Service Date: December 17, 2008

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

IN THE MATTER OF NORTHWESTERN ENERGY, Application for Adjustment to Natural Gas Universal System Benefits Charge	))))	UTILITY DIVISION DOCKET NO. D2004.7.99 ORDER NO. 6679e
IN THE MATTER OF NORTHWESTERN ENERGY, Application for Adjustment to Natural Gas Universal System Benefits Charge	))))	UTILITY DIVISION DOCKET NO. D2004.12.192 ORDER NO. 6679e
IN THE MATTER OF NORTHWESTERN ENERGY, Public Service Commission Investigation and Direction on Electric Universal System Benefits	))))	UTILITY DIVISION DOCKET NO. D2005.6.106 ORDER NO. 6679e

FINAL ORDER

INTRODUCTION

1. In this final order the Montana Public Service Commission ("PSC" or "Commission") issues its decisions on the allocation issues raised in this consolidated docket concerning the electric and natural gas universal system benefits ("USB") programs of NorthWestern Energy ("NWE"). The PSC decisions in Interim Order Nos. 6679a, 6679b and 6679c are summarized and presented in section USB Regulatory Background of this order (refer to the interim orders entered in this docket for additional procedural details).

PROCEDURAL BACKGROUND

2. The PSC initiated Docket No. D2005.6.106 to conduct an investigation and make determinations concerning NWE's electric USB programs. See *Notice of Investigation and Intervention Deadline* issued July 28, 2005.

3. The PSC consolidated Docket No. D2005.6.106 with D2004.7.99 and D2004.12.192 on

July 28, 2005, and indicated the issues in the consolidated docket would primarily involve NWE's USB allocations (e.g.: use, application, distribution) necessary to fund "an appropriate balance" of all qualifying USB programs on an ongoing basis.

4. Montana Consumer Counsel ("MCC"), Montana Department of Public Health and Human Services ("DPHHS"), Renewable Northwest Project/Natural Resources Defense Council ("RNP/NRDC"), AARP Montana ("AARP"), Human Resource Council District XI ("HRC"), Energy Share of Montana ("Energy Share"), Rocky Mountain Development Council ("RMDC"), Large Customer Group, and Montana Association of Human Resource Development Council Directors ("HRDC") (collectively referred to as the "Parties") requested and were granted intervention in this proceeding.

5. On March 15, 2006, NWE filed a status report as directed in Interim Order 6679a on the sustainability of the increased USB low-income discount rates. NWE projected 2006 calendar year expenses for the electric and natural gas USB low-income discounts would be approximately $3.7 million, based on an electricity supply cost of approximately $49.92/Mwh, and a natural gas supply cost of approximately $9.77/Dkt. NWE reported that the increased USB low-income discount rates established in Interim Order 6679a were sustainable provided energy supply costs and low-income participation growth did not exceed business plan projections.

6. On April 5, 2006, the PSC issued a *Notice of Opportunity for Post Interim Procedures*. The notice explained that further proceedings may be required prior to PSC issuance of a final order in this consolidated docket. The PSC invited comments and requests for hearing from NWE, intervening parties and any other person directly affected by the interim order and the subject matter in general regarding: 1) need for further proceedings; 2) issues that remain to be resolved or should be resolved on a permanent basis; and 3) suggestions on how those issues should be resolved.

7. On March 4, 2008, the PSC issued a *Procedural Order and Order Directing NorthWestern Energy to File Supplemental Information* (Fourth Interim Order 6679d). The order established a new procedural schedule and directed NWE to: 1) calculate the natural gas

USB charges that would be necessary to "fully fund" all existing natural gas USB programs during the 2008-09 heating season; 2) calculate the electric USB funds that would become available from terminating the practice of transferring electric USB collections to partially fund natural gas USB low-income programs; 3) update NWE's responses to data requests PSC-001 through PSC-010; 4) update the information in "provides" 1 through 4 requested at the October 4, 2005, hearing; 5) provide actual 2007 electric and natural gas USB programs and expenditures; 6) provide proposed 2008-09 heating season electric and natural gas USB programs and budgets based on normal weather conditions and commodity prices under normal market conditions; and 7) update the prefiled testimony from Glen D. Phelps, as necessary, including Exhibits GDP-1 through GDP-6. Supplemental prefiled testimony and information was subsequently filed by NWE and intervening parties.

8. On May 14, 2008, the PSC issued a *Notice of Commission Action Requesting Briefs on Universal System Benefits Legal Issues from Parties and Other Interested Persons*. Briefs were subsequently filed by NWE, intervening parties and Montana-Dakota Utilities.

9. On June 13, 2008, the PSC issued a *Notice of Public Hearing*. A hearing was held July 16, 2008, in Helena. NWE and intervening parties' witnesses provided live rebuttal testimony at the hearing and subsequently filed post-hearing briefs (August 29, 2008), and reply briefs (September 10, 2008).

10. On November 12, 2008, the PSC issued a *Notice of Commission Action* extending the expiration date of Third Interim Order No. 6679c from November 1, 2008, to January 1, 2009, pending approval of a final order.

SUMMARY OF TESTIMONY

Introduction

11. The PSC provided adequate public notice of all proceedings and an opportunity to be heard to all interested parties in this consolidated docket. NWE and intervening parties filed supplemental testimony, performed discovery, cross-examined witnesses and presented live

rebuttal testimony at hearing, and filed post-hearing briefs and response briefs. For the most part, the supplemental prefiled testimonies received from the interested parties provided updates to their respective initial prefiled testimonies summarized in Interim Order No. 6679a entered in this consolidated docket. This section includes: 1) summaries of supplemental prefiled testimony; 2) a review of the 2007 Montana Code Annotated (MCA) USB statutes, and the Montana Department of Revenue (DOR) Administrative Rules (ARM); and 3) relevant prior Commission USB orders that provide necessary historical context and background.

NWE – Deborah M. Young

12. NWE witness Deborah M. Young testified that an original intent of the enabling USB legislation was to provide a means of funding a balanced set of public purpose programs. She testified that federal energy policy places substantial and growing emphasis on the goal of energy efficiency and encourages additional spending on research and development projects, including renewable energy projects, to achieve this goal. She stated that increasing energy supply prices and increasing participation in USB low-income discount programs, combined with increased USB funding to Energy Share, diminishes NWE's ability to meaningfully fund non low-income USB programs (e.g.: renewable energy, local market transformation, research and development).

13. Young testified that specified electric USB local conservation and market transformation programs were shifted to electric Demand-Side Management Programs (DSM), as directed by the PSC, and are now funded through electric supply rates as part of the electric default supply portfolio. The shift from electric USB programs to electric DSM programs began in mid-2005 with the Commercial Lighting Rebate Program and continued in 2006 with the Business Partners Program and Northwest Energy Efficiency Alliance (NEEA) funding. She stated that, as a result of these shifts, the proportion of USB funds allocated to USB low-income programs has greatly increased.

14. Young presented the following NWE proposals: 1) establish USB charges at levels sufficient to separately and "fully fund" the electric and natural gas USB programs; 2) USB funds available, due to the elimination of electric transfers, to be allocated to non low-income electric

USB programs; 3) establish and make permanent minimum funding allocations for non low-income electric USB programs and Energy Share; 4) direct that allocations to Energy Share above the established minimum level be specifically earmarked to assist non-LIEAP customers, especially senior citizens; 5) establish additional electric USB programs such as Business Partners Programs for irrigation customers and Commercial Lighting Rebate Programs for choice non-large customers; 6) establish a cushion to provide emergency low-income energy assistance during periods of extraordinary and unique circumstances; 7) establish and make permanent the percentages and effective periods for the low-income discounts; and 8) implement a natural gas USB charge tracking procedure pursuant to § 69-3-1408, MCA.

15. Young said cushioned USB funds remaining after meeting the USB low-income discount funding obligation would be released to fund existing or additional USB renewable resource, local market transformation, and research and development program costs. Young stated that due to the impacts of rising energy costs, among other household expenditures, there should be reasonable limits placed on the responsibility imposed on NWE's ratepayers to assist low-income customers, and that emergency assistance should come from other sources (e.g.: government, business, and charitable contributions).

