

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

IN THE MATTER OF NorthWestern Energy's) UTILITY DIVISION
Application for Approval of Electric Supply)
Deferred Cost Account Balance and Projected) DOCKET NO. D2008.5.45
Electric Supply Cost)

IN THE MATTER OF NorthWestern Energy's) UTILITY DIVISION
Application for Approval of Electric Supply)
Deferred Cost Account Balance and Projected) DOCKET NO. D2009.5.62
Electric Supply Cost)

NORTHWESTERN ENERGY'S INITIAL POST-HEARING BRIEF

NorthWestern Corporation d/b/a NorthWestern Energy ("NorthWestern" or "NWE"), by and through its undersigned counsel, hereby submits to the Montana Public Service Commission ("Commission") this Initial Post-Hearing Brief in the above-captioned matter. The Commission should approve the Stipulation and Settlement Agreement submitted by NorthWestern and the Montana Consumer Counsel ("MCC") in this Docket.

I. Background

On May 30, 2008, NorthWestern filed with the Commission its annual Application for Approval of Electric Supply Deferred Cost Account Balance and Projected Electric Supply Cost ("2008 Application") pursuant to Mont. Code Ann. § 69-8-210 (2007) and Commission rules. On June 9, 2008, the Commission noticed the 2008 Application and set an intervention deadline for June 26, 2008. The Commission, by

Notice of Staff Action issued July 8, 2008, granted intervention to the Montana Consumer Counsel, the only party to request intervention in the 2008 Electric Tracker Docket. NorthWestern subsequently provided updates to the 2008 Application on June 26 and July 17, 2008. The Commission issued Interim Order No. 6921 on June 27, 2008, setting rates for service rendered on and after July 1, 2008.

On May 29, 2009, NorthWestern filed with the Commission its annual Application for Approval of Electric Supply Deferred Cost Account Balance and Projected Electric Supply Cost (“2009 Application”) pursuant to Mont. Code Ann. § 69-8-210 (2009) and Commission rules. On June 19, 2009, the Commission consolidated Docket D2008.5.45 with Docket D2009.5.62. On June 23, 2009, the Commission issued interim Order No. 6921a setting rates for services rendered on after July 1, 2009. On July 6, 2009, the Commission granted intervention to the Montana Consumer Counsel, the Renewable Northwest Project, Human Resource Council - District XI, and the Natural Resource Defense Council. On July 8, 2009, the Commission issued Procedural Order No. 6921b setting the procedural schedule for this consolidated docket which included, among other deadlines, a hearing date of January 13, 2010.

On November 4, 2009, NorthWestern submitted a Motion to Suspend Procedural Schedule, indicating that it and MCC had entered into settlement discussions. On November 6, 2009, the Commission suspended the procedural schedule pursuant to NorthWestern’s request. On December 2, 2009, NorthWestern and MCC submitted a Stipulation and Settlement Agreement to the Commission. On December 7, 2009, the Commission issued a Notice of Public Hearing, setting a hearing date of January 13, 2010 for this matter. On December 18, 2009, NorthWestern submitted a Motion to Establish

New Hearing Date. On December 24, 2009, the Commission issued a Notice of Public Hearing – Revised, setting a new hearing date of February 3, 2010. A hearing was held on that date in this Docket. NorthWestern now timely files this Initial Post-Hearing Brief.

II. The Commission Should Approve the Stipulation and Settlement Agreement Submitted by NWE and MCC

As explained by NorthWestern’s witness John Hines on the stand, the Stipulation and Settlement Agreement settled the three identified items at issue between NWE and MCC, with the resolution to each issue relatively transparent. Tr. 10:23-11:6. First, the Stipulation and Settlement Agreement allows NorthWestern to recover a portion, but not all, of its labor costs for the real-time scheduler function in the electric tracker until the Commission issues a final order in NorthWestern’s general rate case filing, Docket D2009.9.129. Tr. 11:12-22. Second, NorthWestern and MCC agreed to have a robust discussion related to the use of financial swaps in a subsequent docket, if NWE chooses to file one, so the Commission has a sufficient record to render a decision on the use of financial swaps. Tr. 11:23 – 12:16. Third, the Stipulation and Settlement Agreement splits the difference with regard to Colstrip Unit 4 related lost revenues associated with demand side management solely for the last six months of the tracker period, July 1 2008 through June 30, 2009. Tr. 12:17 – 13:2. These three items were the only contested items between NWE and MCC in the consolidated Docket.

As discussed above, the settlements in each of these three areas were transparent. In fact, these were the only three disputed issues between the parties in this Docket. *See supra*. These were not “black box” settlement discussions, as the three issues identified by MCC and NWE were “very clearly set forth” and the negotiated settlements on each

were “pretty transparent.” Tr. 10:23 – 11:5. Moreover, NorthWestern admitted as evidence all testimony if filed in this combined Docket and did not object to the admission of all of its responses to data requests in this Docket. Thus, all of the materials describing the three disputed issues have been submitted as part of the record in this Docket. Accordingly, the Commission should accept and approve the Stipulation and Settlement Agreement as submitted as the three disputed issues and the resolution to each of these issues are straight-forward and are sufficiently described by the materials submitted on the record in this Docket.

