

Service Date: September 27, 2002

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

\* \* \* \* \*

IN THE MATTER of the Petition of ) UTILITY DIVISION  
WHITEHALL WIND, LLC, for )  
QF Rate Determination ) DOCKET NO. D2002.8.100  
) ORDER NO. 6444

PROCEDURAL ORDER

NOTE: Please read carefully. Provisions of this order may be different from previous PSC procedural orders due to the special circumstances of these dockets. This is not a proposed order. Parties may by motion request changes to this order.

Introduction

1. In this order the Montana Public Service Commission (Commission) establishes a procedural schedule and procedural requirements for Docket No. D2002.8.100. Petitioner Whitehall Wind, LLC (Whitehall) asserts that the Commission must make a decision in this docket within 120 days of filing, pursuant to § 69-3-603(2), MCA. Whitehall filed on August 2, 2002.

Schedule

2. The following schedule applies to this docket.

<u>Action</u>	<u>Deadline*</u>
Discovery on Whitehall	October 2, 2002
Whitehall Response	October 9, 2002
Answer Testimony	October 18, 2002
Discovery on Answer Testimony	October 23, 2002
Response to Discovery on Answer Testimony	October 30, 2002
Rebuttal Testimony	November 6, 2002
Discovery on Rebuttal Testimony	November 8, 2002
Response to Discovery on Rebuttal Testimony	November 13, 2002
Prehearing Memoranda	November 13, 2002
Hearing	November 15, 2002

\*Receipt dates, see Service and Filing below.

### Ex Parte Communications

3. These proceedings are contested case proceedings. In contested case proceedings most *ex parte* communications are prohibited by Montana law. An *ex parte* communication is one between a Commissioner and any person associated with a party in the contested case, when the communication involves the contested case or an issue in the contested case and all other parties to the contested case have not been given a reasonable opportunity to participate in the communication. PSC Commissioner receipt or conveyance of *ex parte* communications is prohibited by law. § 2-4-613, MCA. Party receipt or conveyance of *ex parte* communications is prohibited by law. Id. A few categories of *ex parte* communications may be allowed by law and are not prohibited (e.g., emergency motion for extension of time). Id. Any oral, written, electronic, or other form of communication of any kind, between a PSC Commissioner and any person associated with any party to a contested case pending before the PSC may be or may include, inadvertently or otherwise, a prohibited *ex parte* communication. Parties and Commissioners should be alert to this possibility, the prohibition applicable, and the corrective action. The prohibition against *ex parte* communications at the Commission attaches at the time of notice of filing. ARM 38.2.3905(1). The Commission's Ethical Guidelines proscribe Commissioner *ex parte* communication "at any time after [a] case is filed with the Commission." Commission Operations Manual, pp. 4-8.

### Procedure

#### General

4. Unless otherwise stated in this Procedural Order the procedure governing this contested case is set forth in applicable provisions of: (a) Title 69, MCA, public utilities; (b) Title 2, Chapter 4, MCA, MAPA; (c) ARM Title 38, Chapter 2, procedural rules of the PSC; (d) tariffed procedures; and (e) previous Orders of the PSC bearing specifically on the procedure and issues in this docket, if any.

#### Service and Filing

5. Copies of all pleadings, motions, discovery requests, discovery responses, prefiled testimony, and briefs shall be filed with the PSC and served on all parties. In the case of a filing directed to the PSC, such as motions, testimony, and briefs, the original and 10 copies shall be filed. Service upon parties shall be on each party's attorney of record and such other individuals

as may be reasonably designated by the attorney of record.

6. Service on parties and filing with the Commission must be made by email on the deadline. The requisite number of hard copies must follow to the Commission. Hard copy service on other parties must be made if requested. Parties must arrange among themselves for effective email transmission of documents by the deadlines. Email transmission to the Commission should be made to Robin McHugh ([rmchugh@state.mt.us](mailto:rmchugh@state.mt.us)) and Will Rosquist ([wrosquist@state.mt.us](mailto:wrosquist@state.mt.us)). Other persons may be added later.

#### Intervention and Parties

7. Whitehall, NorthWestern Energy (NWE) and the Montana Consumer Counsel (MCC) are parties to this docket. The Commission grants intervention to MCC, *sua sponte*, by this Order.

#### Discovery

8. The term "discovery" includes all forms of discovery authorized by rules of the PSC. The term "written discovery" as used in this order includes data requests. The PSC urges all parties to conduct discovery through the use of data requests as the preferred method of discovery.

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

(a) Parties must assign their data requests a request number (e.g., MCC-001). Request numbers must be consecutive regardless of the party to whom the request is directed (e.g., the PSC might direct PSC-001 through 008 to the utility, PSC-009 through 016 to an intervenor, and PSC-017 through 019 to the utility). Data requests issued in Docket No. D97.7.90 must continue the numbering from earlier proceedings in that docket (i.e., if the last data request in the docket from MCC was MCC-146, the next, pursuant to this order, will be MCC-147.)

