Service Date: June 14, 1993

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

* * * * *

IN THE MATTER of the Application of the MONTANA POWER COMPANY for Authority to Increase Rates for Natural Gas and Electric Service.	))))	UTILITY DIVISION DOCKET NO. 93.6.24 ORDER NO. 5709

PROTECTIVE ORDER

BACKGROUND

On June 7, 1993 the Montana Public Service Commission (Commission or PSC) received a Motion for Protective Order from Montana Power Company (Company or MPC) seeking to "limit access and use of certain Western Energy Company (WECO) materials and information used by MPC to support its revenue requirement increase request to be filed on June 21, 1993. The specific information requested to be protected is contained in Exhibits _____ (LB-5), (B-6), (LB-7), Appendix E, and (RPG-1)."

For expedience, MPC also moved that the Protective Order be sufficiently broad to encompass WECO and future requests for protection of proprietary information in this Docket. MPC noted that there are procedures in the protective order to allow challenges to confidentiality, which should protect the public and the parties' rights.

ORDER

Now therefore It Is ORDERED that this Protective Order, covering the material and information described by the Company in its motion, shall be in effect throughout the proceedings in Docket No. 93.6.24 and thereafter, pending any Commission or Company decision that the information need not remain protected.

1. (a) Confidential Information. All documents, data, information, studies and other materials furnished pursuant to discovery requests, or subpoenas, depositions, or pursuant to Commission order, that are claimed to be trade secret, privileged or confidential shall be furnished pursuant to the terms of this Order. All persons accorded access under this Order shall treat this trade secret, confidential or privileged commercial and financial information as confidential (referred to as "Confidential Information"). Confidential Information shall not be used nor disclosed except for the purpose of this proceeding, and solely in accordance with this Order. All material claimed to be Confidential Information shall be so marked by the party or affiliate by stamping the same with a designation indicating its trade secret, proprietary or confidential nature. All Confidential Information must be submitted to the Commission on yellow paper so that it can be easily identified for filing purposes.

(b) Use of Confidential Information and Persons Entitled to Review. All Confidential Information submitted pursuant to this Order shall be given solely to counsel for the par-

ties, and shall not be used or disclosed except for purposes of this proceeding. However, counsel may authorize access to any specific Confidential Information solely for the purpose of this proceeding to those persons designated their experts in this matter. Such experts may not be an officer, director or employee (except legal counsel) of the parties, or an officer, director, employee or stockholder or member of an association or corporation of which any party is a member, subsidiary or affiliate. Any member of the Public Service Commission and its staff, the Consumer Counsel and his staff and staff members of intervenor State agencies may have access to any Confidential Information provided under this Order, and shall be bound by the terms of this Order.

(c) Nondisclosure Agreement. Before giving access to Confidential Information to any counsel or expert pursuant to paragraph 1 (b), counsel for the party seeking review of the Confidential Information shall deliver a copy of this Order to the counsel or expert who shall agree in writing to comply with and be bound by this Order before disclosure. Confidential Information shall not be disclosed to any person who has not signed a nondisclosure agreement form incorporated herein as Exhibit "A." Court reporters shall also sign an Exhibit "A." The nondisclosure agreement (Exhibit "A") requires the persons obtaining disclosure first to read a copy of this Protective Order and certify in writing that they have reviewed the Order and consented to be bound by its terms. The agreement shall contain the

signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. The agreement shall be delivered to counsel for the Company and a copy delivered to the Commission.

(d) Delivery of Documentation. Where feasible, Confidential Information will be marked as such and delivered to counsel. The Confidential Information may be made available for inspection by counsel and experts accorded access in a place and a time mutually agreed on by the parties, or as directed by the Public Service Commission.

2. (a) Challenge to Confidentiality. This Order establishes a procedure to expedite handling of information that a party claims is confidential; it shall not be construed as an agreement or ruling on the confidentiality of any such document.

(b) Objection to Trade Secret Status. If the parties are unable to agree that certain documents, data, information, studies or other matters constitute trade secret, confidential or privileged commercial and financial information, then the party objecting to the trade secret claim shall request the Commission's review pursuant to this Order. When the Commission determines whether any documents, data, information, studies or other submitted matters are Confidential Information, the Commission will enter an order resolving the issue.

