

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

IN THE MATTER OF NorthWestern) REGULATORY DIVISION
Energy's 2011-2012 Electricity Supply) DOCKET NO. D2012.5.49
Tracker) ORDER NO. 7219i

ORDER ON REMAND

PROCEDURAL HISTORY

1. On June 1, 2012, NorthWestern Corporation, doing business as NorthWestern Energy (NorthWestern), filed its 2011-2012 Electricity Supply Tracker (2012 Tracker) with the Montana Public Service Commission (Commission). The Montana Consumer Counsel (MCC), Human Resource Council District XI and Natural Resources Defense Council (HRC/NRDC) intervened and filed testimony.

2. Following a lengthy administrative process that was delayed multiple times to allow time for discovery and supplemental testimony, the Commission conducted a public hearing on June 11-14, 2013.

3. On October 28, 2013, the Commission issued *Final Order 7219h*, which included the following paragraphs regarding "Lost Revenue Adjustment Policy":

The Commission recognizes that prior orders have established a precedent of full recovery of lost revenues associated with verified savings. Nevertheless, the Commission hereby provides notice to NorthWestern that it is skeptical of the *status quo* regarding lost revenue recovery. The Commission is troubled by the magnitude and complexity of the SBW Report, and by the administrative cost associated with overseeing the process of determining realized savings. The Commission recognizes that NorthWestern's expectation of lost revenue recovery is embedded in its cost estimates in this case, as well as in Docket D2013.5.33. **However, as of the service date of this Order, NorthWestern bears the burden of demonstrating why any request for incremental lost revenues resulting from the acquisition of additional USB or DSM savings is reasonable and in the public interest.** The Commission observes that the policy of allowing lost revenue recovery for USB programs appears particularly questionable given that such programs are required by law.

Regarding lost revenues associated with electric supply DSM program savings, the Commission observes that frequent rate cases will largely mitigate the impact of

lost revenues due to energy efficiency programs on NorthWestern's usage-dependent recovery of capital asset costs.

Or. 7219h ¶¶ 78-79 (emphasis added). The emphasized sentence (Statement of Burden) is the subject of this Order.

4. On November 7, 2013, NorthWestern filed a *Motion for and Brief in Support of Reconsideration of Final Order 7219h* (Motion for Reconsideration), in which it asked the Commission to remove, in part, paragraphs 78-79, where it asserted the Commission had “decided to establish a new burden for recovery of lost revenues in future proceedings.” Mot. for Reconsideration pp. 19, 21 (“It was reversible error for the Commission to pronounce a new standard without allowing due process and receiving evidence and argument on the matter from the affected parties.”).

5. On November 21, 2013, the Commission denied NorthWestern's Motion for Reconsideration.

6. On December 20, 2013, NorthWestern filed a *Petition for Judicial Review* (Petition) in the Second Judicial District Court (Court), Cause No. DV-13-399. In its Petition, NorthWestern argued, in part, that the Commission violated its due process rights by establishing “a new burden for recovery of lost revenues” without giving any party “an opportunity to address whether it believed the Commission's policy should be changed.” Pet. p. 7. On March 3, 2014, the Court issued an *Order Granting Motions to Intervene* from the MCC and HRC/NRDC.

7. On March 24, 2014, the Court conducted a scheduling conference and issued a *Scheduling Order* establishing a briefing schedule and date for oral argument. “During such conference, the parties indicated that they were engaged in negotiations regarding settlement” of the Lost Revenue Adjustment Policy issue. Sched. Or. p. 1 (“Such a settlement would narrow the scope of the issues subject to judicial review, and would serve the interests of justice.”).

8. On April 23, 2014, NorthWestern and the Commission entered into an unopposed *Settlement Agreement Regarding the Lost Revenue Issue* (Partial Settlement) and filed an *Unopposed Motion for Approval of Settlement Agreement* with the Court.

9. On April 28, 2014, the Court issued an *Order* approving the Partial Settlement, remanding the matter to the Commission for the purpose of removing the Statement of Burden, and dismissing “NorthWestern's claims with respect to the lost revenue recovery burden issue.”

FINDINGS OF FACT

10. In the Partial Settlement entered into by NorthWestern and the Commission, the Commission agreed to remove the Statement of Burden from *Final Order 7219h*, and NorthWestern agreed that upon removal of that sentence, its claims with respect to the Lost Revenue Adjustment Policy issue would be dismissed. Partial Settle. p. 2 (Apr. 23, 2014).

11. The Commission further agreed “not to raise the lost revenue policy issue as an additional issue” in the 2012-2013 Electricity Supply Tracker (Docket D2013.5.33), or the 2013-2014 Electricity Supply Tracker (Docket D2014.5.46), but rather “to open a separate docket” (Docket) to address the Lost Revenue Adjustment Policy issue for both electric and natural gas efficiency programs. *Id.*

12. NorthWestern further agreed that if it “files an appeal of the decision in that Docket, [it] will not challenge the Commission’s authority to initiate that Docket or assert that the opening of that Docket by the Commission in and of itself was a procedural due process violation.” *Id.*

CONCLUSIONS OF LAW

13. Generally, “informal disposition may be made of any contested case by stipulation [or] agreed settlement. . . .” Mont. Code Ann. § 2-4-603(1) (2013).

14. Public policy favors the resolution of disputes through settlement rather than litigation. *See Augustine v. Simonson*, 283 Mont. 259, 266, 940 P.2d 116, 120 (1997); *see also Hohensee v. Chemodurow*, 155 Mont. 288, 292, 470 P.2d 965, 967 (1970) (“The law favors the settlement of disputes out of court, either before or after an action is begun”).

ORDER

IT IS HEREBY ORDERED THAT:

15. Pursuant to the Partial Settlement entered into between NorthWestern and the Commission and the subsequent *Order* from the Court, the Statement of Burden is removed from *Final Order 7219h*.

DONE AND DATED this 13th day of May, 2014 by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

W. A. GALLAGHER, Chairman

BOB LAKE, Vice Chairman

KIRK BUSHMAN, Commissioner

TRAVIS KAVULLA, Commissioner

ROGER KOOPMAN, Commissioner

ATTEST:

Aleisha Solem
Commission Secretary

(SEAL)