

Service Date: June 8, 1978

BEFORE THE UTILITY DIVISION
DEPARTMENT OF PUBLIC SERVICE REGULATION
MONTANA PUBLIC SERVICE COMMISSION

In the Matter of the Petition of)
MONTANA-DAKOTA UTILITIES COMPANY) DOCKET NO. 6564
for Increased Rates and Charges in) ORDER NO. 4405a
Gas Service to industrial)
customers.)

Appearances:

LESTER H. LOBLE, II, Attorney at Law, 833 North Last
Chance Gulch, Helena, Montana 59601, appearing on behalf
of the Applicant.

Intervenors:

JOHN C. DOUBEK, Attorney at Law, 34 West Sixth Avenue,
Helena, Montana 59601, appearing on behalf of the Mon-
tana Consumer Counsel, Geoffrey L. Brazier.

WILLIAM LEAPHART, Attorney at Law, 1 North Last Chance
Gulch, Helena, Montana 59601, appearing on behalf of
Great Western Sugar Corporation.

For The Commission:

ROBERT SMITH, Attorney at Law, 1227 11th Avenue, Helena,
Montana 59601, appearing for the Commission staff.

FRANK BUCKLEY, Administrator, Utility Division

DAN ELLIOTT, C.P.A. Utility Division

Before:

THOMAS J. SCHNEIDER, Commissioner and Hearing Examiner
JAMES R. SHEA. Commissioner

FINDINGS OF FACT

1. Montana-Dakota Utilities Co. (MDU, Applicant) is a Delaware Corporation furnishing electric and natural gas service to customers in the State of Montana. As a public utility, MDU's rates to its retail customers and the quality and conditions of its service are subject to the regulatory jurisdiction of the Montana Public Service Commission.

2. On January 24, 1978, MDU filed an application for authority to increase natural gas rates \$2,509,000 in order to recover its actual cost of natural gas as of October 1, 1977. Docket No. 6556 was assigned to this application.

3. On February 22, 1978, MDU filed another application for authority to increase natural gas rates \$2,299,000 in order to recover its actual cost of natural gas as of January 1, 1978. Docket No. 6563 was assigned to this application.

4. In both applications, Applicant requested that the Commission waive the information requirement of MAC 38-2.14(6)-S 14180 through 3&-2.14(6) - 514730.

5. On February 17, 1978, Great Western Sugar Company petitioned the Commission to intervene in Docket No. 6556. Great Western's request to intervene was granted on February 22, 1978.

6. Great Western Sugar Company protested the granting of the waivers and moved the Commission to vacate the hearing scheduled for Docket No. 6564.

7. On February 27, 1978, the Commission consolidated Docket No. 6556 and Docket No. 6563 into Docket No. 6564, and also granted the waiver request of Applicant.

8. On March 10, 1978, notice of public hearing was served on twenty four (24) persons and/or companies indicating that a hearing would be held on April 11 and 12, 1978 in Helena. Legal ads were run in the Glasgow Courier,

the Hardin Herald, the Miles City Star, the Plentywood Herald, the Billings Gazette, the Ranger-Review Sidney Herald, and Fallon County Times.

9. On March 13, 1978 the Montana Consumer Counsel advised the Commission that his office did not intend to participate in an adversarial capacity in Docket No. 6564.

10. On March 20, 1973, Holly Sugar Corporation petitioned the Commission to intervene in Docket No. 6564. Holly Sugar's request to intervene was granted on March 20, 1978.

11. On March 24, 1978, a second notice of public hearing was served on twenty four (24) persons and/or companies indicating than an additional public hearing would be held on April 13, 1978, in Billings, Montana.

12. On March 27, 1978, a letter from the Commission went out to the service list continuing the April 11, 12, and 13 hearings.

13. On March 28, 1978, a third notice of public hearing was served on twenty four (24) persons and/or companies indicating that there would be a Phase I of the hearing on April 11, 1978, in Helena, Montana, and a Phase II to be set at a later time for the purpose of allowing public testimony on the merits of the application.

Legal ads were run in the Fallon County Times, the Miles City Star, the Hardin Herald, the Glasgow Courier, the Billings Gazette, the Ranger-Review and Plentywood Herald.

14. On April 7, 1978, Holly Sugar Corporation withdrew its prior intervention due to a scheduling conflict.

15. On April 11, 1978, Phase I of the hearing was held at 10:00 a.m. in the Commission Conference Room in Helena, Montana.

16. On April 17, 1978, a notice of public hearing for Phase II was served on twenty four (24) persons and/or companies indicating that public hearings would be held May 8, 1978 in Billings, Montana, and on May 9, 1978 in Miles City, Montana. Legal ads were run in the Fallon County Times, Miles City Star, Hardin Herald, Glasgow Courier, Sidney Herald, Ranger-Review, Billings Gazette, and the Plentywood Herald.

17. Mr. Gamble, MDU's Assistant Treasurer, was Applicant's only witness in the April 11, 1978 proceeding.

18. The present base cost of purchased gas allowed Applicant by this Commission for rate-making purposes is 57.50 cents per Mcf.

