

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
Application for Approval to Purchase and)	
Operate PPL Montana’s Hydroelectric Facilities,)	DOCKET NO. D2013.12.85
for Approval of Inclusion of Generation Asset)	
Cost of Service in Electricity Supply Rates, for)	
Approval of Issuance of Securities to Complete)	
the Purchase, and for Related Relief)	

**MONTANA CONSUMER COUNSEL RESPONSE TO OBJECTIONS
AND MOTION TO COMPEL**

On January 3, 2014, Montana Consumer Counsel (MCC) submitted several data requests to NorthWestern Energy (NWE) regarding its application in this proceeding. Pursuant to the Commission’s *Notice of Application and Intervention Deadline and Initial Procedural Schedule*, responses were initially due January 10, 2014. NWE submitted its responses and objections to the data requests on January 24, 2014, the modified due date established in Procedural Order 7323b. MCC responds to several of these objections and requests the Commission to compel responses, as set forth below.

MCC-003

MCC-003 states as follows:

Regarding: Revenue Requirement
Witness: DiFronzo/Meyer

- a. Please provide a year by year estimate of the revenue requirements of the utility with and without the purchase of the hydros, including a detailed explanation of all assumptions made about the alternative power purchases and their prices in the “without” case.

- b. Please provide an analysis of the effect of alternate assumptions in part a, above, on the date at which revenue requirements become lower in the “with” case than in the “without” case.

NWE objects that it did not perform such an analysis, and that the request is burdensome. Such an analysis is essential to considering whether NWE’s preapproval request would result in just and reasonable rates and is in the public interest. The inquiry is central to this application, and not unduly burdensome. If the Company does not know what the year by year revenue requirement impact of its request is likely to be it should so state. Otherwise, the Company should provide this information.

MCC-005

MCC-005 states as follows:

Regarding: Bill Impacts
Witness: DiFronzo

Please provide a year by year estimate of the average residential customer bill for NWE resource procurement planning cycle with and without the purchase of the hydros, including a detailed explanation of any assumptions not already described in response to MCC-003

NWE again objects that it did not perform such an analysis, that the request calls for speculation, and that it is unduly burdensome. The request is similar to the request set forth in MCC-003, and is highly relevant, as described above. Such analysis, and indeed the request for preapproval of long-lived assets itself, require projections and forecasts, as vividly demonstrated by NWE’s forecast of carbon taxes. If the impacts of NWE’s request in this Application are too speculative to assess and provide in data responses, then its request should be denied.

MCC-006

MCC-006 states as follows:

Regarding: Due Diligence
Witness: All Relevant Witnesses

Please provide all components of any due diligence analysis that was done by or for NWE regarding the acquisition of PPLM's hydroelectric properties (and all exhibits and/or attachments thereto).

NWE objects to this request to the extent it seeks privileged information. MCC does not seek information that is determined to be privileged. NWE further objects that the term "due diligence analysis" in the request is vague. The Company partially responds, but limits its response to "final versions of documents...analyzing data provided by PPLM...and presented to [NWE's] Board of Directors." The documents are further limited to October 24, 2012, through September 26, 2013. The request is not vague. NWE itself discusses its "due diligence" efforts many times, especially in the pre-filed testimony of William T. Rhoads, where he provides an "overview of the due diligence process" (p. 7, l. 1), and responds to a question that specifically references NWE's "due diligence analysis" (p. 12, l. 13). Again, the due diligence issue is central to this docket and the Commission should require NWE to fully respond to the request, not limiting its response to information provided by PPLM and subsequently presented to the NWE Board, or prepared within the specified dates.

NWE also indicates in its response that it is withholding certain responsive documents pursuant to an agreement with Credit Suisse, but has sought permission to provide them. NWE cannot control discovery by entering into an agreement with a third party precluding production of information that is otherwise discoverable. Protective orders are available if the material is proprietary. The Commission should require production of these documents.

MCC-007

MCC-007 states as follows:

Regarding: Due Diligence
Witness: All Relevant Witnesses

Please identify in detail all documents that were reviewed by NWE or its advisors in conjunction with any due diligence analysis of the hydroelectric property acquisition.

