

Service Date: April 4, 2005

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
NorthWestern Energy for Advanced)
Approval of Certain Proposed Electricity) DOCKET NO. D2005.2.14
Power Supply Purchase Agreements) ORDER NO. 6633c

PROCEDURAL ORDER

NOTE: PLEASE READ CAREFULLY. PROVISIONS OF THIS ORDER MAY MODIFY PREVIOUS PSC PROCEDURAL AND SCHEDULING POLICY. THIS IS NOT A PROPOSED ORDER. RECONSIDERATION IS AVAILABLE FOR GOOD CAUSE.

Introduction

1. The Public Service Commission (PSC), itself or through delegation to PSC staff, hereby establishes the procedure and schedule to be followed in the above docket. Any request for reconsideration of this Order must be submitted to the PSC within 10 days of the service date above. A request for reconsideration will be scheduled for the PSC's next available business meeting following the request and the parties will be informed of the action taken. This Order is effective immediately and remains effective unless and until modified by action of the PSC.

2. NorthWestern Energy (NWE) filed an application for advanced approval of two power purchase agreements, one between NWE and Judith Gap Energy, LLC, (“Wind Contract”) and one regarding NorthWestern Corporation’s interest in Colstrip Unit 4 (“Colstrip 4 Contract”). The Commission decided to consider each power purchase agreement separately. See Notice of Application and Intervention Deadline, February 9, 2005. Final Order No. 6633b dealing with the Wind Contract was issued on March 31, 2005. This Procedural Order governs procedure with respect to the Colstrip 4 Contract.

Schedule

3. All dates listed in the following schedule are receipt dates (filing and service)

unless otherwise specified. Dates prior to the date of this order or for informational purposes only. Dates and procedures after the date set for hearing are subject to change at the close of hearing. If an additional issues procedure is determined to be unnecessary, the schedule following the time for identification of additional issues may change. Discovery requests on the utility's application may be submitted at any time up to the discovery date fixed by this schedule. Discovery requests may be submitted by PSC staff at any time subsequent to receipt of the utility's application and prior to the final day for such discovery; discovery requests may be submitted by intervenors at any time subsequent to filing a petition to intervene and prior to the final day for such discovery.

- (a) February 7, 2005: Utility's application received by PSC.
- (b) February 9, 2005 Notice of Application and Intervention Deadline issued by PSC.
- (c) March 1, 2005: Final day for petitions to intervene with respect of the Colstrip 4 Contract.
- (d) April 19, 2005: Final day for written discovery (includes data requests) to utility on utility's application and pre-filed testimony.
- (e) April 29, 2005: Final day for utility to respond to discovery on utility's application and pre-filed testimony.
- (f) May 10, 2005: Final day for initial pre-filed testimony from intervenors.
- (g) May 17, 2005: Final day for written discovery on intervenor pre-filed testimony.
- (h) May 24, 2005: Final day for intervenors to respond to written discovery on pre-filed testimony.
- (i) June 1, 2005: Final day for utility rebuttal testimony.
- (j) June 8, 2005: Final day for discovery on utility rebuttal testimony.
- (k) June 15, 2005: Final day for utility to respond to discovery on utility rebuttal testimony.
- (l) June 21, 2005: Final day for Pre-hearing Memoranda.
- (m) June 23, 2005: Hearing commences and continues from day to day until concluded.
- (n) July 14, 2005: Final day for simultaneous Post-hearing Briefs.

- (o) August 5, 2005: Target date for Final Order by PSC, 179 days after PSC receipt of application.

4. In addition, satellite hearings and various pre-hearing conferences may be separately scheduled.

Ex Parte Communications

5. This proceeding is a contested case proceeding. In contested case proceedings most *ex parte* communications are prohibited. An *ex parte* communication is one between (i.e., to or from) a Commissioner and any person associated with a party in the contested case, when the communication involves the contested case or an issue in the contested case and all other parties to the contested case have not been given a reasonable opportunity to participate in the communication. PSC Commissioner receipt or conveyance of *ex parte* communications is prohibited by law. § 2-4-613, MCA. Party receipt or conveyance of *ex parte* communications is prohibited by law. Id. A few categories of *ex parte* communications, some pertaining to procedure and scheduling, may be allowed by law and are not prohibited (e.g., emergency motion for extension of time). Id. Any oral, written, electronic, or other form of communication of any kind, between (i.e., to or from) a PSC Commissioner and any person associated with any party to a contested case pending before the PSC may be or may include, inadvertently or otherwise, a prohibited *ex parte* communication. Parties and Commissioners being ever alert to this possibility, the prohibition applicable, and the corrective action necessary is extremely important in regard to any face-to-face, phone, letter, e-mail, or other encounter involving a party and a Commissioner.

