

Restructuring Testimony

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

IN THE MATTER of the) UTILITY DIVISION
Application of) DOCKET NO. D97.7.90
MONTANA POWER COMPANY
for)
Approval of its Electric Utility
Restructuring)
Transition Plan Filed Pursuant to
Senate Bill 390.)

**PREFILED DIRECT TESTIMONY OF ALAN DAVIS ON BEHALF OF THE MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE MONTANA OFFICE OF THE
NORTHWEST POWER PLANNING COUNCIL**

Introduction

Q: Please state your name and business address.

A. My name is Alan Davis, and my business address is Department of Environmental Quality, 1520 E. 6th Ave, Helena, MT 59620.

Q: Who is your employer and in what capacity do you serve?

A: I am employed by the Montana Department of Environmental Quality and in my current capacity I am serving as a principal advisor to the Governor's Office on electricity industry restructuring issues.

Q: Please state your educational background and work experience.

A: I hold B.A. and M.A. degrees in Economics from the University of Montana. My work experience since earning my degrees includes: Economist for Montana Department of Revenue (1976-1980), Energy Planning Coordinator for the Montana Department of Natural Resources and Conservation (1980-1983), Chief of the Energy Planning and Analysis Bureau, DNRC (1983-1996). I have been in my present position since 1996.

Q: Please state your experience in the development of national or regional electricity policies.

A: I serve on the Western Regional Transmission Association Board of Directors, the WRTA Planning Committee, the Western Interconnect Coordination Forum, liaison between the western states and WSCC on planning issues, and the IndeGO states task force. I have served on the National Governors' Association's Electric Utility Transmission Policy Task Force and on the Keystone II Project on Transmission. I am active in the Committee for Regional Electric Power Cooperation, represent the State on the Western Interstate Energy Board, and have served on numerous task forces and committees for the Northwest Power

Planning Council and Bonneville Power Administration. I have been involved as a charter member of Montana Power Company's Least Cost Advisory Committee.

Q: What is your previous involvement in proceedings before this Commission?

A: I have directed a number of DNRC (the predecessor to the DEQ) and DEQ interventions before this Commission including electricity and natural gas filings. I have testified a number of times before the Commission on policy issues and matters and participated in settlement discussions for both of Montana Power Company's natural gas restructuring filings.

Q: What was your involvement in SB 390, the Electric Utility Industry Restructuring and Customer Choice Act?

A: I worked with the Governor's office to develop the **Racicot Administration Electricity Restructuring Principles** that the Governor adopted to guide the legislative debate on electricity restructuring. I served as a principal negotiator of SB 390 on behalf of the Governor's office to ensure that the Administration's principles were included in SB 390, now codified at Sections 69-8-101, et seq, MCA. I am also an appointed member of the Transition Advisory Committee that was created in SB 390 to oversee the transition to customer choice in Montana.

Q: What is the purpose of your testimony in this docket?

A: I will address the policy issues surrounding functional separation, pilot programs and customer education.

FUNCTIONAL SEPARATION

Q: What is functional separation?

A: Section 69-8-103 (12), MCA defines "functional separation" as follows:

(12) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

In short, the utility is to separate its: electricity supply from its transmission system, which is already required by FERC in Orders 888 and 889; electric distribution system from its unregulated retail energy services functions and its electricity supply functions; and its distribution system from its transmission system.

Q: Which of the Racicot Administration Electricity Restructuring Principles relate to the concept of functional separation?

A: Support Principle I addresses what characteristics should be included in a restructured electricity industry. The essential features include:

A. Competition among generators of electricity and among providers of retail energy services.

B. Minimal regulation for competitive markets.

C. All customers should be able to access competitive markets and choose suppliers as quickly as possible, preferably at the same time.

Principle II states:

Consumers should be protected from market abuses and unwarranted cost shifts between customer classes.

These principles were intended to promote truly competitive markets for energy services and electric generation.

Q: What is DEQ/NPPC's interest in promoting competition?

A: Competition brings many desirable features to markets. In particular as it relates to the provision of energy and energy service, it will bring market discipline to prices and bring product and service differentiation to consumers.

Q: What is DEQ/NPPC's particular interest in competition in the provision of energy services?

