

regarding the outage that occurred at the Dave Gates Generating Station (DGGS) in February 2012. Data Request PSC-008 requested documents related to warranties and insurance covering the DGGS.

5. On July 27, 2012, the Commission issued Procedural Order 7219b, setting a procedural schedule for this proceeding and a September 6, 2012, deadline for NorthWestern to respond to written discovery.

6. On August 23, 2012, NorthWestern filed an initial response to Data Requests PSC-006 through PSC-013. NorthWestern filed an updated response to PSC-006 on September 6, 2012, and updated responses to PSC-006 and PSC-008 on November 8, 2012.

7. On August 23, 2012, Pratt & Whitney Power Systems, Inc. (PWPS) filed a Motion to Intervene for the limited purpose of seeking a protective order, and a Motion for Protective Order concerning certain documents in NorthWestern's possession.¹ PWPS filed a Supplemental Motion for Protective Order on September 5, 2012.

8. On October 1, 2012, the Commission issued a Notice of Staff Action suspending the procedural schedule "to allow time for the completion of discovery" and to resolve any issues "regarding protected materials."

9. In its Application, NorthWestern indicated that it had executed a services agreement with SBW Consulting, Inc. to conduct a comprehensive program evaluation of its demand-side management programs (DSM Program Evaluation) "with final results due at the end of October 2012."

10. At a duly noticed work session on November 9, 2012, the Commission requested supplemental testimony from NorthWestern regarding the DSM Program Evaluation and the efficiency of scheduling and dispatching electricity supply resources. The Commission also requested that the parties attend a prehearing conference to discuss the procedural schedule, and authorized staff to issue this Modified Order to accommodate supplemental testimony and associated discovery. *See* Not. of Commn. Action (Nov. 16, 2012).

11. On November 14, 2012, counsel for NorthWestern, the MCC, PWPS, and the Commission met to discuss the procedural schedule in this docket.

¹ PWPS originally sought to protect as trade secrets "documents in the possession of NWE, including correspondence between PWPS and NWE and attachments to such correspondence, concerning 'the cause of the DGGS shortage' [sic] or the 'operational problems of DGGS', (PSC-006(c) and (d)), and any documents relating to warranties and insurance (PSC-008 (a), (b) and (c))." *See* PWPS Mot. for Protec. Ord. p. 1 (Aug. 23, 2012).

Schedule

12. This Modified Order sets the discovery schedule for this docket. The following pre-filed testimony and discovery must be filed at the Commission and served on all parties by the following deadlines:

- a. January 18, 2013: Final day for NorthWestern's supplemental testimony regarding the DSM Program Evaluation.
- b. February 1, 2013: Final day for NorthWestern to respond to all past data requests and final day for NorthWestern's supplemental testimony regarding scheduling and dispatch of electricity supply resources.
- c. February 15, 2013: Final day to petition for limited intervention to address the supplemental issues identified by the Commission on November 9, 2012.
- d. February 22, 2013: Final day for written discovery to NorthWestern regarding the supplemental issues identified by the Commission on November 9, 2012.
- e. March 8, 2013: Final day for NorthWestern to respond to discovery on supplemental issues.
- f. March 22, 2013: Final day for intervenors' testimony.
- g. April 5, 2013: Final day for written discovery to intervenors.
- h. April 19, 2013: Final day for intervenors' responses to written discovery.
- i. May 3, 2013: Final day for NorthWestern's rebuttal testimony and final day for cross-intervenor response testimony.
- j. May 17, 2013: Final day for written discovery about rebuttal testimony and final day for cross-intervenor response testimony.
- k. May 31, 2013: Final day for responses to written discovery about rebuttal testimony and final day for cross-intervenor response testimony.

13. The deadline for pre-hearing memoranda will be June 5, 2013, and the hearing will commence on June 12, 2013. The Commission will issue a notice of public hearing at least twenty days prior to the hearing.

Ex Parte Communication

14. As a contested case, *ex parte* communication is generally prohibited in this proceeding. Any communication between a Commissioner and a party or a party's

representative about an issue of fact or law in this proceeding that another party has not had notice of and an opportunity to participate in is an *ex parte* communication. Mont. Code Ann. § 2-4-613.

Service and Filing

15. A party must serve a copy of every pleading, motion, brief, discovery request or response, and other document it files in this proceeding on every other party. In order to file a document with the Commission, a party must: (1) Submit the document electronically (e-file) on the Commission's website at <http://psc.mt.gov> ("Account Login/Registration" under "Electronic Documents" tab); and (2) physically deliver or mail the original document to the Commission at 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. The Commission will not post an e-filed document to its website until it receives the original from the filing party. Service or filing by means of facsimile is prohibited. Service by mail does not extend a deadline.

Intervention

16. The original deadline for intervention in this proceeding was July 9, 2012. An entity seeking late intervention must file a petition to intervene setting forth: (1) The general position that it intends to take; (2) a legally protectable interest directly affected by this proceeding; (3) whether late intervention would delay the proceeding or prejudice another party; and (4) good cause for not having filed a timely petition. Late intervention will become effective only upon action of the Commission.

