

Service Date: August 4, 1981

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

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In the Matter of the Value of the)	UTILITY DIVISION
Electric Plant in Service of)	DOCKET NO. 80.8.55
MONTANA POWER COMPANY.)	ORDER NO. 4677a

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ORDER APPROVING AGREEMENT BY THE
PARTIES FOR SETTLEMENT OF PROCEEDING

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FINDINGS OF FACT

1. This proceeding was initiated by the Commission on August 4, 1980, for the purpose of investigating the revaluation of certain land and land rights owned by the Montana Power Company (MPC), and presently included in its original cost accounts and electric rate base in the amount of \$15,852,754.07.

2. The Commission's adversary staff filed testimony advocating the elimination from rate base of the part of the valuation in dispute, and MPC filed testimony advocating its continued inclusion in rate base and the propriety of the valuation.

3. The Commission conducted public hearings in this Docket in Helena on May 19 and 20, 1981.

4. The parties have now presented the Commission with an Agreement for Settlement of the Proceeding. This Agreement is

incorporated herein by reference. The Agreement proposes that \$15,852,754.07 be eliminated from original cost accounts and electric utility rate base effective August 1, 1981, and that \$15,676,514.84 be amortized as a cost of electric service over a 13.5 year period.

5. The Commission finds that the Agreement proposes an acceptable disposition of the issues raised in this Docket, and finds that the Agreement is equitable to both MPC and its ratepayers.

6. The Commission understands that there is concern that the annual amortization may not be allowed as a deduction in computing income tax expense. Because of this concern, the Commission will determine revenues resulting from the amortization as if the amortization were not tax deductible. However, because the result of this Order is to eliminate a cost from the Company's original cost accounts but recognize an acquisition adjustment cost amortizable over a period of 13.5 years, the Commission requires MPC to claim this item as a tax deduction and believes the Internal Revenue Service should find in MPC's favor.

7. MPC shall file tariffs for electric service, effective for services rendered on and after August 1, 1981, that will reflect the amortization of \$15,676,514.84 of the total disputed valuation referred to above, over a period of 13.5 years.

CONCLUSIONS OF LAW

1. The Commission has authority under 2-4-603(1), MCA, to approve the proposed Settlement of the parties for the purpose of disposing of the issues in this Docket.

2. The Settlement approved herein is an appropriate means of resolving all matters that are at issue before the Commission in this Docket.

ORDER

1. The Agreement by the Parties for Settlement of Proceeding presented to the Commission in this Docket is hereby approved.

2. Paragraphs 1 through 5 of the Agreement, the original of which is attached to this Order, are incorporated into this Order as is fully set out herein.

3. MPC shall file tariffs for its electric utility for services rendered on and after August 1, 1981, to reflect the revenue adjustment contemplated herein.

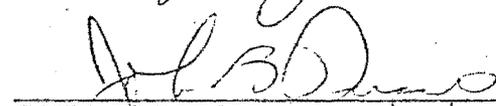
DONE IN OPEN SESSION this 27th day of July, 1981, by a vote of 3-2.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

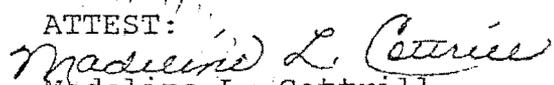

GORDON E. BOLLINGER, Chairman


HOWARD ELLIS, Commissioner


CLYDE JARVIS, Commissioner


JOHN DRISCOLL, Commissioner
(Voting to Dissent)


THOMAS J. SCHNEIDER, Commissioner
(Voting to Dissent)

ATTEST:

Madeline L. Cottrill
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 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. 2-4-702, MCA; and Commission Rules of Practice and Procedure, esp. 38.2.4806, ARM.

DISSENTING OPINION

By: Thomas J. Schneider, Commissioner

July 28, 1981

Docket No. 80.8.55, MPC Electric Plant Valuation

The parties to Docket No. 80.8.55 (PSC Adversary staff, Montana Consumer Council and Montana Power Company) have submitted a stipulated settlement of the case. The Commission majority has accepted that settlement by this Order.

