

Service Date: November 6, 1980

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

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| IN THE MATTER of the Application |) | UTILITY DIVISION |
| by THE MONTANA POWER COMPANY for |) | DOCKET NO. 80.4.2 |
| authority to Increase Rates for |) | ORDER NO. 4714 |
| Electric and Natural Gas Service. |) | |

ORDER DENYING MOTION FOR TEMPORARY INCREASE

FINDINGS OF FACT

1. On October 10, 1980, at the conclusion of the hearings in Phase I, of this Docket, the Montana Power Company orally moved this Commission to grant a temporary rate increase in the amount of the "amended [concession] of the Montana Consumer Counsel in this proceeding." (Tr. 902)
2. Intervenors Champion International/Ideal Basin Industries and the Federal Executive Agencies opposed the Company's motion.
3. This Docket deals with requested general rate increases by the Company for both its gas and its utility operations.
4. Fifteen parties intervened in this case.
5. The Company and other parties sponsored rate of return, revenue and expense and gas rate design testimony by seven witnesses, as well as rate base testimony by three witnesses.
6. Testimony in the subject areas mentioned above offer the Commission a wide variety of arguments which must be carefully weighed before arriving at a final decision.
7. In addition to digesting the very extensive and complex testimony submitted in this case, the Commission, by statute and case law, brings its own expertise to any decision: "The agency's experience, technical competence and specialized

knowledge may be used in the evaluation of evidence." 2-4-612(7), MCA Anaconda Co. v. Montana Public Service Commission, No. 42557 (1st Jud. Dist., Lewis and Clark Co. Jan. 22, 1980). Under this authority, the Commission, on the basis of facts presented, may arrive at a conclusion not specifically advocated by any party. Anaconda Co. v. Montana Public Service Commission, Supra.

8. By its request for an interim increase at the level "conceded" by the Montana Consumer Counsel, the Company seems to suggest that this level is the lowest recommended by any party. Although such an assumption is often valid in rate cases in which the Consumer Counsel participates, it is not the case here. Should the Commission adopt witness Bowyer's testimony, the result would be a rate increase lower than that "conceded" by the Consumer Counsel. In addition, the Commission takes notice of the fact that it has, on at least one occasion, lowered the Consumer Counsel's recommended return on equity as a result of its independent analysis of evidence presented. P.S.C. Docket No. 6618, Order No. 4521.

9. The Commission received testimony from several witnesses who advocated substantial changes in the existing gas rate structure. The issue of electric rate design has been assigned a different schedule than the issues addressed in Phase I of this Docket; such a delay was necessitated by the requirements of the federal Public Utilities Regulatory Policies Act, Pub. L. 95-617.

10. The Commission has made a general practice of allocating any interim rate increase on the basis of the rate structure approved in the previous rate case. This practice has been adopted because 69-3-304, MCA, which authorizes temporary increases, does not address changes in rate structure on a "temporary" basis. In addition, the Commission believes that changes in rate structure should be ordered only after parties have had a full opportunity to brief rate structure issues and the Commission has had a full opportunity to evaluate the entire record. (Final briefs in Phase I of this Docket are due November 17, 1980.) Of course, in some situations the Commission cannot avoid making a determination of I; revenue requirements prior to a determination of other rate case issues. The necessity of postponing electric rate structure issues in this case is an example of such a

situation.

11. By its request for a temporary rate increase, therefore, the Company asks the Commission to also grant a rate increase prior to a final determination on issues of gas rate structure. Should this increase be granted, the increase would be allocated to customers according to a rate structure which might be adjusted by a final decision. This would result in customer absorbing increases which may be either more or less than they will be responsible for after a final decision on rate structure has been rendered. The Commission must carefully balance the fairness of such a result in ruling on the Company's motion.

12. In balancing the interests of the Company and the ratepayers in considering the Company's request for a temporary rate increase for its natural gas utility the Commission must take note of the gas tracking and deferred accounting procedures it has authorized for the Company. In implementing the gas tracking procedure, the Commission has acted with extreme diligence in assuring that Canadian gas price increases have been reflected promptly in the rates the Company is allowed to charge its customers. This diligence has included temporary rate increases when necessary. Approval of the deferred accounting procedure gives the Company yet further protection against a substantial erosion to its earnings, in view of the fact that gas cost expenses currently constitute approximately 85 percent of the total expenses attributable to the as utility.

13. Procedures such as gas tracking and deferred accounting have not been approved for the electric utility, nor have they been requested by the Company until this case. However, the record in this case also indicates that the electric utility has not suffered from the rapid and often unexpected increases in fuel costs which have plagued the gas utility because of such factors as Canadian price increases and the pricing provisions of the National Gas Policy Act of 1978, Pub. L. No. 95-621. The record reveals no sudden unexpected or uncontrollable occurrences which suggest the need for immediate temporary rate relief for the electric utility.

14. Under the Commission's procedures since passage of the "nine month"

statute, 69-3-302, MCA, the Company may expect a Commission decision on its request by January 6, 1981. If such a decision is not forthcoming by that date, the entire increase requested will go into effect, subject to the rebate provisions of the statute if the final decision orders a lower revenue level than that requested.

15. Because this case was heard by retiring Commissioners, it is likely that a decision in this case will be rendered in December of 1980.

16. The Commission's rules set out general criteria for approval of a temporary increase. The relevant portion of those rules state:

(1) Consideration of an application to increase rates on an interim basis in a general rate increase proceeding will be guided by the facts in the record and generally established principles of utility rate regulation.
Rule 38.5.506, A.R.M.

As previously discussed, relevant facts which must be considered by the Commission in this case include the large number of participants and their extensive and complex testimony, the procedures presently in place which alleviate financial hardships to the Company's gas utility, the absence of any precipitous changes in the Company's electric utility operations which have caused uncontrollable increases in expenses, the presentation of several alternative gas rate structure alternatives and the certainty that a final decision in this case is forthcoming at a reasonably early date.

Given these facts, the Commission believes that a temporary increase is not appropriate in this Docket. The balance which the Commission must strike in any decision, by adequately addressing the interests of both the ratepayers and the Company is reached here by postponing rate relief for a relatively short period of time until all issues in the case can be addressed in a final order.

CONCLUSIONS OF LAW

1. The Montana Power Company is a public utility furnishing electric and natural gas service to consumers in the State of Montana.
2. This Commission has jurisdiction over the rates and charges for utility service which is rendered in Montana.
3. Montana law and the Commission's rules provide for granting of temporary rate increases prior to a final decision. 69-3-304, MCA; 38.5.501, et seq., A.R.M. These provisions leave determination of the appropriateness of such increases to the discretion of the Commission.
4. The Commission's determination that a temporary rate increase is not appropriate in this Docket constitutes a proper exercise of its discretion.

ORDER

THE MONTANA PUBLIC SERVICE COMMISSION ORDERS THAT the Montana Power Company's Motion for a temporary increase at the Montana Consumer Counsel's "conceded" level is hereby denied.

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

DONE IN OPEN SESSION THIS 5th day of November, 1980 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

GORDON E. BOLLINGER, Chairman

CLYDE JARVIS, Commissioner

THOMAS J. SCHNEIDER, Commissioner

GEORGE TURMAN, Commissioner

ATTEST:

Madeline L. Cottrill
Commission Secretary
(SEAL)

NOTE: You may be 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 Re consideration 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. 2-4-702, MCA; and Commission Rules of Practice and Procedure, esp. 38.2.4806 ARM.

