

Service Date: November 30, 1981

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

IN THE MATTER of the Application)UTILITY DIVISION
of MONTANA-DAKOTA UTILITIES, INC.)PHASE I AND PHASE II
to Adopt Increased Rates for)DOCKET NO. 81.1.2
Electric Service in the)ORDER NO. 4799e
State of Montana.)

FINDINGS OF FACT

1. On January 5, 1981 Montana-Dakota Utilities Company (MDU) filed an application with the Montana Public Service Commission (Commission) for an order authorizing it to increase rates for electric service.
2. On October 20, 1981, Order No. 4799b and Order No. 4799c were issued in this Docket. Order No. 4799b granted MDU's request in part.
3. On October 30, 1981, MDU filed a Petition for Reconsideration that requested the Commission to reverse its order on five issues.

I. REDUCTION OF NATURAL GAS RATES

4. MDU contested the Commission's reduction of its gas rates to reflect the change in capital structure found to be appropriate in this case. The Commission finds MDU's arguments on this issue

persuasive.

II. ENERGY AUDITS

5. MDU argues that the Commission's requirement that the utility should reimburse groups and businesses who perform energy audits is improper. The Commission finds MDU's arguments persuasive on this issue.

6. The Commission specifically notes, however, that MDU did not ask for reconsideration of the Commission's finding that audits that are not performed by MDU's personnel but that do meet RCS standards should be accepted as the basis for MDU's interest free loans. By this requirement the Commission intends to put energy audits on the same footing as weatherizing materials in the context of MDU's loan program. That is, MDU's customers should have the option of having energy audits performed by independent contractors. The Commission's decision to allow utilities to provide audits at no direct cost to the consumer was based on a desire to offer maximum conservation incentives; that decision was not intended to exclude use of qualified energy audits performed by individuals who are not utility employees.

III. DEPRECIATION TREATMENT

7. MDU claims that the rate making treatment accorded depreciation for the Coyote plant will result in the Company losing its right to accelerated depreciation on Coyote. The basis of MDU's argument is that the method of depreciation selected by the Commission violates provisions of the Economic Recovery Tax

Act of 1981. This Act (Pub. L. 97-34) was enacted on August 13, 1981.

8. On September 17, 1981 the Commission received the opening brief in this Docket; on September 28, 1981 the reply brief was received. Neither brief made any mention of the Act on the depreciation treatment of the Coyote plant. Finally, on October 30, 1981 the Motion for Reconsideration arrived with its pleading regarding the effect of the Act on the depreciation issue. Basic courtesy requires that the Commission and parties be informed of major new developments affecting a rate case at the earliest possible time. MDU could have and should have informed the Commission of this major new development much earlier than it did. While the Commission gave serious consideration to a separate notice of opportunity for hearing on this new matter, a reading of the relevant statute indicated that such delay would be a useless act.

9. It is apparent that if utility property is classified as recovery property it must fully be normalized. Since the Coyote plant is recovery property placed in service in 1981 the method of depreciation requested by the Applicant is proper.

IV. REIMBURSEMENT FOR AEM EXPENSES

10. The Commission is not persuaded by MDU's contention that Montana Consumer Counsel's (MCC) participation in a rate design proceeding precludes an award of costs to otherwise qualified consumer intervenors. While MCC is charged by the state constitution to represent all consumers it does not follow that MCC can adequately advocate the particular interests of a particular

consumer group. AEM's position, inter alia, was that low income and small users in the residential class would benefit by inverted-lifeline rates; MCC neither furthered nor contested AEM's position. MDU's conclusion that MCC's mere participation guaranteed adequate representation of AEM's constituency is not supported by the record.

11. Furthermore, the record indicates that the individual consumers who testified as members of AEM's constituency were well prepared and informed. The effectiveness of their advocacy was most likely a consequence of the "organizational expenses" incurred by AEM's. The Commission refuses to confine "advocacy" of consumer interests to the narrow scope MDU suggests .

12. Finally, the purpose of PURPA 1228 is to assure that consumer intervenors have access to a transcript; it is not dispositive of who is responsible for the cost of that transcript.

