

Service Date: December 10, 1998

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)	UTILITY DIVISION
of Havre Pipeline Company to Increase)	
Rates and Charges to its Shippers on its)	DOCKET NO. D98.6.127
Transmission System.)	ORDER NO. 6083b

PROTECTIVE ORDER

Background

On June 19, 1998, Havre Pipeline Company (Havre) filed its rate increase application with the Montana Public Service Commission (Commission). Intervenors Montana Consumer Counsel (MCC) and Montana Power Trading and Marketing Company (MPTM) submitted data requests, to which Havre Pipeline responded. On September 21 and 23, 1998, respectively, MCC and MPTM filed objections to the adequacy of responses along with motions to compel responses to certain requests.

On September 28, 1998, the Commission granted MCC's motion and stayed further proceedings at its work session. On the same date, Havre Pipeline filed a Request for Hearing on the Motions to Compel. The Commission did not act on MPTM's later-filed motion and objection, with the understanding that the stay afforded parties the opportunity to work out the discovery issues. Havre Pipeline indicated that it would continue to work on resolving the discovery dispute and inform the Commission whether to schedule a hearing on the motions. Havre Pipeline informed the Commission by letter dated October 8, 1998, that it reached agreement with MCC but not with MPTM, to release additional materials to the MCC under a Protective Order.

On November 20, 1998, Havre Pipeline filed a Motion for Entry of Protective Order, stating that it had an agreement with MCC, but not MPTM. Further, Havre Pipeline believed that information requested by MPTM is irrelevant to the Docket, in that it relates

to competitive but not ratemaking purposes. Havre Pipeline requested that the Commission sustain the objections to MPTM 1-004 (a) and (b) and MPTM 1-005 (a) through (c) and direct that Havre Pipeline need not produce the information. For the balance of MPTM's requests, Havre Pipeline requested protection. The Protective Order as proposed by Havre Pipeline provided that an expert, to obtain access to protected information, may be an employee, so long as the employee's duties are dedicated solely to rate-making and not related to marketing or strategic planning.

On November 25, 1998, MPTM filed an objection to Havre Pipeline's Motion for Protective Order, and to the proposed Protective Order, particularly to the provision that the designated expert employee may not have marketing duties. MPC referred to its in-house expert witness who engages in marketing and strategic planning, but not in the gas commodity side of MPTM's business. Havre Pipeline replied on December 4, 1998 to MPTM's objection, stating that the information requested on the gathering system and specific pipeline operations not related to rate-making is not relevant to the proceedings or discoverable. MPTM responded by faxed submission late on December 7, 1998.

At its work session on December 8, 1998, the Commission granted Havre Pipeline's request for a Protective Order as proposed, and sustained the objections to the specified data requests, for which Havre Pipeline need not supply information, protected or otherwise. On its own motion, the Commission determined that MPTM's standing to participate in this Docket shall be limited. MPTM is not a present customer, has only a remote speculation of becoming a customer, and appears to have little reason to participate other than to garner information for the purpose of competition and marketing.

The Commission considers it appropriate to issue a Protective Order in this Docket to provide a procedure for balancing the public right to know and the party's right to nondisclosure of proprietary information and/or financial or commercial information which is not relevant to the transmission rate requested in this proceeding and/or which invades the privacy interests of entities which are not parties to this action.

WHEREFORE, it is ORDERED that this Protective Order be entered and in effect throughout this proceeding with respect to any information claimed by a party to be proprietary and/or not relevant to the rate requested in Docket No. D98.6.127.

1. Proprietary Information. All documents, data, information, studies and other

materials furnished pursuant to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery, or pursuant to Commission order, that are claimed to be of a private, privileged or confidential nature and/or not relevant to the transmission rate requested in this proceeding, including but not limited to information concerning the gathering operations of the Havre Pipeline, shall be furnished pursuant to the terms of this Order, and shall be treated by all persons accorded access pursuant to this Order as constituting private, confidential or privileged commercial and financial information (hereinafter referred to as "Proprietary Information"), and shall neither be used nor disclosed except in accordance with this Order. All material claimed to be Proprietary Information must be marked with an appropriate designation and submitted to the Commission on yellow paper so that it is easily identified for filing purposes.

