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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)	
Service in Electricity Supply Rates, for)	DOCKET NO. D2013.12.85
Approval of Issuance of Securities to)	
Complete the Purchase, and for Related)	
Relief)	

NorthWestern Energy's Brief Regarding PSC-141(a) and (b)

NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern”) submits this brief in response to the Notice of Commission Action issued on April 11, 2014 (“Notice”) regarding Data Request PSC-141(a) and (b) (“PSC-141”).¹

PSC-141 asks for a calculation of the impact of carbon on NorthWestern’s models. NorthWestern has not determined the impact of carbon on its models. The Commission determined that new analysis is not necessary when responding to discovery. NorthWestern has provided the parties and the Commission with a workable model that allows them to answer PSC-141. In his prefiled testimony on behalf of the Montana Consumer Counsel (“MCC”), Dr. John Wilson has asserted that NorthWestern’s DCF model includes nearly \$250 million of CO₂ tax. NorthWestern will respond to Dr. Wilson’s assertion in its rebuttal testimony that is due on May 9, 2014. The Commission should respect its process and prior decisions. For this reason and for the reasons described below, the Commission should not compel NorthWestern to provide any additional response to PSC-141.

In this brief, NorthWestern shows that answering PSC-141 would require new analysis and that the discovery rules do not require a party to perform new analysis when responding to discovery questions. Additionally, NorthWestern addresses and rebuts the Commission arguments noted in the Notice. Finally, NorthWestern argues that the Commission lacks the statutory authority to compel discovery responses since it is not a party in this proceeding.

I. NorthWestern does not have answers to PSC-141; answering would require additional and new analysis.

On March 7, 2014, NorthWestern filed its response to PSC-141. NorthWestern’s answer in part provided as follows “NorthWestern has not performed this analysis.” Nothing has

¹ Subpart (b) of PSC-141 seeks information regarding the DCF model that included coal and was not a final model utilized by NorthWestern in the proposed acquisition of the Hydros. NorthWestern again asserts that this analysis is not relevant to this matter.

changed. This response is still true; NorthWestern has not performed the analysis necessary to answer the questions. In order to provide an answer to PSC-141, NorthWestern would need to perform new analysis. As previously argued by NorthWestern before the Commission, the Montana Rules of Civil Procedure (“M. R. Civ. P.”) that are adopted in the Commission’s administrative rules do not require new analysis to be performed when responding to discovery. Thus, the Commission should deny the request to compel answers to PSC-141.

a. The Rules of Civil Procedure do not require new analysis.

As the Commission is well aware, in this docket, NorthWestern objected to several data requests from both the Commission and the MCC that would require NorthWestern to perform new analysis. The Commission permitted the parties to brief this issue prior to a decision. NorthWestern, in its brief, provided that M. R. Civ. P. 34 does not require parties to perform new analysis when responding to discovery requests.² The Commission agreed. The Commission should not change course now and require NorthWestern to answer questions that would require new analysis. To do so would be a violation of the discovery rules, which the Commission has adopted in its administrative rules. For the benefit of the Commission, NorthWestern reasserts its argument regarding a prohibition of new analysis when responding to discovery.

i. The Discovery Rules, and Rule 34 in particular, do not require NorthWestern to perform new analysis when responding to discovery.

Discovery is intended to eliminate surprise, promote the effective cross-examination of expert witnesses, and to assure mutual knowledge of all relevant facts gathered by all parties.³

² See NorthWestern’s Brief Regarding Discovery Issues filed on February 12, 2014, pp. 11-13.

