

Service Date: June 27, 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. 5986t

**ORDER ON COMMISSION AUTHORITY
AND MONTANA POWER COMPANY OBLIGATIONS PURSUANT TO
THE ELECTRIC UTILITY INDUSTRY AND CUSTOMER CHOICE ACT (ACT)**

Background

1. On March 15, 2001 the Montana Public Service Commission (Commission) issued a Notice of Commission Action and Opportunity to Comment (Notice). In the Notice the Commission asked for comments on the following affirmation of its authority.

[The PSC has] continuing jurisdiction over Montana Power Company (MPC) as a regulated public utility pursuant to Title 69, Chapter 3, MCA, providing fully-regulated utility service of generation, transmission and delivery of electricity to its ratepayers, including full supervisory and regulatory authority over MPC's rates and services. . . .

In implementing MPC's Plan filed pursuant to Title 69, Chapter 8, MCA, the Commission has additional duties and ongoing authority during the transition. Only the Commission in its final order on MPC's Plan can transfer out of MPC's rate base those generation assets held by MPC on May 2, 1997, or its successors or assignees, as previously determined pursuant to Title 69, Chapter 3, MCA.

Until the final order, MPC has the ongoing public utility obligation to furnish the electricity to its ratepayers as a fully integrated public utility. The Commission determines that the generation assets, although transferred in title to PPL Montana, are considered regulated public utility assets in MPC's rate base, for ratemaking and other regulatory purposes, through the end of the transition period. The Commission retains the inherent regulatory authority under Title 69, Chapter 3, MCA, and the additional authority provided under Title 69, Chapter 8, MCA, to make determinations regarding these generation assets to protect customers' rates and service during the extended transition period, while fostering the financial integrity of MPC.

2. On March 28, 2001, after receiving comments, the Commission adopted this statement of its authority. Notice of the adoption was not issued because the legislature was in session and considering several bills that may have affected the Commission's conclusions as stated in the Notice. After the legislature adjourned the Commission reassessed its authority and MPC's obligations in light of legislative action. In this order the Commission substantially affirms its conclusions in the Notice, and it further asserts and describes its authority and MPC's obligations following the rate moratorium period and during the transition period.

Findings of Fact

1. There is an "Electric Utility Industry Restructuring and Customer Choice Act [Act]." § 69-8-101, MCA.
2. MPC filed its Electric Restructuring Transition Plan (Plan) with the Commission pursuant to § 69-8-202(1), MCA, of the Act on July 1, 1997.
3. MPC has waived the statutory deadline for the Commission to issue a final order on the MPC plan. § 69-8-202(3), MCA.
4. The Commission has not issued a final order on the MPC plan.
5. On December 17, 1999, MPC closed the sale of most of its generation assets.
6. On December 19, 2000 (Docket No. D2000.10.177, Order No. 6314) the Commission delayed the implementation of full customer choice to July 1, 2004, pursuant to § 69-8-201(2), MCA (1999).

Conclusions of Law

1. The Commission has full supervisory and regulatory authority over MPC's rates and service, and matters ancillary to the provision of electric service. §§ 69-3-101-330, MCA.
2. MPC is a public utility. §§ 69-3-101 and 69-8-103(23), MCA.
3. MPC has a public utility obligation to provide adequate service at reasonable rates approved by the Commission. § 69-3-201, MCA.
4. When implementing the Act the Commission is specifically charged with protecting the interests of Montana consumers and fostering the financial integrity of MPC. § 69-8-102(2), MCA.
5. The Montana legislature has determined that "Montana customers should have the freedom to choose their supplier of electricity and related services in a competitive market as soon as administratively feasible." § 69-8-102(2), MCA (emphasis added).

6. There is a “transition period” to allow small retail customers of MPC to “transition” to their choice of electricity supplier. The transition period is July 1, 1998 to July 1, 2007. § 69-8-103(32), MCA (as amended at HB 474, Ch. 577, 2001 session).

7. MPC must file a “transition plan” describing its proposal for “transitioning” small retail customers to choice of electricity supplier. § 69-8-202(1), MCA. The Commission has the authority to approve, modify or deny MPC’s transition plan. § 69-8-202(3), MCA. As part of the Commission’s assessment of MPC’s transition plan, the Commission can determine whether the transition to choice for small retail customers should be delayed until after July 1, 2002. § 69-8-202 and 69-8-201, MCA.

8. The legislature anticipated that the transition to choice for small retail customers of MPC could be accomplished by July 1, 2002, § 69-8-201(1)(b), MCA, but the Commission has the authority to delay the implementation of choice for small customers until later in the transition period if the Commission finds that implementation “would not be administratively feasible” or “would materially affect the reliability of the electric system” or that “Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive electricity supply market.” § 69-8-201(2), MCA.

9. The Commission may not prohibit MPC from selling its generation assets. § 69-8-204(2), MCA. However, MPC’s sale of its generation assets did not disintegrate MPC from an electric monopoly public utility with generation, transmission and distribution functions. The disintegration of MPC’s generation assets and generation function from its transmission and distribution assets and functions will not occur until “the effective date of a commission order implementing [MPC’s] transition plan pursuant to § 69-8-202.” § 69-8-210(1), MCA. The generation assets sold by MPC, to the extent they produced electricity dedicated to MPC’s retail load prior to the sale, were purchased subject to § 69-8-210 (1), MCA.

10. As an integrated public utility MPC must continue to provide electricity service to its customers at tariffed rates approved by the Commission. § 69-3-201, MCA. For as long as MPC remains an integrated public utility any purchaser of MPC’s generation assets must provide electricity to meet MPC’s full native load requirements at a price to MPC that reflects costs calculated as if the generation assets had not been sold.

11. After the date at which MPC is no longer an integrated public utility pursuant to § 69-8-210(1), MCA, MPC, as the distribution services provider (§ 69-8-103(1), MCA) will

become the default supplier (§ 69-8-103(8), MCA) of electricity to those customers who have not chosen an alternative supplier of electricity. § 69-8-210(2), MCA.

12. MPC will be entitled to fully recover its prudently incurred default electricity supply costs in rates, § 69-8-210(4), MCA, subject to the rate moratorium provisions at §§ 69-8-211(6)(7), MCA, and subject also to the qualification that such rates, during the transition period, cannot be “higher than [MPC] would reasonably expect to recover in rates had the current regulatory system remained intact.” § 69-8-211(8), MCA.

Order

Montana Power Company may, in order to comply with § 69-8-211(8), MCA, make a filing at the Commission containing information that supports what rates would be on July 1, 2002, had the regulatory system in place prior to the Act remained intact. The filing should be modeled after and should be as complete as a traditional rate case filing as described in Commission rules. Failure to make a filing will mean that rates effective on July 1, 2002 will be no higher than existing tariffed rates. For new rates to be effective on July 1, 2002 MPC must make a filing no later than August 31, 2001. To the extent that it is consistent with this order, the Commission adopts its conclusions in the March 15, 2001 Notice of Commission action and Opportunity to Comment.

DONE AND DATED this 26th day of June, 2001, by a vote of 5-0.

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.