

Service Date: March 13, 2006

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

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IN THE MATTER OF MONTANA-DAKOTA)	UTILITY DIVISION
UTILITIES CO., Application for Approval of)	
Natural Gas Conservation Programs)	DOCKET NO. D2005.10.156
)	ORDER NO. 6697a

ORDER ON MOTION FOR RECONSIDERATION OF INTERIM ORDER

In October 2005 Montana-Dakota Utilities Co. (MDU) filed before the Public Service Commission (PSC) an application for approval of natural gas conservation programs and a related tracking adjustment (cost recovery procedure) applicable to MDU's residential and firm-general services in Montana. In November 2005 the PSC approved MDU's application, as filed, on a temporary (interim) basis through an Interim Order (*PSC Order No. 6697, November 3, 2005*).

The Montana Consumer Counsel (MCC), the only intervenor in this proceeding, has moved for PSC reconsideration of the Interim Order. MCC argues that interim approval of MDU's recovery of lost distribution revenues is inconsistent with Montana statutes on interim orders, PSC interim order rules, and previous PSC orders. MCC also requests that certain language in the Interim Order be deleted because the language suggests the PSC has prejudged the merits of MDU's application. On December 15, 2005, MDU filed a response to MCC's motion. MDU argues that the PSC has the authority to approve MDU's proposed conservation programs and related cost recovery on an interim basis and MCC's cited authorities are misinterpreted by MCC or not applicable.

Section 69-3-304, MCA, provides the statutory authority for PSC issuance of temporary (interim) orders. Among other things the statute requires consistent standards appropriate to the nature of the case. MCC argues "consistent standards" means interim approvals are intended to allow recovery of costs consistent with previous orders, there have been no previous MDU orders on the subject, the PSC has recently denied another Montana utility interim relief under similar circumstances (*NorthWestern Energy, PSC Docket No. D2005.5.88, PSC Order No. 6682b*,

October 14, 2005), and therefore the consistent-standards requirement is not met. MCC also argues the Interim Order violates PSC rules. MDU argues "consistent standards" means standards for interim rate decreases must be consistent with standards for interim rate increases, the previous PSC order denying interim relief is distinguishable, and therefore the PSC action is not in violation of the statute. MDU argues the PSC rules are not applicable and appear to be outdated and inconsistent with the governing statute in any event.

MDU could be correct in regard to interpretation of the consistent-standards provision of § 69-3-304, MCA. The PSC does not need to address that interpretation at this time because there is no basis for interpreting the statute in the fashion argued by MCC in this instance. There appears to be no intrinsic ambiguity in the statute regarding the "consistent standards" requirement and the plain meaning seems to be that the PSC must be consistent in its interim order practice (*e.g.*, consistent among utilities, consistent among cases, possibly consistent between rate decreases and increases), if the nature of the cases are the same. The nature of the present case (MDU gas conservation programs) is not the same as the nature of the previous case (NWE annual electric cost tracker). MDU identifies differences in its argument: NWE is a default supplier, MDU is not; NWE's case involves a complete electric procurement plan, MDU's case involves only one element of natural gas service). There are other differences. The compelling difference is MDU's application relates to natural gas and natural gas for the 2005/2006 heating season presented and still presents special aspects (*e.g.*, extremely high prices, possible supply problems) and an emergency nature. Those aspects did not exist in the NWE electric tracker.

The PSC's interim approval of MDU's application was not requested by MDU. The rules cited by MCC (*ARM 38.5.501 through 38.5.508*) primarily, if not exclusively, apply to applications for interim relief and, even then, allow for waiver (*ARM 38.5.501*). The PSC issued the Interim Order on its own motion, for reasons stated in the Interim Order, primarily the 2005/2006 heating season presents extraordinary circumstances justifying expedited treatment of natural gas energy conservation oriented applications such as MDU's.

The part of the Interim Order that MCC questions regarding prejudgment of the merits of MDU's application is the PSC's indication that, if it were lawful to do so, the PSC would order that costs incurred by MDU during the interim period will be recovered by MDU. *See p. 3, PSC Order No. 6697.* This language is likely not necessary to the Interim Order, but it will remain in the Interim Order. The statement was not intended to indicate the PSC is guaranteeing recovery. The Interim Order as a whole is abundantly clear that MDU accepts the burden of establishing program costs incurred are prudently incurred.

The PSC denies MCC's motion for reconsideration.

Done and dated this 20th day of December, 2005, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chairman

BRAD MOLNAR, Vice-Chairman

DOUG MOOD, Commissioner

ROBERT H. RANEY, Commissioner

THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)