17. The Commission has set a limited intervention deadline of February 15, 2013, for the limited purpose of addressing the supplemental testimony identified by the Commission on November 9, 2012. Not. of Commn. Action p. 2 (Nov. 16, 2012). As parties that have already intervened in this proceeding, the Natural Resources Defense Council, the Human Resource Council, District XI, and the MCC need not petition for limited intervention in order to address the supplemental issues identified by the Commission on November 9, 2012.

Discovery

18. Data requests are the primary method of discovery in proceedings before the commission, but parties may employ techniques of prehearing discovery permitted in state civil actions. Admin. R. Mont. 38.2.3301. The Commission directs the parties to prepare data

requests according to the following guidelines:

- a. Assign a unique, consecutive number to each data request (e.g., MCC-001), regardless of the party to whom the request is directed (e.g., the Commission may direct PSC-001 through 008 to NorthWestern, PSC-009 through 016 to an intervenor, and PSC-017 through 019 again to NorthWestern).
- b. At the beginning of each data request, consistently describe its subject in five words or less. In addition, a party may direct the request to a particular witness or include citations to exhibits or testimony.
- c. For multi-part requests, use lower case letters (a-e) to denote up to five parts.
- d. The following are examples of acceptable data requests:

PSC-006 RE: Purchased Gas Contracts
Witness Doe, JBD-4:13-15.

Please provide the origination and expiration date for each contract.

PSC-007 RE: Bypass
Witness Roe, FAR-14:11-26.

- a. What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

19. A party may object to written discovery no later than the applicable deadline for responses by filing an objection with the Commission and serving it on all parties. The Commission may schedule oral argument before ruling on an objection. The Commission will consider a party that does not object by the applicable deadline to file responses to have accepted the discovery request. If a party objects based on privilege, it must file a privilege log with sufficient information for the Commission to determine whether the privilege applies. If a party objects based on confidentiality, it must file a motion for a protective order no later than the applicable deadline for filing responses.

20. If a discovery response fails to answer the request, the discovering party may move within seven calendar days after service of the response for an order compelling an answer.

The motion, which the party must file with the Commission and serve on all parties, must identify the relief requested. The Commission may schedule oral argument before ruling on a motion to compel, and will set a new response deadline if it grants the motion.

21. In response to a party's failure to answer written discovery, the Commission may: (1) Refuse to allow it to support or oppose related claims; (2) prohibit it from introducing related evidence; (3) strike pleadings, testimony, or parts thereof; (4) stay the proceeding until the request is satisfied; or (5) dismiss the proceeding, or parts thereof.

22. A party may submit written discovery after a deadline established in this Modified Order either by agreement of the parties or with approval of the Commission upon a showing of good cause that addresses why the discovering party missed the deadline.

Pre-hearing Motions, Conferences and Memoranda

23. A party must make a pre-hearing motion, including a motion to strike pre-filed testimony, at the earliest possible time. A responding party must file and serve its response brief within seven calendar days of service of the motion. If the movant wishes to reply, it must file and serve its reply brief within five calendar days of service of the response brief. Upon the request of a party, the Commission may allow oral argument on a pre-hearing motion.

24. The Commission may schedule a pre-hearing conference at any time prior to the hearing to discuss the feasibility of settlement in whole or in part, simplification of the remaining issues through admissions of fact, and any other matters that may expedite the hearing.

25. Unless the parties agree to file jointly, each party must file and serve a pre-hearing memorandum listing the following information regarding the hearing: (1) Uncontested issues; (2) contested issues; (3) witnesses it intends to call; (4) exhibits and discovery it intends to introduce; and (5) any special accommodations it seeks regarding witness sequence or scheduling. If a party intends to introduce a discovery response, it must identify the number of the request, the responding witness, and the issue addressed.

Hearing

26. The Montana Rules of Evidence will govern the hearing. Because each party is entitled to reasonable notice of what issues will be addressed at the hearing, the Commission may not allow a party to raise an issue at a hearing unless it is reasonably related to an issue previously identified in the proceeding.

27. Prior to the hearing, the parties must arrange with the court reporter and presiding officer to consistently mark all proposed exhibits and pre-filed testimony for reference.

28. A party must make each person that authored a discovery response available for cross-examination at the hearing unless the Commission approves an agreement among the parties to waive cross-examination and allow admission of the evidence without the author. A witness need not recite pre-filed testimony before counsel moves to admit the testimony into the record.

29. When a party seeks to cross-examine a witness based on a document not previously filed in this proceeding, it must make copies of the document available to each Commissioner, party, and staff, unless it shows good cause why copies are not available. A party moving to admit discovery into the record must provide a copy for the court reporter.

30. At the discretion of the Commission, members of the public may comment on the proceeding at the hearing.

Open Meetings

31. All Commission meetings are open to the public except as provided by law. The Commission issues notice of routine business meetings and work sessions through a weekly agenda service list. In order to receive notice of the weekly agenda, which may relate to this proceeding, a party must request to be added to the weekly agenda service list.

DONE AND DATED this 21st day of November 2012 by delegation to Commission staff as an Order of the Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

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