CONCURRING STATEMENT
OF COMMISSIONER ROGER KOOPMAN

No matter how well-crafted and how equitably and skillfully negotiated, Stipulations remain a frustration of sorts to this commissioner. That is no reflection on the stipulating parties themselves – in this case, Montana Consumer Counsel, Denbury Onshore LLC and Montana-Dakota Utilities. And after all, the end result is the important thing, not whether the Public Service Commission has many or few of its fingerprints on it.

Still, what the commission is asked to approve is, for the most part, a black box. We are given no information about the negotiation process itself, and know little or nothing about how the parties actually arrived at the final terms and figures before us. We can try to extrapolate or infer, but we really do not know. Given the reams and reams of empirical data collected during the docket process -- from the application, pre-filed testimony, data responses, briefs and the hearing itself -- it is difficult for this commissioner to be expected to simply approve an 8-page agreement, with the caveat that no changes or amendments can be made.

Thus, I found myself in the position of casting a yay or nay vote on a "take it or leave it" proposition, with a settlement that had some provisions I liked, and others I would have preferred to change. On balance, the good far outweighed the imperfect, and none of my concerns were of sufficient gravity to constitute a reason to kill the deal in my judgment.

In my view, the Stipulation had indeed accomplished the commission's primary objective in this case, which was to fairly and equitably minimize the rate increases proposed by the Applicant (MDU), while building a firm financial foundation for the utility going forward, that would enable MDU to continue delivering reliable services at an affordable price. The settlement we approved reduced the overall increase (at the beginning) by approximately 26 percent, lowering the Montana revenue requirement by $2.9 million. The Stipulation also resisted the utility's efforts to hike the residential monthly fixed charge by $7.60, allowing a modest increase of 58 cents instead. Current rates would be locked in for at least two years, before MDU could request another rate adjustment. Given that MDU had, for some time, been substantially under-earning, the situation brought before us clearly warranted the rate increase we approved.

My largest concern was in the cost allocation/rate design area. It is a central principle of "best practices" utility rate regulation that to the greatest degree possible, rates for each customer class should align with actual cost causation. In other words, cross-subsidizations among rate classes, where some classes of rate-payers are forced to cover a portion of the costs incurred by other classes, should be avoided. Not only is this a matter of equity and fairness, but it is also a requirement of sound economics.

Why? Because, as economists will tell you, price signals are of paramount importance when it comes to consumer choice and consumption. Higher prices incentivize conservation. When a customer's rates are artificially low by subsidization-through-rate-design, that consumer receives

false signals, and the net effect is a poorly-informed rate-payer making unwise market decisions -- and conserving less energy.

This Stipulation fails the cost allocation test. Originally, both Denbury and MDU proposed variable rate increases, based in part on the embedded cost of service study (ECOSS) conducted by the utility. In particular, Denbury's recommended rate increases varied from a low of 4.5% to a high of 22.1%, depending on cost causation, with a "rate shock" buffer provision disallowing any particular class from receiving an increase greater than 1.5 times the average increase across all classes. This seemed entirely reasonable, and was a genuine effort to reduce the socialization of rates that currently exists.

Certainly, there was room for reasonable adjustments in Denbury's and MDU's rate designs among the eleven classes. MDU's ECOSS was shown to have calculation flaws, which were later repaired to the best of the utility's ability. MDU acknowledged that the commission should not be guided exclusively by that study, but it shouldn't throw it out as somehow useless, either.

As it turned out, the negotiators essentially did just that, i.e., threw out the baby with the bath water and arrived at a settlement that homogenized 10 of the 11 rate classes with identical 14.76% increases, with no consideration given to a fair and just allocation of costs per class. This, I believe, was a serious mistake, for the reasons stated.

SIGNED:

ROGER KOOPMAN, COMMISSIONER