

Service Date: July 15, 1982

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 of)	UTILITY DIVISION .
MONTANA-DAKOTA UTILITIES CO. for)	
Authority to Implement the Gas Cost)	DOCKET NO. 81.10.98
Tracking Procedure to Establish)	✓ ORDER NO. 4855b
Increased Rates for Gas Service.)	

* * * * *

✓ 82.26

ORDER ON MOTION FOR RECONSIDERATION

On May 28, 1982, the Commission issued Order No. 4855a in this docket. This was a final order disposing of all issues raised.

On June 7, 1982 the Commission received a Motion for Reconsideration from the Montana-Dakota Utilities Company (MDU). Rule 38.2.406, ARM, requiring a decision on the motion, was waived. The Montana Consumer Counsel (MCC) responded to the motion on June 25, 1982 and MDU replied to that response. On July 6, 1982, at its regularly scheduled agenda meeting, the Commission voted to grant the Motion for Reconsideration.

FINDINGS OF FACT

1. The Motion for Reconsideration challenged that part of the Commission's order that disallowed, for ratemaking purposes, carrying charges paid by MDU to Frontier on storage inventory balances in excess of \$100 million. MDU claimed that the record did not support such an adjustment, which was, in any case, impermissible as a matter of law.

2. By contrast, MCC claimed that there was a \$100 million ceiling on Frontier's storage gas inventory. In support of its position, MCC cited the Commission's Order No. 4753, which approved the Frontier project. That order allowed MDU to guarantee Frontier's debts up to \$100 million. Based on that approval, MCC claims that carrying charges for purchases in excess of \$100 million should not be reflected in rates.

3. MDU's response to MCC emphasized that financing gas purchases through the Frontier project is cheaper than using traditional financing techniques. MDU also claimed that the Commission in Order No. 4855a and MCC "take a quantum leap and equate the guarantee obligation to the finance costs incurred by MDU."

4. The Commission agrees with MDU that approval of the \$100 million guarantee does not itself act as an automatic ceiling to the level of carrying charges paid to Frontier on storage inventory balances that will be allowed for ratemaking purposes. The Commission's approval of the transaction merely limits the level of Frontier's debts that MDU can guarantee with its own assets. It does not, by itself, limit the amount of inventory held by Frontier or the amount of the carrying charges that will be allowed for rate-making purposes.

5. The Commission approved the Frontier transaction because there was record evidence that the Frontier project would lower the cost of purchased gas for reasons well summarized in MDU's reply to MCC's arguments on reconsideration. That evidence has not been rebutted in rate increase requests filed subsequent to Order No. 4753.

6. MDU relied substantially on theories of federal preemption in its challenge to the Commission's order. MDU in its Motion and Brief in this

case, seems to argue that the quantity of gas sold to Frontier has been preempted. Under this argument, this Commission has no choice but to pass on the carrying charges associated with any quantity of gas held by Frontier, even if that quantity were found imprudent by the Commission. If this is the case, and the Commission doubts that it is, the fact was not mentioned when MDU came to the Commission for approval of the Frontier Project. Since preemption of the Commission's right to examine the prudence of management decisions (in this case, purchases by MDU of gas supplies) would substantially diminish the Commission's traditional jurisdictional reach, such preemption will not be conceded lightly. This Order should not be construed as agreement with this argument. Unless MDU can present arguments more persuasive than it has thus far, the Commission will continue to believe that it can examine the prudence of management decisions, including decisions regarding gas mix and levels of gas purchases. The question need not be decided in this case, since the record here does not indicate that MDU's gas purchases were imprudent.

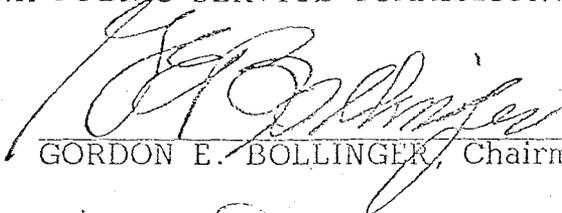
CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and proceedings in this matter.
2. The rates and charges authorized herein are just, reasonable and not discriminatory.
3. The Commission's approval of the Frontier project does not impose an automatic ceiling or carrying charges that will be allowed for ratemaking purposes.

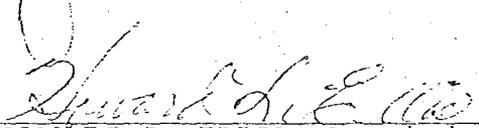
ORDER

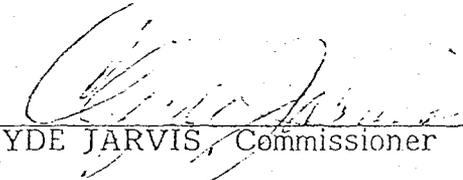
1. MDU's Motion for Reconsideration of Order No. 4855a is granted.
 2. MDU shall file tariffs which reflect increases previously granted and the level of carrying charges paid Frontier that is contained in its Application. This increase shall apply to meter readings taken on and after August 12, 1982.
 3. Any motions not previously ruled upon in this docket are denied.
- DONE and DATED this 12th day of July, 1982, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

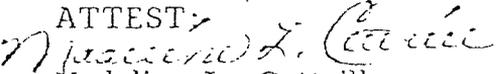

GORDON E. BOLLINGER, Chairman


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 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.