

Ross Richardson
Henningsen, Vucurovich
& Richardson, P.C.
116 W. Granite
Butte, MT 59701
Telephone: (406) 723-3219
Fax: (406) 723-9534
rossrichardson@qwestoffice.net

Attorney for North Western Energy

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

* * * *

IN THE MATTER OF North Western 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 REPLY BRIEF

North Western Energy ("NWE") hereby submits its Reply Brief in the above-captioned docket.

I. THE COLSTRIP UNIT 4 ("CU4") FIXED COST UNIT RATE COMPONENT IS NOT A TRACKING DOCKET ISSUE UNDER MONTANA LAW.

NWE's Initial Brief set forth Montana's statutory authority regarding the role trackers play within the context of the Montana Department of Public Service Regulation, Montana Public Service Commission's ("PSC" or "Commission") framework of review. There is no ambiguity. Under Montana Law, electric trackers deal only with the

prudence of NWE's "Electricity supply costs" and the truing up of revenues to such costs.

On November 13, 2008 the PSC issued Final Order No. 6925f in the CU4 Docket No. D2008.6.69, which directed NWE to "file tariffs to implement the rate-basing of CU4 for service on and after January 1, 2009." See Final Order No. 6924f, Order ¶6, page 65. On December 15, 2008 NWE followed the Commission's directive and met this filing requirement as part of its Docket No. D2008.7.75 monthly submittal; whereby, the CU4 rates became effective on January 1, 2009. This submittal clearly delineated that it included the "proposed rate-basing treatment of Colstrip Unit 4 (CU4) in compliance with Order No. 6925f in Docket No. D2008.6.69. NWE has separated the current electric supply tracker model into two sections, a market-based supply cost section and a CU4 cost of service section." See NWE letter to Ms. Kate Whitney dated December 15, 2008, attached hereto as Exhibit "A". It was made abundantly clear by NWE that the electric supply tracker was separate and apart from the CU4 cost of service section. In its Response Brief the Montana Consumer Counsel ("MCC") has gone to great lengths to elevate form over substance, arguing that the CU4 issues were really intertwined with the electric tracker docket, so it is now appropriate to make adjustments in the current electric tracker docket. That is simply incorrect.

II. FINAL ORDER NO. 6925f ONLY ALLOWED TRACKING OF VARIABLE COMPONENTS OF CU4.

MCC is correct in that this is a procedural matter. Where MCC is incorrect is in its assertion that CU4 fixed costs are a component of the annual Electricity Supply Cost

tracker filings. Variable components of CU4 are reviewed through a tracking mechanism, not fixed costs. Fixed costs were determined in CU4 Docket No. D2008.6.69. The costs which were approved for inclusion in the tracker by Order 6925f are found in paragraph #260, which states:

260. NWE proposed to include CU4 cost of service in electric supply rates as part of its annual electric supply tracker in order to develop an all-in electric supply rate. (Ex. NWE-1 at 23.) MCC said if the Commission decides to rate-base CU4 it should not allow NWE to create a separate set of rates for CU4 because it is difficult to track real costs for CU4 on a stand-alone basis and such a proposal that would include CU4 in NWE's tracker with regular adjustments assures that NWE has no risk of full recovery.

Further, paragraph 261 notes:

261. The PSC disagrees with MCC and believes that the use of a tracker is a reasonable way to recover costs. The Commission has successfully used trackers for many years and has experienced few difficulties with them.

In that case, the MCC had argued to the PSC that NWE should not be allowed to track variable costs. As noted, the Commission did allow CU4 cost of service in electric supply rates as part of its annual tracker. However, it was only applicable to CU4 variable costs. The citation in paragraph 260 is to "NWE-1 at 23." This references the testimony of Patrick Corcoran which clearly delineates that the costs to be included as part of the electric supply tracker are variable costs. Fixed costs were to be included in the fixed cost component of the CU4 rate, "and subject to adjustment only as the result of a future Colstrip Unit 4 general rate filing". Exhibit NWE-1, Testimony of Patrick Corcoran at 24. Consequently, the Commission made it clear that resetting the rates of CU4 fixed costs are not appropriate issues to be raised in electric trackers. CU4 variable

rates are adjusted annually. As noted in NWE's initial brief, there is no legal basis to adjust CU4 fixed costs in this tracker.