2. Terms of Disclosure. Proprietary Information made available pursuant to this Order shall be given solely to counsel for the parties, the Commission and Commission staff, and shall not be used or disclosed except for purposes of this Docket, or as otherwise permitted by subsequent Commission order. Counsel may authorize access to confidential information by that party's experts as follows:

(a) Five (5) days written notice (counted from the date of receipt by the providing party) shall be given to the party that produced the Proprietary Information. The notice shall contain the name, title, job description, description of previous positions and experience, and areas of expertise of any person to be given access to such information. Any such expert may be an employee of a party, provided that such employee's duties are solely dedicated to regulatory activities on behalf of the party, and such employee's duties are not related to marketing or strategic planning of competitive products or services, including those provided by any party to this proceeding.

(b) If it is the good faith position of the party that produced the Proprietary Information that the designated person should not be given access to the information, that party must respond to the notice with a written objection.

(c) If the party that proposed that access be given to the designated person does not receive written objection by the party that produced the Proprietary Information within five (5) days after receipt of the written notice, counsel for that party shall be authorized

to provide access to the information to the designated person.

(d) If the party that produced the Proprietary Information objects to access by the designated person to Proprietary Information, the party that requested such access and the party that produced the information shall attempt to resolve the objection. If these parties are unable to resolve the objection, either of them may apply to the Commission for a ruling as to the access proposed. In that event, access to the information shall not be given to the designated person, pending resolution of the objection by the Commission.

(e) The standard to be applied by the Commission in determining a question of expert access to Proprietary Information shall be whether access by the individual in question would be reasonably likely to jeopardize the confidential nature of the information sought. A party dissatisfied with a decision of the Commission may appeal to the District Court, and, pending appeal, the information shall not be disclosed to the designated person.

(f) Any member of the Commission or its staff, the MCC, and any member of MCC's staff, may have access to any Proprietary Information made available pursuant to this Order and shall be bound by the terms of this Order.

3. Nondisclosure Agreement. Prior to giving access to Proprietary Information as contemplated in paragraph 2 above to any expert, counsel for the party seeking review of the Proprietary Information shall deliver a copy of this Order to such person, and prior to disclosure such person shall agree in writing to comply with and be bound by this Order. Proprietary Information shall not be disclosed to any person who has not signed a nondisclosure agreement in the form which is attached and incorporated herein as Exhibit "A." The nondisclosure agreement (Exhibit "A") shall require the person to whom disclosure is to be made to read a copy of this Order and to certify in writing that he or she has reviewed the same and consents 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. Such agreement shall be delivered to counsel for the providing party and the Commission.

4. Delivery of Documentation. Where feasible, Proprietary Information will be marked as such and delivered to appropriate counsel. In the alternative, the Proprietary Information may be made available for inspection and review by counsel, staff and

experts at a time and place mutually agreed on by the parties, unless otherwise directed by the Commission.

5. Challenge to Confidentiality. This Order establishes a procedure to expedite exchange of information that the providing parties claim is confidential and/or irrelevant; but it shall not be construed as an agreement or ruling on the relevance or confidentiality of any such information. A party to the proceeding or other interested person or entity with proper standing, or the Commission on its own motion, may challenge the providing party's claim of confidentiality or relevance at any time. Any such Petition or Motion must be served upon the providing party, and the providing party may file a response or objection within 14 days thereafter. The providing party's response may also request a hearing or oral argument before the Commission, including its grounds for such request.

(a) If the parties are unable to agree on the relevance of certain documents, data, information, studies or other matters or that such documents, data, information, studies or other matters constitute private, confidential or privileged commercial and financial information, the entity objecting to the proprietary claim shall submit the matter to the Commission for its review. On ruling on whether any documents, data, information, studies or other matters are Proprietary Information, the Commission will enter an order resolving the issue.

