152 FERC ¶ 61,194
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

MDU Resources Group, Inc. Docket No. ES15-38-000

ORDER AUTHORIZING ISSUANCES OF SECURITIES

(Issued September 11, 2015)

1. On July 9, 2015, as amended on August 7, 2015, MDU Resources Group, Inc. (MDU Resources) filed an application pursuant to section 204 of the Federal Power Act (FPA)[1] requesting authorization to issue short-term debt securities in an aggregate principal amount not to exceed $250 million outstanding at any one time.[2] The short-term debt securities will be in the form of unsecured promissory notes representing bank borrowings and/or commercial paper issued through commercial paper dealers (Short-Term Debt Securities).[3] We will grant the authorization, as discussed below.

I. **Background**

2. MDU Resources states that it operates as an electric and natural gas utility company in Minnesota, Montana, North Dakota, South Dakota, and Wyoming under the trade names (i.e., as operating utility divisions of MDU Resources) Montana-Dakota Utilities Co. (Montana-Dakota) and Great Plains Natural Gas Co. (Great Plains).[4]

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[1] 16 U.S.C. § 824c (2012).

[2] MDU Resources Group, Inc. Application for Authority to Issue up to $250,000,000 of Promissory Notes and/or Commercial Paper, Docket No. ES15-38-000 (filed Jul. 9, 2015) (Application). The Application was amended on August 7, 2015. MDU Resources Group, Inc. Amendment to Application in Docket No. ES15-38-000 (filed Aug. 7, 2015) (Amendment). Together, the Application and the Amendment are referred to as the Amended Application.

[3] Application at 2-3.

[4] Amendment at 5.

3. MDU Resources notes that it was previously authorized to issue short-term securities in the form of unsecured promissory notes and/or commercial paper in an aggregate principal amount not to exceed $250 million outstanding at any one time.[5] MDU Resources states that the authorization requested in the Amended Application would supersede and replace its existing authorization, which expires on September 11, 2015.

II. Application

4. MDU states that the unsecured promissory notes evidencing bank borrowings will have maturities no later than one year from the date of issuance and that commercial paper will be due not later than 270 days after issuance.[6]

5. MDU Resources states that the interest rate on the Short-Term Debt Securities will not exceed the highest of the following: (i) the applicable one-week, one-month, two-month, three-month, six-month, nine-month or 12-month London Interbank Offered Rate (LIBOR) at the date of issuance(s), as published in The Wall Street Journal, plus an applicable margin of up to 450 basis points; (ii) the Federal Funds Rate as published by the Federal Reserve Bank of New York in statistical release H.15 entitled "Selected Interests Rates" at the date of issuance(s), plus 450 basis points; or (iii) the Prime Rate as publicly announced by the financial institution serving as the Administrative Agent under the MDU Credit Agreement (as amended, supplemented, restated or otherwise modified from time to time) at the date of issuance(s), plus 450 basis points.[7]

6. MDU Resources states it will use the proceeds from the issuance of the Short-Term Debt Securities exclusively for funding the capital requirements of Montana-Dakota and/or Great Plains, for the refunding of Montana-Dakota and/or Great Plains outstanding obligations, for corporate development of Montana-Dakota and/or Great Plains, and for other Montana-Dakota and/or Great Plains general corporate purposes.[8]

III. Notice of Filing

7. Notice of the Application was published in the *Federal Register*, 80 Fed. Reg. 42,098 (2015), with interventions and protests due on or before July 30, 2015. None was filed.

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[5] *See MDU Resources Group, Inc.*, 144 FERC ¶ 62,235 (2013).

[6] Application at 2-3.

[7] *Id.* at 3-4. MDU Resources states that the current Prime Rate can be found at http://www.selectcdrates.com/prime-rate/.

[8] Amendment at 5-6.

8. Notice of the Amendment was published in the *Federal Register*, 80 Fed. Reg. 48,852 (2015), with interventions and protests due on or before August 17, 2015. None was filed.

IV. **Discussion**

9. FPA section 204(a) provides that requests for authorization to issue securities or to assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person shall be granted if the Commission finds that the issuance or assumption: (1) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.[9]

10. In reviewing an application under FPA section 204, the Commission utilizes an interest coverage ratio calculation to determine whether the issuances for which authorization are sought "will not impair [a public utility's] ability to perform" service as a public utility.[10] The Commission typically bases its finding that proposed issuances of securities will not impair an applicant's ability to perform service as a public utility in part upon the applicant's demonstration that it will have an interest coverage ratio that is 2.0 or higher.[11] In making this finding, the Commission reviews the financial statements submitted with an application filed under FPA section 204 and applicant's calculation of the interest coverage ratio, which is the sum of income before interest and income taxes divided by total interest expense.[12] The interest coverage ratio is a screen test used primarily to provide the Commission with comfort that the financing authorized will not impair an applicant's ability to perform public utility service.[13] The Commission has

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[9] 16 U.S.C. § 824(c)(a) (2012).

