

AL BROGAN
NorthWestern Energy
208 N. Montana, Suite 205
Helena, Montana 59601
Tel. (406) 443-8903
Fax (406) 443-8979
al.brogan@northwestern.com

SARAH NORCOTT
NorthWestern Energy
208 N. Montana, Suite 205
Helena, Montana 59601
Tel. (406) 443-8996
Fax (406) 443-8979
sarah.norcott@northwestern.com

Attorneys for NorthWestern Energy

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

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

**NorthWestern Energy’s Motion for and Brief in Support
of Reconsideration of *Paragraph 7* of the Notice of
Application and Intervention Deadline and Initial Procedural
Schedule, or, in the Alternative, Motion for Extension of
Time**

Pursuant to the ARM 38.2.4806 and ARM 38.2.312, NorthWestern Corporation d/b/a
NorthWestern Energy (“NorthWestern”) submits this timely Motion for and Brief in Support of
Reconsideration of Paragraph 7 of the Notice of Application and Intervention Deadline and

Initial Procedural Schedule (“*Paragraph 7*”),¹ or, in the Alternative, Motion for Extension of Time (“*Motion*”) in the above-captioned Docket. Specifically, NorthWestern moves the Public Service Commission (“Commission”) to:

- (1) Reconsider and vacate the deadlines set forth in *Paragraph 7*.
- (2) Establish the time limits for responding to data requests *following* the Prehearing Conference scheduled for January 13, 2014.² By then, the deadline for intervention will have passed, and the parties to this docket will be known. At that time, as envisioned by the Commission’s rules, the Commission can establish the pertinent deadlines in this proceeding, including discovery. NorthWestern recommends that the Commission allow no less than 21 days for responding to data requests on the filing with an understanding that particularly voluminous requests may take longer.
- (3) In an Order establishing the new time limits for responding to discovery, conclude that:
 - a. NorthWestern does not need to respond to the pending discovery or any additional discovery until the Commission determines that the NorthWestern

¹ The paragraphs in the Notice of Application and Intervention Deadline and Initial Procedural Schedule (“*Notice*”) are not numbered. For clarity, *Paragraph 7* provides:

The PSC and any party may submit preliminary data requests to NorthWestern no later than **January 3, 2014**. NorthWestern must respond to preliminary data requests within ten (10) days of the service date of the data requests or by **January 10, 2014**, whichever is earlier. If an initial data request is objectionable or seeks confidential information, NorthWestern must respond accordingly and proceed to object or file a motion for protective order no later than the deadline to respond; if necessary, NorthWestern must file an updated response within seven (7) days of the PSC ruling on the objection or motion for protective order.

² The *Notice* provides, “The PSC hereby requests that all parties to this Docket attend a scheduling conference on **January 13, 2014**, at 1:30 p.m. at the PSC’s business offices at the above address, either in person or by telephone.”

*Application*³ is adequate and complies with the Commission's minimum filing requirements; and

- b. Parties and the Commission staff must provide courtesy copies electronically of all discovery requests.

As set forth below, the Commission should grant this motion for the following reasons:

- The abbreviated deadlines for responding to discovery set forth in *Paragraph 7* are unnecessary. The Commission has not determined whether the NorthWestern *Application* complies with the Commission's minimum filing requirements. None of the discovery requested, which is complicated, requires detailed analyses, and is voluminous, is directed at this threshold issue. Rather, the discovery goes to the merits of the *Application*. The Commission should first determine that the *Application* complies with the Commission's minimum filing requirements before requiring NorthWestern to address the burdensome, oppressive, and in many instances, irrelevant discovery that has been propounded. For the Commission to require weeks and weeks of discovery on issues that are not relevant to the threshold issue of whether the *Application* complies with the Commission's minimum filing requirements is grossly inefficient, unreasonable and with this current deluge of requests, is unworkable.
- The discovery and its deadlines are impossible to comply with and, as such, are unreasonable and violate NorthWestern's due process rights. So far, NorthWestern has received over 160 data requests, including subparts. Many require intensive record searches that cannot be accomplished in the required timeframes. One data request, for example, will require review of over 9,000

³ *Application* is defined below.

records. NorthWestern simply cannot respond to this volume of discovery in the required timeframe.