NWE again objects to this request to the extent it seeks privileged information, and because the term “due diligence analysis” is vague and overly broad. See discussion of MCC-006, above. NWE further objects that the request is “unnecessary.” NWE does not get to determine what is “necessary” to an intervenor’s case. In fact, the requested information is relevant to a central issue in this proceeding, due diligence, and is “reasonably calculated to lead to the discovery of admissible evidence.” The request thus satisfies the requirements of Rule 26(b)(1), Mont. Rules of Civ. Proc. MCC appreciates that NWE responded to the extent of generally identifying the information in PPLM’s Data Room and documents available on the FERC website. NWE should also identify, however, what is covered by the term “others” at the end of this response. The Company should describe and disclose to the Commission and intervenors the materials that were reviewed in its due diligence efforts.

MCC-008

MCC-008 states as follows:

Regarding: Due Diligence
Witness: All Relevant Witnesses

Please identify in detail all documents that were reviewed by NWE or its advisors in conjunction with any due diligence analysis of the hydroelectric property acquisition.

The Company asserts that the request is “over broad, oppressive, and unduly burdensome.” This argument is not well taken, given the magnitude and potential impacts of the requested preapproval. If NWE received internal advice or advice from its advisors that was critical of the proposed acquisition, that should be made known to the Commission. The information provided

in response to MCC-006 (analysis of due diligence information provided by PPLM and presented to the NWE Board) was much too narrowly defined to constitute a sufficient response. See discussion, above.

NWE further objects that the phrase “criticized or questioned any aspects” is vague and ambiguous. MCC disagrees. If the Company received advice critical of the acquisition, it should be ordered to produce this information. Without such a response, the Commission will be hampered in its ability to evenhandedly assess the merits of the requested preapproval.

MCC-009

MCC-009 states as follows:

Regarding: Acquisition Analysis
Witness: All Relevant Witnesses

Please provide copies of all communications (and any attachments or documents related thereto) between PPLM (or any affiliate thereof) and NWE (or any affiliate or employee or advisor thereof) regarding NWE’s potential acquisition of PPLM’s hydroelectric properties.

NWE objects on several grounds. It first objects “to the extent” that the request seeks irrelevant information. This conditional objection is a bit puzzling. Suffice it to say, however, that MCC is not seeking irrelevant information or documents. The question specifically goes to communications “regarding NWE’s potential acquisition of PPLM’s hydroelectric properties.” NWE’s potential acquisition of PPLM’s hydroelectric properties is the central issue in this proceeding.

NWE again objects “to the extent” the request seeks privileged information or documents. MCC does not seek production of material that is, in fact, determined to be privileged.

NWE objects “to the extent” the request is overly broad, is not limited to a specified time period, or is cumulative or duplicative. The request is not overly broad. It is specifically aimed at relevant material that could lead to discovery of admissible evidence, as described above. It is limited to the period in which NWE has considered the acquisition of PPLM’s hydroelectric properties. Further, since all of the requested communications are individual instances, they are not cumulative. A different conclusion would preclude discovery of communications.

NWE further asserts that there are over 7400 potentially responsive communications. The requested information is relevant, and the Commission should be interested in a party's ability to review such material. MCC is willing to narrow the request to the individuals identified in NWE's objection.

MCC-010

MCC-010 states as follows:

Regarding: Acquisition Analysis
Witness: All Relevant Witnesses

Please identify by date all meetings (in person or telephonic) that occurred between NWE (including employees or representatives thereof) and PPLM (or representatives or employees thereof) regarding any aspect of the potential hydroelectric property acquisition by NWE. Please identify the person or persons involved in those meetings and provide copies of all notes and other documents related to those meetings.

NWE's objections are largely the same as with respect to MCC-009, and MCC's response to those objections is also the same. For purposes of this question, however, MCC would narrow the definition of "meetings" to those involving three or more people. As for telephone meetings, MCC is not asking NWE to produce what it does not have.

The response should not be limited to meetings after May 13, 2013.

