

Service Date: July 28, 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. 5986k

PROTECTIVE ORDER COVERING BID INFORMATION MATERIALS

Background

On July 6, 1999, the Montana Public Service Commission (Commission) issued Procedural Order, Order No. 5986j, in Docket No D97.7.90 setting forth the schedule and procedural requirements for discovery and the hearing on Montana Power Company's (MPC) Tier 2 of its electric industry transition plan filing.

MPC filed a Motion for Protective Order and a proposed protective order on July 12, 1999. Maintaining that certain information is commercially sensitive, MPC requests protection of the following as confidential and proprietary: all binding and non-binding bid information materials submitted by those who bid to purchase MPC's generation assets and related contracts, including Qualifying Facility contracts.

The Commission grants MPC's request for protection of this particular proprietary information as outlined in this Order, while continuing the protection of other non-bid-related information under Order No. 5986a, the Protective Order issued on July 1, 1997. As always, the Commission cautions MPC to use care in categorizing the information as proprietary and not to use the protection to unreasonably restrict access to information.

Parties will continue to submit the non-bid-related Confidential Information on yellow paper, as required by Order No. 5986a under the previously executed Exhibit A. As described in this Order No. 5986k, parties will sign a new Exhibit A covering the bid-related confidential information and will submit all bid-related discovery materials on pink paper. In the following, the Order describes the pre-sale procedures in reviewing the materials (no notes, no copying) and post-sale procedures (some notes with restricted access and selected copying).

ORDER

IT IS ORDERED that this Protective Order covering the bid-related material and information, as described by MPC in the Motion and filed throughout the proceedings in Docket No. D97.7.90, determined by MPC to be confidential, shall be in effect, unless there is a Commission or MPC decision that the information need not remain protected, as provided in this Order.

1. Access to and Use of Confidential Bid-related Information:

(a) Confidential Bid-related Information. All documents, data, information, studies and other materials constituting bid information materials submitted by all entities that bid to purchase MPC's generation assets shall be furnished pursuant to the terms of this Order. All persons accorded access under this Order shall treat this trade secret, confidential or privileged commercial and financial information as confidential (referred to as "Confidential Bid-related Information"). Confidential Bid-related Information shall not be used nor disclosed except for the purpose of this proceeding, and solely in accordance with this Order. MPC shall mark or stamp all material claimed to be Confidential Bid-related Information with a designation indicating its trade secret, proprietary or confidential nature, and submit this Confidential Bid-related Information to the Commission on pink paper for identification for filing purposes.

(b) Use of Confidential Bid-related Information. Before MPC's financial closing of its sale with PP&L Global, Inc., counsel for the parties and designated experts may review the Confidential Bid-related Information, but may not copy it or take notes of it. After financial closing, counsel and designated experts may take notes and may make selected copies of the Confidential Bid-related Information. Before removing the copies from MPC's premises, a party shall provide MPC with a written list of the selected documents copied for MPC's review. MPC shall provide copies of the selected documents identified by authorized parties unless the Commission directs otherwise. MPC may request that the Commission prohibit the copying of a specific document, but shall bear the burden of demonstrating why the confidentiality requirements of this protective order are inadequate and the copying of such document is unreasonable. The Commission's review of such a request by MPC shall be conducted in camera.

(c) Persons Entitled to Review. All Confidential Bid-related Information submitted

pursuant to this Order shall be given solely to counsel for the parties for use only in this proceeding. Counsel may authorize access to any specific Confidential Bid-related Information solely for the purpose of this proceeding to those persons designated their experts in this matter. Such experts may not be an officer, director or employee (except legal counsel) of the parties, or an officer, director, employee or stockholder or member of an association or corporation of which any party is a member, subsidiary or affiliate. Any member of the Public Service Commission and staff, the Consumer Counsel and its staff and staff members of intervenor State agencies may have access to any Confidential Bid-related Information provided under this Order, and shall be bound by the terms of this Order.