The fact that the tariffs themselves were ultimately stamped as approved as part of the tracker docket is not "fatally damaging" to NWE's position. NWE's CU4 filing stated very clearly that it intended to develop an all-in Electric Supply Rate by including CU4 rates with the other components of the electric supply rate. See Exhibit NWE-1 page 23. This is another example of form over substance. If NWE had filed a separate filing that solely addressed CU4 rates, those rates would have to have been added to the other electric supply rate components to derive an all-in electric supply rate.

III. MCC FAILED TO RAISE THE ISSUE OF CU4 FIXED COST RATES IN THE COMPLIANCE FILING FOR CU4 DOCKET NO. D2008.6.69, WHERE THE RATES WERE ESTABLISHED.

As previously explained, NWE, in the Colstrip Unit 4 Rates section of the December 15, 2008, filing which reflects the Final Order in CU4 Docket No. D2008.6.69, set forth the fixed cost rates for CU4. The MCC had its opportunity to review that information and file any objection it had at that time. It did not do so. It is in the CU4 Docket No. D2008.6.69 where any objection MCC had concerning the CU4 fixed cost rates should have been raised.

MCC's contention that no review process was contemplated and MCC was given no opportunity to comment on the compliance filing because the tariffs were approved the day after they were filed is incorrect. The MCC had the opportunity to file any objection it may have had to the tariffs, whether or not they had been approved. Other

parties, including the MCC, routinely file, within established time frames, motions for reconsideration of issues that have been approved by the PSC.

Further, because an approved tariff has now been in place since December of 2008, which includes the fixed cost portion of the CU4 rate, any proposed “adjustments” would constitute retroactive ratemaking, which is prohibited. See *In re Mont. Power Co.*, No. 90.6.39, 1992 WL 503178, at *2 (Mont. P.S.C. Mar. 6, 1992) (stating retroactive ratemaking is prohibited by Montana law), *aff’d*, 132 P.U.R.4th 555, 557.

Its objection in the current docket, therefore, is not only improper but untimely. For all of the reasons set forth both here and in NWE’s Initial Brief, for the PSC to act on this objection in this Docket would be a violation of the law and violate NWE’s rights to Due Process.

As MCC stated in its brief, “Expenses and loads may change over time. If NWE is concerned about CU4 cost increases, it can file a rate case wherein the Commission can review current costs and loads.” This is exactly correct, current costs and loads should be analyzed and updated at the same time – one component cannot be updated in isolation. As NWE pointed out in its Initial Brief, CU4 costs have increased by \$3 million from 2007 to 2009. Loads cannot be updated without also updating costs, and both should be updated concurrently in a general rate case filing.

IV. CONCLUSION.

It is very simple, MCC is arguing form over substance. MCC’s issue with CU4 fixed cost rates should have been raised in the Compliance Filing in CU4 Docket No.

D2008.6.69, not 21 months later in an electric supply annual tracking filing. The matter cannot, as a matter of law, be raised until NWE submits a new general rate case for CU4.

Dated this 15th day of March, 2011.

NorthWestern Energy

By 

Ross Richardson
Henningsen, Vucurovich, & Richardson, PC

Attorney for NorthWestern Energy

NorthWesternTM Energy

Docket D2010.5.50
NWE Reply Brief
EXHIBIT A

NorthWestern Corporation
d/b/a NorthWestern Energy
40 East Broadway Street
Butte, MT 59701
Telephone: (406) 497-3000
Facsimile: (406) 497-2535
www.northwesternenergy.com

December 15, 2008

Ms. Kate Whitney
Administrator
Montana Public Service Commission
1701 Prospect Avenue
PO Box 202601
Helena, MT 59620-2601

RE: Docket No. D2008.7.75
January 1, 2009 Monthly Electric Supply Cost Rate Adjustment

Dear Ms. Whitney:

NorthWestern Energy (NWE) submits an original and ten copies of its January 1, 2009 Electric Supply Cost Rate Adjustment request for approval by the Montana Public Service Commission (MPSC). The 2008/2009 monthly Electric Tracking filings have been assigned Docket No. D2008.7.75.

