

Service Date: September 11, 1998

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 Transition Plan)	DOCKET NO. D97.7.90
Filed Pursuant to Senate Bill 390.)	ORDER NO. 5986e

ORDER ON RECONSIDERATION

BACKGROUND

1. The Montana Public Service Commission (Commission) conducted a public hearing beginning May 28, 1998, on Montana Power Company's (MPC) transition plan, MPC Docket No. D97.7.90, the first hearing scheduled in this Docket. The Commission issued its Order on Tier 1 Issues, Order No. 5986d, on June 23, 1998, addressing the following issues: (a) MPC's plan for large customer choice beginning July 1, 1998; (b) accounting order proposals to track costs stranded during the period before the Final Order; (c) customer education and protection, including functional separation, unbundled bills and rate design; (d) pilot programs; and (e) methods to choose electricity suppliers. The Commission deferred the issue of Universal System Benefits Charge (USBC) to a single-issue hearing to be scheduled in early Autumn to allow implementing the USBC on January 1, 1999, as required by Senate Bill 390. The Commission postponed setting the final hearing on the stranded cost and competitive bid sale issues, pending receipt of information on the bid process.

2. After receiving permission for additional time to file a request for reconsideration, MPC filed a Motion for Clarification/Reconsideration and Stay of the Commission's June 24, 1998 Order on July 13, 1998. MPC requested that the Commission clarify/reconsider and stay portions of the standards of conduct addressing affiliate interaction between MPC's electric transmission and distribution companies and other utility affiliates. MPC believed that the Commission misinterpreted Senate Bill 390, codified at Title 69, Chapter 8, Montana Code Annotated (MCA), and allegedly "violated basic economic and antitrust principles by protecting competitors . . . instead of consumers." MPC maintained that the proposed standards of conduct it had proposed in its plan were consistent with 18 CFR, Part 37, while the standards of conduct

ordered by the Commission would protect MPC's competitors and harm MPC and its affiliates. MPC also alleged that some of the ordered standards were too ambiguous and broad.

3. MPC requested that the Commission reconsider and modify its Order No 5986d pertaining to Standards of Conduct, as proposed by MPC in its Exhibit 3 attached to its Motion for Reconsideration, and stay Standards 1.4 C., 1.4.2 B., E. and G., and 1.4. E.

4. At its duly noticed and scheduled work session held on August 25 1998, the Commission denied the Motion for Reconsideration for the reasons discussed in this Order.

FINDINGS AND DISCUSSION

5. The standards of conduct adopted by the Commission in Order 5986e incorporate recommendations of Department of Environmental Quality/Northwest Power Planning Council (DEQ/NPPC) and Enron Corporation, which were based on a correct interpretation of the functional separation requirement in Senate Bill 390. Enron's witness testified that standards of conduct for a retail environment might be incremental to FERC rules, which were never intended to apply to retail markets. November 1997, Testimony of Mona Petrochko, p. 25. According to Ms. Petrochko, MPC's proposed standards are too narrow in scope in applying to a marketing affiliate whose primary activities involve the wholesale and retail merchant function. Enron maintained that the standards would not apply to an affiliate engaged in energy services, or any affiliate, if supplying power was not its primary activity and that such language leaves substantial room to circumvent the standards. Ibid., p. 27.

6. DEQ/NPPC's witness, Alan Davis, testified that appropriate standards of conduct should not allow MPC's electric utility function to advantage any other MPC services, divisions or affiliates, including telecommunications and natural gas affiliates. DEQ specifically testified that MPC should not be allowed to use the electric utility's billing system to advertise for its affiliates. March 1998, Testimony of Alan Davis, p. 11.

