Book

Service Date: October 28, 1999

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

* * * * *

IN THE MATTER of the Application of U S WEST Communications, Inc. for Authority to Detariff its Toll and Operator Services.	))))	UTILITY DIVISION DOCKET NO. D99.8.205 ORDER NO. 6198a

PROCEDURAL ORDER

NOTE: PLEASE READ CAREFULLY. PROVISIONS OF THIS ORDER MAY MODIFY PREVIOUS PSC PROCEDURAL AND SCHEDULING POLICY. THIS IS NOT A PROPOSED ORDER. RECONSIDERATION IS AVAILABLE FOR GOOD CAUSE.

The Montana Public Service Commission (Commission) has adopted the policy of issuing a final procedural order upon receipt of an application from a utility. The Commission has delegated to Commission staff the duty to set the procedural schedule and issue the Procedural Order. The Commission has set forth a firm schedule in this Procedural Order. At the request of a party and after consulting with the other parties, the Commission staff may amend the procedural schedule when the amendment does not alter the scheduled hearing date. The date set for hearing can only be changed by Commission action.

INTRODUCTION

1. Under the authority of ARM 38.2.2702, the Commission enters this Order setting forth the procedure and schedule to be followed in Docket No. D99.8.205. This Order is effective immediately and remains effective until modified by the Commission.

SCHEDULE

2. All dates listed in the following schedule are **receipt dates** (filing and service) unless otherwise specified. Dates prior to the service date of this Order are for reference purposes only.

(a) August 26, 1999: Application received by Commission.

(b) September 21, 1999: Notice of Application issued by Commission.

(c) October 4, 1999: Final day for intervention as a matter of right.

(d) November 19, 1999: Final day for written discovery (includes data requests) from intervenors to US WEST on application and prefiled testimony. Written discovery may be submitted before the deadline.

(e) December 3, 1999: Final day for US WEST to respond to intervenor discovery.

(f) December 17, 1999: Final day for testimony from intervenors.

(g) December 28, 1999: Final day for written discovery from US WEST to intervenors; final day for intervenor discovery to parties other than US WEST.

(h) January 7, 2000: Final day for intervenors to respond to written discovery from US WEST and other intervenors.

(i) January 17, 2000: Final day for rebuttal testimony from US WEST and cross-rebuttal from intervenors to testimony filed pursuant to ¶ 2 (f).

(j) February 4, 2000: Final day for written discovery directed to all parties filing rebuttal testimony pursuant to ¶ 2 (i), limited to material directly related to rebuttal testimony.

(k) February 14, 2000: Final day for parties to respond to written discovery on rebuttal testimony filed pursuant to ¶ 2 (j).

(r) February 22, 2000: Final day for prehearing memoranda filed by all parties. Staff shall file a limited prehearing memorandum pursuant to ¶ 25.

(s) February 24, 2000: Hearing commences.

3. In addition, the Commission may schedule evening hearings for the convenience of the public and scheduling conferences as necessary.

Procedure

4. The procedure governing this Docket is set forth in applicable provisions of (a) Title 69, Chapter 3, MCA; (b) Title 2, Chapter 4, MCA, Montana Administrative Procedures Act (MAPA); and (c) ARM Title 38, Chapter 2, procedural rules.

Service and Filing

5. Copies of all pleadings, motions, discovery requests, discovery responses, prefiled testimony, and briefs shall be filed with the Commission and served on all parties (US WEST and all intervenors). Parties shall file with the Commission an original and ten copies of motions, testimony, briefs and documents directed to the Commission. Service upon the parties shall be upon each party's attorney of record, if applicable, and other individuals reasonably designated by the attorney of record.

6. The Commission recommends the following guidelines where data processing and computer equipment are available:

(a) Data may be provided on 3 1/4 " IBM/PC Compatible computer diskettes;

(b) Spreadsheets should be provided in Microsoft Excel "97" format.

(c) Text should be provided in Microsoft Word "97" or compatible format.

7. Testimony exhibits and data requests/responses should be provided both electronically, if feasible, and in hard copy. Briefs, motions and any correspondence normally provided to the Service List should be made available electronically on request. In general, all parties to this proceeding should attempt to provide rate filing material in electronic form to the extent it is practical and not cost-prohibitive.

Intervention

8. Parties seeking to intervene must file a Petition to Intervene with the Commission. The Commission deems intervention granted as a matter of right upon a timely filing pursuant to ¶ 2(c), subject to any later ruling on standing. In requesting late intervention, the petitioner must (a) identify the general position that the intervenor will take if the intervention is granted; (b) demonstrate a legal interest directly affected by this Docket; (c) demonstrate that the intervention, if granted, will not delay or prejudice the proceeding in this Docket; and (d) show good cause why the request for intervention was not timely filed. Late intervention will be effective only upon action of the Commission.

Discovery

9. The term "discovery" includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as data requests. The Commission urges all parties to conduct discovery primarily through the use of data requests.

10. The Commission directs all parties to prepare data requests according to the following guidelines:

(a) Parties must assign their data requests a request number (e.g., US WEST-001). Request numbers must be consecutive regardless of the party to whom the request is directed (e.g., the PSC might direct PSC-001 through 008 to US WEST, PSC-009 through 016 to MCC, and PSC-017 through 019 to DEQ).