16. Young asserted that compared to USB low-income discount programs, USB low-income weatherization programs are a much better use of USB funds. She said USB low-income weatherization programs produce long-term energy savings that narrows the "affordability gap" (the difference between actual home energy costs and the ability of low-income households to pay them) and effectively slows the growth of USB low-income discounts necessary for future billing assistance.

17. NWE recommends that the current USB programs and funding allocations, including reinstatement of the increased electric and natural gas USB low-income discount rates, be extended to December 31, 2008.

18. Young's Exhibit DMY-1 provided the proposed natural gas USB charges necessary to "fully fund" all existing natural gas USB programs for the 2008-09 heating season. Table 1 shows

the current PSC-approved electric and natural gas USB charges and the proposed "fully funded" natural gas USB charges.

Table 1: USB Charges: Current Charges and Proposed "Fully Funded" Natural Gas

Electric		Schedule No. E-USBC-1		
Residential	All kWh @	$0.001334		
GS-1 & GS-2 under 1,000kW	All kWh @	$0.001143		
GS-1 & GS-2 over 1,000kW **(a)**	All kWh @	$0.000900		
Irrigation	All kWh @	$0.001144		
Lighting	All kWh @	$0.003404		
Natural Gas		Schedule No. USBC-1	"Fully Funded" Per Exh. DMY-1	Ave. Annual Billing Impact **(c)**
Core Customers	All Dkt @	$0.083300	$0.175540	+ $11.07
Non-Core Tier II **(b)**	All Dkt @	$0.083300	$0.175540	
Non-Core Tier I	All Dkt @	$0.043300	$0.091243	

(a) Annual maximum USB charge assessment is $500,000 less any credits received for internal expenditures and activities that qualify as USB program expenditures.
(b) Post September 1, 1993 existing customers
(c) Based on average annual residential consumption of 120 Dkts

MCC – Dr. Larry Nordell

19. Dr. Larry Nordell, MCC staff economist, recommended the PSC act cautiously as it considers NWE's proposed USB program changes, and its proposed USB priorities and objectives. He disagreed with NWE that one objective of USB programs should be broad-based customer participation. He said the intent of USB programs is to serve unmet social needs.

20. Regarding the PSC's request that NWE calculate the cost of "fully funding" the natural gas USB programs, Nordell disagreed with NWE's calculation as presented in Young's testimony and her Exhibit DMY-1. Nordell argued that, under NWE's interpretation of the PSC's request, fully funding the natural gas USB programs would result in a significant increase in the natural gas USB funding level from $2.7 million to more than $4.8 million, necessitating a natural gas USB charge increase to $0.175540/Dkt, or more than twice the current charge of $.08330/Dkt. Nordell said NWE provided no rationale for the expanded size of the program.

21. Nordell contended that priorities must be set among the competing USB programs, especially since needs and conditions have changed since USB programs were statutorily

mandated in 1997. At that time, he said, renewable resource programs were not universally accepted, and no one anticipated the current situation of rapid renewable resource development and statutory renewable resource mandates. Now, though, NWE is committed to acquisition of renewable resources and spends about $18 million for Judith Gap energy and integration. Nordell argued legislative intent was not to continue to collect USB charges for USB programs that are already funded adequately by the utility. In contrast to the situation with renewable resource programs, he said the present need for low-income programs is urgent due to increasing natural gas and electric energy prices.

22. Nordell recommended that renewable resource and cost-effective energy conservation, including low-income weatherization, should be treated as DSM resource acquisitions to be recovered through the default supply rates. USB programs would then be reserved for low-income assistance, and a modest level of research and development and market transformation activities. He recommended that, if electric USB funds are no longer transferred to the natural gas USB programs, then the electric USB charges should be reduced accordingly and not be treated as available for use to increase program levels for DSM or renewable resource projects. Nordell recommended extending the current USB interim order through the 2008-09 heating season.

DPHHS - Jim Nolan

23. Jim Nolan, Chief of the Intergovernmental Human Services Bureau, testified on behalf of DPHHS. Nolan’s testimony included exhibits based on an analysis conducted by Fisher, Sheehan and Colton, a public finance and economic consulting firm. The results of the analysis were used to develop a model to quantify the gap between affordable and actual home energy bills for each state. The model calculated actual home energy bills using data from the U.S. Department of Energy (DOE), Census Bureau and National Weather Service, and assumes an affordable energy burden of 6% of gross household income. Nolan’s Exhibits JN-3 and JN-4 depict the difference between the actual and affordable home energy bills or “affordability gap” for households at or below 185% of the poverty level.

24. According to Nolan's Exhibit JN-3, from 2002-2007, the individual Montana household affordability gap has increased from $426 to $1,354. For the same time period, Nolan's Exhibit JN-4 contrasted the aggregate Montana household affordability gap with Montana's annual Low-Income Energy Assistance Program (LIEAP) allocation, indicating that the ability of the state's LIEAP allocation to sufficiently cover the affordability gap had fallen from 26% ($13,396,069 / $51,495,975) in 2002 to only 9% ($13,982,931 / $163,518,609) in 2007.

25. Nolan stated that NWE's $4.0 million of USB funds available for low-income billing assistance was substantial and second only to the federal funds. Nolan anticipates serving approximately 19,100 Montana households in 2008. He believes that the interim USB low-income discount rates of 25% for electric and 30% for natural gas service represent the absolute minimum discount levels, and should be indexed to energy supply costs.

26. Nolan agreed with NWE's proposal to increase funding for USB low-income weatherization programs, especially since there were no indications that the federal government will increase its support any time soon. He offered the following for PSC consideration: 1) weatherization projects be selected and funded on the basis of their respective energy burden and opportunity for cost-effective energy savings, as opposed to when requested by customers; 2) program funding levels be established early in the year for staffing and planning purposes; 3) program funding levels be increased to defray a share of administrative costs (e.g.: training, information technology, financial audits, insurance) currently borne by the federal grants; and 4) DPHHS has a successful coherent weatherization program designed around the support and flexibility allowed by its five other funding sources.

27. Nolan stated that the PSC has the ability to improve the USB low-income weatherization programs and to make the interim USB low-income discount rates permanent in a manner that continues to provide a significant and effective means of addressing the long-term problems facing low-income households.

<u>HRC/RNP/NRDC - Thomas M. Power</u>

28. Dr. Thomas M. Power, an independent consulting economist, agreed with these NWE

USB principles: 1) USB programs should be broadly based; 2) NWE's USB funds should supplement, not displace, other sources of support for USB programs; 3) transfers of electric USB collections to fund natural gas USB programs should cease; 4) the USB low-income discount expenditures should not divert funds from all other USB programs; 5) NWE customers' responsibility to assist low-income customers is limited; 6) Energy Share should allocate more of its USB allocation to non-LIEAP customers; 7) low-income weatherization is superior to bill assistance when it comes to helping low-income customers; and 8) implement a natural gas USB charge tracking procedure.

29. Power emphasized that the PSC must balance the pressing needs of low-income households with the pressing needs of the other USB public purpose programs when it decides how to allocate NWE's USB funds, and not divert an excessive amount of funds to low-income energy assistance. He stated that if the USB program becomes just another low-income energy assistance program, exclusive of other public purposes, it could erode public support. He noted that USB low-income programs, consisting mostly of low-income bill assistance, received 59% of NWE controlled USB funds in 2005, and by 2007 that percentage increased to 71%.

30. Power agreed with NWE that more USB funds should be allocated to the low-income weatherization program as opposed to low-income billing assistance. According to Power, while HRC has a long history of supporting low-income programs, including low-income billing assistance, it has always advocated for long-term solutions, such as weatherization, that reduce bills permanently by improving a home's energy efficiency. Power said both additional USB funds and revised program design criteria, as recommended by HRC witness Karp, are required to improve the USB low-income weatherization program. He argued against transferring NWE's low-income weatherization programs to the default supply resource portfolio, since the cost-effectiveness of these programs includes important non-energy objectives.