(d) Nondisclosure Agreement. Before giving access to Confidential Bid-related Information to any counsel or expert pursuant to ¶ 1(b), counsel for the person seeking review of the Confidential Bid-related Information shall deliver a copy of this Order to the person, who shall agree in writing to comply with and be bound by this Order before disclosure. Confidential Bid-related Information shall not be disclosed to any person who has not signed a nondisclosure agreement form incorporated herein as Exhibit "A." Exhibit "A" requires the persons obtaining disclosure first to read a copy of this Protective Order and certify in writing that they have reviewed the Order and consent to be bound by its terms. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. The agreement shall be delivered to counsel for MPC and a copy delivered to the Commission.

(e) Review of Confidential Bid-related Information. The Confidential Bid-related Information will be made available in a data room set aside at MPC's offices in Butte, Montana. The parties shall mutually agree on the dates and times to review the Confidential Bid-related Information.

2. Seal. While in the custody of the Commission, materials subject to this Order shall be marked "CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER, DOCKET NO. D97.7.90." Due to the trade secret nature, these materials shall not be considered as records available at the Commission within the meaning of the open meetings or public records statutes.

3. Citations and References in Pleadings and Brief. Reference to Confidential Bid-related Information in the sealed record, when necessary in pleadings, cross-examination, briefs,

argument or motions, shall be by citation of title or exhibit number or some other non-confidential description. Substantive references to Confidential Bid-related Information shall be placed in a separate section of the pleading or brief and submitted to the Commission under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit "A." All the protections afforded in this Order apply to materials prepared and distributed under this paragraph. A party uncertain about what is or is not Confidential Bid-related Information shall consult with MPC before filing any brief, testimony or other pleading mentioning the information.

4. Reference to Confidential Bid-related Information:

(a) Use in Decisions and Orders. When practicable, the Commission will refer to Confidential Bid-related Information in only a general form and will avoid reproduction in any decision regarding Confidential Bid-related Information to the greatest possible extent. If it is necessary in this proceeding to discuss Confidential Bid-related Information other than in a general form, the discussion with this protected information shall be placed in a separate section of the Order or Decision under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit "A." Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed an Exhibit "A."

(b) Summary for Record. In all instances when MPC files material with the Commission pursuant to this order that MPC considers Confidential Bid-related Information, MPC shall concurrently file a brief non-proprietary written summary of the Confidential Bid-related Information. In other instances, if the Commission deems necessary, MPC shall prepare a written summary of the Confidential Bid-related Information referred to in a decision or order to be placed on the public record.

5. Segregation of Files. All Confidential Bid-related Information filed with the Commission will be sealed by the Commission, segregated and withheld from inspection by any person not bound by the terms of this Order. Confidential Bid-related Information may be released from the restrictions of this Order by agreement of the parties or, after notice and hearing, pursuant to an Order of the Commission or final order of a Court having jurisdiction. The Consumer Counsel may retain all written Confidential Bid-related Information obtained

under this order, but shall withhold it from inspection by others, except for Consumer Counsel staff and counsel, unless it is released by the Public Service Commission and/or a final order of a court under this paragraph, subject always to the terms of confidentiality in this Order.

6. Preservation of Confidentiality. All persons receiving access to any Confidential Bid-related Information by reason of this Order shall neither use nor disclose the Confidential Bid-related Information for purposes of business or competition, or any purpose other than to prepare for and conduct this proceeding as provided in this Order, and shall take reasonable precautions to keep the Confidential Bid-related Information secure, pursuant to this Order.

7. Reservation of Rights. The parties affected by the terms of this Protective Order further retain the right to question, challenge and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this Protective Order in response to interrogatories, requests for information or cross-examination on the grounds of relevancy or materiality.

8. Nonwaiver of Rights. This Order does not constitute any waiver of the rights of any party in this Docket to contest any assertion or finding of trade secret, confidentiality or privilege, and to appeal such determination of the Commission or such assertion by a party.

Amendment or Modification

9. The Commission retains jurisdiction of this matter and may alter or amend these provisions, upon motion by an appropriate party and reasonable notice.

DONE AND DATED this 27th day of July, 1999 by a vote of 5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
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 ARM 38.2.4806.

EXHIBIT "A"

I have reviewed the foregoing Protective Order in MPC Docket No. D97.7.90 dated July 27, 1999 and agree to be bound by the terms and conditions of such order.

Signature

Typed or Printed Name

Employer or Firm

Business Address

Party

Date