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

IN THE MATTER OF NorthWestern)	
Energy's Application for Approval to)	
Purchase and Operate PPL Montana's)	REGULATORY DIVISION
Hydroelectric Facilities, for Approval of)	
Inclusion of Generation Asset and Cost of)	DOCKET NO. D2013.12.85
Service in Electricity Supply Rates, for)	
Approval of Issuance of Securities to)	
Complete the Purchase, and for Related)	
Relief)	

NORTHWESTERN ENERGY'S OBJECTIONS TO DATA REQUESTS PSC-104, PSC-105, AND PSC-106, AND PARTS OF DATA REQUESTS PSC-107 AND PSC-108

NorthWestern Corporation doing business as NorthWestern Energy (“NorthWestern”), objects to data requests identified as PSC-104, PSC-105, PSC-106, PSC-107b, PSC-107c, PSC-107d, PSC-107e, PSC-108b, PSC-108c, PSC-108d, and PSC-108e on the grounds more particularly described below. The Montana Public Service Commission (“Commission”) served its seventh set of data requests (PSC-104 to PSC-120) (“PSC Set 7”) on February 6, 2014. Procedural Order 7323b, ¶ 9, provides a party may object to a data request within 10 days from service. February 16, 2014 is 10 days from service of PSC Set 7. As February 16, 2014, fell on a Sunday and February 17 was a holiday, the deadline to object to data requests in PSC Set 7 is Tuesday, February 18, 2014.

PSC-104

PSC-104 asks as follows:

- a. Please describe and provide sources for all costs shown in the Colstrip 1&2 O&M, Colstrip 3 O&M, and Corette O&M tabs of the Excel spreadsheet provided in response to PSC-066. If you employed models to estimate these costs, please describe in detail the inputs and calculations performed. If the costs were estimated by PPL, please provide the source documents.
- b. Please describe and provide sources for all capital expenditures shown in the Thermal CapEx tab of the Excel spreadsheet provided in response to PSC-066. If you employed models to estimate these expenditures, please describe in detail the inputs and calculations performed. If the costs were estimated by PPL, please provide the source documents.
- c. Please describe and provide sources for all expenditures shown in the G&A, Contingency Items tab of the Excel spreadsheet provided in response to PSC-066. If you employed models to estimate these expenditures, please describe in detail the inputs and calculations performed. If the costs were estimated by PPL, please provide the source documents.
- d. Please describe the derivation of the values found in cells D:4, D:5, and D:6 of the Valuation tab of the PSC-066 spreadsheet. Why are these values not linked (iteratively) to the net present values found in cells H:4-6 of the same sheet?
- e. Please provide evidence and reasoning to support NorthWestern’s assumptions of service termination at Corette in 2016, and Colstrip 1&2 in 2032.

NorthWestern objects to this data request because it is not relevant and not reasonably calculated to lead to admissible evidence. Pursuant to Rule 26(b)(1)¹ of the Montana Rules of Civil Procedure (“M. R. Civ. P.”), a party may only obtain discovery that “is relevant to any party’s claim or defense” and “appears reasonably calculated to lead to the discovery of admissible evidence.” This data request seeks information that is not relevant because it seeks information about thermal assets. The thermal assets are not before the Commission. The parties did not agree to contract terms and price for a combination of the thermal assets. NorthWestern has already provided sufficient information regarding the coal assets and NorthWestern’s consideration of those assets during Mustang I. The level of detail sought by this data request is not relevant to the Commission’s determination regarding whether to grant preapproval because the Hydros are in the best interest of the public and in compliance with relevant Montana law. With respect to this objection, NorthWestern hereby incorporates by reference its *Brief Regarding Discovery Issues* filed with the Commission on February 12, 2014 (“Brief”), and those parts of said Brief that discuss data requests seeking information regarding coal. Therefore, the Commission should sustain NorthWestern’s objection to PSC-104.

PSC-105

PSC-105 asks as follows:

- a. Please describe and provide sources for all costs reflected in the NWE Energy Supply estimates of coal asset cost of sales; as found in rows 15, 25, 35, and 55 of the Thermal Var COS tab of the conforming bid Excel spreadsheet provided in response to PSC-003. If you employed models to estimate these costs, please describe in detail the inputs and calculations performed. If some of the costs were estimated by PPL, please provide the source documents.
- b. Why did NorthWestern choose to use its own estimates regarding the coal asset cost of sales rather than the “CIM” estimates displayed in rows 14, 24, 34, and 54 of the tab referenced in (a)?

¹ The Commission has adopted Rule 26 by reference in its administrative rules. See ARM 38.2.3301.

- c. Please provide the source of the estimates referenced in (b).

NorthWestern objects to this data request because it is not relevant and not reasonably calculated to lead to admissible evidence. Pursuant to M. R. Civ. P. 26(b)(1), a party may only obtain discovery that “is relevant to any party’s claim or defense” and “appears reasonably calculated to lead to the discovery of admissible evidence.” This data request seeks information that is not relevant because it seeks information about thermal assets. The thermal assets are not before the Commission. The parties did not agree to contract terms and price for a combination of the thermal assets. NorthWestern has already provided sufficient information regarding the coal assets and NorthWestern’s consideration of those assets during Mustang I. The level of detail sought by this data request is not relevant to the Commission’s determination regarding whether to grant preapproval because the Hydros are in the best interest of the public and in compliance with relevant Montana law. With respect to this objection, NorthWestern hereby incorporates by reference its Brief, and those parts of said Brief that discuss data requests seeking information regarding coal. Therefore, the Commission should sustain NorthWestern’s objection to PSC-105.

