Service Date: September 26, 1975

DEPARTMENT OF PUBLIC SERVICE REGULATION

MONTANA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) CONSUMERS' GAS COMPANY for Authority) to adopt New Rates Charged for) Natural Gas Service)	DOCKET NO. 6280 ORDER NUMBER 4213
In the Matter of the Application of) TREASURE STATE PIPE LINE COMPANY for) Authority to Adopt New Rates Charged) for Natural Gas)	DOCKET NO. 6281

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After notice the above matters came on regularly to be heard before, the Department of Public Service Regulation, Montana Public Service Commission, which having considered the testimony and exhibits in open hearing, the proposed findings of fact and conclusions of law, and staff memoranda and data, and deeming itself fully advised in the premises, makes the following:

UNCONTESTED FINDINGS OF FACT RELATING TO BOTH APPLICANTS

1) On September 26, 1974, Treasure State Pipe Line Company petitioned the Montana Public Service Commission seeking authority to increase rates charged for natural gas purchased by the Consumers' Gas Company and the Consumers' Gas Company petitioned the Montana Public Service Commission seeking authority to increase rates charged for natural gas to all of its customers.

2) That notice of public hearing was given by mailing copies of the formal notice to three radio stations in northern Montana, one newspaper of general circulation in the State of Montana, and four newspapers of general circulation in the areas affected. No objection was interposed in these proceedings regarding the scope or substance of notice.

3) The public hearing commenced at 10:00 A.M. (MDT) on April 15, 1975, in a conference room of the Montana Public Service Commission at 1227 — 11th Avenue, Helena, Montana. During the hearing, one witness, being the President of both applying regulated companies, testified subject to cross examination. Thirteen documentary exhibits, including answers to interrogatories and responses to subpoenas, were offered and admitted into the record without objection.

4) Treasure State Pipe Line Company and Consumers' Gas Company are public utilities furnishing natural gas service in the State of Montana and are subject to the jurisdiction and authority of this Commission.

5) The Montana Consumer Counsel appeared in the name of and on behalf of the applicants' consumers and represented them at the hearing.

FINDINGS OF FACT RELATED TO TREASURE STATE PIPE LINE COMPANY

6) The profit and loss statement of Treasure State Pipe Line Company as of December 31, 1974, reflects a net loss to Treasure State Pipe Line Company of $10,655.86. This finding is

uncontested.

7) For the years 1970 through 1973, Treasure State Pipe Line Company had a net loss for each of the years in the amounts of $4,958.00, $4,601.00, $1,861.00 and $5,985.00, respectively.

8) The yearly net losses mentioned in the previous two findings make it impossible for Treasure State Pipe Line Company to maintain its equipment in a proper fashion, meet the costs of inflation, purchase new supplies and materials, meet increased payrolls and continue to service its customer in a reasonable and safe manner.

9) Treasure State Pipe Line Company purchases forty percent (40%) of its gas from Hardrock Oil Company and sixty percent (60%) of its gas from Montana Power Company. This finding is uncontested.

10) Hardrock Oil Company had to raise its wellhead price on gas sold to Treasure State Pipe Line Company from $.1O per MCF to S.40 per MCF since the $.40 rate is the going wellhead price in the area of the Hardrock Oil Company gas wells. This increased Treasure State’s Cost of purchase gas.

11) It is just and reasonable to allow Treasure State Pipe Line Company to sell its natural gas for $.85 per MCF. This would cover its persent cost of purchase gas from Montana Power and Hardrock Oil Company, plus resulting in yearly net income of not more than $6,843.00

12) Montana Power Company has applied to the Montana Public Service Commission for an increase in rates of gas sold by it to its customers, including Treasure State Pipe Line Company.

13) The inclusion in rates of any natural gas rate increase which may or may not be granted Montana Power in the near future was an issue in this hearing and as such has been taken into account in conjunction with the evaluation of both applicants' earnings pictures.

14) An increase of the rate Montana Power charges Treasure State Pipe Line Company (as a result of Canadian gas prices rising 6O¢ per MCF or some other event) would reduce Treasure State's net income allowable under this order unless the increase in the cost of purchase gas were allowed to be charged to Treasure States' customer.

