

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
DGGGS Variable Costs/Credits; and (2) Projected)
Electricity Supply Cost Rates, CU4 Variable Rates,) Docket No. D2012.5.49
and DGGGS Variable Rates)

NORTHWESTERN ENERGY'S REPLY BRIEF

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Pursuant to the Montana Public Service Commission's ("Commission") order, NorthWestern Corporation d/b/a NorthWestern Energy ("NorthWestern") hereby submits this *Post-Hearing Reply Brief* ("Reply Brief") in the above-captioned docket.

I. Introduction

On July 24, 2013, NorthWestern submitted its *Post-Hearing Opening Brief* ("Opening Brief") in this docket. NorthWestern explained that (1) the third party regulation service costs that it incurred were prudent; (2) its off-system fixed price transactions reduce the risk of price volatility and are prudent actions that benefit customers; and (3) the Commission should allow the recovery of lost revenues attributable to demand side management ("DSM") activities.

On August 14, 2013, the Montana Consumer Counsel ("MCC") filed its *Response Brief* ("MCC Response") in which it argued that the Commission should disallow replacement power costs and that the Commission should order NorthWestern to terminate its off-system fixed price hedging transactions.¹ The MCC also stated it "has great concerns regarding lost revenue recovery and particularly lost revenue recovery applied to USB programs" but did not elaborate on its concerns or argue for any adjustment to lost revenue claimed by NorthWestern in its rebuttal filing.²

Human Resource Council, District XI and the Natural Resources Defense Council (jointly "HRC/NRDC") filed their *Post-Hearing Brief* ("HRC/NRDC Response") on August 14, 2013. HRC/NRDC asserted that (1) the energy efficiency acquired by NorthWestern from 2007 to 2011 provided net benefits to customers of \$78 million, (2) NorthWestern should be allowed

¹ MCC Response, p. 3.

² MCC Response, p. 4

to recover its lost revenues as supported by the SBW Consulting, Inc. (“SBW”) report, and (3) the correct net to gross energy savings ratio is 1.0.³

1. Standards for Decision

The Commission provides the parties regulated by it, and those appearing before it, a fair process. In making decisions, the Commission must follow the law. Applicable statute requires the Commission to make separately stated findings of fact and conclusions of law.⁴ “Findings of fact must be based exclusively on the evidence and on matters officially noticed.”⁵ Evidence includes witness testimony, writings, physical objects, and other things presented to the senses.⁶ The Commission should recognize that statements and questions by attorneys or by Commissioners are not evidence and cannot be the basis for a finding of fact.

Substantial evidence must support a finding of fact for the finding to be lawful.⁷ Substantial evidence must consist of credible, admissible evidence.⁸ Substantial, credible evidence is evidence that “a reasonable mind might accept as adequate to support a conclusion.”⁹ The Commission must presume that a witness tells the truth.¹⁰ The Commission may not ignore or disregard uncontroverted credible evidence.¹¹

³ HRC/NRDC Response, pp. 1-2.

⁴ § 2-4-623(1)(a), MCA.

⁵ § 2-4-623(2), MCA.

⁶ § 26-1-101(2), MCA.

⁷ *Knowles v. State ex rel. Lindeen*, 2009 MT 415, ¶ 20, 353 Mont 507, 222 P.3d 595.

⁸ *Bean v. Board of Labor Appeals*, 1998 MT 222, ¶ 13, 290 Mont. 496, 965 P.2d 256 (citing *State v. Johnson*, 177 Mont. 182, 520 P.2d 1387 (1978)).

⁹ *Noone v. Reeder*, 151 Mont. 248, 252, 441 P.2d 309, 311 (1968).

¹⁰ § 26-1-302, MCA. This presumption may be overcome by matters that have a tendency to disprove the witness’s truthfulness.

¹¹ *Cf. Reynolds v. Reynolds*, 132 Mont. 303, 310, 317 P.2d 856, 860 (1957) (“The rule that the trial court may not disregard uncontroverted credible evidence is fundamental.” In matters before it, the Commission takes on the role of the trial court.)

When applying the law to the findings of fact, the Commission “has a duty to follow its own precedent or provide a reasoned analysis explaining its departure.”¹²

The Commission must apply these legal standards while deciding the issues in this, or any, docket.

II. *Argument*

1. **NorthWestern prudently incurred third party regulation service costs from February – April, 2012.**

The MCC’s single argument as to why the Commission should exclude from NorthWestern’s electric tracker rates \$1.4 million in third party regulation service costs incurred when the Dave Gates Generating Station (“DGGs”) was offline is that NorthWestern did not investigate the cost of outage insurance.¹³ In its Opening Brief, NorthWestern meticulously articulated why its conduct was prudent, and the evidence included:

- Testimony by Fred Lyon, an attorney who has specialized in construction law and contracts with a focus, since 1977, on the electric utility industry and its procurement practices. He has provided service to the largest regulated utilities in the United States, has received industry honors, and is a frequent speaker. He testified that:
 - The risk managers of the utilities with whom he worked uniformly indicated that outage insurance is too expensive for the risk and that the exclusions are so expensive that it does not guarantee coverage;¹⁴

¹² *Waste Mgmt. Partners of Bozeman, Ltd. v. Department of Pub. Serv. Regulation*, 284 Mont 245, 257, 944 P.2 210, 217 (1997) (citing *Atchison, Topeka and Santa Fe Railroad Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973)).

¹³ When its witnesses’ testimony was filed in this case, the MCC had a second argument for excluding these costs, and the MCC claimed that ratepayers should not have to pay these costs because NorthWestern waived its right to pursue consequential damages in its contract with Pratt & Whitney Power Systems (“PWPS”). NorthWestern rebutted this claim strongly in the pre-filed rebuttal testimony of Mr. Fred Lyon and Mr. William Rhoads. The MCC did not ask a single question at the hearing around this issue and never mentioned it in its Response Brief. The MCC has clearly dropped this argument.

¹⁴ Tr., pp. 274; 277-278.

