

Service Date: December 23, 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. 5986f

ORDER IMPLEMENTING UNIVERSAL SYSTEM BENEFITS CHARGE

BACKGROUND

1. The Montana Public Service Commission (Commission) conducted a public hearing beginning April 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 large customer choice, accounting order proposals to track costs stranded during the period before the Final Order, customer education and protection, pilot programs; and methods to choose electricity suppliers. On reconsideration, the Commission issued Order No. 5986e on September 10, 1998, modifying in part, and otherwise affirming, the standards of conduct in Order No. 5986d.

2. The Commission conducted a public hearing on the single issue of the Uniform System Benefits Charge (USBC) on October 7, 1998, preceding the final hearing (Tier 2) to be set later on transition costs, revenue requirements and the competitive bid sale of MPC's generation assets. The Commission established the single issue hearing to allow implementation of the USBC on January 1, 1999, as required by Senate Bill 390.

3. At a work session on December 22, 1998, the Commission addressed the question of application of Article VIII, Section 17 of the Montana State Constitution to implementation of the USBC on January 1, 1999. This constitutional provision was effective on November 3, 1998 on the vote on Constitutional Initiative 75 (CI-75). Because May 2, 1997, was the effective date of enactment of the USBC in Senate Bill 390, this date established the Commission's obligations under the law. Therefore, the Commission authorized the imposition of the USBC to recover the universal system benefits programs at the level set by the 1997 legislature, to begin January 1, 1999.

### FINDINGS AND DISCUSSION

4. The Commission finds that the date of enactment of Senate Bill 390, which was May 2, 1997, is the controlling date on the legislative intent to impose a Universal System Benefits Charge (USBC). The USBC implementation date of January 1, 1999, was set by the 1997 Legislature as part of electric utilities' transition to competition. The Commission finds that the USBC does not appear to be a tax as defined by the Constitutional Initiative, CI-75, which was effective November 3, 1998. However, the Commission finds that it does not need to address this question of whether it is a tax because CI-75 does not reach back to undo prior enactments.

5. Senate Bill 390 established the funding level of MPC's universal system benefits program at 2.4 percent of the annual retail sales revenues for the calendar year ending December 31, 1995. The state of Montana established these programs to ensure continued and new expenditures for energy conservation, renewable resource projects and low income energy assistance during the transition period. As directed by the 1997 Legislature, the recovery of the costs of all the universal system benefits programs imposed as a result of the enactment of Senate Bill 390 is authorized through the imposition of a USBC assessed at the meter for each local utility system customer. § 69-8-402, MCA.

6. MPC is authorized to modify the rates in its tariff schedule, E-USBC-1, to collect an annual universal system benefits program funding level equal to \$8,559,615, effective January 1, 1999. The Commission also approves MPC's proposed Special Terms and Conditions related to the administration of Large Customer Credits, as introduced in MPC-Exhibit 8. MPC must file compliance tariffs and work papers that implement the required rate adjustments and tariff terms and conditions. Commission staff is delegated authority to approve the compliance tariffs.

7. Other approved rate schedules, in addition to the E-USBC-1, recover expenses related to programs that the modified E-USBC-1 rates will fund beginning January 1, 1999. These other rate schedules must be reduced to remove recovery of universal system benefits program expenses. Since the required rate adjustments are small, these rate adjustments will be made following the Commission's decisions in Tier 2 of this proceeding. MPC's Tier 2 filing must account for the temporary double-recovery of these expenses.

8. The Commission in this Order is fulfilling its statutory duty to impose the USBC beginning January 1, 1999, so that MPC may begin collecting funds to implement the public purpose programs determined to be in the public interest by the 1997 Legislature. The Commission will issue a subsequent order addressing remaining issues related to allocation of the funds to various public purposes and implementation of Universal System Benefit Programs under Senate Bill 390.

#### 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," effective May 2, 1997).
4. Pursuant to Title 69, Chapter 8, MCA, the Commission has the duty to implement a Universal System Benefits Charge, as enacted by the legislature in 1997, to be imposed beginning January 1, 1999.
5. 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).

#### ORDER

THE MONTANA PUBLIC SERVICE COMMISSION HEREBY ORDERS MPC to file compliance tariffs for the Universal System Benefits Charge in accordance with the provisions outlined in this order, effective January 1, 1999.

DONE AND DATED this 23rd day of December, 1998 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chairman

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NANCY MCCAFFREE, Vice Chair

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BOB ANDERSON, Commissioner

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DANNY OBERG, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

NOTE: NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

**CONCURRING OPINION OF COMMISSIONER ROWE**

The Commission is responsible to faithfully follow the Constitution and laws of Montana. Its analysis of issues related to Constitutional Initiative 75 must be conducted with the purpose of complying with the letter and intent of the initiative.

The Commission is also charged to implement Senate Bill 390 concerning electric restructuring and Senate Bill 396 concerning natural gas restructuring. Both statutes, passed during the 1997 session, enact "universal system benefits programs," to be paid for by "universal system benefits charges." These programs were designed to preserve benefits of the current system of electric and gas supply which might be jeopardized under the new system. The electric and gas programs are different from one another in two relevant respects:

1. Senate Bill 390 sets the total electric USBC at 2.4 percent of a utility's retail sales for calendar year 1995 (\$8.5 million in Mac's case). Senate Bill 396 sets the natural gas USBC at .42 percent of a utility's annual revenues, plus additional amounts to be determined by the Commission through specified means.

2. Senate Bill 390 provides that funds not expended by electric utilities and certain customers through the means specified in statute will be paid into a residual fund administered by the state, pursuant to a recommendation by the Legislature's Transition Advisory Committee. It is not known whether any such payment will eventually occur. Senate Bill 396 includes no state-administered fund for natural gas.

The Commission issued a notice and sought comment on the implications of CI-75 for USBCs. From the Commission's analysis and comments received two questions appear key:

1. In approving a USBC, is the Commission "enacting" for purposes of CI-75, or is it implementing a prior Legislative enactment? If the Commission is implementing prior legislation rather than "enacting," the second question is not reached.

2. If the Commission is "enacting" a program, do funds "accrue" to the state, making the program more like a tax? If so, CI-75 is potentially implicated.

Concerning electric USBCs, the Legislature's action was specific, setting the precise amount to be recovered, and directing the Commission to implement a program. Failure to follow Legislative direction would subject the Commission to suit. This Legislative action occurred before passage of CI-75, and by the terms of CI-75 would not be covered. Because

the answer to Question 1 is clear, it is not necessary to reach Question 2 for electric USBCs. However, it should be noted that to the degree Commission action did involve "enactment," that portion of the USBC which is eventually paid into a state fund could raise CI-75 issues. Commenters offered several suggestions to avoid this occurrence and ensure well-run utility and customer programs.

In contrast, under SB 396, some Commission "enactment" may be implicated concerning the any funds greater than .42 percent of a utility's annual revenue. Therefore, it is necessary to reach Question 2. In the natural gas program, all monies are to be expended by the utility with nothing paid into a residual fund. Therefore, the language of CI-75 directs that this program not be considered a tax. Although outside the record, this interpretation appears consistent with the explanatory statements of CI-75's sponsors.

The Commission's focus has been compliance with CI-75 and with Legislative direction through the restructuring statutes. I believe the Commission has accomplished these purposes.

RESPECTFULLY SUBMITTED this 23rd day of December, 1998.

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BOB ROWE, Commissioner