FINDINGS OF FACT RELATED TO CONSUMERS GAS COMPANY

15) The profit and loss statement of Consumers Gas Company as of December 31, 1974, reflects a net loss of $1,616.69. This finding is uncontested.

16) The net income of Consumers Gas Company for the year 1970 through 1973 has been marginal.

17) The net loss of 1974 and the failure to generate no more than marginal net income from 1970 through 1973, have presented Consumers Gas Company from making the necessary repairs of its existing equipment and from installing or purchasing necessary new equipment and machinery.

18) See findings number 12, 13 and 14, which are adopted here. An increase in the rate Treasure State Pipe Line Company charges Consumer Gas Company as a result of rate increases that

Montana Power is charging Treasure State Pipe Line Company would reduce Consumer Gas Company's ability to cover maintenance and other costs and to earn an allowed net income unless the increase in the cost of purchase gas were allowed to be charged to Consumer Gas Company's customers.

19) It is just and reasonable to allow Consumers Gas Company to sell its natural gas at an average base price of $1.20165989 per Mcf which would result in yearly net income of approximately S5,162.O0.

20) Taken together, the price increases found reasonable in findings 11 and 19 total $ 84,178 of which a total of S12,005 are yearly net income or profit to the two companies. This is $ 11,527 less profit than originally requested.

21) The proposed rate schedule #7 on behalf of Consumers Gas Company would reflect the following monetary percentage increases per MCF to customers:

	Present Rates	Proposed Rates	Monetary Increase	Percentage Increase
1 MCF	$2.50	$3.60	$1.10	44%
Next 99 MCF	.66 per MCF	1.20 per MCF	.54	81%
Next 200 MCF	.59 per MCF	1.10 per MCF	.51	86%
Next 700 MCF	.53 per MCF	1.05 per MCF	.52	98%
All over 1000 MCF	.50 per MCF	1.00 per MCF	.50	100%

22) No cost of service studies were given by applicant to justify the classifications in the proposed rate schedule nor to justify increasing the large user's rates a smaller monetary percentage than the smaller user's rates.

23) Montana and the world face an energy crises.

24) The proposed block rate tends to encourage large users of natural gas to use more gas at lower cost during a time when energy cost and shortages make such price breaks irrational.

25) Consumer Gas Company's average customer uses roughly twice as much natural gas as that used by the average residential customer of other utilities in Montana.

26) Consumer Gas Company has no significant energy conservation program.

FINDINGS OF FACT APPLYING TO BOTH APPLICANTS

27) The normal staff of the two regulated companies includes two field men who work for both companies and whose wages are paid as part of the expense of each company. The unusual circumstance of the three-man crew is occasioned by the necessity to "break in" a new man to replace a field man whose retirement is anticipated in the not too distant future. This new man has been employed for a period of six months. It is anticipated that his indoctrination will require approximately three years.

28) It is just and reasonable for applicants' to include the wages of a third fieldman as a recurring expense of the regulated companies in these proceedings due to increased work loads resulting from the Pipeline Safety Program, due to the average age of the employees operating the company; due to the fact, that only two employees operate such a vast operation, encompassing over forty (40) miles of pipeline, and serving a

population of approximately three-hundred-forty-seven (347) customers, and due to the fact, that additional manpower will be needed for the applicants' to formulate an energy conservation program.

29) Gains from pressure differentials between purchased gas and distributed gas and losses from line losses, transmission losses and/or distribution losses have been considered and discarded inasmuch as these are offsetting. Consumer Counsel's finding of fact number 11 on the subject of pressure differentials has been considered with regard to this finding.

30) Consumers Gas Company and Treasure State Pipe Line Company, in support of their respective applications, did demonstrate that their respective balance sheets and profit and loss statements for the calendar year 1974, and other supporting papers did support conclusions that their respective present authorized rates are no longer sufficient or adequate to produce just and reasonable returns to the respective companies or to insure proper repairs and maintenance to their distribution systems sufficient to enable them to supply the needs of their respective customers for service.

31) No evidence of mismanagement or improper handling of applicants' operating expenses was offered or adduced at the hearing.

