

Service Date: May 16, 2018

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

IN THE MATTER OF Montana-Dakota) REGULATORY DIVISION
Utilities Conservation Program Tracking)
Mechanism Rate 90 Tariff) DOCKET NO. D2018.4.21
) ORDER NO. 7599

PROCEDURAL ORDER

PROCEDURAL HISTORY

1. On April 2, 2018, Montana-Dakota Utilities (“MDU”) filed an application with the Montana Public Service Commission (“Commission”) to maintain its current Conservation Program Tracking Mechanism Rate 90 Tariff.
2. On April 10, 2018, the Commission indicated that parties interested in intervening with the Application must notify the Commission by April 27, 2018. The Commission subsequently granted intervention to the Montana Consumer Counsel (“MCC”).
3. The Commission, through delegation to staff, hereby establishes the Procedural Order (“Order”) for this Application. This Order is effective immediately and remains effective unless modified by the Commission or staff. Mont. Code Ann. § 69-3-103. Parties may seek reconsideration of this Order within ten (10) days of its service date. Mont. Admin. R. 38.2.4806 (2017).

SCHEDULE

4. This Application shall adhere to the following schedule:
 - (a) May 31, 2018: Final day for discovery to MDU related to its initial testimony.
 - (b) June 21, 2018: Final day for MDU to respond to discovery.
 - (c) June 28, 2018: Final day to request additional process in this docket. If no party requests additional process, this Application will proceed to resolution by the Commission. If any party requests additional process, the Commission will issue a revised Procedural Order.

SERVICE AND FILING

5. A party must serve a copy of every pleading, motion, brief, objection, data request or response, and other document it files in this proceeding on every other party. Upon e-filing a document with the Commission, the filing party must email a copy of the document to counsel of record. In order to file a document with the Commission, a party must: (1) Submit the document electronically (e-file) on the Commission's website at <http://psc.mt.gov> ("Electronic Filing" under "For Regulated Utilities" tab); and (2) physically deliver or mail the original document to the Commission at 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. The Commission will not post an e-filed document to its website until it receives the original from the filing party. Service or filing by means of facsimile is prohibited. Service by mail does not extend a deadline.

INTERVENTION

6. The deadline for intervention in this proceeding was April 27, 2018. An entity seeking late intervention must file a petition to intervene setting forth: (1) The general position that it intends to take; (2) a legally protectable interest directly affected by this proceeding; (3) whether late intervention would delay the proceeding or prejudice another party; and (4) good cause for not having filed a timely petition. Late intervention will become effective only upon action of the Commission.

DISCOVERY

7. Parties acknowledge that written interrogatories—data requests and responses—are the primary discovery mechanism in Commission proceedings, and should be utilized in good faith. In addition to the rules adopted by the Commission in Mont. Admin. R. 38.2.3301(1) (2017), the following specific procedures govern discovery in this docket.

8. Parties must follow these guidelines for data requests and responses:
- (a) Assign a unique, consecutive number to each data request (e.g., MCC-001), regardless of the party to whom the request is directed (e.g., the Commission may direct PSC-001 through 008 to MDU, PSC-009 through 016 to the MCC, and PSC-017 through 019 again to MDU).
 - (b) At the beginning of each data request, consistently describe its subject in five words or less. In addition, a party may direct the request to a particular witness or include citations to exhibits or testimony.

- (c) For multi-part requests, use lower case letters (a-e) to denote up to five parts.
- (d) Parties must respond to each numbered data request with a separate page.
- (e) The following format must be utilized for data requests and responses:

PSC-006 Regarding: Purchased Gas Contracts
 Witness: Doe, JBD-4:13-15
 Request/Response:

- (a) What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?
- (b) What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

9. Objections to data requests must be filed before the deadline to respond, and must be sufficiently specific for the Commission to adequately rule on the merits of the objection. Responding parties need not object if an answer has been provided to a discovery request. Only objections based on discoverability will be considered; objections on admissibility will be overruled. The failure to object to a data request does not waive the right to subsequently object to the admissibility of the information provided in response. The Commission may schedule oral argument before ruling on an objection.

10. If a party objects based on privilege, it must file a privilege log by the deadline to respond with enough information for the Commission to determine whether the privilege applies.

11. If a data request asks for protected information, the responding party must file a motion for a protective order as soon as practicable, but no later than the deadline to respond to data requests.

12. Parties may submit late-filed data requests or responses after the deadlines in this Procedural Order, either by agreement of the parties, or by approval of the Commission upon a showing of good cause by the filing party that addresses why the late-filed document was not timely submitted.

13. If a party fails to adequately answer a data request, the discovering party may move within fourteen (14) calendar days after service of the response for an order compelling an answer. The motion must identify the relief requested. The responding party may file a brief in opposition within fourteen (14) days of service of the motion to compel. The Commission may

schedule oral argument before ruling on a motion to compel, and will set a new response deadline if it grants the motion.

14. In response to a party's failure to answer a data request, the Commission may: (1) refuse to allow it to support or oppose related claims; (2) prohibit it from introducing related evidence; (3) strike pleadings, testimony, or parts thereof; (4) stay the proceeding until the request is satisfied; or (5) dismiss the proceeding, or parts thereof.

15. In order to promote the efficiency of the administrative process staff attorney Zachary Rogala will act as examiner for the limited purpose of disposing of discovery disputes (including objections to data requests and motions to compel) and motions for protective order in this proceeding. Mont. Code Ann. §§ 69-2-101, 69-3-103 (2017); *see also* Mont. Admin. R. 38.2.306, 38.2.1501.

PRE-HEARING MOTIONS

16. Parties must make a pre-hearing motion, including a motion to strike pre-filed testimony, at the earliest possible time. A responding party must file and serve its response brief within seven (7) calendar days of service of the motion. If the movant wishes to reply, it must file and serve its reply brief within five (5) calendar days of service of the response brief. Upon the request of a party, the Commission may allow oral argument on a pre-hearing motion.

17. The Commission may schedule a pre-hearing conference at any time prior to the hearing to discuss the feasibility of settlement in whole or in part, simplification of the remaining issues through admissions of fact, and any other matters that may expedite the hearing.

DONE AND DATED this 16th day of May, 2018, by delegation to Commission staff as an Order of the Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

BRAD JOHNSON, Chairman
TRAVIS KAVULLA, Vice Chairman
ROGER KOOPMAN, Commissioner
BOB LAKE, Commissioner
TONY O'DONNELL, Commissioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Procedural Order issued on May 16, 2018 in Docket D2018.4.21 was served upon the following, by mailing a true and correct copy, via first class mail, on the 16th day of May, 2018, addressed as follows:

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