Service Date: November 7, 1995

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

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IN THE MATTER OF the Investigation of Section 111 Standards of the Energy Policy Act of 1992.	)	UTILITY DIVISION DOCKET NO. 94.11.49
IN THE MATTER OF the Adoption of Rules Pursuant to Section 69-12-1206(2), MCA.	)	ORDER NO. 5875

FINAL ORDER

INTRODUCTION

In this docket the Public Service Commission (PSC) is investigating: (a) the adoption of Section 111 standards of the Energy Policy Act of 1992 (EPACT); and (b) the adoption of rules pursuant to Section 69-3-1206(2), MCA. The objective of the investigation is to study the matters, including public arguments and views thereon, and determine whether and to what extent the EPACT Section 111 standards should be adopted and the form in which the Section 69-3-1206(2), MCA, rules should be proposed for adoption.

In consideration of these matters, the PSC has publicly noticed this investigation, soliciting comments from interested persons (November 10, 1994). Comments were then received from: Montana Power Company (MPC), a PSC regulated utility; Montana-Dakota Utilities Company (MDU), also a PSC regulated utility; the Montana Consumer Counsel (MCC), the state agency charged with representing consumer interests in matters before the PSC; Stone Container Corporation (Stone); and the Montana Coalition Against Unfair Utility Competition (Coalition).

DISCUSSION AND ANALYSIS

A. EPACT Section 111

1. Introduction

EPACT Section 111 standards generally provide (subject to state adoption) for “encouragement of investments in conservation and energy efficiency by electric utilities.” State agencies, such as the PSC, are required to consider adoption and implementation of the standards to govern operations of their jurisdictional electric utilities. The federal standards include (EPACT amends PURPA, citations herein are to PURPA, as amended), at PURPA Section 111(d):

> (7) INTEGRATED RESOURCE PLANNING.--Each electric utility shall employ integrated resource planning. All plans or filings before a State regulatory authority to meet the requirements of this paragraph must be updated on a regular basis, must provide the opportunity for public participation and comment, and contain a requirement that the plan be implemented.
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> (8) INVESTMENTS IN CONSERVATION AND DEMAND MANAGEMENT.--The rates allowed to be charged by a State regulated electric utility shall be such that the utility's investment in and expenditures for energy conservation, energy efficiency resources, and other demand side management measures are at least as profitable, giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for the construction of new generation, transmission, and distribution equipment. Such energy conservation, energy efficiency resources and other demand side management measures shall be appropriately monitored and evaluated.
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> (9) ENERGY EFFICIENCY INVESTMENTS IN POWER GENERATION AND SUPPLY.--The rates charged by any electric utility shall be such that the utility is encouraged to make investments in, and expenditures for, all cost-effective improvements in the energy efficiency of power generation, transmission and distribution. In considering regulatory changes to achieve the objectives of this paragraph, State regulatory authorities and nonregulated electric utilities shall consider the disincentives caused by existing ratemaking policies, and practices, and consider incentives that would encourage better maintenance, and investment in more efficient

> power generation, transmission and distribution equipment.

Federal definitions for purposes of these standards are (at PURPA, Section 3):

> (19) The term "integrated resource planning" means, in the case of an electric utility, a planning and selection process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis.
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> (20) The term "system cost" means all direct and quantifiable net costs for an energy resource over its available life, including the cost of production, distribution, transportation, utilization, waste management, and environmental compliance.
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> (21) The term "demand side management" includes load management techniques.

Additionally, if the PSC implements standards (7) or (8), PURPA 111(c) requires that it shall: A(A) consider the impact that implementation of such standard would have on small businesses engaged in the design, sale, supply, installation, or servicing of energy conservation, energy efficiency, or other demand-side management measures"; and A(B) implement such standard so as to assure that utility actions would not provide such utilities with unfair competitive advantages over such small businesses."

2. Public Comments

On integrated resource planning (IRP) MPC comments that the PSC need not adopt federal IRP standards. It comments that the PSC's existing guidelines (ARM 38.5.2001 through 38.5.2012) meet or exceed the federal standards. However, MPC suggests that the PSC amend the existing guidelines to allow for a three-year filing period. On investments in conservation and demand management MPC supports the federal standard for inclusion in PSC rules. Additionally, it suggests that its approved decoupling mechanism (experimental, Docket No. 93.6.24) be accompanied by AFUCE (allowance for funds used for conservation expenditures) and delayed amortization of conservation investments so that investments in demand-side management are at least as profitable as investments in construction of new generation equipment. On energy efficiency investments in generation and supply MPC also supports the federal standard, to the extent that it provides an incentive for the PSC to begin considering the issue. In regard to effect on small businesses MPC comments that its efforts to encourage efficiency have stimulated most support businesses. MPC does not plan to compete with independent conservation businesses.

MDU comments on IRP that the adoption of the federal standard is unnecessary as it is already in place in Montana through legislation (Sections 69-3-1201 through 69-3-1206, MCA) and administrative rule (ARM 38.5.2001 through 38.5.2012). For both investments in conservation and demand management and energy efficiency investments in generation and supply MDU comments that adoption of the federal standards may not be necessary, as the bulk of the standards are already in place through statute and rule (as referenced above). MDU also points out that Section 69-3-712, MCA, allows the PSC to include conservation measures in rate base at a rate of return greater than that provided for generating facilities. MDU does suggest that, to the extent that the PSC may believe that MPC’s experimental decoupling reflects appropriate consideration to losses in sales due to investment in conservation and efficiency, the PSC should include the mechanism in rules for all jurisdictional utilities. In regard to effect on small businesses MDU comments that the possibility of unfair competition only arises if a utility is able to subsidize its competitive efforts through monopoly operations. It suggests that proper allocation in the ratemaking process prevents subsidies and the ratemaking process is the appropriate place to ensure that there is no unfair competition.