Procedure

General

6. Unless otherwise stated in this Procedural Order the procedure governing this contested case is set forth in applicable provisions of: (a) Title 69, MCA, public utilities; (b) Title 2, Chapter 4, MCA, MAPA; (c) ARM Title 38, Chapter 2, procedural rules of the PSC; and (d) previous Orders of the PSC bearing specifically on the procedure and issues in this docket, if any.

Service and Filing

7. Copies of all pleadings, motions, discovery requests, discovery responses, pre-

filed testimony, briefs, and other documents shall be filed with the PSC and served on all persons on the service list in this docket. (This includes persons who are not parties.) In the case of a filing directed to the PSC, such as motions, testimony, and briefs, the original and 10 copies shall be filed. Service upon each person shall be upon each person's attorney of record (if any) and such other individuals as may be reasonably designated by the attorney of record or the person.

8. Service and filing by means of facsimile transmission is prohibited. Deadlines for service and filing are deadlines for the service and filing of the original and copies as required.

Intervention

9. Parties seeking to intervene must file a Petition to Intervene with the PSC. The Montana Consumer Counsel (MCC) has a statutory right to intervene. If the deadline for intervention is met, intervention shall be deemed granted to the MCC. Pursuant the Notice of Application and Intervention Deadline, the PSC will rule on every other petition to intervene. Intervention will be effective only upon action of the PSC.

Discovery

10. The term "discovery" includes all forms of discovery authorized by rules of the PSC. The term "written discovery" as used in this order includes data requests. The PSC urges all parties to conduct discovery through the use of data requests as the preferred method of discovery.

11. The PSC directs all parties to prepare data requests according to the following guidelines:

(a) Parties must assign their data requests a request number (e.g., MCC-001). Request numbers must be consecutive regardless of the party to whom the request is directed (e.g., the PSC might direct PSC-001 through 008 to the utility, PSC-009 through 016 to an intervenor, and PSC-017 through 019 to the utility).

(b) All data requests must include at the beginning of each request a description of five words or less explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit number, page number, etc., may be included in addition to, but not in lieu of, the subject of the request. This requirement will help to identify all data requests and responses addressing a particular subject or group of subjects.

Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another.

(c) Multi-part requests may be used, each part denoted by a lower case letter (a, b, c, d, and e). Requests must be limited to five (a-e) parts. If additional parts are necessary additional requests must be made. A single part request should be denoted by the request number only.

(d) Examples of acceptable data requests are as follows:

PSC-500 RE: Purchased Gas Contracts
Witness - Doe, Page JBD-4, Lines 13-15.

Please provide the origination and expiration date for each contract.

PSC-501 RE: Bypass
Witness - Roe, Page RAR-14, Lines 11-14.

- a. What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

12. The party receiving the written discovery or data request has three days from receipt to object. The objection and notice thereof shall be filed with the PSC and served on all parties. The PSC may dispose of objections by prompt ruling or may schedule arguments. Failure to timely object will be deemed acceptance of the request.

13. Any requesting party dissatisfied with the response to any written discovery or data request and desiring PSC action to compel, must, within three days after receipt of such response, file before the PSC and serve all parties, the objection or motion and identify the relief requested. The PSC may dispose of such objection by prompt ruling or may schedule argument. The PSC will act to either sustain or overrule the objections. If an objection is sustained, a time period will be set within which a satisfactory response must be made.

14. Submission of written discovery after the period established will be allowed by leave of the PSC only. Requests will not be permitted unless the party making the request shows good cause as to why the request was not submitted within the time period allowed.

