

Service Date: November 7, 1988

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) UTILITY DIVISION
by the Montana Power Company for)
Authority to Increase Rates for) DOCKET NO. 88.6.15
Electric and Natural Gas Service.)

IN THE MATTER of the 1988 Annual)
Compliance Filing for Electric)
Avoided Cost Based Rates for Public) DOCKET NO. 88.7.26
Utility Purchases from Qualifying)
Facilities by the Montana Power)
Company.)

IN THE MATTER of the Complaint of)
Boulder Hydro Limited Partnership,) DOCKET NO. 88.8.25
Complainant,)
-vs-)
Montana Power Company,) ORDER NO. 5360b
Defendant.)

ORDER ON RECONSIDERATION

On October 17, 1988 the Montana Public Service Commission (Commission) issued a protective order in this Docket covering certain information sought by the parties regarding the proposed sale by the Applicant Montana Power Company (MPC) to the Department of Water and Power of the City of Los Angeles.

In pertinent part, this protective order provided as follows:

1. (b) Use of Confidential Information and Persons Entitled to Review. All Confidential information made available pursuant to this Order shall be given solely to counsel for the parties, and shall not be used or disclosed except for purposes of this proceeding; provided, however, that access to any specific Confidential Information may be authorized by said counsel, solely for the purpose of this proceeding, to those persons indicated by the parties as being their experts in this matter. Any such expert may not be an officer, director or employee (except legal counsel) of the parties, or an officer, director, employee or stockholder or member of an association or corporation of which any party is a member, subsidiary or affiliate. Any member of the Public Service Commission, and any member of its staff, the Consumer Counsel, and any member of his staff may have access to any Confidential Information made available pursuant to this order, and shall be bound by the terms of this Order.

On October 25, 1988, the Commission received a motion for reconsideration from the Department of Natural Resources and Conservation (DNRC), a party to this proceeding.

On November 4, 1988, the Commission staff waived the requirements of ARM 38.2.4806.

In its motion, DNRC asserts that it is a public agency similar to the Commission and the Montana Consumer Counsel, which employs its own in-house experts who have no competitive interest in the protected confidential information. According to DNRC,

application of the protective order as issued essentially requires it to expend public funds to hire private "experts" when in-house employees are otherwise available.

DNRC requests that the protective order be revised to respond to the governmental functions exercised by state agencies in rate regulation matters. Accordingly, DNRC contends that the protective order should be modified to allow its employee "experts" access to the protected confidential information. Since these employees have no "competitive interest" in the protected information, disclosure to them does not impair the rights of utilities recognized and protected in Mountain States Telephone and Telegraph Co. v. Department of Public Service Regulation, ___Mont.____, 634 P.2d 181 (1981).

The Commission agrees with the analysis presented by DNRC in its motion and accompanying brief. Accordingly, paragraph 1(b), quoted above, is hereby amended as follows;

- (b) Use of Confidential Information and Persons Entitled to Review. All Confidential Information made available pursuant to this Order shall be given solely to counsel for the parties, and shall not be used or disclosed expert for purposes of this proceeding; provided, however, that access to any specific Confidential Information may be authorized by said counsel, solely for the purpose of this proceeding, to those persons indicated by the parties as being their experts in this matter. Any such expert may not be an officer, director or

employee (except legal counsel) of the parties, or an officer, director, employee or stockholder or member of an association or corporation of which any party is a member, subsidiary or affiliate. Any member of the Public Service Commission, and any member of its staff, the Consumer Counsel, and any member of his staff, and the staff of the Department of Natural Resources and Conservation, may have access to any Confidential Information made available pursuant to this Order, and shall be bound by the terms of this Order. (emphasis upon amendment)

CONCLUSIONS OF LAW

1. The Applicant, Montana Power Company, furnishes electric service to consumers in the State of Montana and is a "public utility" under the regulatory jurisdiction of the Montana Public Service Commission. Section 69-3-101, MCA.

2. The Commission properly exercises jurisdiction over the Applicant's rates and operations. Section 69-3-102, MCA and Title 69, Chapter 3, Part 3, MCA.

3. The Commission is empowered, where appropriate during the regulation of public utilities, to restrict or place terms and conditions upon the public disclosure of proprietary information.

Mountain States Telephone and Telegraph Co. v. Department of Public Service Regulation, ___Mont.____, 634 P.2d 181 (1981).

ORDER

1. The Montana Public Service Commission grants the Motion for Reconsideration of the Department of Natural Resources and Conservation, as it relates to paragraph 1(b) of the protective order issued in this Docket, dated October 17, 1988.

Done and Dated this 7th day of November, 1988 by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

TOM MONAHAN, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Carol Frasier
Commission Secretary

(SEAL)

NOTE: You may be entitled to judicial review in this matter. Judicial review may be obtained by filing a petition for review within thirty (30) days of the service of this order. Section 2-4-702, MCA.