31. Power testified in support of the current structure of the low-income discount that automatically reduces LIEAP customers' bills. However, he pointed out that as utility rates increase, more and more USB dollars are required to fund the low-income discount programs,

which in turn reduces the availability of funds for other USB programs, including low-income weatherization programs. He said a natural gas tracker mechanism would preclude the diversion of non low-income USB allocations to fund a USB low-income discount program shortfall. Power proposed that both the electric and natural gas low-income discounts be partially funded by USB charges and partially funded in general rates, and recommended that future increases in the low-income discount obligation be funded by adjusting NWE's general rates.

32. Regarding NWE's allocation of USB funds to Energy Share, Power recommended the PSC require Energy Share to redirect a portion of its existing USB allocation to serve more non-LIEAP customers. He argued that LIEAP customers already qualify for the USB low-income discounts and low-income weatherization programs.

33. According to Power, there are limits to what the PSC and NWE can do to solve the home energy "affordability gap". He argued that even if all of NWE's USB funds were spent on low-income bill assistance, it would close only 8% of the affordability gap based on 2004 data. Power said that low-income programs should try to increase purchasing power without eliminating price signals to low-income households.

HRC - Michael Karp

34. Michael Karp, an independent consultant, reviewed NWE's free weatherization program and recommended program design changes. According to Karp, problems with the current program include: 1) stranded conservation; 2) failure to fund 100% of all feasibly installed energy efficiency measures; 3) it is not a stand-alone program; 4) inappropriate reliance on arbitrary DPHHS cost-effectiveness methodology; and 5) commingling of USB and other funds.

35. Karp said that DPHHS, NWE's free weatherization program contractor, requires that installed conservation measures achieve a savings-to-investment ratio of at least 1.3. Karp claimed this requirement reduces the effectiveness of the program because it excludes conservation measures that are cost-effective from a societal standpoint. Karp recommended a stakeholder group develop a pre-approved list of weatherization measures that, if feasible, would all be installed during the initial visit to the home.

36. According to Karp, because the free weatherization program is funded by both USB and DOE funds, the program is operated by DPHHS according to restrictive DOE and DPPHS rules that erect barriers to implementation of energy efficiency measures. He cited federal and state requirement barriers, such as: 1) prohibiting further installation of conservation measures in homes that were previously weatherized; 2) setting allowable installation costs that are too low to install all feasible measures; 3) continuing funding uncertainty due to the DOE awaiting annual funding approval; and 4) differing program years for the DOE (April to March) and LIEAP (October to September).

37. Karp recommended that NWE implement a stand-alone USB funded free weatherization program independent of the DOE program. He said the program should fund 100% of all feasible conservation measures on a pre-approved list and should be subject to the USB administrative rules that do not require applying a set savings-to-investment ratio to each measure.

<u>HRC/RNP/NRDC - Ann Gravatt</u>

38. Ann Gravatt, the policy director for RNP, testified that USB funding for the renewable resource program is insufficient. She said the allocation of USB funding for renewable resource projects has steadily declined from 13% originally allocated by the PSC in 1999 to 7% in 2007, due primarily to the emergency funding for USB low-income programs.

39. Gravatt contended that even customers who are not USB program recipients receive benefits, because USB funds by definition are for “system benefits” such as energy savings, cleaner air, and operational efficiencies.

40. Gravatt maintained the need remains to fund USB renewable resource, conservation and market transformation programs. In the case of renewable resource projects, she said USB funds help to level the playing field by assisting in overcoming market barriers such as high upfront costs and failure of markets to quantify the value and benefits of renewable resources. She cited numerous examples of projects funded by NWE’s modest USB renewable resource program and USB funded state educational and demonstration programs.

41. Gravatt said increasing concerns about climate change have led to federal and state policies aimed at moving to a less carbon-intensive energy system, resulting in continued attention to renewable resource development and acquiring cost-effective energy conservation.

42. She said that if electric USB collections are no longer transferred to fund natural gas USB programs, then they should fund a more robust set of electric USB programs, including renewable resource projects. She agreed with NWE's suggestion to set a minimum allocation for electric USB renewable resource projects. Gravatt provided examples of renewable resource projects that could be implemented if additional electric USB funds became available. She noted that Montana's net metering limit of 50 kw is a barrier to implementing some renewable resource projects. She also suggested that USB could play a role in funding training and education for a "clean energy economy" workforce.

43. Gravatt recommended the PSC end the transfer of electric USB collections to fund natural gas USB programs and fund a more robust set of electric USB programs, including the restoration of the renewable resource program to the 1999 funding level of 13%.

Energy Share - Gregg Groepper

44. Gregg Groepper, executive director of Energy Share, testified that the need of low-income households for energy assistance has increased since the PSC issued Interim Order 6679a in 2006. According to Groepper, Energy Share spent almost $200,000 more through March 2008 than it did through March 2007. He said that from January 2006 through March 2008 Energy Share received $1,293,750 in NWE USB funds and spent $1,688,571 (including private and challenge grant funds) on NWE customers.

45. Groepper effectively stated that: 1) Energy Share's USB allocation from current USB charges should be $575,000 through 2010; 2) if Energy Share is allocated additional USB funds, some of it should be earmarked for non-LIEAP customers; and 3) NWE should set a fixed level of funding for Energy Share through 2010, but if the time period is longer, an annual adjustment mechanism reflecting energy prices and inflation should be implemented.

DISCUSSION OF APPLICABLE STATUTES, RULES, AND REGULATORY BACKGROUND

USB Statutory Background

46. The Montana legislature established universal system benefit programs applicable to electric (§ 69-8-402, MCA) and natural gas (§ 69-3-1408, MCA) retail sales customers of: a) utilities subject to PSC jurisdiction; and b) cooperatives subject to their governing boards.

47. The PSC and the DOR are vested with USB rulemaking authority. §§ 69-8-403 and 69-8-413, MCA. The PSC is also vested with USB ratemaking authority. § 69-8-402, MCA. The DOR shall review claimed credits of the utilities and large customers pursuant to § 69-8-414, MCA. The DOR rules for reviewing claimed expenditures and credits are found at ARM 42.29.101 through 42.29.112.

48. A utility or large customer may be entitled to receive a credit against its USB obligation for the total cost of qualifying expenditures. Qualifying expenditures shall be expended by the end of the following calendar year, unless extended by the DOR for good cause. A qualifying expenditure by a utility or large customer includes a commitment of funds or resources to a USB program as defined at § 69-8-103, MCA, and further defined by DOR at ARM 42.29.101. Activities, programs or expenditures identified in the rules found at ARM 42.29.101 through 42.29.112 are not intended to be all inclusive. ARM 42.29.102. Qualifying expenditures specifically include commitments to Energy Share and LIEAP. ARM 42.29.111.

49. The DOR defines USB public purpose program categories as follows:

a. *Cost-effective energy conservation* – the installation or implementation of an energy efficient measure or practice which results in a reduction of energy usage. Cost-effective means that the expected benefits accrued as a result of pursuing the action must exceed the expected costs associated with that action over some reasonable period of time. Permitted energy conservation expenditures/credits subject to DOR review are found at ARM 42.29.106 and include energy audits and DSM programs;
b. *Low-income customer weatherization* – a group of energy assistance measures targeted at improving energy efficiency and energy related safety of low-income homes. Permitted low-income weatherization expenditures/credits subject to DOR

review are found at ARM 42.29.107;

c. *Low-income energy assistance* – activities that better ensure affordable energy services on a continuing basis to low-income households. Low-income eligibility is limited to households whose annualized income is 150% or less of federal poverty guidelines with exceptions subject to documentation on an individual case basis. Permitted low-income energy assistance expenditures/credits subject to DOR review are found at ARM 42.29.107;

d. *Renewable resource projects and applications* – projects and applications that use various technologies to convert virtually inexhaustible energy sources to electricity or to perform useful work in some way. Such projects and applications include those that capture unique social and energy system benefits or provide transmission and distribution system benefits. Permitted renewable resource expenditures/credits subject to DOR review are found at ARM 42.29.108 and include net-metering systems having a generating capacity of not more than 50 kilowatts;

e. *Research and development* – programs related to a broad spectrum of activities which are intended to identify, evaluate, develop, and/or demonstrate techniques or technologies related to the acquisition of public purpose benefits, specifically energy conservation and renewable resource projects. Permitted research and development expenditures/credits subject to DOR review are found at ARM 42.29.109; and

f. *Market transformation* – coordinated activities at the state, regional or national levels designed to encourage competitive markets for the support of efficient technologies or renewable resources. The intent of market transformation is to undertake [coordinated] activities that will increase the market share [of efficient technologies or renewable resources] so that the activities will be sustained after incentives or other support have been withdrawn. Permitted market transformation expenditures/credits subject to DOR review are found at ARM 42.29.110. It is possible for market transformation programs to overlap with the USB public purpose programs defined in a. through e. above.