STIPULATED SETTLEMENT

Stipulated settlements on important utility rate matters are extremely rare before the Montana Commission. However, such settlements are a recognized manner of resolving disputes before the Courts and other regulatory agencies in a practical, economic and expedient fashion. Such settlements constitute a negotiated balancing of the risks, costs and benefits among the parties. Because of the compromise inherent in such settlements, the individual issues are rarely resolved according to accepted ratemaking and legal precedent. Consequently, no specific findings and no final resolution of principles result.

It is, indeed, tempting to accept the settlement based upon practical and expedient arguments: (1) the risk of losing on the substantive issues; (2) the risk of losing on the array of legal motions and objections; (3) the limited staff and financial resources available for protracted litigation;

(4) the amount of Commission and staff time required to adopt a comprehensive decision in this complex case; (5) the fact that the long-disputed \$15.8 million is finally removed from rate base; (6) a "bird in the hand is worth two in the bush"; and (7) the priorities of handling a myriad of other cases involving energy and communications that have far more ratepayer impact. However, the Montana Public Service Commission is responsible by law to establish rates which are just and reasonable. The Commission must determine whether this settlement is consistent with its statutory responsibility. To fulfill that responsibility, the Commission must look beyond the practical and expedient to the substance of the long-festering dispute involving MPC's accounts.

While it is entirely possible that the proposed settlement represents the best terms available for the Montana ratepayer, a brief comment on that settlement is in order. The stipulated settlement in effect treats the disputed amount as an Acquisition Adjustment, Account 100.5 (ie., actual costs in excess of the original cost to the party first devoting the properties to public service) and allows the amount to be amortized over a 13.5 year period. Assuming arguendo that such a finding of actual cost were correct, there is no reason for allowing amortization of the amount over less than 20 years. In Docket No. 6348, Order No. 4220(d), the Commission amortized the \$5.9 million Acquisition Adjustment over a 20 year period. In that case, no dispute existed concerning the actual cost or

classification. That is in sharp contrast with the facts in this case.

COST OR WRITE-UP

In the 1944 hearing, counsel for the Montana Power Company framed the two principle issues involved: (1) "can a cost be established in a transaction which is not at arm's-length but which is based upon the fair commercial value of the property at the time; and (2) were the sales by the Ryan group to Montana Power Company in February of 1913 arm's-length purchases by the Montana Power Company which created a new cost?" The Federal Power Commission generally agreed with that statement of issues but emphasized the need to determine whether the "actual legitimate cost of public utility properties" was increased in these transactions.

I am convinced that the answer to each fundamental issue is "No." To answer either question in the affirmative is to ignore cost-based accounting and perpetuate the abuses of the holding company era which Congress attempted to remedy. To depart from legitimate cost-based accounting for a public utility is the antithesis of regulation. To allow utilities to inflate their valuations via corporate reorganization techniques is to allow self-regulation.

The record evidence, including the 1944 proceeding, supports classification of the \$15.8 million as an Electric Plant Adjustment, Account 107. That classification would properly

reflect that the disputed amounts did not constitute actual legitimate costs but rather consisted of write-ups, "water", inflation of accounts, goodwill, intangibles and similar devices. Likewise, the evidence demonstrates that Company personnel, Price-Waterhouse, Ebasco, and others long recognized the existence of substantial but arbitrary write-ups. To allow amortization of those write-ups as if they were legitimate costs is not consistent with the facts in the case or the Commission's legal responsibilities. The Commission's acceptance of this stipulated settlement in advance of briefs obviously precluded development of comprehensive findings by the Montana Public Service Commission necessary to finally resolve the issues. However, the Federal Power Commission Opinion No. 120 of February 13, 1945, 57 PUR(NS) 193-236, is generally consistent with such findings as I would contemplate. And so, "the old Banquo's ghost", who haunted MPC's Vice-President Mr. F. W. Bird (and others), lives on for another 13.5 years. I agree with the concise reconciliation of the issue proposed by Mr. Bird:

"...of course there is only one way to fix it, that is to write it down and write the capital down." 57 PUR(NS) 200



THOMAS J. SCHNEIDER, Commissioner

DISSENTING OPINION

By: John B. Driscoll, Commissioner

July 28, 1981.

