

Service Date: July 6, 1999

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. 5986j

PROCEDURAL ORDER ON TIER 2 ISSUES

The Montana Public Service Commission (Commission) issued Order No. 5986, its first Procedural Order in this Docket on Montana Power Company's (MPC) Transition Plan, on June 20, 1997. Following MPC's announcement on December 9, 1997 of its intention to sell its electric generation in Montana, the Commission convened a Procedural Conference on December 19, 1997, which ultimately resulted in a two-tiered proceeding, with an intervening one-issue hearing on the universal system benefits programs and charges.

On April 17, 1998, in its Notice of Commission Action Clarifying Public Notice issued April 6, 1998, the Commission stated that in the first proceeding MPC would present its plan for large customer choice; an accounting order mechanism to track stranded costs before the final order on stranded costs; customer education and protection, including functional separation, unbundled bills and rate design; pilot programs; and methods to choose electricity suppliers. After the results of the competitive bid sale were known, the Commission would notice and conduct a later hearing on transition costs, market power, universal system benefits charge, revenue requirements, and the competitive bid sale of MPC's generation assets.

The Commission conducted the Tier 1 proceeding beginning on April 28, 1998. On June 23, 1998, the Commission issued Order No. 5986d, Order on Tier 1 Issues, rendering decisions on the unbundled rate design, functional separation of revenue services (metering, billing, etc.), standards of conduct, pilot programs, customer education, and accounting orders. The Commission modified the Tier 1 decision on the sole issue of Standards of Conduct in its Order on Reconsideration, Order No. 5986e, issued September 11, 1998.

On October 7, 1998, the Commission conducted a single-issue hearing on the Universal System Benefits Charge and issued its Order Implementing Universal System Benefits Charge (USBC), Order No. 5986f, on December 23, 1998. The Commission issued its Order Allocating Universal System Benefits Funds, Order No. 5986g, on February 4, 1999. In its Order on Reconsideration issued May 12, 1999, Order No. 5986i, the Commission modified the low-income allocation for 1999 program year and directed MPC to pursue its advisory committee proposal to develop future USBP allocations.

At MPC's request, the Commission held a public meeting on May 27, 1999, to allow MPC to present information on the progress of the sale of generation assets in the state of Montana. At this meeting, MPC informed the Commission that on July 1, 1999, it would be filing the Tier 2 portion of this Docket on the generation sale and issues identified for the Tier 2 proceeding. MPC anticipated final closing on the sale on September 1, 1999, or soon thereafter. On May 27, 1999, Parties and staff also convened a pre-filing procedural conference to discuss the Tier 2 filing and requirements for a Protective Order. The following schedule is a result of the procedural conference and subsequent discussions among the Parties.

The Commission issues the following Procedural Order and Schedule: The Commission sets forth a firm schedule. 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 upon good cause shown.

ORDER

1. Pursuant to the authority under Title 69, Chapters 3 and 8, Montana Code Annotated (MCA) and the Commission's rules under the Administrative Rules of Montana, ARM 38.2.2702, the Commission enters this Order setting forth the procedure and schedule to be followed in Tier 2, Docket No. D97.7.90. This Order is effective immediately and remains effective until modified by the Commission. In the following, the Commission establishes a progressive ("rolling discovery") schedule attempted before with varying success. Discovery responses will be due 14 days from receipt, on a best efforts basis. Parties are encouraged to communicate discovery concerns in a timely manner, to minimize discovery objections. This procedure should enable parties to refine, clarify and supplement requests and responses.

However, a Party finding the rolling discovery procedure to be unsatisfactory may formally request that the Commission institute an alternative schedule. The Commission will establish an appropriate procedure to address the request.

SCHEDULE

2. All dates listed in the following schedule are **receipt dates** (filing and service) unless otherwise specified. On request of parties or on the Commission's own motion, the Commission may set a supplementary procedural schedule to address additional discovery needs.