50. If a utility's or large customer's credit does not satisfy the annual funding requirements, then the utility shall make a payment to the USB program funds established by the DOR. § 69-8-402, MCA. The DOR shall establish one or both of the following USB funds: a) a fund to provide for "other than low-income energy assistance" to be administered by the Montana

Department of Environmental Quality (DEQ), and b) a fund to provide for "low-income energy assistance" to be administered by DPHHS. The DEQ and DPHHS may adopt rules that administer and expend the money in each respective fund based on an annual needs assessment. In assessing the funding needs the DEQ and DPHHS shall solicit utility and public comment from the affected service territory, taking into account existing utility and large customer USB program expenditures. § 69-8-412, MCA.

51. Any record of decision, order, or other documentation of a federal power agency, the PSC or other government agency which allocates the portion of the cost of power attributable to renewable resource or conservation related activities shall be conclusive and shall be appropriate documentation for purposes of satisfying the DOR record keeping requirements at ARM 42.29.105.

52. Pursuant to § 69-8-402, MCA, a large customer shall prepare and submit, by March 1 of each year, an annual summary report of USB program activities and expenditures to its utility company and the DOR, and a utility shall prepare and submit an annual summary report of USB program activities and expenditures to the DOR and the PSC.

53. The USB expenditure/credit rules are designed to help: 1) utilities; 2) cooperatives; 3) large customers; 4) state USB program fund administrators; and 5) the general public ensure that USB funds generated through PSC approved USB non-bypassable charges produce the intended public purpose benefits. § 69-8-413, MCA.

54. USB charges are established to ensure "continued funding of", and "new expenditures for", USB public purpose programs. § 69-8-402, MCA. Beginning January 1, 1999, the initial funding level for electric USB programs was established at 2.4% of an electric utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995. An electric utility's minimum annual funding requirement for electric USB low-income programs is 17% of the annual funding level. A volumetric (kWh) electric USB charge assessed at the meter of each retail sales customer determines the annual funding level. An individual retail sales customer may not bear a disproportionate share of the electric utility's funding requirements, and a sliding scale

must be implemented to provide a more equitable distribution of program costs. An electric utility's transition plan to competition must describe how it proposes to measure and provide for funding each electric USB program, such as cost-effectiveness and need determination, including the methodologies. § 69-8-402, MCA.

55. In 2006, the PSC submitted a bill to the Montana Legislature to clarify whether the natural gas USB charge(s) could be increased to address USB funding issues. In April 2007, the Montana Legislature enacted House Bill 427 (HB427) to amend §§ 69-3-1402 and 69-3-1408, MCA. HB427 clarified that a natural gas utility's USB programs are subject to ongoing PSC oversight and direction, and a utility shall file an annual report of its USB charges, programs and funding levels in a manner prescribed by the PSC. Beginning January 1, 2007, HB427 established a natural gas utility's minimum annual funding requirement for natural gas USB low-income programs at 0.42% of the utility's annual revenues for the previous year. The annual funding level for natural gas USB programs is an amount no less than 1.12 % of the utility's annual revenues derived from natural gas service to end-users. ARM 38.5.7020(2). In addition, the natural gas USB charge may be established and revised through the implementation of a USB tracking procedure. § 69-3-1408, MCA.

<u>USB Regulatory Background</u>

<u>Electric USB</u>

<u>Docket No. D97.7.90, Order No. 5986f</u>

56. In October 1998, the Commission conducted a public hearing on the issue of the electric USB charge. The Commission established the single issue hearing to allow implementation of the electric USB charge on January 1, 1999, as required by Senate Bill 390 enacted in May 1997.

57. The Commission found that, as part of an electric utilities' transition [to competition] plan, the state of Montana established USB programs to ensure "continued" and "new" expenditures for energy conservation, renewable resource projects and low income energy assistance. Pursuant to § 69-8-402, MCA, MPC (predecessor to NWE) filed, and the Commission approved, electric USB charges effective for service on or after January 1, 1999.

The electric USB charge rates must remain in effect through December 31, 2009. § 69-8-402(2), MCA.

<u>Docket No. D97.7.90, Order No. 5986g</u>

58. In February 1999, the Commission ordered MPC to apply the following allocations to fund "an appropriate balance" of all qualifying electric USB programs:

- 50% - cost-effective energy conservation (includes large customer group);
- 21% - low-income weatherization, low-income energy assistance, and Energy Share;
- 13% - renewable resource projects and applications;
- 3% - research and development;
- 13% - market transformation (1/3 to NEEA and 2/3 to Montana).

59. The Commission stated that for extraordinary and unique circumstances, MPC may vary from this allocation approach, but must provide an explanation in its USB annual reports.

<u>Docket No. D97.7.90, Order No. 5986i</u>

60. In May 1999, the Commission ordered MPC to apply the following allocations as a guide to determine the individual program funding within the USB low-income program category (21% of the total USB funds) for the 1999 USB program year:

- 50% - low-income energy assistance;
- 26% - low-income weatherization;
- 12% - Energy Share;
- 12% - low-income energy assistance outreach/renewable energy projects.

61. The Commission determined that without established guidelines or criteria, the allocation to USB low-income programs was a judgment call. As directed in Order No. 5986g, MPC should document deviations from this allocation approach.

62. The Commission agreed with MPC that setting a multi-year low-income allocation at this time would eliminate a degree of flexibility and could interfere with the goal of maximizing overall USB program benefits. The Commission encouraged MPC and other interested parties to work out a strategy for using USB funds through a collaborative approach. The Commission also approved, at least temporarily, to increase the electric USB low-income discount rate to 15%.

Docket No. D2003.8.114, Order No. 6504a

63. In January 2004, the Commission ordered NWE to comply with the Bankruptcy Court's order to maintain a separate special purpose bank account for the purpose of depositing and disbursing USB funds as required by the laws and regulations of the State of Montana (Order ¶ 1). The Commission found that USB funds collected by NWE were the proceeds from a special charge specifically identified and mandated by the Montana Legislature. The Commission concluded that segregating USB funds into an interest bearing account, separate and apart from other corporate funds, best served to protect and enhance the legislatively-mandated USB programs.

Docket No. D2003.10.142, Order No. 6514

64. In August 2003, Governor Judy Martz issued Executive Order No. 15-03 establishing a Consumer Energy Protection Task Force (Task Force). The Task Force was charged, in part, with developing proposals for mitigating utility bill increases, especially for low-income customers.

65. In a meeting held in August 2003, NWE explained to the Task Force its 2003 USB programs budget and identified $1,725,600 of "unassigned" and "uncommitted" funds that may be available for low-income energy assistance. The unassigned funds consisted of: 1) $1,000,000 contractually committed in 2000 and 2001 by NWE to a large renewable energy project which was cancelled in 2002; and 2) $725,000 budgeted and uncommitted for 2003 local conservation, renewable energy projects and research and development USB programs.

