

Service Date: April 14, 1992

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. 90.6.39
Natural Gas and Electric Service.)	ORDER NO. 5484t

PROCEDURAL ORDER FOR RESERVED ISSUES

INTRODUCTION

On June 27, 1990 the Montana Public Service Commission (Commission) received Montana Power Company's (MPC or Company) application for authority to increase electric and gas rates. The Commission issued final Order Nos. 5484k (Revenue Requirement) and 5484n (Class Cost of Service/Rate Design-Electric) on July 19, 1991 and October 17, 1991, respectively. On November 12, 1991 the Commission issued its Order on Motions for Reconsideration, Order No. 5484p, which reserved to a later proceeding in this Docket the issues of the proper ratemaking treatment of the reciprocal sharing agreement and the fiber optic ground wire transaction. The Commission issued its proposed procedural order on April 1, 1992 to be finalized on April 10, 1992.

The Commission now enters this order setting forth the procedure to be followed on the reserved issues in Docket No. 90.6.39.

In this order the term "parties" includes MPC, Montana Consumer Counsel (MCC) and intervenors in the Docket which participated in the reserved issues in prior proceedings. To participate in this portion of the Docket such intervenors, other than MCC, shall file a Notice of Intervention in the Reserved Issues. Any other individuals or entities are not parties unless they have been granted intervention by the Commission.

Copies of all pleadings, motions, discovery requests, discovery responses, prefiled testimony and briefs shall be filed with the Commission and served on the parties. Copies of all discovery responses shall be served on the Commission, on the party making the discovery requests and on parties who request the responses pursuant to paragraph 12 of this Order. Parties shall file an original and ten copies with the Commission of motions, testimony, briefs and documents directed to the Commission. Service upon the parties shall be upon the parties' attorney of record and such other individuals as may be reasonably designated by the attorney of record.

All dates listed in the following schedule are mailing dates. Parties must mail all material by the most expeditious method available at reasonable cost. In choosing the "most expeditious method available," the parties should consider the obligations imposed upon other parties by the following schedule. Parties may make arrangements among themselves for the use of express mail.

Schedule

Unless modified, the following schedule shall apply in Docket No. 90.6.39:

- (a) April 17, 1992: Final day for written discovery directed to MPC.
- (b) May 1, 1992: Final day for completion by MPC of all responses to written discovery directed to MPC by other parties pursuant to paragraph 4(a).

- (c) May 15, 1992: Final day for completion and service upon MPC and other parties of the prepared testimony and exhibits of all parties except MPC.
- (d) May 29, 1992: Final day for written discovery directed to all parties by MPC; final day for intervenor discovery to parties other than MPC.
- (e) June 8, 1992: Final day for completion of answers by all parties to written discovery made pursuant to paragraph 4(d).
- (f) June 18, 1992: Final day for service of rebuttal testimony by MPC and testimony of other parties which is in rebuttal to testimony filed pursuant to paragraph 4(c).
- (g) June 29, 1992: Final day for written discovery directed to all parties that filed rebuttal testimony pursuant to paragraph 4(f); such discovery must be directly related to the rebuttal testimony.
- (h) July 7, 1992: Final day for completion of answers by all parties to discovery made pursuant to paragraph 4(g).
- (i) July 10, 1992: Final day to provide the Commission and parties with a witness list indicating the sequence that witnesses will be called by the parties at the hearing; final day for any party that intends to introduce evidence, data requests or other discovery as part of its basic case, to notify all parties of the specific data requests or other discovery it plans to so introduce.
- (j) July 14, 1992: Opening day of hearing on reserved issued in Docket No. 90.6.39.

Intervention

This proceeding is limited to the reserved issues and to the parties participating in Docket No. 90.6.39. No request for late intervention will be granted without a substantial demonstration of a proposed intervenor's direct interest in the proceeding, good cause shown why it did not intervene and/or testify in the original proceeding, and covenant that the intervention, if granted, will not delay or prejudice this proceeding in concluding the reserved issues. (ARM 38.2.2401 et seq.) Parties participating in the proceedings on the reserved issues shall have filed with the Commission their Notice of Intervention in the Reserved Issues on or before April 10, 1992. After this date, intervenors shall request Commission approval in order to participate in this limited proceeding.

Discovery

The schedule in paragraph no. 4 represents deadlines. Written discovery, filed testimony or data responses submitted after the appropriate deadline may be allowed only by leave of the Commission, upon request and a showing of good cause.

Parties are encouraged to communicate perceived deficiencies in discovery and to attempt to remedy informally, when possible. Objections to the Commission pursuant to paragraph nos. 13 and 14 shall be a remedy of last resort. To resolve concerns informally, requesting parties shall send written notice to the Commission and those parties specifically requesting copies of answers to discovery requests pursuant to paragraph 12. Notice shall specify the applicable data request number(s), agreement to clarify or complete answer, date of service of initial request, and appropriate discovery deadline.

The term "discovery" as used in this order includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as informal "data requests." The Commission

urges all parties to conduct their discovery as much as possible through the use of data requests.

Data requests must be numbered consecutively, beginning with the number last used by the requesting party in proceedings under this Docket. All data requests must include at the beginning of each request a short description (approximately five words or less) explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit no., page no., etc., may be included in addition to, but not in lieu of, the subject of the request. Each party should attempt to keep descriptions consistent from one request to another.