(b) All data requests must include at the beginning of each request a description of five words or less explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit number and page number, etc., may be included in addition to, but not in lieu of, the subject of the request. This requirement will help to identify all data requests and responses addressing a particular subject or group of subjects. Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another.

(c) Parties may make multi-part requests, each part denoted by a lower case letter, limited to five parts (a-e). A single part request should be denoted by the request number only.

(d) Examples of acceptable data requests are as follows:

PSC-500
RE: Return on Equity
Witness - Doe, Page JQD-4, Lines 13-15.

Please provide an analysis of hypothetical debt/equity structure.

PSC-501
RE: Return on Equity
Witness - Doe, Page JQD-14, Lines 11-14.

a. What is the cost of equity and how is it derived?

b. What portion of the equity capital is transferred, or imputed, to debt for ratemaking purposes?

11. The party to whom the written discovery or data requests are directed has five days from receipt to file objections to the request(s). Notice of the objection shall be served upon the Commission and on all parties. The Commission may dispose of objections by prompt ruling or may schedule argument. Failure to timely object will be deemed acceptance of the request. Parties are encouraged to try to resolve concerns about requests before filing objections.

12. A requesting party dissatisfied with the response to any written discovery or data request and desiring Commission action to compel must serve its written objection(s) and relief requested simultaneously upon the Commission and parties within five days after receipt of the response. The Commission may dispose of objection(s) by prompt ruling or may schedule argument. The Commission will act either to sustain or overrule the objection(s), and if sustaining, set a deadline for a satisfactory response.

13. Submission of written discovery after the deadline will be allowed by leave of the Commission only. The Commission will not grant requests without a showing of good cause as to why the request was not submitted within the time period allowed.

14. A party's unexcused failure to answer data requests or other discovery from any party may result in Commission action: (a) refusing to allow the unresponsive party to support or oppose related claims; (b) prohibiting introduction of related matters in evidence; (c) striking pleadings, testimony, or parts thereof; (d) staying further proceedings until the request is satisfied; or (e) dismissing all or part of the case, defense, or proceeding.

15. At hearing, the Commission will adopt into the record all prefiled testimony upon motion of the proponent, without the witness reading the testimony into the record. The testimony will be an exhibit and not otherwise entered into the transcript.

16. All proposed exhibits and prefiled written testimony shall be marked for the purposes of identification prior to the start of the hearing. Parties should arrange in advance with the court reporter for the preferred manner of identifying exhibits.

17. When cross-examination is based on a document not previously filed with the Commission, copies of the document must be made available to the Commissioners, parties, and staff, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the

court reporter, each Commissioner, the Commission staff and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, upon making previous arrangements with the Commission and all parties.

18. Parties may be permitted to present live rebuttal testimony only if it is in direct response to an issue raised for the first time in cross-examination or in the testimony of a public witness. Such testimony will be allowed only by leave of the Commission or presiding officer.

19. The Commission may allow citizens and citizen groups to make statements without submitting prepared written testimony. Public witnesses may also read written testimony or have it adopted directly into the record.

20. The Montana Rules of Evidence in effect at the time of the hearing in this Docket will govern.

21. Any party to this proceeding responding to written discovery shall have each person authoring any response(s) present and available as a witness at the hearing to introduce the response(s) and be available for cross-examination. Parties may waive objection(s) to introduction absent the author and the right to cross-examine. Upon Commission approval of parties' agreement to waiver, the person responding to data requests need not be present to testify and the responses may be introduced into the record. Written discovery (not including transcripts of depositions on oral examination) and data responses will be introduced at hearing only pursuant to applicable rules of evidence and through an appropriate witness subject to cross-examination, or by waiver of Parties and upon stipulation approved by the Commission.

Prehearing Motions and Conferences

22. Motions by any party, including motions to strike prefiled testimony and motions concerning any procedural matter connected with this Docket, shall be raised at the earliest possible time. Prehearing motions must be submitted on briefs unless otherwise requested by a party and approved by the Commission. Upon a grant of oral argument, the requesting party shall notice it for hearing before the Commission.

23. The Commission staff may set a final Prehearing Conference to discuss settlement of any issues in the proceeding; simplification of issues; possibility of obtaining admissions of

fact and documents; distribution and marking of written testimony and exhibits prior to the hearing; and other procedural matters as may aid in the disposition of the proceeding.

24. Nothing in this order shall be construed as limiting the legally established right of the Commission or its staff to inspect the books and accounts of US WEST.

25. Each party shall submit a prehearing memorandum containing a list of all issues uncontested and contested, witnesses to testify, and exhibits and discovery for introduction at hearing. The prehearing memorandum should also identify any special needs to accommodate witness sequence or scheduling. Commission staff will file a limited prehearing memorandum identifying data or discovery responses to be introduced into the record, the issue to which they are relevant , and the witnesses necessary to sponsor the responses, or alternatively, to testify.

DONE AND DATED this 26th day of October, 1999 by delegation to Commission staff as the Order of the Montana Public Service Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman
NANCY MCCAFFREE, Vice Chair
BOB ANDERSON, Commissioner
GARY FELAND, Commissioner
BOB ROWE, Commissioner