

Service Date: December 17, 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 of)	
MONTANA POWER COMPANY for)	UTILITY DIVISION
Suspension of Long-Term Qualifying)	
Facility Power Purchase Schedule LTQF-1,)	DOCKET NO. D98.8.183
Determination of New Avoided Costs, and)	ORDER NO. 6124
Termination of Standby Service.)	

FINAL ORDER

Background

1. On August 11, 1998, the Montana Public Service Commission (PSC or Commission) received from Montana Power Company (MPC) its APPLICATION FOR IMMEDIATE SUSPENSION OF LONG-TERM QUALIFYING FACILITY POWER PURCHASE SCHEDULE LTQF-1, DETERMINATION OF NEW AVOIDED COSTS, AND THE TERMINATION OF STANDBY SERVICE. MPC requests that the Commission immediately suspend the Long-term Qualifying Facility Power Purchase Schedule, LTQF-1, replace it with a new schedule, and extinguish the Standby Service Schedule S-1. MPC attached a proposed revised schedule for QF purchases, which would require MPC to purchase energy, not capacity, for a term not to extend beyond July 2002 (transition period under Senate Bill 390). The price for energy would be the lesser of an indexed market price or 22.25 mills, less losses and costs to get the energy to market.

2. MPC states that the request results from changes in the electric industry since the schedules were last approved. The Federal Energy Regulatory Commission (FERC) in Orders 888 and 889 promulgated wholesale competition. In Senate Bill 390 (the Electric Utility Industry Restructuring and Customer Choice Act, Title 69, Chapter 8, MCA), the Montana Legislature allowed for electricity competition over a transition period to retail customers. MPC is preparing to sell its generation in response to these changes in the electric industry and to move its customers to choice of power supply by the end of the transition period. Therefore, MPC's relationships with QF owners and operators will radically change. According to MPC, mandated long-term QF contracts are

inconsistent with the transition under Senate Bill 390 to a distribution utility, which will not have the load or obligation to deliver supply.

3. On August 21, 1998, the PSC issued a NOTICE OF APPLICATION AND OPPORTUNITY FOR HEARING. Colstrip Energy Limited Partnership (CELP) and Yellowstone energy Limited Partnership (YELP) each intervened and requested a hearing. CELP and YELP are QFs that have power purchase agreements with MPC under the LTQF-1 tariff schedule. In general, these QFs were concerned that MPC's application not affect their existing power purchase agreements. No other parties intervened or commented on MPC's filing.

4. On October 23, 1998, CELP and YELP each requested to withdraw their requests for a hearing. The QFs stated that they have stipulated with MPC that the changes proposed by MPC to the LTQF-1 tariff schedule would apply only to power purchase contracts entered into on or after July 1, 1998 and would not affect the existing contracts these QFs have with MPC.

Discussion and Findings

5. Standby Service. Given the absence of subscribers to Standby Service, the Commission grants MPC's request to cancel this tariff schedule. Customers most likely to subscribe to this service are customers that are currently eligible for choice pursuant to SB 390. Therefore, these customers should be encouraged to use the market to obtain this service in the future. However, A.R.M. 38.5.1203 currently requires that, unless specifically required by order of a federal regulatory agency, no utility may refuse to provide standby service to a customer solely on the grounds that the request is for standby service. Until the Commission determines that electricity supply markets are workably competitive pursuant to §69-8-403(3) MCA, or eliminates this rule, MPC must notify the Commission of any requests for standby service so that the Commission can address such situations on an individual case basis.

6. QF Tariff Schedules. The current LTQF-1 tariff schedule allows a QF to obtain a contract for 5, 10 or 15 years. Under MPC's proposed QF-1 tariff schedule any QF contracts executed prospectively would terminate on July 1, 2002. MPC understandably desires to limit its exposure to new, long-term QF contracts given the restructuring of Montana's electric industry and its own corporate restructuring. Since the

Montana legislature concluded in SB 390 that the “generation and sale of electricity is becoming a competitive industry” it is appropriate to begin weaning independent power producers off of guaranteed utility buyers. However, the federal PURPA¹ statute currently still applies. Although several drafts of national electric industry restructuring legislation have included provisions that would repeal PURPA, Congress has yet to enact any such legislation. If Congress still has not enacted such legislation by July 1, 2002, it is not clear that MPC could legally refuse to purchase power from a qualified facility.

7. A power producer can obtain qualified facility status in part by incorporating generation sources or technologies that SB 390 specifically recognizes as being worthy of continued public support, i.e. renewable technologies. MPC’s electric distribution utility will have an ongoing role in maintaining system reliability and expanding the system in an efficient manner, which may involve distributed generation.² So while the historic relationship between QFs and utilities may be coming to an end, there will continue to be a connection between distribution system reliability and expansion, and distributed generation and renewable technologies available through QF-type entities.

