

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.)

NOTICE OF STAFF ACTION

1. On June 7, 2010, NorthWestern Energy (NorthWestern) filed its annual Application for Approval of Electric Supply Deferred Cost Account Balance and Projected Electric Supply Cost, Docket D2010.5.50.
2. On August 4, 2008, the Montana Public Service Commission (Commission) submitted data request PSC-021 to NorthWestern Energy (NorthWestern), asking NorthWestern to "provide a copy of [its] most recent electricity supply hedging strategy."
3. On August 11, 2010, NorthWestern filed a Motion for Protective Order, seeking to protect its "business strategy for future market purchases," (hedging strategy), including information that "details specific percentages of forecasted electric supply that will be purchased by NorthWestern and the timelines on which the purchases are to occur" (percentages and timelines).
4. On August 18, 2010, NorthWestern filed a redacted copy of its hedging strategy in response to data request PSC-021.
5. On August 31, 2010, the Commission issued Order 7093b granting NorthWestern's Motion for Protective Order.
6. On September 29, 2010, NorthWestern filed a complete, protected version of its hedging strategy. *See* Commn. Ord. 7093b (Aug. 31, 2011).
7. On January 19, 2011, the Commission commenced a public hearing in this matter. At the hearing, a NorthWestern witness disclosed the percentages and timelines outlined in the hedging strategy. *See* Docket D2010.5.50, Hrg. Transcr. 116:10-11, 118:6-11 (Jan. 19, 2010).

8. Pursuant to the Commission's "affirmative duty . . . to make all of [its] records and proceedings available to public scrutiny," the Montana Supreme Court has held that the Commission has an "affirmative duty to review" protected information "and make an independent determination whether the records are in fact property rights which warrant due process protection." *Great Falls Tribune v. Mont. Pub. Serv. Commn.*, 2003 MT 359, ¶¶ 54, 57 (2003) (citing Mont. Const. art. II, §§ 8-9).

9. Pursuant to the Commission's affirmative duty to review protected information, PSC counsel again reviewed the percentages and timelines within the hedging strategy and determined that they no longer qualified as a trade secret due to their disclosure at the hearing.

10. On April 13, 2011, counsel for the Commission sent a letter to counsel for NorthWestern, suggesting that NorthWestern file a revised, partially un-redacted version of the hedging strategy setting forth the specific percentages and timelines that it disclosed at the public hearing.

11. On May 20, 2011, NorthWestern filed a revised, partially un-redacted version of the hedging strategy setting forth the percentages and timelines that were initially redacted.

Done and dated this 14th day of June 2011, by delegation to Commission staff as an Order of the PSC.

BY THE MONTANA PUBLIC SERVICE COMMISSION

TRAVIS KAVULLA, Chairman
GAIL GUTSCHE, Vice Chair
W. A. (BILL) GALLAGHER, Commissioner
BRAD MOLNAR, Commissioner
JOHN VINCENT, Commissioner