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

In the Matter of NorthWestern Energy’s Application For: )  
(1) Approval of Deferred Cost Account Balances for )  
Electricity Supply, CU4 Variable Costs/Credits, and ) Regulatory Division  
DGGs Variable Costs/Credits; and (2) Projected )  
Electricity Supply Cost Rates, CU4 Variable Rates, ) Docket No. D2012.5.49  
and DGGs Variable Rates )

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**NorthWestern Energy’s Motion for and Brief in Support  
of Reconsideration of Interim Order No. 7219**

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Pursuant to ARM 38.2.4806, NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern” or “NWE”) submits this *Motion for and Brief in Support of Reconsideration of Interim Order No. 7219* (“*Motion*”) in the above-captioned docket. Specifically, NorthWestern moves the Public Service Commission (“Commission”) to reconsider and reverse Order No. 7219, Finding of Fact ¶ 13 and Order ¶¶ 21–25. Collectively, these paragraphs deny or delay

NorthWestern the opportunity to recover previously incurred electricity supply costs. This denial or delay does not comply with the statutorily required Commission-approved cost recovery mechanism, is not consistent with the Commission’s precedent and past practice, and will impose substantial added costs on NorthWestern’s consumers.

## **I. INTRODUCTION**

On June 1, 2012, NorthWestern filed its *Application for Interim and Final Electricity Rate Adjustment* (“*Application*”). In the *Application* NorthWestern requested authority to set rates at a level projected to recover a net under-collection from the 2010–2011 and 2011–2012 tracker periods of \$8,502,457. In Order No. 7219, the Commission denied NorthWestern’s request. The Commission did not provide any basis for denying the request except that the docket is in an early stage. Order No. 7219, Finding of Fact ¶ 13 (“FOF 13”) provided, in part, “At this early stage of the proceeding, the Commission declines to implement NWE’s proposed Deferred Supply Rate on interim basis. The Electricity Supply Deferred Costs Account Balance shall be set to zero until a further Order of the Commission.”<sup>1</sup>

## **II. ARGUMENT**

FOF 13, and the ordering paragraphs implementing it, Order No. 7219, ¶¶ 21–25 (“ORDER 21–25”), do not comply with the cost recovery mechanism that the Commission approved as required by § 69-8-210(1), MCA (2011); are inconsistent with the standards established in the Commission’s prior interim orders in the electricity supply tracker dockets; violate § 69-3-304, MCA (2011), which requires that an order denying a temporary rate increase be based upon consistent standards appropriate for the nature of the case; and will result in

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<sup>1</sup> The Commission also noted that NorthWestern proposed carrying the net amount associated with the Dave Gates Generating Station (“DGGS”) over to the next tracker period. NorthWestern did this due to the special circumstances regarding DGGS. The Commission certainly could adjust the net under-collection to account for DGGS.

additional costs of over \$870,000 on an annual basis to NorthWestern's electricity supply consumers. The Commission should reconsider and reverse FOF 13 and ORDER 21–25.

**A. The Commission-approved cost recovery mechanism requires that rates be adjusted at the beginning of a tracker period to recover any net under-collection.**

Section 69-8-210(1), MCA (2011), provides:

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.

The Commission approved a cost recovery mechanism in Docket No. D2001.7.84, Order No. 6422 and Docket No. D2001.10.144, Order No. 6832c (collectively “Order 6832c”). The Commission described the mechanism as follows: “NWE would accumulate over and under collections, plus interest, in a deferred account. **At the end of the tracking period**, rates would be adjusted to true-up for any net over or under collection from the previous period . . . .” Order 6382c, ¶ 2 (emphasis added). The Commission approved “the electricity supply cost recovery mechanism as filed by NWE.” Order 6382c, ¶ 7.

In this docket, NorthWestern requested that rates be adjusted to true-up for the net under-collection from the previous period. FOF 13 and ORDER 21–25 impermissibly delay the rate adjustment to true-up for a net under-collection. Disallowing the inclusion of the net under-collection of \$8,502,457 in an interim rate adjustment does not comply with either the letter or the intent of the Commission-approved cost recovery mechanism as approved in Order No. 6832c.

**B. The Commission has consistently included rate adjustments for material net over or under-collection in interim orders in electricity supply trackers.**

Since 2003, NorthWestern has been required to file electricity supply cost trackers at least 30 days prior to the proposed effective date of a rate change (which is generally July 1 of each year). In every tracker, the Commission has issued an interim order to implement new rates. In every interim order since 2004, the Commission has included material net under or over-collection in the interim rate adjustment<sup>2</sup>. The table below shows the docket number, the interim order number, and the net under or over-collection that was included in each interim order.

