Service Date: August 10, 1983

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

* * * * *

IN THE MATTER of the Application of MONTANA-DAKOTA UTILITIES COMPANY for Authority to Implement the Gas Cost Tracking Adjustment Procedure.	)))))	UTILITY DIVISION DOCKET NO. 83.5.34 ORDER NO. 4993a

ORDER ON MOTION FOR RECONSIDERATION

FINDINGS OF FACT

1. On June 22, 1983, the Commission issued Order No. 4993, granting interim relief in this Docket. Finding of Fact No. 14 stated that the interim order "should in no way be misinterpreted to mean that any issue in the case has been decided. . .".

2. On July 1, 1983, the Montana-Dakota Utilities Company (MDU or Company) filed a Petition for Reconsideration concerning the following issues:

(1) The adjustment for Commission approved levels of company production;

(2) The adjustment for off-system sales to Colorado Interstate Gas Company (CIG); and

(3) Balancing interests of MDU and its ratepayers.

APPROVED LEVEL OF COMPANY PRODUCTION

3. One of the Commission's interim rate relief criteria states, "the appropriate gas mix on which to base a tracking procedure is that mix last

approved within the confines of a general rate case; furthermore, that mix should apply to both the current and unreflected portions of a tracking procedure."

4. The Commission adjusted interim rates in this Docket to reflect company production at an annual level of 4.259 Bcf in accordance with the last Commission-approved gas mix. MDU takes issue with this adjustment, claiming it is based on a mistake of fact. The Company arrives at this conclusion by reference to company production for the 12 month period ending January, 1983, which was 4.4 Bcf. This gas cost tracking application is based on the six month period also ending January, 1983. The gist of MDU's argument, therefore, is that the level of company production in the gas mix should be reviewed only in the context of cumulative production over an historic 12 month period, rather than analyzing each month for reasonableness.

5. Although the criterion does not state that annual company production is any more relevant than monthly amounts, the Commission agrees that in many circumstances an annual figure could serve as an accurate proxy for future production. However, company production in the unreflected gas cost adjustment covers only a 6 month period, in this instance August, 1982 - January, 1983. The Commission, therefore, is faced with determining whether or not production amounts in the 6 month period are reflective of and will serve as a proxy for the approved annual mix.

6. Production amounts for November and December, 1982 and January, 1983 clearly are not reflective. In previous years, the company has maximized production in these months to meet heating load demands; MDU's annual peak demand typically occurs during this period. In fact, the dramatic

downward swing in MDU's production for November - January in this filing resulted from the loss of a significant percent of its sales market.

7. MDU alleges that the abnormally low three month production period, if viewed in the context of an historic annual period, meets the Commission's mix criteria. This may be true, but only if MDU intends during February, 1983 - July, 1983 to produce at the same high levels it did during February, 1982 - July, 1982. This is not MDU's intention, however. Because of the significant market loss, it will produce at 20 - 25 percent of those levels.

8. The Commission finds it cannot ignore the substantial change in MDU's operating philosophy. It is clear that production in the November - January period portrays a far different picture than MDU's continued average. If the Commission were to wait until the average reflected the change, which would likely be MDU's next tracking application to be filed late November, 1983, the Company would have operated at reduced production levels for nine months. At that point, the Commission would be unable to adjust company production for November, 1982 - January, 1983. In fact, the full impact of MDU's charge would not be reflected in the average until May, 1984 - in MDU's Spring 1984 tracker. The Commission finds preposterous the notion that it must wait until mid-1984 to fully consider a currently observable change. While the Commission waited, ratepayers would be funding a gas mix not approved and, therefore, gas expenses never subjected to adequate scrutiny for reasonableness. The Commission therefore reasoned that some method, other than MDU's average, had to be used to reflect and serve as a proxy for the approved annual mix.

9. The Commission considered four other approaches:

A. Use of an appropriate average of the same months in prior years. A three year average of these months was 2,129,575 Mcf.

B. Use approved company production divided by 2. This amount was 2,129,528 Mcf.

C. Use August - January monthly production included in the approved mix. This amount was 2,489,359 Mcf.

D. Use actual monthly production adjusted to the same percentage of system requirements (8.26%) as in the approved mix. This amount was 2,353,397 Mcf.

The Commission chose the latter. This compared to 1,361,325 Mcf included by MDU, and resulted in an upward adjustment of 992,072 Mcf.

10. The Commission notes that its adjusted production amount constitutes slightly more than half (55%) of the approved annual production (4,259,057 Mcf), while MDU's filed amount constitutes less than one-third (32%) of the same number. The Commission approach allocates roughly half of company production to each six month adjustment period, thereby eliminating adverse impacts on seasonal customers. MDU's approach does not.

