted joint testimony to support their recommended ROE and ROR. *See generally* Test. Woolridge. MCC and Denbury supported their recommended ROE and ROR by producing and analyzing DCF and CAPM models. Test. Wooldridge 46-51.

18. MCC and Denbury applied the DCF and CAPM models to a proxy group of publicly held electric utility companies ("Electric Proxy Group") as well as to the proxy group used by MDU. *Id.* at 4. MCC and Denbury selected their proxy of 24 electric companies by analyzing six different criteria, including credit and bond ratings; long-term earnings per share growth; and dividends. *Id.* at 23-25. Applying the Electric Proxy Group to the DCF and CAPM resulted in an ROE of 9.00% and 8.85%, respectively. *Id.* at 52, 67. Applying MDU's proxy group to the DCF and CAPM resulted in an ROE of 9.15%. *Id.* at 52

19. Both MCC and Denbury calculated their proposed revenue requirement by adjusting MDU's proposed revenue requirement. See *generally* Test. Higgins; Test. Mark Garrett (Apr. 7, 2023); Cross Intervenor Test. Mark Garrett. Among other adjustments, MCC and Denbury advocated for an adjustment to

remove all costs associated with the Heskett IV power plant and the facilities to interconnect Heskett IV. Test. Mark Garrett 40; Test. Higgins 12. Also, MCC and Denbury both proposed adjustments related to MDU's request to recover $2,085,960 for the retired coal assets. Data Req. Resp. PSC-022 attach. A (MDU's revenue requirement for retired coal assets). MCC proposed a $362,748 reduction to revenue associated with the retired plant rate base and a $707,364 reduction to the retired plant depreciation expense, for a total reduction of $1,070,112. *See* Test. Mark Garrett MG-3, cells L17, L31. Denbury proposed a $369,759 reduction to revenue associated with retired plant depreciation expense and a $405,590 reduction to revenue associated with the retired plant rate base, for a total reduction of $775,349. *See* Test. Higgins Ex. KCH-3, at 1. After these adjustments, MCC's proposal would have allowed MDU to recover $1,015,848 annually for the retired coal assets, and Denbury's proposal would have allowed $1,310,611 annually. In short, both MCC and Denbury allowed revenue associated with the retired coal assets.

20. MCC also advocated for adjustments to MDU's proposed revenue requirement relating to prepaid retirement benefit assets, dues and memberships, investor relations, D&O insurance, post-test-year closure of the Sidney Sugars plant, and post-test-year revenue growth regarding the Sydney Sugar plant closure. Test. Mark Garrett 28-34, 37-39, 45-50, 56; Cross-Intervenor Test. Mark Garrett 5-6; Cross-Intervenor Test. David E. Dismukes 2 (May 19, 2023).

B. Cost Allocation and Rate Design

21. To guide their proposed allocation of revenue requirement among classes, the parties relied primarily on their respective class cost of service studies ("CCOSS"), which measure MDU's historical costs and allocate those costs to each customer class based on cost responsibility. MDU's revenue proposal consisted of adjustments in varying proportions to the present revenue levels of all the customer classes to improve each class's revenue-to-cost ratio. Test. Amen 50-51. MDU proposed to allocate the revenue requirement to its customer classes as follows: a

19.16% increase for residential customers; a 15.09% increase for small general customers; a 12.87% increase for large general customers; a 15.40% increase for municipal pumping customers; and a 13.48% increase for outdoor lighting customers. Test. Amen 53. MDU's cost allocation and rate design were supported by a class cost of service study. *See id*. at 15-44.

22. The MCC proposed to limit the rate increase to any single customer class by 1.15 times the overall system average increase. Test. Dismukes 46. Specifically, MCC proposed to allocate the revenue requirement to MDU's customer classes by increasing rates by 5.09% for all customer classes except the Large General Primary class, the Space Heating class, and the Municipal Pumping class. Test. David E. Dismukes Ex. DED-17 (Apr. 7, 2023). For those specific classes, MCC advocated a 5.96% increase to rates. *Id.* MCC's cost allocation and rate design was supported by a corresponding class cost of service study. *See* Test. Dismukes 9-40.

23. Denbury recommended a cap of 1.5 times the overall system increase and assigned that increase to all customer classes where its CCOSS indicated an increase of at least that amount to achieve its costs of service. Test. Higgins 50-51. For all other customer classes Denbury recommended an increase equal to the amount necessary to align the class with its costs-of-service, plus an equal percentage increase to allow MDU to collect Denbury's proposed revenue requirement. Id. Denbury's cost allocation and rate design were supported by a class cost of service study. See Exhibit KCH-16.

