

Service Date: December 29, 2004

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

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IN THE MATTER of the Application of)	UTILITY DIVISION
THE MONTANA POWER COMPANY's)	
1) Approval of the Default Supply Portfolio, and)	DOCKET NO. D2001.10.144
2) the Projected Electric Cost Tracking for the)	ORDER NO. 6382f
12-Month Period Beginning July 1, 2002.)	

**ORDER ON MOTION FOR WAIVER OF TIME
AND RECONSIDERATION OF ORDER NO. 6382e;
ORDER ON PETITION FOR RETURN OR
DESTRUCTION OF PROTECTED MATERIALS;
ORDER ON RECONSIDERATION OF
ORDER NO. 6382e.**

Introduction and Background

On August 3, 2004 the Commission issued Order No. 6382e in this docket, Order on Remand/Notice of Compliance.¹ The detailed background to Order No. 6382e is provided in that Order; but, in short, that Order was issued to implement the remand direction of the Montana Supreme Court in Great Falls Tribune v. Public Service Commission and Montana Power Company, 2003 MT 359, 319 Mont. 38, 82, P.3d 876, as directed also by a July 2, 2004 Order of the district court, Lewis & Clark County, Cause No. CDV-2001-708. Order No. 6382e directed NorthWestern Energy (NWE) to refile a request for protective order in this docket by August 24, 2004, or Protective Order No. 6382 would be vacated and any information subject to that Order would be made public.

NWE's response to Order No. 6382e was neither to refile for a protective order, nor to let Protective Order No. 6382 lapse, but rather to file on August 27, 2004 a Petition for Return or Destruction of Protected Materials. The Commission has not acted on this Petition, but continued in effect Protective Order No. 6382, pending such action, and pending other matters as explained below.

Following the Great Falls Tribune decision in December, 2003, the Media (the Great Falls Tribune and other media entities) sought attorney fees in district court from the Commission and

NWE jointly. The district court denied attorney fees, a decision the Media appealed to the Montana Supreme Court in the late summer of 2004. The appeal was subject to mandatory mediation under the appellate rules, and a mediator was assigned and mediation ensued.

The mediation of the Media appeal of the district court's decision on attorney fees occurred in September and October of 2004. A settlement agreement among the parties was reached fairly quickly, and assignment was made to draft settlement documents. Before those documents could be executed, however, NWE indicated its desire and position that the attorney fee settlement should also settle, to the extent possible, any remaining issues and disputes related to the remaining protected information in this docket. The Commission was not involved directly in this discussion, and could not commit to anything beyond settling the attorney fee appeal. Through its attorney, however, the Commission indicated to NWE that it would consider a NWE proposal that would satisfy the interests of NWE, the Media, and the Commission.

On December 10, 2004 NWE filed a Motion for Waiver of Time and Reconsideration of Order No. 6382e. NWE asks the Commission to waive ARM 38.2.4806 as necessary to permit reconsideration of Order No. 6382e. NWE explains that, as part of the settlement of the attorney fees appeal, the Media has agreed to an understanding regarding the Media's current interest in information covered by Protective Order No. 6382. That understanding, memorialized in a letter to NWE attorney Tim Sweeney from Media attorney Jennifer Hendricks, is attached to the NWE Motion and reads as follows:

This is to confirm the understanding we have reached regarding the Petitioners' current interest in obtaining access to the documents, currently subject to a PSC protective order, that have been the subject of the referenced litigation.

At this time, because some of the information has already been voluntarily released by Northwestern and because other subsequent proceedings before the PSC are of more current public interest, the Petitioners are not interested in obtaining the documents that are still deemed subject to the protective order. It is therefore the Petitioners' view that, with the settlement of the issue of attorney fees, all parties can consider this litigation concluded.

All parties understand that future events may render these documents matters of public interest once more. The Petitioners reserve the right to request access to these documents if they have need for them in the future. In addition, we have acknowledged that we are settling this case and reaching this understanding without any assurances regarding what action the PSC

¹ This Order does not change the Notice of Compliance.

may decide to take with respect to the documents, based on the PSC's prior order setting a deadline for a motion to keep the materials protected and the subsequent filings by both of us.

Based on this understanding NWE asks the Commission to rescind Order No. 6382e, and the direction therein to refile or lose protection for certain information. NWE contends that the understanding indicates the Media does not want "to still pursue this matter" (see language of the Supreme Court cited at Order No. 6382e, p.3) and that "requiring NWE to re-file for a protective order in this matter no longer serves a useful purpose." NWE asks that Protective Order No. 6382 remain in force.

Discussion

The Commission agrees that the Media/NWE understanding changes the basis of Order No. 6382e, which was issued under the implicit assumption that the Media did want to continue its challenge of Protective Order No. 6382. Now that that assumption is no longer correct, there is good reason to reconsider Order No. 6382e. Protective Order No. 6382, as affirmed at Order No. 6382b, Order on Providers' Claims of Confidentiality, does represent an independent determination of protectability, consistent with Great Falls Tribune, and subject to challenge pursuant to ARM 38.2.5008.

Conclusions of Law

1. All conclusions of law reached above are incorporated herein.
2. The Montana Public Service Commission (Commission) regulates the rates and services of public utilities. Title 69, Chapter 3 and 8, MCA.
3. NorthWestern Energy (NWE) is a public utility subject to the jurisdiction of the Commission.
4. NWE, when required to provide information to the Commission, may request a protective order.
5. The Commission may issue protective orders pursuant to § 69-3-105, MCA.
6. This order lawfully implements the remand instructions of the Supreme Court and the remand order of the district court, as discussed above and at Order No. 6382e.

Order

ARM 38.2.4806 is waived to allow reconsideration of Order No. 6382e. The

Commission rescinds Order No. 6382e and the direction therein that NWE refile for a protective order in this docket. Protective Order No. 6382 in this docket remains in force and effect, subject to challenge by the Media, other persons with standing, or the Commission on its own motion. NWE's Petition for Return or Destruction of Protected Materials is denied.

DONE AND DATED this 21st day of December 2004, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman

TOM SCHNEIDER, Vice Chairman

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner

JAY STOVALL, Commissioner

ATTEST:

Connie Jones
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 ARM 38.2.4806.