A: Competition in the provision of energy services should provide many varying and different choices for customers in Montana. To date, MPC customers basically receive what has been called "pure vanilla power." In other words, MPC customers generally get the same product at the same price. There is no product or price differentiation. Energy efficiency and renewable energy products have constantly fought an uphill battle to get integrated into utility portfolios, even when these products had cost and/or environmental advantages. Irrigators have been forced to pay for winter peak, even though they make no contribution to the winter peaking problem. Innovation has never been rewarded in the utility industry because the risk/reward premium for taking chances or risks didn't exist in a regulated world.

With the passage of SB 390 and its focus on customer choice, it is critical that customers really do have a choice, not only in terms of commodity, price and generation source, but also in terms of the new and different products that customers want. There is a whole host of new products and services that are emerging in markets today that should soon be available to consumers in Montana. Many new energy suppliers are providing packages of the electricity supply, coupled with efficiency services and innovative metering and billing services tailored to the customers' needs.

If many of these products and services that could be offered by market competitors are provided by the utility as part of its regulated service to customers and included in rates, then customers would have to pay extra to get these new services from a source other than MPC. Having these competitive products and services embedded in MPC's rates significantly advantages it in the market and severely impedes the ability of other market providers to serve consumers in Montana with their products.

Q: What is the ultimate consequence of restructuring if the incumbent utility forces energy services on its existing customers at the expense of allowing competition with other energy service providers?

A: The ultimate consequence is the worst possible outcome for SB 390. MPC would end up with all its generation deregulated and no effective competition from others for its customers. In effect MPC would become a deregulated monopoly in Montana.

Functional Separation

Q: What is the purpose of functional separation of the utility?

A: The main purpose of functional separation is to prevent the formerly vertically integrated utility from using any of its monopoly-provided functions to advantage other parts of the company in markets where other providers can competitively provide these same services. If the incumbent provider is given any advantage because of its monopoly functions, the development of a competitive market will be impeded, thus voiding the advantages that competition brings to markets. Divestiture of assets would be the best way to prevent any of these abuses, but the legislature followed the path of requiring the utility to functionally separate its business enterprises and then to adopt a code of conduct within the company to prevent any self dealing or self advantage.

The two functions that should continue as monopoly services are the transmission and distribution of electricity. On either side of these monopoly functions are the energy generation and energy services functions that should be provided competitively. Functional separation is intended to prevent either the transmission system or the distribution system from giving unfair advantage to MPC's energy services or electric generation in markets where MPC is the monopoly provider.

Q: Does SB 390 require MPC to separate its energy services functions from its distribution function?

A: Yes.

Q: Please explain.

A: We were clear in our negotiations on the bill and SB 390 is clear that retail energy services must be separated from the distribution company in order to promote competition in Montana.

Section 69-8-103(12), MCA defines "functional separation" as follows:

(12) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

Section 69-8-204 (1), MCA requires that:

(1) To the extent that a public utility is vertically integrated, a public utility shall functionally separate the public utility's electricity supply, retail transmission and distribution, and regulated and unregulated retail energy services operations in the state of Montana, upon application to and approval from the commission.

Sections 69-8-103 (7) and (8), MCA define distribution facilities and distribution providers as follows:

(7) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(8) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of electricity to the public.

Section 69-8-208, MCA requires that:

(1) A public utility's distribution system service provider shall:

(a) file tariffs that make distribution facilities available to all electricity suppliers, transmission services providers, and customers on a non discriminatory and comparable basis.

Taken collectively, it is very clear that the distribution system is narrowly defined in the bill and must be separated from the energy services business and done so in specific tariffs that contain provisions for non discrimination and prevent self dealing.

Q: Does Montana Power Company's Plan provide for the functional separation specified in SB 390?

A: No.

Q: Please explain.

A: MPC has repeatedly stated that the only separation required by SB 390 is to separate the regulated from the unregulated energy services. MPC does not feel that it has to separate its energy services business from its distribution business. As a result, the lines are blurred between its regulated and unregulated businesses. This not only creates a problem for customers in the lack of true competition and choice, but creates very real opportunities for self dealing.

Q: Please be specific in your concerns regarding MPC's restructuring filing.

A: 1) MPC asserts that it doesn't have to functionally separate its distribution function from its energy services company.