V. EXCESS CAPACITY ADJUSTMENT

13. MDU has vigorously contested the Commission's finding that approximately 40 MW of the capacity is excess and should, therefore, be excluded from the rate base in this case. Because of the importance of the issue, a discussion supplemental to that found in Order No. 4799b is appropriate .

14. The Commission adopted two general concepts that supported its decision: 1) capacity which is reasonably expected to be needed during the time rates are in effect should be allowed in rate base; 2) risks which accompany the existence of excess capacity should

not be borne entirely by the ratepayer. These concepts will be discussed in turn.

15. As MDU's own Initial Brief indicates, there are varying criteria by which a Commission may judge whether a particular investment should be included in a rate base. These criteria were carefully considered by the Commission in its Order No. 4799b, where the Commission accepted the liberal approach of including in rate base that portion of the investment in Coyote which could be reasonably considered used and useful during the time the rates approved in this Docket will be in effect.

16. In applying that criteria, the Commission reasonably concluded that, in view of testimony that at least 46 megawatts was excess capacity in the summer of 1981 and that demand was expected to increase 10 percent between 1980 and 1982, the 40 megawatt adjustment contained in Order No. 4799b fully met the criteria adopted. This aspect of the decision has been entirely ignored in the Company's Motion for Reconsideration. Despite this failure to discuss relevant issues that were, in fact, raised in the first instance by MDU, the Commission has decided to give the Company every benefit of the doubt as to what capacity might reasonably be expected to be used and useful during the period during which rates approved in this Docket are in effect. Thus, the Commission finds that its original finding 40 megawatts of Coyote to be excess capacity should be amended to reflect 30 megawatts of excess capacity. This amended finding recognizes: 1) forecasting future demand is not an exact science; 2) rates approved in this docket may remain in effect beyond 1982, in which case, a portion of the 40 megawatts may conceivably be required to meet ratepayers' needs.

17. Similarly, the Commission finds that its policy enunciated in Order No. 4799b regarding risk sharing supports an amended finding that investment in Coyote representing 30 megawatts should not be allowed in rate base.

18. The Commission's risk sharing policy has been generally well expressed by the Pennsylvania Public Utility Commission:

For purposes of this proceeding we agree with the judge that the sudden burden of this new plant investment of the company's customers was no fault of Penn Power or of its investors; but neither was it the fault of ratepayers. Under these circumstances there must be some sharing of the risk associated with bringing large plants on line.

Pennsylvania PUC v. Pennsylvania Power Co. 27 PUR 4th 426, 437 (1978)

The only caveat that must be added to the Commission's adoption of the Pennsylvania Commission's policy is that, in this case, the Commission has not made any determination as to the prudence of MDU's decision to invest in Coyote and does not believe it necessary to do so under the present circumstances. In drawing this conclusion, the Commission believes that before an investment is included in rate base, the Company must show: 1) that the investments were prudent, and 2) that the property invested in will be used and useful during the time the rates will be in effect.

19. The Company's proposal that its entire Coyote investment be included in rate base at this time is, in effect a proposal that

ratepayers should absorb all the risk associated with bringing large plants on line.

20. MDU's argument also ignores the substantial balancing of risk in favor of the shareholder which is represented by the Commission's finding that the Company will be allowed an accounting treatment that recognizes allowance for funds used during construction (AFUDC) treatment for the investment representing excess capacity. Compounding of AFUDC is found to be appropriate. Given this treatment, the Commission finds that MDU will be fully compensated when, and if, the plant becomes fully used and useful. While this treatment will be allowed for the 30 megawatts found to be excess capacity by this order, the Commission reiterates that it will reevaluate continuation of this accounting treatment in future proceedings.

21. As the Company is well aware, by allowing AFUDC, the Commission is not disallowing rate base treatment for the investment representing 30 megawatts of capacity, but is merely deferring rate base recognition until the plant becomes used and useful to ratepayers.