11. It is important to keep two considerations in mind throughout this discussion: 1) the reasons for an approved gas mix and 2) the purpose and requirements of interim orders. In Docket No. 82.6.40, Order No. 4918c, issued simultaneously with this Order, the Commission reiterates and summarizes the reasons for determining a Commission-approved gas mix and applying it to gas cost tracking proceedings. Finding of Fact Nos. 12-18, Order No. 4918c. That discussion will not be repeated here, but the Commission underscores the Company's burden to prove reasonable expenses as particularly crucial. MDU's Petition asserts that the mere fact that the

unreflected gas cost account consists of actually incurred historical costs makes it immune from review. The Commission takes strong exception to this proposition. While it is true that gas mix should normally not be a factor in a tracking proceeding, that is because an approved gas mix from the last general rate case is applied. The Commission detects a departure from that course in this Docket, as discussed above.

12. In Order No. 4918c, Docket No. 82.6.40, the Commission found the record would not support a change in the Company's gas mix. The Commission did, however, determine that the importance of the issue and MDU's current circumstances justifies a re-examination of gas mix in this Docket.

13. Section 69-3-304, MCA, provides that the Commission may, in its discretion, approve interim increases pending final decision. Specific guidelines for interim increases are set forth in ARM 38.5.501, et seq. These provisions are designed to grant speedy relief regarding noncontroversial items. It is apparent that the Company's gas mix, and particularly its level of company production, are not noncontroversial items. Neither, therefore, is the Company's gas expense attributable to its change in gas mix. The Commission has determined that these costs are not appropriately included in interim relief.

CIG OFF-SYSTEM SALES

14. MDU's Petition argues that the June 23, 1983, FERC Order in MDU v. CIG, Docket CP83-180, pre-empts this Commission from attributing additional revenues to MDU on the theory that CIG, an off-system customer, should purchase gas at a level higher than its actual take. The Commission concludes that MDU's position is correct, and will accordingly adjust interim

rates in this Docket. This determination will not, of course, preclude future inquiries regarding used and useful plant, reasonableness of expenses, and other appropriate ratemaking requirements.

BALANCING MDU AND RATEPAYER INTERESTS

15. In apparent recognition of the Commission's discretion in setting interim rates, MDU lastly argues that the interests of both the Company and its ratepayers must be balanced, and that such a balance suggests authorizing in full MDU's rate increase request. The Company arrives at this conclusion with regard to the gas mix adjustment as a result of its position that this adjustment was based on a mistake of fact, and that the "likelihood of a refund is small to non-existent."

16. The discussion above rejects the notion that the Commission's gas mix adjustment for interim purposes was based upon a mistake of fact. Under these circumstances, concluding that a refund is unlikely would be to prejudge the merits of a significant issue in this Docket. Moreover, a proper balancing of interests is struck by the existence of gas cost tracking and interim procedures, and adherence to the guidelines established therefor; while both are designed to provide speedy relief for utilities, neither contemplates expedited treatment of controversial items.

CONCLUSIONS OF LAW

1. Applicant, Montana-Dakota Utilities Company, is a corporation providing service within the State of Montana and as such is a "public utility" within the meaning of 69-3-101, MCA.

2. The Montana Public Service Commission properly exercises jurisdiction over the Applicant's Montana operations pursuant to Title 69, Chapter 3, MCA.

3. Section 69-3-304, MCA, provides, in part, "The Commission may, in its discretion, temporarily approve increases pending a hearing or final decision."

4. Where the Federal Energy Regulatory Commission (FERC) has established tariffs for off-system sales and explicitly ruled that a particular off-system customer is not required to take any specific amount of gas, the Commission is pre-empted from directly attributing revenue responsibility to that off-system customer on the theory that off-system sales should occur at a specific minimum. Federal Power Commission v. Corporation Commission, 362 F.Supp. 522 (W.D. Okla. 1973), aff'd 415 U.S. 961 (1973).

5. The rate levels and spread approved herein are a reasonable means of providing interim relief to MDU. The rebate provisions of Section 69-3-304, MCA, protect ratepayers in the event that any revenue increases authorized by this Order are found to be unjustified in the final order in this Docket.

ORDER

1. Applicant, Montana-Dakota Utilities Company, is hereby granted interim relief in the amount of 4.2¢ per mcf for all residential and commercial customers and 7.3¢ per mcf for industrial customers. These rates reflect removal of the Commission's adjustment for CIG sales as requested in MDU's Petition, and constitutes $622,757 of increased revenue therefrom.

2. Such relief is to become effective for service rendered on and after August 8, 1983, and remain in effect until such time as a final decision is reached in this matter.

3. Rates will be filed in such a manner as to maintain the 25 percent rate differential between "Winter" and "Remainder of the Year" rates.

4. Interim revenues granted herein are subject to rebate should the final order in this Docket determine that a lower revenue level is warranted. Such a rebate would include interest at the rate of the Applicant's last granted return on common equity.

5. All motions not ruled upon are denied.

DONE IN OPEN SESSION this 8th day of August, 1983, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

THOMAS J. SCHNEIDER, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

CLYDE JARVIS, Commissioner

DANNY OBERG, Commissioner

ATTEST:
Madeline L. Cottrill
Madeline L. Cottrill
Secretary

(SEAL)

NOTE: You may be entitled to judicial review in this matter. Judicial review may be obtained by filing a petition for review within thirty (30) days of the service of this order. Section 2-4-702, MCA.