(b) 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, page number, etc., may be included in addition to, but not in lieu of, the subject of the request. This requirement will help to identify all data requests and responses addressing a particular subject or group of subjects. Subject

descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another.

(c) 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 (a-e) parts. If additional parts are necessary additional requests must be made. A single part request should be denoted by the request number only.

(d) Examples of acceptable data requests are as follows:

PSC-500 RE: Purchased Gas Contracts  
Witness - Doe, Page JBD-4, Lines 13-15.  
Docket No. \_\_\_\_\_

Please provide the origination and expiration date for each contract.

PSC-501 RE: Bypass  
Witness - Roe, Page RAR-14, Lines 11-14.  
Docket No. \_\_\_\_\_

- 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?

10. Submission of written discovery after the period established will be allowed by leave of the PSC only. Requests will not be permitted unless the party making the request shows good cause why the request was not submitted within the time period allowed.

11. 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.

12. Due to the extremely abbreviated schedule mandated by this order it is very important that discovery questions be clear and that answers be thorough. The Commission strongly encourages the parties (employees and consultant experts) to communicate informally if necessary to clarify questions or answers. This should avoid many discovery disputes.

13. The parties must make every possible effort to resolve discovery disputes. When discovery disputes cannot be resolved the parties must notify Commission attorney Robin

McHugh, (406) 444-6376, immediately, and informal or Commission action will be discussed.

### Testimony and Evidence

14. The PSC contemplates a complete identification of issues prior to the time of hearing. Introduction of new issues or data in new areas at the time of hearing will be carefully scrutinized and will be subject to disallowance unless reasonably related to issues earlier identified in the application, prefiled testimony, or proceedings.

15. At hearing, prefiled direct, answer, and rebuttal testimony (including on additional issues) will be adopted into the record by motion of the proponent without the need of recitation by the witness. The testimony will be an exhibit and not otherwise entered into the transcript.

16. All proposed exhibits and prefiled written testimony shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter and presiding officer for the preferred manner of identifying exhibits.

17. When cross-examination is based on a document, not previously filed with the PSC, copies of the document must be made available to each commissioner, 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. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, and if previous arrangements have been made with the PSC and all parties.

18. Parties may be permitted to present live rebuttal testimony only if it is in direct response to an issue raised for the first time in cross-examination or the testimony of a public witness. Such testimony will be allowed only by leave of the PSC or presiding officer.

19. Citizens and citizen groups will, in the discretion of the PSC, be allowed to make statements without having submitted prepared written testimony. In addition, if they have prepared written testimony they may read it if they desire, or they may have it adopted directly into the record.

20. The Montana Rules of Evidence in effect at the time of the hearing in this docket will govern at the hearing.

21. Any party to this proceeding having responded, itself or through agents, to written discovery from any other party or the PSC, shall have all persons authoring each response present and available as a witness at the hearing for the purposes of introduction of the discovery and

cross-examination thereon. Reasonable alternatives to this requirement, such as waiver of objection to introduction absent the author and waiver of right to cross-examine, agreed to by the parties may be accepted if approved by the PSC. Written discovery (not including transcripts of depositions on oral examination) and data requests will not be introduced at hearing unless done in accordance with applicable rules of evidence and through an appropriate witness subject to cross-examination, or upon stipulation approved by the PSC. All responses to PSC data requests may be introduced into evidence at the hearing.

#### Prehearing Motions and Conferences

22. 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. Prehearing motions shall be submitted on briefs.

23. The PSC may, at any time prior to the hearing, set a prehearing conference for discussion of, among other things, the feasibility of settlement of any issues in the proceeding, the simplification of issues, the possibility of obtaining admissions of fact and documents, the distribution and marking of written testimony and exhibits prior to the hearing, and such other matters as may aid in the disposition of the proceeding or settlement thereof.

24. 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 the utility at any time.

#### Prehearing Memorandum

25. The Prehearing Memorandum shall be from each party unless the parties agree to file jointly. It shall contain a list of all issues determined to be uncontested, all issues determined to be contested, witnesses intended to be called to testify or stand cross-examination, exhibits intended to be introduced, and discovery, to date, intended to be introduced at hearing. Identified responses to data requests to be introduced at hearing will be accompanied by a proper identification of the request, the witness responsible for the response, and the issue to which it relates. Any special needs to accommodate witness sequence or scheduling should be identified in the Prehearing Memorandum.

#### Open Meetings

26. All PSC meetings regarding this docket are open meetings except as otherwise

required or permitted by law. Parties will not routinely be notified of PSC business meetings or work sessions that may pertain to discussion or action on matters within this docket. Notification of PSC work sessions concerning this docket will be provided to all persons requesting notification through the PSC's weekly agenda mailing list.

Done and dated this 26th day of September, 2002, by delegation to PSC staff as an Order of the PSC.

BY THE MONTANA PUBLIC SERVICE COMMISSION

GARY FELAND, Chairman  
JAY STOVALL, Vice Chairman  
BOB ANDERSON, Commissioner  
MATT BRAINARD, Commissioner  
BOB ROWE, Commissioner

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.