

Service Date: March 22, 2000

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. 5986p

**ORDER REINSTITUTING PROCEDURAL SCHEDULE ON TIER 2 ISSUES
AND DIRECTING FILING OF TRANSITION PLAN
WITHOUT TRACKING MECHANISMS**

Background

1. Montana Power Company (MPC) announced its intentions to sell its generation assets on December 9, 1997, which resulted in a two-tier proceeding on MPC's transition plan to customer choice of electricity supply. In Notice of Commission Action issued April 17, 1998, the Montana Public Service Commission (Commission) notified the parties in this Docket that after the results of the competitive bid sale were known, the Commission would 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.

2. The Commission held a public meeting on May 27, 1999, to allow MPC to present information on the progress of the sale of generation. 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 on the Tier 2 issues for purposes of developing the schedule. In Order No. 5986j issued July 6, 1999, as the Procedural Order and Schedule on Tier 2 issues, the Commission established a Procedural Schedule based on a closing date of September 1, 1999

(¶ 2 e). The Commission stated that if the sale closing were delayed, the Commission would adjust the dates on its own motion or at the request of parties.

3. On August 30, 1999, Montana Power Company (MPC) informed the Commission that MPC anticipated the closing of the sale of the generation assets to occur in mid- to late October, 1999. At a duly noticed work session on August 31, 1999, the Commission on its own motion suspended the Procedural Schedule on the Tier 2 issues.

4. The Commission issued its Notice of Commission Action Suspending the Procedural Schedule and Directing Briefing of Issues on September 2, 1999. The Commission directed briefing of the following legal issues in the Tier 2 proceeding. (1) Does Title 69, Chapter 8, MCA require the Commission to establish once and for all, in the final order on MPC's transition plan, the amount of transition costs that MPC may recover from its ratepayers. (2) Does the law allow continuing adjustments to the Competitive Transition Charge after the final order on the transition plan? (3) Does MPC's Tier 2 filing satisfy the transition cost estimation, mitigation and recovery provisions in Title 69, Chapter 8, MCA? If not, in what way is the filing deficient? (4) Are market power and MPC's revenue requirement relevant issues that must be addressed in the Tier 2 proceeding? The Commission authorized staff to convene a Procedural Conference at the conclusion of the briefing schedule.

5. The Commission received briefs from MPC, Montana Energy Brokers, Large Customers Group (LCG), Big Sky Power LLC, Montana Consumer Counsel (MCC), and Montana Department of Environmental Quality on the issues outlined in the September 2, 1999 Notice.

6. At a duly noticed work session on November 16, 1999, the Commission determined that MPC must amend its transition plan filing on the Tier 2 issues, excluding its mechanisms intended to track and adjust transition costs after the final order. The Commission also determined that revenue requirements and market power are necessary issues in the Tier 2 proceeding. On November 24, 1999, the Commission issued Order No. 5986m, directing MPC to amend its transition plan to incorporate an approach that specifically demonstrates and identifies all transition costs it seeks to recover, and address market power and revenue requirement issues. On reconsideration in Order No. 5986n issued January 26, 2000, the Commission denied MPC's motion for reconsideration on the issue of tracking of transition costs

after the final order and on the issue of the relevance of revenue requirement to this filing, and granted reconsideration of market power as an issue in this proceeding.

7. MPC filed an action in the Second Judicial District Court, Silver Bow County, on February 18, 2000, Cause No. DV-00-40, for judicial review of the decisions on tracking mechanisms and revenue requirement in Order Nos. 5986m and 5986n. This action is scheduled for briefing to conclude May 1, 2000, with oral argument scheduled May 22, 2000 (unless it can be rescheduled to an earlier date).

8. On March 10, 2000, the Commission staff convened a Procedural Conference to discuss reestablishing the procedural schedule and setting a hearing date. MPC maintained that it would not file a transition plan without tracking mechanisms, as directed by the Commission. MPC stated that it would file information and updating for discovery purposes, but not amend its transition plan and file testimony until after prevailing in district court or, if necessary, at the Supreme Court.

9. The Commission has the obligation to implement Senate Bill 390 (1997), codified at Title 69, Chapter 8, Montana Code Annotated (MCA) and to issue a final order on MPC's transition plan. MPC's sale of its generation was closed on December 17, 1999. In the original Procedural Order on Tier 2 Issues, Order No. 5986j, as agreed to in a procedural conference by MPC, the updating and accounting (Supplement) on the sale was to be filed one month after the anticipated closing date of the sale, or October 1, 1999. Before MPC's announcement on December 9, 1997 that it would sell its generation assets, the Commission anticipated a final order to become effective July 1, 1998. The Commission sees no cause for further delays and institutes this procedural schedule so that it may render a final decision by the end of the year.

10. At its duly noticed work session on March 20, 2000, the Commission directed its staff to issue a modified procedural schedule with a hearing date to allow a decision by the end of the year.

11. The requirements of Procedural Order on Tier 2 Issues, Order No. 5986j, remain in full force and effect, and the Commission reinstates a procedural schedule, modifying the schedule which was suspended on September 2, 2000. Paragraph 2 of the Procedural Schedule, Order No. 5986j, is amended in the following.

PROCEDURAL SCHEDULE

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) April 19 – May 5, 2000: MPC submits updated information to the parties.
- (b) May 5, 2000: MPC submits its amended Tier 2 filing on its application for final approval of its transition plan on the remaining issues, including the generation sale.
- (c) April 19 – June 9, 2000: 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 7, 2000: Final day for Intervenor testimony on Tier 2 filing.
- (e) July 7 – July 28, 2000: 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.
- (f) August 18, 2000: Final day for MPC's Rebuttal Testimony.
- (g) August 18 through September 1, 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.
- (h) September 20, 2000: Final day for prehearing memoranda filed by all parties. Staff shall file a limited prehearing memorandum pursuant to this Order.
- (i) September 26, 2000: Hearing commences.

Done and Dated this 20th day of March, 2000 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)