19. Applicant contends that the actual cost of purchased gas being paid as of October 1, 1977 would be 74.3983 cents per Mcf.

20. The actual cost of purchased gas paid as of September 30, 1978 was 74.1000 cents per Mcf.

21. The difference between the October 1, 1977 price (74.3983 cents) and the September 30, 1977 price (74.1000 cents) results from a one cent escalation in the price of new gas (that which is obtained from wells spudded-in on or after January 1, 1975), as required by the Federal Energy Regulatory Commission for gas dedicated to interstate commerce. This one cent escalation would result in an average cost increase of 0.2983 cents per Mcf if the same volumes of gas were purchased in the same proportions as having actually been purchased in the third quarter ending September 30, 1977.

22. Applicant contends that the actual cost of purchased gas being paid as of January 1, 1978 would be 87.9280 cents per Mcf.

23. The actual cost of purchased gas paid as of December 31, 1977 was 87.3018 cents per Mcf.

24. As in Finding No. 21 the difference in prices between the December 31, 1977 price and the January 1, 1978 price is a result of the one cent escalation in the price of new gas.

25. This one cent escalation would result in an average cost increase of 0.5462 cents per Mcf if the same volumes of gas were purchased in the same proportions as having actually been purchased in the fourth quarter ending December 31, 1978.

26. There is no evidence in this Docket which indicates that Findings No. 19 and No. 22 will occur. The one cent escalation is, therefore, speculative and is rejected by the Commission in keeping with the actual cost concept for this purchased gas cost tracking case.

27. The actual increased costs for purchased gas over the base cost of purchased gas when factored for storage and produced gas and sales delivery pressure are:

September 30, 1977 Costs

(1)	Industrial	12.40 4	12.40 4
(2)	Residential & Commercial		11.41 4

December 31, 1977 Costs

(1)	Industrial		11.36 4
(2)	Residential & Commercial		10.44 4

The total amounts of increased revenues to which Applicant is entitled are:

September 30, 1977

Residential & Commercial Sales		
13,263,089 mcf at	11.414 =	\$1,513,318
Industrial Sales		

7,677,433 mcf at	12.404 =	<u>952,002</u>
	Subtotal	\$2,465,320

December 31, 1997

Residential & Commercial Sales		
13,263,089 mcf at	10.444 =	\$1,384,666
Industrial Sales		
7,677,433 mcf at	11.364 =	<u>872,156</u>
	Subtotal	\$2,256,822
	Total	\$4,722,142

28. The requested revenues sought by Applicant are solely related to increases associated in the cost of MDU's purchased gas supply.

29. The rate of return granted Applicant in its most recently completed general rate proceeding in Docket No. 6441 will not be affected by the implementation of the increases proposed in Finding No. 27.

COMMISSION DISCUSSION OF PUBLIC TESTIMONY

The special public hearings at Billings and Miles City were in large measure the result of the letters of protest and particularly in response to a petition by Miles City residents to be heard on the rate increase application prior to any Commission action.

It was apparent from the testimony and questions that the people were generally confused about the number of and reasons for the several rate increase applications of MDU. The "85% increase" headline which had appeared in the Billings Gazette during late March was a matter of grave concern to the people. Commissioner Schneider, the Hearing Examiner,

explained before and during each public hearing that there were two separate cases pending before the Commission:

(1) The consolidated Docket 6564, the purchased gas costing case, which was concerned with the single issue of the actual purchased gas cost incurred by MDU during the third and fourth quarters of 1977.

(2) Docket 6567, which is a full rate case concerned with the examination of all ratemaking issues, including but not limited to: rate of return, rate structure, taxes, advertising, etc.

A copy of the transcript from Phase I of the hearing, the technical and accounting portion, was made available to the public libraries in advance of the hearing. A copy of MDU's prefiled testimony, supporting the proposed increase, was also available to the public libraries in advance of the hearing.

The majority of the public witnesses testified about the serious burden which the proposed increase would have on consumers, particularly those consumers on fixed incomes. Public testimony explained that the percentage increases for utility services were far outstripping the cost of living increases which these consumers were receiving.

Public testimony also raised a number of additional issues and questions including: (a) the profitability of MDU; (b) the extent and appropriateness of utility advertising expense; (c) the reason for the \$4 per month customer charge for electric and gas service; (d) whether MDU kept several sets of books; (e) a desire to pay increased gas rates for an interim period if MDU would sign a commitment to develop solar and wind energy; and (f) the realization that a rate increase to MDU will impact consumers not only in utility rates but in taxes and in the price of other products as

government services and local businesses pass through their increased utility rates to consumers. All of these issues and objections raised by members of the public are valid areas of the public are valid areas of concern, which properly must be addressed by the Commission in the major rate case -- Docket 6567 -- scheduled for hearing on September 12, 1978, in Billings.