MCC-011

MCC-011 states as follows:

Regarding: Acquisition Analysis
Witness: All Relevant Witnesses

Please provide copies of all communications (internal and external) concerning any aspect of NWE's potential acquisition of any generating properties from PPLM (or any affiliate thereof) other than the hydroelectric properties that are the subject of this filing.

See discussion above for responses to the conditional objections that NWE has previously raised with respect to this set of data requests.

NWE argues that communications regarding “potential transactions that did not come to fruition” are irrelevant. NWE is wrong in this assertion. It is clear that PPLM was interested in selling all of its Montana resources, not just the hydros. NWE did, in fact, bid on these resources, albeit apparently assigning a negative value to some of them. These were, therefore, resources potentially available to serve ratepayers and the Company is obligated to consider such alternatives in its resource planning. The information requested can lead to evidence concerning how the Company conducted such evaluations, as well as the impact those considerations had on the purchase for which it is now requesting preapproval.

NWE estimated that there may be between 15,000 and 19,500 potentially responsive emails and attachments. On January 30, NWE filed a Supplement to its objection, revising the potential number of documents to 40,000 and providing a cost estimate of \$140,000 to conduct the necessary review. Although the annual cost to ratepayers of the requested \$900 million rate base preapproval is significant, MCC does not want NWE to pay a consultant \$140,000 to respond to this request. MCC withdraws this request.

MCC-013a

MCC-013a states as follows:

Regarding: Exhibits
Witness: Bird/Meyer/Stimatz/Kliwer

Please provide working electronic copies of all exhibits and work papers with all supporting files and links intact, for each of the following:

- a. Exhibit Nos. BBB-3, BBB-4 and BBB-5.

NWE did not provide the requested backup (workpapers with all supporting files and links intact) for Exhibit No. BBB-5. The response instead refers to the Company’s response to PSC-057. The response to PSC-057 has nothing to do with the requested backup for Exhibit No. BBB-5. The requested material is necessary to review NWE’s asserted cost of capital pertaining to the proposed rate base addition. The Commission should compel NWE to satisfactorily respond to MCC-013a with regard to Exhibit No. BBB-5.

MCC-014

MCC-014 states as follows:

Regarding: Exhibits
Witness: DiFronzo/Masud/Otto

Please provide working electronic copies of all exhibits and work papers with all supporting files and links intact, for each of the following:

- a. Exhibit Nos. PJD-1, PJD-2, PJD-3 and PJD-4.
- b. AM Exhibit 1 Public.
- c. Exhibit AO-02 Public.

With respect to subparts “b” and “c,” NWE responds that it “does not have electronic copies in its possession, nor may it require its consultants to provide proprietary models.”

Among other things, MCC-014 requests backup for the valuation of the hydros conducted by Credit Suisse and Blackstone on behalf of NWE. As NWE witness Ahmed Masoud explains in his prefiled testimony, Credit Suisse used several methodologies, some of them familiar to the Commission, to estimate value. These included Discounted Cash Flow analyses, “Selected Transaction Multiples” and “Comparable Companies Trading Multiples.” (AM-4) These analyses led to valuations used to support the Company’s preapproval request. NWE witness Alan Otto, of Blackstone Advisory Partners, likewise presents valuations relied upon to support NWE’s request in this case. In fact, his testimony indicates that his firm “employed generally accepted valuation methods.” (p. 9, l. 2) Some of the models appear to have been supplied by NWE itself. (Exhibit AO-2, p. 16, fn. 1) MCC requires the backup for these analyses in order to evaluate them. The Commission should be interested in the parties’ ability to conduct such reviews, rather than simply accepting the resulting calculations in outside consultants’ testimonies. Consultants appearing in Commission proceedings have consistently been called upon to explain and produce the support for their recommendations. Failure to compel production of these workpapers and supporting documents would set a new and unfortunate precedent. If the models used by the consultants are truly proprietary, appropriate protective orders may be requested.

MCC requests that the Commission compel complete responses to data requests as described above.

Respectfully submitted February 3, 2014.

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