7. DEQ's witness, Mick Robinson, in discussing adequate functional separation, stated that functional separation issues are broader than just separation between the distribution utility and the affiliated supply company. Tr., p. 462. As well, Mr. Davis, responding to questions about the degree of functional separation that DEQ advocated, stated "...[w]here there is the possibility of recombining these telecommunications, metering, billing functions...[it is] important to have...protections within the Company to prevent them from advantaging themselves in this emerging market...." Tr., p. 465. When questioned by MPC about the Company's proposed

standards, DEQ witness, Larry Nordell, testified that although MPC's proposed standards provide separation between the Energy Services Division and Montana Power Trading and Marketing, they do not separate the electric distribution function from other services provided by the company, such as telecommunications. Tr., p. 501. Responding to questions from Commissioner Anderson, Dr. Nordell indicated that even if the trading and marketing function did not exist, functional separation is still important to promote efficient competition and innovation in the provision of other services that may involve synergies between telecommunications, information services and metering. Tr., pp. 520-522.

8. In its Motion for Reconsideration, MPC maintained that the Commission misinterpreted § 69-8-204(3) and (4), MCA, which states:

(3) Public utilities shall:

(a) prevent undue discrimination in favor of their own power supply, other services, divisions or affiliates, if any;

(b) prevent any other form of self-dealing that could result in noncompetitive electricity prices to customers; and

(c) grant customers and their electricity suppliers access to the public utility's retail transmission and distribution system on a nondiscriminatory basis at rates terms and conditions of service comparable to the use of the retail transmission and distribution system by the public utility and the public utility's affiliates.

(4) The provisions of this section are satisfied if the public utility adopts and complies with a code of conduct consistent with the federal energy regulatory commission approved code of conduct pursuant to 18 CFR, part 37. The commission shall promulgate rules relating to the code of conduct. (Emphasis added)

9. MPC asserted that the Commission misinterpreted this part of the Act in developing standards of conduct that affect all of MPC's affiliates, electricity supply-related or not. MPC maintained that this part of the Act has the sole purpose of preventing actions that could result in non-competitive electricity prices. MPC believed that the provisions in § 69-8-204, MCA focus only on electricity marketing affiliates, since the section is deemed satisfied if a utility adopts and complies with a code of conduct consistent with a FERC approved code of conduct pursuant to 18 CFR, Part 37. MPC maintained that utility interactions with Touch America, oil and gas affiliates in the United States and abroad and other affiliates not involved in the electricity business would not lead to noncompetitive electricity prices.

10. The Commission agrees that this part of the Act is intended to prevent noncompetitive electricity prices, but it does not focus solely on a utility's electricity marketing affiliates.

The referenced section of Senate Bill 390 uses the term “affiliate” twice without preceding it by the terms “electricity” or “marketing,” and the term “affiliate” is not defined in Senate Bill 390. To prevent noncompetitive electricity prices, § 69-8-204, MCA states that utilities must offer access to transmission and distribution facilities and services on a nondiscriminatory basis at rates, terms and conditions comparable to what is offered to the utility itself or the utility’s affiliates. Although the goal is competitive electricity prices, achieving the goal requires comparable, nondiscriminatory access by all participants, including any MPC affiliates, to transmission and distribution services.

11. MPC’s reasoning throughout its Motion incorrectly characterized the standards of conduct as universally applying to all its affiliates. In fact, the standards apply to the regulated electric transmission and distribution utility’s conduct and affect affiliates only to the extent they seek access to regulated systems and services. Such interactions could lead to noncompetitive electricity prices. When a utility’s affiliate is afforded preferential treatment or special access to prices and terms that are not available to non-affiliates seeking access to the same regulated systems and services, the potential for noncompetitive outcomes in electricity markets is a concern. A standard of conduct should prevent any preference to an affiliate of a utility

12. The standards of conduct ordered by the Commission attempt to ensure that all potential users of regulated electric transmission and distribution systems and services have nondiscriminatory access, whether they are an affiliate of the utility or another entity. MPC maintained that the standards are too broad, citing FERC Order No. 889a as authoritative on standards of conduct. FERC determined that its proposed standards in Order No. 889 were too broad in prohibiting contacts between employees of the public utility engaged in transmission system operations and employees of the public utility engaged in wholesale marketing functions, as well as employees of any affiliate, no matter how employed. MPC questioned whether, under the Commission’s adopted standards, an affiliated telecommunications company such as Touch America could rent office space from the utility. MPC also maintained that it appears to violate the standards if the utility transacts business with the Shared Administrative Services Division of the Corporation.

13. FERC’s determination in Order No. 889a related to discourse between transmission employees and wholesale marketing employees. The Commission has other and different duties under Senate Bill 390, which go beyond the transmission/wholesale connection regulated by

FERC. These duties are incorporated in § 69-8-204, MCA, and other general and supervisory statutes governing the Commission's authority in Title 69, Chapter 3, MCA. The Commission's Order No. 5986d, in adopting modifications to MPC's Standards of Conduct, is consistent with FERC standards, to the extent that the provisions in FERC Order No 889 relate to those in Senate Bill 390 on transmission and wholesale marketing.

14. Clear separation between regulated electric utility functions and other corporate functions, electric-related or not, will facilitate the Commission's responsibility to ensure that regulated functions are offered on a nondiscriminatory basis and are not used inappropriately to support other corporate functions. Unrestricted transactions between the utility and affiliates, as well as allocation of Shared Administrative Services Division costs to utility and non-utility functions, may produce suspicion, lead to contentious regulatory proceedings and impose accompanying regulatory costs on society. This outcome is a strong probability, given MPC's multiple business lines and its reliance on the provisions in Senate Bill 390 on functional separation between regulated utilities and their affiliates. Standards of conduct properly limit the mingling of utility and non-utility functions to those necessary for the utility to carry out its purpose.

The Standards MPC Proposed are Not Consistent with FERC Standards

15. The standards of conduct proposed by MPC in this docket do not comply with a standard of conduct approved by FERC, pursuant to 18 CFR, Part 37. Title 18, Part 37, CFR requires utilities to submit to FERC written procedures for implementing the standards in this section. The written procedures must be in sufficient detail for the commission (FERC) to determine that the utility is complying with the standards. MPC admitted in its Motion that FERC has not approved a code of conduct for MPC. Until FERC has approved the procedures MPC will implement to comply with Title 18, Part 37 CFR, MPC has nothing to adopt or with which to comply under § 69-8-204(4), MCA.

16. Additionally, the standards of conduct proposed by MPC are not consistent with the standards in Title 18, Part 37.4 CFR. In comparing FERC's standards to the standards MPC proposed in this docket, MPC incorrectly characterized standards in 18 CFR, Part 37.4(5). MPC depicted Part 37.4(5)(ii) as requiring MPC to apply tariffs in an impartial manner, if discretion is allowed. MPC stated that sections 1.4 A and G of its proposed standards implement this requirement. However, Part 37.4(5)(ii) states that *transmission providers* must apply tariff provisions in a fair and impartial manner "...that treats all customers (including the public utility and

any affiliate) in a nondiscriminatory manner...." (Emphasis added.) MPC's proposed standards, under sections 1.4 A and D, would only apply tariffs in the same manner to electricity supply affiliates and keep a log of any exercise of discretion favoring its marketing affiliate. Sections 1.4 A and D are not consistent with FERC's standards, in that they do not require the regulated electric transmission and distribution utility to offer access to electric transmission and distribution systems and services to all customers, including any affiliate, on comparable terms and in a nondiscriminatory manner.

17. MPC interpreted Part 37.4(5)(iv) as prohibiting preference favoring the marketing affiliate, maintaining that Sections 1.4 C, J, K and L of its proposed standards implement this requirement. However, Part 37.4(5)(iv) states that a utility is prohibited from giving preference to a wholesale merchant affiliate, or any affiliate, over the interests of any other customer, through tariffs or otherwise, in matters involving transmission service. Inconsistently with FERC's standards, MPC's proposed standards, under sections 1.4 C, J, K and L, only prevent preference to a marketing affiliate, which MPC defined as an entity owned by MPC, whose primary purpose is the wholesale and retail merchant function. Thus, MPC's standards would not appear to prohibit offering preferential or priority access to an affiliate whose primary purpose involves customer account and energy management services. MPC obtained interim electricity supplier licenses for two entities, Montana Power Trading & Marketing and Montana Power Trading & Marketing Energy Services. It is not clear whether one of these affiliates may have a primary purpose other than wholesale and retail merchant functions. The Commission's Tier 1 Order discussed the relationship between telecommunications and advanced metering services. Metering does not appear to be contained in MPC's definition of merchant activity. Limiting the standards to utility interaction with the merchant affiliate is insufficient.

18. Comparison of MPC's proposed standards of conduct made under § 69-8-204(4), MCA, and FERC-approved standards pursuant to 18 CFR, Part 37 is not possible because FERC has not approved any standards for MPC to implement Title 18, Part 37 CFR. However, comparing MPC's proposed standards of conduct in this docket to the general standards outlined in 18 CFR, Part 37, reveals inconsistencies. The Commission properly and lawfully modified MPC's transition plan, pursuant to § 69-8-202(3), MCA, and adopted standards of conduct that promote comparable, nondiscriminatory access by all customers, including MPC affiliates, to regulated electric transmission and distribution systems and services.

Economic Principles, Protecting Competition Rather than Competitors

19. MPC stated that standards of conduct should not impinge on principles of efficient competition. Specifically, MPC asserted that:

- Firms should be free to enter markets and offer a variety of products and services.
- Utilities and affiliates should not be denied opportunities to compete on the basis of incremental costs and efficiencies.
- Competing on relative efficiencies does not constitute cross-subsidization.
- Standards of conduct must recognize the difference between competitive advantages that come from controlling essential facilities and those that come from efficiencies associated with scale, scope and experience.

20. Before proceeding to MPC's arguments, the Commission asks: On whose behalf has MPC filed this Motion for Reconsideration? Touch America is not a party to this proceeding. All the arguments MPC puts forth on markets, freedom to compete, and economic efficiencies appear to relate to its subsidiary, not a party in this case. This transition period from regulated electricity supply monopoly to competition and choice for electricity supply is understandably confusing. MPC made arguments in support of the benefits of a monopoly organization that MPC has enjoyed. MPC then applied these arguments to the subsidiary, essentially asserting its rights to inherit the monopoly parent's benefits in order to compete in another market.

21. If MPC's argument is that MPC itself is the party in interest on the Motion for Reconsideration, then the Commission must determine that MPC expects to gain an unwarranted, anti-competitive advantage for MPC in the transition to choice. To address this query, the Commission will discuss MPC's Motion and positions. According to MPC, the Commission adopted the standards in Order No. 5986d either out of ignorance or misunderstanding of the bulleted economic principles. MPC suggested that the adopted standards unnecessarily protect Touch America's competitors, AT&T and US West, by requiring the utility to offer its billing envelope to all competitors if it is offered to an affiliate. MPC also asserted that it would be anti-competitive to deny the utility and its affiliates the ability to exploit economies of scale, scope and experience, apparently referring to an affiliate's use of the utility billing envelope.

22. The standards of conduct adopted by the Commission do not protect any competitor, nor are they inconsistent with the economic principles MPC identified. Rather, MPC wants protection for Touch America through discriminatory access to regulated electric facilities and

services. MPC characterized Touch America as a small competitor compared to AT&T and US West, but did not discuss the more than 350 other registered Montana telecommunications companies who must also compete with AT&T and US West, as well as with Touch America.