66. In October 2003, NWE filed an application with the Commission requesting approval to reallocate the unassigned electric USB funds consistent with the Task Force's recommendation, and endorsed by the Governor. NWE proposed "supplemental" low-income discount rates for electric and natural gas customers of 10% and 21%, respectively, to be effective beginning November 1, 2003, and ending when the $1.3 million of reallocated funds became exhausted. The existing low-income discount rates of 15% for both electric and natural gas customers would continue as usual. The supplemental rates were designed to fully offset the net bill impacts on

low-income customers stemming from the 2003 electric and natural gas default supply cost trackers, Docket Nos. D2003.6.77 and D2003.6.66, respectively.

67. The Commission approved NWE's application to reallocate the unassigned electric USB funds, and stated that this was a "one-time authorization" that did not set precedent for future years. The Commission clarified in Order ¶ 1 that this authorization "applies only to the unique circumstances identified in this proceeding and does not represent a change in the Commission's policy regarding the "proper approach" to allocating USB funds among qualifying USB categories and specific uses within those categories. Order Nos. 5986g and 5986i, Docket No. D97.7.90, continue to reflect the Commission's policy on USB fund allocation."

First Interim Order No. 6679a entered in this Consolidated Docket

68. In November 2005, the Commission directed NWE to increase the electric USB low-income discount rate from 15% to 25% and the natural gas USB low-income discount rate from 15% to 30%, effective for service November 1, 2005, through April 30, 2006. To fund the increased natural gas USB low-income discount expenditures, the Commission directed NWE to reallocate the following: 1) "uncommitted" electric USB funds; 2) "cancelled" electric USB program contracts; and 3) "reduced" budget expenditures for electric USB renewable energy, market transformation, and research and development programs. The Commission also directed NWE to file a report in March 2006 on the sustainability of the increased USB low-income discount rates established in this interim order.

69. The Commission's decisions in this interim order produced the following electric USB allocations:

- 50% - cost-effective energy conservation (includes large customer group);
- 40% - low-income weatherization, low-income energy assistance, and Energy Share;
- 8% - renewable resource projects and applications;
- 1% - research and development;
- 1% - market transformation.

Second Interim Order No. 6679b

70. At a publicly noticed and open work session held on September 26, 2006, the

Commission reinstated the increased electric and natural gas USB low-income discount rates effective for service from November 1, 2006, through April 30, 2007. NWE was ordered to adhere to other applicable orders and directives in Interim Order No. 6679a, including the electric USB allocations mentioned above.

71. Although the Commission reduced funding for some electric USB public purpose programs to continue to address energy affordability concerns, to a certain extent these public purposes are included in the electric default supply annual trackers as DSM program costs (see Docket No. D2004.6.90). The Commission also encouraged NWE to continue USB activities that are consistent with the objectives in the default supply procurement rules for recovery in default supply rates. ARM 38.5.8201 through 38.5.8226.

72. In post-interim procedures, NWE indicated that it seeks to implement a robust and balanced set of USB programs and recommended adjusting the gas USB rate to cover gas USB programs.

<u>Third Interim Order No. 6679c</u>

73. In October 2007, the Commission determined that retail electric and natural gas service continued to be unaffordable for low-income customers and issued a third interim order extending the terms of Second Interim Order 6679b through October 31, 2008, including reinstatement of the increased electric and natural gas USB low-income discount rates for the 2007-08 winter heating season. The Commission agreed with Energy Share and RNP/NRDC that it could not thoroughly consider the impact of HB 427, and enter a final order before the 2007-08 winter heating season. The Commission acknowledged that a number of electric and natural gas USB program allocation and funding issues must be revisited before it issued a final order in this consolidated docket.

<u>Natural Gas USB</u>

<u>Docket No. D96.2.22, Order No. 5898d</u>

74. In Order No. 5898d, the Commission approved stipulated natural gas USB charges and a USB low-income discount rate of 10%. The natural gas USB charges were expected to generate

USB collections sufficient to sustain MPC's (predecessor to NWE) pre-USB funding levels for energy conservation and low-income activities (weatherization and discounts). The stipulated natural gas USB funding requirement of $1,222,000 was allocated 73% to USB low-income programs and 27% to USB conservation programs.

Docket No. D99.8.176, Order No. 6197c

75. In August 1999, MPC filed with the Commission an application for authority to increase rates for natural gas service. The Commission was subsequently notified of a tentative settlement agreement (Stipulations 1 through 3) between MPC and intervening parties (MCC, Large Customer Group, DPHHS, and HRC District XI among others). Stipulation 1 included an increase in the natural gas USB charge stemming from an increase in the LIEAP discount from 10% to 15% (*Stipulation 1, Exhibit C*). The Commission stated that nothing in Stipulations 1 through 3 or in the Exhibits should be considered as precedent in any future proceedings involving any of the parties.

First Interim Order No. 6679a entered in this Consolidated Docket

76. In June 2004, NWE requested an increase in the natural gas USB charges to make up for a projected shortfall in revenues necessary to sustain the 15% low-income discount in the face of rising natural gas supply costs and prevent the segregated natural gas USB account from incurring a negative balance. The Commission assigned the matter Docket No. D2004.7.99, and on July 15, 2004, the Commission approved, on an interim basis, NWE's request to increase the natural gas USB charges. Ultimately, the requested increase in the natural gas USB charges was not sufficient to fully sustain the 15% low income discount in 2004.

77. While projecting that the increased natural gas USB charges, approved on an interim basis in D2004.7.99, would generate surplus natural gas USB revenues for 2005, NWE experienced a shortfall for 2004. In November 2004, NWE requested to further increase the natural gas USB charges. The Commission assigned the matter Docket No. D2004.12.192. The actual 2004 natural gas USB revenue shortfall, as shown in Exhibit NWE-1, Attachment GDP-2, was $163,932, and was carried over as an expense in 2005, as shown in NWE's updated response

to data request AARP-01.

78. The Commission's electric USB reallocation decisions in this interim order did not envision carrying over the 2004 natural gas USB revenue shortfall into 2006. Therefore, in November 2005, the Commission directed NWE to reallocate available uncommitted 2005 electric USB funds for the purpose of making the 2004 natural gas USB cash account whole and to help fund the increased 2005-06 natural gas USB low-income discount expenditures. The reallocation or transfer of electric USB funds to help fund natural gas USB low-income discount expenditures was continued for the 2006-07 winter heating season (Second Interim Order No. 6679b) and the 2007-08 winter heating season (Third Interim Order No. 6679c).

DISCUSSION, DECISIONS, AND FINDINGS OF FACT

79. On March 4, 2008, the Commission issued a *Procedural Order and Order Directing NorthWestern Energy to File Supplemental Information* (Order No. 6679d) that included NWE's calculation of natural gas USB charges necessary to "fully fund" all existing natural gas USB programs. The Commission requested supplemental information based on the unresolved issues that required resolution from the previous interim orders.

80. In addition, on May 14, 2008, the PSC issued a *Notice of Commission Action Requesting Briefs on Universal System Benefits Legal Issues from Parties and Other Interested Persons*.

81. In this final order the Commission issues its decisions on the allocation issues raised in this consolidated docket concerning NWE's electric and natural gas USB programs and the proposed increase to the natural gas USB charges. The Commission begins by discussing the USB legal issues briefed followed by its discussion and decisions on the USB allocation issues and the natural gas USB charge(s) necessary to "fully fund" all existing natural gas USB programs.

82. The Commission received briefs on the two USB legal issues from parties to this consolidated docket and other interested persons. The first legal issue involved the transfer of electric USB collections to fund natural gas USB program expenditures. The second legal issue

involved whether all USB public purpose programs are required to receive a meaningful level of funding to achieve the intended legislative goals and objectives.

83. The Commission issued Interim Order Nos. 6679 a, b, and c in this consolidated docket to address the "heating affordability crisis". In Order 6679b, the Commission noted that “the statutory authority allowing the Commission to fund natural gas USB programs through electric USB charges is unclear and that it would issue another interim order “to allow the legislature to clarify the natural gas USB statutes.” *Order* at 5 and 9. The Commission requested briefs on USB legal issues in part to receive input from interested parties on how to resolve the outstanding issues from Order 6679b.