- The tsunami of discovery, coupled with unnecessarily abbreviated response times, undercuts the Commission's ability to make a decision based on a complete record. The Commission wants and needs complete responses to discovery, but its own timeframes for responding to discovery, set forth in *Paragraph 7*, preclude NorthWestern from providing the complete responses.
- The Commission's own rules contemplate that discovery deadlines will be set after a prehearing conference is held and not before. This enables all of the parties and the Commission the ability to discuss the Commission's and the parties' needs, as applicable to a proceeding. The *Notice* has it backwards, as it has set the deadlines, and then set a date for intervention and a prehearing conference. In so doing, the Commission staffs' *Notice* undercuts the Commission's ability to have the most complete record possible on which to make a decision in this case.

As this *Motion* demonstrates to the Commission, the process that the Commission staff has initiated is procedurally flawed, unfair and unjustified. In *Paragraph 7*, the Commission staff has established an extremely short time for properly responding to intensive, voluminous and complex discovery requests.⁴ At the same time, had the Commission staff truly wanted NorthWestern to respond to the discovery in that period, it would have electronically provided NorthWestern a courtesy copy of the discovery. Inexplicably, with one exception, the Commission staff did not do so. In fact, NorthWestern has yet to be served with one of the three

⁴ NorthWestern appreciates any effort to process this *Application* quickly, but a tsunami of irrelevant discovery requests does not facilitate the *Application's* processing.

sets of discovery as they have all been mailed. Moreover, there is no need for massive discovery at this stage of the docket as the Commission has not determined that the *Application* complies with the Commission's minimum filing requirements. In addition, many of the discovery requests are unreasonable. As the Commission can see, many ask NorthWestern to run various analyses and alternatives. The discovery process does not require this, and, in many cases, the staff can run the requested analyses as NorthWestern has provided electronic versions of exhibits, supporting tables, and workpapers. Other data requests ask extensive questions about a potential transaction that did not take place, and that is not before the Commission. Another asks for a copy of the documents in the PPL Data Room; there are over 9,000 documents in the Data Room, many of which are not relevant. The full Commission should take control of this proceeding. The process for considering NorthWestern's *Application* must be fair. Unless the Commission inserts reasonableness and order into this proceeding, NorthWestern's ability to fairly advance its *Application* will be severely jeopardized. And, if the discovery process is not managed appropriately, the Commission will not have the record it needs and expects in a case of this significance to Montana customers.

I. PROCEDURAL BACKGROUND

On October 11, 2013, NorthWestern provided pre-filing notice of its intent to file an application for approval of the hydroelectric assets to the Commission to comply with ARM 38.5.8228(1). Inexplicably and without precedent, on December 6, 2013, the Commission issued a Notice of Opportunity for Early Intervention ("*Early Notice*") in which it granted interested parties the opportunity to intervene in a docket that NorthWestern had not yet filed. On December 20, 2013, NorthWestern filed its *Application for Hydro Assets Purchase*

(“*Application*”). On December 23, 2013, in anticipation of future discovery requests, NorthWestern hand delivered working electronic versions of exhibits, supporting tables, and workpapers to the Commission and the Montana Consumer Counsel (“MCC”). Also on December 23, 2012, the Commission issued the *Notice*. The Commission served the *Notice* by mail; NorthWestern received the *Notice* on December 26, 2013. Although not designated as an order, *Paragraph 7*, as set forth in footnote 1, requires NorthWestern to respond to, or object to, certain data requests and to file motions for protective orders within seven to ten days, an extremely short time (by comparison, in state court, a party typically has 30 days).

On Friday, December 27, 2013, the Commission staff served, by mail, data requests PSC-001 – PSC-035 (“*PSC Set 1*”). The Commission staff did not provide a courtesy copy by email or even alert NorthWestern to the fact that it had served discovery. As a result, NorthWestern did not receive them until December 30, 2013. *Paragraph 7* requires NorthWestern to respond to the requests by January 6, 2014, five business days after *PSC Set 1* was mailed.

