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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
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	)	

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**NorthWestern Energy's Objection to the Admission of  
Certain Data Responses into the Evidentiary Record**

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NorthWestern Corporation doing business as NorthWestern Energy (“NorthWestern”), objects on the grounds more particularly described below to the following data responses being admitted into the evidentiary record: PSC-003(b) – (d), PSC-066, PSC-087(a) – (d), PSC-090a, part of PSC-092(a), PSC-092(b) and (d), PSC-093(a) and (c), PSC-104, PSC-105, and PSC-106. Pursuant to Procedural Order No. 7323b (“Order 7323b”), parties’ prehearing memorandums had to identify data responses that they planned to move into the record at hearing. The Montana Consumer Counsel (“MCC”) provided that it would “move for admission into the record all data responses filed by all parties in this docket, including all exhibits thereto and all material referenced in the responses.” MCC Prehearing Memorandum, p. 4. Order 7323b further provided that any party that objected to a data response identified as one to be moved into the evidentiary record at hearing must object by June 30, 2014. In accordance with that requirement, NorthWestern submits the following objections to the Montana Public Service Commission (“Commission”).

Please be advised that NorthWestern believes many of the data requests in this docket contain misstatements, misrepresentations or unsupported allegations about the facts or prefiled testimony in this case. Evidence is defined to include “witness testimony, writings, physical objects, or other things presented to the senses.” § 26-1-101, MCA. Since only responses to data requests are considered evidence for which the Commission can consider when making its decision, NorthWestern does not specifically object to each and every question that it believes is inappropriate for the above cited reasons.

#### **D) Relevance Objection**

The Commission is an administrative agency subject to the Montana Administrative Procedure Act. As such, the Commission is “bound by common law and statutory rules of

evidence.” § 2-4-612(2), MCA; *see also* ARM 38.2.4201 (“The Montana rules of evidence, as adopted by the Montana supreme court, shall be applied in all contested cases.”). The Montana Rules of Evidence (“M. R. Evid.”), Rule 401 provides that “[r]elevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Thus, evidence that is not relevant is inadmissible. M. R. Evid. 402; *see also Dahlin v. Holmquist*, 235 Mont. 17, 20, 766 P.2d 239, 241 (1988). The appropriate test to determine relevancy is whether the evidence “will have any value, as determined by logic and experience, in proving the proposition for which it is offered.” *Sunburst School District No. 2 v. Texaco, Inc.*, 2007 MT 183, ¶ 211, 338 Mont. 259, 165 P.3d 1079 (citing *State v. Hamilton*, 2002 MT 263, ¶ 20, 312 Mont. 249, 59 P.3d 387; *Werre v. David*, 275 Mont. 376, 389, 913 P.2d 625, 633 (1996)). Additionally, the test for determining whether evidence is relevant and thus admissible presents a more stringent standard than the test for determining relevant discovery. *Preston v. Montana Eighteenth Judicial Dist. Court, Gallatin County*, 282 Mont. 200, 209, 936 P.2d 814, 819 (1997) (citing *Drabik v. Stanley-Bostitch, Inc.*, 796 F.Supp. 1271 (W.D. Mo. 1992)).

On December 20, 2013, NorthWestern filed its Application with the Commission seeking the authority to purchase and operate 11 hydroelectric generating facilities and related assets (“Hydros”) from PPL Montana, LLC (“PPLM”). With its Application and subsequent thereto, NorthWestern filed prefiled testimony and exhibits demonstrating why the authority sought should be granted by the Commission. The acquisition of the Hydros does not include any of PPLM’s thermal assets. Thus, the Commission’s decision on the Hydros does not involve the coal assets. NorthWestern is not attempting to purchase any coal assets in the Application before the Commission. Despite that fact, several Commission data requests in this docket sought

information regarding the coal assets and analysis performed by NorthWestern regarding those assets. NorthWestern objected to discovery of this information on the basis of relevance. Many of NorthWestern's objections were overruled.<sup>1</sup> See *Notice of Commission Action* dated February 20, 2014 and *Notice of Commission Action* dated March 14, 2014.

Notwithstanding the Commission's decision to allow discovery to proceed in this docket on the thermal assets, that discovery is not admissible as evidence in this docket. Evidence regarding thermal assets NorthWestern does not seek to own is not relevant to the Commission's determination regarding whether the Hydros should be purchased because such purchase is in the best interests of the public and consistent with Montana law and the Commission's administrative rules. Put more simply, NorthWestern's offer to purchase the coal assets, which offer was rejected by PPLM, and any analysis related to that offer are not facts of consequence that will assist the Commission with its determination on whether NorthWestern can purchase the Hydros. This information has no value to the Commission's decision on the Hydros. Each of the data responses identified below concern PPLM's thermal assets.<sup>2</sup> For those reasons argued above, the Commission should sustain NorthWestern's objection to the data responses identified below and exclude their admission into the evidentiary record in this docket.

