

Service Date: January 19, 2001

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. 5986s

**ORDER DENYING MOTION FOR RECONSIDERATION OF
INTERIM RATE INCREASE FOR QF COSTS**

Background

1. On August 24, 2000, Montana Power Company (MPC) requested an increase in the generation component of retail rates to allow recovery of increased Qualifying Facility-related (QF) supply costs. For customers that have moved to choice, MPC also proposed implementing a new or modified accounting order. MPC stated that timely regulatory action could take the form of interim approval as part of Docket No. D97.7.90.

2. On September 12, 2000, the Commission issued a request for written comments to be filed by October 9, 2000, on MPC's proposed rate increase. MPC, Department of Environmental Quality (DEQ), Montana Consumer Counsel (MCC), Large Customer Group (LCG) and the U.S. Air Force/Malmstrom Air Force Base (MAFB) filed comments.

3. On November 8, 2000, the Commission issued Order No. 5986r denying MPC's request to increase rates on an interim basis. The Commission found that MPC had not sufficiently justified the requested interim increase and raised concerns about the mitigation of QF costs.

4. On November 21, 2000, MPC filed a Motion for Reconsideration of Order No. 5986r. MPC alleged that the Commission incorrectly interpreted § 69-8-211(6), Montana Code Annotated (MCA), on the requirement for an extraordinary event resulting in an 8 percent annual revenue requirement increase. MPC maintained that because it could increase the supply component of rates under § 69-8-201(1)(a), MCA, for larger customers, therefore the exceptions would only apply if MPC sought to increase rates above those in effect on July 1, 1998, which

MPC had not done. In support of this position, MPC cited § 69-8-211(8), MCA, which provided that under no circumstances may MPC charge rates or collect costs that include costs reallocated to transition costs at a level higher than it would have expected absent the restructuring act.

MPC asserted that if the regulatory system remained intact, it would collect those costs.

Therefore, MPC maintained that financial harm would become the most relevant issue and that without the requested increase MPC would not be able to earn its authorized return;

5. MPC also claimed that the single issue filing rationale was a red herring and that the Commission violated § 69-3-304, MCA by treating the MPC's prior \$16.8 million reduction differently than the current \$9.2 million increase. Further, MPC maintained that it had provided sufficient evidence on its attempts to mitigate QF contract costs to justify an interim decision.

6. On November 30, 2000, by authority delegated to staff, the Commission waived the ten day rule in ARM 38.2.4806(5), which would otherwise have required that the Commission act within ten days of the filing or the motion for reconsideration would be deemed denied.

7. At the Commission's duly noticed work session on January 16, 2001, the Commission denied MPC's Motion for Reconsideration for the reasons set forth in this Order.

DISCUSSION AND FINDINGS

Statutory Interpretation

8. In Order No. 5986r, ¶ 20, the Commission stated: "The timing of MPC's request and the nature of the costs involved mean that an exception to the requirements in § 69-8-211(6), MCA would require MPC to demonstrate that an extraordinary event has resulted in an eight percent annual revenue requirement increase." The Commission correctly paraphrased the statute, which states that an exception to the rate moratorium is allowed, after Commission approval, if an extraordinary event results in an eight percent power supply-related annual revenue requirement increase from July 1, 2000 through July 1, 2002. A power supply-related rate increase would not be allowed, based on an exception to the rate moratorium, given the information MPC filed. MPC's argument that § 69-8-211(6)(b), MCA, allows MPC to increase the supply component of rates for large customers is irrelevant to its request for an interim rate increase. MPC did not request a specific rate increase for large customers, and Order No. 5986r, § 20, did not address whether MPC may increase rates for large customers.

9. MPC stated that its request did not involve an exception to the requirements in § 69-8-211, MCA, which the Commission recognized in ¶ 21: "...[T]his does not resolve the question of whether, since current power supply rates are less than the July 1, 1998 level, MPC can now raise rates back to that level or some lower level." The Commission realized that applying the rate moratorium provisions alone was not a sufficient basis for judging the reasonableness of MPC's request. The Commission correctly interpreted these statutory provisions. The Commission finds that there is no basis to reconsider its order based on MPC's arguments on statutory interpretation.

Financial Harm

10. MPC asserted that it would suffer "irreparable" financial harm if it is not allowed to increase the supply component of rates on an interim basis to recover increased QF costs. However, MPC did not demonstrate how it would suffer irreparable financial harm. The decision not to allow interim recovery does not imply that the costs will never be recovered.

11. With functional separation and deregulation of supply, as mandated by Title 69, Chapter 8, MCA, traditional forms of cost recovery do not apply to MPC's supply-related costs. Pursuant to § 69-8-211, MCA, MPC will recover the QF-related costs to which it is entitled over time through a combination of market sales and approved transition charges. As provided in § 69-8-211(4), MCA, the cost recovery period could vary and might not match, month-to-month, year-to-year, MPC's actual cost outlays. In the end, MPC will recover its costs, including approved transition costs. Neither transition costs nor transition charges have been established.