84. The passage of HB 427 in 2007, clarifies the Commission’s authority to establish natural gas USB charge(s) that ensure “continued funding of” and “new expenditures for” all natural gas USB public purpose programs. Consequently, the Commission’s past allowances for transferring electric USB funds to address the "heating affordability crisis" is no longer consistent with the authority and direction established by the amended natural gas USB statutes.

85. The Commission finds that funding the natural gas USB activities involving E+ Audit for the Home, E+ Free Weatherization Program, Energy Share, and the natural gas low income bill discount with electric USB charges is no longer consistent with statutory authority. (Exhibit DMY-1; Exhibit GDP-2; and Exhibit (GDP-2).DMY).

86. Dr. Power, in his testimony at the hearing, expressed concern about electric USB charges subsidizing natural gas billing assistance and natural gas weatherization assistance. "That question has been raised by the Commission and Commission staff, by Energy Share, by the Human Resource Councils, by the utility itself. A lot of us have been nervous about that purposeful collecting of funds from electric customers and using a big chunk of them primarily for the benefit of natural gas customers." (TR 147).

87. Effective January 1, 2009, the Commission directs NWE to cease the transfer of electric USB collections to fund natural gas USB program expenditures. The Commission recognizes that certain USB programs (e.g.: E+ Energy Audits, E+ Weatherization, Energy Share)

administered by NWE, or another party on its behalf, may require the pooling of electric and natural gas USB funds in order to promote administrative efficiency and maximize USB program benefits. The Commission has not ended and does not intend to end the process of pooling funds to maximize USB program benefits. The Commission reaffirms its policies to establish electric and natural gas USB charges pursuant to § 69-8-402 and § 69-3-1408, MCA, that ensure "continued funding of" and "new expenditures for" (e.g. "fully fund") qualifying USB program expenditures.

88. The Commission finds that it is important to align the USB charges with the USB program benefits in the territory in which the money was received. The Legislature expressed its concern about the equality of USB expenditures in § 69-8-412, MCA, by stating that "the DEQ and DPHHS shall expend the money in each representative fund on universal system benefits programs in the utility service territory from which the money was received." While the statute referred to the low-income and non low-income funds, the Legislature clearly indicates its intention that USB charges shall be expended in the territory from which the money was received. Natural gas USB collections should primarily be used to fund natural gas USB programs in the territory from which it was received and the same applies to electric USB collections. This ensures equality and fairness to the ratepayers in the respective utility territories that pay these USB charges. The natural gas USB charge should reasonably correspond to the respective costs of the natural gas USB programs and the same holds true for the electric charges and programs.

89. Effective January 1, 2009, the Commission directs NWE to apply a "modified allocation approach", consistent with the Commission's policy regarding the "proper approach" to allocating USB funds among qualifying USB categories and specific uses within those categories (see D96.2.22, Order 5898d; D97.7.90, Orders 5986g and 5986i; and D2003.10.142, Order 6514), that will "meaningfully" fund "an appropriate balance" of all USB program categories as defined at § 69-8-103, MCA and further defined by DOR beginning at ARM 42.29.101. This allocation approach returns the USB program to the allocation method that has been consistently applied

from Order 5986g in 1999 until the interim orders in this docket. The Commission understands "meaningful" to be an amount or level of funding noticeably or measurably large enough to have or likely to have influence or effect. NWE Witness Deborah Young testified to a need "to fund a balanced set of USB programs with a limited amount of total USB annual funding and the need to end the practice of prioritizing one group at the expense of others." (Direct testimony of Deborah M. Young, p.8, lines 9-25).

90. The Commission acknowledges that its prior directives which shifted specified electric USB local conservation and market transformation programs (e.g.: Commercial Lighting Rebate Program, Business Partners Program, NEEA) to electric DSM programs, and are now funded through electric supply rates as part of the electric default supply portfolio, achieve, in part, the intended legislative goals and objectives of USB programs. However, the shifting of these specified program expenditures do not eliminate or diminish the Commission's responsibility to establish USB charges that ensure continued funding of the E+ Energy Audit and E+ Weatherization programs, and new expenditures for conservation, renewable resource, research and development, and market transformation activities. The Commission finds that USB renewable energy development funding should be restored to its historic allocation level as advocated by NWE, Ms. Gravatt, and Dr. Power. Ms. Gravatt and Dr. Power testified that market barriers still prevent the development of some renewable resources. (Gravatt testimony at pg. 6-7, TR 142-143). In addition, the fact that there are cost-effective renewable resources in existence does not obviate the need for public support for other forms of renewable energy development. (Gravatt response testimony at pg. 2).

USB Allocation Issues

91. In 1999, pursuant to § 69-8-402, MCA, the Commission approved electric USB charges that were established to ensure "continued funding of" and "new expenditures for" all electric USB program categories as defined at § 69-8-103, MCA, and further defined by DOR beginning at ARM 42.29.101. The established electric USB charges must remain in effect through December 31, 2009. § 69-8-402(2), MCA. Future Commission action on the electric USB

charges will be subject to 2009 legislative amendments to the electric USB statutes.

92. The Commission orders, on a final basis, NWE to increase the electric and natural gas USB low-income discount rates to 25% and 30%, respectively, to be in effect during the winter heating season period beginning November 1 and ending April 30. The electric and natural gas USB low-income discount rates will revert back to 15% and 0%, respectively, for the time period beginning May 1 and ending October 31. These discount levels and heating season periods were in place on an interim basis in the past three interim orders and will now be finalized. The record does not support extending the heating season and the discounts to a longer time period as first requested by Energy Share in its post-hearing brief.

93. The Commission finds that the interim low-income discounts levels are to be made final, subject to future review, if circumstances based on heating costs, discount costs, and weatherization progress warrant it. NWE Witness Deborah Young testified that there is a "reasonable limit" to low-income allocation (NWE-1, DMY-8, l. 22), she further testified that NWE is "not taking a position as to what the final allocation should be" (TR 29:20-22), but is simply requesting "that the discount be fixed … in terms of percentage and effective time period and be made permanent" (TR 19:18-21).

94. The Commission directs NWE to fund Energy Share with $575,000 of USB funds, consisting of: 1) $239,000 from electric USB funds derived by NWE applying the "modified allocation approach" described in the following paragraphs and shown in Table 2; and 2) $336,000 (the balance) from natural gas USB funds. Based on testimony received from NWE and other parties, the Commission directs that Energy Share make every effort to provide priority energy assistance to non-LIEAP customers, especially senior citizens, but will not restrain Energy Share with a specific percentage requirement at this point. If energy prices or heating circumstances substantially change, the Commission may review Energy Share's funding level after 2010.

95. The effect of the increased USB low-income discount rates, along with consideration of prior Commission decisions that shifted the cost recovery of specified cost-effective energy

conservation measures and a market transformation program from USB programs to the default supply portfolio, will require the development of a "modified allocation approach" in order to fund "an appropriate balance" of all electric USB program categories.

96. In D97.7.90, Order 5986g, the Commission ordered MPC to apply a set of allocations to fund an appropriate balance of all electric USB program categories based, for the most part, on similar pre-USB program expenditures and information at that time. The Commission determined this allocation approach was consistent with the statutory requirement that USB charges be established to ensure continued funding of and new expenditures for USB public purpose programs pursuant to § 69-8-402, MCA.

97. The electric USB program adjusted allocation amounts shown in Table 2 are produced by first applying the set of allocations in Orders 5986g and 5986i to the budgeted 2009 electric USB revenues of $9,490,948 (Exhibit GDP-3, line 67). The adjustment to the electric USB market transformation category represents the 2008-09 NEEA budgeted expenditure that was shifted to electric DSM programs (see Docket No. D2008.5.45, Exhibit WMT-2, line 35). The adjustment to the electric USB low-income discount program is the amount necessary to equal the estimated low-income discount expenditure calculated in Provide 2 (p. 1, line 27). The adjustment to the electric USB large customer (self-directed) category is the amount necessary to equal the budgeted 2009 electric USB revenue collections from those customers (Exhibit GDP-3, line 66). The adjustment to the electric USB energy conservation category is a "balancing entry" necessary to equal the budgeted 2009 electric USB revenues of $9,491,000 rounded.

