Service Date: December 4, 1987

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

* * * * *

IN THE MATTER of the Montana Public Service Commission's Investigation of Federal Tax Reform Impacts on Public Utility Revenue Requirements.	))))	UTILITY DIVISION DOCKET NO. 86.11.62 ORDER NO. 5236f

* * * * *

INTRODUCTION

1. On June 8, 1987, the Montana Public Service Commission (MPSC or Commission) issued Order No. 5236c in this Docket. Order No. 5236c set forth the Commission's conclusions regarding interpretation and application of the Tax Reform Act of 1986 (TRA).

2. On July 1, 1987, the Commission issued Order No. 5236d denying Motions for Reconsideration of certain issues in Order No. 5236c. The Commission's treatment of contributions in aid of construction (CIAC) was one of the Motions which was denied reconsideration in Order No. 5236d. The denial of the Motion for reconsideration of the treatment to be afforded CIAC left intact the requirements in Order No. 5236c. One of the requirements in that Order directed utilities to file with the Commission by August 1, 1987, "...the proposed calculation to be used in determining the amount of tax to be collected" from the person or entity making a contribution.

3. As directed, affected utilities filed their proposed calculations for determining the amount of tax to be collected from contributors. The CIAC tax calculations submitted by theutilities were consistent with the provisions of this Commission's Order No. 5236c. Therefore, no comments regarding the mechanics of the calculation are required.

4. The Commission's review of the narratives submitted with the CIAC calculations indicates that two policy issues warrant further discussion. The two issues are: 1) how should the proper interest rate to be used in the net present value calculation be determined; and 2) should a utility be allowed to deviate from the Commission's ordered method for collecting the additional tax associated with CIAC.

5. Mountain Water Company (MWC) and Butte Water Company (BWC) proposed that the Commission establish a procedure using readily available information such as the average interest rate on Treasury Bonds and Notes. MWC and BWC reasoned that use of such an indicator was necessary because the discount rate would "need to be recalculated periodically."

In its narrative, Pacific Power and Light (PP&L) proposed that the Commission annually establish the proper interest rate to be used in the net present value calculation. PP&L's rationale is to

eliminate conflicts regarding selection of the proper discount rate.

6. The Commission agrees with the aforementioned utilities that it is appropriate for the Commission to exercise control over the discount rate used to calculate the present value of the tax benefits. The Commission does not, however, agree that the control exercised should be as restrictive as that proposed by these companies. The utilities that will be required to comply with the provisions of this order have varying cost of capital requirements. Therefore, the Commission is of the opinion that the individual utility should have a certain degree of latitude in determining the discount rate to be used in its present value calculation.

7. Given the varying cost of capital requirements of the utilities, the Commission finds that an acceptable procedure for exercising regulatory control over the discount rate is to set a ceiling for that rate as the last overall granted rate of return for the utility. The Commission also finds that the discount rate determined appropriate by the utility will be applicable to all CIAC and shall be effective for a minimum of one year.

8. The second policy issue that warrants discussion flows from comments made by PP&L in its narrative. PP&L made the following statement in its narrative:

> In response to paragraph 46 of Order No. 5236c, the Company is currently studying the effects of the following two options: Under the first option, if the Company finds that the ordered method discourages economic development, the Company would continue to charge customer advances as it always has in Montana. In this case, the stockholders would bear the additional expense for the tax on the contributions. Under the second option, the

Company would follow the treatment authorized in Order No. 5236c.

In an August 28, 1987, letter from J. T. Watson, PP&L informed the Commission that it was the Company's determination that it would continue to charge contributions as it always has in Montana, with the stockholders bearing the additional tax expense. The Commission's original Order in this matter did not contemplate implementation of an alternative treatment for CIAC.

9. In the Commission's view, both of PP&L's proposed options are reasonable, because in both instances the responsibility for payment of the additional tax is assumed by someone other than the general body of ratepayers, which is consistent with the findings in Order No. 5236c. Even though the Commission's Order No. 5236c did not provide for the filing of alternative methods for collection of the tax associated with CIAC, the Commission finds PP&L's proposal to have the stockholders bear the additional tax expense acceptable, as long as the policy extends to all contributions received by the Company.

10. Other utility companies may share PP&L's view that the Commission's ordered method for treatment of CIAC discourages economic development. If this is the case, the Commission is

amenable to accepting filings from other utilities specifying that the stockholder will bear the tax expense associated with CIAC.

11. The Commission will be promulgating rules relative to the treatment that should be afforded CIAC for inclusion in the Administrative Rules of Montana. Once these rules are in place the provisions of this Order will no longer be effective.

CONCLUSIONS OF LAW

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA.

2. Respondents are public utilities subject to the Commission's jurisdiction. Section 69-3-101, MCA.

3. The Commission may regulate the mode and manner of all investigations and hearing of public utilities. Section 69-3-103, MCA.

ORDER

1. Utilities affected by the by the repeal of Section 118(b) and the resulting tax treatment for contributions in aid of construction shall file with the Commission by December 21, 1987, the discount rate to be used in the present value calculation.

2. The filed discount rate shall be effective for a minimum of one year, with changes being filed for a January 1, effective date. The filed discount rate shall not exceed the last granted overall rate of return for the utility.

3. Utilities may adopt a policy that the stockholders will bear the additional tax expense associated with contributions. Affected utilities, including Pacific Power and Light Company, have until December 21, 1987, to file with the Commission a statement of their adoption of such a policy.

4. The provisions of this Order shall be in effect until such time as the Commission has placed into effect rules govern ing contributions in aid of construction in the Administrative Rules of Montana.

DONE AND DATED at Helena, Montana this 2nd day of December, 1987 by a 5 to 0 vote.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

_____

CLYDE JARVIS, Chairman

_____

HOWARD L. ELLIS, Commissioner

_____
TOM MONAHAN, Commissioner

_____
DANNY OBERG, Commissioner

_____
JOHN B. DRISCOLL, Commissioner

ATTEST:

Ann Purcell
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.