³ See *Murphy Homes, Inc. v. Muller*, 2007 MT 140, ¶67, 337 Mont. 411, 162 P.3d 106; citing *Richardson v State*, 2006 MT 43, ¶ 22, 331 Mont. 231, 130 P.3d 634; quoting *Massaro v. Dunham*, 184 Mont. 400, 405, 603 P.2d 249, 252 (1979); citing *Hickman v. Taylor*, 329 U.S. 495, 507, 67 S. Ct. 385, 392, 91 L. Ed. 451 (1947); and *Henricksen v. State*, 2004 MT 20, ¶ 57, 319 Mont 307, 84 P.3d 38; quoting *Hawkins v. Harney*, 2003 MT 58, ¶ 21, 314 Mont. 384, 66

Discovery includes depositions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.⁴ The Commission has adopted all of these methods⁵ and an additional technique – data requests.⁶ Data requests serve as written interrogatories, requests for production of documents, and requests for admission. The purpose of a data request determines the sideboards around it. If a data request asks for information it is akin to an interrogatory, and M. R. Civ. P. 33 establishes the sideboards; if a data request asks for the production of documents M. R. Civ. P. 34 sets the limits; and if a data request asks for the admission of the truth of any matter, M. R. Civ. P. 35 applies.

Critically, here, M. R. Civ. P. 34 allows a party to request the production of documents, and is the rule which prohibits the Commission from requiring NorthWestern to prepare new documents.⁷ By its very language, *M. R. Civ. P. 34 limits production to documents that are in*

P.3d 305.

⁴ M. R. Civ. P. 26a.

⁵ “Techniques of prehearing discovery permitted in state civil actions may be employed in commission contested cases, and for this purpose the commission adopts rules 26, 28 through 37 (excepting rule 37(b)(1) and 37(b)(2)(d) of the Montana rules of civil procedure in effect on the date of the adoption of this rule, and any subsequent amendments thereto.” ARM 38.2.3301(1)

⁶ “Nothing in (1) of this rule shall be construed to limit the free use of data requests among the parties. The exchange of information among parties pursuant to data request is the primary method of discovery in proceeding before the commission.” ARM 38.2.3301(2)

⁷ “A party may serve on any other party a request within the scope of Rule 26(b): (1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items **in the responding party’s possession, custody, or control**: (A) any designated documents or electronically-stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or (B) any designated tangible things.”

existence. The rule provides that a party may only require production of documents “in the responding party’s possession, custody, or control.” A document that has not been created is not within a party’s possession, custody, or control. The Montana Supreme Court has held that, “By its plain language, *Rule 34(a) does not require parties to produce nonexistent documents.*”⁸ (emphasis added). For that reason, the Montana Supreme Court has stated that tax returns that had not been created were not within the “ambit of Rule 34(a).”⁹

Federal court decisions construing Federal Rule of Civil Procedure Rule 34 say the same. M.R.Civ.P. 34 is adopted from Rule 34 of the Federal Rules of Civil Procedure.¹⁰ When a state rule is modeled after a federal rule, Montana courts look to interpretation of the federal rule for guidance interpreting the state rule.¹¹ Federal decisions have repeatedly held that Federal Rule of Civil Procedure 34 cannot be used to require a party to create new documents.¹² Just as the

M. R. Civ. P. 34(a) (emphasis added).

⁸ *Peterman v. Herbalife Intern., Inc.*, 2010 MT 142, ¶ 22, 356 Mont. 542, 234 P.3d 898.

⁹ *Id.*, ¶ 21.

¹⁰ The current version of M.R.Civ.P. was adopted in 2011. The Committee Notes explaining its adoption provide: “Previous Rule 34 of the Montana Rules of Civil Procedure allowed 45 days for response by a defendant to requests served under Rule 34 following service of summons and complaint on that defendant. That provision is carried forward in Rule 33(b)(2)(A). In all other respects, the rule is identical to Rule 34 of the Federal Rules of Civil Procedure.”

¹¹ *Farmers Union Mut. Ins. Co. v. Bodell*, 2008 MT 363, ¶ 21, 346 Mont. 414, 197 P.3d 913, citing *Muri v. Frank*, 2001 MT 29, ¶ 12, 304 Mont. 171, 18 P.3d 1022.