15. Unless excused by the PSC, failure by a party to answer data requests or other

discovery from any party may result in: (a) action refusing to allow the failing party to support or oppose related claims; (b) action prohibiting introduction of related matters in evidence; (c) action striking pleadings, testimony, or parts thereof; (d) action staying further proceedings until the request is satisfied; or (e) action dismissing the case, defense, proceeding, or parts thereof.

Testimony and Evidence

16. The PSC contemplates a complete identification of issues prior to the time of hearing. Introduction of new issues or data in new areas at the time of hearing will be carefully scrutinized and will be subject to disallowance unless reasonably related to issues earlier identified in the application, pre-filed testimony, or proceedings. In this docket the Applicant will be permitted to provide live rebuttal testimony at the hearing.

17. At hearing, pre-filed direct and answer testimony (including on additional issues) will be adopted into the record by motion of the proponent without the need of recitation by the witness. The testimony will be an exhibit and not otherwise entered into the transcript.

18. All proposed exhibits and pre-filed written testimony shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter and presiding officer for the preferred manner of identifying exhibits.

19. When cross-examination is based on a document, not previously filed with the PSC, copies of the document must be made available to each commissioner, parties, and staff, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each commissioner, the PSC staff, and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, and if previous arrangements have been made with the PSC and all parties.

20. Citizens and citizen groups will, in the discretion of the PSC, be allowed to make statements without having submitted prepared written testimony. In addition, if they have prepared written testimony they may read it if they desire, or they may have it adopted directly into the record.

21. The Montana Rules of Evidence in effect at the time of the hearing in this docket will govern at the hearing.

22. Any party to this proceeding having responded, itself or through agents, to written discovery from any other party or the PSC, shall have all persons authoring each response

present and available as a witness at the hearing for the purposes of introduction of the discovery and cross-examination thereon. Reasonable alternatives to this requirement, such as waiver of objection to introduction absent the author and waiver of right to cross-examine, agreed to by the parties may be accepted if approved by the PSC. Written discovery (not including transcripts of depositions on oral examination) and data requests will not be introduced at hearing unless done in accordance with applicable rules of evidence and through an appropriate witness subject to cross-examination or upon stipulation approved by the PSC.

Pre-hearing Motions and Conferences

23. Motions by any party, including motions to strike pre-filed testimony and motions concerning any procedural matter connected with this docket, shall be raised at the earliest possible time. Pre-hearing motions shall be submitted on briefs unless otherwise requested by a party and approved by the PSC. If oral argument is granted, the party requesting oral argument shall, after scheduling with the PSC, notice the same for hearing before the PSC.

24. The PSC may, at any time prior to the hearing, set a pre-hearing conference for discussion of, among other things, the feasibility of settlement of any issues in the proceeding, the simplification of issues, the possibility of obtaining admissions of fact and documents, the distribution and marking of written testimony and exhibits prior to the hearing, and such other matters as may aid in the disposition of the proceeding or settlement thereof.

25. Nothing in this Order shall be construed to limit the legally established right of the PSC or its staff to inspect the books and accounts of the utility at any time.

Pre-hearing Memorandum

26. The form and content of a Pre-hearing Memorandum to be submitted by each party shall conform to the following:

- (a) The first section shall identify issues before the PSC;
- (b) The second section shall identify any witnesses the party expects to call to testify or to sponsor pre-filed testimony;
- (c) The third section shall identify all exhibits and discovery responses the party intends to offer for inclusion in the administrative record;
- (d) A party's pre-hearing memorandum shall not exceed 10 pages.

Open Meetings

27. All PSC meetings regarding this docket are open meetings except as otherwise

required or permitted by law. Parties will not routinely be notified of PSC business meetings or work sessions that may pertain to discussion or action on matters within this docket. Notification of PSC work sessions concerning this docket will be provided to all persons requesting notification through the PSC's weekly agenda mailing list.

Done and dated this 4th day of April, 2005, by delegation to PSC staff as an Order of the PSC.

BY THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chairman
BRAD MOLNAR, Vice-Chairman
DOUG MOOD, Commissioner
ROBERT H. RANEY, Commissioner
THOMAS J. SCHNEIDER, Commissioner

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.