Multi-part requests may be used. Each part of a multi-part request should be denoted by a lower case letter (a, b, c, d and e). Requests should be limited to five (a-e) parts without any subparts. If additional parts are necessary, additional requests should be made. A single part request should be denoted by the request number only.

Examples of acceptable data requests follow:

Acceptable Data Request Format

- PSC-500 RE: Purchased Gas Contracts
Witness - Doe, Page JQD-4, Lines 13-15.

Please provide the origination and expiration date for each contract.
- PSC-501 RE: Bypass
Witness - Roe, Page JAR-14, Lines 11-14.
- a. what risks of bypass would be avoided by the shareholders as a result of the Company's proposed treatment?
 - b. what risks of bypass would be avoided by the ratepayers as a result of the Company's proposed treatment?
 - c. what risks of bypass would be shared by ratepayers and shareholders as a result of the Company's proposed treatment?

written discovery and data requests will be served on all parties of record on the reserved issues. Unless otherwise agreed, copies of answers to all written discovery and data requests will be served only on parties specifically requesting them and on the Commission. Here, the term "parties" includes the parties, their attorneys, and witnesses testifying on matters to which the answers relate. A party should inform that party to whom data requests or written discovery is directed that it wishes to obtain material requested by any other party. The Commission encourages all parties to scrutinize the material provided in the Docket before submitting data requests to limit unnecessary data requests. The Commission further encourages parties to discuss preferred format for data requests and responses, consistent with paragraphs 9-11 of this Order.

Parties have five (5) days from receipt of written discovery or data requests, or until a response is due, whichever is less, to file objections to the request(s). Notice of the objection shall be served upon the Commission and all parties of record. The Commission may dispose of such objections by prompt ruling or may schedule argument on the objections. Failure to object will be deemed acceptance of the requests. Parties are encouraged to try to resolve concerns about requests pursuant to paragraph 7, before filing objections.

A requesting party dissatisfied with the response to its data request must, within five (5) days after receipt of such response, serve in writing upon the Commission and all parties of record its objections to such response. The Commission may dispose of objections by prompt ruling or may schedule argument.

The Commission will issue its order either sustaining or overruling the objections.

The Commission may allow parties to submit written discovery or data requests after their deadlines if good cause is shown for failure or inability to meet the deadline.

Unless excused by the Commission, failure by a party to answer data requests or other discovery from any party may result in:

- (a) An order prohibiting the disobedient party from supporting or opposing related claims, or from introducing related matters in evidence;
- (b) An order striking pleadings, testimony or parts, or staying further proceedings until the request is satisfied, or dismissing the action or proceeding or any part.

Neither the Commission nor the Commission staff is a party to this proceeding. Commission staff has the rights and responsibilities of parties under Commission rule. See ARM 38.2.601(n). The Commission directs its staff to make every good faith effort to meet the discovery deadlines imposed on parties in this Order. However, Commission staff has the overriding

responsibility to advise the Commission and the duty to ensure that all issues are thoroughly explored on the record. The Commission reserves the right for its staff to conduct discovery beyond the deadlines contained in this order if issues are not adequately examined. Failure or inability to respond to this late discovery may result in a continuance of the scheduled hearing.

Testimony and Evidence

All proposed exhibits and prefiled written testimony shall be marked for identification before the hearing as arranged in advance with the court reporter.

At the hearing, prefiled direct, answer and rebuttal testimony will be adopted into the record, eliminating the need to retype prepared testimony into the transcript.

Parties shall make copies available of any documents not previously filed with the Commission which will be used for cross-examination, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each Commissioner, the Commission staff, and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, upon prior arrangement with the Commission and all parties.

By leave of the presiding officer, parties may be permitted to present "live" rebuttal testimony only in direct response to an issue raised for the first time in cross-examination or the testimony of a public witness.

The Commission may allow citizens and citizen groups to make statements without submitting prepared written testimony; in addition, if they have prepared written testimony, they may read it or have it adopted directly into the record.

The rules of evidence applicable in the District Courts of the State of Montana at the time of the hearing in this Docket will be used at the hearing.

Prehearing Motions and Conferences

Motions by any party, including motions to strike pre-filed testimony and motions concerning procedural matters shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs unless otherwise requested by a party. The party successfully requesting oral argument shall notice it for hearing before the Commission.

The Commission may set a final Prehearing Conference to discuss settlement of any issues in the proceeding; simplification of issues; possibility of obtaining admissions of fact and documents; distribution and marking of written testimony and exhibits prior to the hearing; and other procedural matters as may aid in the disposition of the proceeding.

Nothing in this Order shall be construed to limit the legally established right of the Commission or its staff to inspect the books and accounts of MPC at any time.

Witness Sequence List

MPC shall provide the Commission one list indicating the witness sequence for the hearing, which MPC and any other parties to this Docket shall negotiate among themselves. MPC may inform the Commission and parties of the final sequence in writing or by telephone directed to the party's attorney of record, and Commission staff attorney.

Done and Dated this 13th day of April, 1992 by a vote of 5 -
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BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DANNY OBERG, Vice Chairman

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

TED C. MACY, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)