**a) Applicable Data Responses**

**PSC-003**

PSC-003      Regarding:    Prior Bid for PPLM Assets  
                  Witness:      Bird

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<sup>1</sup> The Commission also sustained several data requests that sought information regarding the coal assets of PPLM. The Commission sustained PSC-005(a), PSC-068(b) and (d), PSC-084(c) and (d), and PSC-086(e). During the Commission's public work session discussing NorthWestern's objections to certain coal data requests, the Commission reasoned that some questions were permissible if they were follow-up questions to PSC-003 or PSC-066. Any question that was not a follow-up question to either of those data requests and was objected to because it sought information regarding the thermal assets was sustained. See Commission video archive for February 18, 2014, work session.

<sup>2</sup> For the Commission's convenience, each data response from NorthWestern to which it objects to in this pleading has been repeated here in its entirety.

- b. Please provide any model, whether DCF or LT Rev Req or other, or other written analysis that NWE used to inform these bids.
- c. Please explain further the environmental concerns associated with the PPLM coal assets, and describe the process and amount of negative value that NWE quantified to be associated with those concerns, isolating each concern as an individual liability to the extent that NWE did so.
- d. Please explain further the sale lease-back provision associated with the PPLM coal assets, and describe the process and amount of negative value that NWE quantified to be associated with that provision.

RESPONSE (January 24, 2014):

- b. NorthWestern objects to this data request to the extent that it seeks information or documents not relevant to the issues in this docket, which is beyond the permissible scope of discovery. The scope of discovery is limited to non-privileged matters that are relevant. M. R. Civ. P. 26(b)(1). The information sought must be reasonably calculated to the discovery of admissible evidence. *Id.* Initially, the party responding to discovery must make a good faith determination of relevance. If the party responding is not permitted to determine the relevance of material and is required to produce all material so that the requesting party can determine relevance, the limitation that irrelevant information or documents are not discoverable is violated. Neither bid was accepted and no transaction resulted from the January 7, 2013 bids. No transaction involving these bids is before the Commission.

In addition, NorthWestern does not have the final models with the final inputs on which its bids were based. As is customary when a Seller enters into a Confidentiality Agreement to bidders for the potential sale of its business, Paragraph 6 of PPL's Sept. 12, 2012 Confidentiality Agreement with NorthWestern Energy required NorthWestern, as a condition of having access to PPL's confidential information, to agree to return or destroy all confidential information it obtained from PPL at any time PPL so requests. That Confidentiality Agreement is provided as Attachment 1. The definition of "Confidential Information" includes NorthWestern's analyses utilizing PPLM's confidential data. When NorthWestern and PPL did not reach agreement for any of PPLM's assets, PPLM sent a letter to NorthWestern Energy on Feb. 11, 2013 (provided as Attachment 2) requesting that NorthWestern destroy or return to PPL all confidential information. Consequently, NorthWestern destroyed its final model with the final inputs for the January 2013 bids and cannot provide complete final models on which its bids were based.

When PPLM reengaged with NorthWestern in the Spring of 2013, NorthWestern's outside consultants were able to provide one of the final models – the LT Rev Req model. Without waiving said objection, the final LT Rev Req models for both the

conforming and non-conforming bids from December 2012 are provided in the folder labeled "PSC-003" on the attached CD.

- c. NorthWestern objects to this data request to the extent that it seeks information or documents not relevant to the issues in this docket, which is beyond the permissible scope of discovery. The scope of discovery is limited to non-privileged matters that are relevant. M. R. Civ. P. 26(b)(1). The information sought must be reasonably calculated to the discovery of admissible evidence. *Id.* Initially, the party responding to discovery must make a good faith determination of relevance. If the party responding is not permitted to determine the relevance of material and is required to produce all material so that the requesting party can determine relevance, the limitation that irrelevant information or documents are not discoverable is violated. NorthWestern and PPLM did not enter into a transaction involving coal and NorthWestern's assessment of the environmental risks associated with coal is not an issue in the pending proceeding, which involves hydroelectric assets.

NorthWestern additionally objects on the basis that as it no longer has its complete final models with its inputs that would reflect NorthWestern's assessment of environmental costs. See the response to part b, above.

Without waiving these objections, NorthWestern's valuation of the non-hydro facilities was significantly lower than the costs of the hydro-only facilities because of anticipated but unknown future costs to comply with existing environmental regulations; potential major modifications of the Colstrip facility that might be required as a result of a potential lawsuit brought by Sierra Club and the Montana Environmental Information Center's Clean Air Act lawsuit against the operator (PPLM) and the owners of the Colstrip facility; potential future compliance costs incurred due to new environmental statutes and regulations, including laws limiting greenhouse gas emissions; and the unavoidable and potentially very significant environmental compliance costs associated with the sale-leaseback.

