

Service Date: March 25, 1993

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

* * * * *

In the Matter of the Investigation) DOCKET NO. 93.3.10
of § 712 Standards of the Energy)
Policy Act of 1992.) ORDER NO. 5701

ORDER AND NOTICE ESTABLISHING A DOCKET
AND SETTING PREHEARING CONFERENCE

1. On October 24, 1992, President George Bush signed into law the Energy Policy Act of 1992 (Energy Policy Act). Section 712 of the Energy Policy Act amends § 111(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA) and requires that not later than one year after enactment, i.e., by October 23, 1993, the Montana Public Service Commission (Commission) shall consider and make a determination concerning whether it is appropriate to implement standards regarding the following:

(i) the potential for increases or decreases in the costs of capital and the resulting increases or decreases in retail rates that may result for utilities that use purchases of long-term wholesale power to meet electric demand in lieu of the construction of new generating facilities;

(ii) whether the use by exempt wholesale generators (EWGs) of capital structures which employ proportionally greater amounts of debt than the capital structures of utilities that are required or allowed to consider the purchase of long-term wholesale power supplies as a means of meeting electric demand threatens reliability or provides an unfair advantage for EWGs over such utilities;

(iii) whether to implement procedures for the advance approval or disapproval of the purchase of a particular long-term wholesale power supply; and

(iv) whether to require as a condition for the approval of the purchase of power that there be reasonable assurances of fuel supply adequacy.

2. Section 712 also provides that a State Commission may take such action, including action with respect to the allowable capital structure of EWGs, as it may determine to be in the public interest as a result of performing the aforementioned evaluations.

3. Under § 111(b) of PURPA, the consideration previously referred to is required to be made after public notice and the determination previously referred to is required to be made in writing, based upon findings included in such determination and upon the evidence presented at the hearing, and available to the public.

4. Section 712 further provides that the Montana Commission shall consider and make a determination whether it is appropriate to implement standards regarding the aforementioned matters without regard to any proceedings commenced prior to the October 24, 1992, enactment of § 712.

5. The Commission is of the opinion that in order to comply with § 712 of the Federal Energy Policy Act of 1992, a generic investigation docket should be established to consider and make a determination concerning whether it is appropriate to implement standards regarding the subject matter of § 712 and what should be the specifics of such standards should the Commission decide to adopt standards.

6. The Commission, in order to comply with the public notice requirement of § 712, will serve a copy of this order upon those persons and entities listed on the attached service list. In addition, to further provide public notice, the Commission will send notice of this order to the publisher of the daily newspapers in the state of Montana.

7. Any city, county, person, or entity desiring to intervene in this proceeding shall file an application to intervene on or before the date set in this order.

8. The Commission is further of the opinion that a prehearing conference should be set wherein all interested parties should discuss the question of the scope of the required proceedings as directed by § 712. Specifically, the interested parties should make recommendations as to whether it is necessary pursuant to § 712 for the Commission to only determine by October 23, 1993, whether to adopt standards or not or whether it is necessary pursuant to § 712 for the Commission to in fact adopt the necessary standards by October 23, 1993. The interested parties should also discuss and make recommendations as to the necessity of proceeding by general rulemaking or case by case. The Commission is finally of the opinion that the interested parties should recommend to it an appropriate procedural schedule which will permit the Commission to meet the various requirements of § 712.

IT IS THEREFORE ORDERED:

1. That this docket is hereby established for the Commission to investigate and make a general evaluation of the subject matter of § 712 of the Federal Energy Policy Act of 1992.

2. That notice of this proceeding shall be made as herein described.

3. That any proper city, county, person, or entity desiring to intervene and participate herein shall, except for good cause shown, file its application to intervene on or before April 9, 1993.

4. That a prehearing conference in this matter is hereby scheduled to commence at 10:00 a.m. on April 23, 1993, to consider the matters herein set out. Said conference shall be held in the Commission's hearing room at 1701 Prospect Avenue, Helena, Montana.

5. That recommendations as to the nature of the proceedings, scope of the proceedings, and schedule of proceedings shall be submitted to the Commission by the interested parties by April 16, 1993.

DONE AND DATED at Helena, Montana, this 22nd day of March, 1993, by a 5 to 0 vote.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION



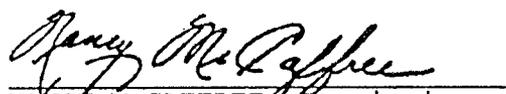
BOB ANDERSON, Chairman



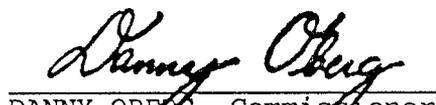
BOB ROWE, Vice Chairman



DAVE FISHER, Commissioner



NANCY McCAFFREE, Commissioner



DANNY OBERG, 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 38.2.4806, ARM.