

Service Date: July 28, 2003

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

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IN THE MATTER OF NORTHWESTERN ) UTILITY DIVISION  
ENERGY, LLC, Annual Application to )  
Implement its Unreflected Gas Cost, Gas Cost ) DOCKET NO. D2002.11.140  
Tracking and Gas Transportation Adjustment )  
Clause Procedures ) ORDER NO. 6468d

IN THE MATTER OF NORTHWESTERN ) UTILITY DIVISION  
ENERGY, Annual Application to )  
Implement its Unreflected Gas Cost, Gas Cost ) DOCKET NO. D2003.6.66  
Tracking and Gas Transportation Adjustment )  
Clause Procedures ) ORDER NO. 6491c

**ORDER ON RECONSIDERATION**

On July 3, 2003, the Public Service Commission (PSC) issued a final order in NorthWestern Energy's (NWE) 2002/2003 gas tracker, *PSC Docket No. D2002.11.140, Order No. 6468c*, and an interim order in NWE's 2003/2004 gas tracker, *PSC Docket No. D2003.6.66, Order No. 6491a*. Combined, the orders determine NWE was imprudent in acquiring gas supplies as a default gas supplier and implement a corresponding adjustment (reduction) of approximately \$12 million in NWE revenues. Motions for reconsideration have been received from NWE, Colstrip Energy Limited Partnership, Yellowstone Energy Limited Partnership, MBIA Insurance Corporation, and IBEW Local 44. The PSC has considered the motions and denies them, determining no compelling basis for reconsideration has been presented.

Done and dated this 22nd day of July, 2003, by a vote of 3-2.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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BOB ROWE, Chairman  
(concurring opinion attached)

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THOMAS J. SCHNEIDER, Vice-Chairman

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MATT BRAINARD, Commissioner

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GREG JERGESON, Commissioner  
(voting to dissent)

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JAY STOVALL, Commissioner  
(voting to dissent)

ATTEST:

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Commission Secretary  
Barbara Effing

(SEAL)

OPINION OF CHAIRMAN ROWE

NorthWestern's motion for reconsideration in D2002.11.140 did not raise (and I think should have raised) the issue of further proceedings concerning what remedy is appropriate once a finding of imprudence has been made. Instead NorthWestern requested that the Commission reverse its imprudence determination outright.

The record in this matter, as it stands, leads to the Commission's finding of limited imprudence. Reasonable people may disagree concerning whether NorthWestern was imprudent in specific practices, as the Commission found, or whether those practices were in all respects prudent; however, the Commission's decision was clearly based on the record. Further, anyone moderately attentive to the docket as it progressed through discovery and hearing should have fully appreciated the aspects of prudence which were the area of focus. The only thing "surprising" about the prudence elements of concern is that anyone who participated in the hearing was at all surprised.

In the Commission's deliberation on the motion for reconsideration, I supported a supplemental proceeding to address the appropriate remedy for partial imprudence. Such a proceeding could have been narrowly focused on any offsets in gas costs, storage and other expenses during a specified period, as was the subject of one motion that failed; or, it could have concerned remedies generally, as was the subject of another motion that failed. Such a process is widely used in both criminal and civil litigation, and would have been especially valuable here. It is noteworthy that in only several paragraphs does NorthWestern's motion for reconsideration address specific concerns raised by the remedy set out in the Commission's initial order, as opposed to more general disagreement with the order as a whole. NorthWestern's specific remedy-related concerns, along with any other concerns with remedy (including matters of fairness, balance, incentives, and concerns raised by interveners in D2003.6.66), would have been addressed by passage of one of the two motions. It is a missed opportunity for all parties, and for the Commission, that a supplemental remedy proceeding was not undertaken.

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BOB ROWE, Chairman