2) MPC proposes to lump all charges associated with distribution, which under MPC's interpretation, includes many energy services, into a non by passable delivery service charge to all customers.

3) MPC proposes an organizational structure that comingles its regulated and unregulated business enterprises without clear firewalls to prevent self dealing between the business units.

4) MPC proposes to offer many services outside its service territory as competitive services that are included as part of the regulated distribution function within Montana.

Q: Please address each of these concerns in more detail.

A: 1) MPC has repeatedly asked the Commission to accept its interpretation of SB 390 that it only has to separate its regulated from its unregulated energy services businesses. Having made this interpretation of the statute, MPC repeatedly has refused to provide information that would allow the Commission and other parties the option of separating the distribution function from the energy services function.

DEQ/NPPC disagree with MPC's interpretation of the statute. As addressed earlier in this testimony, it is clear that SB 390 intended to separate the energy services business from the distribution function. Failure to do so not only inhibits competition, but also creates the very real potential for self dealing.

2) MPC's proposal for a fixed delivery charge lumps all cost for distribution and a host of energy services into a charge levied on a per customer basis. Dr. Nordell will discuss the Delivery Service Charge (DSC) proposal in more detail in his testimony. The concern with the DSC from the consumer perspective is that it lumps all kinds of costs, including those costs not related to distribution, into a fixed charge that can't be escaped. It also buries into one lump sum a host of charges that need to be sorted out on a cost basis. This increases the possibility of cross subsidization between the energy services and distribution function.

MPC has used its interpretation of SB 390 to avoid providing the record with adequate information to separate these costs between the regulated and unregulated functions, in spite of repeated discovery requests from DEQ/NPPC, the Commission and others. It has not provided the distribution tariff required by Section 9 of SB 390.

Finally, many of the services included in the DSC are offered on the market by many energy suppliers as competitive services. In fact MPC offers these services in California as competitive services. If these services are lumped into rates that are not escapable by customers, then the only way the customers can get take advantage of innovative or different technologies for these services offered by providers other than MPC is to pay twice for the services. Paying twice for the same service will virtually eliminate the ability of alternate providers to bring new and innovative technologies, different types of services, or lower cost services to consumers in Montana.

3) MPC proposes to have both regulated and unregulated functions in the same business units of the company. MPC has a Regulated Services Division where the regulated functions of transmission and distribution are combined with functions like DSM and metering and billing that do not need to be regulated. Many of these same services also are provided by the unregulated Supply Division. There is no clear firewall between the regulated and unregulated portions of the Division. MPC has consistently refused to provide "a code of conduct consistent with federal energy regulatory commission approved code of conduct" as required in Section 69-8-204, MCA that addresses the separation of the distribution function from the energy services function. Instead, MPC holds out its FERC-approved code as sufficient, even though the FERC code of conduct applies only to the separation of transmission from power marketing. It is silent on the separation of distribution from energy services. Failing to build the appropriate protections between the distribution function and the competitive energy services and electrical generation functions creates the possibility for market and other customer information to flow between the regulated and unregulated parts of the company, which would give advantages to MPC's affiliates. Once again MPC uses its interpretation of the statute to avoid the inclusion of basic assurances against self-dealing in a code of conduct.

4) MPC is proposing to offer metering and billing services, energy efficiency services and a host of other services as competitive services in California. Yet in Montana, MPC wants these very same services to be a part of the distribution function and loaded into charges that all customer have to take from MPC.

MPC cannot have it both ways. If these services can be offered outside MPC's service territory as competitive services, then the same should hold true with MPC's service territory. MPC can't compete in one part of the country with these services, then argue that nobody but MPC can provide these services within MPC's service territory. MPC wants to compete outside of Montana and restrict competition within its service territory. Such

inconsistency in corporate dealings reinforces DEQ/NPPC's concern that MPC's transition plan promotes MPC's energy services at the expense of other competitors.

Q: Why should metering and billing be an energy service rather than part of the distribution function?

A: MPC is offering metering and billing outside its service territory as a competitive service. Other companies also offer metering and billing services as a part of the total package of services that they offer to their customers. If MPC can offer these services outside its service territory as a competitive service, and there are competitors offering the same services, there is no reason for MPC to continue as a monopoly provider of these services in Montana.