- It is common knowledge in the industry (fossil fuel, and regulated utilities) that outage insurance is too expensive;¹⁵ and
- Other than the nuclear industry, he has never, in 37 years, encountered an outage insurance policy in place.¹⁶
- Testimony by William Rhoads, who has spent nearly 25 years in hydro operations and thermal generation. He has negotiated contracts for the procurement of major power plant components for many years and has personal and direct knowledge of all of the issues relating to DGGS, including management of the outage. He testified that:
 - In his 25 years of experience in generation, utilities don't typically obtain it;¹⁷
 - There is a fairly significant waiting period before the insurance will typically kick in;¹⁸
 - The premiums for outage insurance are so significant that the value isn't there;¹⁹
 - Regulation service is a very unique kind of power purchase, and is likely much more expensive than replacement power insurance;²⁰ and
 - He confirmed with Otter Tail Power Company, Montana-Dakota Utilities, and Idaho Power that they do not obtain outage insurance because it is not economical to do so and that the utilities' prudence would be questioned if they did purchase it.²¹
- A memo prepared by Donna Haeder, NorthWestern's Director of Risk Management, in which she stated that the cost of outage insurance was roughly \$1 million per year, and that the typical offering would not provide coverage until the 61st day of an outage, and that the applicable policy included a \$1 million deductible.
 - At roughly that cost, NorthWestern would have incurred far more expenses had it purchased the insurance than it incurred in acquiring third party regulation service as NorthWestern would have incurred \$3 million in premium costs alone over the three years (2011, 2012 and 2013).²²
 - As NorthWestern decreased the amount of third party regulation service purchased from Avista and Powerex to the point where none was required

¹⁵ Tr., p. 277-278.

¹⁶ *Id.*

¹⁷ Tr., p. 170

¹⁸ Tr., pp. 170-171

¹⁹ Tr., p. 171.

²⁰ Tr. at p. 172.

²¹ Tr., p. 224-225.

²² Tr., p. 242.

as of May 1, 2012, the 60-day waiting period would have rendered the insurance almost useless and would have imposed an unnecessary cost on consumers.

In the MCC Response, while the MCC continues to argue that NorthWestern's failure to merely investigate the cost of outage insurance warrants the exclusion of \$1.4 million of costs in rates, the MCC's arguments and claims are wholly without merit. For one, the Commission should reject the MCC's position because the MCC has failed to establish a causal link between the MCC's claim and NorthWestern's costs. There is no evidence in the record demonstrating that NorthWestern would have incurred less than \$1.4 million in costs had it investigated (and presumably purchased) the cost of outage insurance, and the MCC's belief that the mere act of investigating the cost of outage insurance would have somehow changed NorthWestern's costs is pure speculation.²³ In the absence of any evidence linking the two, the MCC's claim must be rejected. The Commission need not go any further.

Moreover, even if this were not the case, NorthWestern has demonstrated through substantial evidence that its actions were prudent, and much of the alleged "evidence" that the MCC cites in the MCC Response is erroneous, taken out of context, or exists only as a part of a witness's testimony, potentially leading to a factually incorrect conclusion.

In this Reply Brief, in *Section A* below, NorthWestern demonstrates that the Commission should reject the MCC's claim on the basis that there is no causal relationship between the costs NorthWestern incurred during the outage and the MCC's argument that NorthWestern should have investigated the cost of outage insurance. In *Section B* below, in order to ensure that the record is accurate, NorthWestern addresses the MCC's erroneous facts and claims.

²³ In fact, the MCC's expert witness conceded that he did not know the cost of an insurance policy to cover DGGs or if it would have been deemed affordable. Tr., pp. 593-594.

A. The MCC's claim that NorthWestern's third party outage costs should not be included in rates because NorthWestern did not investigate the cost of outage insurance should be rejected, as there is no causal link between the claim and NorthWestern's costs.

From pages 4-8 of the MCC Response, the MCC cites numerous cases in support of its proposed legal standard to be applied in this case establishing prudence. The thrust of these cases fully supports NorthWestern's position in this proceeding, as the cases generally hold that prudence is measured at the time the utility made its decision and not in hindsight.²⁴ Many of the MCC's cases involve abandoned nuclear power plants, and the principle question in these cases is whether the utility's costs in constructing now abandoned and never operational nuclear power plants may be recovered in rates.²⁵ The majority rule in the United States is that utilities are entitled to recover these costs because, again, prudence is measured at the time the decisions are made and not in hindsight.²⁶ Many also hold that managers of a utility have broad discretion in conducting their affairs and that management decisions are entitled to deference. As these cases demonstrate, these are well-established legal principles that provide the relevant legal standard here.

²⁴ See, e.g. *Re Southern California Edison Co.*, 116 P.U.R.4th 365, 374 (Cal. PUC Sept. 25, 1990) ("Namely, the event or contract is to be reviewed based on facts known or should have known by utility management at the time. This standard is used to avoid the application of hindsight in reviewing the reasonableness of a utility decision."); *Re Wisconsin Public Service Corp.*, 86 P.U.R.4th 357, 375 (Wis. PSC July 9, 1987) ("Hindsight may not be relied on by the commission in answering the prudence question."); and *Re Long Island Lighting Co.*, 71 P.U.R.4th 262, 267 (N.Y. PSC November 16, 1985) ("Thus, in evaluating prudence, we must ask whether the company acted reasonably under all the circumstances at the time."); .

²⁵ *Re Central Vermont Pub. Serv. Corp.* 83 P.U.R.4th 532 (Vt PSB May 15, 1987); *Re Long Island Lighting Co*; *Re New England Power Co.*, 31 FERC ¶ 61,047 (1985). See also, *People's Organization for Washington Energy Resources v. Washington Utilities and Transportation Commission*, 711 P.2d 319 (Wash. 1985).

²⁶ *People's Organization for Washington Energy Resources*, 711 P.2d at 331-333.

One case involving abandoned nuclear power plants, *Violet v. Federal Energy Regulatory Commission*, has important parallels here. In *Violet*, the U.S. Court of Appeals held that there must be a causal link between the alleged imprudent decision and the costs at issue.²⁷ In *Violet*, the New England Power Company (“NEP”) sought to recover the costs it incurred as a participant in the construction of the Pilgrim II nuclear power plant during the last 15 months before the project was abandoned. NEP had signed a Joint Ownership Agreement, which gave Boston Edison Company (“BEC”) complete control over all aspects of the project. The agreement also limited BEC’s liability to the other owners, including NEP, to damages resulting from a deliberate violation of the agreement.

The issue on appeal brought by the State of Rhode Island was whether signing that contract was imprudent as NEP could not now recover the costs from BEC that it was seeking to recover from ratepayers. The U.S. Court of Appeals held that it was “mainly speculative” that NEP would have been able to recoup all or part of the costs it sought to impose on ratepayers had it insisted on a different contract.²⁸ The Court also held that there was no evidence in the record of industry practice, or from industry experts, showing that a reasonably prudent utility, before taking a minority interest in a project, could or would have insisted upon greater rights of indemnification. The court also held that “[M]ore important, it is not apparent that in the absence of the allegedly imprudent liability waiver NEP would have been able to recover from

²⁷ *Violet v. Federal Energy Regulatory Commission*, 800 F.2d 280 (1st Cir. 1986) (*Violet*).