¹² See e.g. *Harris v. Koenig*, 271 F.R.D. 356, 371 (D.D.C. 2010) (“parties are only required to produce documents that ‘are already in existence’”) (emphasis in original) (quoting *Ascom Hasler Mailing Sys., Inc. v. U.S. Postal Serv.*, 267 F.R.D. 1, 8 (D.D.C 2010); citing *Alexander v. Federal Bureau of Investigation*, 194 F.R.D. 305, 310 (D.D.C.2000) (“Rule 34 only requires a party to produce documents that *are already in existence*”; “[a] party is not required to prepare, or cause to be prepared, new documents solely for their production”) (internal citation omitted)(emphasis added); *Insituform Technologies, Inc. v. Cat Contracting, Inc.*, 168 F.R.D. 630, 633 (N.D.Ill.1996) (“Rule 45...does not contemplate that a non-party will be forced to create documents that do not exist.”); *Rockwell Int'l Corp. v. H. Wolfe Iron & Metal Co.*, 576

Montana Supreme Court and numerous federal courts have ruled, the Commission correctly held that a party cannot use a data request to force another party to create a new document or perform new analysis when responding to discovery.

b. Responding to PSC-141 requires more than simply explaining analysis that NorthWestern already performed.

The Notice asserts that, during the Commission work session held to discuss PSC-141, arguments were made that “the question does not require new analysis, that it only requires NorthWestern to explain analysis it has already conducted.”¹³ This assertion is incorrect. PSC-141 does seek answers to questions, not production of documents; however, NorthWestern would still need to perform additional and new analysis in order to answer the question regarding what portion of the total net present value is attributed to the inclusion of a carbon price in the discounted cash flow (“DCF”) model. Thus, answering the question would not be as simple as the Commission asserts. The answers to PSC-141 cannot be derived by explaining analysis already conducted because these answers do not exist in the analysis NorthWestern has done. To require NorthWestern to answer this question would require NorthWestern to manipulate the analysis it did perform, which is additional and new analysis. As discussed more fully below, an

F.Supp. 511, 513 (W.D. Pa. 1983) (“Rule 34 cannot be used to require the adverse party to prepare, or cause to be prepared, a writing to be produced for inspection, but can be used only to require production of things in existence”) (internal quotes omitted), quoting *Soetaert v. Kansas City Coca Cola Bottling Co.*, 16 F.R.D. 1, 2 (W.D.Mo.1954); *United States v. U.S. Alkali Export Ass'n*, 7 F.R.D. 256, 259 (S.D.N.Y.1946) (“Rule 34 is to be used to call for the production of documents already in existence...and not to require an adverse party to prepare a written list to be produced for inspection.”); *Gray v. Faulkner*, 148 F.R.D. 220, 223 (N.D.Ind.1992) (“Of course, “[i]f a document or thing does not exist, it cannot be in the possession, custody, or control of a party and therefore cannot be produced for inspection-””) (internal citation omitted). Similarly, one court found it inappropriate to impose upon a party the duty of “sorting or analysis of the data” or the “task of culling relevant [data] from a long list.” *Sanders v. Levy*, 558 F.2d 636, 642 n. 7 (2d Cir.1976), *rev'd on other grounds, sub nom. Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340 (1978).

¹³ See Notice, p. 2.

explanation of the steps necessary to perform the requested analysis has been provided in NorthWestern's responses to Data Request PSC-160. This enables the parties to answer the question in PSC-141. NorthWestern has not undertaken these steps. This would be the new analysis necessary to answer the question. Since NorthWestern has not taken the steps outlined in PSC-160, it cannot answer PSC-141. Per the Commission's prior decision regarding new analysis, NorthWestern should not be compelled to answer PSC-141. For these reasons, the Commission should deny the motion to compel.

c. NorthWestern has told the parties how to manipulate the DCF model in order to account for different carbon prices in different years.

In response to PSC-160, NorthWestern provided the parties with the necessary steps to answer PSC-141. In the Notice, the Commission asserts that "the instructions provided by NorthWestern on how to calculate the value in RDR PSC-160 may not include all of the steps one would have to take to calculate the value."¹⁴ NorthWestern did, in fact, completely and accurately respond to the questions asked in that data request. PSC-160(b) asked:

If NorthWestern has not performed the analyses described in parts (b) – (e) of the [PSC-159], is the Excel spreadsheet 'Exhibit__ (JMS-1) and (JMS-2) & p. JMS-20' in the 'Joseph Stimatz' folder on the CD labeled 'Witnesses Electronic Supporting Data' the appropriate model with which to perform such analyses? If not, please explain.