The testimony of Mr. Jerome Dyba of Miles City (Tr. 75-76) is, however, particularly relevant to the single issue under consideration in this case -- the actual cost of purchased gas incurred by MDU. Mr. Dyba recognized that this case was basically an auditing or accounting matter and stated that under the circumstances testimony about the inability of the consumers to pay the requested rate increase may not carry much weight. Mr. Dyba observed "...the only people that we have in our favor are elected officials of the Public Service Commission, which the point I would like to lay out in front of you is, I would like you to scrutinize this now (so) that somehow or other these figures are verified and that we get a fair shake out of the deal".

This scrutiny and verification of the actual cost of purchased gas is the crux of the issue. The Commission, through its professional staff and the Montana Consumer Counsel, through its expert witnesses, have determined that the gas costs actually incurred during the third and fourth quarters of 1977 are appropriate. The Commission has disallowed the one cent quarterly adjustment to the actual gas cost in each quarter as explained in Findings 21, 25, and 26. Furthermore, the entire cost of gas issue will be fully examined in major rate case, Docket 6567, in September.

CONCLUSIONS OF LAW

1. The rate levels and rate structures resulting from the operation of this Order are just and reasonable.

ORDER

NOW THEREFORE, at a session of the Public Service Commission, Department of Public Service Regulation of the State of Montana, held in its offices at 1227 11th Avenue, Helena, Montana, on the 8th day of June, 1978, there being present Chairman Gordon E. Bollinger, and Commissioners P. J. Gilfeather, Thomas J. Schneider and James R. Shea, there came regularly before the Commission for final action the matters and things in Docket No. 6564, and the Commission having received or read the transcript of the evidence, and being fully advised in the premises;

THE MONTANA PUBLIC SERVICE COMMISSION ORDERS THAT:

1. Applicant shall file rate schedules effective upon Commission approval which will increase residential and commercial rates by 21.85 cents per Mcf at local sales pressure and industrial rates by 23.76 cents per .Mcf at 14.73 p.s.i.a.

2. All motions and objections not ruled upon at the hearing are denied.

IT IS FURTHER ORDERED that a full, true and correct copy of this order be sent forthwith by certified mail to the Applicant herein, and by first class United States mail to all other appearances herein.

THE FOREGOING ORDER was adopted by the Department of Public Service Regulation of the State of Montana, Public Service Commission, and incorporates Proposed Order 4405a by reference.

DONE IN OPEN SESSION at a meeting of the Montana Public Service Commission held on the 8th day of June, 1978, by a vote of 4 - 0.

GORDON E. BOLLINGER Chairman

P.J. GILFEATHER, Commissioner

THOMAS J. SCHNEIDER, Commissioner

JAMES R. SHEA, Commissioner

ATTEST:

Madeline L. Cottrill
Commission Secretary

(SEAL)

NOTE: You are entitled to judicial review of the final decision in this matter. If no Motion for Reconsideration is filed, judicial review may be obtained by filing a petition for review within thirty (30) days from the service of this order. If a Motion for Reconsideration is filed, a Commission order is final for purpose of appeal upon the entry of a ruling on that motion, or upon the passage of ten (10) days following the filing of that motion.

cf. the Montana Administrative Procedure Act, esp. Sec. 82-4216, R.C.M. 1947; and Commission Rules of Practice and Procedure, esp. 38-2.2(64)-P2750, ARM.

CONCURRING OPINION OF COMMISSIONER SCHNEIDER

I believe that in order for utility regulation to provide long-term benefits to the consuming public, the Commission must act in a responsible manner. This Commission has, I submit, adopted a tough but fair approach to regulation to the benefit of Montana consumers. For example, the Commission has consistently held:

- (1) The utility shall be allowed a rate of return on a depreciated original cost rate base when first dedicated to public service.
- (2) Customer contributed capital such as deferred taxes, deferred investment tax credits, and customer advances for construction is excluded from rate base.
- (3) Construction work in progress (CWIP) is excluded from rate base since it is not used and useful in rendering service to present consumers.
- (4) The rate of return on stockholder equity is established at the lowest level which will satisfy the fecal tests for a "fair return". At that profit level the interests of the consumer and the investor are fairly balanced.

The tough but fair regulatory philosophy, illustrated by the above examples, ranks well in the nation with respect to a consumer oriented approach. In order for this policy to endure, it is essential for the Commission to permit a utility to recover its legitimate operating expenses in a timely manner. To deny the actual costs of purchased gas incurred by MDU would be punitive and would be reversed in the courts. A punitive regulatory policy cannot long exist under a system of laws, and the public would be poorly served by such policy. The Commission is, therefore, required to implement the allowed increases in natural gas rates in spite of the public protest.

The quarterly adjustments mandated by the Federal Energy Regulatory Commission and the phased deregulation of natural gas prices by Congress make it obvious that MDU is going to incur increased gas costs on a regular basis. Montana law does not permit retroactive ratemaking. Therefore, to the extent that recovery of those costs through increased consumer rates is delayed, MDU will absorb a loss. It is imperative, therefore, that the Commission adopt a responsible and rapid approach to the recovery of the legitimate gas costs. I will generally recommend handling future quarterly purchased gas cost proceedings in the following manner: Implement the rates on a temporary basis subject to rebate pending a hearing and final decision.

Thomas J. Schneider