²⁸ *Id.* at 283. (“Similarly, it seems mainly speculative that if BEC’s formal liability had extended beyond that for deliberate violations of the agreement, NEP would have been able to recoup from BEC all or part of the costs it seeks to impose upon its ratepayers. Not only is it unclear what a ‘properly drafted’ clause would have contained (and whether BEC, in the interest of its own ratepayers, would have accepted a different clause), it is unclear what rights NEP, as a minority member of the joint venture, could have claimed on the present facts.”).

BEC the costs it incurred on Pilgrim II after 1980.”²⁹ The court held that “On this record, the Commission [FERC] could view as merely speculative the ALJ’s suggestions that a different sort of contractual arrangement would have enabled NEP to have secured present redress from BEC.”³⁰

These principles apply with equal force here. Just as the Court held in *Violet* that it was “merely speculative” that the negotiation of a different contract would have put ratepayers in a better position, it is “merely speculative” here that inquiring about (much less purchasing) outage insurance would have resulted in NorthWestern incurring less than \$1.4 million in third party regulation service costs. Indeed, it is purely speculative. There is no reliable evidence in this record to support the MCC’s position. There must be a causal relationship between the MCC’s position and the evidence, and the MCC has not put forward any evidence demonstrating that purchasing, much less inquiring about, outage insurance would have resulted in cost savings for NorthWestern and its customers, and thus would have put ratepayers in a more favorable position. In fact, the MCC’s expert witness, Dr. Wilson, testified that he did not know what the cost of an insurance policy would be to cover the plant, or if it would be deemed affordable.³¹ In contrast, NorthWestern’s evidence, from not only one but two industry experts and a business record from NorthWestern’s Director of Risk Management, demonstrates that ratepayers are better off through NorthWestern’s reliance on the extended warranty and purchase of third party regulation service than they likely would have been through the purchase of outage insurance.

²⁹ *Id.*

³⁰ *Id.* at 283.

³¹ Tr., pp. 593-594.

B. NorthWestern's rebuttal to errors in the MCC Response.

1. The MCC erred in its presentation of the ramp rate issue.

At the hearing, the MCC tried to show that NorthWestern, and thus its ratepayers, was not receiving the regulation service that it was paying for. This was demonstrated through the MCC's cross-examination of Mr. Rhoads in which the MCC required Mr. Rhoads to read into the record select phrases taken out of context, leaving the erroneous impression that while the NorthWestern Purchase Order provided for a minimum of 30 MW per minute per unit, PWPS required NorthWestern to permanently reduce the ramp rate following the outage from 30 MW to 15 MW. When given the opportunity at the hearing, Mr. Rhoads fully addressed this issue and explained that NorthWestern was supposed to receive 15 MW per minute per engine, and that there were two engines in each Unit, thereby providing, in the aggregate, 30 MW per minute.³² He further testified that this was the Purchase Order requirement and that is what NorthWestern is receiving.

Despite Mr. Rhoads' clarification at the hearing, in the MCC Response, the MCC quotes selective portions of the record on this issue in a continued attempt to leave the impression that NorthWestern's customers are not getting what they are paying for. At page 8, the MCC Response states:

NWE went to the Commission seeking preapproval for a generating station that produced 30 MW or more per minute, per unit "to respond to regulated significant variations in system generation and load." TR. p. 53:15-54:8. Ratepayers paid approximately \$81 million for a generating station that would produce 30 MW or more per minute per unit. *Id.*, TR 54:22-24. After DGGS was taken out of service, PWPS recommended changing the ramp rate from 30 to 15 MW per minute. TR p. 64:17-20. NWE instituted the

³² In fact, as Mr. Rhoads testified, the ramp rate actually exceeded 30 MW per minute, per engine. Tr., p. 69.

operational change to run the units at 15 MW per minute after the failure of the units in early 2012. TR. p. 65:6-23; 66:22-25; p. 77:5-9.

In contrast to this truncated and misleading presentation, here is Mr. Rhoads' testimony:

BY MR. BROWN:

Q. Why don't we just start where we -- where Ms. Tranel ended. Are you still having operational response issues as a result of actual ramps slower than 15 MW per minutes?

A. No, and I can explain why.

Q. Please do.

A. When Pratt & Whitney ran ramp rate tests out at the site and found -- and as they suspected before they actually ran the tests -- that the ramp rate that Pratt & Whitney actually provided us was much greater than the 15 MW per minute minimum ramp rate requirement that we had requested in the original purchase order that we had with Pratt & Whitney.

Now, we've gone kind of full circle, and I think folks are confused between the 15 MW per minute on one hand and 30 MW per minute on another. And let me try to explain the difference in how this 15 and 30 MW per minute is getting confused by some folks. I think if we start at the beginning with the purchase order that we had with Pratt & Whitney, the minimum requirement is 15 MW per minute, per engine. And the way these Pratt & Whitney units are designed is that there's two engines per unit. Each one is capable of running independently of the other. And as was pointed out in both the third party -- third party review of our technology selection, and also the paper that I presented, I think the key word there is 30 MW per minute in the aggregate. And so it doesn't matter operationally how we operate the units in terms of running one engine on one unit and another engine on another unit. The aggregate of the ramp rate of those two engines is 30 MW per minute.

So the fact that Pratt & Whitney identified that, you know, their ramp rate had actually exceeded 30 MW per minute, per engine, was way in excess of what we actually asked for and required in the purchase order. And so Pratt & Whitney came out and ran the test that was that identified in this particular exhibit and said, okay, well, in their mind, or in their view, you know, we could get by with 15 MW per minute per engine, and maybe we could get by with a little bit less. And it was at that time when they had run those tests and left the site that, okay, it's running less than 15 MW per minute, you know, the root cause analysis that we had talked about in my written -- in the data request and my rebuttal testimony hadn't been completed yet.

And so what they determined was, well, at 15 MW per minute is okay. You know, maybe

it would be even better if we went less than that. Well, when we found out that the plant wasn't exactly operating quite as robustly as it was when we had the 15 MW per minute requirement, they actually came back out or did a software change to boost the ramp rate level back to the minimum 15 MW per minute, per engine, as identified in the purchase order, and that's currently where we are.

