

Service Date: October 12, 1995

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Proposed) UTILITY DIVISION
Adoption of Rules Governing Reporting) DOCKET NO. D95.8
.112
by Public Utilities.) ORDER NO
. 5868

FINAL ORDER

Background/Introduction

1. On August 10, 1995 the Montana Public Service Commission (Commission) received a petition from the Montana Power Company, Montana Telephone Association, Pacificorp, Montana-Dakota Utilities Co. and U.S. West Communications (petitioners) requesting, "That the Commission initiate a rulemaking proceeding which proposes the adoption of the draft rules set forth in Appendix A [to the petition], together with the incorporation of the forms currently used by the Commission for its annual report, and such new forms as are necessary for the additional reporting requirements set forth in the Appendix A." Petition, p. 4. In the alternative, the petition asked, "... that the Commission issue an order scheduling an oral presentation from the Petitioners in accordance with 1.3.205(3)(b) ARM." Id. The petition was filed pursuant to ' 2 - 4-315, MCA and ARM 1.3.205. Section 2-4-315, MCA, reads in part that, "Within 60 days after submission of a petition, the agency either shall deny the petition in writing (stating reasons for the denial) or shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305 [MCA]."

Discussion and Decision

2. The Commission grants, denies and responds to the petition as follows:

(a) The Commission denies the request to proceed with a rulemaking that proposes the adoption of rules as set forth in Appendix A of the petition. The Commission has, however, formally proposed rules on affiliated interest reporting requirements and policy guidelines that contain many of the reporting requirements of Appendix A. The Commission finds that

the draft rules at Appendix A, while generally necessary, are not sufficient or complete affiliated interest reporting requirements. Petitioners are referred to the proposed rules, and can comment on those rules pursuant to the formal process.

(b) The Commission denies the request to incorporate into rule the forms necessary to implement affiliated interest reporting requirements. In its proposed rules the Commission has delegated the mechanical function of preparing appropriate forms to its staff. The Commission finds that incorporating reporting forms into rule is not necessary.

(c) The Commission grants the request to incorporate the traditional annual reporting requirements into rule. This should not be interpreted as Commission concurrence with the statement in the petition that annual reporting requirements, "... by law, must be expressed in administrative rules." Petition, p. 3. That statement was offered without citation or argument and the Commission makes no finding on its validity. The Commission does find, however, that in this case the incorporation of existing annual reporting requirements into rule is consistent with good administrative practice, and with the affiliated interests reporting requirements rulemaking. The Commission anticipates issuing proposed annual reporting requirements rules in early 1996. Those proposed rules may include some of the substantive rules suggested in Appendix A to the petition; but the Commission will not be bound by anything in Appendix A. As with the affiliated interest reporting requirements rules, annual reporting rules will not contain the forms or schedules necessarily to comply with the rules.

(d) The Commission denies the request to schedule an oral presentation from the petitioners. The Commission heard an informal oral presentation from petitioners on July 12, 1995 on substantially the same request. The Commission understands petitioners' request and finds that nothing would be gained from another oral presentation.

Conclusions of Law

1. The Commission is obligated to respond to petitioners' request within 60 days of filing. ' 2-4-315, MCA.
2. The Commission may deny a petition for rulemaking, stating its reasons for denial. ' 2-4-315, MCA.
3. The Commission may require appropriate annual reports from utilities under its jurisdiction, including reports on the affiliated interests of jurisdictional utilities. ' 69-3-102, 106(1), 202(1)(2)(3), 203, MCA.

Order

NOW THEREFORE IT IS ORDERED that the petition is granted and denied as described at paragraphs 2.(a) - (d), above.
Done and Dated this 5th of October, 1995 by a vote of 3-2.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

NANCY MCCAFFREE, Chair

DAVE FISHER, Vice Chair
(Voting to Dissent)

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

(Voting to Dissent)

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.

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