

Service Date: December 7, 1990

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 COMPANY, a)	
Division of MDU Resources Group,)	
Inc., for Authority to Implement the)	DOCKET NO. 90.11.75
Gas Cost Tracking Procedure to Estab-)	
lish Decreased Rates for Gas Service.)	ORDER NO. 5524

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INTERIM ORDER REJECTING APPLICATION

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FINDINGS OF FACT

BACKGROUND

On November 1, 1990 the Montana-Dakota Utilities Company (MDU) filed with the Montana Public Service Commission (PSC) its semiannual application to implement the Gas Cost Tracking Adjustment Procedure as set forth in MDU tariff Rate 87 and Rate 88 (tracking procedure). The filing was designated Docket No. 90.11.75. MDU requested an effective date of December 1, 1990 for a PSC order in this docket.

Historically, the tracking procedure has provided for semiannual adjustments to rates on the basis of a Current Gas Cost Tracking Adjustment and an Unreflected Gas Cost Tracking Adjustment amortized over a projected six-month sales period.

Prior to MDU's November 1, 1990 filing, and on September 24, 1990 the PSC issued Order No. 5490 in Docket Nos. 87.7.33, 88.2.4, 88.5.10 and 88.8.23 (purchase practices proceedings). This order modified the historic tracking procedure and required specific information to be filed in all future tracker filings, including this current proceeding.

MDU has moved for reconsideration of Order No. 5490, the PSC is presently considering MDU's motion, and will rule to grant or deny it in the near future. In its motion MDU does not appear to challenge the substance of the provisions modifying the tracking procedure and requiring the filing of specific information. MDU has not moved for a stay of enforcement of Order No. 5490.

To this date, MDU has failed to file amended Rate 87 and Rate 88 tariff sheets and failed, in this filing, to reflect the modifications and supply the information as required by Order No. 5490.

Additionally, on October 3, 1990 the PSC issued to MDU a formal request that MDU specifically address five identified issues in this current tracker proceeding. MDU did not address these issues in its application.

However, on November 5, 1990 the PSC received from MDU a letter explaining that MDU thought it inappropriate to include such information in its tracker filing. Accompanying the letter was MDU's response addressing the issues raised in the PSC's formal request of October 3, 1990.

On November 8, 1990, at a scheduled and noticed work session, the PSC considered and rejected MDU's arguments not to include the formally requested information in the tracker filing. PSC staff was directed by the PSC to draft a Notice of Commission Action incorporating MDU's response into the current tracker proceeding.

This Notice of Commission Action has not yet been issued, pending further PSC discussion of other aspects of this current tracker application.

In MDU's current application the Unreflected Gas Cost Adjustment includes several unusual items such as a PSC tax refund plus interest, deferred revenues plus interest authorized by the order on reconsideration in Docket No. 88.11.53, gas supplier refunds to be passed through, the return of certain MDU over collections and Williston Basin Interstate Pipeline (WBIP) take or pay (TOP) charges to be passed through; as well as, several miscellaneous items (see Order Nos. 5399b, 5399d, 5476 and 5476a and pp. 3-6 of Donald R. Ball's Direct Testimony).

In its application, MDU states that various WBIP filings before the FERC have occurred since the time when the PSC established MDU's present gas cost tracking adjustment level. In addition, MDU notes that it will replace its gas contract with Amerada Hess effective January 1, 1991.

The net effect of these changes and the amortization of the balance in the unreflected account is an increase of \$.657/dk for residential and general service customers and an increase of \$.997/dk for industrial customers. These changes would result in approximately \$4,200,000 in increased revenues over the proposed December 1, 1990 through May 31, 1991, effective period. MDU requests that the PSC grant a change in rates on these bases.

As an alternative, MDU proposes no change in rates be made on December 1, 1990. MDU states that a final decision in WBIP's FERC Docket No. RP86-10 is likely to result in substantial

refunds to MDU that would potentially be received prior to June 1, 1991, the next scheduled tracker effective date. MDU believes it more reasonable to request deferral of the potential rate increases so that they can be offset by the potentially substantial WBIP refunds during the upcoming spring tracker filing.

MDU requests that this filing be accepted as being in full compliance with the filing requirements of the Commission.

COMMISSION ANALYSIS AND DISCUSSION

MDU's failure to provide the information required by Order No. 5490 and the PSC's October 3, 1990, formal request leaves the PSC in a position where it lacks specific data needed to examine the propriety of MDU's current and unreflected gas costs included in this tracker filing.

MDU's actions have placed the PSC in a position where it cannot fulfill its obligation to insure that rates are just and reasonable. MDU's alternative proposal would leave rates at current levels, which appears to be fair on the surface if an extremely conservative approach is taken. However, even this could not be properly determined given the present filing.

When MDU was ordered through Order No. 5490 to file specific information in the upcoming fall tracker, now designated Docket No. 90.11.75, and requested formally to supply additional information, the PSC meant it.

The PSC is rejecting MDU's filing and suspending from the approval date of this order MDU's authority to defer any additional costs into the unreflected account until such time as MDU complies with the additional filing requirements set forth in Order No. 5490 and the formal request of October 3, 1990. However, additional cost offsets and refunds must continue to be booked in the unreflected account as has traditionally been done.