You will see that based on the operation of the plant, even though this period when they reduced it to a little bit less than 15 MW per minute, that we've been meeting the reliability criteria of the CPS2 reliability requirement.

And so I can understand, you know, the confusion around the 15 MW per minute versus the 30 MW per minute. You know, if I haven't been clear in my response, I'd be happy to explain that more clearly.

Q. Mr. Rhoads, my confusion was centered around whether you were getting a minimum or maximum of 15 MW per minute at this point. I suppose you've answered that, that now you're currently getting a minimum of 15 MW per minute; is that correct?

A. That's correct, back to our original requirement.³³

As can be seen by a complete presentation of the evidence, NorthWestern's customers are receiving exactly what the Purchase Order provided for.

2. The MCC Response misstates the testimony on NorthWestern's ability to purchase replacement regulation service.

At page 4 of its brief, in footnote 3, the MCC states that "Note that NWE had no trouble purchasing replacement regulation service ..."³⁴ However, the hearing testimony demonstrates that the opposite is true. Mr. Cashell testified directly on this issue:³⁵

Q. Was it difficult finding entities with the ability to provide regulation service?

³³ Tr., pp. 68-70. Mr. Rhoads also later testified that "...the interesting thing here is that it actually proves that the 15 MW per minute that we had in the request for proposal for the equipment in the first place and in the design concept is proof that what we had for a technical specification was dead on, you know, what we needed. And the fact that there was no proxy for any kind of unit out -- for any kind of plant like this, is validation, I think, that the design concept and the engineering that went into this was excellent[.]" Tr., p. 102.

³⁴ See MCC Response, p. 4, fn. 3.

³⁵ Tr., pp. 346-347.

A. Absolutely. As I pointed out a little earlier, we knew the well was a very small well, and we went back to the parties that we had done business with in the past and had responded to our RFPs. Grant County, Avista and Powerex were the only respondents to our RFP of 2011, so that's who we went back to. And of the three, only two responded. And as I pointed out, in the first month, we didn't even get as much as we would have liked to. (*emphasis added*)

3. Outage insurance – the MCC Response distorts the record.

As the record demonstrates, NorthWestern established that pursuing outage insurance was not cost effective, and its position was presented through Mr. Lyon, Mr. Rhoads and Ms. Haeder's memo. In an effort to somehow undermine this testimony by industry experts, the MCC makes several claims that are, at best, incorrect.

First, at page 15, footnote 23, the MCC accuses Mr. Lyon of being "uninformed and self-contradicting" by asserting that Mr. Lyon testified that "he had never encountered such an insurance policy." The MCC then concludes that if Mr. Lyon has never seen such a policy, he can't competently testify as to its deductibles and exclusions.

The MCC's argument is made possible only by omitting key words in Mr. Lyon's testimony. He did not testify that he had never seen an outage insurance policy. Rather, he testified that for fossil fuel utilities, he never encountered an insurance policy "**in place.**"³⁶ Mr. Lyon's testimony and qualifications demonstrate, without question, that he is an expert in construction risk and construction contracts,³⁷ and managing risk involves insurance. His expertise on these issues, including insurance, was demonstrated by his answers to questions posed by the Commission and the parties. For example, in response to the Commission attorney's questions on outage insurance, he testified about the nuclear industry's outage

³⁶ Tr., p. 278: 2.

³⁷ Exhibit NWE-3, Exhibit __FL-1, pp. 1-4.

insurance, its deductibles and exclusions.³⁸ In response to another question from the Commission attorney, he testified regarding the discussions he has had with his utility clients on the issue of outage insurance.³⁹ He is so knowledgeable about these issues that although this proceeding has nothing to do with the crippled Crystal River nuclear power plant in Florida, he easily answered a question from Vice Chair Lake regarding the repair costs and the insurance settlement between the owners of the Crystal River nuclear power plant and its insurer, and he testified that Duke decided to shut the plant down because of the gap between the insurance recovery and the amount of the claims.⁴⁰ He even testified as to how the nuclear outage insurance pool is funded.⁴¹ Mr. Lyon is obviously an industry expert on these issues and is not, as the MCC states, “uninformed.” The MCC’s argument that he “had never seen an outage insurance policy” was made possible only by the exclusion of key words from his testimony.

Second, the MCC states that NorthWestern “speculates wildly about how expensive they imagine outage insurance would be” and that “[s]tarting with an assumed and entirely undocumented guess that such insurance would cost ‘roughly \$1 million’ the Company compounds its speculation by suggesting that since DGGs is a regulation facility rather than a load serving plant, coverage for this plant ‘is likely much more expensive.’” The MCC goes on to call this testimony “contrived excuses” and “self-serving speculation.”⁴²

The reality, however, is that this testimony is extremely reliable. The estimate of \$1 million is based on the Haeder Memo, and the memo’s conclusions are entitled to significant weight and credibility as the memo was prepared in the normal course of business, long before

³⁸ Tr., p. 273.

³⁹ Tr., p. 274.

⁴⁰ Tr., pp. 274-275.

⁴¹ Tr., p. 276.

⁴² See MCC Response, p. 15.

this issue was raised by the MCC.⁴³ In addition, it was prepared by an industry expert – Ms. Haeder – who is NorthWestern’s Director of Risk Management and her memo is based on her experience in that position.

Moreover, while the MCC describes as “self-serving” the conclusion that the insurance would be more costly because DGGs provides regulation service instead of load, this conclusion is shared by the MCC’s own witness, Dr. Wilson. As Dr. Wilson testified, “The application is unique, and I think that makes it somewhat risky”⁴⁴ and that “I’d factor that up for the uniqueness of the plant.”⁴⁵

4. The MCC Response takes statements out of context.

Rather than rely on evidence in the record, the MCC continuously takes testimony out of context in order to emphasize its positions. For example, starting at page 8, the MCC states no fewer than three times that NorthWestern had “serious concerns about the commercial operability of DGGs less than a month before turning it online.”⁴⁶ In so doing, the MCC is suggesting, erroneously, that the plant’s entire commercial viability was in jeopardy. What the record shows, instead, is that there was a water injection concern shortly before the plant was to start operations.⁴⁷ It should come as no surprise that there could be many reasons for delay in the start date of a plant, as the operator wants to ensure that all of the systems work as designed.

⁴³ The date on the memo is October 17, 2012, and the MCC first raised an issue regarding outage insurance on March 22, 2013.