8. The Commission grants MPC’s request to suspend the availability of the current LTQF-1 tariff schedule for prospective power purchase contracts between the Company and QFs. The Commission approves MPC’s proposed QF-1 tariff schedule, with several conditions. First, MPC must file in January 2002 to extend the QF-1 schedule beyond the July 2002 date if PURPA has not been repealed, or otherwise justify terminating the tariff schedule.

9. Second, the Commission is not convinced that the generation asset sale means that MPC’s avoidable capacity costs are zero. MPC witness John Leland testified in Docket No. D97.7.90 that through a buy-back contract with the asset purchaser MPC would be purchasing “energy and capacity” to match the MPC Energy Services Divi-

¹ Public Utility Regulatory Policies Act of 1978.

² MPC witness John Leland stated in his January 1998 Rebuttal Testimony in Docket No. D97.7.90 that MPC would not be selling its diesel generators in Yellowstone National Park because those generators are necessary to ensure reliable service to loads within the park in the event the radial transmission line serving the park fails, as well as to provide voltage support. These assets are not part of the Montana ratebase but the example is still valid.

sion's power supply requirements throughout the transition period.³ Mr. Leland also testified about a contract with Idaho Power Company for load following services.⁴ The ability to respond to fluctuating demand levels instantaneously and ensure that the delivery system remains energized during peak periods requires capacity as well as energy. Whether MPC owns generation or not it continues to have full power supply obligations to its customers that have not chosen market supply service throughout the transition period. And, as already discussed, even if the utility has no power supply obligations to customers it continues to be responsible for providing reliable and efficient distribution service, which may involve controlling distributed generation.

10. The energy rate in MPC's proposed QF-1 tariff schedule is the lesser of a Mid-Columbia market index price or 22.25 mills per kWh. MPC did not provide any support in its application for the 22.25 mill per kWh cap on the energy rate. In response to an informal request, MPC stated that this rate is based on the transfer rate proposed in Docket No. D97.7.90. The transfer rate is defined as the cost-based rate MPC's Services Division (distribution utility) would pay to the Company's Supply Division during the transition period, pending sale of the generation assets. It is not clear whether this transfer price includes load following services. The most recent reference to the transfer rate is found in Mr. Leland's January 1998 testimony. That rate appears to include load following services, but is 22.6 mills per kWh. A table in Mr. Leland's April 1998 testimony quantifies the cost of load following at 0.5 mills per kWh. The 22.25 mills per kWh cap on the tariffed rate seems to be equal to the reported buy-back price contained in MPC's generation asset sales agreement.⁵

11. The Commission approves the proposed QF-1 rate on an interim basis, pending resolution of MPC's restructuring case, Docket No. D97.7.90, wherein the Commission may further explore whether 22.25 mills per kWh adequately represents MPC's avoided costs for energy and capacity. However, any contracts executed under the interim rate will not be subject to change upon the Commission's final approval of the QF-1 rate.

³ January 1998 Rebuttal Testimony, p 10.

⁴ April 1998 Rebuttal Testimony, p 6.

12. Third, MPC's compliance tariffs must remove the word "energy" from the description of the rate and payment terms. Current law requires MPC to purchase energy and capacity from QFs. MPC's QF-1 tariff schedule should not imply that QF's are not being paid for capacity unless the Commission is satisfied that MPC's avoidable capacity costs are truly zero.

13. The Commission acknowledges the Notices of Intent to Withdraw Petitions for Intervention filed by CELP and YELP and declares their interventions withdrawn. The Commission also acknowledges the stipulations, entered into between CELP and MPC and YELP and MPC, that the revisions proposed by MPC in this Docket do not apply to QF/MPC power purchase agreements executed prior to July 1, 1998.

Conclusions of Law

1. The Montana Power Company is a public utility pursuant to sections 69-3-101 and 69-3-601(4), MCA.

2. The Commission properly exercises jurisdiction over the rates, terms and conditions for the purchase of electricity by public utilities from qualified cogenerators and small power producers. Sections 69-3-102, 69-3-103 and 69-3-601 through 69-3-604, MCA. Section 210, Pub.L. 97-617, 92 Stat. 3119 (1978).

3. The decisions rendered in this Order are just and reasonable to MPC, qualifying facilities and ratepayers.

4. The decisions made in this Order are a reasonable accommodation of existing federal and state law, the changes in the electric utility industry generally and MPC specifically.

Order

Consistent with the foregoing discussion, and with the qualifications and directions contained therein, the Application of Montana Power Company in this Docket is granted.

DONE AND DATED this 8th day of December, 1998 by a vote of 4-0.

⁵ This is the price that has been reported in the press, the Commission has not formally been provided a copy of the asset purchase agreement.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

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 within ten (10) days. See ARM 38.2.4806.