

Service Date: April 4, 1991

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

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IN THE MATTER OF The Applications for )	
Approval of (A) the General Filing of )	UTILITY DIVISION
Pacific Power & Light Company in )	
Demonstration of One Test Year as a )	
Merged Company and (B) Proposed New )	DOCKET NO. 90.11.78
Tariff, Schedule No. 47T, on the PP&L/ )	
Champion International Inc. Electric )	ORDER NO. 5538d
Service Contract. )	

ORDER DENYING MOTION FOR RECONSIDERATION  
AND COMPELLING PRODUCTION

On February 6, 1991 the Montana Public Service Commission (Commission) Staff informed Pacific Power & Light Company (PP&L, Applicant or Company) of Staff's on-site audit in Portland, Oregon scheduled February 18-22, 1991. The audit related to Docket No. 90.11.78 as well as overall operations of Pacificorp and its subsidiaries.

After initial refusal to provide requested material for Northwestern Telephone Systems, Inc. (NTS), Pacific Telecom, Inc., and NERCO, Inc., subsidiaries of Pacificorp, PP&L agreed in the afternoon of February 21, 1991 to make requested information available for NTS and Pacific Telecom only. The Company continued to refuse review of NERCO's material, including Board of Director's minutes.

Commission Staff informed PP&L that it was essential to review materials requested of NERCO, Inc. as well as that of the other affiliated subsidiaries.

On February 27, 1991 the Commission received a letter from PP&L's counsel expressing the Company's position of refusal to permit Staff examination of NERCO's materials. PP&L offered to have NERCO's staff counsel screen the requested materials for information NERCO deemed relevant to PP&L's electric operations.

On February 28, 1991 at a public work session, the Commission voted to compel PP&L to allow examination of NERCO's materials as Staff deemed necessary for audit purposes.

On March 5, 1991 the Commission issued Order No. 5538b, Order Compelling Production for Audit Examination. The order directed PP&L to furnish the Commission and its Staff any and all books, accounts, records and papers relating to NERCO, as requested, as well as all such documents relating to Pacific Telecom, Inc. and NTS, as previously agreed. A refusal to permit this audit examination could subject PP&L to penalties as provided in § 69-3-206, MCA.

On March 18, 1991 the Commission received the Motion for Reconsideration from the attorneys for Pacificorp, dba Pacific Power & Light Company.

At a duly noticed public work session held on March 27, 1991, the Commission voted to deny PP&L's Motion for Reconsideration of Order No. 5538b. The Commission determined that NERCO, Inc. is a business of PP&L subject to investigation and audit by the Commission. The Commission further determined that the Commission shall assess the relevance of records of NERCO, Inc. in its audit and that it is unacceptable for PP&L to screen materials for an audit.

DISCUSSION AND ANALYSIS

PP&L claims that it has the right to limit Commission investigatory access to excerpts of NERCO's materials that NERCO has determined are related to electric operations or transactions with PP&L or that could impact PP&L's rates or services. PP&L believes that Commission Staff, in an audit of PP&L and any other businesses in which PP&L is directly or indirectly engaged, shall accept PP&L's assurances that it had provided "sufficient information" that all of Pacific Power's affiliated transactions are just, reasonable, in the public interest, and without adverse impact on rates and services. Further, PP&L apparently believes that the utility shall instruct the Commission as to what is within Commission jurisdiction.

To accept PP&L's position would eviscerate the authority of the Commission to conduct investigatory audits. An audit is a thorough review of a company's books, records, accounts, papers, documents, etc., which in part allows the Commission to keep itself informed on the management of the business of the utility. See § 69-3-106, MCA. Every public utility, including PP&L, which is engaged directly or indirectly in businesses other than those defined as "public utility" pursuant to § 69-3-101, MCA, shall keep and render the accounts of these businesses to the Commission, as required. See § 69-3-202(2), MCA. If the Commission requires an accounting from these other businesses, all the provisions of Title 69, Chapter 3, MCA, apply to such papers and records of these other businesses. Id.

The Commission will not grant relief for an argument that the public utility shall be allowed to screen the records of its businesses for purposes of a filtered audit and investigation. Following this reasoning to its logical conclusion, soon utilities would be handing over only such edited records as they deemed suitable for a favorable Commission review.

PP&L is in error to propose that the Commission may review only records and papers related to public utility business, that is, the provision of service in exchange for payment of rates. PP&L's argument is circuitous. First, PP&L attempts to define such business as it deems public utility business. Then, PP&L confines the Commission's jurisdiction to only such business directly related to the provision of service or the determination of rates. Even if this were the case, the Commission and not PP&L should decide what business pertains and what does not. However, subject to the provisions of Title 69, Chapter 3, the Commission has full authority to inquire into the

management of the business of all public utilities. § 69-3-106, MCA. This supervisory authority extends to all business owned or managed by the utility, including any businesses the utility is engaged in directly or indirectly which are not public utility business as defined in § 69-3-101, MCA. § 69-3-202(2), MCA. Stepping outside the limited circle of PP&L reasoning, it is clear that the Commission has full authority to inquire into the management of NERCO, Inc. and to examine its books, records, accounts and papers, as the Commission deems necessary and convenient in the exercise of its powers. § 69-3-103, MCA.