- d. NorthWestern objects to this data request to the extent that it seeks information or documents not relevant to the issues in this docket, which is beyond the permissible scope of discovery. The scope of discovery is limited to non-privileged matters that are relevant. M. R. Civ. P. 26(b)(1). The information sought must be reasonably calculated to the discovery of admissible evidence. *Id.* Initially, the party responding to discovery must make a good faith determination of relevance. If the party responding is not permitted to determine the relevance of material and is required to produce all material so that the requesting party can determine relevance, the limitation that irrelevant information or documents are not discoverable is violated. NorthWestern's decision to not pursue PPLM's coal assets, and all of the intricacies of the sale-leaseback, is not an issue in this proceeding. What is at issue is NorthWestern's decision to acquire PPLM's Montana hydroelectric facilities. The Prefiled Direct Testimony of Brian B. Bird ("Bird Direct Testimony") mentioned the sale-leaseback as part of an overview of NorthWestern's efforts to acquire the PPLM hydroelectric facilities so that the Commission could see that NorthWestern's

purchase of the PPLM hydroelectric facilities was the result of significant efforts spanning a significant period of time.

NorthWestern further objects to explaining the sale-leaseback on the basis that to fully describe the sale-leaseback is burdensome. The Colstrip sale-leaseback transaction was memorialized through numerous transaction agreements (the "Operative Documents") entered into among PPLM, two financial investors (subsidiaries of which acted as the "Owner Lessors" in the sale-leaseback), and other related parties (*e.g.*, the pass-through trustee and each Owner Lessor's parent entity). The Operative Documents included:

- A Participation Agreement, which described the overall transaction structure and contained various representations, warranties and covenants which imposed obligations and restrictions on PPLM in the conduct of its business. It also included a detailed appendix of definitions that were cross-referenced in the other Operative Documents;
- The Facility Lease, which set out the initial lease term and extension options during which PPLM could operate the power plant. It also specified various rental obligations, maintenance and/or improvement obligations, default remedies and other terms, including PPLM's termination rights in respect of the lease;
- A Site Lease and Sublease Agreement ("Site Lease") related to the real property on which the Colstrip plant is sited. Under the sale-leaseback, fee ownership of the real estate remains with PPLM, with the applicable Owner Lessor taking a leasehold interest that is then subleased back to PPLM. The Site Lease set out initial terms and renewal options for this arrangement, as well as rental amounts and other customary provisions;
- An Indenture, Mortgage and Security Agreement between the indenture trustee and the applicable Owner Lessor, which evidenced and governed the issuance of the secured lessor notes and contained payment, distribution and default terms, as well as administrative provisions;
- An Assignment and Reassignment Agreement in respect of certain project agreements, as well as an Omnibus Voting Rights Agreement, which established a framework for PPLM to maintain certain rights in respect of the governance of Colstrip; and
- A Tax Indemnity Agreement, under which PPLM agreed to indemnify the applicable Owner Lessor and its affiliates upon certain breaches of its representations, or the occurrence of other events, to the extent such breach or other event triggered adverse tax consequences.

As can be seen by the number and nature of the Operative Documents, the sale-leaseback is extremely complicated and a full description of the transactional

arrangement would require extensive legal analyses. To do so would be extremely burdensome, and it is not relevant as NorthWestern has not put before the Commission a transaction that attempts to comply with the Colstrip sale-leaseback's complexity. Moreover the sale-leaseback is no longer even in effect, as it was terminated in December 2013 by mutual agreement between PPLM and the other parties thereto.

Without waiving these objections, NorthWestern responds as follows: A "sale-leaseback" is a type of financing transaction where one party – the seller/lessee – sells an asset and leases it back pursuant to a long-term lease. In doing so, the seller/lessee continues to be able to use the asset, despite no longer owning it. The buyer/lessor investor usually makes a cash payment to the seller/lessee, which is financed (at least in part) with a recourse or nonrecourse loan.

The Colstrip sale-leaseback was memorialized through various transaction agreements entered into by PPLM, the Owner Lessors, and other related parties including those identified above.

The sale-leaseback included both affirmative covenants and negative covenants. Among the many affirmative covenants was the requirement to return the facility to the Owner Lessors after the 36-year initial term expired. At such time, PPLM's right to use the Colstrip facility would have ceased. But, upon the return of the facility (other than under certain circumstances), PPLM would have been required to ensure that:

- Colstrip was in at least as good condition as if it had been maintained, repaired and operated during the term in compliance with the Facility Lease, ordinary wear and tear excepted, and shall have no deferred maintenance;
- Colstrip had the capability and functional ability to generate electricity, on a continuous basis in normal commercial operating conditions, substantially at the ratings for which it was designed, taking into account all modifications (ordinary wear and tear excepted);
- Colstrip was in compliance with all requirements of manufacturers required for the maintenance of any material warranty then in effect; and
- no component of the plant was a temporary component.