⁴⁴ Tr., pp. 593-594. Notably, Dr. Wilson also testified that he did not know what the cost of an insurance policy would be to cover the plant, or if it would be deemed affordable.

⁴⁵ Tr., p. 588.

⁴⁶ See MCC Response, pp. 8, fn. 8; 9; 12, fn. 19.

⁴⁷ Mr. Rhoads testified that the issue related to the amount of water injected into the combustors to control NOX emissions. Tr., p. 71. It had nothing to do with the outage. *Id.*; see also Tr., pp. 129-130.

And, as Mr. Rhoads testified, this issue was resolved. MCC is wrong to suggest that the entire viability of the plant was at issue.

Another statement that the MCC repeats is Mr. Rhoads' testimony that NorthWestern was trying to turn a "lemon into lemonade."⁴⁸ The MCC presents this statement as if NorthWestern was referring to DGGS as a whole, suggesting again that the plant may not have been viable. However, the record demonstrates that Mr. Rhoads was referring to the outage and not to the plant as a whole,⁴⁹ particularly as he testified numerous times that the plant is a tremendous plant, extremely reliable, and has received an important industry award.⁵⁰ Moreover, as Mr. Rhoads further testified, NorthWestern has taken the outage and indeed turned it into lemonade through the extended warranty.⁵¹

5. The MCC ignores all of the evidence demonstrating that NorthWestern effectively managed DGGS and the outage to protect ratepayers.

The MCC makes countless statements accusing NorthWestern of not protecting ratepayers either in constructing DGGS or in managing the outage. These statements are clearly designed to inflame the Commission and to help persuade the Commission to exclude the \$1.4 million in third party regulation service costs. These claims are (1) unsupported by any facts, and (2) completely contrary to the record.

One example is the MCC's statement that one of the ongoing costs of preapproval is "utility apathy regarding costs to ratepayers as a project develops."⁵² However, as with so many of the MCC's claims, the evidence actually demonstrates the opposite, as DGGS was built

⁴⁸ MCC Response, pp. 3, 8.

⁴⁹ Tr., pp. 113-114.

⁵⁰ Tr., pp. 114; 116.

⁵¹ Tr., pp. 113-115.

⁵² MCC Response, p. 12, fn 19.

approximately \$19 million under budget.⁵³ Moreover, NorthWestern had not only one but two evidentiary hearings on DGGs: the preapproval hearing and the compliance hearing. There were multiple intervenors in each and extensive discovery, and the purpose of the compliance docket was to review the prudence of NorthWestern's costs. Critically, no party contested the prudence of NorthWestern's costs. Under these facts, there is clearly no utility apathy. To the contrary, had there been any utility apathy towards DGGs's costs, one or more parties would have challenged the costs. Because of NorthWestern's diligence in ensuring that its costs were reasonable and fair to its customers, the Commission concluded that the "prudence of these DGGs-related costs incurred by NWE is not at issue."⁵⁴

A second example is the MCC's statements in the MCC Response that NorthWestern "was not motivated to avoid the huge costs of an outage,"⁵⁵ "took no steps to mitigate the risk to ratepayers in light of its concerns,"⁵⁶ and "[knew] that no recourse was available from PWPS..."⁵⁷ There is no evidence to support the MCC's statements, and the evidence demonstrates that NorthWestern acted prudently, with consumers' interests in mind, in managing the outage:

- In negotiating the contract with PWPS, NorthWestern obtained several key provisions to help ensure that in the event of an outage, costs would be as low as possible, including, most importantly, a one-year extension of the PWPS turbine warranty because, as Mr. Rhoads testified, the remedy for a component failure is a warranty, and the extended warranty was an 'insurance policy' for customers.⁵⁸

⁵³ See Order No. 6943e, Docket No. D2008.8.95, dated March 21, 2012, comparing the original, estimated cost by Mr. Rhoads contained at p. 3, ¶ 2, to ¶ 76.

⁵⁴ Order No. 6943e, Docket No. D2008.8.95, dated March 21, 2012, at ¶ 77.

⁵⁵ MCC Response, p. 10, fn. 11.

⁵⁶ MCC Response, p. 12, fn. 19.

⁵⁷ MCC Response, p. 16.

⁵⁸ Tr., p. 184.

NorthWestern also built the plant with redundancies, including an operational spare that serves for periods when maintenance is being performed on other units, during extreme weather conditions, when additional regulation service is needed, or for possible use when backup fuel is needed.⁵⁹

NorthWestern also negotiated and obtained an extra engine to be kept at the plant.⁶⁰ It also selected a turbine manufacturer whose design enabled NorthWestern to install a blanking plate, which enables one turbine in a Unit to run without the Unit's other turbine operating. The blanking plate enables NorthWestern to use one side of a Unit to help reduce the need for third party regulation service.⁶¹ NorthWestern held off incurring the costs for designing and installing it until it was clear that it was needed.⁶²

- NorthWestern prudently managed the third party regulation service contracts for its customers' benefit. The price that NorthWestern paid for third party regulation service from Powerex and Avista was at the same prices that the two entities had recently offered NorthWestern through a competitive bid process, and were comparable with the costs previously paid under contracts with Avista and Powerex.

In order to minimize the cost of the outage, the contracts allowed NorthWestern to purchase an incremental amount of regulation service for approximately a year, so that as NorthWestern brought turbines back online, NorthWestern had the flexibility to reduce and ultimately eliminate all third party purchases.⁶³

- NorthWestern had recourse with PWPS, and NorthWestern's recourse, or insurance, was the warranty. As a result of the warranty, PWPS, at its own cost, found replacement power turbines from its pool of lease turbines so that DGGs could get back into service as quickly as possible. PWPS delivered a leased power turbine from Santiago, Chile, picked up the NorthWestern turbines from Anaconda, repaired them in Connecticut, and returned them for installation at DGGs (PWPS will be doing this a second time when the

⁵⁹ Exhibit NWE-2, p. 16.

⁶⁰ Tr., p. 210.

⁶¹ See Exhibit NWE-2, pp. 7-8.

⁶² Tr., p. 166.

⁶³ This is reflected in the table on page 7 of Exhibit NWE-4, which shows the reduction in regulation service purchases from February 3, 2012 through May 1, 2012.

modification is installed). PWPS has also devoted a large team of engineers to identifying the underlying problems and designing a remedy. PWPS found and installed loaner turbines or reinstalled DGGs's original turbines so quickly (within 3 months) that NorthWestern did not need to purchase any third party regulation service after May 2, 2012.