Table 2: 2009 Electric USB Program Adjusted Allocations/Expenditures (rounded to nearest 000)

Descriptions	Sources				
Low-Income (L-I) Est. Discount	2008 Bus. Plan			Electric L-I Discount Calc.	
L-I Participants	Provide 2, p. 1			12,907	
Consumption	Provide 2, p. 1			95,781,910kwh	
Volumetric Rate	Provide 2, p. 1			$0.099732	
Fixed Mo. Charge	Provide 2, p. 1			$5.00	
L-I Energy Cost	Provide 2, p. 1			$10,326,946	
Est. L-I Discount	Provide 2, p. 1			**$2,121,315**	
USB Category	Orders 5986g,i Allocation %	Orders 5986g,i Allocations	Adjustments	Adjusted Allocations	Adjusted Allocation %
Conservation	21%	$1,993,000	($914,000)	$1,079,000	11.37%
Market Transform.	13%	$1,234,000	($545,000)	$689,000	7.26%
Renewable Energy	13%	$1,234,000		$1,234,000	13.00%
Research & Dev.	3%	$285,000		$285,000	3.0%
Subtotal Non L-I	**50%**	**$4,746,000**	**($1,459,000)**	**$3,287,000**	**34.63%**
L-I Discount	50%	$997,000	$1,124,000	$2,121,000	68.04%
L-I Weatherization	26%	$518,000		$518,000	16.62%
L-I Energy Share	12%	$239,000		$239,000	7.67%
L-I Other/Outreach	12%	$239,000		$239,000	7.67%
Subtotal L-I	**21% 100%**	**$1,993,000**	**$1,124,000**	**$3,117,000**	**100% 32.84%**
Large Cust. (a)	**29%**	**$2,752,000**	**$335,000**	**$3,087,000**	**32.52%**
Total Expenditures	**100%**	**$9,491,000**	**$0**	**$9,491,000**	**100%**

(a) Large Customers may "self-direct" their USB funds and **do not have a minimum funding requirement for low-income nor an obligation to fund any of NWE's non low-income USB activities**.

98. The Commission finds that this "modified allocation approach" produces reasonable, fair and equitable allocations of scarce electric USB resources. The Commission orders NWE to apply the "modified allocation approach" described in the preceding paragraph and shown in Table 2 to produce "an appropriate balance" of funding for all electric USB public purpose program categories.

99. The Commission directs NWE to fund the electric USB public purpose program categories at levels that approximate the adjusted allocations and adjusted allocation percentages shown in Table 2. NWE may enter into arrangements to commit the allocated USB funds as soon as practicable. The Commission recognizes that total electric USB collections and program

allocations may vary, as they are subject to variables such as system demand (weather), supply cost and low-income program participation. The Commission also acknowledges that: 1) NWE's practical experience with administering USB programs; 2) agreements with other parties administering USB programs on its behalf; and 3) changing circumstances may require NWE to make further modifications or adjustments. To the extent that NWE makes further modifications or adjustments, the Commission directs NWE to provide a full description of the changes, (as part of FOF ¶113, filing requirement #1, the 2009 electric and natural gas USB program budgets), including the methodologies, used to measure the utility's level of funding to each USB program category.

100. The Commission orders NWE to increase the natural gas USB charges to a level necessary to generate USB revenue collections that "fully fund" the proposed total natural gas USB program expenditures of approximately $4,825,000. (Exhibit DMY-1, line 12). Exhibit DMY-1 reflects that the residential natural gas USB rate would increase from $.08330/dkt to $0.175540/dkt. Dr. Power testified "that the natural gas charge would rise from about 1/3 of one percent in terms of average bills to customers to two-thirds of one percent. So that a fairly small change in everybody's bill allows one to fund the low-income discount and free up money to make real investments in trying to get ahead of this problem and permanently improve the housing stock." (Hearing Transcript pg. 138). The actual increase in customers' bills from increasing the natural gas rate will be small compared to the amount those bills increase or decrease as a result of the monthly variability in natural gas supply costs.

101. While the MCC argues that the Commission need not, and should not, increase the gas USB charge, the Commission disagrees based on testimony and evidence presented by NWE and other parties. In addition, the language in Section 69-3-1408(2), MCA, states that "the Commission shall establish a universal system benefits charge … taking into consideration the current level of expenditure by the natural gas utility…" The Commission has considered what NWE's recommended level of natural gas USB expenditures and the corresponding charges are, and finds that those recommendations are reasonable.

102. The Commission agrees with NWE that the natural gas funding levels for the E+ Energy Audit and the E+ Free Weatherization programs have not meaningfully changed since the establishment of the natural gas USB charges in 1997. (see D96.2.22, Order 5898d). Based on a review and examination of the information and data provided in Exhibit DMY-2, along with consideration for inflation and increasing program participation levels, the Commission finds that there is sufficient support for the proposed E+ Energy Audit and E+ Weatherization USB program expenditures of approximately $1,088,000 and $1,393,000, respectively. Adjustments to the proposed natural gas USB program expenditures are described in the following paragraph.

103. The natural gas USB program adjusted allocation amounts shown in Table 3 are based on NWE's 2008 Business Plan. (Prefiled testimony p. DMY-10, line 20 – 26). The adjustment to the natural gas USB low-income discount program is the amount necessary to equal the estimated low-income discount expenditure calculated in Provide 2 (p. 1, line 11). The adjustment to the natural gas USB low-income Energy Share expenditure is the amount necessary to equal the balance of the $575,000 expenditure not otherwise funded with electric USB collections. The adjustment to the natural gas USB energy conservation category is a "balancing entry" necessary to equal the total 2008 Business Plan expenditures of approximately $4,825,000. The natural gas USB program adjusted allocation percentages shown in Table 3, when taking into consideration the impact of the increased low-income discount rate and the Energy Share expenditure, are reasonably close to and consistent with the allocation percentages in Order No. 5898d of Docket No. D96.2.22.

Table 3: 2009 USB Natural Gas Program Allocations/Expenditures (rounded to nearest 000)

Descriptions	Sources			Natural Gas	
Est. L-I Discount	2008 Bus. Plan				
Customers – Ave.	Provide 2, p. 1			8,061	
Consumption	Provide 2, p. 1			680,202 dkt	
Unit Cost-Delivered	Provide 2, p. 1			$12.03301	
Mo. Service Charge	Provide 2, p. 1			$6.90	
L-I Energy Cost	Provide 2, p. 1			$8,852,293	
Est. L-I Discount	Provide 2, p. 1			**$1,971,925**	
USB Category	Allocation %	"Fully Funded" Exh. DMY-1	Adjustments	Adjusted Allocations	Adjusted Allocation %
Conservation	**22.55%**	**$1,088,000**	**($74,000)**	**$1,014,000**	**21.02%**
L-I Discount	47.63%	$1,780,000	$192,000	$1,972,000	51.74%
L-I Weatherization	37.28%	$1,393,000		$1,393,000	36.55%
L-I Energy Share	12.15%	$454,000	($118,000)	$336,000	8.82%
L-I Other/Outreach	2.94%	$110,000		$110,000	2.89%
Subtotal L-I	**77.45% 100%**	**$3,737,000**	**$0**	**$3,811,000**	**100% 78.98%**
Total Expenditures	**100%**	**$4,825,000**	**$0**	**$4,825,000**	**100.00%**

104. The Commission finds that the proposed "fully funded" natural gas USB program amounts represent reasonable, fair and equitable allocations of scarce natural gas USB resources. The Commission orders NWE to apply the allocation approach described in the preceding paragraph and shown in Table 3 to produce "an appropriate balance" of funding for all natural gas USB public purpose program categories.