PSC-106

PSC-106 asks as follows:

- a. Is the coal asset (Corette, Colstrip 1&2, Colstrip 3) cost and production information found in the conforming bid spreadsheet provided in response to PSC-003 consistent with the full information that NorthWestern had received prior to July 1, 2013? If not, please explain inconsistencies and deficiencies.
- b. Is the coal asset cost and production information found in the spreadsheet provided in response to PSC-066 consistent with the full information that NorthWestern had received prior to July 1, 2013? If not, please explain inconsistencies and deficiencies.

- c. Please remedy any inconsistencies and deficiencies in the PSC-003 and PSC-066 spreadsheets by providing data to support all relevant model inputs that are consistent with full information as of July 1, 2013.

NorthWestern objects to this data request because it is not relevant and not reasonably calculated to lead to admissible evidence. Pursuant to M. R. Civ. P. 26(b)(1), a party may only obtain discovery that “is relevant to any party’s claim or defense” and “appears reasonably calculated to lead to the discovery of admissible evidence.” This data request seeks information that is not relevant because it seeks information about thermal assets. The thermal assets are not before the Commission. The parties did not agree to contract terms and price for a combination of the thermal assets. NorthWestern has already provided sufficient information regarding the coal assets and NorthWestern’s consideration of those assets during Mustang I. The level of detail sought by this data request is not relevant to the Commission’s determination regarding whether to grant preapproval because the Hydros are in the best interest of the public and in compliance with relevant Montana law. With respect to this objection, NorthWestern hereby incorporates by reference its Brief, and those parts of said Brief that discuss data requests seeking information regarding coal. Therefore, the Commission should sustain NorthWestern’s objection to PSC-106.

PSC-107

PSC-107b through e asks as follows:

It was indicated in the Due Diligence Report that there is ongoing litigation with respect to shoreline erosion around Flathead Lake and the maintenance of lake levels controlled by Kerr Dam. *See Mattson v. Mont. Power Co.*, 2012 MT 318, 368 Mont. 1.

- b. Assuming NorthWestern acquires PPL’s hydroelectric facilities, please indicate whether NorthWestern will seek to recover any costs related to this litigation from customers if the Plaintiffs (i.e., landowners with properties on the shores of Flathead Lake) ultimately prevail.

- c. With respect to subpart b., please identify and describe the costs that NorthWestern will seek to recover through rates.
- d. Assuming NorthWestern acquires PPL's hydroelectric facilities, please indicate whether NorthWestern will seek to recover any costs related to this litigation from customers if the Defendants ultimately prevail, or if the parties ultimately settle.
- e. With respect to subpart d., please identify and describe the costs that NorthWestern will seek to recover through rates.

NorthWestern objects to these subparts of PSC-107 because the questions call for speculation. Speculation is prohibited by the Montana Rules of Evidence, specifically Rules 701 and 703. Generally, in court cases, the Rules of Evidence do not apply to discovery matters. Commission contested cases are different from court cases because in most instances responses to discovery requests are requested either by another party or the Commission to be moved into the record at hearing, where the rules of evidence do apply. Even though M. R. Civ. P. 26 provides that discovery can seek information that may be inadmissible at trial, discovery must still be relevant and calculated to lead to admissible evidence. Since this information is speculative, it is not likely to lead to admissible evidence and therefore discovery on these points are irrelevant. Based on the foregoing, the Commission should sustain the objections to PSC-107b through e.

PSC-108

PSC-108b through e asks as follows:

It was indicated in the Due Diligence Report that there is ongoing litigation with respect to payments potentially owed the State for use of navigable riverbed. *See PPL Montana v. Mont.*, 132 S. Ct. 1215 (2012).

- b. Assuming NorthWestern acquires PPL's hydroelectric facilities, please indicate whether NorthWestern will seek to recover any costs related to this litigation from customers if the Plaintiff ultimately prevails.
- c. With respect to sub-part b., please identify and describe the costs that NorthWestern will seek to recover through rates.

- d. Assuming NorthWestern acquires PPL's hydroelectric facilities, please indicate whether NorthWestern will seek to recover any costs related to this litigation from customers if the Defendant ultimately prevails, or if the parties ultimately settle.
- e. With respect to sub-part d., please identify and describe the costs that NorthWestern will seek to recover through rates.

NorthWestern objects to these subparts of PSC-108 because the questions call for speculation. Speculation is prohibited by the Montana Rules of Evidence, specifically Rules 701 and 703. Generally, in court cases, the Rules of Evidence do not apply to discovery matters. Commission contested cases are different from court cases because in most instances responses to discovery requests are requested, either by another party or the Commission, to be moved into the record at hearing, where the rules of evidence do apply. Even though M. R. Civ. P. 26 provides that discovery can seek information that may be inadmissible at trial, discovery must still be relevant and calculated to lead to admissible evidence. Since this information is speculative, it is not likely to lead to admissible evidence and therefore discovery on these points are irrelevant. Based on the foregoing, the Commission should sustain the objections to PSC-108b through e.

Respectfully submitted this 18th day of February 2014.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of NorthWestern Energy's Objections to Data Requests PSC-104, PSC-105, and PSC-106 and parts of PSC-107 and PSC-108 in Docket No. D2013.12.85 has been hand delivered to The Montana Public Service Commission and The Montana Consumer Counsel. A copy has been e-filed on the MPSC website. It will be mailed to the most recent service list in this Docket by first class mail. It will also be emailed to the counsel of record.

Date: February 18, 2014



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Administrative Assistant
Regulatory Affairs

**Docket No D2013.12.85
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