

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. 5986

PROCEDURAL ORDER

Background

Pursuant to Senate Bill 390 (SB 390), passed in the 1997 Montana Legislative Session, public utilities under the jurisdiction of the Montana Public Service Commission (Commission) are required to file transition plans to customer choice one year before the date any customer has the right to choose its electric supplier. The large customers of both Montana Power Company (MPC) and PacifiCorp are entitled to choice under the Act on July 1, 1998. On July 1, 1997 the Commission should receive PacifiCorp's and MPC's Transition Plan filings and requests for approval of their respective electric restructuring proposals.

The Commission has the duty under SB 390 to issue a final order before 9 months after the date a utility files its plan, unless waived by the utility. The Commission must process both utilities' filings during the same time frame. The Commission sets forth a firm schedule in this Procedural Order. On request of any party and with the consent of the other parties, the Commission staff may amend the procedural schedule when the amendment does not alter the scheduled hearing date. The Commission will reconsider the date set for hearing only upon good cause shown.

The Commission issues the following Procedural Order and Schedule:

1. Pursuant to the authority of SB 390 and the Commission's rules under ARM 38.2.2702, the Commission enters this Order setting forth the procedure and schedule to be

followed in Docket No. D97.7.90. This Order is effective immediately 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. The schedule is tight, as required by SB 390. On request of parties or on the Commission's own motion, the Commission may set a supplementary procedural schedule to address additional discovery needs. The Commission encourages parties to intervene and file data requests, responses and resulting testimony ahead of deadlines, when possible. The schedule provides for initial discovery before the filing at the request of any intervenor. After the plan is filed, intervenors may submit progressive discovery in one weekly set per party or intervenor due on each Monday, with responses to each set due two weeks from each request, or before, if feasible.

- (a) June 20, 1997: Procedural Order issued by Commission. Protective Order issued by Commission on MPC's request. Preliminary discovery on MPC by Intervenors preceding the filing of the plan may begin on this date, with responses due after filing pursuant to ¶ 2(c).
- (b) July 1, 1997: Final day for filing transition plan and prefiled testimony pursuant to Senate Bill 390, Sections 5 and 6. Notice of Transition Plan Filing and Intervention Deadline issued by Commission. Progressive written discovery (includes data requests) from intervenors and Commission Staff may begin, limited to one set of data requests for each party per week due on Monday of each week (July 7, July 14, July 21, July 28, etc.), with responses from MPC due on or before two weeks from each set of requests. Final deadline for intervenor discovery requests per ¶ 2(g).
- (c) July 14, 1997: Final day for responses to discovery propounded pursuant to ¶ 2(a) received before the transition plan filing pursuant to ¶ 2(b).
- (d) July 22, 1997: Final day for intervention (earlier intervention encouraged). Preliminary comments on initial plan's completeness due *from intervenors*.

- (e) August 12, 1997: **Preliminary Commission determination and findings** on completeness of plan and adequacy in meeting minimum requirements of Sections 1-31, Senate Bill 390.
 - (f) August 26, 1997: **Final day for MPC to file a revised plan.**
 - (g) September 22, 1997: Final day for written discovery (includes data requests) from intervenors and Commission Staff to MPC on its transition plan, including revisions.
 - (h) October 6, 1997: Final day for MPC to respond to intervenor discovery.
 - (i) November 7, 1997: Final day for testimony from intervenors on revised plan.
 - (j) November 26, 1997: Final day for written discovery from MPC to intervenors on testimony filed pursuant to ¶ 2(i) and for intervenor discovery to parties other than MPC.
 - (k) December 10, 1997: Final day for intervenors to respond to written discovery from MPC and other intervenors on revised plan filed pursuant to ¶ 2(j).
 - (l) January 12, 1998: Final day for rebuttal testimony from MPC and cross-rebuttal from intervenors to testimony filed pursuant to 2(i).
 - (m) January 26, 1998: Final day for intervenor discovery on rebuttal testimony filed pursuant to ¶ 2(l).
 - (n) February 6, 1998: Final day for MPC's responses to discovery on rebuttal testimony.
 - (o) February 19, 1998: Final day for prehearing memoranda filed by all parties. Staff shall file a limited prehearing memorandum pursuant to this Order.
 - (p) February 24, 1998: Hearing commences.
 - (q) May 1, 1998: Final order issued (**assuming that MPC files a waiver of the nine month requirement in SB 390, Section 6**).
3. In addition, the Commission may schedule local satellite hearings and prehearing conferences.

PROCEDURE

General

4. 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

5. The Commission's procedural rules require that copies of all pleadings, motions, discovery requests, discovery responses, prefiled testimony, and briefs must be filed with the Commission and served on all parties. Parties shall file with the Commission an original and ten copies of motions, testimony, briefs and documents directed to the Commission. Service shall be upon each party's attorney of record, and other individuals reasonably designated by the attorney of record. **As an experiment, the Commission will allow parties to submit pleadings, documents, requests and responses to each other and the Commission through the use of a list-server. Parties must continue to comply with the Commission's procedural rules for service set forth in ARM Title 38, Chapter 2. Parties will be notified how to submit documents electronically in a subsequent notice. Exercise of this option may help expedite these proceedings.**

6. The Commission recommends the following guidelines where data processing and computer equipment are available: (1) Data provided on 3½ " IBM/PC Compatible computer diskettes; (2) Spreadsheets provided in Lotus 1-2-3 Version 3.1 DOS compatible format; and (3) Text provided in Word Perfect Version 5.1, 6.0 or 6.1 compatible format.

7. Parties should attempt to provide rate filing material in electronic form to the extent it is practical and not cost-prohibitive. Testimony, exhibits and data requests/responses should be provided both electronically and in hard copy. Briefs, motions and correspondence normally provided to the Service List should be made available electronically on request.

Intervention

8. Parties seeking to intervene must file a Petition to Intervene with the Commission. The Commission deems intervention granted as a matter of right upon a timely filing pursuant to ¶ 2(b). In a request for late intervention, the petitioner must (a) identify the general position that

the intervenor will take if the intervention is granted; (b) demonstrate a legal interest directly affected by this Docket; (c) demonstrate that the intervention, if granted, will not delay or prejudice the proceeding in this Docket; and (d) show good cause why the request for intervention was not timely filed. Late intervention will be effective only upon action of the Commission.

Discovery

9. 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. The dates set forth in the Procedural Schedule, ¶ 2, are *deadlines* for filing.

10. The Commission directs all parties to prepare data requests according to the following guidelines:

(a) Parties must assign a request number (e.g., MPC-001) to their data requests. 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 MPC and PSC-009 through 016 to MCC).

(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 and 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 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.

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

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?

11. Any party dissatisfied with the written discovery or data requests directed to that party or with responses to its discovery or data requests has five days from receipt to file objections to the request(s) or responses. Notice of the objection(s) shall be served on the Commission and 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 should attempt to resolve discovery objections informally, if possible.

12. The Commission will act either to sustain or overrule the objection(s), and if sustaining, set a deadline for a satisfactory response. Submission of written discovery after the deadline established will be allowed by leave of the Commission only. The Commission will not grant requests without a showing of good cause as to why the request was not submitted within the time period allowed.

13. 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

14. At hearing, the Commission will adopt into the record all prefiled direct, answer, and rebuttal testimony on motion of the proponent, without the witness reading the testimony into the record. The testimony will be an exhibit and not otherwise entered into the transcript.

15. 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 for the preferred manner of identifying exhibits.

16. 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.

17. 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.

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

19. 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 transcripts 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

20. 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.

21. 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.

22. Nothing in this order shall be construed as limiting the legally established right of the Commission or its staff to inspect the books and accounts of MPC or PacifiCorp at any time.

Prehearing Memorandum

23. 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 20th day of June, 1997 by delegation to Commission staff as the Order of the Montana Public Service Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

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