105. The Commission directs NWE to fund the natural gas USB public purpose program categories at levels that approximate the adjusted allocations and adjusted allocation percentages shown in Table 3. NWE may enter into arrangements to commit the allocated USB funds as soon as practicable. The Commission recognizes that total natural gas USB collections and program allocations may vary, as they are subject to variables such as system demand (weather), supply cost and low-income program participation. To the extent that NWE makes further modifications or adjustments, the Commission directs NWE to provide a full description of the changes, (as part of FOF ¶113, filing requirement #1, the 2009 electric and natural gas USB program budgets), including the methodologies, used to measure the utility's level of funding to each USB program

category.

106. The Commission's allocation decisions in this final order are consistent with its policy that USB allocations ensure "continued funding of" and "new expenditures for" "an appropriate balance" of USB public purpose programs. Table 4 reflects the combined funding levels for all USB program categories. The Commission finds that, on a combined basis, the funding allocation percentages produce a reasonable, fair, and equitable distribution of scarce USB resources that address both long and short-term USB goals and objectives.

Table 4: Combined 2009 USB Program Allocations as Adjusted (rounded to nearest 000)

Descriptions	Table 2 - Electric Adj. Allocations	Table 3 – NG Adj. Allocations	Combined USB Adj. Allocations	Combined Allocation %
Conservation	$1,079,000	$1,014,000	$2,093,000	14.62%
Market Transform.	$689,000		$689,000	4.81%
Renewable Energy	$1,234,000		$1,234,000	8.62%
Research & Dev.	$285,000		$285,000	1.99%
Subtotal Non L-I	**$3,287,000**	**$1,014,000**	**$4,301,000**	**30.04%**
L-I Discount	$2,121,000	$1,972,000	$4,093,000	28.59%
L-I Weatherization	$518,000	$1,393,000	$1,911,000	13.35%
L-I Energy Share	$239,000	$336,000	$575,000	4.02%
L-I Other/Outreach	$239,000	$110,000	$349,000	2.44%
Subtotal L-I	**$3,117,000**	**$3,811,000**	**$6,928,000**	**48.39%**
Large Customers	**$3,087,000**		**$3,087,000**	**21.56%**
Total Expenditures	**$9,491,000**	**$4,825,000**	**$14,316,000**	**100%**

107. With no objections from the Parties, the Commission approves the implementation of a natural gas USB charge tracker mechanism pursuant to § 69-3-1408(2), MCA , as proposed and described by NWE on page DMY-17 and Exhibit DMY-3 in its prefiled testimony.

108. The Commission finds no compelling reason to modify NWE's overall administration of the electric and natural gas USB programs at this time, including the need for; 1) cushions; 2) caps; 3) additional minimum funding levels; or 4) multi-year allocations.

109. The Commission finds that the increased low-income discount rates and the significant contribution to Energy Share approved in this final order clearly exceeds the USB statutory requirements imposed on NWE's ratepayers in providing vital low-income energy assistance.

Therefore, the Commission determines that the need for additional low-income energy assistance stemming from extraordinary and unique circumstances should, for the most part, come from other sources (e.g.: federal government grants, state government discretionary general funds, charitable contributions).

110. NWE may find a measure of flexibility to reallocate market transformation program funds that overlap with other electric USB public purpose programs. ARM 42.29.110. The Commission reaffirms its policy against setting multi-year allocations at this time, since they effectively diminish program funding flexibility and may interfere with the overall goals and objectives of maximizing USB program benefits. (see D97.7.90, Order 5986i).

111. The Commission appreciates HRC's testimony regarding program design changes, but found the testimony lacking sufficient ways and means for implementing its proposals. The Commission finds that the current DPHHS weatherization programs are an effective use of limited USB funds. Based on the large demand and waiting list for the low-income weatherization program, the Commission supports weatherizing the greatest number of households with the limited amount of funding available. Furthermore, the Commission remains concerned that the inherent complexities of sorting out the web of both federal and state rules (e.g.: DOE, DOR, DPHHS), and the likelihood of overstepping jurisdictional boundaries may prove problematic. The Commission continues to encourage all affected parties to work out strategies, through a collaborative approach, that improve the efficient administration and enhance the effectiveness of USB programs. In communities served by NWE and other utilities or cooperatives where both entities provide on-site residential energy audits, the Commission encourages a coordinated effort when providing this USB program.

112. The Commission directs NWE to move forward, beginning January 1, 2009, to administer the electric and natural gas USB public purpose programs in accordance with the orders and directives in this final order.

113. The Commission directs NWE to file with the Commission, on or before April 1, 2009: 1) the 2009 electric and natural gas USB program budgets; 2) the comprehensive 2008 Electric

USB Annual Report and a similarly prepared 2008 Natural Gas USB Annual Report; and 3) the natural gas USB charges annual tracking adjustment. These filing requirements shall be prepared in compliance with the applicable USB statutes and administrative rules, and reflect the Commission's policy directives regarding USB allocations and funding levels in this final order. NWE may submit the required filings separately or combined.

CONCLUSIONS OF LAW

1. All findings of fact that can properly be considered conclusions of law and that should be considered as such to preserve the integrity of this Final Order are incorporated herein as conclusions of law.

2. The PSC is the Montana administrative agency charged with regulating public utilities. § 69-1-102, MCA. NWE is a public utility in regard to NWE's provision of natural gas and electric services to customers in Montana. § 69-3-101, MCA (meaning of "public utility").

3. NWE, as well as other Montana energy utilities, is required to have USB programs. See, e.g., § 69-3-1408, MCA (natural gas utility USB program), and § 69-8-402, MCA (electric utility USB program). The PSC has authority to approve public utility USB programs. § 69-3-1408, MCA (natural gas USB), and § 69-8-402, MCA (electric USB). Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance. § 69-8-402, MCA.

4. A natural gas utility shall implement, upon commission approval and subject to ongoing commission oversight and direction, a universal system benefits program. A natural gas utility shall file an annual report of its universal system benefits charges, programs, and program funding levels with the commission in a manner prescribed by the commission. § 69-3-1408, MCA.

5. A natural gas universal system benefits charge may be established and revised through a universal system benefits charge tracking procedure. § 69-3-1408, MCA.

FINAL ORDER

1. NorthWestern Energy shall increase, on a final basis, the electric and natural gas USB low-income discount rates to 25% and 30%, respectively, to be in effect for the winter heating season period beginning November 1 and ending April 30. The electric and natural gas USB low-income discount rates will revert back to 15% and 0%, respectively, for the time period beginning May 1 and ending October 31.

2. NorthWestern Energy shall apply the “modified allocation approach” described in ¶¶ 97 and 103, and shown in Tables 2 and 3 above, to produce “an appropriate balance” of funding for all USB public purpose program categories.

3. NorthWestern Energy’s electric and natural gas USB expenditure targets for qualifying USB programs and categories shall approximate the adjusted allocations in Tables 2 and 3 above, subject to actual revenue collections and low-income discount costs.

4. NorthWestern Energy shall increase the natural gas USB charges as proposed by NWE in Exhibit DMY-1, and shown in Table 1 above, in order to generate USB revenue collections necessary to "fully fund" the proposed total natural gas USB program expenditures of approximately $4,825,000.

5. NorthWestern Energy shall implement a natural gas USB charge tracker mechanism.

6. NorthWestern Energy shall submit required filings as directed in ¶ 113 above.

7. The Commission’s directives and orders in this Final Order shall be effective for service rendered on or after January 1, 2009. NorthWestern Energy shall file compliance tariffs with an effective date of January 1, 2009, to reflect the changes in the USB charges as a result of this Order.

DONE IN OPEN SESSION at Helena, Montana on the 9th day of December 2008 by a vote of 4-1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

____
GREG JERGESON, Chairman

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DOUG MOOD, Vice Chairman

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BRAD MOLNAR, Commissioner (Dissenting)

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ROBERT H. RANEY, Commissioner

____
KEN TOOLE, Commissioner

ATTEST:

Verna Stewart
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.