Docket No.	Interim Order No.	Under-Collection	Over-Collection
D2004.6.90	6374	\$738,167	
D2005.5.88	6682b		\$5,189,223
D2006.5.66	6740a	\$4,514,743	
D2007.5.46	6836		\$22,264,565
D2008.5.45	6921		\$43,183,311
D2009.5.62	6921a		\$22,123,462
D2010.5.50	7093	Not Material	
D2011.5.38	7154		\$3,756,820

There are important policy reasons underlying the Commission’s decisions to include material net under and over-collection in every electricity cost tracker interim rate adjustment since 2003. One reason is to reduce the accrual of interest on the net balance. This saves both consumers and NorthWestern money. Another reason is to minimize the associated rate impact by enabling the amortization of the net balance through the entire subsequent tracker period. *See, e.g.* Docket No. D2005.5.88, Order No. 6682b, Finding ¶ 8 (October 14, 2005) (“This overcollection will be refunded to customers beginning with this Interim Order and over the

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<sup>2</sup> There was no deferred balance in the 2002-2003 tracker period due to the expiration of the full-requirements buy-back contract with PPL Montana at the beginning of the tracker period.

remainder of the tracking period ending June 30, 2006.”); *accord* Docket No. D2006.5.66, Order No. 6740a, Finding ¶ 4 (August 1, 2006); Docket No. D2007.5.46, Order No. 6836, Finding ¶ 2 (June 27, 2007); Docket No. D2008.5.45, Order No. 6921, Finding ¶ 2 (June 27, 2008); Docket No. D2009.5.62, Order No. 6921a, Finding ¶ 2 (June 26, 2009); and Docket No. D2011.5.38, Order No. 7154, Interim Order ¶ 2 (June 22, 2011). It is beneficial to as closely as possible match expenses or credits to the customers who incurred or paid for them. By denying NorthWestern’s request, the Commission is ignoring its long-standing precedent and the important public policy reasons that underlie that precedent.

**C. FOF 13 and ORDER 21–25 violate § 69-3-304, MCA (2011).**

Section 69-3-304, MCA (2011), provides in part, “An order of the commission approving or denying a temporary rate increase or decrease shall be based upon consistent standards appropriate for the nature of the case pending . . . .” In the work session at which the Commission considered NorthWestern’s application for an interim order, one Commissioner stated that the Commission did not normally grant interim orders until after intervenors had filed testimony. This is not true with respect to electricity supply cost trackers.

One of the standards that the Commission has applied in electricity supply tracker dockets is to approve the interim rate adjustment, including an adjustment for material net under or over-collection, prior to intervenor testimony being filed. This is illustrated by the dates of the interim orders and the dates of intervenors filing testimony in each of the tracker dockets as shown in the table below.

Docket Number	Date of Interim	Date of Intervenor Testimony	Notes
D2003.6.77	July 17,2003	May 25, 2005	This was the first electricity supply tracker. There were numerous delays and

Docket Number	Date of Interim	Date of Intervenor Testimony	Notes
			this docket was jointly administered, but not consolidated, with the 2004 tracker docket.
D2004.6.90	July 20, 2004	May 25, 2005	
D2005.5.88	October 13, 2005	November 22, 2005	NWE made a revised tracker filing on October 3, 2005.
D2006.5.66	August 1, 2006	October 5, 2007	On August 8, 2006, the Commission suspended the schedule until the start of the next electricity tracker. This was consolidated with Docket No. D2007.5.46 on July 2, 2007.
D2007.5.46	June 26, 2007	October 5, 2007	
D2008.5.45	June 27, 2008	September 18, 2009	On June 16, 2009, the Commission consolidated this docket with D2009.5.62.
D2009.5.62	June 23, 2009	September 18, 2009	
D2010.5.50	June 29, 2010	September 16, 2010	
D2011.5.38	June 21, 2011	September 26, 2011	

FOF 13 and ORDER 21–25 ignore these clear, consistent standards. The Commission has not explained why the standards that have been in effect for nine years should be changed. The Commission has not based the denial of an interim rate increase for the net under-collection on consistent standards appropriate for electricity supply trackers as required by statute. FOF 13 and ORDER 21–25 violate § 69-3-304, MCA (2011).