PROPOSED FINDINGS OF FACT NOT ADOPTED

1) Consumers Counsel's proposed finding number six 'That,

Treasure State Pipe Line Company's own testimony and exhibits as condensed in Consumer Counsel Exhibit "B" admitted without objection, demonstrate that 54.3% of the amounts requested to be authorized as an increase will be allocated for net income purposes, if the proposed increase is authorized"; and his proposed finding number seven "That Consumer Gas Company's own testimony and exhibits as condensed in Consumer Counsel Exhibit "B" admitted without objection, demonstrate that 13.5% of the amounts requested to be authorized as an increase will be allocated for net income purposes, if the proposed increase is authorized." are rejected as irrelevant to the determination of what revenues are reasonable and justified. Unless the percentage of an increase allotted to profits is related to a base figure and to an absolute amount of increase it can be misleading.

2) Consumer Counsel's proposed finding of fact number 9 is denied because it is a conclusion arrived at by Consumer Counsel and it is not a proven fact.

3) Consumer Counsel's proposed finding of fact number 13, is denied as irrelevant in view of the Commission's determination of the case using the end result test (see conclusions of Law #5, 6 and 7) and finding of fact 31.

4) Consumer Counsel's finding number 8 and the first two lines of Consumer Counsel's finding number 12 are denied because the total rate increase petitioned for was not granted.

5) All other proposed findings of fact have been adopted

in form or substance exception some of applicants' other proposed findings which have been denied because they are covered by the reasons to be found in this order.

RULINGS ON MOTIONS AND ADMISSION OF EVIDENCE

1) A motion to consolidate the cases for the purposes of expediting the hearing procedure was granted without objection.

2) A motion that any order resulting from the hearing include a provision that Treasure State Pipe Line Company file with this Commission on a monthly basis reports of the sources and volumes of its gas supply was granted without objection.

3) A motion on behalf of both regulated utilities to incorporate provisions in any orders resulting from these proceedings authorizing the automatic "pass-through" to customers of the regulated companies any increased costs of natural gas supplies was objected to by the Consumer Counsel. An objection by the Montana Consumer Counsel to incorporating "pass-through, "escalator," or "automatic adjustment" clauses or any other provisions whereby rates are modified automatically and without hearing was resisted by the regulated companies. Both the motion and the objection were taken under advisement, and the motion to incorporate an automatic "pass-through" clause is now denied. But paragraph 4 **of** the order section is not to be interpreted to be such a clause. It is limited to the evidence in this docket.

4) Written objections and motions interposed by the Montana Consumer Counsel on behalf of the utility consuming

public in and around Toole Ccunty, Montana relating to the decision of this Commission to conduct these proceedings in Helena, Montana and not in Toole County, Montana, have heretofore been considered by this Commission and denied on April 12, 1975, in these proceedings.

5) All other rulings on objections to evidence and motions made at the hearing, and contained in the transcript, are incorporated herein by reference.

6) Any objections to evidence or motions not previously ruled upon are denied.

CONCLUSIONS OF LAW

1) The rate schedules as proposed by applicant is irrational in light of the energy crises and discriminates without demonstrated justification or a rational basis against persons who use a small amount of natural gas (see findings 21-26).

2) The setting of Consumers Gas Company rates is “state action’ since it is done by a governmental entity of this state, namely this Commission, and as such must conform to due process and equal protection standards of the 14th Amendment to the U.S. Constitution.

3) The rate schedule as proposed by applicant cannot be approved by this Commission since that schedule violates equal protection and due process.

4) Automatic adjustment clauses are in violation of

the Montana Administrative Procedure Act provisions for contested cases; the citizens' right of participation (Article II, Section 8, Montana Constitution of 1972); the right to know (Article II, Section 9. Montana Constitution of 1972); the due process of law provisions of state and federal constitutions; and Section 70-113 Revised Codes of Montana 1947.

5) This Commission has a duty under the provisions of the Public Service Commission Act, RCM 1947, Section 70-101, et. seq., to insure that utilities under its jurisdiction provide reasonably adequate service at just and reasonable rates.

