

Service Date: April 8, 1992

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. 5570d

ORDER COMPELLING DISCOVERY

On March 16, 1992 Montana-Dakota Utilities Co. (MDU) filed objections before the Montana Public Service Commission (PSC) to certain Montana Consumer Counsel (MCC) discovery responses. MDU requests an appropriate order compelling MCC to properly respond to the discovery. On March 30, 1992 MCC filed comments on MDU's objections.

MDU first objects that MCC has attempted to comply with production of voluminous prior written testimony by making it available to MDU only at the offices of MCC's expert witness in Washington, D.C. MDU argues that it is entitled as of right to the testimony without the difficulty and expense of travel and review in Washington D.C. MCC argues that it is not resisting production but believes that review by MDU's Washington, D.C., legal counsel would be an acceptably less burdensome means for MDU to obtain the information.

The PSC determines that there can be instances where the burdens of providing discovery requests justify special arrangements. However, the circumstances in this instance do not justify requiring MDU to review the requested information in Washington, D.C. Therefore, MCC is ordered to provide one copy of the requested information to MDU at its Helena, Montana, attorney's office and one copy to the PSC offices.

MDU next objects that MCC's expert witness, not MCC itself, answered certain interrogatories and requests for admissions. MDU argues that MCC must answer the requested discovery and no mere witness can answer and fulfill the related obligations. MCC argues that it believes that it should be able to designate an expert witness to provide answers.

The PSC determines that MCC may employ or contract with expert witnesses for the purposes of assistance in intervention in matters before the PSC. The PSC also determines that, so long as MCC delegates authority to any such expert witness, such witness can lawfully respond on behalf of MCC to discovery requests. MDU's objection is therefore overruled.

MDU next objects that the answers for formal discovery must be under oath. MCC apparently agrees to re-submit or supplement the formal discovery responses under oath.

The PSC determines that the "under oath" requirement is essential in formal discovery. It is therefore ordered that MCC shall re-submit the discovery responses, signed under oath by the MCC or its authorized representative.

MDU's last objection concerns a request for admission and related interrogatories. MDU had requested that MCC admit that the three consolidated trackers in this docket were computed in accordance with MDU tariff Rates 87 and 88. MCC denied this. Alternative interrogatories (in case of denial) requested that MCC specify the particular provisions of Rates 87 and 88 violated and provide a detailed description of how such were violated. MCC provided a description of the violation but did not identify particular provisions violated.

The PSC determines that MCC's answer needs clarity. Therefore, MCC is ordered to identify the particular provisions of Rates 87 and 88 violated or explain, in detail, why it cannot so identify such particular provisions.

It is further ordered that MCC shall comply with this Order Compelling Discovery within 20 days of the Service Date identified above.

Done and dated this 6th day of April, 1992, by a vote of 4 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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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)