In addition, in connection with such return, PPLM would have been required to provide a phase I environmental survey (and a phase II, if the phase I revealed facts that would reasonably necessitate a phase II) as to the environmental condition of Colstrip, its compliance with applicable environmental laws during the lease term, and the presence or absence of environmental conditions at the facility site. If the phase I/II indicated any non-compliance with applicable environmental laws, PPLM would have been required to provide a remediation plan designed to restore

compliance as promptly as reasonably practical and without materially adversely affecting the continued operation of the plant. Moreover, PPLM would have been solely responsible for any liability arising from any delay in returning the plant to full compliance. In addition, there were also requirements associated with site decommissioning.

The sale-leaseback also included negative covenants. One negative covenant concerned assignments, and it provided that assignment of the key agreements required consent of the Owner Lessors except under certain circumstances. Another concerned mergers and consolidations, and they prohibited PPLM from entering into any merger or consolidation, or any sale, assignment, conveyance, lease, transfer or other disposal of, all or substantially all of its properties or assets unless certain requirements were met. Another restricted the conditions under which dividends could be paid. Another restricted the disposal of PPLM's assets.

These provisions, as well as others, presented major obstacles to executing a transaction with PPLM. First, many of the negative covenants in the sale-leaseback Operative Documents prevented NorthWestern from assuming direct ownership of the Mustang assets, either because they required a waiver from the Owner Lessors and PTC holders, which PPLM was unwilling to seek, or because the negative covenants were incompatible with NorthWestern's business.

Indirect ownership, however, had its own problems. Ownership of the assets through a subsidiary would have (i) required a waiver of the direct ownership requirement under NorthWestern's 2004 Stipulation and Settlement Agreement (the "Bankruptcy Stipulation") with the MSPC and the Montana Consumer Counsel, (ii) required additional approvals from the Federal Energy Regulatory Commission ("FERC"), and complicated other FERC approvals required to consummate the Mustang transaction, which increased the likelihood that FERC consents might not be timely obtained or that FERC would condition its consent on additional restructuring or mitigation, and (iii) made MPSC approval extremely complex and challenging.

In addition to these and other structural limitations, NorthWestern identified other considerations in the sale-leaseback arrangement which made it commercially unappealing. The most visible were the rent payment and credit support requirements, which represented significant short- and long-term costs. Others arose out of the operational and maintenance provisions in the Facility Lease and Site Lease. For example, the Facility Lease appeared to require PPLM to continue to operate and maintain the facility, in good condition, repair and working order and consistent with "Prudent Industry Practice," until at least 2036 (when the initial Facility Lease term expired), including performing modifications required due to changing environmental laws or new environmental regulations affecting the plant. Upon the expiration of the Facility Lease, PPLM would have been required to ensure the plant was capable of generating electricity consistent with its design parameters. These requirements would have applied without any consideration of economic impacts (*i.e.*, the costs and benefits of such actions to PPLM) and appeared to limit PPLM's ability to

“mothball” or retire the Colstrip facility, for example, in the face of costly environmental capex triggered by new federal regulations. As such, PPLM could be forced to make uneconomic repairs and improvements to Colstrip and could be prevented from managing maintenance and capital investment cost-effectively.

In order to address the risks associated with the Colstrip Sale-Leaseback, NorthWestern proposed certain conditions in its “conforming” bid. In initial post-bid negotiations, the parties were unable to agree on terms for the transaction and the parties’ negotiations terminated over these provisions.

In its “conforming” bid submitted January 7, 2014, NorthWestern proposed to purchase PPLM’s leasehold interest in Colstrip, Corette, and the hydroelectric facilities for an aggregate purchase price of \$400 million. At that time, NorthWestern’s non-conforming bid proposed a purchase of the hydroelectric facilities alone, without any coal-fired assets, for an aggregate purchase price of \$740 million. The \$340 million difference between these bids represents the negative value assigned by NorthWestern to the coal assets based on several factors: the sale-leaseback; significant environmental risks and costs associated with coal assets; and the fact that the thermal assets put us in a long position as we did not need all of the power from the thermal facilities and the regulatory and commercial issues that arose from having excess power.

#### **PSC-066**

PSC-066      Regarding:      Evaluating Other PPLM Assets  
                  Witness:        Stimatz

Please provide the version of your Exhibit (JMS-1) that included analysis of other assets owned by PPLM referenced on JMS-4:9-10.