Included in this filing is the proposed rate-basing treatment of Colstrip Unit 4 (CU4) in compliance with Order No. 6925f in Docket No. D2008.6.69. NWE has separated the current electric supply tracker model into two sections, a market-based supply cost section and a CU4 cost of service section. The market-based supply cost section is essentially the same model used in prior monthly tracker filings and going forward will still represent the bulk of the supply costs. These costs will continue to be a rolling 12-month forecast updated for current market prices and loads. The added CU4 section identifies three separate cost sections. The first is the revenue requirement associated with CU4 as a result of the final order in the CU4 docket described above. This is presented in the electric tracker model as the fixed cost of service and will remain unchanged until an order is issued in the next CU4 revenue requirement filing. Fuel costs, Puget revenue credits and incremental property taxes are presented in the next section as the variable cost of service. These costs will be tracked in a fashion similar to the market-based supply costs but will be updated as a 12-month forecast only at the time of each annual electric tracker filing. The final component of CU4-related costs is the price stability contract benefits to be returned to ratepayers over a two-year period as directed in Order No. 6925f.

The derivation of rates follows the revisions to the tracker model and produces separate rate components for market-based supply, CU4 fixed cost of service and CU4 variable cost of service which includes the price stability contract benefits. These separate rate components are bundled together into a single supply rate for customer billing.

It should be noted that the single supply cost included in this letter in previous electric monthly tracker filings is no longer applicable. In it's place, NWE provides a rate summary table (\$/MWh) as follows:

Current electric supply rate effective 12/1/08	55.46
Proposed supply excluding CU4 rate	49.09
Proposed CU4 fixed & variable cost of service rate	8.39
Total proposed electric supply rate effective 1/1/09	57.48

Enclosed with this letter is a Fact Sheet providing additional detail related to revisions in both the electric tracker model and the rate derivation worksheets.

Appendix A to this letter presents a summary of the current electric supply rates and the proposed rates in this filing, as well as the resulting dollar and percentage changes. The total proposed electric supply rate per MWh changes from \$55.46 to \$57.48, or a 3.65% increase for the period January 1, 2009 through December 31, 2009.

Appendix B, which is copyright protected and is being provided to the MPSC and the Montana Consumer Counsel (MCC) under limited license from the publisher, represents the forward market prices at the Mid-Columbia trading hub, an indicator of Montana electric market supply costs. Appendix C summarizes the forecasted electric loads, supply and supply costs for the next 12-month period, based on current available information. Appendix D provides the detail of the forecasted electric load. In addition, Appendix D includes the 12-month forecasted electric load for the period January 1, 2007 through December 31, 2007 used in the CU4 fixed cost of service rate derivation and the 12-month forecasted electric load for the period July 1, 2008 through June 30, 2009, updated with actual data, used in the CU4 variable cost of service rate derivation.

Appendix E presents the rate design and derivation of the proposed electric supply rates. The change in proposed revenue compared to the revenue calculated using current rates applied to the 12-month ended December 2009 forecasted loads is an increase of \$11,934,198.

NWE also filed Tariff Letter No. 161-E simultaneously with this monthly Electric Supply Rate Adjustment filing. These rates will become effective for service on and after January 1, 2009.

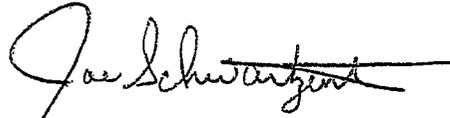
Three copies of this letter and documents submitted herewith will be delivered to the MCC.

The employee of NWE responsible for answering questions concerning this tariff change request or for inquiries to the appropriate members of the Utility Staff is:

Mr. Joe Schwartzenberger
Regulatory Affairs Department
NorthWestern Energy
40 East Broadway
Butte, MT 59701
(406) 497-3362
joe.schwartzenberger@northwestern.com

If there are any questions in this regard, I can be reached at (406) 497-3362.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Schwartzenberger". The signature is written in a cursive style with a long horizontal stroke at the end.

Joe Schwartzenberger
Director of Regulatory Affairs

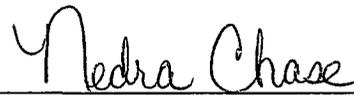
Enclosures

cc: Montana Consumer Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of NorthWestern Energy's ("NWE") Reply 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: March 15, 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 Schwartzenberger
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**