CONCLUSIONS OF LAW

All Findings of Fact are by this reference incorporated herein.

MDU is a public utility providing natural gas services to customers in Montana. By its application in this docket, MDU is requesting a change in its scheduled rates. The PSC has jurisdiction over this matter pursuant to Title 69, Chapter 3, MCA. See also, Section 69-3-302, MCA, specifically.

In exercising this jurisdiction the PSC has the duty to see that MDU's rates are and remain just and reasonable. See generally, Montana-Dakota Utilities Co. v. Montana Department of Public Service Regulation, 231 Mont. 118, 121, 45 St. Rptr. 477, 479, 752 P.2d 155, 157 (1988); see also, Section 69-3-330, MCA.

In exercising this jurisdiction and fulfilling this duty, the PSC has full power of supervision, regulation, and control of MDU. See generally, Montana-Dakota Utilities Co. v. Department of Public Service Regulation, ___Mont.___, ___, 47 St. Rptr. 1351, 1355, ___P.2d___, ___ (1990); see also, Sections 69-1-102 and 69-3-102, MCA.

The PSC has the power to do all things necessary and convenient in the exercise of its statutory powers. See, Section 69-3-103, MCA.

These full powers in the PSC must be exercised in conformity with the federal and state constitutions, statutes and rules.

In the PSC's regulation of MDU, as in other public utilities, it is an axiom (proposition whose truth cannot be more plain) that MDU, in seeking increased rates, has the burden of showing that its claims are reasonable. See generally, Montana Power Company v. Department of Public Service Regulation, 204 Mont. 224, 230, ___St. Rptr.___, ___, 665 P.2d 1121, 1124 (1983).

This burden of showing that claims are reasonable means that a public utility must show that the requested rates (the claim) are reasonable. It is clear that to accomplish this the public utility must do so in light of its decisions, actions, and

operations that manifest, effect, are the basis of, or justification for the rate change. It is clear that showing that rates are reasonable requires a showing in light of all things that the PSC must consider in performing its duty to approve only rates that are just and reasonable.

The elements of a showing that rates are reasonable, in most cases, should be known by a public utility through statute, rule, order, or prior practice. However, the elements may change to include things that the PSC itself views as necessary to fulfill its duty. So long as a public utility is apprised of these things in a timely or meaningful manner, it has the burden of showing reasonableness based on them.

The PSC may lawfully request that a public utility address any issue necessary for the PSC to perform its duty in rate change matters initiated by the public utility.

In Order No. 5490 and the PSC's formal request of October 3, 1990, the PSC properly placed MDU on notice that the issues would be a part of MDU's tracking procedure.

MDU has, from all appearances, ignored Order No. 5490 and clearly stated its determination that including the response to the PSC's formal request in this tracking proceeding is inappropriate.

The PSC may reject MDU's application if it is not in compliance with statute, rule or order. See, ARM 38.2.315. Such rejection must be done within 30 days of receipt of an application. See, ARM 38.2.315.

However, for good cause and as justice may require a PSC procedural rule may be waived by the PSC. See, ARM 38.2.305. Good cause exists as a proper determination on this matter has required the PSC to first review MDU's motion pertaining to Order No. 5490, which was filed November 9, 1990. The PSC hereby waives the 30 day rule to the extent this order is issued beyond it and constitutes a rejection.

MDU's application is not in compliance with Order No. 5490. MDU's application may be lawfully rejected on this basis. See, ARM 38.2.315.

MDU's application is not in compliance with the PSC's formal request of October 3, 1990. This formal request is based on ARM 38.5.183, providing that a public utility may be required by letter to submit specified cost data. It is also based on Section 69-3-106, MCA. It is also based on the general powers of the PSC. MDU's application may be lawfully rejected on these bases. See generally, ARM 38.2.315.

MDU is required by tariff Rate 87 and Rate 88, to file an application semiannually 30 days prior to the established proposed effective dates contained therein. As a result of MDU's failure to incorporate the requirements of Order No. 5490 and the formal request of the PSC and any resulting rejection by the PSC, MDU is in violation of Montana law.

MDU will remain in violation of the law until such time as it properly files an application under tariff Rate 87 and Rate 88 as modified by Order No. 5490 and in compliance with the PSC's formal request.

ORDER

All Conclusions of Law are by this reference incorporated herein.

The application of MDU for authority to implement the tracking procedure is rejected on the bases that it is not in compliance with Order No. 5490 and the formal request of the PSC.

MDU shall file amended tariff sheets for Rate 87 and Rate 88 incorporating therein the applicable provisions of Order No. 5490. This filing shall be within 15 days of the approval date of this order.

MDU shall file a proper application under Rate 87 and Rate 88 (as amended by Order No. 5490) incorporating therein the applicable provisions of Order No. 5490 and the formal request of

the PSC. This filing shall be within 15 days of the approval date of this order.

Effective on approval of this order and until MDU properly files an application as ordered above, the authority of MDU to defer any additional costs into the unreflected account is suspended. However, additional cost offsets and refunds must continue to be booked in the unreflected account as has been traditionally done.

The effective date of this order is November 30, 1990.

Done and Dated this 30th day of November, 1990 by a vote of 4-1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman

JOHN B. DRISCOLL, Commissioner

REX MANUEL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner
(Voting to Dissent)

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.