

Service Date: December 13, 2013

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

IN THE MATTER OF THE APPLICATION)	REGULATORY DIVISION
of MONTANA-DAKOTA UTILITIES CO.,)	
a Division of MDU Resources Group, Inc.,)	DOCKET NO. D2012.9.100
for Authority to Establish Increased Rates for)	
Natural Gas Service)	ORDER NO. 7254b

DISSENTING OPINION OF COMMISSIONER TRAVIS KAVULLA

Stipulations often promote judicial economy. They can save parties time and money in reaching a conclusion to a contested proceeding. The stipulation we here consider, however, is a different animal altogether. In this proceeding, a stipulation was submitted more than 14 months after Montana Dakota Utilities applied for a rate increase. Hundreds of pages of testimony, thousands of pages of discovery, a long hearing, a full briefing of the issues, even a Commission public meeting scheduled to decide this matter: All of this grew the case file to its bursting point before the prospect of a stipulation was even disclosed. Ironically, this stipulation meant a *delay* of this proceeding's conclusion, and a waste of our time in the run-up to it.

A lengthy case file and serial delays imposed by parties have characterized this rate case. Nonetheless, the Commission could not be bothered to take care in evaluating the stipulation's merits. From the time it was filed with the Commission to when it was taken up for consideration, the stipulation was available to the Commission for less than a week. The haste is the result of the stipulation's purported imposition of a deadline of ten days on the entity that has been least responsible for delay: the Commission. The final order that has issued in this docket was not even available to commissioners when it was approved at a Commission meeting. Voting for something before reading it has become a sadly commonplace practice in much of government. It should not be at the Public Service Commission.

Interim orders frequently govern rates while the Commission considers the matter. So, too, should an interim order based on the stipulated revenue requirement and rate design have

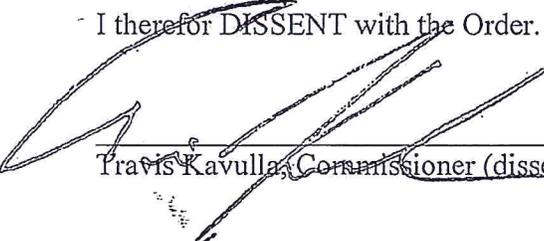
been issued in this proceeding.¹ MDU itself gestured the Commission toward this path. *See* Motion for Interim Order (Dec. 9, 2013). This would have effected the parties' stipulation, while giving the Commission time to consider the facts. Instead, the majority has reached a decision that one may *suspect* or *have a gut feeling* is reasonable (those are the words used in the Commission's deliberations on this matter), but which as yet lacks the analytical, quantitative support for the conclusion to be deemed reasonable *as a matter of fact*. The public expects us to do our homework. We have not here.

There are some positive outcomes contained within the stipulation. It provides for the removal of the Billings Landfill Facility, which has dramatically underperformed expectations, from rate base. *See* Stipulation (Dec. 5, 2013), ¶ 8. It does not ignore the subject of depreciation, but makes some forward progress in establishing a baseline for this topic, which has been a topic of heated controversy in MDU's recent rate proceedings. *Id.*, ¶ 7. In its one piece of dicta, the Order provides guidance on this topic which I also support. *See* Order 7254b, ¶ 12.

The stipulation leaves many other questions unaddressed, however. Those include capital structure, return on equity, and the inclusion of the customer billing system into rate base. It would have behooved the Commission to take its tentative judgment of what the outcomes of those issues would have been—since the evidence and arguments regarding those issues have been fully submitted, this would not have been hard to do—and compare the cumulative effect of those straw decisions against the stipulation's \$1,525,000 rate increase.

Analysis may have brought me to the same conclusion of the majority in due course, but I cannot join in the rush to judgment that marks this decision.

I therefore DISSENT with the Order.



Travis Kavulla, Commissioner (dissenting)

¹ A motion to issue an interim order in lieu of issuing a final order failed by a 3-2 vote. I am grateful for Commissioner Koopman's agreement that this was a reasonable course of action to pursue.