On January 3, 2013, the MCC emailed data requests MCC-001 – MCC-015 (“*MCC Set 1*”) to NorthWestern. NorthWestern has not yet been served with *MCC Set 1*. The total number of data requests from the MCC, including subparts, is 25. Based on *Paragraph 7*, responses to these are due by January 10, 2014, five business days after *MCC Set 1* was mailed.

In reviewing the Commission website, NorthWestern discovered that the Commission posted data requests PSC-036 – PSC-058 (“*PSC Set 2*”) on January 2, 2014 and data requests PSC-059 – PSC-06 (“*PSC Set 3*”) on January 3, 2014. As with *PSC Set 1* and in sharp contrast to the usual practice in prior proceedings with shortened response periods, the Commission staff, inexplicably, did not provide courtesy copies electronically of *PSC Set 2*. NorthWestern received *PSC Set 2* on January 3, 2013 but has yet to receive *PSC Set 3*. Responses to these

requests are due by January 10, 2014, six business days and five business days, respectively, after each set was mailed.

II. ARGUMENT

Paragraph 7 is unnecessary and contrary to the Commission's administrative rules; imposes an undue and oppressive burden on NorthWestern; establishes an unreasonable time period in which to respond given the nature of the "preliminary" data requests, including the manner in which the Commission has served them; and denies NorthWestern due process.

A. *Paragraph 7* is unnecessary at this stage in the docket.

The docket is in an early stage. The intervention deadline has not passed and will not until January 10, 2014. The Commission has scheduled a prehearing conference for January 13, 2014.⁵ The Commission has not issued a procedural order. The task currently facing the Commission is determining if the *Application* is adequate and in compliance with the Commission's minimum filing requirements. § 69-8-421, MCA. The Commission must make this determination within 45 days of NorthWestern's filing of the *Application* or by February 3, 2014.

Determination of whether an application meets the Commission's requirements is a normal task for the Commission and does not require responses to data requests.⁶ *Paragraph 7* does not limit "preliminary" data requests to items related to the adequacy or compliance of the filing. In utility rate cases, the Commission must notify the utility within 30 days of any failure of an application for a rate increase to comply with the extensive minimum filing requirements.

⁵ NorthWestern will suggest reasonable discovery deadlines at the Prehearing Conference.

⁶ Some Commission staff apparently believe that the Commission requires assistance in making this determination. The *Early Notice* stated, "To facilitate a timely adequacy determination, the PSC invites any interested person who will be directly affected by the application and wants to be a party to the proceeding to file a petition for early intervention." NorthWestern is not aware of any open meeting at which the Commission expressed such a concern. Therefore, this must be the view of a subset of Commission staff.

ARM 38.5.184(1). In the past, the Commission has made this determination by reviewing filings and comparing them to the Commission's rules. In the last occurrence of which NorthWestern is aware that the Commission found that an application did not meet the Commission's minimum filing requirements, it did so prior to any discovery or discovery responses. *See* Docket No. D2009.9.129, Notice of Commission Action (November 13, 2009).⁷

The Prefiled Direct Testimony of John D. Hines specifically addresses the *Application's* compliance with each section of ARM 38.5.8228, the Commission's minimum filing requirements for electric resource approval applications. The Commission possesses the expertise and capability to determine whether the *Application* is adequate and meets its minimum filing requirements without resort to responses to data requests just as it has done with other applications and filings in past. The Commission bases its determination of adequacy only on the *Application's* form and content, and not its merits.

The discovery propounded does not address whether the *Application* meets the Commission's minimum filing requirements. For example, it asks for a copy of the entire PPL Data Room,⁸ which consists of over 9,000 documents; responding to this request will take weeks as each document will need to be reviewed for relevancy and privilege or confidential treatment. The discovery asks NorthWestern if it has analyzed recent U.S. Supreme Court cases.⁹ The discovery requests the Seller's Confidential Information Memorandum.¹⁰ The discovery asks how NorthWestern "settle[d] on 2021 as the year when a significant per-ton carbon price would

⁷ At a work session, the Commission and Commission staff, through Mike Lee, Will Rosquist, and Robin McHugh, discussed whether NorthWestern's general rate case filing complied with the Commission's administrative rules. The Commission found that it did not. *See Commission Minutes for the week of November 9, 2009*, Entry 421. NorthWestern filed its first discovery response in docket No. D2009.9.129 on December 16, 2009.

