

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

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IN THE MATTER OF NorthWestern Energy's) REGULATORY DIVISION
2011-2012 Electricity Supply Tracker)
) DOCKET NO. D2012.5.49

HUMAN RESOURCE COUNCIL, DISTRICT XI AND NATURAL RESOURCES
DEFENSE COUNCIL STATEMENT ON THE MAY 31, 2013
NOTICE OF COMMISSION ACTION

Human Resource Council, District XI and Natural Resources Defense Council support NorthWestern Energy's request that the Commission rescind its Notice of Commission Action (NCA), issued May 31, 2013.

The NCA directs counsel to "to address certain issues that have not been adequately addressed," identifying three specific issues.¹ But, every one of those issues has been the subject of either testimony or data responses by at least one party. Evidently, the Commission is dissatisfied with the present state of the record and the positions taken by the parties. To fashion a record more to its liking the NCA solicits "additional evidence."

This is plainly inappropriate. While the Commission clearly has an affirmative obligation to protect the public interest, trolling for "additional evidence" that supports an

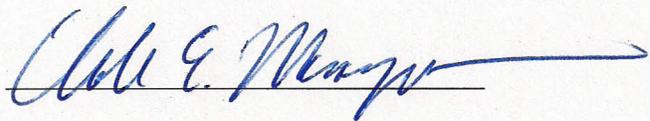
¹ This statement focuses on the NCA's request for "additional evidence" and not on the last paragraph of the NCA that concerns the introduction of data requests and responses. No inferences should be drawn from this, however. Indeed, we believe that the method the NCA uses to ensure that the Commission has a sufficient evidentiary record (if this is, in fact, the motivation for the requirement the NCA seeks to impose on the parties' counsel) is unsound and irregular.

outcome that the Commission might want to reach explodes the boundary between the Commission as an adjudicator and the parties to a proceeding as advocates.

In addition, as NWE in its motion for reconsideration correctly points out, it is up to each party to determine its position and how that position is articulated. The Commission simply cannot tell parties what evidence to bring before it.

Finally, on a practical level, the NCA establishes a process that will be unwieldy and difficult and will not aid in the Commission's decision-making. The NCA contemplates the introduction of evidence at the hearing without any advance notice to other parties or to the Commission. This will be confusing and messy and inefficient.² Existing Commission procedures for filing pre-filed testimony and submission of data requests provide all parties and the Commission with notice of what is being argued and the basis for those arguments.³ Not only does this process allow for a more efficient hearing but it allows subjects to be considered in a more reasoned and reflective manner. Decision making is thus made easier and better.

Respectfully submitted,



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² There may also be due process concerns in that parties may not have the ability to conduct meaningful cross examination on this "additional evidence."

³ The Commission's Additional Issues procedures were designed to achieve precisely this result.

Attorney for Natural Resources Defense
Council and Human Resource Council,
District XI

June 5, 2013

CERTIFICATE OF SERVICE

I hereby certify that the above signatory has, this 5th day of June 2103, served the foregoing by electronic delivery to the applicant and the Montana Consumer Counsel (and its counsel).