

Service Date: September 30, 1991

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

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IN THE MATTER OF MONTANA-DAKOTA)	UTILITY DIVISION
UTILITIES COMPANY, Application for)	
Authority to Implement the Gas Cost)	DOCKET NO. 91.5.18
Tracking Adjustment Procedure.)	ORDER NO. 5570

PROCEDURAL ORDER

PRELIMINARIES

On September 4, 1991 the Montana Public Service Commission (PSC or Commission) issued a Proposed Procedural Order for the above-entitled docket, allowing a comment period for changes. On September 16, 1991 the PSC received Objections to the Proposed Procedural Order from Montana-Dakota Utilities Company (MDU or Company).

MDU first requests that the October 11, 1991 date specified in paragraph 3(c) of the Proposed Procedural Order and each succeeding date, except for the hearing date, be extended by seven days. MDU states that the Montana Consumer Counsel has been contacted and has no objection to this request. The request is hereby GRANTED and paragraph 3 of the Proposed Procedural Order is amended accordingly. Now see paragraph 8 herein.

MDU also requests that the phrase "and relevant orders of the PSC" be stricken from paragraph 4 of the Proposed Procedural Order. MDU asserts that the phrase provides no meaningful notice to MDU of the procedures being contemplated. MDU asserts that the phrase violates the Montana Administrative Procedures Act (MAPA) which specifically contemplates that an agency's procedural requirements will be by rule (citing to Section 2-4-201(1), MCA). MDU also asserts that Section 2-4-101(1), MCA, specifically defines establishment of procedural requirements as agency action which must conform to MAPA rulemaking requirements.

MDU's request concerning "and relevant orders of the PSC" in paragraph 4 of the Proposed Procedural Order is DENIED IN PART AND GRANTED IN PART. MDU's assertion that MAPA encompasses all agency "procedures" into MAPA "rules," making them subject to MAPA "rulemaking" requirements, is not persuasive. The factor governing whether a procedure, regulation, standard, or statement is a MAPA "rule" is its applicability. If it is of "general applicability" it is a "rule" under MAPA. See, Section 2-4-102(10), MCA. MDU's Gas Cost Tracking Adjustment Procedure (Tracker) which this docket totally involves, is not in and of itself a procedure of general applicability. It was created by Order, not rule, it has continually been governed and modified by Order, not rule. Although procedures of general applicability do apply, so do procedures of specific applicability -- procedures unique to it. These procedures are contained in the tariffs governing MDU's Tracker and PSC orders applying to MDU's Tracker. The phrase in issue is amended to accommodate the above reasoning and alleviate or negate any lack of clarity. Now see paragraph 9 herein.

Amendment has been made, on the PSC's own motion, to the "Discovery" section, paragraphs 7 through 11 of the Proposed Procedural Order (paragraphs 12 through 17 of this Order). This amendment is to provide the procedure for numbering and identifying "data requests." Now see paragraph 13.

INTRODUCTION

This Order sets forth the schedule and procedure, or references the procedure, to be followed in this docket.

"Parties" includes the applicant, MDU and all intervenors. "Intervenors" must obtain a grant of intervention by the PSC after proper application. At this point the Montana Consumer Counsel is the only intervenor and its requested hearing is granted.

SCHEDULE

All dates listed in the following schedule are mailing dates unless otherwise specified. Parties must mail all material by the most expeditious method available at reasonable cost. Parties may make arrangements among themselves for the use of express mail.

- a. September 20, 1991: Final day for requesting intervention as a matter of right.
- b. October 4, 1991: Final day for written discovery to MDU from intervenors.
- c. October 18, 1991: Final day for MDU to answer written discovery from intervenors.
- d. November 1, 1991: Final day for prefiled testimony from intervenors.
- e. November 15, 1991: Final day for written discovery to intervenors from MDU.
- f. November 29, 1991: Final day for intervenors to answer written discovery from MDU.
- g. December 13, 1991: Final day for prefiled rebuttal testimony from MDU.
- h. December 27, 1991: Final day for written discovery to MDU (rebuttal testimony only) from intervenors.
- i. January 10, 1992: Final day for MDU to answer written discovery (rebuttal testimony only) from intervenors.

- j. January 24, 1991: Final day for all parties to file a prehearing memorandum listing issues it views as uncontested, issues it views as contested, witnesses it intends to call at hearing, exhibits it intends to introduce at hearing, and response to any discovery to date that it intends to introduce at hearing.
- k. February 7, 1992: Final day for depositions.
- l. March 10, 1992: Hearing commences and continues from day to day until concluded.

PROCEDURE

General

Unless otherwise stated herein the procedure governing is set forth in the procedural rules of the PSC (ARM Title 38, Chapter 2, and related provisions), lawful tariffed procedures, and orders of the PSC bearing specifically on the procedures applicable specifically in MDU's Gas Cost Tracking Adjustment Procedure.

Service and Filing

Copies of all pleadings, motions, discovery requests, discovery responses, prefiled testimony and briefs shall be filed with the Commission and served on all parties. In the case of a filing directed to the Commission, such as motions, testimony and briefs, the original and ten copies shall be filed with the Commission. Service upon the parties shall be upon each party's attorney of record and such other individuals as may be reasonably designated by the attorney of record. The parties may agree to limit service of discovery responses except for service upon the Commission.