23. MPC appeared to suggest that requiring Touch America to obtain access to regulated electric systems and services on the same terms as any other potential user would interfere with Touch America's abilities to compete on its incremental costs and to exploit economies of scale or scope. However, MPC stated that Touch America is a completely separate corporate entity with its own board of directors. It follows, then, that Touch America has its own incremental costs. Nothing in the adopted standards interferes with Touch America's ability to compete based on those incremental costs or to enter markets in which it feels it can competitively offer products and services. No evidence on the record indicates that Touch America's use of the affiliated electric utility's envelope would produce greater economies than could be achieved by any of the other 350 plus telecommunications companies if they had similar access.

24. Indeed, giving Touch America preferential and discriminatory access to electric utility bill envelopes could result in one of the nineteen market imperfections identified by MPC witness William Shepard (see MPC's response to data request PSC-131). Even if Touch America would pay the electric utility the incremental cost of using spare envelope space, those costs could be quite low. Electric utility ratepayers have already covered the cost of the envelope and the postal costs. Touch America is a separate corporate entity with no greater claim to extra space in the electric utility's bill envelopes than other, nonaffiliated entities. Granting Touch America preferential access to that space could constitute a pecuniary input advantage in the production of electricity-related products or services that Touch America may offer. Whether or not the advantage could be characterized as a subsidy, it would be a market imperfection, and the adopted standards correctly discourage that result.

25. The standards adopted by the Commission are not based on an "infant industry" exception to the rule of unbiased competition, as MPC alleged might be the case. The standards adopted in Order No. 5986d require comparable and nondiscriminatory access to transmission and distribution systems and services for all potential users. MPC's proposed standards hold a greater potential for biased competition and protection of its telecommunications affiliate with preferential access. MPC's motion fails to identify any evidence on the record that suggests that the adopted standards violate the economic principles that MPC identified.

26. MPC criticized the adopted standards for ambiguity in using the term “interaction.” However, MPC’s own proposed standards use the same term. Paragraph 1.4 of the standards of conduct included in MPC’s late filed exhibits states:

“Standards of Conduct: the Utility shall comply with the Standards of Conduct prescribed by FERC in its Orders 889 and 889-A and codified in 18 CFR, §37 as such Standards relate to the interaction between its electric transmission business and its Wholesale Merchant Function....” (Emphasis added.)

The term interaction means the same with respect to MPC's transmission business and its wholesale merchant function as it means with respect to its transmission and distribution business and any of its other affiliates. However, to clarify the term, the Commission modifies paragraph 1.4.2.C of the adopted standards.

27. MPC asserted that the envelope is not an "essential facility." However, this assertion is inconsistent with MPC's testimony in this case and its legal arguments. MPC witness Mr. William Thomas testified that educational and safety-related messages provided in utility bills are examples of distribution-related customer services which may not be provided if billing were no longer a utility function (April 1998, Rebuttal Testimony, p. 6). If MPC believes that educational and safety-related messages are important enough to warrant keeping the billing function in MPC's domain, then MPC should also be concerned that injecting marketing material into the bill may diminish the effectiveness of the education and safety messages. In its Brief on the Motion for Reconsideration, p. 14, MPC stated that the Commission had affected "the utility's property, like the billing envelope" MPC belies its assertion that the envelope is not an "essential facility."

No Prohibition of Free Speech for MPC or Touch America

28. MPC alleged that "[p]rohibiting [Touch America] from using [MPC's] bill to advertise or communicate other messages violates the First Amendment to the U.S. Constitution and Section 7 of the Montana Constitution." Is MPC making the claim on its own behalf or that of its subsidiary, Touch America, not a party to the case? The Commission has not denied access to the envelope to either the monopoly or its subsidiary, so there is no abridgment of First Amendment rights. Further, the Commission has not dictated the content of the messages in the envelope. The Commission has conditioned the use of the envelope and all regulated systems and services, such that all potential users are provided comparable, nondiscriminatory access.

