

Service Date: February 17, 1978

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

* * *

IN THE MATTER OF the application)	UTILITY DIVISION
of PACIFIC POWER & LIGHT COMPANY,)	
for authority to establish increased rates for)	DOCKET NO. 6517
electric service.)	ORDER NO. 4401
)	
)	

FINDINGS OF FACT

1. On June 17, 1977 the Pacific Power & Light Company (Applicant) filed revised tariffs with the Montana Public Service Commission (Commission), to produce a proposed annual revenue increase of \$2,463,000 to be recovered by a 0.585 cents per kilowatt hour increase in the energy charge to Applicant's customers.

2. An Order for Procedure to be Followed at Rate Hearing, which set out a timetable and procedural guidelines for the disposition of Docket No. 6517, was adopted by the Commission on August 2, 1977. These procedural guidelines had been formulated at a prehearing conference which had been held, following published notice, on July 29, 1977. This order was modified on a motion by Consumer Counsel (MCC) for an extension of the time within which to file prepared testimony and exhibits, on November 16, 1977.

3. On December 15, 1977, Applicant filed its Motion for a Temporary Rate Increase. The Motion requested Commission approval of a rate increase of 0.2925 cents per kilowatt hour which would produce an annual revenue increase of \$1,231,500. The rate increase requested by the Motion was 50% of the increase requested in this case, and would be subject to rebate if the final order in this Docket approved a lesser increase.

4. On December 7, 1977, the Commission received, pursuant to the Amended Order for Procedure, the prefiled testimony and exhibits of George F. Hess on behalf of MCC. Based on certain adjustments he made to rate base, Hess determined a revenue deficiency under the present rates of \$1,591,000. MCC acknowledged that the Applicant requires an annual revenue increase of \$1,591,000 in order to provide an opportunity to earn the fair rate of return recommended by the MCC's expert witness Dr. Fitzpatrick.

5. Upon request of Applicant, an oral argument on Applicant's Motion for a Temporary Rate Increase was scheduled to be held at the close of the hearing on the proposed permanent rate increase.

6. On December 16, 1977, the Commission issued a legal notice of the public hearing on the application for permanent rate relief and the motion for a temporary rate increase.

7. On January 10, 11, and 12, 1978, pursuant to the Commission's notice, hearings to receive evidence were conducted in Kalispell, Montana.

8. On January 12, 1978, oral argument on the Temporary Rate Increase was conducted before the five members of the Commission. The argument was attended by representatives of the Applicant and of intervenor MCC, both of which offered their views on Applicant's Motion.

9. Pursuant to established Commission policy, a printed agenda stating that Applicant's Motion for a Temporary Increase would come before the Commission on February 10, 1978, at 1:30 p.m., was mailed to the news media in the Helena area. The Commission at that time voted to defer action on Applicant's Motion.

10. The Applicant's Motion for a Temporary Rate Increase again came before the Commission, after proper notice in the printed agenda, on February 14, 1978 at 10:00 a.m. A motion to draft a temporary increase order was passed at that time.

11. MCC's witness Hess recommended that the proposed rates be reduced by a total of \$872,000 in order to produce the fair rate of return determined by MCC's witness Fitzpatrick. After making his adjustments to rate base for the test year, from witness Hess's figures the pro forma earned return for the test year was 4.95%. This return is far below MCC's recommended fair rate of return of 8.59%. Hess recommended an annual revenue increase of \$1,591,000, which exceeds the temporary rate request of \$1,231,500.

12. Inasmuch as Applicant is earning a clearly deficient return under the adjusted 1976 test year conditions, there is no reason why rate relief should be delayed.

13. The Commission expects to issue a final order in this Docket within the nine month time limit established by R.C.M. 1947, ' 70-113. However, when so clear a need for relief has been demonstrated, the Commission must act in order to keep the utility whole pending disposition of the permanent rate increase.

14. The increases approved herein shall be distributed to all classes of Applicant's customers on a volumetric or uniform cents per kwh basis as proposed by the Applicant.

CONCLUSIONS OF LAW

1. Applicant is a public utility furnishing electric service to consumers in this state. Applicant's service and rates are subject to the regulatory jurisdiction of this Commission.

2. Revised Codes of Montana 1947, ' 70-113, as amended, provide in part "The Commission may, in its discretion, temporarily approve increases pending a hearing or final decision."