Metering and billing is the umbilical cord connecting a utility to its customers. If metering and billing services are not severed from MPC as a part of this restructuring proposal, MPC will be able to maintain its strangle hold on its current customers. It is through metering and billing that the utility gains tremendous information about its customers. It is through metering and billing that utilities interact with their customers, including bill stuffers, on a monthly basis, and gain other customer marketing information. MPC's name and logo are on its bills, customers make out checks to MPC and all communication goes through MPC. It is also through the metering and billing that a link is provided to future energy services, such as electronic home management, burglar alarm services, and telecommunication services. If MPC's hold over the customer is not severed as a part of this restructuring filing, then MPC will maintain its ability to control its customers and inhibit competition.

As companies move to being total utility service providers, with electricity, telephone, and natural gas all provided by one company on one bill, competitors need to have fair and unfettered access to the customers. Failing to segregate metering and billing will prevent such unfettered access. With MPC owning an energy services company, an electricity supply company, a natural gas utility, a telephone company, and being a provider of Internet services, it is to MPC's advantage to not open these competitive services to other providers. These MPC affiliates should compete for customers in Montana like other competitors, based on their price and services offered. They shouldn't automatically get advantages in the market through MPC's control over its customers and access to them.

Q: What does MPC propose for metering and billing in its filing?

A: MPC proposes that metering and billing stay part of the regulated distribution company and its costs be a part of a fixed inescapable delivery service charge on all MPC customers. MPC feels that it gets to decide when metering and billing is competitive and even reserves for itself the right to decide if it is to be competitive. In MPC's response to DEQ 2-040 it stated:

"To the extent MPC is willing to entertain variations on billing, it would do so at its discretion, anytime during the transition period, and beyond."

MPC is reserving the right in its filing to make decisions on what is a competitive service and what is not. It uses this interpretation to avoid even giving the basic information on what each of these services costs. DEQ/NPPC feels this decision should be made by the Commission, rather than MPC.

Q: What do you suggest the Commission do with MPC's transition plan as it relates to functional separation?

A: DEQ/NPPC makes the following recommendations to the Commission on functional separation:

- 1) The Commission should amend MPC's plan to functionally separate its business enterprises consistent with SB 390, but more importantly should require MPC to clearly separate its regulated from its unregulated functions. The Commission should direct MPC to file the necessary cost information to do this.**
- 2) The Commission should require MPC to create clear firewalls between its regulated and unregulated business enterprises and require a code of conduct consistent with FERC's that clearly separates the distribution function from the energy services and power marketing business. These firewalls need to involve all MPC employees, including upper management.**
- 3) The Commission should amend MPC's plan to include only those services that are essential to the distribution system in the regulated part of the company. As a basic rule, if MPC's subsidiaries can offer the service outside of MPC's service territory, then it should be an unregulated function, rather than a part of the regulated distribution function. However, these decisions should not just be based on what MPC offers, but should be based on what services can be provided competitively. If the Commission should err, it should err on the side of competitively providing as many services as possible and removing them from the distribution tariff.**
- 4) The Commission should specify that MPC's metering and billing and efficiency programs are to be a part of the unregulated business and not lumped into distribution service rates.**
- 5) MPC's delivery service charge proposal needs to be broken into its component pieces and only those charges specific to the distribution system should be included in the charges.**
- 6) The Commission should direct MPC to file a distribution services tariff for its wires-only distribution business as required by Section 69-8-208 (1)(a), MCA, which includes the provisions that prevent self dealing.**
- 7) Prior to any deregulation of MPC's generating assets or approving any recovery of stranded costs, the Commission must require MPC to open its system to competition, functionally separate its regulated and unregulated businesses and provide appropriate protections to prevent self dealing.**

PILOT PROGRAMS

Q: What is the purpose of pilot programs as required by SB 390?

