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

IN THE MATTER OF NorthWestern Energy's	)	
2013 and 2014 Applications for (1) Approval of	)	REGULATORY DIVISION
Deferred Cost Account Balances for Electricity	)	
Supply, CU4 Variable Costs/Credits, DGGGS	)	DOCKET NO. D2013.5.33
Variable Costs/Credits, Spion Variable	)	
Costs; and (2) Projected Electricity Supply Cost	)	DOCKET NO. D2014.5.46
Rates, CU4Variable Rates, DGGGS Variable	)	
Rates, and Spion Variable Rates	)	

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**NorthWestern Energy's Objection to the  
Montana Environmental Information Center and Sierra Club's  
Petition for General Intervention**

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Pursuant to Administrative Rule of Montana ("ARM") 38.2.2405, NorthWestern Corporation d/b/a NorthWestern Energy ("NorthWestern") hereby objects to the Montana Environmental Information Center and Sierra Club's (collectively referred to hereafter as "MEIC/SC") Petition for General Intervention ("Petition") in the above-captioned dockets. For those reasons discussed more fully below, NorthWestern requests that the Montana Public

Service Commission (“Commission”) deny the Petition. MEIC/SC should not be permitted to generally intervene as the Petition clearly seeks to broaden the issues in the consolidated dockets and the interests of MEIC/SC’s members are already adequately represented by other parties. Alternatively, if the Commission believes that MEIC/SC will not broaden the issues, it should nonetheless limit its intervention in this proceeding as discussed below.

### **Procedural Background**

On May 31, 2013, NorthWestern filed its 2013 Application for Approval of (1) Deferred Cost Account Balances for Electricity Supply, Colstrip Unit #4 (“CU4”) Variable Costs/Credits, and Dave Gates Generating Station (“DGGS”) Variable Cost/Credits; and (2) Projected Electricity Supply Cost Rates, CU4 Variable Rates, DGGS Variable Rates, and Spion Kop Wind Generation Asset (“Spion”) Variable Rates with the Commission (“2013 Application”) (Docket No. D2013.5.33). On June 19, 2013, the Commission issued a Notice of Application and Intervention Deadline setting the intervention deadline for July 31, 2013. By Notice of Staff Action issued on August 2, 2013, intervention was granted to the Human Resource Council District XI, Natural Resources Defense Council, and the Montana Consumer Counsel (“MCC”). On February 28, 2014, NorthWestern filed a Motion to Defer Proceedings and Consolidate this Docket with the 2014 Electricity Supply Tracker Docket (“Motion”). The Commission granted the Motion. *See* Notice of Commission Action served on May 12, 2014.

On May 29, 2014, NorthWestern filed its 2014 Application for Approval of (1) Deferred Cost Account Balances for Electricity Supply, CU4 Variable Costs/Credits, DGGS Variable Costs/Credits and Spion Variable Costs; and (2) Projected Electricity Supply Cost Rates, CU4 Variable Rates, DGGS Variable Rates, and Spion Variable Rates with the Commission (“2014 Application”) (Docket No. D2014.5.46). On June 2, 2014, the Commission issued a Notice of

Application and Intervention Deadline (“Notice”) for the consolidated dockets. In the Notice, the Commission noted that the parties that were granted intervention regarding the 2013 Application were automatically parties with respect to the 2014 Application due to the consolidation of the dockets. The Notice further provided that “[a]ny other interested person who is directly affected by” the issues contained in the 2014 Application must file for intervention by July 18, 2014. MEIC/SC filed its Petition on that deadline.

### **Argument**

The Commission should deny the Petition for two reasons. One, general intervention is limited to parties that do not seek to broaden the issues in a docket. MEIC/SC’s statements in the Petition plainly demonstrate that it would expand the issues in the consolidated dockets. Second, the MCC is already an intervenor and so the interests of MEIC/SC’s members, who are residential customers of NorthWestern, are already represented. Therefore, MEIC/SC’s participation in the consolidated dockets is superfluous and should be denied or limited as provided for below.

#### **1. MEIC/SC’s statements prove that it will broaden the issues in the consolidated dockets.**

Under the Commission’s administrative rules, any person who is directly affected by a matter filed at the Commission may seek intervention in the docket. ARM 38.2.2401. General intervention is limited to those persons that do “not desire to broaden the issues of the original proceeding.” ARM 38.2.2403. MEIC/SC seeks general intervention in the consolidated dockets.