3. The Commission has provided full and adequate public notice of all proceedings in this Docket.

4. The conceded rate level and the rate structures approved herein are a reasonable means of providing interim relief to the Applicant. The rebate provision of ' 70-113 is a safeguard against any charges approved herein which might ultimately be determined unreasonable.

ORDER

THE MONTANA PUBLIC SERVICE COMMISSION ORDERS THAT:

1. Applicant may institute the Temporary Rate Increase approve herein, of 0.2925 cents per kilowatt hour, effective for the first full billing period after February 20, 1978, which will generate an amount less than the revenues conceded by MCC to be justified.

2. The increase granted is subject to rebate should the final Order in this Docket determine that a lesser increase than authorized by this Order is required.

3. In the event a rebate is directed by the final Order in this Docket, provision shall be made in that Order to cause all uncollected rebates to be escheated to the State of Montana in the manner provided by law. Any rebate ordered shall bear an interest rate of 10% on an annual basis from the time collected.

DONE IN OPEN SESSION this 17th day of February, 1978, by a vote of 3-2.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION:

GORDON E. BOLLINGER, Chairman

P. J. GILFEATHER, Commissioner

THOMAS J. SCHNEIDER, Commissioner

JAMES R. SHEA, Commissioner
Voting to Dissent

GEORGE TURMAN, Commissioner
Voting to Dissent

ATTEST:

Madeline L. Cottrill
Commission 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.

The present Commission has taken and continues to take a tough but justified approach to utility ratemaking policy. For example, the Commission has among others adopted the following methodologies:

- (1) Disallow construction work in progress CWIP from rate base to insure consumers pay a return on currently used and useful plant.
- (2) Use an historical test period adjusted for known and measurable changes to arrive at an average year rate base.
- (3) Use a depreciated original cost of the utility first devoting the plant to public service in establishing rate base.
- (4) Disallow customer contributed capital in the form of various deferred taxes from rate base.
- (5) Allow a rate of return as low as possible consistent with "fair return" requirements of the law. The allowed returns of the Commission are on the low end of the reasonable range of a "fair return".

The Montana Public Service Commission, therefore, has demonstrated a tough, progressive regulatory policy to the benefit of the rate payer.

However, for such a policy to be fair as well as tough, the Commission must act in a responsible manner to insure that the revenue requirements, demonstrated and conceded under this "hardline evaluation", are implemented immediately. To do otherwise is to be punitive. The long term result of punitive action will be reversal in the courts and erosion of the progressive regulatory policies to the detriment of the Consumer. The Commission must regulate responsibly!

In the case of Pacific Power & Light all the public safeguards have occurred. All the testimony of the Company and the Consumer Counsel has been subjected to cross-examination in the public hearing. The case for the temporary (interim) increase is and has been before the Commission for its decision.

DOCKET NO. 6517
ORDER NO. 4401

Dissent of Commissioner James R. Shea

It is undisputed that the level of the temporary increase granted of \$1,231,500 in this Order is: (1) 50% of the permanent request, and (2) substantially less than the \$1,591,000 level conceded by Consumer Counsel. It is clear, therefore, that this Order constitutes a responsible action of the Commission. The tough but fair policy is preserved.

Thomas J. Schneider
Commissioner, District #2

This case affects consumers in Kalispell, Columbia Falls, Whitefish, Libby and other areas of Northwestern Montana. Reasons for dissent:

There are many utility companies in Montana that have been in existence for periods of 50 to 75 years.

Companies have survived wars, recessions, depressions, good times and bad times. These companies never had the privilege of being granted temporary rate increases until 1975.

A law was created in 1975 which gave the power to the Montana Public Service Commission to grant temporary rate increases.

By this law nothing has to be proved by the company seeking a temporary increase.

This law favors the utility companies at the expense of the consumers. There is great danger inherent in the law.

The Legislature in 1977 provided a nine-month period in which to have a case decided by the Public Service Commission. This law gives sufficient protection to the utilities.

Temporary increases in my opinion are not in the best public interest as they diffuse and separate the principal rate case.

Temporary increases should only be granted if a utility suffers a natural disaster or finds itself in a longtime position that would lend itself to very serious financial difficulties or for some other extraordinary compelling reason.

The records will show that temporary increases become permanent or they tend to encourage legal difficulties which have to be decided in the courts.

The Montana Consumer Counsel who is mandated by the Constitution to protect the consumers at all levels of rate cases has long been opposed to temporary rate increases except under certain qualified circumstances.

To a very large extent I share this position.

James R. "Jimmy" Shea
Commissioner, District #4