

Service Date: May 12, 2014

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

IN THE MATTER OF the Application of        ) REGULATORY DIVISION  
NorthWestern Energy for Hydro Assets     )  
Purchase                                        ) DOCKET NO. D2013.12.85

**NOTICE OF COMMISSION ACTION**

On December 20, 2013, NorthWestern Corporation dba NorthWestern Energy (NorthWestern) filed its Application for Hydro Assets Purchase (Application) with the Montana Public Service Commission (Commission). On January 16, 2014, the Commission issued Procedural Order No. 7323b which established deadlines for discovery, testimony, and additional issues identification.

On April 11, 2014, NorthWestern submitted data requests NWE-001 through NWE-010 to the Montana Consumer Counsel (MCC). On April 22, 2014, the MCC filed an Objection to Data Requests NWE-005 and NWE-010, Motion for Protective Order and Alternative Motion for Extension of Time for Preparation of Listing of Materials Withheld Based on Claim of Privilege. The MCC estimated that the two discovery requests seek the production of an estimated 650 communications between or among MCC, its staff, its two testifying expert witnesses in this proceeding. The MCC argues that many of these communications concern the mental impressions, conclusions, opinions, or legal theories of the MCC and is attorney work product.

On April 25, 2014, NorthWestern filed a Response to the Montana Consumer Counsel's Objection to Data Requests. NorthWestern argues that it does not expect to receive protected work product but NorthWestern cannot evaluate the need for protected communications without a description of them in a privilege log. NorthWestern argues that both the Montana Rules of Civil Procedure 26(b)(6) and the Commission's Procedural Order No. 7323b require a privilege log. On April 29, 2014, the MCC filed a Reply in Support of Objection and Requests for Relief Concerning Data Requests NWE-005 and NWE-010. The MCC argues that the requested materials are effectively defined by the underlying data request itself as work product and

therefore the exercise of wading through hundreds of communications in order to produce a privilege log is essentially an exercise in squandering the scarce resources available to the MCC.

During a work session on April 29, 2014, the Commission sustained the MCC's objection to NorthWestern Energy's data requests NWE-005 and NWE-010.

**BY THE MONTANA PUBLIC SERVICE COMMISSION**

**W. A. (BILL) GALLAGHER, Chairman**

**BOB LAKE, Vice Chairman**

**KIRK BUSHMAN, Commissioner**

**TRAVIS KAVULLA, Commissioner**

**ROGER KOOPMAN, Commissioner**