

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

* * * *

IN THE MATTER OF NorthWestern Energy's) REGULATORY DIVISION
Application for Approval of Electric Supply)
Deferred Cost Account Balance and Projected) DOCKET NO. D2010.5.50
Electric Supply Cost)

NORTHWESTERN ENERGY'S INITIAL BRIEF

This docket was initiated on June 7, 2010, when NorthWestern Energy ("NWE") filed its annual Electric Supply Tracker Application for Approval of Electric Supply Deferred Cost Account Balance for the 12-month period ending June 30, 2010; and Projected Electric Supply Costs for the 12-month tracker period July 1, 2010 through June 30, 2011 ("Tracker Application"). On July 2, 2010 the Montana Consumer Counsel ("MCC") intervened. A procedural Order was issued on July 28, 2010 setting the deadlines for certain activities and filings. Filing of testimony by MCC and rebuttal testimony by NWE, as well as related discovery ensued. The hearing on NWE's Tracker Application was held before the Montana Department of Public Service Regulation, Montana Public Service Commission ("PSC" or "Commission") on January 19th and 20th, 2011. In support of the Tracker Application, NWE presented testimony from David Fine, Director of Energy Supply Planning; Frank Bennett, Electric and Natural Gas Supply specialist; Cheryl Hansen, Senior Analyst in the Regulatory Affairs Department; Kevin Markovich, Director of Energy Supply Market Operations; William Thomas, Manager of Regulatory Support Services; and Patrick Corcoran, Vice-President of Government and Regulatory Affairs. Dr. John Wilson testified on behalf of MCC.

The only contested issue before the Commission in this Docket is MCC's contention that the Colstrip Unit 4 fixed cost revenue requirement rate, which was set in Docket D2008.6.69 as required in Order 6925f, should be adjusted. Therefore, all actual and forecast electric supply costs presented for approval in the Tracker Application and updated through the hearing in this Docket, except to the extent the level of Colstrip Unit 4 related lost revenues may be impacted by any decision the Commission may render that changes the Colstrip Unit 4 fixed cost rate, should be approved.

I. **THE ELECTRIC TRACKER IS THE LEGAL MECHANISM FOR NWE TO RECOVER ELECTRICITY SUPPLY COSTS INCURRED.**

The Tracker Application now before the Commission requested approval of NWE's Electric Supply Deferred costs for the 12-month period ending June 30, 2010. In addition, it sets forth NWE's projected supply and electric costs for the 12-month period, July 1, 2010 to June 30, 2011. The Tracker Application was filed in accordance with the Deferred Accounting method approved by the Commission in Docket No. 2001.10.144 and applicable Montana statute. "...there is a specific provision in Montana law Section 16.98.210 (incorrect cite in transcript – correct cite is Section 69-8-201) that provides the authority for the Commission and provides the basis for the tracking mechanism." Live Testimony of Patrick Corcoran (Corcoran Live Testimony), Transcript page 299, lines 18-21.

Section 69-8-210(1), MCA, states:

Public utilities-electricity supply-environmentally preferred resources. (1) The commission shall establish an electricity cost recovery mechanism that allows a public utility to fully recover prudently incurred electricity supply costs, subject to the provisions of 69-8-419, 69-8-420,

and commission rules. The commission may include other utility costs and expenses in the cost recovery mechanism if it determines that including additional costs and expenses is reasonable and in the public interest. The cost recovery mechanism must provide for prospective rate adjustments for cost differences resulting from cost changes, load changes, and the time value of money on the differences.

“Electricity supply costs” are further defined in §69-8-103(8), MCA, as:

“Electricity supply costs” means the actual costs incurred in providing electricity supply service through power purchase agreements, demand-side management, and energy efficiency programs, including but not limited to:

- (a) capacity costs;
- (b) energy costs;
- (c) fuel costs;
- (d) ancillary service costs;
- (e) transmission costs, including congestion and losses;
- (f) planning and administrative costs; and
- (g) any other costs directly related to the purchase of electricity and the management and provision of power purchase agreements.

Under the clear mandate of the law, the electric tracker deals with the prudence of NWE’s electricity supply costs and truing up of revenues to such costs. “This docket, the annual electric supply tracker docket, is specific only to a defined term by Montana law. It’s called electric supply costs. And those electric supply costs are defined as purchase power agreements, energy efficiency and demand side management. And so in this docket those costs are reviewed and approved by this Commission, the prudence of those costs, but those are purchase power agreements.” Corcoran Live Testimony, Transcript pages 241, line 20 through 242, line 3. MCC did not take issue with the reasonableness of any of the electric supply costs as set forth in the Tracker Application. All were prudently incurred and should be approved.

NWE did not request consideration of the Colstrip Unit 4 fixed cost revenue requirement related rates in this tracker. In fact, it would have been inappropriate and

NWE is prohibited from making such a request. The Generation Asset Cost of Service on NWE's interest in Colstrip Unit 4, including the fixed costs and the associated fixed costs rates, was determined in Docket D2008.6.69.

Generation Assets Cost of Service is defined in §69-8-103(13), MCA, as follows:

“Generation assets cost of service” means a return on invested capital and all costs associated with the acquisition, construction, administration, operation, and maintenance of a plant or equipment owned or leased by a public utility and used for the production of electricity.”

Clearly, it would be inappropriate and contrary to law for the Commission to adjust Colstrip Unit 4 fixed cost rates in this Docket.