24. Issues with the underlying load data supplied by MDU called the results of MDU's and MCC's CCOSS into question. Denbury objected that MDU's CCOSS was based on class usage and coincident peak data from a load study of calendar year 2019 while the billing determinants were based on the test period ending June 30, 2022. Test. Higgins 39-46. Recognizing this issue, MDU adjusted its CCOSS in rebuttal testimony by revising the 12 Coincident Peak ("CP") allocation factor to reflect the class demands on MDU's system during the test period ending June 2022. Reb. Test. Amen 20.

II. The Stipulation

25. After prehearing discovery concluded, MDU, MCC, and Denbury jointly filed the Stipulation. It includes a variety of provisions related to MDU's revenue requirement, cost allocation, and rate design. *See* Stipulation ¶¶ 8-14. (June 12, 2023). In the Stipulation, the parties agreed to admit into the evidentiary record (a) all pre-filed testimony and exhibits of the witnesses for the parties to support the reasonableness of the Stipulation and (b) all data requests and responses. Stip. ¶ 13.

26. For the reasons set forth below, the Commission finds that the Stipulation as a whole is a fair and equitable settlement of the issues in this case and that approval will result in just and reasonable rates for MDU's electric customers.

A. Revenue Requirement

27. The Stipulation is silent regarding issue-specific adjustments to rate base and net operating income. However, the Stipulation includes several provisions concerning the overall revenue requirement increase.

28. In the Stipulation, the parties agreed to an overall revenue increase of $6.1 million. Stip. ¶ 8(A). Of the $6.1 million, $1.2 million is attributable to annual amortization and return related to retired coal plant deferrals and $1,989,835 is attributable to pass-through property taxes. *Id.* ¶¶ 8(E), (G); Data Req. Resp. PSC-026 (Mar. 13, 2023); Appl. Rule 38.5.173 at 1. The remaining approximately $2.9 million is not attributed to any specific capital investments and operating and maintenance expenses.

29. To evaluate the reasonableness of the Stipulation, the Commission analyzed the record evidence and developed what it considers reasonable, conservative, low and high values for MDU's revenue requirement and ROE.

30. The Commission finds that an increase to MDU's revenue requirement of $4,909,821 represents a conservative low-end increase. This estimate largely adopts MCC's adjustments, except for prepaid retirement benefit asset, dues and memberships, and post-test-year revenue growth regarding the Sydney Sugar plant closure.

31. The low-end revenue requirement estimate reflects an ROE of 9.44%, based on a DCF model of MCC and Denbury's proxy group, but with corrections recommended by MDU's expert. Reb. Test. Bulkley, Ex. AEB-4, Schedule 8 (incorporating an adjusted dividend yield of 3.84% and a growth rate of 5.60% within the Electric Proxy Group). The low-end ROE was supported by adjustments within MDU's rebuttal testimony, which include the alignment of dividends and stock prices through time and adjustments involving corrections for inconsistencies within MCC and Denbury's DCF model. Reb. Test. Bulkley 4. The low-end ROE is further supported by the exclusion of downward adjustments to growth rates which exceeded the boundaries of reasonableness at the margin within MCC's and Denbury's DCF model due to the rejection of midpoint earnings per share growth rates which reflect investor expectations. Test. Woolridge 46-51; Reb. Test. Bulkley 34–35.

32. In contrast, the Commission finds that an increase to MDU's revenue requirement of $9,929,494 represents a conservative high-end estimate. To calculate the conservative high-end increase to MDU's revenue requirement, the estimate adopts a majority of MDU's positions, but adjusted the revenue requirement to include MCC's recommendations for Heskett Unit IV, investor relations, D&O insurance, and the Sidney Sugars plant closure.

33. The high-end revenue requirement reflects an ROE of 10.10%. To calculate the high-end ROE, the Commission excluded MDU's assumptions within the CAPM, primarily the proposed expected market return of 13.04%. Intervenor testimony critical of MDU's proposed earnings per share growth of 10.95% was strongly supported by references to a variety of marketplace participants with much lower growth expectations. Test. Woolridge 79-89. The downward adjustment to the

ROE from MDU's proposed ROE of 10.5% to 10.10% also incorporates reasonable adjustments for business risks within the cost of equity assessment. *Id.* at 8-9.

34. Based on its analysis, the Commission finds that the stipulated revenue requirement of $6.1 million is reasonable because it falls between the conservative low-end of $4,909,821 and the conservative high-end of $9,929,494. Further, the Commission finds that the stipulated ROE of 9.65% is reasonable because it falls between the low-end ROE of 9.44% and the high-end ROE of 10.10%.

B. Cost Allocation and Rate Design

35. The Stipulation includes various provisions related to the allocation of revenue requirement and rate design. As explained below, the Commission finds that the overall cost allocation in the Stipulation is reasonable.

36. The Stipulation proposed an overall rate increase of 9.10%. Stip. Appendix 1. For a typical residential customer using 792 Kwh, the bill impact would amount to an increase of approximately $8.00 per month or $96.09 per year.