29. MPC cited Pacific Gas & Electric v. P.U.C. of California, 106 S.Ct. 903 (1986) in support of its argument that the Commission has impermissibly burdened "MPC's First Amendment rights because they (sic) would force the Company to associate with the views of other speakers." MPC Brief in Support of Motion for Reconsideration, p. 14. However, this Order is distinguished from the 1986 case, which preceded the era of competition and transition to choice embodied in Senate Bill 390. Here, the Commission's order does not force MPC to associate with the views of other speakers, nor does the Commission itself select the other speakers on the basis of their viewpoints. The Commission's order is "content neutral" and directly related to the substantial state interest of encouraging the developing markets and choice.

30. Order No. 5986d meets the requirements of Consolidated Edison Company of New York, Inc., v. PSC of New York, 100 S.Ct. 2326 (1980). The Standards of Conduct as modified by the Commission represent a reasonable time, place and manner requirement. To foster competition and avoid an undue advantage to the utility, the Commission requires equal access for competitors in MPC's bills. There is no impermissible subject matter regulation. The Commission is not directing the utility to insert in its bills any material contrary to MPC's policies or beliefs. MPC has strenuously supported competition and the new era of choice. The fact that the access would provide a marketing avenue for competition would not be contrary to MPC's views or policies. Rather, this would promote competition. Requiring nondiscriminatory access is a narrowly tailored means of meeting the substantial state interest of fostering competition and avoiding an unfair competitive advantage to MPC, while MPC transitions from monopoly provision of electricity supply to competition and choice. Despite MPC's claims, the Commission's modifications to the Standards of Conduct, in "affecting the utility's property, like the billing envelope," do not force MPC to associate with others' views. The Order requires comparable access in a reasonable time, place and manner.

31. The Commission's decision in Order No. 5986d also meets the test in Central Hudson Gas & Electric Corp. v. P.S.C., 100 S.Ct. 2343 (1980). Is the speech protected by the First Amendment? If it is commercial, it must be lawful and not misleading. Yes, the speech is protected, although commercial speech does not require the full constitutional protection of other speech. It may be subject to economic or other legitimate governmental regulation. Is the asserted governmental issue substantial? Yes, the promotion of competition and choice in the electric supply industry, as mandated by Senate Bill 390, is a substantial state interest. Does the

regulation directly advance the governmental interest? Yes, by narrowly tailoring a requirement that competitors have the same access to MPC's bills, as do MPC's affiliates, without any judgment as to the content of the speech. Is the regulation more extensive than necessary to serve the interest? No, the requirement is narrowly drawn and applies only to comparable access to avoid an unfair competitive advantage to MPC.

Antitrust Analysis Inapplicable to the Commission's Decision

32. MPC argued at length in its Motion for Reconsideration that antitrust law does not support the Commission's Standards of Conduct. This argument is a red herring. The Commission's decision to modify the Standards of Conduct was based on its general regulatory and supervisory authority under Title 69, Chapter 3, MCA, and its specific authority under Title 69, Chapter 8, MCA (Senate Bill 390). MPC's analysis of antitrust law was mistakenly premised on the assumption that the adopted Standards of Conduct have the singular purpose of preventing subsidization of unregulated affiliates by the regulated entity. As well, the standards have the purposes of ensuring nondiscriminatory and comparable access to the utility's facilities and promoting competition.

33. MPC was correct that subsidization is addressed in other proceedings at the Commission. Preventing subsidization is essential in the regulation of public utilities and necessarily implicit in the Standards. In fact, the adopted Standards of Conduct address the requirements incorporated in § 69-8-204, MCA, which include functional separation and avoidance of discriminatory affiliate transactions. Section 69-8-204, MCA requires that the utility MPC must functionally separate its electricity supply, retail transmission and distribution, and regulated and unregulated retail energy services operations. The public utility must prevent undue discrimination in favor of its own power supply, other services, divisions, or affiliates. Despite the passage of Senate Bill 390, MPC has fallen back on case law before competition was a glint in the eye of Congress and the Legislature. MPC alleged in its Motion that it was entitled to certain benefits of an integrated business and implied that it was not abusing monopoly power to accrue gains from a division possessing a monopoly in its own market. *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263 (2d Cir. 1979), *cert. denied*, 100 S.Ct. 1061 (1980).