NorthWestern's response to PSC-160(b) was:

Yes, the Excel spreadsheet 'Exhibit__ (JMS-1) and (JMS-2) & p. JMS-20' ('DCF Workbook') would be the appropriate model to make the net present value calculation. The file 'Curve Calculator 6-7-13.xls' provided in response to data request MCC-154 ('Curve Calculator Workbook') would also be helpful in this analysis.

Additionally, PSC-160(c) asked as follows:

¹⁴ Notice, p. 2.

If the answer to part (b) of this data request is ‘yes’ how should the Excel worksheet be modified to determine how the DCF value of the Hydros would change if NorthWestern assumed an alternative CO₂ emissions costs?

NorthWestern responded:

The on-system, on-peak and off-peak forward prices that drive the DCF calculation are located in Columns S and T on the ‘Exhibit__ (JMS-2)’ tab of the DCF Workbook. The prices in these columns can be changed to calculate the effect of alternative pricing assumptions, including alternative CO₂ pricing assumptions, on the net present value.

Alternative on-system prices can be calculated in the Curve Calculator Workbook. Alternative CO₂ pricing assumptions can be entered in the ‘GHG15 Carbon’ tab of that workbook. The resulting on-system prices in columns AB and AC on the ‘GHG15 Forwards’ tab can be copied into Columns S and T of the ‘Exhibit__ (JMS-2’ tab in the DCF Workbook to calculate the net present value.

In further support of NorthWestern’s position, attached is an affidavit of Joseph M. Stimatz (“Stimatz Affidavit”) that affirms that the responses to PSC-160 are complete, accurate and contain the necessary process in order to perform the analysis that the Commission seeks an answer to in PSC-159 or alternatively in PSC-141.¹⁵ It appears that the Commission’s questions regarding the completeness of NorthWestern’s response to PSC-160 stem from the fact that the MCC’s expert witness, Dr. John Wilson, has calculated a different value pursuant to the analysis requested in PSC-141 than the Commission’s staff. The fact that different values were derived does not mean NorthWestern failed to provide all necessary steps. The difference could be explained because the calculations were performed independently and might include different assumptions. As the Commission is not a party to this docket, neither the assumptions it made nor the results it derived are available to the parties. Notwithstanding that fact, as shown above and in the attached affidavit, NorthWestern did respond completely to PSC-160 thereby allowing the parties, and the Commission, to conduct their own analysis to answer PSC-141.

¹⁵ Stimatz Affidavit, ¶ 6.

II. NorthWestern has the burden to support its case and inclusion of a carbon price has been supported by NorthWestern in this docket.

As the applicant in this docket, NorthWestern has the burden of proof with respect to its requests for certain actions from the Commission. In this case, NorthWestern must establish that the purchase price for the Hydros is appropriate and will result in just and reasonable rates for its customers. When valuing the Hydros, NorthWestern performed certain modeling. Important to this brief is the DCF modeling performed by NorthWestern. NorthWestern's DCF model required NorthWestern to develop a price forecast. This price forecast had three components "(1) market quotes at Mid-Columbia ("Mid-C") for the intermediate term with an escalation rate based on inflation expectations for the period after which market quotes are available; (2) a basis adjustment from Mid-C to Montana; and (3) an adjustment for the price of carbon under potential future regulation."¹⁶

Inclusion of a carbon price in the price forecast in this case is consistent with NorthWestern's previous procurement planning and acquisition activities. As explained by the Stimatz Direct Testimony at page 24, "NorthWestern has included a price for carbon in its supply planning and acquisition activities since the 2007 Plan and the Commission supported this approach." The testimony goes on to provide that "[c]arbon regulation was addressed in a manner consistent with NorthWestern's other recent planning activities and resource acquisitions. The 2013 Plan uses a carbon price adjustment adapted from the Energy Information Administration's 2013 Annual Energy Outlook."¹⁷ NorthWestern has also responded to a multitude of data requests that ask about carbon pricing.

