

Service Date: October 15, 2004

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, Complaint by Yellowstone Valley	)	
Electric Cooperative and Investigation by	)	DOCKET NO. D2004.3.43
Public Service Commission	)	ORDER NO. 6606

**FINAL ORDER**

Introduction

1. On March 12, 2004, Yellowstone Valley Electric Cooperative, Inc. (YVEC) filed before the Public Service Commission (PSC) a complaint against NorthWestern Energy (NWE). The complaint pertains to NWE's electric service activities within an area near Billings, Montana (i.e., general area west of Billings, Ironwood Estates, Rehberg Ranch Subdivisions). The area is governed by a PSC-approved exclusive service agreement between YVEC and NWE.

2. On April 2, 2004, the PSC issued a notice of the YVEC complaint to NWE. On April 23, 2004, NWE responded to the complaint and included a motion to dismiss the YVEC complaint on jurisdictional grounds. On April 27, 2004, YVEC replied to NWE's response. On May 27, 2004, NWE filed a motion to reject the YVEC complaint and the YVEC reply on the basis that YVEC is a corporation, a corporation must be represented by an attorney in the practice of law, the YVEC activity before the PSC is the practice of law, and YVEC has not been represented by an attorney.

Discussion

3. Prior to the complaint YVEC and NWE entered into an exclusive service agreement governing the service area subject to YVEC's complaint. The PSC approved that exclusive service agreement on March 28, 2003. *PSC Docket No. D2002.11.144, Order No. 6487.*

4. The YVEC complaint appears to properly recognize the limits of PSC jurisdiction regarding PSC-approved exclusive service agreements. NWE's first motion to dismiss also properly recognizes the extent of PSC jurisdiction. The PSC has authority to approve exclusive service agreements. § 69-5-112, MCA. The PSC does not have jurisdiction regarding disputes related to exclusive service agreements and such disputes are to be resolved in court. §§ 69-5-110 and 69-5-111, MCA. To the extent the YVEC complaint requests the PSC to interpret or enforce the YVEC / NWE exclusive service agreement the YVEC complaint must be dismissed. The PSC does not have the power to hear and decide disputes regarding approved exclusive service agreements.

5. YVEC also complains regarding NWE's line extension policies in the service area subject to the YVEC complaint. YVEC's standing (legally protectible interest) to complain in regard to proper application of NWE's line extension policy might be questionable insofar as YVEC is disputing NWE's activities within the service area governed by the YVEC / NWE exclusive service agreement. If NWE is not violating the exclusive service agreement, it is difficult to identify either an actionable harm to YVEC or any other basis for YVEC standing.

6. NWE has provided a response to YVEC's complaint regarding application of the NWE line extension policy. NWE suggests YVEC is not properly recognizing NWE's free extension tariff and the distinction between line extensions and system upgrades. The PSC determines that NWE has adequately described its line extension policy, which appears to have been applied correctly in the area subject to the YVEC complaint. The YVEC complaint does not include information that would tend to specifically demonstrate a question of fact regarding application NWE's free line extension tariff or the distinction between line extensions and system upgrades.

7. NWE has also raised the issue of YVEC appearing before the PSC in violation of laws governing the practice of law. The PSC agrees that YVEC is a corporation and a corporation must appear through legal counsel in all matters that constitute the practice of law. Given the above actions regarding the YVEC complaint, the PSC determines it need not rule on the issue raised by NWE. However, YVEC is advised that it must act in PSC matters involving

the practice of law through legal counsel.

ORDER

IT IS HEREBY ORDERED the complaint of Yellowstone Valley Electric Cooperative, Inc., against NorthWestern Energy is dismissed. Dismissal is without prejudice regarding NorthWestern Energy implementation of line-extension policies in the area subject of the complaint. If Yellowstone Valley Electric Cooperative, Inc., chooses to refile a complaint regarding NorthWestern Energy's application of its line extension policy, representation by legal counsel is advisable (and may be required in law), standing to complain must be demonstrated, and specific instances of violation of the line extension policy, including good cause why NorthWestern Energy's existing free line extension tariff would not apply and why the specific provision of service is not a system upgrade, to which line extension is not applicable.

Done and dated this 10th day of August, 2004, by a vote of 4-1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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BOB ROWE, Chairman

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THOMAS J. SCHNEIDER, Vice-Chairman

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MATT BRAINARD, Commissioner

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GREG JERGESON, Commissioner  
(voting in dissent)

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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 38.2.4806, ARM.