[10] *See, e.g.*, *Old Dominion Electric Cooperative*, 145 FERC ¶ 61,132, at P 12 (2013); *Startrans IO, LLC*, 122 FERC ¶ 61,253, at P 18 (2008) (*Startrans*).

[11] *Startrans*, 122 FERC ¶ 61,253 at P 18 (stating that "this screen is a mid-way number in a range that has been used by lenders and borrowers and provides a buffer against unforeseen, adverse financial events that might impair Startrans IO's ability to perform as a public utility").

[12] *Westar*, 102 FERC ¶ 61,186, at P 15 n.15 (2003).

[13] *Montana Alberta Tie Ltd.*, 128 FERC ¶ 61,217, at P 16 (2009) (citing *Startrans*, 122 FERC ¶ 61,253 at P 18). The Commission has also described the interest coverage ratio as a measure of a utility's ability to meet future debt and interest payments. *Westar*, 102 FERC ¶ 61,186 at P 15.

stated, however, that whether or not an applicant meets the 2.0 interest coverage ratio screen does not by itself determine whether the Commission will authorize or deny the application.[14] The Commission has approved FPA section 204 applications that have not met the 2.0 interest coverage ratio threshold.[15]

11. MDU Resources has filed, as Exhibits C, D and E to the Application, actual and *pro forma* financial statements as of March 31, 2015. Exhibit E of the Application shows that MDU Resources has a *pro forma* interest coverage ratio of negative 0.71, which is below the Commission's 2.0 times interest coverage test.

12. As noted above, in section 204 filings, the Commission utilizes an interest coverage ratio calculation in its evaluation of a public utility's financial viability, and generally requires an applicant filing under FPA section 204 to demonstrate, on a *pro forma* basis, that net income will equal or exceed twice total interest expense.[16] In this case, MDU Resources' *pro forma* interest coverage ratio is below 2.0. Other factors, however, provide the Commission with an alternative basis upon which the Commission may conclude that the proposed issuance of Short-Term Debt Securities will not impair MDU Resources' ability to service the proposed debt securities and continue to provide service as public utilities.

13. In the Amendment, MDU Resources explains that the computation of the *pro forma* interest coverage ratio in the Application includes the effects of an after-tax noncash write-down of oil and natural gas properties at Fidelity Exploration & Production Company (Fidelity), an indirect wholly owned non-utility subsidiary of MDU Resources. According to MDU Resources, this write-down, which is associated with lower oil and natural gas prices, reduced Net Income by $315,252,000. MDU Resources states that if the write-down is excluded from the *pro forma* interest coverage computation, the MDU Resources interest coverage ratio would be 8.02. MDU Resources argues that excluding the write-down is appropriate because the write-down is noncash and does not affect cash flows. Rather, it is an acceleration of depreciation, depletion and amortization (DD&A) expenses. MDU Resources explains that the write-down reduces future DD&A expense on present investment in oil and natural gas properties, and, assuming all other things being equal, increases future earnings.[17]

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[14] *See, e.g.*, *Startrans*, 122 FERC ¶ 61,253 at n.7.

[15] *See, e.g.*, *NorthWestern Corp.*, 151 FERC ¶ 61,120 (2015); *ITC Great Plains, LLC*, 147 FERC ¶ 61,005 (2014); *Mississippi Power Co.*, 145 FERC ¶ 61,218 (2013); *Westar*, 102 FERC ¶ 61,186.

[16] *See, e.g.*, *Startrans*, 122 FERC ¶ 61,253 at P 18.

[17] Amendment at 4.

14. To demonstrate its ability to pay all of its utility debt obligations, MDU Resources calculates an interest coverage ratio for its stand-alone non-consolidated utility divisions, Montana-Dakota and Great Plains. MDU Resources states that the proceeds from the Short-Term Debt Securities issuances will be used "exclusively to fund the utility operations of Montana-Dakota and/or Great Plains," and that "[n]o such proceeds will be used by, for the benefit of, any other subsidiary of MDU Resources."[18] MDU Resources states further that all non-utility debt of the organization is issued by Centennial Energy Holdings, Inc. (Centennial), a direct wholly owned subsidiary of MDU Resources, or one of Centennial's subsidiaries, and "is neither guaranteed by, nor otherwise recourse to, MDU Resources."[19] MDU Resources also indicates that, for ratemaking purposes, the earnings of its non-utility subsidiaries are excluded from the development of rates. Since it operates as an electric and natural gas utility company, MDU Resources calculates a utility-only interest coverage ratio on a stand-alone basis of 2.31.[20] According to MDU Resources, this utility-only interest coverage ratio omits equity in earnings from non-utility subsidiaries and more accurately reflects the financial performance of Montana-Dakota and Great Plains.

15. We agree with MDU Resources that, for the reasons articulated in the Amendment, removing the effects of its non-utility operations is appropriate. As the Commission recently found in *Entergy Arkansas, Inc.*, some types of *pro forma* adjustments may be appropriate when computing the *pro forma* interest coverage ratio.[21] Based upon the facts presented by MDU Resources, we find it is appropriate to omit gains and losses recorded in Account 418.1, Equity in Earnings of Subsidiary Companies, from the *pro forma* interest coverage ratio in circumstances such as those described above and in the Amendment. In order to properly reflect this adjustment in future FPA section 204 applications, we will require public utilities to show any appropriate removal of non-utility gains and losses as part of their Exhibit C *pro forma* journal entries rather than make an adjustment as part of a supplemental exhibit. Accordingly, in future applications under FPA section 204, MDU Resources should show the removal of the effects of its non-utility operations as a *pro forma* adjustment to its financial statements rather than as an additional or alternative exhibit. The Commission believes that this type

[18] *Id.* at 5.

[19] *Id.*

[20] This calculation excludes a net loss of $108,845,139.00 incurred by MDU Resources' non-utility subsidiaries. *See* Amendment, Exhibit A: Montana-Dakota and Great Plains Natural Gas Utility Divisions Interest Coverage, Twelve Months Ended March 31, 2015.

[21] *Entergy Arkansas, Inc.*, 152 FERC ¶ 61,093, at P 31 (2015).

of *pro forma* adjustment is appropriate for all applicants with circumstances similar to MDU Resources' circumstances, as described in the Amendment.

16. We find, based on the statements set forth in the Amended Application, that MDU Resources has demonstrated that the proposed issuances of securities described in the Amended Application: (1) are for lawful objects within the corporate purposes of MDU Resources and compatible with the public interest, are necessary or appropriate for, or consistent with, the proper performance by MDU Resources of its service as a public utility, and will not impair its ability to perform that service; and (2) are reasonably necessary or appropriate for such purposes.

17. Accordingly, based upon the terms and conditions and for the purposes specified in the Amended Application, MDU Resources is authorized to issue Short-Term Debt Securities in an aggregate principal amount not to exceed $250 million outstanding at any one time. The Short-Term Debt Securities will be in the form of commercial paper and/or unsecured promissory notes.

18. The interest rate on the Short-Term Debt Securities will not exceed the highest of the following: (i) the applicable one-week, one-month, two-month, three-month, six-month, nine-month or 12-month London Interbank Offered Rates (LIBOR) at the date of issuance(s), as published in The Wall Street Journal, plus an applicable margin of up to 450 basis points; (ii) the Federal Funds Rate as published by the Federal Reserve Bank of New York in statistical release H.15 entitled "Selected Interests Rates" at the date of issuance(s) plus 450 basis points; or (iii) the Prime Rate as publicly announced by the financial institution serving as the Administrative Agent under the MDU Credit Agreement (as amended, supplemented, restated or otherwise modified from time to time) at the date of issuance(s) plus 450 basis points.

19. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.[22] First, public utilities seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes. Second, if any utility assets that secure debt issuances are divested or "spun off," the debt must follow the asset and also be divested or spun off. Third, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt must follow the non-utility assets. Specifically, if the non-utility assets are divested or spun off, then a proportionate share of the debt must follow the divested or spun off non-utility asset. Finally, if utility assets financed by unsecured debt are divested or spun off to another entity, then a proportionate share of the debt must also be divested or spun off. We will condition our authorization on MDU Resources abiding by these restrictions.

[22] *Westar*, 102 FERC ¶ 61,186 at PP 20-21.

<u>The Commission orders:</u>

(A) MDU Resources is hereby authorized to issue Short-Term Debt Securities in an aggregate principal amount not to exceed $250 million at any one time outstanding at the interest rate stated in the body of this order.

(B) The authorization granted in this order is effective as of the date of this order and terminates two years thereafter.

(C) The authorizations granted in this order are subject to the restrictions specified in the body of this order and the restrictions on secured and unsecured debt as outlined in *Westar*.

(D) The authorizations granted in this order are without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.