¹⁶ See the Prefiled Direct Testimony of Joseph M. Stimatz ("Stimatz Direct Testimony"), pp. 20-21.

¹⁷ See Stimatz Direct Testimony, p. 25.

Given what is known about future carbon regulation, NorthWestern believes that it would have been imprudent, inconsistent, and inappropriate for it not to include an adjustment for this risk in its analysis. Therefore, NorthWestern believes that based on the information provided in this docket, to date, responses to PSC-141 are not necessary. NorthWestern believes that it has, to date, provided the Commission with sufficient information and documentation to support the inclusion of a carbon price adjustment in the DCF analysis. As discussed above, NorthWestern has provided information required to perform the analysis requested in PSC-141 if the Commission or parties wish to perform such analysis.

a. NorthWestern is not required to make another party's case for them.

By compelling NorthWestern to respond to PSC-141, which would require new analysis as discussed above, the Commission would be forcing NorthWestern to support the MCC's case. There is no legal authority that requires one party to help support or make another party's case. One might argue that discovery does this; however, as noted above, the purpose of discovery is different and does not affirmatively require support from one party. Forcing NorthWestern to perform new analysis and respond to PSC-141 is inappropriate because the MCC has an expert who can perform the analysis. As discussed above, NorthWestern has provided the necessary steps to perform this analysis. And, as discussed more fully below, the MCC has apparently performed the analysis as it has asserted that inclusion of carbon in the price forecast approximately results in \$247 million of the purchase price for the Hydros being attributed to carbon. Thus, compelling NorthWestern to respond to PSC-141 is improper because the parties are fully capable of making their own case.

b. NorthWestern will respond to the MCC's testimony regarding carbon in rebuttal testimony

NorthWestern will file its rebuttal testimony by May 9, 2014. This testimony will rebut the MCC's position regarding carbon and its characterization of carbon in this docket. The MCC's expert, Dr. John Wilson, testifies that "[NorthWestern's] DCF analysis includes \$247.4 million of assumed hypothetical capitalized CO₂ tax costs."¹⁸ With this statement, it appears that the MCC's answer to PSC-141 is that \$247.4 million of the purchase price for the Hydros is attributed to carbon. NorthWestern disagrees with this testimony and the MCC's characterization of carbon in this case. Providing a response to PSC-141 is not the appropriate place for NorthWestern to engage in this discussion. Rebuttal testimony is the proper place to address testimony from other parties in this docket. However, it should be noted that in order to rebut the MCC's testimony, NorthWestern will not be required to perform the additional, new analysis that is requested by PSC-141. Thus, to compel NorthWestern to respond to PSC-141 is improper in this case for the above reasons.

III. The Commission lacks the authority to compel responses to data requests.

The Commission is a creature of statute and derives its authority and jurisdiction from statutes.¹⁹ As such, the acts of the Commission are legislative, and not judicial.²⁰ The Legislature has the authority to regulate public utilities and it does so through the Commission.²¹ The Commission has been given the authority and duty to "supervise and regulate the operations of

¹⁸ See Prefiled Direct Testimony of John Wilson, p. 35.

¹⁹ *Great Northern Utilities v. Public Service Commission*, 88 Mont. 180, 207, 293 P. 294, 298 (1930).

²⁰ *City of Polson v. Public Service Commission of Montana*, 155 Mont. 464, 476, 473 P.2d 508, 514 (1970) (citing *Billings Utility Co., v. Public Service Commission*, 62 Mont. 21, 203 P. 366, 368 (1921)).