37. The Commission finds that the mix of interests represented among the stipulating parties is sufficiently diverse to produce class revenue allocations that are just and reasonable.

38. The Stipulation includes no increase on the customer charges for residential, small general service, irrigation, and space heating customers, while the remaining customer classes will receive the customer charge rate design as initially proposed by MDU. Stip. ¶ 8(A), Appendix 2.

39. The Commission finds that the stipulated rate design to be just and reasonable. In its testimony, MCC did not raise any issues with the proposed increases in customer charges outside of the residential customer class, and Denbury did not specifically address MDU's proposed rate design.

Conclusions of Law

40. All findings of fact that are properly construed as conclusions of law are incorporated herein and adopted as such.

41. The Commission has full power of supervision, regulation, and control of public utilities. Mont. Code Ann. § 69-3-102 (2021). MDU is a "public utility" subject to regulation by the Commission as it provides electric service within the state of Montana. Mont. Code Ann. § 69-3-101.

42. Procedural due process is flexible and calls for such procedural protections as the particular situation demands. *Geil v. Missoula Irrigation Dist.*, 2002 MT 269, ¶ 58, 312 Mont. 320, 59 P.3d 398. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* ¶ 61 (internal quotation marks and citations omitted). The Commission concludes it has provided adequate public notice of this proceeding and an opportunity for all interested parties to be heard and that no further process is necessary to approve the Stipulation.

43. The rates charged by a utility must be just and reasonable. Mont. Code Ann. § 69-3-330. Determining "just and reasonable rates" involves a balancing of investor and consumer interests. *Fed. Power Comm'n. v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1942). The Stipulation was a result of an agreement between the MDU, a large industrial consumer (Denbury), and the representative of the interests of the consuming public (MCC). The fact that representatives of both the investors and the consumers independently agreed to the rates in the Stipulation suggests that the result is a just and reasonable balancing of interests. Having reviewed the Stipulation and the record in its entirety, the Commission concludes that the Stipulation results in rates that balance investor and consumer interests.

44. A utility is entitled to an opportunity to earn a fair return on the value of its investment. *Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n*, 262 U.S. 679, 690 (1923) (citing *Smyth v. Ames* 169 U.S. 466, 547 (1898)). The return should be commensurate with returns on investments in other enterprises having corresponding risks. *Hope Nat. Gas Co.*, 320 U.S. at 603. The Commission concludes that the 9.65% ROE is commensurate with the returns on investments in other enterprises having corresponding risks.

45. In determining just and reasonable rates, the Commission is not bound "to the use of any single formula or combination of formulae." *Id.* at 602. Rather, the Commission should review the impact of the rates in their entirety to determine whether they are just and reasonable. *Id*. The Commission concludes that the rates proposed in the Stipulation are just and reasonable because, as discussed in detail above, the $6.1 million revenue requirement agreed to in the Stipulation falls within a range of reasonableness. The Commission also concludes that the rate design and the class allocation in the Stipulation are reasonable. Together, the revenue requirement increase, the rate design, and the class allocation result in just and reasonable rates.

Order

46. The Stipulation is APPROVED, and MDU is authorized to collect an additional $6.1 million in annual revenue for electric delivery services rendered on or after October 1, 2023. MDU's total revenue requirement shall be allocated across MDU's customer classes as discussed in the Stipulation and this Order.

47. MDU shall adhere to the Stipulation and shall submit tariffs for each service addressed by this Stipulation by September 28, 2023.

DONE and DATED August 8, 2023, by the Montana Public Service Commission, by a vote of 3 to 2.

JAMES BROWN, President
JENNIFER FIELDER, Vice President,
TONY O'DONNELL, Commissioner, dissenting
RANDY PINOCCI, Commissioner, dissenting
DR. ANNIE BUKACEK, Commissioner

CERTIFICATE OF SERVICE

I certify that on the 21st day of September, 2023, a true and accurate copy of the foregoing document was served by email to the following:

MONTANA-DAKOTA UTILITIES CO
travis.jacobson@mdu.com
terese.birnbaum@mdu.com
mgreen@crowleyfleck.com
wbarker@crowleyfleck.com
sking@crowleyfleck.com
For Applicant Montana-Dakota Utilities Co.

DENBURY ONSHORE, LLC
cassidy.macphail@denbury.com
tnelson@hollandhart.com
nsstoffel@hollandhart.com
darueschhoff@hollandhart.com
aclee@hollandhart.com
For Applicant Denbury Onshore, LLC

MONTANA CONSUMER COUNSEL
jbrown4@mt.gov
ssnow@mt.gov
james.pollard2@mt.gov
For Montana Consumer Counsel

EMAIL LIST(S):
Notification of Montana Dakota Utility Filings
Commission Orders

By: */s/ Tarin Slayton*
Tarin Slayton
Montana Public Service Commission