- NorthWestern negotiated an extremely favorable extended warranty. In fact, NorthWestern's customers are in a better position now than they would have been without the outage. Because of the extended warranty, the original warranty has been extended at least five years past the original commercial operation date, and because of the warranty's additional provisions, described in detail in NorthWestern's Post-Hearing Brief, the power turbines, and therefore the plant assets, will be more reliable than they were before the outage and at no additional cost to customers during the extended warranty period.

NorthWestern acted reasonably and prudently in managing the outage at DGGs. For all of the reasons set forth in this brief and in NorthWestern's Opening Brief, the Commission should include NorthWestern's \$1,419,172 costs of third party regulation service in NorthWestern's electricity supply rates.

2. The MCC's position that NorthWestern's use of off-system fixed price transactions should be eliminated by the Commission is short-sighted.

The MCC's argument for elimination of off-system fixed price transactions fails to recognize what could happen if the Commission does as the MCC recommends. During the relevant tracker periods, yes, the prices of electricity went down when compared to the point in time that NorthWestern entered into the first of the three components of the off-system fixed price transactions.⁶⁴ Again, though, these prices could have easily gone the other way during

⁶⁴ See NorthWestern Opening Brief, pp. 31-32 for a description of the three components of NorthWestern's off-system fixed price transactions.

those same periods.⁶⁵ The MCC's position seems to ignore this fact. The MCC's main argument for its position that off-system hedges should be eliminated is focused on what happened during three years.⁶⁶ By only looking at what has transpired during this short time period, thereby failing to recognize fluctuation in electricity prices, the MCC's position is short-sighted.

The MCC's short-sighted position is best explained with an example. Let's say that the Commission agrees with the MCC that NorthWestern should not be permitted to use off-system fixed price transactions starting in July of 2014. Then in 2016, the price of electricity goes up substantially due to several coal plants in the Northwest shutting down because of their inability to meet the carbon emission standards established by the Environmental Protection Agency as part of the Clean Air Act. Given that NorthWestern can no longer enter into any off-system transactions, 25% of NorthWestern's electricity supply would be exposed to the higher electricity prices in 2016 and the higher cost would be reflected in customer rates.⁶⁷ In this example, off-system fixed price transactions would have helped to lower the price that NorthWestern's customers pay for electricity. If attention is focused on short time periods, such

⁶⁵ Tr., p. 508.

⁶⁶ See MCC Response, p. 17. NorthWestern notes that the MCC Response misstates certain facts at page 17. The MCC states that the amount passed onto ratepayers is \$47.2 million from 2011 through 2013 plus an additional amount for the 2013 through 2014 period. The evidence in this docket does not support that statement. The evidence in this docket shows that NorthWestern, during the 2011 to 2012 tracker period, asked for recovery of \$16.9 million; that during the 2012 to 2013 period was asking for recovery of \$19.8 million; and that \$10.5 million was a projection for the July 2013 through June 2014 period. Tr., pp. 425, 430, 433. These three amounts for three years total \$47.2 million.

⁶⁷ This is part of the asymmetrical risk situation described in NorthWestern's Opening Brief at page 30. The MCC characterizes NorthWestern's discussion regarding asymmetrical risk as "cavalier." See MCC Response, p. 19. These examples were meant to illustrate that prices can only go down so far but can go up, theoretically, to infinity, and were not careless or without thought as suggested by the MCC. Similarly, the MCC Response at page 21 takes the point regarding asymmetrical risk and seems to suggest that asymmetrical risk and the analogy to insurance is preposterous. The point is asymmetrical risk is real – prices can go higher than they can fall. If prices rise and NorthWestern is prohibited from engaging in off-system fixed price transactions, the potential exposure for customers is considerable.

as the MCC has done in this case, and there are “market interruptions, either abnormally high prices or abnormally low prices, you could come up with conclusions that weren’t...congruent with managing the portfolio.”⁶⁸

Unfortunately, NorthWestern does not have a magic eight ball that allows it to know what the prices of electricity are going to ultimately be. NorthWestern does know, however, that electricity prices are not static and that prices are very volatile.⁶⁹ Thus, NorthWestern follows the market in order to formulate its best forecast of which way prices are going.⁷⁰ Every day, NorthWestern’s Energy Supply group meets to discuss the market and if there should be movement in the company’s position.⁷¹ In order to make these decisions, this group takes into consideration broker quotes, electronic platform forward prices, weather, transmission, and hydro conditions and reads about the current market conditions as well as reviews its own financial models.⁷² Thus, NorthWestern’s decisions on whether to enter into market purchases or sales are very well informed. NorthWestern acknowledges that other entities with which it enters into transactions “have superior technical modeling skills” but does not believe this gives the other entities an edge over NorthWestern nor does it allow these other entities to manipulate the market.⁷³ The evidence shows that NorthWestern does its homework. NorthWestern enters into off-system fixed price transactions educated on the market with the goal of serving customers by reducing price volatility.

⁶⁸ Tr., p. 455: 12-16.

⁶⁹ Tr., p. 519.

⁷⁰ Tr., pp. 514, 416.

⁷¹ Tr., p. 474.

⁷² Tr., pp. 475-476.

⁷³ Tr., pp. 473: 21; 474.

As the MCC Response points out, yes, NorthWestern agrees that high rates are “an unfavorable outcome for the customers” of NorthWestern.⁷⁴ Thus, if the Commission were to order that NorthWestern’s use of off-system fixed price transactions be eliminated, this could result in possible high rates for customers and that would be “very bad for customers.”⁷⁵ To reiterate NorthWestern’s Opening Brief, NorthWestern enters into these hedges to protect customers against rising prices, which, in turn, reduces risk to customers.⁷⁶ The main goals of NorthWestern’s hedging strategy are to reduce volatility and create price stability.⁷⁷ Without off-system fixed price transactions, it is unlikely that NorthWestern will reach these goals that benefit customers.

A. The MCC’s statement that “there is relatively little incremental benefit in moving the percentage hedged”⁷⁸ up by 10% thus permitting the continued use of off-system hedges is contrary to its own position on this issue, as well as that of the Commission.

For the 2011 through 2012 tracker period, 10% of NorthWestern’s supply needs⁷⁹ were met by fixed price contracts that resulted from off-system transactions.⁸⁰ Including these off-system fixed price transactions with NorthWestern’s other energy hedges⁸¹ during the relevant tracker period results in approximately 85% of NorthWestern’s energy in its portfolio being

⁷⁴ MCC Response, p. 17.

⁷⁵ Tr., p. 528: 13.

