

Service Date: May 24, 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
Brock M. Weidner, )	
	)
Complainant, )	
	)
-vs- )	DOCKET NO. 94.3.15
	)
PTI Communications, )	
	)
Defendant. )	ORDER NO. 5787

PROCEDURAL ORDER

Under the authority of ARM 38.2.2702, the Montana Public Service Commission (PSC) enters this order setting forth the procedure to be followed in Docket No. 94.3.15.

Intervention

1. The deadline for filing Petitions to Intervene is July 1, 1994. Petitions to Intervene filed after that date must comply with ARM 38.2.2401 - 38.2.2406.

Service and Filing

2. Parties shall file copies of all pleadings, motions, discovery requests and responses, pre-filed testimony (if any), briefs and all other documents, with the PSC, and serve all parties and other entities and individuals on the attached Service List. An original and seven (7) copies of all discovery

must be filed with the PSC, and an original and eleven (11) copies of all other documents. (Only one copy of proprietary documents shall be filed -- on yellow paper.) The PSC or its staff may designate different forms of service for some parties on the service list as appropriate, at a later date (e.g. overnight mail, cover letter only, etc.).

#### Schedule

3. The deadlines for service and filing of documents in this Docket (pursuant to the above requirements) and other pertinent dates, shall be those dates contained in Attachment "A" which is attached hereto and incorporated herein by this reference.

#### Discovery

4. The term "discovery" includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as "data requests" (informal interrogatories).

5. The PSC directs all parties to prepare data requests according to the following guidelines:

(a) All data requests must include at the beginning of each request a description of 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 number and page number may be included in addition to, but not in lieu

of, the subject of the request. Each party should attempt to keep descriptions consistent from one request to another.

(b) Multi-part requests may be used, each part denoted by a lower case letter (a, b, c, d and e). Requests must be limited to five parts (a-e), without any sub-parts. If additional parts are necessary, additional requests must be made. A single part request should be denoted by the request number only.

(c) Examples of acceptable data requests follow:

PSC-500 RE: Purchased Gas Contracts  
Witness - Burke, Page JBB-4, Lines 13-15.

Please provide the origination and expiration date for each contract.

PSC-501 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?

b. What risks of bypass would be avoided by the ratepayers as a result of the Company's proposed treatment?

6. The party receiving written discovery or data requests has five calendar days from receipt to file objections to the request(s). Notice of the objection shall be served upon the PSC and on all parties (as provided in the paragraph above). The PSC may dispose of objections by prompt ruling or may schedule argument. Failure to timely object will be deemed a waiver of objections.

7. Any requesting party dissatisfied with the response to any written discovery or data request and desiring PSC action to

compel, must serve its written objection(s) and requested relief simultaneously upon the PSC and parties within five calendar days after receipt of such response (as provided in the paragraph above). The PSC may dispose of such objection(s) by prompt ruling or may schedule argument. The PSC will act either to sustain or overrule the objection(s), and if sustaining, set a deadline for a satisfactory response.

8. Parties are encouraged to attempt to resolve all discovery disputes between themselves, before filing objections. All motions regarding discovery should contain a statement explaining the efforts taken to resolve the issue informally, and a photocopy or restatement of the requests and responses.

9. Submission of written discovery after the deadline established will be allowed by leave of the PSC only. The PSC will not grant requests without a showing of good cause as to why the request was not submitted within the time period allowed.

10. Unless excused by the PSC, failure by a party to answer data requests or other discovery from any party may result in: (a) action refusing to allow the failing party to support or oppose related claims; (b) action prohibiting introduction of related matters in evidence; (c) action striking pleadings, testimony, or parts thereof; (d) action staying further proceedings until the request is satisfied; or (e) action dismissing the case, defense, proceeding, or parts thereof.

11. Unless otherwise provided by this Order, PSC Rules or other PSC action, discovery procedures and requirements shall be

governed by the applicable Montana Rules of Civil Procedure. See ARM 33.2.3301 through 38.2.3305.

Testimony and Evidence

12. All proposed exhibits and prefiled written testimony (if any) shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter or at a prehearing conference, for the preferred manner of identifying exhibits.

13. When cross-examination is based on a document not previously filed with the PSC, copies of the document must be made available to the Commissioners, parties, 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 PSC staff, and all parties. The last requirement may be waived if the documents to be introduced are bulky, or for other good cause, upon making previous arrangements with the PSC and all parties.

14. The PSC may allow citizens and citizen groups to make statements without submitting prepared written testimony. In addition, if they have prepared written testimony they may read it or have it adopted directly into the record.