A: In SB 390 the basic assumption is that retail customer choice is going to work and be available to all customers on MPC's system at the end of a 4-year transition period. SB 390 uses pilot programs with the intention of creating a logical pathway to full customer choice at the end of that period, rather than all customers getting choice at one time. The pilot programs are also designed to gather information on whether workable competition exists in Montana in the provision of electricity supply and energy services. Pilot programs will help provide information to determine whether competition is working in Montana. The pilots

are to test the utility's technical and administrative systems for offering retail choice, and to find the best means to encourage the development of markets, find the best way to offer customer choice, and test suppliers' level of interest in providing customer choice. Pilot programs are intended to provide a logical pathway to full retail choice for MPC customers at the end of the transition period and determine if there is workable competition, rather than determine at the end of the pilot whether to offer retail choice for all customers.

Q: Why is this pathway to choice concept such an important feature of pilot programs in Montana?

A: Many of the pilot programs around the country were intended to see if retail choice was a viable option to consider and as such had a beginning and ending date. California, on the other hand, decided against using pilot programs and moved to provide retail choice to all customers on January 1, 1998. Montana took the middle road and set a specific date when all customers will have choice and opted for pilots as the way to get there. This is significant because it shifts the purpose of the pilot programs from simply testing the concept of retail choice, to the process of successfully getting it implemented and determining whether there is workable competition once it happens.

Q: What is the irony of pilot programs as they relate to a utility?

A: The irony of pilot programs is that we are asking a utility, in this case MPC, to set up and operate programs whose purpose is to provide a different electricity supplier to customers that the utility has historically served. In effect, we want the utility to promote its customers switching to its competitors.

Q: Why does this matter?

A: I think that care must be taken to make sure that the pilot programs are successful and include key elements that will cause them to succeed. Some of the pilots offered by utilities around the country had features that seemed to make them more likely to fail than succeed.

Q: Do you have an overall concern about MPC's interest in the outcome of the pilot programs it operates?

A: Yes. If the pilot programs fail or are unsuccessful in getting customers to choose, then we will end up in a situation where customers have choice, but no effective competition. We will end up with MPC in effect being a deregulated monopoly in Montana. My real concern is that MPC doesn't have any real incentive to make these pilots work and, in fact, stands to benefit if they do not succeed in getting workable competition into Montana.

Q: How do you propose to solve this problem?

A: It is important to make sure that these pilot programs don't fail because of their design, their operation, or because they discourage customers or competitors from participating. These pilots are extremely important in Montana's pathway to customer choice and merit special attention and oversight to make sure they succeed.

Q: What should be tested in pilot programs in Montana?

A: Section 69-8-104, MCA, lays out the basic test parameters for pilot programs. In addition to the utility's ability to test its system, the pilots should make sure that a true path to competition is created and simulate, to the extent possible, what the market will operate like

in the future. This includes specifically testing the concept of market aggregation and affording market aggregators the opportunity to bring logical aggregations forward to the pilots and giving new service providers a simple and easy process to access customers.

Q: You have attended a number of presentations on the success and failures of pilot programs and customer education. What are some key features that make for successful pilot programs?

A: 1. There needs to be a large number of customers eligible to participate in the program and they should come from all customer classes. There not only has to be enough customers to truly test the system, but there has to be a sufficient number of customers to be of interest to potential new entrants into the market. The programs are trying to simulate a market with full customer choice, so the more customers there are in the market, the more it looks like the true market that will exist at the end of the transition period.

2. Few restrictions should be applied on competitors that are coming into the program. Since utilities are running the program to get new competitors to their former customers, care must be taken so as not to discourage either new competitors or customers wanting to participate in the programs. New competitors must have unfettered access to customers. The program needs to be designed so it doesn't fail simply because of being poorly designed.

3. It has to be simple for customers to get in and sign up. Unnecessary paperwork or any unnecessary activities that cause more time to be spent getting into the program will turn off people intending to enter the programs. The less people have to do to participate, the more likely they are to do so.

4. The sign up period needs to be open ended--that is it needs to provide the option of signing up at the beginning of the pilot and throughout the customer choice period. It needs to ramp up at a logical rate that doesn't frustrate those wanting to get to choice from having it.

5. Early education is a key ingredient to a successful pilot program. The pilot program needs to educate customers to be aware of the option to choose and then it needs to continue with a consumer education component throughout the duration of the pilot program. (See education discussion section for further detail). What is most important is that the consumer education program be in place and operating with sufficient lead time to inform customers about what will happen to them as they move to retail choice, the beginning of the pilot programs, and how to go about choosing a new electricity supplier in the pilot program.