⁸ PSC-036.

⁹ PSC-040.

¹⁰ PSC-001.

take effect.”¹¹ The discovery asks for a full set of the correspondence between PPLM and FERC described in the Prefiled Direct Testimony of William T. Rhoads.¹² The discovery asks what the purpose is of a generator re-wind.¹³ The discovery asks NorthWestern to run 40 additional scenarios in the Power Simm model;¹⁴ *responding to the request alone will cost NorthWestern between \$40,000 and \$50,000.* All of these requests, similar to all of those propounded by the Commission and by the MCC, go to the merits of NorthWestern’s *Application*; none of them are required to assess whether NorthWestern’s *Application* is adequate and complies with the Commission’s minimum filing requirements.

Many criticize government requirements when they are oppressive and unnecessary, and the obligation to respond to any discovery at this stage in this proceeding deserves that criticism. NorthWestern is confident that its *Application* is adequate and complies with the Commission’s minimum filing requirements; it is detailed and voluminous and addresses each of the requirements in Montana law for constituting a complete application. If, however, for any reason, the Commission finds that the *Application* is deficient, the weeks and weeks of effort to address the pending discovery will be for naught, and will have been a complete waste of time. The Commission should not be issuing orders that are oppressive, unnecessary, and wasteful.

B. *Paragraph 7 is contrary to the Commission’s administrative rules and makes little sense in light of the January 13, 2014 prehearing conference and the January 10, 2014 intervention deadline.*

Paragraph 7 establishes procedural deadlines for data requests. However, the Commission’s own rules contemplate that the Commission will establish procedural deadlines in

¹¹ PSC-015

¹² PSC-022

¹³ PSC-028

¹⁴ PSC-047.

a procedural order that it issues *after* it holds a prehearing conference. As ARM 38.2.2702(1) provides:

Following a prehearing conference, the commission may issue a procedural order which fixes any dates which are pertinent to the disposition of the case, and which sets out the procedures to be followed by the parties” (emphasis added).

Sound public policy underlies this regulation. The reason for issuing a procedural order *following* rather than *preceding* a prehearing conference is to ensure that the docket’s procedures facilitate the presentation of the parties’ evidence so that the Commission has the best possible record on which to base its decision. Every case is different, and the purpose of a prehearing conference is to establish procedural deadlines that meet the needs of a case. That is why the Commission’s own regulations, at ARM 38.2.2701(1), identify “scheduling of discovery” as one of the purposes of a prehearing conference. For these reasons, establishing procedural deadlines *prior* to a prehearing conference is contrary to the sound public policy reasons underlying the Commission’s administrative rules.

Moreover, in this case, the Commission has already scheduled a prehearing conference for January 13, 2014, and, by then, the deadline for intervention, which is January 10, 2014, will have passed. That will enable the parties, who will be known by then, and the Commission, at the prehearing conference, to discuss discovery and procedural deadlines. That will enable the parties to develop the best possible record for the Commission’s consideration. To set deadlines prior to the identification of the parties and without the parties’ input does not facilitate the development of the best possible record. In a proceeding of this magnitude and significance to Montana consumers, it is particularly important that the procedures are fair to all parties so that the Commission has a complete record on which to base its decision.

C. The Inexplicably Abbreviated Timeframe for Responding to the Data Requests, coupled with the Massive Number of Requests, Violates NorthWestern's Due Process Rights and Violates Montana Civil Rule 26(g).

Due process requires a fair and impartial process. Montana Civil Rule 26(g) requires that every discovery request be for a proper purpose and that every discovery request not be unreasonable or unduly burdensome. Either taken together or individually, these precepts call for a reasonable process in which to respond to discovery. In this case, the timeframes set forth in *Paragraph 7*, coupled with the overwhelming discovery, violates both.