RESPONSE (January 24, 2014):

NorthWestern objects to this data request to the extent that it seeks information or documents not relevant to the issues in this docket, which is beyond the permissible scope of discovery. The scope of discovery is limited to non-privileged matters that are relevant. M. R. Civ. P. 26(b)(1). The information sought must be reasonably calculated to the discovery of admissible evidence. *Id.* Initially, the party responding to discovery must make a good faith determination of relevance. If the party responding is not permitted to determine the relevance of material and is required to produce all material so that the requesting party can determine relevance, the limitation that irrelevant information or documents are not discoverable is violated. Without waiving said objection, NorthWestern provides the following response.

See the file in the folder labeled “PSC-066” on the attached CD. The model alone is not reflective of the acquisition decision ultimately made by NorthWestern. In the end

NorthWestern did not bid on the combined hydro and thermal assets. Many other factors and risks were analyzed by NorthWestern as described in the Prefiled Direct Testimony of Brian Bird, pages 3 through 21.

UPDATED RESPONSE (March 3, 2014):

By Notice of Commission Action dated February 20, 2014, the Commission overruled NorthWestern's objection to this data request.

Notwithstanding our objection or the Commission's subsequent response, NorthWestern confirms that the above response is a complete response to the data request.

**PSC-087**

PSC-087 RE: Quantifying Value of Coal Facilities' Liabilities  
Witness: Bird or Other

The responses to PSC-003(c) and (d) are appreciated but they lack detail as to how the concerns regarding the coal facilities were actually quantified in NWE's valuation and analysis leading to its 2013 bid that included the facilities.

- a. Please demonstrate how you quantified or assigned a dollar value to the environmental liabilities discussed in response to PSC-003(c).
- b. Provide any analytic work that supports the negative value described in Bird's testimony, and the zero rate base value shown in the LT Rev Req model attached in response to PSC-003(b)
- c. Please demonstrate how you quantified or assigned a dollar value to the lease-back provisions discussed in response to PSC-003(d).
- d. Were the environmental and lease-back liabilities described in response to PSC-003(c) and (d) captured as data in the LT Rev Req model produced in response to PSC-003(b)?

RESPONSES:

- a. On February 10, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.
- b. On February 10, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.
- c. On February 10, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.

- d. On February 10, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.

UPDATED RESPONSE (March 3, 2014):

- a. As stated previously, NorthWestern no longer has its notes or materials associated with Mustang I. As is customary when a Seller enters into a Confidentiality Agreement with bidders for the potential sale of its assets, Paragraph 6 of PPL's September 2012 Confidentiality Agreement with NorthWestern required NorthWestern, as a condition of having access to PPL's confidential information, to agree to return or destroy all confidential information it obtained from PPL at any time PPL requests. PPL sent NorthWestern a letter dated February 11, 2013 requesting that NorthWestern destroy or return to PPL all Confidential Information. Consequently, we cannot demonstrate precisely how we quantified or assigned a dollar value to the environmental liabilities discussed in response to Data Request PSC-003c.

However, we do know that we included in our model certain future environmental costs. Some of these costs were based on compliance with existing laws and regulations, and our estimates of these costs were generally consistent with capital expenditures set out in PPLM's capital budgets. In addition, outside of the model, we assigned a cost of \$200 million for the future installation of Selective Catalytic Reduction (SCR) at Colstrip. However, beyond the inputs used in the modeling and the \$200 million SCR cost, we made a further allowance to accommodate for the considerable uncertainty associated with future environmental laws and regulations for coal facilities. The environmental expenses that were in the model, and the \$200 million outside of the model associated with SCR, did not totally represent the difference between the \$740 million non-conforming all hydro (plus Corette) bid and the \$400 million all asset conforming bid. Other factors that ultimately drove our \$400 million bid included negative impacts on our customers due to having excess power; regulatory risks associated with FERC market power issues; risks associated with not having complete control over the plants due to the Colstrip facilities having multiple owners; unknown but potentially very significant environmental costs associated with complying with future environmental requirements at Colstrip; and, of course, impacts on customers' bills. It was all of these factors that drove our \$400 million bid.

Ultimately, we never negotiated price issues with PPLM because we could not agree on key terms and conditions. We previously produced in discovery a document dated January 15, 2013, called "Project Mustang – Newfoundland "Conforming" Bid Threshold Non-Price Business Issues List." (Document No. MCC\_009\_00000305 in the MCC-009 folder on the CD provided February 18, 2014 with the updated response to Data Request MCC-009). This document, attached again here, was prepared by Simpson Thacher & Bartlett LLP, PPL's outside counsel. The negotiations never got past Issue No. 1, called "Restructuring." Therefore, even if

NorthWestern would have been willing to increase its bid above \$400 million, the transaction's negotiations ended on Point No. 1 on the Simpson Thacher & Bartlett LLP's Issues List.

Although, in Mustang II, PPL indicated that the sale leaseback would be removed by the time a deal was closed, we had determined, in late June 2013, that we would not pursue any additional coal. First, we did not need the power. The extremely long position we would be in with the coal would have created substantial swings in rates because of the large percentage of customers' rates that would have included off-system sales credits.

