

163 FERC ¶ 62,190

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

MDU Resources Group, Inc.

Docket No. EC18-51-000

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued June 19, 2018)

On January 31, 2018, as amended on March 7, 2018 and April 20, 2018, MDU Resources Group, Inc. (MDU Resources) filed an application pursuant to section 203 of the Federal Power Act (FPA)¹ requesting authorization to implement a corporate reorganization through which Montana-Dakota Utilities Co. (Montana-Dakota) will become a wholly owned subsidiary of a newly formed holding company (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction consist of transmission and interconnection facilities, tariffs, rate schedules and service agreements, and related books and records.

MDU Resources states that it is a public utility that provides natural gas and electric service to customers in Montana, North Dakota, South Dakota, and Wyoming. MDU Resources is a transmission-owning member of Midcontinent Independent System Operator, Inc. (MISO). Montana-Dakota is a Division of MDU Resources that engages in transmission, distribution, and provides distribution and power sales to approximately 143,000 customers in Montana, North Dakota, South Dakota, and Wyoming. Montana-Dakota is also a transmission-owning member of the MISO.

MDU Resources states that the reorganization involves the creation of a holding company that will become the public company and ultimate parent of two first-tier subsidiaries that will own and operate all of the distribution utility operating companies and business subsidiaries.

MDU Resources states that the Proposed Transaction is consistent with the public interest and will not adversely affect competition, rates or regulation. With respect to competition, MDU Resources states that the Proposed Transaction does not raise any horizontal or vertical market power concerns because it entails an internal restructuring of MDU Resources' utility and non-utility operations. The Proposed Transaction will not cause any change in control or ownership in any jurisdictional facilities or any other

¹ 16 U.S.C. § 824b (2012).

property. In addition, there will be no change in MDU Resources or its affiliates' participation in the power markets and thus there will be no impact on competition in those markets. MDU Resources represents that the Proposed Transaction will not cause any of the entities involved to gain the ability or incentive to affect prices or outputs to downstream electricity markets or to discourage new generation.

With respect to rates, MDU Resources states that the Proposed Transaction will not affect the rights of customers who will continue to be served by MDU Resources and its affiliates under the same rates, terms and conditions of service as were in effect prior to the reorganization. In addition, MDU Resources state that all costs associated with securing the necessary approvals and implementation of the reorganization will be borne by MDU Resources and Montana-Dakota will not seek to recover any portion in utility rates. Therefore, the Proposed Transaction will have no impact on the rates charges to retail or wholesale customers.

With respect to regulation, MDU Resources states that the Proposed Transaction will not affect the manner or extent to which the Commission, any state, or any other federal agency may regulate it. The extent to which MDU Resources and its affiliates are subject to the jurisdiction of the Commission will not change as a result of the Proposed Transaction.

MDU Resources verifies that, based on facts and circumstances known to it or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, any cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under sections 205 and 206 of the FPA.

The filings were noticed on February 2, 2018, March 8, 2018, and April 20, 2018 with comments, protests, or interventions due on or before February 21, 2018, March 28, 2018, and May 11, 2018, respectively. None were filed.

Information and/or systems connected to the bulk system involved in these transactions may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company's books and records. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the Proposed Transaction is based on such examination ability.

Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.² To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of Order No. 652.

After consideration, it is concluded that the Proposed Transaction is consistent with the public interest and is authorized, subject to the following conditions:

- (1) The Proposed Transaction is authorized upon the terms and conditions and for the purposes set forth in the application;
- (2) MDU Resources must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30

² *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

- days from the date of the material change in circumstances;
- (3) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission;
 - (4) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;
 - (5) If the Proposed Transaction results in changes in the status or upstream ownership of MDU Resources' affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2017) shall be made;
 - (6) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
 - (7) MDU Resources shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction;
 - (8) MDU Resources shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities has been consummated; and
 - (9) MDU Resources shall submit proposed accounting entries within six months of the date that the Proposed Transaction is consummated, and the accounting submission shall provide all the accounting entries and amounts related to the reorganization along with narrative explanations describing the basis for the entries.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307 (2017). This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2017).



Steve P. Rodgers, Director
Division of Electric Power
Regulation - West

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