(c) Request for Removal from Protection. Any party upon ten (10) days prior notice may file a request for removal

of Confidential Information from the protective requirements of this Order or from the sealed record, to be placed in the public record. Upon a challenge to the confidential or proprietary nature of this information, a hearing examiner and/or the Commission shall resolve the issue following proceedings in camera conducted with only persons present with authorized access to such confidential matter. The record of in camera hearings shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. 93.6.24," and transcribed only upon agreement of the parties or Order of the Hearing Examiner or the Commission. If transcribed, the record shall be separately bound, segregated, sealed, and withheld from inspection by any person not authorized disclosure under this Order. Any release from the restrictions of this Order requires agreement of the parties or an Order of the Hearing Examiner or the Commission, after notice to the parties and a hearing. If the Hearing Examiner or the Commission should rule that any information should be removed from the protection of this Order or the sealed record, the parties shall not disclose such information or use it in the public record for five (5) business days, at the request of the providing party to enable it to seek a stay or other relief.

3. (a) Receipt into Evidence. At least ten (10) days before using or referring to any Confidential Information as evidence, the party shall make its intention to use this information known to the providing party. The requesting and the providing parties shall make a good faith effort to reach an agree-

ment on how to use the information so as not to reveal its trade secret, confidential or proprietary nature. If such efforts fail, the providing party shall separately identify, within five (5) business days, which portions of the documents containing Confidential Information to be offered or referred to on the record shall be placed in the sealed record. Only one (1) copy shall be made of designated documents to be placed in the sealed record and only for that purpose. Otherwise, parties shall make only general references to Confidential Information in these proceedings.

(b) Seal. While in the custody of the Commission, materials subject to this Order shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. 93.6.24." Due to their trade secret nature, these materials shall not be considered as records in the possession or retained by the Commission within the meaning of the open meetings or public records statutes.

(c) In camera Hearing. Any Confidential Information requiring oral disclosure to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized access to the Information under this Order. Cross-examination on and substantive reference to Confidential Information and that portion of the record containing the references shall be marked and treated as provided in this Order.

(d) Appeal. Sealed portions of the record in this proceeding may be forwarded on appeal to any court of competent jurisdiction in accordance with applicable rules and regulations, but under seal as designated herein for the information and use of the Court.

(e) Return. Unless otherwise ordered, Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, subject to the protective requirements of this Order, and shall be returned to counsel for the Company within 30 days after final settlement or conclusion of this matter, including administrative or judicial review.

4. Citations and References. Reference to Confidential Information in the sealed record, when necessary in pleadings, cross-examination, briefs, argument or motions, shall be by citation of title or exhibit number or some other nonconfidential description. Substantive references to Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Hearing Examiner or the Commission under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit "A." All the protections afforded in this Order apply to materials prepared and distributed under this paragraph.

5. (a) Use in Decisions and Orders. The Commission will refer to Confidential Information in only a general form and will avoid reproduction in any decision of Confidential In-

formation to the greatest possible extent. If it is necessary to discuss Confidential Information other than in a general form, the discussion with this protected information shall be placed in a separate section of the Order or Decision under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit "A." Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed an Exhibit "A."

(b) Summary for Record. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the Decision or Order to be placed on the public record.

6. Segregation of Files. All Confidential Information filed with the Commission will be sealed by the Commission, segregated and withheld from inspection by any person not bound by the terms of this Order. Confidential Information may be released from the restrictions of this Order by agreement of the parties or, after notice and hearing, pursuant to an Order of the Commission or final order of a Court having jurisdiction. The Consumer Counsel may retain all written Confidential Information under this order, but shall withhold it from inspection by others, except for his staff and his counsel, unless it is released by the Public Service Commission and/or a final order of a court, subject always to the terms of confidentiality.

7. Preservation of Confidentiality. All persons receiving access to any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than to prepare for and conduct this proceeding, and shall take reasonable precautions to keep the Confidential Information secure, pursuant to this Order.

8. Reservation of Rights. The parties affected by the terms of this Protective Order further retain the right to question, challenge, and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this Protective Order in response to interrogatories, requests for information or cross-examination on the grounds of relevancy or materiality.

This Order does not constitute any waiver of the rights of any party to contest any assertion or finding of trade secret, confidentiality or privilege, and to appeal any such determination of the Commission or such assertion by a party.

9. Amendment or Modification. The Commission retains jurisdiction of this matter and may alter or amend these provisions, upon motion by an appropriate party and reasonable notice.

DONE AND DATED this 10th day of June, 1993 by a vote of 4 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

Bob Anderson
BOB ANDERSON, Chairman

Bob Rowe
BOB ROWE, Vice Chairman

Dave Fisher
DAVE FISHER, Commissioner

Nancy McCaffree
NANCY MCCAFFREE, Commissioner

ATTEST:
Kathlene M. Anderson
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 38.2.4806, ARM.