In questioning NWE’s witness Pat Corcoran, Commissioner Molnar suggested that NorthWestern rejected a full requirements contract with PPL in 2004 for \$37.40 per Mwh, a price that was allegedly less than market pricing for the period in question. Tr. 54:1-6. As explained by Mr. Corcoran, there was no \$37.40 full requirements offer; it was closer to \$40 per Mwh. Tr. 57:14 -19. More importantly, however, Mr. Corcoran explained that the offer made by PPL was not a fixed, firm priced offer at all; it was merely a starting negotiating point between the parties, consistent with how power purchase agreements are traditionally offered in the marketplace. Tr. 58:1 – 19. Of critical importance was the fact that there were serious risks to ratepayers in the draft contract proposed by PPL, and that considering these risks, the contract did “not make sense on its face.” Tr. 59:22 – 60:6. These risks by themselves were non-starters for NorthWestern. For example, the pricing alluded to by Cmmr. Molnar was fixed only for a few weeks, if not a few days. Tr. 58:1-19. This is significant as it often time takes months to negotiate power purchase agreements of this magnitude. If the pricing offered

by PPL was not firm, as testified to by Mr. Corcoran, then the price most likely would have changed prior to NWE and PPL entering into a final contract.

In addition, Mr. Corcoran explained that while NorthWestern considered the PPL offer, along with a number of other offers, it was sensitive to the risk associated with “sole sourcing” the majority of its base load energy supply with a single provider—i.e. PPL. Tr. 57:20-25. By placing all of its “eggs in one basket”, NorthWestern would face a “cliff” when the sole sourced contract expired as NorthWestern would have to scramble to replace a substantial piece of its base load energy at that time. *Id.* Further, the Commission had then-recently given NorthWestern direction in the context of energy supply resource planning that encouraged NorthWestern to diversify its electric supply portfolio, and not to put all of its electric supply resource “eggs in one basket.” Tr. 56:13 – 23; 59:22 – 60:6.

More significantly, while the PPL offer allegedly contained advantageous pricing in relation to then-current market pricing, the PPL offer had a number of “other specific provisions to it that made that contract extremely expensive.” Tr. 58:15-19. First, the PPL offer required NorthWestern to cancel two existing contracts it had totaling 450 MW. Tr. 58:20-25. The value of those two existing contracts in comparison to market pricing for the time-period July 1, 2005 through, July 1, 2007, was approximately \$130 million. Tr. 59:1-4. The significance of this is that had NorthWestern opted to enter into the PPL offer, it would have had to give up the two existing supply contracts, thus giving up \$130 million in value. Tr. 59:1-9.

Second, the PPL offer contained a requirement that allowed PPL to replace Qualifying Facilities (“QF”) power, if such QF power were lost for whatever reason, at a

rate that was the then-current market-rate plus 20 percent. Tr. 59:10 – 16. Third, the PPL offer contained another provision which had a 20 percent “adder” if NorthWestern were to enter into new renewable contracts. Tr. 59-17-21.

Lastly, Mr. Corcoran described that at the time NWE was in contract discussions with PPL, PPL, the Commission, NorthWestern and the MCC were all involved in a market power proceeding at the Federal Energy Regulatory Commission (“FERC”). Tr. 60:7 – 12. One possible outcome of that FERC proceeding was that PPL would be required to offer power from its Montana resources at cost-based rates as opposed to market-based rates. Tr. 60:13-22. The outcome of this FERC proceeding would have had a significant impact on any product NWE would have purchased from PPL, unless NWE had already signed a contract with PPL. Accordingly, it would not have been prudent for NorthWestern to enter into a long-term power purchase agreement with PPL at market based rates, with serious potential risks associated with the contract, pending a FERC proceeding which could have required PPL to offer only cost-based rates.

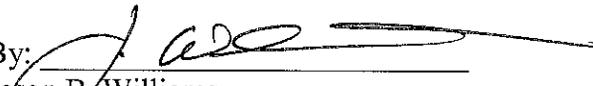
To summarize, the alleged offer by PPL of power for \$37.40 per MWh was not an offer at all. More importantly, the offer contained numerous other provisions which NorthWestern did not believe were in the best interests of the utility or its customers. Finally, there was a proceeding occurring at FERC at the time when NorthWestern and PPL were negotiating which made it imprudent for NorthWestern to rush into a long-term deal with PPL.

III. Conclusion

For all the reasons stated above, NorthWestern respectfully requests the Commission to approve the Stipulation and Settlement Agreement as submitted by NorthWestern and the MCC.

Respectfully submitted this 10th day of March, 2010.

NorthWestern Energy

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CERTIFICATE OF SERVICE

I hereby certify that a copy of NorthWestern Energy's Initial Post-Hearing Brief has been served on the most recent service list in the combined Dockets D2008.5.45 and D2009.5.62 by first class mail and efiled with the PSC.

Date: March 10, 2010


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D2008.5.62
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