The issues in this docket are limited to those raised by NorthWestern’s 2013 and 2014 Applications. The consolidated dockets are electricity supply tracker dockets. The Commission established these dockets pursuant to Montana law in order to allow NorthWestern to annually track and adjust electricity supply rates for those electricity supply costs that it had prudently

incurred over a one-year period. *See* § 69-8-210, MCA. Given the reason for these dockets, the matters discussed and decided therein are limited to that objective. In the consolidated dockets, as related to CU4, NorthWestern seeks to adjust rates for an over-collection (or a give back) of approximately \$2.7 million related to the variable costs (fuel, property tax, demand-side management lost revenues) incurred for the 2013/2014 tracker year and an over-collection (or, again, a give back) of approximately \$1.9 million for the 2012/2013 tracker year. *See* Prefiled Direct Testimony of Frank V. Bennett. Additionally, NorthWestern seeks to recover costs associated with certain market purchases necessitated by an outage that occurred at CU4 in 2013. *See* the 2014 Prefiled Direct Testimony of Kevin J. Markovich. Thus, the question to be decided by the Commission in the consolidated dockets is: Were the electricity supply costs incurred by NorthWestern to serve customers prudently incurred? A prudence review involves a fact finding exercise to determine what was known or should have been reasonably known by the utility at the time the costs were incurred. *In re NorthWestern Energy*, Order No. 6836c, ¶ 155, Docket Nos. D2006.5.66 and D2007.5.46 (June 24, 2008). Such a review does not involve policy issues such as promoting energy efficiency and renewable resources, or the fundamental decision regarding whether NorthWestern should have acquired an interest in CU4.

The Petition provides that the issues in this proceeding will not be broadened if the Commission grants MEIC/SC's request for general intervention. Petition, p. 5. Notwithstanding that statement, other statements in the Petition suggest otherwise. MEIC/SC claims intervention is necessary "to further their **conservation interests** and ensure that their members are not forced to bear the unnecessary costs of operating and maintaining **the highly polluting and unreliable** [CU4]." *See* Petition, p. 1 (emphasis added). In support of its Petition, MEIC/SC provides background regarding each organization and what it promotes. Both organizations have goals

aimed at protection of the environment through promotion of clean renewable resources with a reduction in fossil fuel generating resources. Petition, p. 1-2.

Specifically, the Sierra Club's Beyond Coal Campaign has a mission "to replace dirty coal with clean energy by mobilizing grassroots activists in local communities to advocate for the retirement of old and outdated coal plants." See <http://content.sierraclub.org/coal/about-the-campaign>. Given this mission, the Sierra Club has identified Colstrip as "one of the dirtiest coal plants in the country" that "uses, by industry standards, out dated air pollution technology and has a myriad [sic] of problems which include the leakage of coal ash comtamination [sic] into the regions groundwater." See <http://content.sierraclub.org/coal/montana>. Also, as identified by the Petition, the Sierra Club has filed a federal lawsuit against the owners of Colstrip, which includes NorthWestern, claiming Colstrip violated the Clean Air Act. Petition, footnote 1 on page 4.

Additionally, the Petition states that the "Sierra Club has participated in public utility commission proceedings nationwide,<sup>1</sup> including proceedings pertaining to Colstrip, in support of policies **to reduce the impact of climate change and other air pollution by promoting clean energy alternatives and energy efficiency.**" Petition, p. 4 (emphasis added). The Petition suggests that NorthWestern seeks to burden its customers with costs from "an expensive, unreliable, and highly polluting coal-fired power plant." Petition, p. 3. Additionally, MEIC/SC states that CU4 "does not provide adequate and reliable electricity supply service at the lowest

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<sup>1</sup> The Sierra Club has also been denied the right to intervene in many utility commission dockets across the nation, including California, Wyoming, North Carolina, and Kentucky. In fact, last July, the Kentucky Public Service Commission ("KPSC") denied the Sierra Club's request for full intervention finding that full intervention was not necessary and would likely complicate the matter. See Order dated July 19, 2013, *In the Matter of Joint Application of Kenegy Corp. and Big Rivers Electric Corporation for Approval of Contracts and For a Declaratory Order*, Case No. 2013-00221 (When denying intervention, the KPSC found that "[s]pecifically, there are no issues related to promoting energy efficiency, renewable energy, and other low carbon generation sources, and no evaluation of supply-side and demand-side alternatives....Therefore, the [KPSC] finds that Movants do not have a special interest that is not adequately represented and Movants intervention is not likely to present issues or develop facts that will assist in the review of the [issue] without unduly complicating or disputing the review.").

long-term total cost....where renewable sources of energy such as wind, solar, and hydropower may have lower costs.” *Id.*

Testimony and a hearing on these issues would broaden the scope of this docket far beyond a prudence review. Several of these issues should have been and actually were addressed in the pre-approval docket relating to CU4. In late 2008, NorthWestern was permitted by the Commission to rate base CU4 as the Commission found that approval was in the public interest and consistent with certain laws and rules regarding procurement of electricity supply resources.<sup>2</sup> *See* Final Order No. 6925f, Conclusions of Law, ¶ 4 in Docket No. D2008.6.69. Additionally, NorthWestern’s electricity supply generation mix is appropriately discussed in NorthWestern’s biennial Electricity Supply Resource Procurement Plans (the most recent having been filed in December 2013), not in tracker dockets. *See* Docket No. N2013.12.84. And, finally, discussion regarding policy issues such as greater reliance by utilities on renewable resources is an appropriate discussion for the Montana Legislature, not the Commission.