12. MPC's recovery of increased QF costs has been delayed, in part, due to disagreements over the interpretation of Title 69, Chapter 8, MCA, and MPC's decision to sell its generation facilities and use the generation sale to demonstrate, in part, the amount of net transition costs. The effect of these delays, however, is no different than the effect ups and downs in market prices could have on cost recovery. MPC's attempt to tie the delay in recovering some supply-related costs to its return on regulated transmission and distribution investments is misplaced. MPC and the Commission have worked for several years to functionally separate MPC's supply function from its transmission and distribution utility functions. After the final determination of the net amount of transition costs and regulating default supply, the Commission will not regulate MPC's residual supply-related costs as it will transmission and distribution costs.

13. The Commission finds that MPC did not demonstrate that it will suffer *irreparable* financial harm, and MPC did not show that the temporal financial effects it is experiencing are inconsistent with the structural changes mandated in Title 69, Chapter 8, MCA.

QF Costs and Market Prices

14. MPC asserted that the buyback contract “recognizes the use of QF power in determining the amount of power required from PPL Montana,” and therefore “all QF power is required to serve retail load.” The Commission finds this argument to be illogical and inconsistent with statements made by certain QFs, as the Commission noted in Order 5986r. Further, MPC’s argument effectively suggests that MPC entered into a buyback contract that may not allow MPC to mitigate QF-related costs, or limits mitigation options, during the buyback contract period. Such a contract would directly conflict with MPC’s obligations to fully mitigate transition costs. The Commission finds that MPC’s Motion did not resolve the issues the Commission raised in Order 5986r and provided no basis for a reconsideration of an interim rate increase based on QF costs.

Temporary Rate Increase Approval, § 69-3-304, MCA

15. MPC maintained that it was entitled to a temporary rate increase under § 69-3-304, MCA, on the grounds that this statute *requires* the Commission to approve temporary rate increases or decreases based on consistent standards. Because the Commission approved the interim rate decrease in Order No. 5986o issued on February 4, 2000, MPC believed that the Commission should grant this request for an interim rate increase now, in order to be consistent.

16. Contrary to MPC's implication that interim rate increase approval is a right due MPC from the Commission under § 69-3-304, MCA, it is wholly within the Commission's discretion to issue a temporary increase, pending a hearing and a final decision on a rate increase application under Title 69, Chapter 3, MCA. MPC does not have an absolute right to a temporary rate increase. In Order No. 5986r, the exercise of the discretion to deny MPC's request was not arbitrary but based on reasoned analysis and a correct interpretation of the law.

17. The underlying contested case in Docket No. D97.7.90 is not an application for a rate increase under Chapter 3, but rather a proceeding under Title 69, Chapter 8, MCA, to restructure MPC's utility functions in transitioning to choice in customer supply, and finally to remove the generation function from regulation by the Commission. There are no "consistent standards" to apply to rate increases or decreases under a restructuring case, because there is no

precedent in other restructuring cases and only the single approval of MPC's request for a temporary rate reduction.

18. Logic dictates that, under either a restructuring case (Chapter 8) or a ratemaking case (Chapter 3), the standards for a decrease and an increase would necessarily be different, e.g., the standards to evaluate MPC's previous request to reduce rates by \$16.8 million and its present request to increase rates by \$9.2 million. For example, a utility does not ask for a decrease solely on the grounds that there would be no irreparable harm in granting the decrease. As explained in Order 5986r, the public interest was easily gauged in the case of the previous rate reduction. A rate reduction does not harm customers and, ordinarily, MPC will not propose something that harms itself. In the present case, customers would be adversely affected by higher rates, and the need and legality of the rate increase were questionable.

19. The Commission finds that it made a reasonable determination that the interim increase should not be granted, based on consistent public interest considerations. Furthermore, each decision was made on facts specific to the separate requests. The Commission determines that it should deny MPC's motion for reconsideration of Order 5986r.

CONCLUSIONS OF LAW

1. Montana Power Company (MPC) provides electric utility service within the State of Montana and as such is a "public utility" within the meaning of § 69-3-101, MCA.

2. The Montana Public Service Commission (Commission) properly exercises jurisdiction over the Montana Power Company's rates and operations pursuant to Title 69, Chapter 3, MCA.

3. The Commission has been further charged with the duty of overseeing MPC's restructuring of its utility business and its transition to customer choice of electricity supply, pursuant to Title 69, Chapter 8, MCA. Docket No. D97.7.90 is a case pending under this Chapter.

4. The Commission has the discretion, within the scope of § 69-3-304, MCA, to make temporary approvals of rate increases or decreases pending a hearing or final decision on an application for a rate increase or decrease.

5. Based on standards appropriate for this case pending under Title 69, Chapter 8, MCA, on MPC's transition to choice and utility restructuring, the Commission properly exercises its discretion to deny the request for an interim rate increase to recover qualifying facility (QF)

supply-related costs. MPC has not demonstrated irreparable harm. Its increased QF-related costs are not sufficient to justify a rate increase without a thorough examination of embedded costs and current revenues and a demonstration of efforts to mitigate these costs.

ORDER

WHEREFORE, THE COMMISSION DENIES MPC's Motion for Reconsideration of the decision in Order No. 5986r in which the Commission denied MPC's request for an interim rate increase of \$9.2 million on an annual basis. The Commission affirms the decisions in Order No. 5986r.

DONE AND DATED this 16th day of January, 2001 by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GARY FELAND, Chairman

JAY STOVALL, Vice Chairman

BOB ANDERSON, Commissioner

MATT BRAINARD, Commissioner

BOB ROWE, Commissioner

ATTEST:

Rhonda J. Simmons
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.