

Service Date: February 4, 2003

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

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IN THE MATTER of the Application of	)	UTILITY DIVISION
MONTANA POWER COMPANY for	)	
Approval of its Electric Utility Restructuring	)	DOCKET NO. D97.7.90
Transition Plan Filed Pursuant to Senate Bill 390.	)	ORDER NO. 5986x

**ORDER RESCINDING ORDER NO. 5986t**

On June 27, 2001 the Montana Public Service Commission (Commission) issued Order on Commission Authority and Montana Power Company Obligations Pursuant to the Electric Utility Industry and Customer Choice Act (Act), Order No. 5986t, in this docket. Structurally, Order No. 5986t recognizes the existence of the Montana Electric Utility Industry Restructuring and Customer Choice Act (Choice Act), §§ 69-8-101-702, MCA, certain Commission actions taken, or not taken, to implement the Choice Act (Findings of Fact), and lists certain Conclusions of Law pertaining to Commission authority under the Choice Act and other relevant sections of Title 69, MCA. The "Order" section of Order No. 5986t is directed at Montana Power Company (MPC), now NorthWestern Energy (NWE). It does not require any action; rather, it put NWE on notice that failure to take particular action by a certain time would have specific consequences.

Order No. 5986t was issued at a difficult point in the history of Choice Act implementation, and it represents a good faith legal interpretation of Commission authority and NWE structure and obligations under the Choice Act. Implementation of the Choice Act, however, has had to be flexible in order to respond 1) to changed electricity market conditions, 2) to concerns about the financial stability of NWE (and the implications that has for the provision of adequate service at reasonable rates), and 3) to changing conceptions of what the public interest requires in the context of the Choice Act. When the Commission issued Order No. 5986t it appeared that a particular interpretation and aggressive enforcement of the Choice Act was necessary with regard to electricity rates that would be charged beginning July 1, 2002. That appearance changed as events transpired after the issuance of Order No. 5986t, and the Commission processed the MPC/NWE sale (Docket No. D2001.1.5) and the MPC/NWE default

supply portfolio (Docket No. D2001.10.144). As July 1, 2002 approached, it became apparent to the Commission that enforcement of Order No. 5986t would not be in the public interest.

In addition, Order No. 5986t caused great concern to NWE and PPL Montana, LLC (PPL Montana), the purchaser of most of the former MPC generation assets. NWE and PPL Montana filed separate lawsuits in the summer of 2001 challenging Order No. 5986t. Given the changed circumstances described above, and the decision not to enforce Order No. 5986t in advance of July 1, 2002, it is no longer necessary or expedient to defend Order No. 5986t against these challenges, or to continue to maintain Order No. 5986t as a formal statement of Commission conclusions of law.

#### Order

Therefore, the Commission rescinds Order No. 5986t in its entirety, without prejudice to the facts or conclusions stated therein, and without prejudice to any interpretation of law or consequent action this Commission, or a future Commission, might make.

DONE AND DATED this 9th day of January, 2003, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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BOB ROWE, Chairman

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THOMAS J. SCHNEIDER, Vice Chairman

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MATT BRAINARD, Commissioner

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GREG JERGESON, Commissioner

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JAY STOVALL, Commissioner

ATTEST:

Rhonda J. Simmons  
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 38.2.4806, ARM.