PP&L cites Montana Power Co. v. PSC, 206 Mont. 359, 671 P.2d 604 (1983) as demonstrating limitations to the scope of Commission powers as statutorily granted in supervising utilities under Title 69, MCA. The limitation therein is that the Commission has no preliminary injunctive enforcement power on its own order, without a notice and hearing. The Commission must go to District Court for summary action. Under Title 69, MCA, as a matter of law, the Commission has no judicial powers. § 69-3-103, MCA. However, the Supreme Court did not decide whether the Commission could prohibit a public utility's corporate reorganization as the issue was not ripe for review.

The Commission conducts general investigatory audits, as it deems necessary, of all public utilities subject to its jurisdiction. The audit in question pursuant to this Order is being conducted generally on over-all operations of Pacificorp and its subsidiaries and specifically on, but not limited to, the issues raised in Docket No. 90.11.78.

For the purpose of the penalty provision in § 69-3-206, MCA, PP&L argues that the materials the Commission compels for production shall be related "to the business of the public utility," and that NERCO's materials are not related. As explained in previous paragraphs, the "business of the public utility" need not be "public utility" business (providing services as defined in § 69-3-101, MCA). Instead, it may be "any other businesses" not mentioned in § 69-3-101, MCA, in which the public utility engages. § 69-3-202, MCA. These records are within the Commission's jurisdiction.

On February 21, 1991, agents of PP&L refused to furnish the Commission with books, accounts, records and papers in violation of § 69-3-206, MCA, and have since failed to

furnish the Commission access to the requested materials. As of March 23, 1991, PP&L shall have refused and failed to furnish the information requested by the auditors for a period of 30 days. The Commission deems that this refusal to allow such inspection materially stymies the Commission in pursuit of its duties and shall be subject to a fine of \$1,000 per day for this violation, to begin accruing on March 23, 1991. The Commission is empowered to enforce this fine by filing a complaint in district court. § 69-3-206, MCA.

The Commission wishes to remedy this matter short of judicial action. To that end, the Commission will stay any pursuit of its legal remedies for a period of ten days after issuance of this order. On or before April 12, 1991, PP&L shall file a notice of its intentions regarding compliance with Commission Order Nos. 5538b and 5538d.

#### CONCLUSIONS OF LAW

The Montana Public Service Commission is invested with supervision and regulation of public utilities, subject to the provisions of Title 69, Montana Code Annotated (MCA). § 69-3-102, MCA.

Pacific Power & Light Company is a public utility subject to the Commission's jurisdiction over its operations in Montana.

The Commission is empowered to do all things necessary and convenient in the exercise of its powers conferred by Title 69. § 69-3-103, MCA.

The Commission has the authority to inquire into the management of the business of the public utility, to keep itself informed and to obtain all necessary information from the utility. § 69-3-106, MCA.

When required by the Commission, a public utility shall provide information for any other businesses it is directly or indirectly engaged in which are not defined as public utilities, and Title 69, Chapter 3, MCA, shall apply with like force to such materials required to be furnished. § 69-3-202, MCA.

The Commission has the power to require a utility to furnish or allow examinations of books, accounts, records or papers relating to the business of a public utility, subject to a penalty for refusal of \$1,000 per day per violation. §§ 69-3-106 and 69-3-206, MCA.

ORDER

THE COMMISSION THEREFORE ORDERS the following:

Pacific Power & Light's Motion for Reconsideration is DENIED.

Pacific Power and Light Company shall furnish the Commission and its Staff any and all books, accounts, records and papers relating to NERCO, as determined necessary by Staff, as well as all such documents relating to Pacific Telecom, Inc. and Northwestern Telephone Systems, Inc.

Pacific Power & Light shall be subject to fines and penalties as provided in § 69-3-206, MCA, of \$1,000 per day from March 23, 1991 forward for refusal and failure to permit inspection of books, accounts, records and papers as required by the Commission. The Commission may appropriately pursue recovery of these fines upon complaint to district court if PP&L fails to meet conditions prescribed in the following paragraph.

Pacific Power & Light shall file a Notice of Intention on or before April 12, 1991 stating its intention to comply with Order Nos. 5538b and 5538d. PP&L may contact Commission Staff as to appropriate means to facilitate furnishing the information required.

DONE AND DATED this 2nd day of April, 1991 by a vote of 5 - 0 .

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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HOWARD L. ELLIS, Chairman

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DANNY OBERG, Vice Chairman

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BOB ANDERSON, Commissioner

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JOHN B. DRISCOLL, Commissioner

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WALLACE W. "WALLY" MERCER, Commissioner

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.