In the eight business days subsequent to NorthWestern's filing of the *Application*, the Commission staff has submitted 66 data requests that include over 160 subparts, not including compound or double questions.¹⁵ It is not possible given the sheer volume of the Commission staff's discovery to respond within *Paragraph 7*'s period. The additional discovery by the MCC makes this task even more impossible. In fact, the discovery is so massive that it far outstrips the Commission's discovery in all of the prior dockets under § 69-8-421, MCA, combined.¹⁶ Moreover, an examination of just a handful of the questions demonstrates how objectionable, oppressive, and burdensome the discovery to date has been. One example alone demonstrates the obvious inability to respond to the discovery within the required periods. PSC-036, from *PSC Set 2*, requires NorthWestern to produce the documents in PPLM's data room. The data room consists of over 9,000 documents belonging to PPLM. Before NorthWestern can provide

¹⁵ As stated above, NorthWestern has not received *PSC Set 2* or *PSC Set 3*. This information is based on a review of the Commission's web site.

¹⁶ In Docket No. D2011.5.41 (the Spion Kop docket), the Commission submitted 25 data requests to NorthWestern; in Docket No. D2008.8.95 (the Dave Gates Generating Station docket), the Commission submitted eight data requests to NorthWestern prior to the hearing and Final Order; and in D008.6.69 (the Colstrip Unit 4 docket), the Commission submitted eight data requests to NorthWestern. In other words, the Commission submitted a total of 41 data requests in the three prior dockets, other than data requests submitted on compliance filings after the resources were approved.

any of them, it must first receive PPLM's permission. NorthWestern or PPLM will then need to review each document for confidential, trade secret, or privileged information. In addition, many of the documents will be irrelevant as they do not relate to NorthWestern's decision to acquire PPLM's Hydro assets. However, it is obvious that reviewing over 9,000 documents to determine whether they are relevant or confidential, will take weeks.

NorthWestern cannot provide these responses by *Paragraph 7's* deadline of January 10, 2014. These data requests, coupled with *Paragraph 7's* short response deadlines, are oppressive in that they require expenditure of NorthWestern's employee time and expense to respond to matters that are not at issue in this docket. Furthermore, they go far beyond the purpose of data requests – the exchange of information among the parties. *See* ARM 38.2.3301(2). Instead, the requests appear to require NorthWestern to perform analyses of resource alternatives that are inconsistent with NorthWestern's long-term planning. Many of the data requests ask questions that are answered in NorthWestern's filing; that can be answered as easily by the Commission staff as by NorthWestern, especially given that NorthWestern has provided electronic versions of its witnesses' exhibits, supporting tables, and workpapers; that are argumentative and assume assertions that are not true; or that require the review and production of documents that are not NorthWestern's.

Rule 26(g) provides that discovery shall not be unreasonable or unduly burdensome. However, if a time period in which to respond to discovery requests is unreasonably short, the parties will not have enough time to search their records and provide those documents and answers responsive to the requests. The consequence is that the other parties as well as the Commission will not be able to ascertain the relevant facts to the case and will not be able to properly prepare their case or have a fully developed record on which to base a decision. An

unreasonably short deadline harms everyone involved in the case. The parties need sufficient time to compile data and respond to discovery otherwise the entire process could be considered an act in futility.

The seven to 10 calendar day deadlines currently imposed by *Paragraph 7* place an unreasonable burden on NorthWestern. In civil cases, parties have 30 days in which to respond to discovery requests, and the Commission has adopted certain discovery rules from the Montana Rules of Civil Procedure. Specifically, the Commission's ARM 38.2.3303 adopts the Montana Rules of Civil Procedure 26 and 28 through 37, except for 37(b)(1) and 37(b)(2)(d). Both Rules 33 and 34 of the Montana Rules of Civil Procedure provide a party 30 days to respond to discovery requests. Both Rules 33 and 34 provide a party 30 days to object to discovery request.

