

Service Date: February 15, 1994

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

\* \* \* \* \*

IN THE MATTER OF THE COMPLAINT OF )	UTILITY DIVISION
Stone Container Corporation, )	
)	
Complainant, )	
)	DOCKET NO. 93.12.62
-vs- )	
)	
Montana Power Company, )	
)	ORDER NO. 5772
Defendant. )	

**ORDER DISMISSING COMPLAINT**

1. On December 3, 1993 Stone Container (Stone) filed a complaint with the Montana Public Service Commission (Commission) alleging certain improper conduct by Montana Power Company (MPC) with respect to MPC's application of the Commission's Least Cost Planning rules (ARM 38.5.2001-2012) to resources (DSM projects) offered by Stone in response to MPC's request for proposals (RFP) to supply electricity resources. Stone requests an order for the following specific relief:

(a) determining that MPC's conduct with respect to the DSM projects is unreasonable, insufficient, or unjustly discriminatory;

(b) directing MPC to comply with the terms of the Commission's Guidelines and its own RFP, and to treat the DSM projects on an equal footing with supply-side resources, by negotiating in good faith with Stone to acquire the DSM projects;

(c) determining that the DSM projects, as offered to MPC by Stone, are cost-effective and presumptively should be acquired, or, in the alternative, determining the standards by which the cost-effectiveness of DSM resources and their acquisition by MPC should be measured; and

(d) determining that if MPC chooses not to acquire the DSM projects, or chooses to discriminate against other cost-effective DSM resources, then any alternative resources recently or subsequently acquired by MPC at higher costs will be subject to presumptive disallowance for rate purposes, at least with respect to that portion of MPC's costs which are in excess of the costs of the DSM projects or other cost-effective DSM resources.

On January 18, 1994 MPC filed its answer, denying the Stone allegations and suggesting the complaint should be dismissed.

#### DISCUSSION

2. On January 31, 1994, at a scheduled work session, the Commission discussed Stone's complaint and MPC's answer and voted to dismiss the complaint. The Commission's Least Cost Planning rules are intended to provide guidance to utilities as they make electric resource choices. Those choices will ultimately be presented to the Commission for review in general rate cases. If

utilities fail to choose least cost resources (resources selected in conformance with Least Cost Planning rules) they run the risk of regulatory disallowance. A general rate case is the appropriate vehicle for evaluating utility resource choices. The rules state, "These guidelines do not change the fundamental ratemaking relationship between the utilities and the commission[,]" and, "The guidelines provide the utilities with policy and planning guidance. They do not specify the outcome of the planning process nor mandate particular investment decisions. Each utility's plan should be the result of that utility's unique planning process and judgment." ARM 38.5.2001(3) and (4).

3. The Commission has never performed on-going evaluations of a utility's resource selection process in order to determine, with respect to each particular resource choice, whether the utility is acting prudently. Utility regulation in Montana involves hindsight review of utility management decisions. The adoption of the Least Cost Planning rules does not change that. If MPC wants certain resource costs reflected in rates it will in due course be forced to explain and justify its resource selection process, including its competitive bid process, with reference to the Least Cost Planning rules. Obviously, this will require MPC to justify selecting one resource over another. Stone's allegations can be explored as part of that process.

4. In addition, Stone's complaint appears to invite the Commission to preapprove particular resources. Preapproval is

generally not consistent with Commission practice or Montana law. The Commission will not preapprove MPC's resource choices.

#### CONCLUSIONS OF LAW

1. The Commission has the power to supervise, regulate and control public utilities under its jurisdiction. § 69-3-102, MCA.

2. The Commission's Least Cost Planning rules do not change the fundamental ratemaking relationship between utilities and the Commission. ARM 38.5.2001(3).

3. The Commission may investigate a complaint against a public utility in a manner it deems appropriate. § 69-3-321(1), MCA.

4. The Commission is not required to exercise more of its power than it determines appropriate. Montana Consumer Counsel v. PSC and MPC, 168 Mont. 180, 187, 541 P.2d 770, \_\_\_\_ (1975).

5. The Commission may determine that a complaint against a public utility is most appropriately addressed in a general rate case.

6. The Commission has the discretion to determine the most appropriate and effective method for reviewing the prudence of utility management decisions.

#### ORDER

NOW THEREFORE, on the Commission's own motion, the complaint of Stone Container is Dismissed.

Done and Dated this 31st day of January, 1994 by a vote of  
3-2.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

---

BOB ANDERSON, Chairman

---

BOB ROWE, Vice Chairman  
(Voting to Dissent/Attached)

---

DAVE FISHER, Commissioner

---

NANCY MCCAFFREE, Commissioner  
(Voting to Dissent/Concurrence Attached)

---

DANNY OBERG, Commissioner

ATTEST:

Kathlene M. Anderson  
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 ARM 38.2.4806.

**DISSENT OF COMMISSIONER ROWE**

The majority's decision to dismiss summarily Stone Container's complaint is consistent with the Least Cost Planning rules' focus on "guidance" and avoidance of specifying outcomes or particular investments. ARM 38.5.2001(4). The majority correctly steers clear of anything approaching "pre-approval" of substantive resource decisions.

This dissent is grounded in a desire to proceed thoughtfully in developing the integrated resource planning (IRP) process. Accordingly, I would have preferred to have the parties brief the issues raised by the complaint, including jurisdiction. Although complaints arise between specific parties, the development of IRP policy is a matter of broader public interest, as to which others might have sought amicus status.

The Commission has broad discretion in developing its approach to integrated resource planning and plan review. Further consideration of this matter would have enabled the Commission to address several issues of consequence:

- \* Is eventual review in revenue requirements proceedings always adequate?
- \* Will parties with real interests in the utility's resource choices still remain, and will they have adequate incentive to raise those issues two years after the fact?
- \* Is threatened rate base denial always an adequate sanction?
- \* Does dismissal of the complaint inadvertently signal utilities that integrated resource planning does not require genuine change in utility resource planning and acquisition?
- \* Does dismissal inadvertently signal other parties that vigorous participation in the IRP process will not be productive?

Balanced against these concerns remains the Commission's strong commitment to avoid any appearance of pre-approving resource decisions. Abjuring pre-approval is a cornerstone of Montana regulation for at least two reasons. First, pre-approval would prematurely transfer risk from shareholders to ratepayers.

Integrated resource planning, in contrast, is designed to lower risk for all parties. Second, the information disparity between the utility, the Commission, and other potentially interested parties is especially great in Montana, due to limited staff and other resources. As comments filed in Docket No. 93.3.9 (reviewing MPC's initial IRP) make clear, only in the context of contested cases are parties such as the Montana Consumer Counsel or the Commission's own staff able to minimize sufficiently that resource disparity.

I do not know the answers to these questions. Briefs from the parties would have allowed the Commission to consider these and other significant issues. The Commission acted too hastily in summarily dismissing Stone's complaint.

RESPECTFULLY SUBMITTED this 15th day of February, 1994.

---

BOB ROWE  
Vice Chairman

I concur in Commissioner Rowe's opinion.

---

NANCY McCAFFREE  
Commissioner