

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE COMPLAINT FILED)	ORDER GRANTING MOTION
BY JOHN REINTS, RAPID CITY, SOUTH)	TO DISMISS COMPLAINT
DAKOTA, AGAINST MONTANA-DAKOTA)	AND CLOSING DOCKET
UTILITIES CO. REGARDING ITS FLAT)	CN03-003
MONTHLY CHARGE)	

On October 29, 2003, the Public Utilities Commission (Commission) received a complaint filed by John Reints, Rapid City, South Dakota (Complainant), against Montana-Dakota Utilities Co. (MDU) regarding its flat monthly charge.

On October 29, 2003, the complaint was faxed to MDU. Pursuant to ARSD 20:10:01:09, MDU was notified that it must satisfy the complaint or file an answer in writing with the Commission by November 18, 2003. On November 5, 2003, the Commission received an Answer and Motion to Dismiss from MDU. On November 13, 2003, the Commission received Complainant's Response to Respondent's Motion to Dismiss & Complainant's Petition to Amend Complaint.

On December 2, 2003, at a regularly scheduled meeting, the Commission considered this matter. The Commission voted unanimously to grant the motion to dismiss and to dismiss the complaint and close the docket. Having considered MDU's Motion to Dismiss, the pleadings of the parties and the oral arguments of the parties, the Commission makes the following Findings of Fact, Conclusions of Law and Final Decision and Order:

FINDINGS OF FACT

1. The Complaint does not allege that the minimum monthly base rate included by MDU on Complainant's monthly bills is inconsistent with MDU's Gas Rate Schedules tariff filed with the Commission on December 22, 1994, approved by the Commission in Docket No. NG94-012 and currently in effect.
2. The Commission takes judicial notice that MDU's filed Gas Rate Schedules tariff, Section No. 3, 19th Revised Sheet No. 1, "RESIDENTIAL GAS SERVICE Rate 60," filed on December 22, 1994, with an effective date of January 1, 1995, states that residential customers' bills will include a "Base Rate Per Month" of \$7.00 for customers with meters rated under 500 cubic feet per hour and that the minimum bill will be the "Base Rate."
3. The Commission takes judicial notice that MDU's filed and Commission-approved gas rate tariffs have continuously included a minimum monthly base rate charge since the 1970s.
4. The Commission takes judicial notice that all of the Commission-approved electric and gas residential rate tariffs on file for all utilities in South Dakota include minimum monthly customer charges. The Commission accordingly finds that it has considered and resolved the competing policy factors of allowing such charges on many occasions.
5. The Commission takes further judicial notice that Docket NG02-011, filed on December 30, 2002, was a rate proceeding involving the very rates of which the Complaint complains, that NG02-011 was pending before the Commission throughout the period since Complainant filed the Complaint and that Complainant did not intervene or comment in the NG02-011 rate proceeding.

6. The Commission finds that there is nothing alleged in the Complaint that advises the Commission of rate-making policy facts of which the Commission was not aware at the times it has considered the issue of minimum monthly customer charges on the numerous instances they have been before the Commission, including in Dockets NG94-012 and NG02-011, and accordingly finds that the Complaint fails to make a sufficient showing to justify the Commission's initiation of an investigation and a rate proceeding as to MDU's tariffed gas rates.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 15-6, 49-1 and 49-34A, including 1-26-18, 49-1-11(4), 49-34A-3, 49-34A-6 and 49-34A-26 and ARSD 20:10:01:11.01.

2. The Commission, MDU and Complainant are bound by the MDU Gas Rate Schedules tariff currently on file and in effect.

4. The minimum monthly base rate of which the Complaint complains does not violate the filed MDU Gas Rate Schedules tariff and is accordingly not unlawful. As a properly approved and tariffed rate, the minimum base rate is not subject to challenge by complaint other than through a complaint pursuant to SDCL 49-34A-26 seeking an investigation by the Commission and, if deemed warranted by the Commission, the initiation by the Commission of a rate proceeding.

5. Administrative rate setting is a quasi-legislative, not a quasi-judicial function. SDCL 49-34A-26 affords the Commission broad discretion as to whether to initiate an investigation and initiate a rate proceeding upon the filing of a complaint.

6. The Commission concludes that the Complaint does not state facts that are different from the general policy factor considered by the Commission in the numerous instances, including Docket NG94-012 and the recently decided Docket NG02-011, in which the Commission has had to balance the competing economic and social interests involved in fairly apportioning directly assignable fixed customer service costs between fixed charges and usage-based charges.

7. The Commission concludes that the Complaint does not state a sufficient basis for initiating an investigation under SDCL 49-34A-26, that MDU's motion to dismiss should therefore be granted and that the Complaint should be dismissed and the docket closed.

It is therefore

ORDERED, that MDU's motion to dismiss is granted, the complaint is dismissed and the docket is closed.

PLEASE TAKE NOTICE that this Final Decision and Order was duly entered on the 22nd day of December, 2003. Pursuant to SDCL 1-26-32, this Final Decision and Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to ARSD 20:10:01:30.01, an application for a rehearing or reconsideration may be made by filing a written petition therefor and ten copies with the Commission within 30 days from the date of issuance of this Final Decision and Order. Pursuant to SDCL 1-26-31, the parties have the right to appeal this Final Decision and Order to the appropriate Circuit Court by serving notice of appeal of this decision to the circuit court within thirty (30) days after the date of service of this Notice of Decision.

Dated at Pierre, South Dakota, this 23rd day of December, 2003.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Helaine Kalbs

Date: 12/23/03

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner

