

Service Date: February 14, 1985

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

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IN THE MATTER of the Commission's) UTILITY DIVISION
Investigation of Electric Avoided Cost)
Rates.) DOCKET NO. 84.10.64

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ORDER ON RECONSIDERATION OF
PROCEDURAL ORDER AND AMENDED PROCEDURAL ORDER

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1. On January 17, 1985, a Procedural Order was issued in this docket.
2. Following issuance of that order, various motions were filed by the Montana Power Company (MPC) the Montana Consumer Counsel (MCC) and Big Horn Energy Partners (Big Horn) and PLM Financial Services, Inc. (PLM).

The Montana Power Company

3. MPC claims that there is no frame of reference by which to answer the questions propounded by the Commission in its Procedural Order. MPC suggests that if the Commission wishes to have the issues raised by the questions addressed, it should do so through testimony filed by its staff. The Company states that it is inappropriate to use answers "selected in a piecemeal fashion to support a proposal not advocated by any party and which has never been openly stated."

4. MPC's Motion for Reconsideration suggests that it does not wish to answer the questions set out in the Procedural Order. That order does not require MPC or any other party to do so. As the caption of this docket suggests, the purpose of this proceeding is to investigate issues related to

determination of avoided cost rates. The method by which the Commission wishes to implement its investigatory powers is a matter peculiarly within the Commission's discretion. MPC's proposal regarding an advocacy staff position might well have merit if the Commission had the necessary sources to implement. As MPC knows, those resources do not exist; in their absence, the Commission must use other avenues by which to secure information which, based on its experience, is important in its considerations. The Commission's approach in this proceeding was to rely on the good faith of parties to respond to the Commission's explicitly stated concerns. If parties have questions about the issues raised, they are free to discuss their concerns with the staff, as most have in the past. Contrary to MPC's Motion the Commission believes that the issues have been clearly enumerated in the order initiating this investigation.

Big Horn Energy Partners (Big Horn) and PLM Financial Services, Inc.

5. Big Horn and PLM filed an Objection to Procedural Order and Motion for Reconsideration and More Definite Statement.

6. Big Horn and PLM claim that the Commission's Procedural Order violates 2-4-302 and 2-4-315, MCA and 38.2.101 and 1.3.205 through 1.3.210, ARM. The claims are without merit. The Commission's invitation to parties to submit suggested changes in rules relating to avoided costs (38.5.1901 through 38.5.1908, ARM), was issued pursuant to 2-4-304, MCA, which allows informal consultations prior to initiation of formal rulemaking procedures. The Commission of course, fully intends to comply with the procedures outlined in 2-4-302, MCA, as it always does in its rulemaking proceedings.

7. Big Horn and PLM claim that the Commission's Procedural Order violates the Commission's procedural rules governing contested cases, evidently on the grounds that it does not comply with rules relating to filing of petitions, applications and complaints. The claim seems to imply that because procedural rules do not specifically discuss investigatory dockets, the Commission is precluded from exercising its investigatory powers granted by statute. The Commission finds no merit in the argument.

8. Big Horn and PLM also claim that the Commission, pursuant to 2-4-601, MCA, should provide a more definite statement designating who has the burden of proof in the proceeding and various requirements for parties to state facts they will rely on, relief they will request and reasons why they believe the present methodology is unjust.

9. Section 2-4-601, MCA relates only to notices for hearings; therefore, it is not applicable to this stage of the proceedings. However, the Commission acknowledges the concern of Big Horn, PLM and MPC about the issue. Since no party has submitted authorities regarding the proper burden of proof to be assigned to agency investigations, a final determination of the issue is not appropriate at this time. As a general matter, however, the Commission believes that those advocating changes in the status quo should have that burden.

10. The Commission finds Big Horn's and PLM's request for additional filings from parties to be inappropriate and burdensome. The Commission fails to see how they would be helpful, since prefiled written testimony will be filed well in advance of hearing, thus giving all parties adequate notice of positions that will be advocated. In addition, position statements have been filed, which should provide further notice. Any gaps that remain in

parties understanding of the various positions advocated can be addressed via the discovery process, for which specific provision has been made in the Procedural Order.

11. Finally, PLM and Big Horn have requested the opportunity to file a brief in support of its motion or in the alternative to present oral argument by the Commission. Under the Commission's rules, a brief should have accompanied the Motion. The Commission believes that the issues raised in the Motion are sufficiently clear and do not require clarification via oral argument.

Montana Consumer Counsel (MCC)

12. MCC has requested a two week extension on all dates listed in the Procedural Order. Further discussions have indicated that a one week extension would be adequate.

ORDER

It is ordered that all dates listed in the original order shall be advanced by one week except those which have already passed. Therefore, the following schedule shall apply in this docket:

February 20, 1985 - Final day for:

- Filing of initial testimony.
- Filing of any suggested amendments or additions to Rules 38.5.1901 through 1908, ARM.

March 8, 1985 - Final day for submission of discovery.

March 29, 1985 - Final day for responses to discovery.

April 19, 1985 - Final day for filing of rebuttal testimony.

May 7, 1985 - Opening day of hearing.

All dates are mailing dates. Parties must mail all material by the most expeditious method available at reasonable cost.

It is further ordered that all other motions, objections and requests are denied.

DONE AND DATED THIS 11th day of February, 1985, by a vote of 4 to 0.

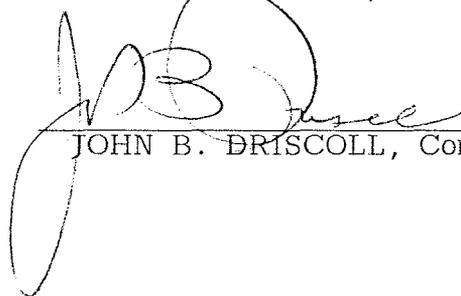
BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.



CLYDE JARVIS, Chairman



HOWARD L. ELLIS, Commissioner

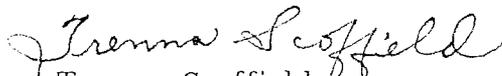


JOHN B. DRISCOLL, Commissioner



TOM MONAHAN, Commissioner

ATTEST:



Trena Scofield
Commission Secretary

(SEAL)