6. Competitors must have the ability to retain a customer that signs up with them through and after the transition period to full customer choice. The pilots can't stop and start throughout the transition to choice. If a pilot program ends before the date of full retail choice and pilot participants have to go back to their utility provider, electricity suppliers lose the ability to continue to serve their customers as soon as the pilot ends, even though their customers were satisfied with their service. Such restrictions greatly inhibit the ability of electricity suppliers to compete for new customers. This was a major issue that new competitors raised as a design flaw with some of the less successful pilot programs throughout the country.

7. Interested customers should be able to participate as soon as they are ready. The pilots should take customers on a first come, first serve basis, with no further restrictions. Those that want choice should be able to be first in line to get it.

8. Aggregators and brokers should have the ability to bring aggregations of customers into the pilot program and the ability to serve customers they get into the program. Since it appears that aggregation is going to be a key feature of open access markets, the pilots need to be cognizant of this and test how it will work as a part of the program.

9. Pilots need to test the utility's infrastructure to deliver choice, in a way that does not inhibit competition.

Q: Does MPC's proposed pilot program comport to the key features of success that you mentioned?

A: It is hard to be real specific with what MPC's proposed pilot program is because it is evolving throughout the proceeding. In general, however, MPC's pilot program appears to be a small scale cautious plan designed more to test the utility's ability to offer retail choice than to test what might actually occur with full retail choice. Specifically, some of the initial concerns DEQ/NPPC has with MPC's pilot program include:

- 1) It has too few customers eligible in the pilot and ramps up too slowly.
- 2) MPC has total control of all aspects of the pilot at each step in the pilot program; the customer has to keep going back through MPC controlled processes.
- 3) The random selection process creates a real barrier for new market entrants to get customers in the program if they decide to sign up. They sign them up, then there is no assurance that they will even be selected for the pilot program.
- 4) The pilot program is unclear as to how MPC's subsidiaries are treated in the pilots or how and whether MPC affiliates should be allowed to participate.
- 5) MPC places itself in the position of looking out for the customers' interests in dealing with outside suppliers in the pilot program.
- 6) MPC has all suppliers going through MPC to access customers rather than providing the ability for suppliers to directly access customers.
- 7) MPC is in control of all information in the process.
- 8) MPC restricts aggregators' ability to bring customers into the program. Groups of customers that band together and find an aggregator would be effectively restricted from coming into MPC's program.
- 9) MPC does not provide an element to educate customers about the pilot programs.

In general, it is DEQ/NPPC's opinion that MPC's pilot programs are overly restrictive and will inhibit rather than promote the pathway to full retail choice for customers in Montana.

Q: Does DEQ/NPPC have any concerns about the timing of the pilot program development and the timing of this docket?

A: Yes. Both the pilot programs and consumer education components of MPC's plan are evolving as this docket is proceeding. They are critical parts of the overall transition plan that MPC is seeking to have the Commission approve. Details of the pilot and the consumer

education programs need to be decided in detail sufficient to ensure that they will succeed prior to the Commission approving MPC's plan. Prior to any deregulation of MPC's generating assets or approving any recovery of stranded costs, the Commission must approve MPC's pilot programs.

Q: Is the collaborative effort being undertaken by MPC to develop pilot programs making progress on MPC's pilot programs?

A: Yes, while it is too early to tell what will eventually come out of the process, there seems to be a healthy dialogue and exchange of ideas heading toward developing pilot programs that ultimately will be successful. DEQ/NPPC, however, is not willing to default to the collaborative process to resolve all the issues surrounding pilots at the expense of putting our thoughts and recommendations in the record for the Commission's consideration. The agreements in the collaborative are not binding on MPC.

Q: What specific recommendations would you suggest to improve MPC's pilot programs.

A: 1) The number of customers eligible to begin with should be increased and the ramp up to full customer choice should be faster. All customers should be initially eligible and at least 10 percent of the customers should be able to choose an alternate supplier initially.

2) The customer enrollment program should be open-ended for customers to sign up anytime during the transition to full customer choice.

3) The random selection process needs to be eliminated and replaced with a first come, first served process for customers wanting to participate.

4) Aggregators should be able to bring blocks of customers into the program.