²¹ *Id.*

public utilities...” servicing Montanans.²² The Commission is thus charged with ensuring that the public utilities provide adequate service at just and reasonable rates.²³

This authority, however, does not permit the Commission to be a party in contested dockets. Since the Commission is not a party, it may not compel answers to discovery. Procedural Order 7323b, ¶ 13, provides in part that “[i]f a response to a data request fails to answer the request, *the discovering party* may move within seven (7) calendar days after service of the response for an order compelling an answer.” (emphasis added). This provision in the procedural order is consistent with the Commission’s administrative rules. In ARM 38.2.3301, the Commission has adopted M. R. Civ. P. 37. M. R. Civ. P. 37(a)(1) provides that “*a party* may move for an order compelling discovery.” (emphasis added). Furthermore, ARM 38.2.3301 provides that when “applying the rules of civil procedure to commission proceedings, all references to ‘court’ shall be considered to refer to the commission.” Nothing in the administrative rules provides that reference to “party” shall mean the Commission. Thus, this provision clearly indicates that the Commission is not a party and therefore a motion to compel from the Commission is a violation of both its own administrative rules and the Montana Rules of Civil Procedure.

If the Commission finds that it does have the authority to compel discovery responses, NorthWestern protests that the Commission’s motion to compel is untimely. NorthWestern filed its response to PSC-141 on March 7, 2014. The work session to discuss a motion to compel was not held until almost a month later on April 4, 2014. This is clearly more than seven calendar days and therefore is untimely.

²² § 69-1-102, MCA.

²³ *Great Northern Utilities*, 88 Mont. at 207.

a. If the Commission compels NorthWestern to answer a Commission data request, this action has the appearance of advocacy.

As discussed above, the Commission lacks authority to compel responses to discovery. If the Commission disagrees and does compel NorthWestern to respond, this action has the appearance of advocacy. Advocacy is not the Commission's role. By creating the Commission, the Legislature "intended to provide a comprehensive and uniform system of regulation and control of public utilities, by a specially created tribunal."²⁴ The Commission's job is to balance the interests of both the public utility and that of the consuming public. The way in which the Commission achieves this goal is by acting as a trier of fact in contested cases. Statute does permit the Commission to ask questions in a case in order to clarify a party's position; however, it does not have authority to take a position during the case.^{25 26} The Commission may establish advocacy staff in contested dockets, but it has not done that in this case. If the Commission compels NorthWestern to respond to PSC-141, it appears that the Commission is taking a position in the case and acting as an advocate. This is inappropriate.

IV. Conclusion

As NorthWestern has stated many times, this transaction is extraordinarily important to NorthWestern and its customers. Compelling responses to PSC-141 would be inappropriate for many reasons, but mainly because it requires NorthWestern to perform new analysis. The Commission already ruled in this docket that neither NorthWestern, nor any other party, is required to perform new analysis in order to respond to discovery. There is no compelling reason for the Commission to change its mind here. NorthWestern is and has been committed to a fully

²⁴ *State ex rel. City of Billings v. Billings Gas Co.*, 55 Mont. 102, 112, 173 P. 799, 801 (1918).

²⁵ See Section 69-2-102, MCA.

²⁶ Section 69-2-102, MCA, also permits the Commission to raise additional issues if it believes the parties have not adequately addressed an issue. The Commission has done that in this case and carbon pricing was not identified as an additional issue by the Commission.

transparent and open process to provide a full record upon which the Commission can base a decision. NorthWestern does not believe that responses to PSC-141 will add to the record in this case. NorthWestern will rebut statements about carbon pricing when it is appropriate – in its rebuttal testimony. Therefore, based on the foregoing, the Commission should refuse to grant a motion to compel NorthWestern to respond to PSC-141.

Respectfully submitted this 23rd day of April 2014.

NORTHWESTERN ENERGY

By: 
Sarah Norcott
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Attorneys for NorthWestern Energy

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
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Service in Electricity Supply Rates, for)
Approval of Issuance of Securities to)
Complete the Purchase, and for Related)
Relief)

Affidavit of Joseph M. Stimatz

STATE OF MONTANA)
) : ss.
County of Silver Bow)

I, Joseph M. Stimatz, being first sworn upon oath, deposes and says:

1. I am the Manager of Asset Optimization in the Energy Supply Market Operations group for NorthWestern Corporation d/b/a NorthWestern Energy ("NorthWestern"). My responsibilities include analysis and negotiation of power purchase agreements, development of hedging strategies, and management of NorthWestern's supply portfolio.