In addition, we were concerned about acquiring more power than we needed, and particularly from coal, because we believed that it was going to become more difficult to sell coal off-system into the Pacific Northwest and West Coast markets. Washington Governor Inslee has clearly stated that he intends to end "coal-by-wire imports by WA utilities." California may have a similar limitation in the future.

Second, environmental risks had increased since negotiations terminated in Mustang I. For example, in March, 2013, the Sierra Club and the Montana Environmental Information Center (MEIC) sued the operator (PPL) and the owners of Colstrip, including NorthWestern, over Clean Air Act issues. On June 25, 2013, President Obama issued his Climate Change Action Plan, which will almost certainly increase the cost of coal generation. It is not possible to quantify what those costs might be and the impact of that Plan on Montana's coal facilities. In addition to these new risks, we continued to face other environmental risks associated with acquiring PPLM's thermal facilities such as the risks associated with the EPA's forthcoming coal ash regulations; future regional haze and other Clean Air Act costs; expenses related to the shutdown and remediation of Corette; other potential Colstrip litigation; and new environmental statutes and regulations. These costs cannot be quantified. In our judgment, we could not justify acquiring these assets and transferring these risks to our customers and/or shareholders because we could not quantify all of the environmental risks and we could not transfer these risks to PPL.

- b. As described in part a, above, NorthWestern no longer has its notes or analytic work from Mustang 1. However, similar analytical work, performed for Round Two, illustrates how negative value was ascribed to the thermal assets based on discounted cash flows from operations. Please see the model provided in response to Data Request PSC-066. The DCF results, shown in cells G2:J8 of the Valuation tab of that model, show a negative value for the thermal assets based upon discounted operational cash flows alone. As described in the response to Data Request PSC-066, this model does not include all of the risks and potential issues associated with the thermal assets as described in part a, above, and in the responses to Data Requests PSC-003c and d. These additional items would contribute significant negative valuation and are not included in the model provided in response to Data Request PSC-066.

As for the zero rate base value shown in the Round One conforming LT Rev Req Model produced in response to Data Request PSC-003b, this was done to simply include the estimated net purchase price for all of the thermal assets rather than attempting to allocate the purchase price out by ascribing a gross positive or negative value to each asset individually to equate to the bid price.

- c. We did not and could not assign a dollar value to the sale leaseback because so many of the risks associated with it could not be quantified. We included the sale/leaseback payments in our model which was approximately \$60 million on NPV basis. However, the sale leaseback required returning the asset in good operating condition and in compliance with all environmental regulations, and it also stipulated that the site had to be remediated at the end of the plant's useful life. These were obviously very significant additional risks whose costs could not be identified as we do not know what environmental requirements will be put in place in the future. As a start, we estimated that \$200 million would be required for installing Selective Catalytic Reduction (SCR) at Colstrip. However, because future environmental requirements associated with the plant are unknown but could be extremely significant, we could not define, with any precision, what those costs might be. Their potential significance, however, greatly influenced our bid for all the assets at \$400 million. Ultimately, we assigned a material negative value to the coal assets because of our determination that there would be more stringent and therefore more costly environmental regulation of coal facilities in the future, together with provisions in the sale/leaseback documents that would have required us to maintain the Colstrip facilities and to modify them to satisfy all future environmental laws, regardless of the economics of maintaining the facilities or modifying them. Please also see the response to Data Request PSC-087a.
- d. No, the environmental and lease-back liabilities described in the responses to Data Requests PSC-003c and d were not captured as data in the LT Rev Req model produced in response to PSC-003b due to both: (1) the difficulty in estimating the costs associated with the sale leaseback, which included the obligation to maintain and modify the Colstrip facilities to satisfy all future environmental laws and regulations, and (2) the likely inability of obtaining full regulatory recovery of these costs, especially in light of the long position our portfolio would be in with these thermal assets.

#### PSC-090

PSC-090 RE: Cap-ex Estimates in LT Rev Req Model  
Witness: Mike Barnes, part a

- a. How were cap-ex estimates for the coal facilities in the LT Rev Req model produced in response to PSC-003(b) derived? If they were sourced from PPLM, please describe what, if any, adjustments NWE made to them.

RESPONSES:

- a. On February 10, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.

UPDATED RESPONSE (March 3, 2014):

- a. The work papers and documents detailing the derivation of the cap-ex estimates were destroyed in accordance with the Confidentiality Agreement (CA) with PPL. Due to that destruction, the detail is not available; however, and generally, PPLM produced 10-year (2013-2022) capital budget estimates that were used as the basis for the input for the LT Rev Req model. They were used as presented by PPLM in years 2014-2022. For years beyond 2022, an average of the 10-year capital budget categories were used as a starting point and an escalation was employed to predict future years. Prior to calculation of the average, a review of the projects predicted in the 10-year capital budget was conducted and some costs were removed to account for the fact that some projects would not likely be expected to re-occur before 2036 and would have otherwise contributed to an average that would be higher than expected.

