



90.12.86 and is available for review at the Commission offices or from USWC. On August 7, 1992 MCI filed a Request for Hearing regarding USWC's PIU Tariff Transmittal.

WHEREFORE, the PSC hereby establishes this new Docket, No. 92.7.51, to address the PIU issues identified in Docket No. 90.12.86 and USWC Tariff Transmittal 92-25; and issues the following Order establishing the procedures and schedule for said Docket.

1. Copies of pleadings, motions, discovery requests, pre-filed 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 the parties' attorneys 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. All Documents filed with the Commission must be punched for a 3-hole binder. All pre-filed testimony (direct, intervenor, rebuttal, etc.) must be filed on "calendar paper" (i.e., with numbered lines and pages).

#### Schedule

2. All dates listed in the following schedule are mailing dates. Parties must mail all material by the most expeditious method available at reasonable cost. Documents sent on the last date allowed must be sent by Express Mail if addressed out of state. Unless otherwise specified herein or ordered by the Commission, the following schedule shall apply in this docket:

- (a) September 28, 1992: Final day for service of pre-filed testimony by USWC.
- (b) October 8, 1992: Final day for timely filing of Petitions to Intervene by parties who are interested in and directly affected by this Docket.<sup>1</sup>
- (c) October 13, 1992: Final day for service of written discovery directed to USWC by all parties.
- (d) October 27, 1992: Final day for service by USWC of answers to written discovery pursuant to paragraph 2(c)
- (e) November 10, 1992: Final day for service of intervenor testimony.
- (f) November 24, 1992: Final day for service of written discovery regarding intervenor testimony.
- (g) December 8, 1992: Final day for service of answers to written discovery pursuant to 2(f).
- (h) December 17, 1992: Informal prehearing conference.
- (i) December 31, 1992: Deadline for filing of stipulations.
- (j) January 20, 1993: First day of hearing in Docket No. 92.7.51.

#### Intervention

3. This Order sets an intervention deadline of October 8, 1992, in this docket.

Parties seeking to intervene after October 8, 1992, must file a Petition pursuant to ARM

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<sup>1</sup> USWC is deemed a party to this proceeding and need not file a Petition to Intervene, since it has proposed a change to its tariffs. MCI has already filed a Petition to Intervene and need not file another.

38.2.2401 et seq. containing the following information: (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.

### Discovery

4. 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.

5. The Commission and Commission staff are not subject to discovery; that is, the parties may not conduct discovery on the Commission or its staff.

6. Written discovery and data requests must be served on all parties. This should serve to reduce the number of duplicate requests in subsequent rounds of discovery. Unless otherwise agreed between individual parties, copies of answers to all written discovery and data requests will be served only on parties specifically requesting them and on the Commission. In this connection only, the term “parties” includes the parties, their attorneys, and witnesses testifying on matters to which the answers relate who are not located in the same town as the party. If any party wants material requested by any other party, it should so inform the party to whom the data requests or written discovery is directed. The Commission encourages all parties to scrutinize carefully the material that has been provided in the Docket prior to submitting data requests. This should serve to ease the burden on those parties answering data requests.

7. The Commission directs all parties to prepare data requests according to the following guidelines: Each party's data requests must be numbered sequentially throughout the docket, beginning with the number one (1) (regardless of the party to which the request is addressed). Separate "sets" of data requests must not be utilized. In addition, 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. 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<br>Witness - Burke, Page JBB-4, Lines 13-15.<br>Please provide the origination and expiration date for each contract.                           |
| PSC-501 | RE: Bypass<br>Witness - Johnson, Page DAJ-14, Lines 11-14.<br>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 rate payers 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?

8. Each data response must begin on a new page. Parties must answer all data requests in a full and complete manner. Attachments that have been submitted in response to a previous request may be incorporated into other responses by reference, if the prior response and attachments have been submitted to all parties.

