

Service Date: November 25, 1992

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

* * * * *

IN THE MATTER OF THE COMPLAINT OF)	UTILITY DIVISION
David C. Mogan,)	
)	
Complainant,)	
)	
-vs-)	DOCKET NO. 92.8.45
)	
Montana Power Company,)	
)	
Defendant.)	ORDER NO. 5666

ORDER GRANTING MOTION TO DISMISS

David C. Mogan filed a Formal Complaint against the Montana Power Company on August 17, 1992.

Notice of the Complaint was served on MPC by the PSC on September 2, 1992.

On September 23, 1992 MPC filed a Motion to Dismiss the Complaint. On September 29, 1992 David C. Mogan filed a letter and Memorandum in Opposition to MPC's Motion to Dismiss.

On October 20, 1992 MPC filed an Answer to the Complaint.

On November 4, 1992 David C. Mogan filed a Reply to MPC's Answer.

MPC's Motion to Dismiss is based upon the following grounds:

- a. MPC has no record of any legitimate or accurate dispute with regard to the Complaint.
- b. Complainant's assertion that he is disputing his account balance is not based upon supportable facts, but is an attempt to avail himself of the provision which prohibits disconnection while a dispute is pending.
- c. Complainant has failed to pay his current account balance, has a history of non-payment, and is utilizing dilatory tactics to avoid timely payment.
- d. Complainant continues to use MPC services, and without payment bill-paying customers will be exposed to escalating charges.
- e. The Complaint fails to state a cause of action.

The Commission has fully considered the pleadings filed in this Docket, and grants MPC's Motion to Dismiss the Complaint for the following reasons.

The electric service provided by MPC to the Complainant's Kirkwood Apartments in Hinsdale, Montana was considered in PSC Docket No. 90.6.41. A public hearing in that case was held November 14, 1991 in Hinsdale. Proposed Order No. 5630 was issued by the Hearings Examiner on June 26, 1992. Exceptions to the Proposed Order were thereafter filed by MPC and the Complainant. Final Order No. 5630a was issued by the Commission on October 2, 1992. Reconsideration was denied.

PSC Order No. 5630a in Docket No. 90.6.41 is binding with respect to this dispute and all other utility disputes respecting Mr. Mogan. The Commission held:

5. Mogan shall exhaust the Commission's informal complaint procedures in future utility matters before filing any formal complaint with the Commission. Where the resolution recommended by the Consumer Representative is reasonable and would prevent undue expense to all parties, the Commission and the State of Montana, the Commission will dismiss any future complaint upon a Statement of Satisfaction of Complaint by the utility demonstrating willingness to implement the Consumer Representative's solution.

Order No. 5630a, >5, p. 24.

The Complainant has failed to comply with the above directive with respect to the matters raised in the Complaint in this Docket. The Commission realizes that the Complaint in this Docket was filed prior to the issuance of Order 5630a in Docket No. 90.6.41. Nevertheless, the Commission intends Paragraph 5, quoted above, to apply to both pending and future utility disputes involving Mr. Mogan.

Mr. Mogan has failed to exhaust the informal complaint procedures of the Commission. This Complaint is therefore dismissed without prejudice. The PSC may consider a formal Complaint in this matter filed by Mr. Mogan, but only after the informal complaint procedures are exhausted.

CONCLUSIONS OF LAW

The PSC is vested with the authority to supervise and regulate the rates and service of Montana public utilities. <69-3-102 and Title 69, MCA.

The Montana Power Company is a public utility subject to PSC jurisdiction. <69-3-102, MCA .

The PSC has afforded adequate notice to the parties in this proceeding, pursuant to the Montana Administrative Procedures Act. Title 2, Chapter 4, MCA.

The PSC has the legal authority to consider Complaints against public utilities regarding service and rates. <69-3-321, MCA and ARM 38.2.2101.

ORDER

IT IS HEREBY ORDERED that:

1. The Complaint filed on August 17, 1992 by Mr. David C. Mogan is dismissed in its entirety, without prejudice.
2. Docket No. 92.8.45 is closed.

Done and Dated this 24th day of November, 1992 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DANNY OBERG, Chairman

WALLACE W. "WALLY" MERCER, Vice Chairman

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

TED C. MACY, Commissioner

ATTEST:

Kathlene M. Anderson
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.