6) The standard "just and reasonable" has been held to be the same as the constitutional standard for public utility rates. F.P.C. v. Natural Gas Pipe Line Co., 315 U.S. 575 (1942). This standard has been expressed' as follows:

> Under the statutory standard of 'just and reasonable' it is the result reached and not the method employed which is controlling. It is not the theory but the impact of the rate order which counts....
>
> The rate-making process under the Act (Natural Gds Act), i.e., the fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumers interest.. The investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated.... The return to the equity owner should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital. F.P.C. v. Hope Natural Gas Co. 320 US 591, at 602-603 (1944).

7) In view of the large deficits incurred by the applicants in the years 1970 through 1974, increased rates for applicants' natural gas distribution service are justified.

8) The increase approved herein are just and reasonable amounts to insure continued adequate and safe service to

applicants' consumers.

9) The rate relief requested by applicants should be granted in part as reflected by the above findings.

ORDER

1) Treasure State Pipe Line Company shall file monthly reports indicating its sources and volumes of purchased gas.

2) Consumers Gas Company is allowed to earn the amounts found reasonable in finding number 19. And it shall file within ten (10) days of this order, a tariff reflecting this allowance. The tariff shall have a minimum bill of $3.26 being a base of $3.00 plus .26 cents which .26 cents represents the increase of 25.9 cents purchase gas increase which occurred prior to July 1, 1975. per customer for the 1st Mcf of gas used, and a base rate of $1.15 for the next 99 Mcf of gas used, and all other gas sold shall be charged out as in the proposed schedule plus the said sum of 25.9 cents per Mcf which 25.9 cents represents the said gas purchase increase prior to July 1, 1975. The sum of 25.9 cents per Mcf be added for each rate category above the minimum bill. The 25.9 cents added to the base price herein reflects the increase in cost of gas to the applicants which occurred prior to July 1, 1975.

3) Consumers' Gas Company shall institute an effective energy conservation program designed by it for its own system.

4) Both applicants' may increase their rates to their respective customers to recoup the increase in purchase gas

costs, if any, as a result of a raise in those costs pursuant to any order issued to the Montana Power Company, but not to any other gas supplier, by this Commission within 1 year after this order is issued. (see findings paragraphs numbered 12, 13, 14 and 18 and ruling on motions 3). Likewise, both applicants shall decrease their rates to their respective customers to reflect any decrease in purchase gas costs, if any, as a result of a decrease in those costs pursuant to any order issued by this Commission.

5) Treasure State Pipe Line Company is granted an increase to 85 cents per Mcf plus flow-through of 25.90 cents per Mcf, and it shall file a tariff reflecting this within 10 days of this order.

6) The new tariff sheets to be filed for both Consumers Gas Company and Treasure State Pipe Line Company shall not contain the “cost of purchase gas adjustment clause” or any incorporation by reference of such a clause by any wording on the tariff.

DONE, IN OPEN SESSION at Helena, Montana, June 25, 1975, and September 18, 1975. BY A 4-1 vote, Commissioner JAMES R. SHEA dissenting in part.

BY ORDER OF THE PUBLIC SERVICE COMMISSION:

GORDON E. BOLLINGER, Chairman

P.J. GILFEATHER, Commissioner

THOMAS G. MONAHAN, Commissioner

GORDON TURMAN, Commissioner

Commissioner JAMES R. SHEA dissented in the opinion of

the majority of the Commission.

"DISSENT IS AS FOLLOWS"

The Consumer Counsel Geofrey Brazier on behalf of the consuming public petitioned the Public Service Commission to hold this hearing in Toole County. His request was denied by the Commission by a Vote of 4 to 1.

Because the place of hearing was in Helena, Montana I believe the consuming public of Toole County did not have an adequate opportunity to be heard relative to the applicant's petition.

Unless time and money were spent in coming to Helena, Montana protestants, if any, were denied the right of participation.

Therefore, I dissent in the opinion of the majority.

JAMES R. SHEA, Commissioner

GAIL E. BEHAN
Secretary

(SEAL)

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing within thirty (30) days from the service of this order, a petition for review pursuant to Section 82-4216, R.C.M. 1947.