Summary

34. Order 5987d did not misinterpret Senate Bill 390. Section 69-8-204, MCA does not focus solely on electricity marketing affiliates in seeking to promote competitive electricity sup-

ply prices through nondiscriminatory access to regulated utility systems, facilities and services. The Commission's adopted standards appropriately apply to the conduct of MPC's regulated electric utility functions. That conduct involves the prices, terms and conditions of access offered to all customers, including any affiliate, to regulated utility systems, facilities and services. Clear separation of regulated utility functions and other corporate functions promotes nondiscriminatory access to utility systems, facilities and services and prevents self-dealing.

35. MPC does not have a set of procedures, approved by FERC, which implement Title 18, part 37 CFR, and, therefore, has nothing to adopt or with which to comply under § 69-8-204(4), MCA. MPC's proposed standards are not consistent with the standards included in Title 18, part 37 CFR itself. The standards adopted by the Commission do not inhibit MPC's telecommunications affiliate, Touch America, a separate and distinct corporate organization, from competing on its incremental costs or from entering any markets, telecommunications-related or otherwise. There is no record evidence suggesting that Touch America is in a unique position to exploit economies of scale or scope that could be achieved by including promotional material in regulated electric utility bills. Being a separate and distinct organization, Touch America has no greater claim to spare space in the regulated electric utility bill than other non-affiliated entities.

36. The Commission's determination on standards of conduct in no way relies on the so-called infant industry exception to the rule of unbiased competition. It is MPC seeking protection as a small telecommunications company (compared to US West and AT&T) through preferential and discriminatory access to regulated electric utility systems, facilities and services. The Commission's adopted standards properly prohibit such access which would have the potential to distort emerging markets for electricity supply-related products and services such as billing, metering, customer account services and energy management services which may depend on telecommunications technologies.

CONCLUSIONS OF LAW

1. All Findings of Fact are incorporated in this Order as Conclusions of Law.
2. MPC furnishes electric service for consumers in the State of Montana and is a public utility under the regulatory jurisdiction of the Montana Public Service Commission. The Commission properly exercises jurisdiction over MPC's rates and operations. §§ 69-3-101 and 69-3-102, MCA.

3. The Commission exercises authority over public utilities and the electric utility industry restructuring pursuant to its authority under Title 69, Chapter 8, MCA (Senate Bill 390 or "Electric Utility Industry Restructuring and Customer Choice Act").

4. The Commission provided adequate public notice of all proceedings and an opportunity to be heard to all interested parties in this Docket. §§ 69-3-303, 69-3-104, and 69-8-202, MCA; and Title 2, Chapter 4, MCA (Montana Administrative Procedures Act).

5. Customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts are entitled to choice of electricity supply on or before July 1, 1998. The Commission properly exercised its jurisdiction in bifurcating the public hearings to implement Senate Bill 390 to enable choice for those customers entitled to choice on July 1, 1998. § 69-8-201, MCA.

6. The Commission properly exercises jurisdiction in setting unbundled rates for production (supply) as part of the process of approving a utility's transition plan and implementing choice. The Commission has on-going jurisdiction and regulatory oversight over public utility distribution and transmission services, for which it must establish just and reasonable rates through established ratemaking principles. §§ 69-8-403, MCA.

ORDER

THE MONTANA PUBLIC SERVICE COMMISSION HEREBY ORDERS: The Commission denies the relief requested by MPC in its Motion for Clarification/Reconsideration and Stay of the Commission's June 24, 1998 Order for the reasons outlined in this Order on Reconsideration.

DONE AND DATED this 9th day of September, 1998 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

NOTE: You may be entitled to judicial review in this matter. Judicial review may be obtained by filing a petition for review within thirty (30) days of the service of this order. Section 2-4-702, MCA.