The plethora of statements by MEIC/SC in the Petition demonstrates that the goal of its intervention in this docket is to promote its objectives to rid the United States of coal generation, not to represent its members’ concerns regarding the discrete rate issues in this proceeding. A referendum on whether NorthWestern should own an interest in any coal plant would significantly and inappropriately broaden the issues in the consolidated dockets. A prudence review of the incurred costs does not necessitate a discussion on whether renewable resources are better for the environment than coal resources or whether coal resources are more unreliable than renewable resources or whether coal is less energy efficient than renewable resources. Under the

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<sup>2</sup> It should be noted that the neither the Sierra Club nor MEIC intervened in this docket. There were however other environmental groups, Natural Resources Defense Council and Renewable NorthWest Project, that petitioned for and were granted intervention in the docket.

guise of a prudence review, these policy issues are being advanced by a group seeking to be a party in violation of the Commission’s administrative rules regarding general intervention. For these reasons, the Commission should deny the Petition.

**2. MEIC/SC’s members are already adequately represented by the MCC.**

Despite the arguments above, if the Commission finds that MEIC/SC does not seek to broaden the issues in this docket, the Commission should deny or at least limit the MEIC/SC’s intervention. Pursuant to ARM 38.2.2403, MEIC/SC provides that it should be permitted to generally intervene in the consolidated dockets because it has “a direct and substantial interest in this proceeding because the proposed rate increase will have economic and environmental consequences for NorthWestern [] ratepayers.” Petition, pp. 2-3. Additionally, MEIC/SC seeks “full intervention to help to ensure that the Commission and parties have information and analysis necessary to fully assess whether...[the] rate increase is in the best interests of Montana ratepayers.” *Id.*, p. 5. These statements suggest that MEIC/SC is seeking intervention in order to represent NorthWestern’s Montana customers. This is not its role, but is the role that has been constitutionally granted to the MCC. The Montana Constitution provides that the office of consumer counsel is created to represent the interests of consumers before the Commission. *See* Article XIII, Section 2 of the Montana Constitution. The MCC is a party to this docket. Thus, the MCC represents the interests of all of NorthWestern’s Montana customers in this docket. Therefore, since the interests of NorthWestern’s Montana customers are already represented by the MCC, MEIC/SC’s request for full participation is not necessary and should be denied.

Notwithstanding the above discussion, MEIC/SC asserts that its “interests are not adequately represented by any existing party to this proceeding.” Petition, p. 5. MEIC/SC states that many of its members are residential electric customers of NorthWestern. *Id.*, p. 1. Again,

these interests are represented by the MCC as discussed above. However, MEIC/SC, to justify its request for full intervention, states that the MCC has not “described an interest in this proceeding that is focused on NorthWestern Energy’s proposed recovery of costs associated with Colstrip.” Petition, p. 5. Yet, MCC recently opposed recovery of replacement regulation services costs in the 2012 electricity supply tracker docket, and its posed questions to NorthWestern witnesses regarding CU4 and replacement power cost recovery during the Commission’s hearing on NorthWestern’s proposed acquisition of PPL Montana’s hydroelectric facilities. Given these recent actions by the MCC, MEIC/SC’s statements about its interests not being adequately represented by another party already granted intervention in the consolidated dockets should be dismissed.

Nevertheless, if the Commission desires to grant intervention to the MEIC/SC, such intervention should be limited. Pursuant to ARM 38.2.2406, the Commission has the authority to limit involvement by an intervenor in a proceeding when “two or more intervenors have substantially similar interests and positions.” Given the arguments discussed above, the MEIC/SC and the MCC have substantially similar interests in this docket. As such, the MEIC/SC intervention in this docket should be limited to involvement only if the MCC does not contest NorthWestern’s request to recover the replacement power costs associated with the 2013 CU4 outage. In addition, the Commission should bar testimony and discovery on policy issues relating to energy generated by coal, as the Commission has previously approved NorthWestern’s investment in and ratebasing of CU4.

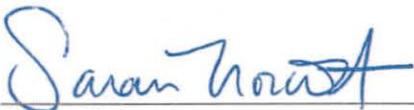
### **Conclusion**

The Commission has authority to control dockets filed before it. *See* § 69-2-101, MCA. As such, it has the ability to deny or limit intervention. MEIC/SC’s Petition unmistakably

establishes that its involvement in the consolidated dockets is intended to go far beyond the scope of the issues raised by NorthWestern's filing and far beyond the express purpose of the tracker dockets. As such, the Petition should be denied. Additionally, the interests of MEIC/SC's members are already adequately represented by the MCC in this proceeding. For this reason, the Petition should be denied or limited as discussed above.

Respectfully submitted this 1st day of August, 2014.

NORTHWESTERN ENERGY

By:  \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of NorthWestern Energy's Objection to the Montana Environmental Information Center and Sierra Club's Petition for General Intervention in Docket No. D2013.5.33/D2014.5.46 will be hand delivered to the PSC and MCC and e-filed with the PSC. It will also be served upon the attached service list.

Dated this 1st day of Aug 2014

A handwritten signature in blue ink that reads "Connie Moran". The signature is written in a cursive style and is positioned above a horizontal line.

Connie Moran  
Administrative Assistant

Docket Nos. D2013.5.33/D2014.5.46  
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