**D. FOF 13 and ORDER 21–25 will result in additional costs to NorthWestern’s electricity supply consumers.**

NorthWestern is entitled to fully recover all prudently incurred electricity supply costs. § 69-8-210, MCA (2011). The net under-collection results from prudently incurred electricity supply costs. Over \$2 million of the net under-collection is attributable to 2010–2011 costs that the Commission found to be prudent. *See*, Docket No. D2011.5.38, Final Order No. 7154b, Conclusion of Law ¶ 7 (April 12, 2012) (“NWE’s electricity supply costs incurred from July 2010 through June 2011 were prudent.”). Since the costs were determined to be prudent, it is unreasonable to not allow NorthWestern to collect them pursuant to the interim order.

A utility’s expenses are presumed to be prudent until a serious doubt is created with regard to the prudence of the expenditure. *See, e.g., Nevada Power Co. v. Public Utilities Comm’n of Nevada*, 138 P.3d 486 (Nev. 2006); *State ex rel GS Technologies Operating Co. v. Public Service Comm’n of State of Mo.*, 116 S.W.3d 689 (Mo. Ct. App. W.D. 2003), as modified on denial of reh’g (October 28, 2003); *Potomac Elec. Power Co. v. Public Service Comm’n of District of Columbia*, 661 A.2d (D.C. 1995); *Hamm v. South Carolina Public Service Comm’n*, 422 S.E. 2d 110 (S. C. 1992); and *Gulf States Utilities Co. v. Louisiana Public Service Comm’n*, 578 So. 2d 71 (La. 1991).

NorthWestern’s electricity supply costs for 2011–2012 should be presumed to be prudently incurred until evidence raises a serious doubt otherwise. This is especially true because the Commission has never found that NorthWestern’s electricity supply costs were imprudent. *See* Docket No. D2011.5.38, Order No. 7154b, Conclusion of Law ¶ 7 (April 12, 2012); Docket No. D2010.5.50, Order No. 7093c, Conclusion of Law ¶ 9 (April 18, 2011); Docket Nos. D2009.5.62 and D2008.5.45, Order No. 6921c, Order ¶ 1, (May 2010); Docket Nos. D2007.5.46 and D2006.5.66, Order No. 6836c, Order ¶ 1 (June 24, 2008) (excepting certain

wind ancillary costs and lost transmission and distribution revenue attributable to choice customer loads); Docket No. D2005.5.88, Order No. 6682d, Conclusion of Law ¶ 5 (July 12, 2006); and jointly administered Docket No. D2004.6.90, Order No. 6574e and Docket No. D2003.6.77, Order No. 6496f, Order ¶ 1 (December 16, 2005).

Because NorthWestern's electricity supply costs were prudently incurred, NorthWestern is entitled to the time-value of money on the net under-collection. § 69-8-210(1), MCA (2011). The Commission has determined that the interest rate to be applied to any refunds related to Order No. 7219 is 10.25% per annum. Order No. 7219, ¶ 27 (June 27, 2012). It would be unjust and unreasonable to apply a different interest rate to a surcharge resulting from the Commission denial of inclusion of the net under-collection in the interim. This interest rate applied to the net under-collection that the Commission did not include in the interim rate adjustment is approximately \$871,500 per year. NorthWestern's electricity supply consumers will be responsible for paying this amount. This is an unnecessary burden for consumers.

Finally, if the Commission maintains its standard practice of amortizing net under or over-collection amounts over the balance of the tracking period, then the delay in including the net under-collection will likely lead to a substantially greater rate increase. This results from the shorter period and fewer kilowatt-hours over which to recover the net under-collection. For some consumers, this may cause a real hardship. Rate stability is one of the utility planning and operational goals; this delay contributes to rate instability. These potential adverse consequences are unnecessary.

### III. CONCLUSION

For these reasons, the Commission should grant NorthWestern's motion for reconsideration and reversal of FOF 13 and ORDER 21-25 and include the net under-collection in electricity supply rates on an interim basis.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of July 2012.

By:   
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of NorthWestern Energy's (NWE) Motion for Reconsideration in Docket No. D2012.5.49 has been e-filed with the PSC, hand delivered to the PSC and MCC, and has been served upon the remainder of the service list by postage prepaid via first class mail as follows:

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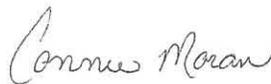
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