- (a) July 1, 1999: MPC submits its Tier 2 filing on its application for final approval of its transition plan on the remaining issues, including the generation sale.
- (b) July 6, 1999: Procedural Order and Notice of Application and Intervention Deadline issued.
- (c) July 15 through October 29, 1999: Progressive written discovery (includes data requests) from Intervenors and Commission Staff with responses from MPC due on or before two weeks from receipt of each set of requests.
- (d) July 29, 1999: Final day for new interventions.
- (e) September 1, 1999: Anticipated closing of sale of generation assets. If the sale closing is delayed, the Commission may adjust the dates in this Procedural Schedule on its own motion or at the request of parties.
- (f) September 3, 1999: Date for MPC to make Accounting Order extension request, if the sale does not close on September 1, 1999.
- (g) September 15, 1999: Final date for responses to Accounting Order request
- (h) September 30, 1999: Target date for Commission's Order on MPC's Accounting Order Request.
- (i) October 1, 1999: Final day for filing of MPC's Supplement to Tier 2 Filing, including updated number from sale. Final day for MPC's Interim Request.
- (j) October 15, 1999: Final day for Intervenors to respond to Interim Request.
- (k) October 29, 1999: Target date for Commission decision on Interim Request, with an target implementation date of November 1, 1999.
- (l) November 19, 1999: Final day for Intervenor testimony on Tier 2 filing.

- (m) November 19, 1999 through December 30, 1999: Progressive written discovery (includes data requests) from MPC and Cross-Intervenors with responses from MPC due on or before two weeks from receipt of each set of requests.
- (n) January 18, 2000: Final day for MPC's Rebuttal Testimony.
- (o) January 18 through February 11, 2000: Progressive written discovery (includes data requests) from Intervenors with responses from MPC due on or before two weeks from receipt of each set of requests.
- (p) February 25, 2000: Final day for prehearing memoranda filed by all parties. Staff shall file a limited prehearing memorandum pursuant to this Order.
- (q) March 7, 2000: Hearing commences.

3. In addition, the Commission may schedule local satellite hearings and prehearing conferences.

PROCEDURE

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.

Intervention

5. Parties seeking to intervene must file a Petition to Intervene with the Commission pursuant to ARM Title 38, Chapter 2, Sub-Chapter 24. The Commission deems intervention granted as a matter of right upon a timely filing pursuant to ¶ 2(d). 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.

Service and Filing

6. 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.

7. The Commission allows and encourages parties to submit pleadings, documents, requests and responses electronically 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 should provide rate filing material in electronic form to the extent it is practical. Data should be provided on 3 1/2 " IBM/PC Compatible computer diskettes, spreadsheets in Microsoft Excel 97, and text in Microsoft Word 97 compatible format. Testimony, exhibits and data requests and 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.

Discovery

8. 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.

9. 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. 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 imputed to debt for ratemaking purposes?

10. Parties should attempt to resolve discovery concerns informally, if possible. The progressive discovery schedule in ¶ 2 of this Order allows refining, clarifying and supplementing discovery requests and responses. When the informal avenues prove unsatisfactory, 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.

11. The Commission may dispose of objections by prompt ruling or may schedule argument. The Commission will either sustain or overrule the objection(s), and if sustaining, set a deadline for a satisfactory response. The Commission has delegated to its Staff the authority to modify the procedural schedule, including discovery deadlines, on written request and the agreement of the parties. Submission of written discovery after an established deadline 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.

12. 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

13. 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. 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.

14. When cross-examination is based on a document not previously filed with the Commission, copies of the documents 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.

15. 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.

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

17. Any party to this proceeding responding to written discovery from any other party or from 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

18. 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.

19. 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.

20. 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 at any time.

Prehearing Memorandum

21. Each party shall submit a prehearing memorandum containing 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 6th day of July, 1999 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
GARY FELAND, Commissioner
BOB ROWE, Commissioner