⁷⁶ NorthWestern Opening Brief, p. 27.

⁷⁷ Tr., p. 509.

⁷⁸ MCC Response, p. 18.

⁷⁹ The MCC Response, citing to NorthWestern’s Opening Brief, states that NorthWestern “argues that in **subsequent periods** off-system fixed price hedges **may** represent 10% of total electricity supply.” MCC Response, p. 17-18 (emphasis added). The MCC’s statement is wrong. NorthWestern never argued that the 10% figure referred to its situation in the future. The evidence clearly shows that 10% is the amount that was fixed price hedged during the applicable tracker period: July 2011 to June 2012. Tr., pp. 457 and 491.

⁸⁰ Tr., p. 491.

⁸¹ *Id.*

hedged.⁸² Thus, by eliminating the off-system fixed price transactions, NorthWestern's electricity supply will be exposed to the spot market for 25% of its needs.⁸³ As discussed in NorthWestern's Opening Brief, one of the MCC's witnesses in this docket, Dr. John Wilson, in a prior electricity tracker docket, testified that "25 to 30 percent short-term spot market exposure is pretty high."⁸⁴ The Commission agreed with Dr. Wilson on that point.⁸⁵ The MCC's position in the prior tracker docket shows that when electricity prices were high, the MCC argued NorthWestern should not be as exposed to the market. Now that electricity prices are lower, NorthWestern's exposure to 25% of the market is now appropriate according to the MCC.⁸⁶ It appears the MCC's position on this issue will vary depending on market prices at the time. Given these inconsistent arguments from the MCC, NorthWestern can only assume that as soon as the prices start to increase, the MCC will again argue that 25% exposure is too high. If the Commission agrees with the MCC that off-system fixed price transactions should be terminated and thus 25% exposure to the spot market is appropriate, customers' rates will increase when prices start to rise.

⁸² At page 17, the MCC Response mistakenly states that "on-system fixed price hedges represented 85.2% of total electric supply." During questioning Mr. Markovich agreed that the chart he was shown by the MCC indicated that the top bar showed 85.2% as fixed price hedges. Tr., p. 419. He never agreed that 85.2% was the total of all fixed price hedges, which would include on-system and off-system transactions. In fact, later testimony supports the position that both on-system and off-system hedges equal approximately 85%. Tr., p. 419.

⁸³ MCC-003, Attachment p. 3 of 3.

⁸⁴ NorthWestern Opening Brief, p. 33 citing to Docket No. D2005.5.88, Final Order No. 6682d, ¶ 60 (July 12, 2006).

⁸⁵ *Id.*

⁸⁶ The MCC Response fails to rebut NorthWestern's argument regarding 25% exposure to the spot market and the harm it will potentially cause customers.

B. Natural gas price swaps are not analogous to electricity supply hedging as suggested by the MCC.

The MCC Response equates NorthWestern's use of off-system electricity supply hedges to natural gas price swaps.⁸⁷ The MCC's witness on this issue, Mr. George Donkin, states in his pre-filed testimony that the natural gas price swaps are similar to electric off-system fixed price transactions because both transactions involve purchases of energy at fixed prices that are then sold at market index prices with no physical receipt of energy by NorthWestern in either situation.⁸⁸ The evidence at the hearing refutes this testimony. According to NorthWestern's witness, Mr. Kevin Markovich, in addition to the fact that natural gas can be stored so it is naturally hedged, the other significant difference between natural gas hedges and electricity hedges is that natural gas hedges are purely financial transactions whereas electricity hedges are not; the electricity is actually scheduled.⁸⁹ When asked by the Commission attorney why NorthWestern does not "enter the financial type for electricity," Mr. Markovich responded that NorthWestern "sought approval to do so in two different dockets in front of the Commission, and at that time [the Commission wasn't] comfortable, so [NorthWestern doesn't] enter them."⁹⁰ It should be noted that Mr. Markovich has been involved with the electric market since 1996 and has been the Director of Energy Supply Market Transactions since 2006.⁹¹ In comparison to Mr. Markovich, Mr. Donkin at hearing admitted that his prior experience on the hedging issues was with natural gas transactions and that this was his first experience with electricity hedging.⁹² Thus, given Mr. Donkin's very limited exposure and experience with electricity hedges, his

⁸⁷ MCC Response, p. 18.

⁸⁸ Exhibit MCC-2, p. 14.

⁸⁹ Tr., pp. 460 and 465.

⁹⁰ Tr., p. 465: 14-18.

⁹¹ Exhibit NWE-7, p. 2.

⁹² Tr., p. 557.

comparison of natural gas hedges to electricity hedges should be disregarded as it is shown to be incorrect by the testimony of Mr. Markovich.

C. Hedging and Insurance: the MCC's conjecture that NorthWestern has failed to consider the costs of hedging is mistaken.

In its Opening Brief, NorthWestern does compare hedging to insurance since the goal of both hedging and insurance is to protect against unplanned, potentially costly events.⁹³ If hedges are like insurance, the MCC Response suggests that NorthWestern has failed to recognize the corresponding costs associated with procuring insurance, in this case, \$47.2 million.⁹⁴ The MCC's suggestion on this point is wrong. NorthWestern does evaluate "its electricity supply hedges and hedging programs."⁹⁵ NorthWestern focuses not just on what the hedges are doing, but on the overall portfolio.⁹⁶ NorthWestern watches the electricity prices and when it believes a price is fair and there is a need to fill a short position, NorthWestern enters a hedge.⁹⁷ This is the main reason hedges are entered into in the first place: to reduce risk. However, NorthWestern does not enter these hedges blindly. As discussed above, it watches the market, makes informed decisions based on the available information at the time.⁹⁸ Given that the market is constantly changing, NorthWestern's decision at a single point in time can always be scrutinized. Nevertheless, if NorthWestern made a prudent decision based on the information available to it at the time, it should not be criticized later if the outcome is not as favorable as initially expected. Thus, the MCC's insinuation that NorthWestern fails to recognize the cost of hedging in conjunction with its position that hedging provides value is mistaken.

⁹³ NorthWestern's Opening Brief, p. 30; *see also* Exhibit NWE-9, p.6.

⁹⁴ MCC Response, p. 20.

⁹⁵ Exhibit NWE-9, p. 4.

⁹⁶ Tr., p. 454.

⁹⁷ Tr., pp. 469-470.

⁹⁸ Tr., p. 470.