MCC comments that there is nothing to gain by adoption of the federal IRP standards. It comments that the PSC has already acted upon the elements within the standards and IRP has been in existence in Montana for a number of years.

Stone comments that it is committed to the idea of IRP, but to date has not been successful in realizing implementation of its efficiency projects, as MPC has rejected them. It comments that Montana IRP appears to be heavy on planning and light on implementation. It suggests that the PSC consider requiring implementation of identified plans in its guidelines. It requests that the PSC investigate MPC’s current decision-making for accepting least-cost conservation resources such as Stone’s.

The Coalition comments that subsidized economic activity of a utility or its affiliate forms the core of unfair utility competition. It recommends public hearings be held to ensure that the concerns of private enterprise can be addressed in the adoption of rules and policies.

3. PSC Analysis

The PSC determines that Montana, through statute and rule and PSC order, has adequately addressed the goals of the federal standards. Therefore, adoption of the standards is not necessary.

In sum, the federal standards provide that: electric utilities shall employ IRP; utility investment in conservation and efficiency will be as profitable as investment in traditional plant; and utilities will be encouraged, through removal of disincentives and creation of incentives, to make cost-effective efficiency improvements in traditional plant.

Title 69, ch. 3, part 12, MCA (Montana Integrated Least-Cost Planning and Acquistion Act) provides for many of the general elements of the encouraged federal standards. The Act encourages efficiency in utility operations (supply) and use of utility services (demand), allows rates to include investment in such efficiencies, and allows the PSC to require long-range plans (IRP). Section 69-3-1202, MCA. The referenced plan (IRP) must contain evaluation of the full range of cost-effective means for the utility to meet its service obligations, including through conservation and efficiency. Section 69-3-1204(2), MCA.

Title 69, ch. 7, part 7, MCA (Conservation Purchases or Investments by Utilities), provides for several of the general elements of the encouraged federal standards. Eligible conservation purchases or investments shall be included in a utility's rate base. Section 69-3-712, MCA.

PSC rules, ARM Title 38, ch. 5, sub-chapter 20 (Least Cost Planning -- Electric Utilities) implement the Montana statutes and the elements of the federal standards to the extent such are consistent with the regulatory policy of Montana. The rules require IRP by electric utilities.

In Docket No. 93.6.24, Order No. 5709d, paras. 255-265, the PSC approved a decoupling experiment for MPC. Through this decoupling experiment the PSC began the process of "giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency" as contemplated in federal standard (8). The process is dynamic (the MPC experiment has been suspended), and the precise regulatory response to "income lost from reduced sales" has not been determined, but the PSC is already addressing the concern reflected in federal standard (8).

MPC has suggested that the PSC amend its the existing guidelines for electric IRP to allow for a three-year filing period. This docket was not intended for consideration of amendments such as this and the PSC cannot consider it at this point. However, MPC can make a separate request, through petition for rulemaking.

Stone comments that Montana IRP appears to be heavy on planning and light on implementation. It suggests that the PSC require implementation of identified plans by rule. It requests that the PSC investigate MPC's current decision-making for accepting least-cost conservation resources such as Stone's. This docket was not intended for consideration of amendments to existing rules or to entertain complaints and the PSC will not consider these at this point. Furthermore, Stone's concerns were addressed and ruled on in Docket No. 93.12.62, Order Nos. 5772 and 5772a.

In regard to the Coalition's comments on unfair competition, the PSC has determined that it will not adopt the federal standards. Therefore consideration of unfair utility competition is not required in the context of this proceeding. However, the PSC remains cognizant of the Coalition's concerns and will keep them in mind in administering regulation of public utilities.

B. Section 69-3-1206(2), MCA, Rules

1. Introduction

Applicable in the context of the "Montana Integrated Least-Cost Resource and Planning Act" (Title 69, ch. 3, part 12, MCA), specifically within Section 69-3-1206, MCA, Arate treatment,@

Section 69-3-1206(2), MCA, provides that: "[t]he commission shall adopt rules establishing criteria governing the extent of recovery of abandonment costs." The question in this investigation is not whether to adopt, but what to adopt, as the statute requires adoption of rules.

2. Public Comments

MPC restricts its comments to abandonment decisions dictated by MPC's IRP process. MPC identifies three primary possibilities for abandonment, all based on resources no longer fitting within the resource mix, as IRP driven or dictated. These include existing used and useful resources; resource under construction; and purchase contracts. MPC suggests that each should be met by 100% recovery of investment. MPC suggests that the next step be either that the parties propose rules or the PSC propose rules based on the parties' comments.

MDU comments that the PSC should adopt the rules. It suggests that if abandonment is part of a least cost plan, there is no valid reason that all costs associated should not be fully reflected in rates.

3. PSC Analysis

The PSC is required by statute to make rules establishing criteria governing the extent of recovery of abandonment costs in the context of integrated least-cost resource planning and acquisition. The PSC determines that it will propose rules and commence rulemaking in the near future, considering the comments received in this docket.

ORDER

For the reason expressed above, the PSC determines that it will not adopt the EPACT, Section 111, standards for encouragement of investments in conservation and energy efficiency by electric utilities. IT IS HEREBY SO ORDERED and further ordered that this investigation into adoption of the standards is concluded and the docket is closed. However, this action does not preclude the PSC from commencing anew an investigation or other proceeding on standards or other standards, should future circumstances then reasonably demand. The PSC determines that it will commence rulemaking on the Section 69-3-1206(2), MCA, rules.

Done and dated this 31st day of October, 1995, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

NANCY MCCAFFREE, Chair

DAVE FISHER, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, 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.