Intervention

Parties seeking to intervene after September 13, 1991, must file a Petition to Intervene with the Commission. The petition shall demonstrate (A) the position that the intervenor will take if the intervention is granted, (B) that the proposed intervenor has an interest in and is directly affected by this docket, (C) that the intervention, if granted, will not delay or prejudice the proceeding in the Docket, and (D) good cause why the petition was not timely filed. (ARM Section 38.2.2401 et seq.)

Discovery

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 through the use of data requests as much as possible.

The Commission directs all parties to prepare data requests according to the following guidelines:

- (a) All data requests must include at the beginning of each request a short description (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. This requirement will help the Commission to identify more quickly all data requests and responses addressing a particular subject or group of subjects. Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another.
- (b) Multi-part requests may be used. Each part of a multi-part request should be denoted by a lower case letter (a, b, c, etc.). Requests should be limited to five (a-e) parts. 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 and unacceptable data requests are as follows:

Acceptable Data Request Format

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

Please provide the origination and expiration date for each contract.

PSC-501 RE: Bypass
Witness - Johnson, Page DAJ-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?

Unacceptable Data Request Formats

- PSC-502 RE: Witness - Burke, Page. JBB-4, Lines 13-15.
1. Please provide the origination date for each contract.
 2. Please provide the expiration date for each contract.
- PSC-503 RE: Bypass
Witness - Johnson, Page DAJ-14, Lines 11-14.
- a. What risks of bypass would be avoided by the shareholders as a result of the Company's proposed treatment?
 1. What risks of bypass would be avoided by the ratepayers as a result of the Company's proposed treatment?
 2. What risks of bypass would be shared by ratepayers and shareholders as a result of the Company's proposed treatment?
- PSC-504 RE: Core vs Noncore Customers
- a. What benefits will the core customers enjoy that will be unavailable to noncore customers?
 - b. What barriers will exist to discourage customers from flip-flopping between core and noncore status?
 - c. Please identify and quantify all additional costs that will be experienced to identify and serve potential noncore customers.
 - d. Please identify and quantify potential additional revenues that could result from the separation of noncore from core customers.
 - e. Please fully define the difference between a core and a noncore customer.
 - f. On average, is the core customer's demand more elastic or less elastic than the noncore customer's?

The party receiving the written discovery or data request has five (5) days from receipt of the same within which to voice any objections it has to the request. The objection and notice thereof shall be served upon the Commission and all parties of record. The Commission may dispose of such objections by prompt ruling or may schedule arguments on the objections. Failure to object will be deemed acceptance of the request.

In the event any requesting party is dissatisfied with the response to any written discovery or data request, such party must, within five (5) days after receipt of such response, serve in writing upon the Commission, and simultaneously upon all parties of record, its objections to such response. The Commission may dispose of such objections by prompt ruling, or may schedule argument on the objections. The Commission will issue its order either sustaining or overruling the objections. If objections are sustained, a time period will be set within which a satisfactory response must be made.

Submission of written discovery or data requests after the period established for the same will be allowed by leave of the Commission only. Such requests will not be permitted unless the party making the request shows good cause as to why the request was not submitted within the time period allowed.

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 refusing to allow the disobedient party to support or oppose related claims, or prohibiting him from introducing related matters in evidence;

- (b) An order striking pleadings, testimony or parts thereof, or staying further proceedings until the request is satisfied, or dismissing the action or proceeding or any part thereof.

Testimony and Evidence

The Commission contemplates a progressive narrowing of issues as prefiled testimony proceeds from direct to rebuttal. Introduction of new issues or data in new areas will be carefully scrutinized and disallowed unless reasonably related to issues earlier identified in the application, in Commission orders or in testimony prefiled in conformance with this order.

At the hearing, prefiled direct, answer and rebuttal testimony will be adopted into the record without the need of recitation by the witness. This procedure will eliminate retyping of prepared testimony into the hearing transcript.

All proposed exhibits and prefiled written testimony shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter the manner of identifying their exhibits.

When cross-examination is based on a document, not previously filed with the Commission, copies of the document will be made available to the Commission 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, and if previous arrangements have been made with the Commission and all parties.

Parties may be permitted to present "live" rebuttal testimony only if it is in direct response to an issue raised for the first time in cross-examination or the testimony of a public witness. Such testimony will be allowed only by leave of the presiding officer.

Citizens and citizen groups will, in the discretion of the Commission, be allowed to make statements without having submitted prepared written testimony; in addition, if they have prepared written testimony they may read it if they desire, or they may 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 hearings in these Dockets will be used at the hearings.

Prehearing Motions and Conferences

Motion by any party, including motions to strike prefiled testimony and motions concerning any procedural matter connected with this docket shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs unless otherwise requested by a party. If oral argument is requested, and the request is granted, the party requesting oral argument shall notice the same for hearing before the Commission.

The Commission may, at any time prior to the hearing, set a final Prehearing Conference. At that prehearing conference there may be discussed, among other things,

the feasibility of settlement of any issues in the proceeding, simplification of issues, possibility of obtaining admissions of fact and documents, the distribution and marking of written testimony and exhibits prior to the hearing, and such other matters as may aid in the disposition of the proceeding or settlement thereof.

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 MDU at any time.

Prehearing Memorandum

The prehearing memorandum shall be from each party unless the parties agree to file jointly. Any special needs to accommodate witness sequence or scheduling should be identified in the prehearing memorandum.

DONE AND DATED this 24th day of September, 1991 by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

ATTEST:

Ann Purcell
Acting 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.