Service Date: May 28, 1996

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

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IN THE MATTER OF MONTANA-DAKOTA	)	UTILITY DIVISION
UTILITIES COMPANY, Application for	)	
Authority to Increase Rates for Natural Gas	)	DOCKET NO. D95.7.90
Service in Montana.	)	ORDER NO. 5856c

ORDER ON MOTION FOR RECONSIDERATION

On May 6, 1996 the Montana Consumer Counsel filed a Motion for Reconsideration of the Public Service Commission's April 17, 1996, Final Order (Order No. 5856b) in the above-entitled docket. The Public Service Commission, having first considered the motion and arguments in support of it, determines that the motion should be DENIED.

Done and dated this 22nd day of May, 1996, by a vote of 3-2.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

NANCY MCCAFFREE, Chair
(Voting to Dissent)

DAVE FISHER, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner
(Voting to Dissent)

ATTEST:

Kathlene M. Anderson
Commission 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.

DISSENT OF COMMISSIONER ROWE
TO ORDER ON RECONSIDERATION
Docket No D95.7.90, Order No. 5856c

First, I would have granted MDU's request for time to respond to the motion for reconsideration, and would have carefully studied the response. Absent that, I would deny the request to reconsider debt refinancing, the use of a thirteen month average balance, treatment of accumulated provision for injuries and damages, and expenses to promote compressed natural gas vehicles. Several of these are close calls, but do not appear "unjust or unwarranted" (Section 38.2.4806 (3), A.R.M.).

Based on the record, two issues are not at all close calls. The Commission's decisions concerning post-test year adjustments (other than office closing expenses) and return on equity are fundamentally in error.

Concerning return on equity, MCC's brief forcefully demonstrates the arbitrariness of the majority decision.[1] Among other defects, the Commission's reliance on "good practices" is untenable. First, good management practices by either a regulated or unregulated economic entity produce their own rewards. Second, the record lacks either evidence to connect these practices to an increase in the return on equity or to quantify what such an increase should be. Third, to the extent good practices reduce a firm's riskiness, one could argue they support reducing the return. (I am not making this argument, except to show the lack of rigor in the majority's reasoning.) Fourth, any such adjustment ought to be reciprocal; where management performs poorly or

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[1]I disagree with one assertion by MCC concerning the Order. MCC witness Hill asserted but did not fully substantiate that risk for MDU was similar to his sample group of utilities. MDU witness Gaske provided more evidence for the contrary proposition. As noted in my dissent to the original Order, this might justify an increase to no higher than 11.5 percent.

customers are harmed, returns should be lowered. Anything approaching this has happened only in the most isolated incidents involving water systems. MDU's prior returns were not lowered for what apparently were believed to be bad practices. If this is now the policy, the Commission should state it clearly and follow through.

The Commission's decision concerning post-test year plant additions may be even more damaging. I have supported post-test year plant additions for actual expenditures of an extraordinary nature. Until this decision, I believed this was also the Commission's position. Here, there is no showing that extraordinary circumstances exist. Here, the level of matching the Commission has previously required did not occur. Here, the adjustments approved are asserted, not "known with certainty and measurable with reasonable accuracy at the time of filing." Section 38.5.105, A.R.M. Going forward, the Commission risks granting carte blanche recovery for budgeted items.

My dissent to the original Order summarized the historical test year and the reasons which support it. As stated there MDU had the choice, which it did not elect, to file under the optional filing requirements using year-end figures. If the Commission wishes to rewrite the test year standard, it should do so directly

As to return on equity and post-test year adjustments, the majority's decision does not represent a fair balancing of interests, but rather is unfair to one side. I continue to be deeply concerned about the decision's possible precedential effect. I am also concerned about the effect this decision might have on negotiations in other cases. Parties on all sides coming before the Commission should be aware that in the future I will not vote to approve stipulations which are driven by inflated rates of return or undisciplined assumptions about post-test year adjustments.

RESPECTFULLY SUBMITTED this 22nd day of May, 1996.

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BOB ROWE
Commissioner