22. MDU has correctly pointed out that, contrary to Order No. 4799b, the record in this Docket does contain evidence that, under principles of economic dispatch, Coyote will be on line. In view of this error, the Commission has further considered the issue of dispatch as it relates to the issue of excess capacity and, therefore, finds further discussion to be necessary.

23. The concept of economic dispatch is used by MDU in its decisions regarding the order in which plants are used on a daily

basis. It considers only the operational expenses associated with a plant. Although the Commission recognizes the logic of its use in daily operations, the Commission also finds that it has little value in an analysis of whether capacity is used and useful. While it may be true that the operating or running costs associated with Coyote are relatively low in terms of economic dispatch, it is abundantly clear that the overall annual costs (fixed plus variable) are high. Indeed, it is the high annual incremental costs of this new plant which predicated a major portion of this rate case. It is the high incremental cost of new facilities which is driving average costs and rates upward so dramatically.

24. The used and useful concept in utility law is associated with a regulatory agency's examination of investments to be included in rate base. In the case of Coyote that examination revolves around investment in capacity. In the Commission's view, this is quite a separate issue from the examination of operating costs that is made in MDU's day to day operations.

25. The relevant inquiry is the consideration of whether capacity investment should be included in rate base, not whether the plant is actually operating. A distinction must be made between the complementary but not synonymous terms "used" and "useful." Perhaps MDU's argument regarding economic dispatch would be persuasive if the statutes required only that rate base treatment be accorded plant that is "used. " However, the addition of the term "useful" requires the Commission to look beyond the mere mechanics of whether MDU is pushing Coyote's "on" button. The Commission must also determine whether ratepayers need all of the capacity provided when the button is pushed. In the case of investment in approximately 30 megawatts of Coyote's capacity, the answer must be

no.

26. The logical necessity of requiring that any investment both used and useful is quite obvious. If the criteria for rate base treatment were merely that the Company "used" the investment, the determination of what should be accorded rate base treatment would rest entirely with the utility, contrary to the basic principles of utility regulation under this scenario. In order to assure rate base treatment the utility would simply make some "use" of the investment, whether or not such use met ratepayer needs, leaving the Commission as a mere rubber stamp whose only function would be to inspect a plant to assure that the "on" button had been pushed.

CONCLUSIONS OF LAW

1. The Montana-Dakota Utilities Company is a corporation providing electric service within the State of Montana and as such is a public utility within the meaning of 69-3-101, MCA.

2. The Montana Public Service Commission properly exercises jurisdiction over MDU's operations pursuant to Title 69, Chapter 3, MCA.

3. Section 69-2-102, MCA, does not alter the Commission's substantive duty to assure that rates are just and reasonable and that all investments included in a utility's rate base are just and reasonable.

4. The Commission is not required by law to accept the testimony

and opinions of any witness.

5. The Commission must use its experience, technical competence, and specialized knowledge in evaluating evidence presented by parties in a rate case. 2-4-612(7), MCA.

6. All parties had adequate notice regarding the issue of excess capacity. MDU itself raised the issue by its request that the entire investment in Coyote be included in its rate base. Consumer Counsel's prefiled testimony further focused the issue. There was a substantial amount of cross-examination on the issue at the hearing.

7. The Commission's decision regarding excess capacity of Coyote is based on factual evidence and is within the scope of its statutory authority.

8. The Commission's decision to require reimbursement of Action for Eastern Montana is within the scope of its authority. Pub. L. 95-617; 38.5.201-38.5.204, A.R.M.

9. The rates approved by Order No. 4799b, as amended by this order are just, reasonable and not unjustly discriminatory.

ORDER

1. Order No. 4799b is hereby amended to conform to findings made in this order.

2. MDU's Petition for Reconsideration regarding issues I, II and III is granted .

3. MDU's Petition for Reconsideration regarding issue IV is denied.

4. MDU's Petition for Reconsideration Regarding issue V is denied except to the extent that Findings No. 13 through 25 grants the relief requested in part.

Done and Dated this 30th day of November, 1981 by a vote of 5-0

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

GORDON E. BOLLINGER, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

CLYDE JARVIS, Commissioner

THOMAS J. SCHNEIDER, Commissioner

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 often (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.