

Whether MNE is entitled to a contract rate based on the avoided costs rate as of May, 1984.

4. On August 28, 1985, the Commission issued a procedural Order to govern discovery between the parties. A hearing in this proceeding was scheduled to commence on October 29, 1985.

5. Through the formal discovery process, and during an informal attorneys conference, it became apparent that MNE did not have an executed power purchase contract with MDU.

6. On October 15, 1985, MNE, through counsel, filed with the commission a motion requesting an interim ruling on the following issue:

Whether this commission feels it can grant the requested relief considering that MNE has not yet executed a power purchase contract with MDU.

7. Pursuant to previous contact with counsel for MDU, this motion was unopposed.

ANALYSIS

8. Specifically, MNE is requesting that the Commission consider the application of Finding of Fact No. 13, Order No. 5017, Docket No. 83.1.2, to the given factual situation.

9. Finding of Fact No. 13, Order No. 5017, Docket No. 83.1.2 provides as follows:

13. In this decision, the Commission explicitly finds that changes it might make in the future will not affect the terms and conditions of signed contracts. Changes that might be made will be prospective, that is, they will govern only those contracts signed after the changes are made.

10. This provision directly addressed a concern expressed by QF developers that future changes in the avoided cost rates would abrogate existing contracts. See Finding of Fact No. 12, Order No, 5017, Docket No. 83.1.2.

11. Under the direction of Order No. 5017, Docket No. 83.1.2, MDU's 1984 avoided cost rates became effective July 1, 1984.

12. In its Petition, through subsequent discovery, and in its motion, MNE has admitted that as of July 1, 1984, it did not have a signed power purchase agreement with MDU.

13. Finding of Fact No. 13, Order No. 5017, Docket No. 83.1.2, is unambiguous in its meaning. Only signed contracts would not be subject to alteration in the event of a change in the avoided cost rates. Changes that do occur are prospective, and govern contracts signed after the changes are made. MNE has admitted that it does not have a signed power purchase agreement.

14. There have been no facts presented to this Commission which would justify a departure from the application of Finding of Fact No. 13, Order No. 5017, Docket No. 83.1.2. Accordingly, the Commission will not grant the relief requested by MNE. By the terms of Order No. 5017, Docket No. 83.1.2 as applied here, the 1983 avoided cost rates are not available to MNE. Procedurally, the Petition of MNE should be dismissed.

CONCLUSIONS OF LAW

1. MDU is required to purchase power from qualifying facilities, as defined by PURPA and Montana law, subject to the terms and conditions established by the Montana Public Service Commission.

2. The Montana Public Service Commission properly exercises jurisdiction over the matters raised by the Petition in this action. Section 69-3-663, MCA.

3. This Order is consistent with federal and state law, and with the Commission's previous orders in Docket Nos. 81.2.15 and 83.1.2.

ORDER

The Petition of MNE in this Docket is hereby ordered by this Commission to be dismissed, with prejudice.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

TOM MONAHAN, Commissioner

ATTEST:

Trenna Scofield
Secretary
(SEAL)