Instead of 30 days, given the time constraints in its proceedings, the Commission has usually ordered a shorter period, often fourteen days, for responding to data requests. It is usually very difficult to respond to discovery in fourteen days. Here, the Commission has even further compressed the period for responding to discovery, to just seven to 10 calendar days for filing objections and motions for protective order. There is no obvious or stated reason for this, and it is patently unreasonable. The unreasonableness of the imposed timeframes is even more apparent when compared to the plain timelines involved in responding to the voluminous, burdensome (and often irrelevant) discovery requested to date.

The unreasonableness of *Paragraph 7*'s deadlines is illustrated by reference to just a sample of the data requests. PSC-001 requires NorthWestern to produce Seller's Confidential Information Memorandum ("CIM"). NorthWestern has no right to disclose the Seller's information, and in fact, has an affirmative obligation to protect the information. Upon receiving this data request, NorthWestern informed PPL Montana ("PPLM") and asked if there was

information in the CIM to the disclosure of which PPLM would object. On January 3, 2014, after conducting the necessary review with its personnel and advisors, PPLM identified to NorthWestern certain information in the CIM that PPLM considers confidential information that should be protected from public disclosure. NorthWestern cannot review this information, consult and work with PPLM, and prepare a response to PSC-001 in one business day, January 6, 2014. PSC-003 asks questions and requests documents related to a process that ended in February 2013 and did not result in any transaction. The discovery relating to a transaction that did not take place and that is not before the Commission is simply not relevant. In reality, due to *PSC Set 1* being served by mail, *Paragraph 7* allows even less than five business days.

D. Alternatively, the Commission should extend the time for NorthWestern to respond pursuant to ARM 38.2.312.¹⁷

The Commission may extend the time for responses to data requests.¹⁸ ARM 38.2.312 provides:

In the discretion of the commissioners or a hearing examiner, for good cause shown, any time limit prescribed by commission ruling or by these rules may be extended. All requests for extensions shall be made before the expiration of the period originally prescribed or as previously extended.

In this *Motion*, NorthWestern has shown good cause for extending the time limits for responses, objections, and motions for protective orders prescribed by *Paragraph 7*. This request for

¹⁷ Some may contend that the *Motion* is not timely. Such a contention is not well taken. ARM 38.2.4806(1) permits a party 10 days after an order or decision to request reconsideration. The Commission served the *Notice* by mail. M.R. Civ. P. 6(d) provides, “When a party must act within a specified time after service and service is made [by any method other than hand delivery], 3 days are added after the period would otherwise expire.” This extension is required by fairness and due process considerations. If the Commission does not want the 3-day extension of time to apply, it so states in a procedural order. The *Notice* does not state that the 3-day extension of time did not apply. Therefore, the deadline for seeking reconsideration of the Notice that was served by mail on December 23, 2013 is January 6, 2014, the first business day after January 5, 2014.

¹⁸ NorthWestern requested Commission legal staff to extend the deadline to respond to *PSC Set 1*. Legal staff indicated that it was unwilling to extend the deadline prior to the deadline for responses.

extension is being made before the initial period for those responses, objections, and motions for protective orders.

An extension of time is not NorthWestern's preferred remedy. Instead, the Commission should reconsider Paragraph 7, vacate the deadlines, and re-set procedural deadlines after the Prehearing Conference. NorthWestern seeks an extension of time only in the alternative.

E. NorthWestern reserves the right to object to any data requests in *PSC Set 1*.

Paragraph 7 requires that NorthWestern object to any data requests in *PSC Set 1* by January 6, 2014. By filing this *Motion*, it has reserved the right to object to any data request in *PSC Set 1* even if the Commission were to maintain the unnecessary, unreasonable and unfair deadlines. However, in an abundance of caution and to preserve the right to further explain its objections after the Commission makes a decision on this *Motion*, NorthWestern informs the Commission that it specifically objects to data requests identified as PSC-001, PSC-003, PSC-004, PSC-005, PSC-008, PSC-015, PSC-016, PSC-018, PSC-020, PSC-022, PSC-023, PSC-024, PSC-026, PSC-027, PSC-028, PSC-029, PSC-031, PSC-032, PSC-034, and PSC-035. The identification of these data requests is not a waiver of the right to object to any other data requests in *PSC Set 1* to the extent that the data requests are (1) overly broad and unreasonably vague; (2) seek information that is irrelevant, outside the reasonable scope of this proceeding, and not calculated to lead to the discovery of admissible evidence; (3) fail to describe the documents or information requested with reasonable particularity and are, therefore overbroad, unreasonably vague, and unduly burdensome; (4) purport to require the preparation of new studies or analyses, or to organize data in a manner other than that in which the currently exist; (5) seek the production of documents without reference to the matters at issue in this proceeding; (6) call for the production of documents that are cumulative or contain duplicative information;

