

Service Date: March 5, 1996

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

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IN THE MATTER OF THE COMPLAINT OF)	UTILITY DIVISION
FERDIG OIL CO., INC.,)	
Complainant,)	
-vs.-)	DOCKET NO. D95.11.172
)	
MONTANA POWER COMPANY)	
Defendant.)	ORDER NO. 5901

PROCEDURAL ORDER

BACKGROUND

On November 24, 1995 Ferdig Oil Co. Inc., (Ferdig) filed its Complaint against Montana Power Company (MPC) with the Montana Public Service Commission (Commission) with general allegations and a request that MPC be required to provide gas transportation service to Ferdig. On December 4, 1995 the Commission issued the Notice of Complaint to Montana Power Company, and MPC responded on December 14, 1995. The Commission, at a regularly scheduled work session on January 17, 1996 directed Staff to establish a procedural schedule and set a tentative hearing date if parties cannot resolve the complaint or show good cause why it should be dismissed.

Upon delegation to Commission Staff, the Commission has set forth a firm schedule in this Procedural Order. The Commission Staff may amend the procedural schedule at the request and upon the consent of parties, when the amendment does not alter the scheduled hearing date. The Commission will reconsider the date set for hearing upon good cause shown.

INTRODUCTION

1. Under the authority of ARM 38.2.2702, the Commission enters this Order setting forth the procedure and schedule to be followed in Docket No. D95.11.172. This Order is effective upon issuance and remains effective until modified by the Commission.

SCHEDULE

2. All dates listed in the following schedule are **receipt dates** (filing and service) unless otherwise specified.

- (a) March 29, 1996: First Round--final day to file and serve written discovery (includes data requests) between parties and from Commission Staff to parties. Since Staff is not a party, discovery requests may not be directed to Staff.
- (b) April 16, 1996: Final day for filing responses to discovery filed pursuant to & 2(a).
- (c) April 26, 1996: Second Round--final day to file and serve written discovery limited to matters raised in the first round of discovery.
- (d) May 6, 1996: Final day for filing responses to second round of discovery.
- (e) May 16, 1996: Final day for motions, depositions and other prehearing matters.
- (d) May 23, 1996: Final day for prehearing memoranda filed by parties and limited staff memorandum filed pursuant to & 18.
- (e) May 30, 1996: Hearing (date may be changed upon notice).

PROCEDURE

General

3. The procedure governing this Docket is set forth in applicable provisions of (a) Title 69, Chapter 3, MCA; (b) Title 2, Chapter 4, MCA, Montana Administrative Procedures Act (MAPA); and (c) ARM Title 38, Chapter 2, procedural rules.

Service and Filing

4. Copies of all pleadings, motions, discovery requests, discovery responses and briefs shall be filed with the Commission and served on the parties. Parties shall file with the Commission an original and ten copies of motions, briefs and documents directed to the Commission. Service upon the parties shall be upon each party's attorney of record, if applicable, and such other individuals as may be reasonably designated by the attorney of record.

Discovery

5. The term "discovery" includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as data requests. The Commission urges all parties to conduct discovery primarily through the use of data requests.

6. The Commission 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. Examples of acceptable data requests follow:

PSC-500 RE: Return on Equity
Witness - Doe, Page JQD-4, Lines 13-15.

Please provide an analysis of hypothetical debt/equity structure.

PSC-501 RE: Return on Equity
Witness - Doe, Page JQD-14, Lines 11-14.

- a. What is the cost of equity and how is it derived?
- b. What portion of the equity capital is transferred, or imputed, to debt for ratemaking purposes?

7. The party receiving the written discovery or data requests has five days from receipt to file objections to the request(s). Notice of the objection shall be served upon the Commission and on all parties. The Commission may dispose of objections by prompt ruling or may schedule argument. Failure to timely object will be deemed acceptance of the request. Parties are encouraged to try to resolve concerns about requests before filing objections.

8. A requesting party dissatisfied with the response to any written discovery or data request and desiring Commission action to compel must serve its written objection(s) and relief requested simultaneously upon the Commission and parties within five days after receipt of such response. The Commission may dispose of such objection(s) by prompt ruling or may schedule

argument. The Commission will act either to sustain or overrule the objection(s), and if sustaining, set a deadline for a satisfactory response.

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

Testimony and Evidence

10. All proposed exhibits shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter for the preferred manner of identifying exhibits.

11. When cross-examination is based on a document not previously filed with the Commission, 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 Commission staff and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, upon making previous arrangements with the Commission and all parties.

12. 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 in the testimony of a public witness. Such testimony will be allowed only by leave of the Commission or presiding officer.

13. The Montana Rules of Evidence in effect at the time of the hearing in this Docket will govern at the hearing.

14. Any party to this proceeding responding to written discovery from any other party or the Commission shall have each person authoring 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 Commission approval of 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 (not including tran-

scripts of depositions on oral examination) 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 by waiver of Parties and upon stipulation approved by the Commission.

Prehearing Motions and Conferences

15. 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 unless otherwise requested by a party and approved by the Commission. Upon a grant of oral argument, the requesting party shall notice it for hearing before the Commission.

16. The Commission staff may set a final Prehearing Conference 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.

Prehearing Memorandum

17. Each party shall submit a prehearing memorandum. The memorandum shall contain a list of all issues uncontested and contested; witnesses to testify; and exhibits and discovery for introduction at hearing. Any special needs to accommodate witness sequence or scheduling should be identified in the prehearing memorandum. Commission staff shall file a limited prehearing memorandum identifying data or discovery responses to be introduced into the record and the witnesses necessary to sponsor the responses, or alternatively, to testify.

Done and Dated this 5th day of March, 1996 by delegation to Commission Staff as the Order of the Montana Public Service Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

NANCY MCCAFFREE, Chair
DAVE FISHER, Vice Chair
BOB ANDERSON, Commissioner
DANNY OBERG, Commissioner
BOB ROWE, Commissioner