15. The Montana Rules of Evidence in effect at the time of the hearing will apply.

16. Any party to this proceeding responding to written discovery from any other party or the PSC shall have each person authorizing any response(s) present and available as a witness at the hearing to introduce the response(s) and be available for cross-examination. Parties may waive objection(s) to introduction absent the author, and the right to cross-examine. Upon PSC approval of such parties' agreement to waiver, the person responding to data requests need not be present to testify and the responses may be introduced into the record. Written discovery and data responses will be introduced at hearing only pursuant to applicable rules of evidence and through an appropriate witness subject to cross-examination, or upon stipulation approved by the PSC (except, see Rule 32, M.R.Civ.P. regarding admission of depositions).

#### Prehearing Motions and Conferences

17. Motions by any party, including motions to strike prefiled testimony and motions concerning any procedural matter connected with this Docket shall be raised at the earliest possible time, and in accordance with the procedural schedule established herein. Prehearing motions shall be submitted on briefs, without oral argument, unless otherwise requested by a party and approved by the PSC. All parties are strongly encouraged to attempt to resolve procedural disputes informally.

18. It appears that it may be possible for the parties to agree to a Stipulation of Facts in this case, perhaps even

earlier than contemplated by the Procedural Schedule. If the parties can submit a Stipulation containing all pertinent facts, prehearing motions may be immediately filed and the PSC may be able to reach a decision expeditiously without the time and expense of a formal evidentiary hearing. At their option, parties may request oral argument before the PSC before deliberations on prehearing motions.

19. The PSC may set prehearing conferences to discuss settlement of any issues in the proceeding; simplification of issues; possibility of obtaining admissions of fact and documents; distribution and marking of written testimony and exhibits prior to the hearing; and other procedural matters as may aid in the disposition of the proceeding.

20. Nothing in this order shall be construed to limit the legally established right of the PSC or its staff to inspect the books and accounts of PTI and other regulated utilities at any time.

Prehearing Memorandum and Briefs

21. Each party and the Commission staff will serve a prehearing Memorandum on the Commission and all formal parties in this Docket on or before December 2, 1994 containing the following information:

- a) Each and every Data Response and all other exhibits that it intends to offer into evidence at the hearing;

- b) The name of the witness responsible for the Data Response or through which the exhibit will be offered; and
- c) The issue to which the Data Response or document is relevant.

22. In addition, all parties (but not the Commission staff) are required to file a prehearing Brief containing:

- a) A list of all issues, contested and uncontested;
- b) Witnesses the party will call to testify;
- c) A proposed order of witnesses (including whether each witness would simultaneously offer both direct and rebuttal testimony);
- d) A proposed order of cross-examination;
- e) Identification and explanation of any special scheduling or witness sequence needs which a party requests to accommodate scheduling conflicts.
- f) An identification and briefing of the issues of fact and issues of law presented by the case.
- g) A detailed summary of the testimony the party intends to introduce, and its relationship to the issues in the case.

Amendment

23. The provisions of this Order may only be amended by PSC action, or PSC staff action pursuant to delegated authority. The PSC shall maintain continuing jurisdiction of the matters encompassed by this Order during the course of this Docket.

Done and Dated this 23rd day of May, 1994 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

*Bob Anderson*

BOB ANDERSON, Chairman

*Bob Rowe*

BOB ROWE, Vice Chairman

*Dave Fisher*

DAVE FISHER, Commissioner

*Nancy McCaffree*

NANCY MCCAFFREE, Commissioner

*Danny Oberg*

DANNY OBERG, Commissioner

ATTEST:

*Kathlene M. Anderson*

Kathlene M. Anderson  
Commission Secretary

(SEAL)

Service Date: May 24, 1994

ATTACHMENT "A"

Procedural Schedule  
Docket No. 94.3.15, Order No. 5787

<u>Deadline</u>	<u>Action</u>
June 17, 1994	Data Requests Due.
July 8, 1994	Answers to Data Requests Due.
July 29, 1994	Stipulation of Facts between parties due (optional). If the parties agree to a Stipulation of the applicable facts, the case may be decided on the prehearing motions. <u>See</u> Paragraph 18 of Procedural Order.
August 19, 1994	All Pre-Hearing Motions Due (e.g. motion for failure to state a claim, motion for summary judgment, motion in limine, etc.). <u>See</u> Paragraphs 17 and 18 of Procedural Order.
September 9, 1994	Comments and Opposition to Pre-Hearing Motions due.
September 23, 1994	Replies from moving parties, to Comments and Opposition filed September 9 due.
September 26 - October 28	PSC consideration of Pre-Hearing Motions.
November 18, 1994	Pre-Hearing Memoranda and Briefs due.
December 2, 1994	Prehearing Conference (tentative).
December 6, 1994	First day of formal hearing (Kalispell).