impose undue expense or unreasonable burden; (7) call for information or documents not presently in the possession of NorthWestern, but in the possession of third parties or separate legal entities; (8) call for information in the public domain or not in the exclusive possession, custody, or control of NorthWestern; (9) may be interpreted to call for the production of information that is protected by the attorney-client privilege, work-product immunity, or any other applicable doctrine or privilege; (10) are argumentative; or (11) seek information already in the Commission's possession, or that is reasonably available to it from sources other than NorthWestern.

III. CONCLUSION

NorthWestern's proposed acquisition will be of significant long-term benefit to its customers, and the Commission requires a complete record on which to base its decision. The Commission must take control of this proceeding so that the process for considering NorthWestern's *Application* is fair, and so that the Commission has the best record possible on which to base a decision. There was no emergency justifying the abbreviated response times for discovery that are set forth in *Paragraph 7*, and had such an emergency existed, the Commission staff would surely have at least served NorthWestern with its discovery by email. Moreover, the Commission has not yet determined whether NorthWestern's *Application* complies with the Commission's minimum filing requirements.

For these reasons, NorthWestern asks the Commission to reconsider and vacate *Paragraph 7* and re-establish procedural deadlines following the prehearing conference scheduled for January 13, 2014. At that time, all of the parties to the case will have been identified and a thoughtful procedural schedule can be established which best meets the needs of this proceeding. No discovery response on the *Application* or any objection to discovery should

be required less than 21 days after receipt of the discovery request. In addition, the Commission should first determine whether NorthWestern's Application complies with the Commission's minimum filing requirements before requiring NorthWestern to respond to discovery. The Commission should also require the parties to provide electronic courtesy copies of discovery requests to the entire service list at the time the requests are served by mail.

RESPECTFULLY SUBMITTED this 6th day of January 2014.

NorthWestern Energy

By:



Al Brogan

Attorney for NorthWestern Energy

CERTIFICATE OF SERVICE

I hereby certify that an original and ten copies of NorthWestern Energy's *Motion for and Brief in Support of Reconsideration of Paragraph 7 of the Notice of Application and Intervention Deadline and Initial Procedural Schedule, or, in the Alternative, Motion for Extension of Time* in Docket No. D2013.12.85 is to be hand-delivered to the Montana Public Service Commission this date. Three copies will also be hand-delivered to the Montana Consumer Counsel. A copy will be mailed by first class mail to Mr. Clark and Mr. Wilson as listed on the attached service list in this Docket. A copy will be e-filed on the PSC website.

Date: January 6th, 2014



Nedra Chase
Administrative Assistant
Regulatory Affairs

Docket No D2013.12.85
Hydro Assets Purchase
Service List

Joe Schwartzenberger
NorthWestern Energy
40 E Broadway
Butte MT 59701

Patrick R. Corcoran
NorthWestern Energy
40 E Broadway
Butte MT 59701

Nedra Chase
NorthWestern Energy
40 E Broadway
Butte MT 59701

Al Brogan
NorthWestern Energy
208 N Montana Ave Suite 205
Helena MT 59601

Sarah Norcott
NorthWestern Energy
208 N Montana Ave Suite 205
Helena MT 59601

Kate Whitney
Montana Public Service Commission
1701 Prospect Ave Box 202601
Helena MT 59620-2601

Robert A Nelson
Montana Consumer Counsel
111 North Last Chance Gulch Ste1B
Helena MT 59620-1703

John W. Wilson
J W Wilson & Associates
1601 N Kent Ste 1104
Arlington VA 22209

Albert E. Clark
2871 Conway Rd. 127
Orlando FL 32815