**PSC-092**

PSC-092 RE Thermal CapEx vs. Hydro CapEx  
Witness: John VanDaveer, part a / Mike Barnes parts a & b / Joe Stimatz,  
parts c & d

In the spreadsheet provided in response to PSC-066, NWE in the "Thermal CapEx" tab lists both an "Expected Case" and a "High Case" for the Colstrip units. There appears to be only one cap-ex estimate, with no "high case" for the Hydros.

- a. Where did the cap-ex data appearing for the Thermal and Hydros come from?
- b. What specifically drives the difference between the "Expected" and "High" cases for the Colstrip units? Provide a list of the upgrades assumed in the Colstrip cap-ex forecasts.
- d. Did NWE consult other Colstrip co-owners' publicly available information regarding cap-ex requirement estimates regarding Colstrip facilities (e.g., Puget Sound Energy) to check it against the cap-ex requirements assumed in the spreadsheet in response to PSC-066?

RESPONSES:

- a. On February 10, 2014, NorthWestern objected to the portion of this data request that pertains to thermal resources. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.

As for the Hydros, all original backup data for the capital forecast was destroyed in accordance with the CA. The capital forecast was redeveloped from historical and forecast capital expenditures provided by PPLM. PPLM provided a specific five-year forecast for years 2013-2017 (see the response to Data Request PSC-018, parts a and b). Historical expenditures were also provided from 2008-2012 (see the response to Data Request MCC-057). Based on this information and the actual system upgrade status, a realistic capital annual aggregate amount was developed for year 2018 and escalated forward.

- b. On February 10, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.
- d. On February 10, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.

UPDATED RESPONSE (March 3, 2014):

- a. **Mike Barnes response:** All of the work papers and documentation supporting the detail in the Thermal CapEx tab were destroyed in accordance with the PPL CA. As a result of that destruction, the detail is no longer available; however, generally, the 10-year capital budgets provided by PPLM for Colstrip 1-4 and Corette were used as presented for years 2014-2022. The future years were projected based on an escalation factor using the average of the 10-year capital as a basis for the starting point in 2023.
- b. All of the work papers and documentation supporting the detail referenced Thermal CapEx tab were destroyed in accordance with the PPL CA. However, if I recall correctly, there was no difference between the High Case and the Expected Case for years 2014-2022 and those values were used as presented in the PPLM 10-year capital budget documents. As indicated in the response to Data Request PSC-090a, an average capital cost was then calculated using the cost estimates from 2013 through 2022 which was then used as a starting point for 2023. Then the costs were simply escalated for years 2024-2036. The difference between High Case and Expected Case for years 2024-2036 exists simply due to adjustments that were made to the average of 2013 through 2022 to account for the fact that there were specific projects in the 10-year capital budget that would not be expected to be incurred again in 2023-2036. Once those projects were removed, an average of the remaining cost was calculated and was used as a starting point for 2023 and a simple escalation was used to project the future years in the Expected Case. In the High Case, those same projects were not removed and were included in the average used as starting point for 2023 and then escalated.
- d. No.

### PSC-093

PSC-093 RE: Fuel & Carbon Inputs to O&M  
Witness: Mike Barnes, part a / Stimatz, parts b & c

- a. In the DCF model provided in response to PSC-066, the fuel cost increases dramatically for Colstrip Unit 3 in 2020. Explain this increase, and the footnote included in the spreadsheet.
- c. What tons/Mwh is assumed in the calculation of the carbon O&M price for the Colstrip 1 & 2 and Colstrip 3 plants?

### RESPONSES:

- a. On February 10, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.
- c. On February 10, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.

### UPDATED RESPONSE (March 3, 2014):

- a. The current contract expires on the last day of 2019, and, therefore, a new contract will be required. Conservatively we estimated that the new contract will be at a higher price than one agreed to in 1994. All of the work papers and documentation supporting the detail behind the increase were destroyed per the CA with PPL.
- c. 1.25 tons/MWh.

### PSC-104

PSC-104 Regarding: Coal Asset Valuation  
Witness: Barnes, parts a & b / Stimatz, parts c, d, & e

- 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.

RESPONSE:

- a. On February 18, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.
- b. On February 18, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.
- c. On February 18, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.
- d. On February 18, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.