II. COLSTRIP UNIT 4 FIXED COST RATES WERE APPROVED BY THE COMMISSION IN DOCKET NO. D2008.6.69, NWE'S APPLICATION FOR APPROVAL OF ITS INTEREST IN COLSTRIP UNIT 4 AS AN ELECTRICITY SUPPLY RESOURCE.

On behalf of the MCC, Dr. Wilson has suggested that the 2009/2010 tracker revenue should be adjusted downward by nearly \$2,000,000. He arrives at this result by using expected 2008/2009 sales and the Colstrip Unit 4 fixed costs authorized by the Commission in Docket D2008.6.69 to develop an alternative Colstrip 4 fixed cost rate. He then multiplies this fixed cost rate by 2009/2010 electric tracker sales to arrive at what he advocates should have been the Colstrip Unit 4 fixed cost revenue for the 2009/2010 tracker period, which is approximately \$2,000,000 less than actual Colstrip Unit 4 fixed cost revenue for the 2009/2010 tracker period. See Direct Testimony of Dr. Wilson, pp 11-16.

As an initial matter, Dr. Wilson is misguided in suggesting that any adjustment to the 2009/2010 tracker revenue related to recovery of Colstrip Unit 4 fixed costs should be made in this Docket. As described above, consistent with law, Colstrip Unit 4 fixed costs are not recovered through the electric supply tracker and it would be inappropriate and illegal to adjust Colstrip Unit 4 fixed cost rates, and, therefore, related revenues, in this Docket.

That aside, the Commission approved Colstrip Unit 4 fixed cost rates in Docket D2008.6.69, which is now closed. As explained in the Rebuttal Testimony of Patrick Corcoran on pages 4 and 5, Order No. 6925(f) in Docket No. D2008.6.69 directed NWE to file tariffs implementing the rate-basing of Colstrip Unit 4 for service on and after January 1, 2009. Although the compliance material (“Compliance Filing”) was included as part of the December 2008 monthly Electric Filing, it was clearly set out and discussed separately and apart from the regular monthly tracking filing material. The compliance tariff sheets were approved by the PSC on December 17, 2008. A copy of this filing was served on MCC. The Commission explicitly approved Colstrip Unit 4 fixed cost rates. “...when the Commission issued its order, they required us to submit a compliance filing. And when we submitted that compliance filing, which included the use of 2007 test year loads to calculate those rates, the staff had the responsibility - and this is a long standing practice - to review that compliance filing to make sure it was in compliance with the order.” Corcoran Live Testimony Transcript, page 259, lines 10-17.

NWE filed for approval of the Colstrip Unit 4 fixed costs in the appropriate docket. The fixed cost rates were calculated on the basis of 2007 historic test year sales and are appropriately included in the tariffs, which were certified by the Secretary of the Commission, implementing Order No. 6925(f). They are not a part of an electricity supply tracker.

The costs set forth in the 2007 historic test year were presented in Docket No. D2008.6.69, which followed the Commission's filing requirements. The 2007 test year costs were matched with the loads that were in place at that point in time. The "Matching Principle" requires this and rates were subsequently derived on this basis. To use different test year loads now, as advocated by Dr. Wilson, would violate this principle. While loads have changed from 2007 to 2009, NWE's costs for Colstrip Unit 4 have also changed. These costs have grown considerably, by \$3 million from 2007 to 2009. See Transcript of Hearing, pp 265-269.

III. REMOVING \$2 MILLION FROM NWE REVENUES AS SUGGESTED BY MCC IS A VIOLATION OF THE LAW.

As stated above, this Docket is not the proper forum for adjusting revenue related to collection of Colstrip Unit 4 fixed costs. In fact to do so would violate NWE's substantial legal rights, including those protected by the Montana and United States Constitutions. Specifically, NWE's rights to substantive and procedural Due Process rights guaranteed in Article II, Section 17 of the Montana Constitution and the Fourteenth Amendment to the United States Constitution protect it from such an arbitrary and

capricious action. To take property of NWE without offering NWE an opportunity for a fair hearing is absolutely prohibited.

IV. CONCLUSION.

Any issue MCC had with NWE's Compliance Filing should have been raised at the time of the Compliance Filing. Dr. Wilson's proposed adjustment is untimely, inappropriate, contrary to law and should be rejected.

Dated this 22nd day of February, 2011.

NorthWestern Energy

By 

Ross Richardson
Henningesen, Vucurovich, & Richardson, PC

Attorney for NorthWestern Energy

CERTIFICATE OF SERVICE

I hereby certify that a copy of NorthWestern Energy's ("NWE") Initial Brief in Docket D2010.5.50 has been efiled with Montana Public Service Commission (PSC) and has been delivered to the PSC and Montana Consumer Counsel (MCC) on this date.

Date: February 22nd, 2011

A handwritten signature in cursive script that reads "Nedra Chase". The signature is written in black ink and is positioned above a horizontal line.

Nedra Chase
Administrative Assistant
Regulatory Affairs

A. Service List D2010.5.50

**Nedra Chase
NorthWestern Energy
40 E Broadway
Butte MT 59701**

**Robert Nelson
Montana Consumer Counsel
111 N Last Chance Gulch
Suite 1B Box 201703
Helena MT 59620-1703**

**Ross Richardson
Henningsen Vucurovich
& Richardson
116 W. Granite Box 399
Butte MT 59703**

**Joe Schwartzberger
NorthWestern Energy
40 E Broadway
Butte MT 59701**

**Kate Whitney
Montana PSC
1701 Prospect Box 202601
Helena MT 59620-2601**

**John W. Wilson
JW Wilson & Associates
1601 N. Kent Ste 1104
Arlington VA 22209**