Docket No. 80.8.55, MPC Electric Plant Valuation

1. The TRUTH of this matter is that Montana Power Company's rate base is \$15,852,754.07 greater than original cost depreciated. Under Montana law this Commission has the authority to eliminate up to this amount from the rate base after evaluating the supporting documentation and mitigating historic circumstances. The record's clear showing of present valuation over original cost depreciated was balanced only by the utility counsel's many motions and questions obviously designed to confuse and entangle the procedural presentation of essential fact. At the time, it was embarrassing for this Commissioner to witness the complete lack of substantive or cogent response on the part of utility attorneys. Having been presented on one hand with historical documentation, and on the other with legal buffoonery, this Commission would have had no choice but to remove the disputed amount from both the asset and equity sides of the company's balance sheet. The consequence, if supported by the courts, would have been an immediate annual rate decrease of \$4.2 million. Nothing would have been saved for the stockholder.

In contrast, this "approved settlement" sells the

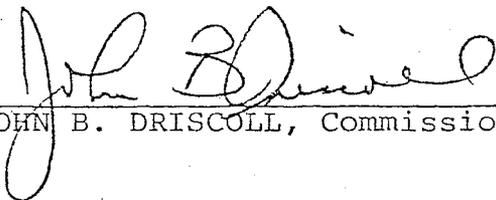
disputed rate base to the beleaguered ratepayer for cash. Even though there is a (relatively minor) rate decrease, this is an expensive decision for the ratepayer. What is even worse, this is a discouraging decision for the citizen. This Commission and its fine staff of legal advisors appears to have lost confidence in the ability of our judicial system to see to the legal heart of a relatively simple question of justice. I have not lost that confidence. This is my first reason for dissenting.

2. This settlement is, in fact, better than no settlement at all, because it does decrease utility rates and it does remove the questionable rate base over a period of 13.5 years. However, this is a decision reached under duress. This Commission has run out of money to defend the proper decision and the legitimate interests of the rate payer. The utility stockholders, meanwhile, have unlimited funds provided for their defense by the same beleaguered ratepayer. A decision not freely decided upon the facts before us is of questionable legitimacy. This is my second reason for dissenting.

3. Finally, the shameful legal peacocking we have witnessed in this proceeding negates the real value of this Commission in this type of situation. Of the authorities available, this Commission has the best grasp of energy realities (now and in the future), ratepayer sensibilities, the utility company predicament, and subsequent to the hearing,

the historic facts of the case in question. Yet, this proceeding isolated this Commission from bringing its background and understanding to bear on the final settlement. We were left with a "take it or leave it" scenario that could have been significantly improved upon in the interests of both the ratepayer and the stockholder. One simple adjustment, as an example, would have more fairly treated the ratepayer's interest, while leaving the stockholder with the same income earning equity and his dignity. This could have been accomplished by transferring the \$15.8 million in cash as it accumulates to Account 124, Other Investments. Under the guidelines for this account, the ratepayer generated owners' equity could have been used for equity positions in non-associated companies engaged in the development and commercialization of conservation, load management, and Montana's renewable energy resources. Ironically, such an "energy capital fund" would have been the unique heritage of a Montana entrepreneur who made his fortune in Montana's renewable resources, Mr. John D. Ryan. The interest of the consumer in this matter is the overpowering need we have in Montana to initiate a load management conservation and renewable resource economy. The alternative is the continued expansion of expensive fossil fired plants. Beyond retaining income earning equity that will now be cash based, the interest of the stockholder would be served by a regulatory decision that

finally allowed the excess cash so badly needed by the utility to pursue a diversified source of income in a growth market. This is my final reason for dissenting. The all or nothing approach by the utility has sold the Commission short, rendered useless its broader understanding of the broader question, and probably instilled seeds of bitterness where there was an intent to address an important problem.



JOHN B. DRISCOLL, Commissioner