2. In the above-referenced docket, I have filed Prefiled Direct testimony, Supplemental testimony, and Additional Issues testimony. I have also responded to numerous data requests posed by both the Montana Public Service Commission ("Commission") and the Montana Consumer Counsel.

3. As part of my contribution to this docket, I prepared and ran the discounted cash flow ("DCF") models that were used by NorthWestern to support its bid to PPL Montana, LLC for acquisition of the hydroelectric facilities.

4. During the discovery phase of this docket, the Commission asked NorthWestern the following questions in PSC-160:

- i. If NorthWestern has not performed the analyses described in parts (b) – (e) of the [PSC-159], is the Excel spreadsheet ‘Exhibit__ (JMS-1) and (JMS-2) & p. JMS-20’ in the ‘Joseph Stimatz’ folder on the CD labeled ‘Witnesses Electronic Supporting Data’ the appropriate model with which to perform such analyses? If not, please explain.
- ii. If the answer to part (b) of this data request is ‘yes’ how should the Excel worksheet be modified to determine how the DCF value of the Hydros would change if NorthWestern assumed an alternative CO₂ emissions costs?

5. I provided the responses to these two questions, which were filed with the Commission on March 7, 2014. The responses were as follows:

- i. Yes, the Excel spreadsheet ‘Exhibit__ (JMS-1) and (JMS-2) & p. JMS-20’ (‘DCF Workbook’) would be the appropriate model to make the net present value calculation. The file ‘Curve Calculator 6-7-13.xls’ provided in response to data request MCC-154 (‘Curve Calculator Workbook’) would also be helpful in this analysis.
- ii. The on-system, on-peak and off-peak forward prices that drive the DCF calculation are located in Columns S and T on the ‘Exhibit__ (JMS-2)’ tab of the DCF Workbook. The prices in these columns can be changed to calculate the effect of alternative pricing assumptions, including alternative CO₂ pricing assumptions, on the net present value.

Alternative on-system prices can be calculated in the Curve Calculator Workbook. Alternative CO₂ pricing assumptions can be entered in the ‘GHG15 Carbon’ tab of that workbook. The resulting on-system prices in columns AB and AC on the ‘GHG15 Forwards’ tab can be copied into Columns S and T of the ‘Exhibit__ (JMS-2)’ tab in the DCF Workbook to calculate the net present value.

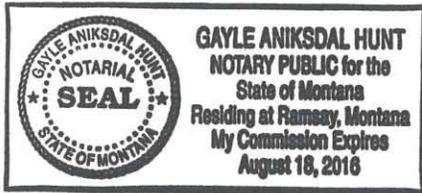
6. These responses are complete and accurate and contain the necessary process in order to perform the analysis that the Commission seeks an answer to in PSC-159 or alternatively PSC-141.

7. I have personal knowledge of the facts stated herein. Any opinions expressed herein are based upon my experience, as well as my knowledge of DCF models and related information generally.

DATED this 23 day of April 2014.

Joseph M. Stimatz
Joseph M. Stimatz

SUBSCRIBED AND SWORN TO BEFORE me this 23rd day of April 2014.



Gayle Aniksdal Hunt
Print or Type Name: Gayle Aniksdal Hunt
Notary Public for the State of Montana

Residing at Ramsay, Montana, ~~South Dakota~~

My Commission Expires: August 18, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of NorthWestern Energy's Brief Regarding PSC-141(a) and (b) will be hand delivered to the Montana Public Service Commission (PSC) and the Montana Consumer Counsel (MCC) on this day and e-filed electronically on the PSC website. It will be mailed to the most recent service list in this Docket and will also be emailed to the Counsel of Record.

Date: April 23, 2014



Nedra Chase
Administrative Assistant
Regulatory Affairs

Docket No D2013.12.85
Hydro Assets Purchase
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