9. All parties submitting data requests must also submit a "data request recap sheet" which includes the name of the party submitting the data requests, the docket number, the party to whom the requests are directed, a brief description of the subject of each data request (50 characters or less), discovery type (testimony (T), rebuttal (R), surrebuttal (S) or other (O)), and the name of the witness to whom each request is directed. The following is provided as an example of the correct form for the recap sheet:

Docket No. 90.12.86

Montana Consumer Counsel Data Requests

MCC to USWC

1. (a-c) (T) Cost of Service Witness: Bowman
2. (S) Low Income Telephone Assistance Witness: Smith
3. (a-e) (O) Switch Technology Witness: Jones

MCC to Dept. of Defense

4. (T) Private Line Services Witness: Unknown
5. (a-b) (R) Cost of Capital Witness: Johnson

10. The original and four (4) copies of all responses to data requests must be filed with the Commission.

11. Parties receiving written discovery or data requests have seven (7) business days from receipt of the same, or until a response is due, whichever is less, 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 promptly will be deemed acceptance of the requests, and a waiver of any objections.

12. In the event any requesting party is dissatisfied with the response to any written discovery or data request, such party must, within seven (7) business 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. Unless an agreement is reached between the parties, 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.

13. Submission of written discovery or data requests after the period established for the same will only be allowed by leave of the Commission. Such requests will not be permitted unless the party making the request shows good cause as to why the requests were not submitted within the time period allowed. Unless a shorter period is provided by the procedural schedule, or unless otherwise agreed to by the parties (the party sending the data requests and the party to whom the data requests are directed) all responses to data requests must be served within 14 days after they are received.

14. 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 there of, or staying further proceedings until the request is satisfied, or dismissing the action or proceeding or any part thereof.

15. The deadlines and limitations in Paragraphs 11, 12, 13 and 14 are not relevant or applicable to action by the Commission itself or its staff.

16. 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 USWC at any time. The Commission reserves the right, for itself and for its staff, to submit data requests to USWC at any time, for the purpose of acquiring information related to its costs and services. Written information, provided in response to Commission or Commission staff data requests will be deemed part of the record in this docket unless specific objection is made to its inclusion, and such objection is sustained by the Commission. The Commission asserts broad investigatory powers as a prerequisite to gathering all relevant information necessary to reaching informed decisions on the applications of utilities subject to its jurisdiction.

17. 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 or in the reservation of certain issues for a future proceeding.

#### Testimony and Evidence

18. 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 by the parties 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.

19. At the hearing, prefiled direct, intervenor 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.

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

21. 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 and

staff 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.

22. 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 Commission or the presiding officer or Chairman.

23. 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.

24. The Montana Rules of Evidence will be applied at the hearing. The parties may waive formal procedures by joint stipulation pursuant to Section 2-4-603, MCA.

#### Prehearing Motions, Stipulations and Conferences

25. Motions by any party, including motions to strike pre filed testimony and motions concerning any procedural matter connected with this docket should 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.

26. If considered necessary, the parties may request a prehearing conference. The Commission may also set a prehearing conference on its own motion. At a prehearing conference, there may be discussed, among other things, the feasibility of settlement of any issues in the proceeding, simplification of issues, discovery, the possibility of obtaining admissions of fact and documents, the distribution and marking of written testimony and exhibits prior to the hearing, hearing procedure, evidentiary objections, prehearing motions and such other matters as may aid in the disposition of the proceeding or settlement thereof.

27. At the Prehearing Conference to be held prior to the hearing, each party will provide the Commission with a list of its witnesses indicating a proposed witness sequence at the hearing. If the parties cannot agree to a witness sequence at the Prehearing Conference, the sequence will be set by a hearings examiner or the Chairman.

DONE AND DATED THIS 14th day of September, 1992, by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DANNY OBERG, Chairman

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BOB ANDERSON, Commissioner

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JOHN B. DRISCOLL, Commissioner

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TED C. MACY, Commissioner

ATTEST:

Ann Purcell  
Acting Commission Secretary

(SEAL)

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