5) New energy suppliers should be able to offer metering, billing, and other energy services to customers without a financial penalty to those selecting them.

6) There needs to be a simple process for signing up for the pilots.

7) The barriers for new suppliers to serve customers should be eliminated. The new suppliers should have unfettered access to all of MPC's customers.

8) MPC needs to have all the institutional mechanisms and infrastructure in place to provide full choice to those selecting alternate suppliers by July 1, 1998.

9) Aggregators and new suppliers need to be given assurances that they will have the opportunity to get new customers at the beginning, retain them throughout the transition, and after the date that full retail choice occurs.

10) The education program for the pilot program should be up and running before the pilot program begins, even if this means delaying the advent of choice for a few months for smaller customers.

11) While all customers should be eligible for entry into pilot programs, a more efficient strategy might be to initially target certain geographic areas, such as

Missoula or Helena.

12) Consideration should be given to hiring an independent pilot administrator to avoid any potential for self dealing in the program

13) MPC's affiliates should be restricted from participating in pilot programs.

14) While testing the infrastructure is important, many utilities will be offering retail choice throughout the country, which suggests that this should not be a problem for MPC. The Commission should make it clear to MPC that it will accept nothing less than success in MPC's technical ability to offer choice to consumers in the pilot programs.

15) The Commission should not approve other aspects of MPC's transition plan, such as deregulating generation or recovery of stranded costs, until the pilot programs are approved.

Customer Education

Q: What is the importance of customer education in the pathway to full retail choice?

A: Allowing customers to choose an electricity supplier is a significant change from the way electricity has been provided to consumers. There is a profound change in actions and responsibilities for consumers. In order for competition to take place and for customers to take full advantage of what is available in terms of choice and products, they need to have good information. Consumers need to know what is happening to them specifically and to all electric service consumers in general. They need to know how to participate in the new market for electricity and how to get into pilot programs offering choice. They also need to know what new responsibilities come with getting the opportunity to choose. Finally, since their electricity bill will be changing, they need to have all the changes explained to them. In short it is a monumental change in an industry whose product is essential.

Q: How does education relate to pilot programs?

A: Customers need to know what is happening to them as it relates to choosing an electricity supplier, and once they know that choice is available, they will need to know how to get into a pilot program. For either full retail choice or pilots to succeed, a significant educational program must be in place prior to beginning and throughout the transition to customer choice.

Q: What is the irony of asking a utility to run customer education programs regarding customer choice?

A: The irony is that we are asking a utility, in this case MPC, to objectively educate its customers in a way that might lead them to choose another supplier. In effect, we are asking MPC to promote its competition.

Q: Why does this matter?

A: It is important in that there is a very fine line between marketing and consumer

education. It is going to be hard to define much of the information regarding customer choice as either marketing or educational. Clearly MPC cannot use its education program to give itself advantages in the world of full retail choice. The trick is how to objectively educate the customer in such a way that no advantage goes to anybody in terms of serving that customer. This is particularly difficult when MPC is the entity that is supposed to do the education.

Q: Do you have an overall concern about MPC interest in the outcome of the education programs it operates?

A: Yes. DEQ/NPPC's concerns about MPC's consumer education program mirror our concerns about pilot programs. If the consumer education programs promote MPC or are unsuccessful in educating customers about choice, then we will end up in a situation where customers have choice, but no effective competition. We will end up with MPC in effect being a deregulated monopoly in Montana. My real concern is that MPC doesn't have any real incentive to make its education program work and, in fact, stands to benefit if it does not succeed in getting workable competition into Montana.

Q: How do you propose to solve this problem?

A: It is important to make sure that the consumer education programs don't fail because of their design, their operation, or because they discourage customers from switching. The education program is intertwined with the success of pilot programs for MPC's customers. Both the education program and pilot programs are extremely important in Montana's pathway to customer choice and merit special attention and oversight by the Commission through the transition to make sure they succeed.

Q: What are DEQ/NPPC's concerns relating to consumer education?

A: DEQ/NPPC has five major concerns regarding consumer education. They are:

- 1) Consumers should get consistent and factual information regarding customer choice.
- 2) Consumers must be able to go to an objective source for their information or to answer their questions.
- 3) The education program should be developed in such a way that it does not provide advantages to any particular electricity supplier, especially MPC.
- 4) Educating consumers regarding choice needs to be clearly separated from MPC's marketing efforts.
- 5) The consumer education programs must be in place and operating successfully prior to the beginning of pilot programs.