D. NorthWestern's use of off-system fixed price transactions does not violate § 69-8-419, MCA.

The MCC Response argues that NorthWestern's reference to § 69-8-210(1), MCA,⁹⁹ requires a discussion of § 69-8-419, MCA. According to the MCC, under the terms of § 69-8-419(2)(a), MCA, NorthWestern's use of off-system fixed price transactions is contrary to and in violation of the statute because electricity supply should be procured at the lowest long-term total cost. The MCC's argument on this point fails to recognize that NWE enters into these transactions to benefit customers with price stability in the long term. NorthWestern's decisions on these issues are guided by its fiduciary responsibility to its customers.¹⁰⁰ It is only after the fact that it can be determined whether forecasts were right or wrong. For example, at hearing, the Citigroup contract was discussed.¹⁰¹ NorthWestern entered into that contract in 2008, which was before the recession. Right before the recession the economy was robust, there was "no financial meltdown...and the economy was projecting great growth."¹⁰² Less than a year after the contract was entered into, the market collapsed. Prices went down. There was no way for NorthWestern, or any other business, to know that the market would drop the way that it did.¹⁰³ NorthWestern entered into that contract because it believed that it was in the best interest of the customer as it reduced the short position and limited exposure to the spot market. Accordingly, the MCC's position that NorthWestern's use of off-system fixed price transactions should be terminated as they are in violation of § 69-8-419, MCA, is erroneous.

⁹⁹ The MCC Response refers to § 69-8-201(1), MCA, which discusses retail customer choice. NorthWestern believes that this was an inadvertent error as NorthWestern's Opening Brief referred to § 69-8-210(1), MCA.

¹⁰⁰ NorthWestern Opening Brief, p. 30.

¹⁰¹ Tr., p. 471.

¹⁰² Tr., p. 471: 10-12.

¹⁰³ Tr., p. 471.

E. NorthWestern's use of off-system fixed price transactions does provide value to its customers by protecting them from risk associated with volatile market prices.

As discussed in NorthWestern's Opening Brief, the use of off-system fixed price transactions is important. These types of transactions provide value to NorthWestern's customers in many ways. These transactions reduce risk. They limit exposure to the spot market. They mitigate the pricing power of the dominant supplier in Montana.¹⁰⁴ They help provide stability in a volatile market. With respect to these transactions, NorthWestern makes informed decisions based on the information available at the time. Hindsight is 20/20. If NorthWestern could have foretold the future, its decisions regarding certain transactions would most likely be different. The MCC's short-sightedness on this issue and recommendation to eliminate such transactions should be scrutinized carefully as the ramifications to customers could be substantial.

3. The Commission should allow NorthWestern to recover lost revenue as shown in NorthWestern's rebuttal filing.

NorthWestern requested recovery of lost revenues associated with DSM after adjusting for the SBW report's conclusions and elimination of DSM associated with NorthWestern's facilities. NorthWestern supported this request with the pre-filed testimony of William M. Thomas, Michael H. Baker, Faith DeBolt, and Marjorie R. McRae. No party contested NorthWestern's request or offered any contrary evidence. In the MCC Response, the MCC appeared to invite the Commission to change the manner in which NorthWestern recovers lost

¹⁰⁴ The MCC fails to rebut or address NorthWestern's argument on this point.

revenues.¹⁰⁵ The MCC did not offer any argument or authority for such a change. The HRC/NRDC Response supported recovery of the lost revenues requested by NorthWestern.

NorthWestern reminds the Commission that no substantial credible evidence supports any finding of fact as to the amount of lost revenues other than the amount NorthWestern requested. During the hearing, the Commission's attorney and some Commissioners questioned NorthWestern's witnesses about the net to gross factor.¹⁰⁶

Some questions compared an early draft of the SBW report to the final SBW report. The early draft is not substantial credible evidence that a net to gross factor other than 1.0 is correct. Dr. Marjorie R. McRae's team at Research Into Action, Inc. calculated the preliminary figures pursuant to the contract with SBW.¹⁰⁷ Dr. McRae testified that the preliminary figures were not correct. She explained why the preliminary figures were not correct. The Commission would be acting arbitrarily if it were to find Dr. McRae to be credible with respect to the preliminary numbers she calculated but not to be credible with respect to her conclusion that they did not accurately measure the effects.

Dr. McRae's testimony that the net to gross ratio is 1.0 is uncontroverted by any evidence. Consistent with the statutory dictates, the Commission should find that the net to gross ratio for lost revenue calculation is 1.0.

As explained in NorthWestern's Opening Brief, the Commission has established a precedent of encouraging DSM and allowing full recovery of lost revenue.¹⁰⁸ No party advocated for a departure from precedent. No party provided any reasoned explanation for a

¹⁰⁵ MCC Response, p. 4.

¹⁰⁶ See Tr., pp. 645-660, 665-676, 678-683, and 692-694 (McRae); 715 (Baker).

¹⁰⁷ Tr., pp. 647.

¹⁰⁸ NorthWestern Opening Brief, pp. 35-38.

departure from the Commission's precedent. The Commission should follow its precedent and allow full recovery NorthWestern's requested lost revenues.

III. Conclusion

Based on the foregoing, NorthWestern respectfully requests that the Commission grant the relief requested in Section III of NorthWestern's Opening Brief. Given all the credible, admissible evidence in this docket, which supports NorthWestern's positions, to find otherwise would be clearly erroneous. First, there is no evidence to disallow NorthWestern's lost revenues. Next, with every action that it takes, NorthWestern has its customers in mind. To remove off-system fixed price transactions from NorthWestern's toolbox would be detrimental to customers' pocketbooks. Finally, the Commission should grant recovery of the replacement regulation service contracts. To deny recovery based on NorthWestern's failure to ask one question with indeterminate impact on costs would be taking prudency hindsight to a new, wholly unacceptable, level.

Respectfully submitted this the 28th day of August 2013.

NORTHWESTERN ENERGY

By: 

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CERTIFICATE OF SERVICE

I hereby certify that a copy of NorthWestern Energy's ("NWE") Reply Brief in Docket No. D2012.5.49 has been hand delivered to the Montana Public Service Commission ("PSC") and has been e-filed electronically on the PSC website. It will also be hand delivered to The Montana Consumer Counsel ("MCC") and has been served by mailing a copy thereof by first class mail, postage prepaid to the service list in this Docket.

Date: August 28, 2013

A handwritten signature in blue ink that reads "Connie Moran". The signature is written in a cursive style and is positioned above a horizontal line.

Connie Moran
Administrative Assistant
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A. Docket D2012.5.49
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