UPDATED RESPONSE (March 21, 2014):

- a. The inputs supporting the data for the O&M expenses in the referenced model were destroyed in accordance with the Confidentiality Agreement (CA) with PPL. However, PPL documents were used to provide the basis for the inputs. To that end, when data was not available to input, a simple escalation was employed to predict the future years.
- b. See the response to Data Request PSC-092, parts a and b.
- c. The expenses shown for the Black Eagle and Thompson Falls contingencies in rows 8 and 9 are NorthWestern's estimates as described in the Rhoads Direct Testimony on pages 43-44 and in the responses to Data Requests PSC-031 and PSC-080. The Marketing Expense, Hydro Direct G&A, and Thermal Direct G&A in rows 22-24 come from PPLM's financial models that were provided in the data room. The Third Party Operator expense is NorthWestern's estimate of the cost of contracting with a third party to operate the Colstrip plants.

- d. The values in D4, D5, and D6 are approximations of the asset valuations calculated in H4:H6. They are not linked to calculate iteratively due to modeling choice.
- e. The assumption regarding Corette was consistent with PPLM's public statements that the plant will be mothballed in April 2015. The assumption with regard to Colstrip 1 & 2 was not specific to any particular source. The planning horizon used in the DCF modeling was 20 years, and decommissioning costs were included for Colstrip 1 & 2 in the last year of that horizon. It should also be noted that the model provided in response to Data Request PSC-066 represents the state of the DCF modeling as of June 24, 2013, but since NorthWestern decided around that time not to bid on the coal assets, a final evaluation for the purposed of bidding on the coal plants was not completed.

### **PSC-105**

PSC-105 Regarding: Coal Asset Valuation  
Witness: Meyer, parts a & c / Barnes, part b

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

### **RESPONSE:**

- a. On February 18, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.
- b. On February 18, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.
- c. On February 18, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.

### **UPDATED RESPONSE (March 21, 2014):**

- a. Although the models provided in response to Data Request PSC-003 were from the January 2013 bid process, the cost of sales estimates as found in rows 15, 25, 35 and 55 of the Thermal Var COS tab were copied from the DCF Analysis Models utilized during that same time period but subsequently destroyed per the Confidentiality Agreement. However, these same cost of sales estimates can be seen in the DCF Analysis Model as provided in response to Data Request PSC-066 from the July 2013 bid process on line 14 of tabs Colstrip 1&2 O&M, Colstrip 3 O&M and Corette O&M. As such, please see the response to Data Request PSC-104a regarding availability of the source documents.
- b. The inputs supporting the data for the “Var COS” tab were destroyed in accordance with the CA with PPL. However, PPLM included the entire cost of fuel at Colstrip as variable, and the fuel contracts are such that a portion of those costs are actually fixed. NorthWestern made an adjustment to account for that in order to better predict dispatch rate. The differences for Corette were differences seen in the actual fuel contract for Corette as opposed to values in the CIM.
- c. The “CIM” estimates displayed in rows 14, 24, 34 and 54 of the Thermal Var COS tab were copied from the sellers’ thermal and hydro financial model, lines 40-44 of tabs Unit 1, Unit 2, Unit 3 and Corette CONSOLIDATED.

**PSC-106**

PSC-106      Regarding:    Coal Asset Valuation  
                   Witnesses:    Meyer, parts a & c / Stimatz, parts b & c

- 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.

**RESPONSE:**

- a. On February 18, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.

- b. On February 18, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.
- c. On February 18, 2014, NorthWestern objected to this data request. NorthWestern will respond, if necessary, after the Commission has ruled on the objection.

UPDATED RESPONSE (March 21, 2014):

- a. The cost and production information found in the conforming bid spreadsheet provided in response to Data Request PSC-003 was from the January 2013 bid process so it would not have contained the “full information” NorthWestern had received up to the July 1, 2013 time frame, such as the planned termination of the sale-leaseback agreement that became known in early May 2013. However, since the inputs into the LT Rev Req Model that was provided in response to Data Request PSC-003 were from sources that were destroyed according to the Confidentiality Agreement, I am not able to provide a reconciliation of the “inconsistencies and deficiencies.”
- b. As previously described, there were many potential future costs and risks that were not quantified in the DCF model but were important factors in NorthWestern’s bid decision. The information in the model represents NorthWestern’s estimates at the time for purposes of DCF analysis. The exception is that, as noted in the response to Data Request PSC-093b, the carbon expense in the model was reflective of the carbon assumptions from the 2011 Electricity Supply Resource Procurement Plan and was lower than the carbon cost assumption from the 2013 Plan. Please also see the response to Data Request PSC-141, parts c and d.
- c. See the response to parts a and b, above.

Respectfully submitted this 30<sup>th</sup> day of June 2014.

NORTHWESTERN ENERGY

By: 

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Sarah Norcott  
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Attorneys for NorthWestern Energy

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of NorthWestern Energy's Objection to the Admission of Certain Data Responses into the Evidentiary Record 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. This will be mailed to the most recent service list in this Docket by first class mail. This will also be emailed to the counsel of record.

Date: June 30, 2014



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**Docket No D2013.12.85  
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