(b) Any party or appropriate person or entity (as described above) may seek by appropriate pleading to have documents designated as Proprietary Information in accordance with this Order removed from the protective requirements of this Order or from the sealed record and placed in the public record. If the proprietary nature of this information is challenged, resolution of the issue shall be made by a hearing examiner and/or the Commission after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential matter shall be present. The record of such in camera hearing shall be marked "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. D98.6.127, ORDER NO. 6103b." The record shall be transcribed only on agreement by the parties or Order of the Hearing Examiner or the Commission and shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order, unless and until released from the restrictions of this Order either

through agreement of the parties or pursuant to an order of the Hearing Examiner or the Commission. If transcribed, the Court Reporter shall also be required to sign an Exhibit "A." If the Hearing Examiner or the Commission should rule in response to such a pleading that any information should be removed from the protective requirements of this Order or from the protection of the sealed record, the parties shall not disclose such information or use it in the public record for seven (7) business days to afford the providing party a reasonable opportunity to seek a stay or other appropriate relief.

6. Seal. While in the custody of the Commission and MCC, materials subject to this Order shall be marked "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. D98.6.127," and due to their private nature they shall not be considered as records in the possession or retained by the Commission within the meaning of the open meetings or public records statutes.

7. Use in Pleadings, Briefs, etc. Any necessary reference to Proprietary Information in pleadings, briefs, argument or motion shall be by citation of title or exhibit number or by some other confidential description. Any further use of or substantive references to Proprietary 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.

8. (a) Use in Commission Orders. The Hearing Examiner or the Commission will attempt to refer to Proprietary Information in only a general or conclusive form, and to the extent possible, will avoid reproduction of Proprietary Information in any decision or ruling. If it is necessary to discuss Proprietary Information in greater detail, it shall be placed in a separate section of the Order 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 sealed portion and may review the sealed portion on file with the Commission after signing an Exhibit "A."

(b) Summary for Record. The providing party shall prepare a nonproprietary written summary of the Proprietary Information referred to in the Order to be filed at the Commission and placed on the record.

9. The Commission and its counsel and staff, and the MCC and its counsel and staff,

shall be bound by the terms of this Order.

10. Segregation of Files. All Proprietary Information filed with the Commission will be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order, unless such Proprietary Information is released from the restrictions of this Order either through agreement of the parties, an Order of the Commission or an order of a Court having jurisdiction. All written Proprietary Information coming into the possession of the MCC under this order may be retained by him in his office files, but shall be withheld from inspection by others, except for his staff and his counsel, unless released by an agreement, an order of the Commission and/or an order of a court.

11. Preservation of Confidentiality. All persons entitled to receive or afforded access to any Proprietary Information by reason of this Order shall neither use nor disclose the Proprietary Information for any purpose other than those described in Paragraph 2 above, and then solely as contemplated herein, and shall take reasonable precautions to keep the Proprietary Information secure and in accordance with the purpose and intent of this Order.

12. Reservation of Rights. The parties affected by the terms of this Protective Order retain the right to question, challenge, and object to the admissibility (in any proceeding before the Commission or other appropriate body) of any information furnished under the terms of this Protective Order on the grounds of relevancy or materiality.

This Order in no way constitutes any waiver of the rights of any interested party or entity to contest any assertion or finding on the right of privacy, confidentiality or privilege, and to appeal any such determination of the Commission.

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

DONE AND DATED this 8th day of December, 1998 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chairman

BOB ANDERSON, Commissioner

DANNY OBERG, 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 with ten (10) days. See ARM 38.2.4806.

Exhibit "A"

I have reviewed the foregoing Protective Order to which the parties in Havre Pipeline Company Docket No. D98.6.127 have stipulated and agree to be bound by the terms and conditions of such stipulation and order.

Signature

Typed or Printed Name

Employer or Firm

Business Address

Party

Date