Q: Does DEQ/NPPC have any concerns about the timing of the education program development and the timing of this docket?

A: Yes. Both the pilot programs and consumer education components of MPC's plan are evolving as this docket is proceeding. They are important parts of the overall transition plan that MPC is seeking to have the Commission approve. The features of the pilot program and the consumer education programs need to be decided in detail sufficient to ensure that they will succeed prior to the commission approving MPC's overall transition plan. The

Commission shouldn't deregulate generation or authorize stranded cost recovery until the pilot programs and consumer education programs are approved.

Q: Does MPC's education plan address DEQ/NPPC's major concerns regarding education?

A: No definitive statement can be made because MPC's education plan is being developed concurrently with this docket, but outside of the Commission proceedings.

Q: Is MPC's collaborative effort to develop education programs making progress in terms of improving MPC's education plan?

A: Yes, while it is too early to tell what will eventually come out of the process, there seems to be a healthy dialogue and exchange of ideas headed toward developing an education program that ultimately will be successful. However, DEQ/NPPC is not willing to default to the collaborative process to resolve all the issues surrounding consumer education rather than putting our thoughts and recommendations in the record for the Commission's consideration. The agreements in the collaborative are not binding on MPC.

Q: Is MPC responsible for consumer education in its service territory?

A: According to SB 390 the answer is yes, but DEQ/NPPC thinks some practical considerations should be involved in consumer education.

Q: What are some of these considerations?

A: 1) Circulation areas of newspapers in a particular town or the area of broadcast coverage by television stations do not coincide with utility service territory boundaries. In fact, many customers of electric cooperatives or PacifiCorp may receive their main information about choosing a new electricity supplier through print, radio or television ads purchased by MPC. The general message of retail electric choice concerns all Montanans, but may only be available in one part of the state or only in certain service territories. Pilot programs offering retail choice may only be available to certain parts of the media market.

2) DEQ/NPPC suggests that it is going to be particularly difficult to draw the line between consumer education and marketing. If consumers receive consumer choice information with MPC's logo all over it, is it MPC marketing or education? These matters are very hard to sort out. Many of the brochures DEQ/NPPC has seen regarding customer choice in other states seem to be more designed to display the utility logo than to convey information about pilot programs or customer choice.

Q: What does DEQ/NPPC suggest to resolve some of these issues?

A: DEQ/NPPC suggests that serious consideration be given to developing an independent source of information for consumers regarding customer choice and that all utilities and cooperatives finance the education program in proportion to their loads.

Q: Can this independent source of information funded by utilities and cooperatives be created in this docket?

A: No, the Commission can only modify MPC's transition plan to require MPC to participate in such an independent program.

Q: What does DEQ/NPPC recommend to the Commission regarding MPC's consumer education program?

A: 1) The Commission should lay down basic guidelines for MPC consumer education programs to define the line between marketing and consumer education, including provisions to ensure that MPC's consumer education program in no way gives any advantages to MPC or any of its affiliates in the competitive energy supply and energy services markets.

2) The Commission should require that all consumer education materials be reviewed and approved by the Commission prior to release. Included in this recommendation is that the materials be void of corporate identifiers.

3) The Commission should establish itself as an independent source of information for all MPC consumers regarding consumer choice and pilot programs. This would be in addition to whatever the utilities do.

4) The Commission should require MPC to participate financially in an independent consumer education program or at least contract for an independent operator of its education program, with the contract being approved by the Commission.

5) The Commission should adopt a complaint or sanction process for energy suppliers or energy service providers that believe MPC's educational efforts have crossed the line between marketing and consumer education.

6) The Commission should direct MPC to begin its consumer education program as soon as possible with materials and a program approved by the Commission.

7) The Commission should direct that MPC's consumer education program must be in place for a sufficient amount of time prior to the beginning of pilot programs for MPC's customers.

8) The Commission should not approve other aspects of MPC's transition plan, such as deregulating generation or recovery of stranded costs, until the consumer education programs are approved.

Q: Does this conclude your testimony?

A: Yes it does.