



November 18, 2014

Ms. Kate Whitney  
Utility Division  
Montana Public Service Commission  
1701 Prospect Avenue  
PO Box 2022601  
Helena, Montana 59620-2601

**Re: Docket Nos. D2013.5.33/D2014.5.46 Electric Tracker  
NorthWestern Energy's Reply to Montana Environmental Information  
Center and Sierra Club's Response to NorthWestern Energy's Objections**

Dear Ms. Whitney:

Enclosed for filing is a copy of NorthWestern Energy's Reply to Montana Environmental Information Center and Sierra Club's Response to NorthWestern Energy's Objections. It will be hand delivered to the Montana Public Service Commission and the Montana Consumer Counsel this date. It will also be mailed to the service list in this docket, e-filed on the PSC website, and emailed to counsel of record.

Should you have questions please contact Joe Schwartzberger at (406) 497-3362.

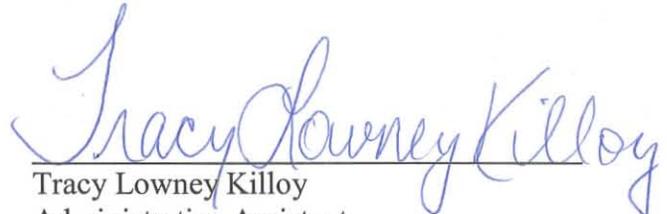
Sincerely,

Tracy Lowney Killoy  
Administrative Assistant

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of NorthWestern Energy's Reply to Montana Environmental Information Center and Sierra Club's Response to NorthWestern Energy's Objections in Docket Nos. D2013.5.33/D2014.5.46 has been hand delivered to the Montana Public Service Commission and to the Montana Consumer Counsel this date. It will be e-filed on the PSC website, emailed to counsel of record, and served on the most recent service list by mailing a copy thereof by first class mail, postage prepaid.

Date: November 18, 2014

  
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Docket No. D2013.5.33/ D2014.5.46  
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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, DGGS	)	DOCKET NO. D2013.5.33
Variable Costs/Credits, Spion Variable	)	
Costs; and (2) Projected Electricity Supply Cost	)	DOCKET NO. D2014.5.46
Rates, CU4 Variable Rates, DGGS Variable	)	
Rates, and Spion Variable Rates	)	

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**NORTHWESTERN ENERGY'S REPLY TO MONTANA ENVIRONMENTAL  
INFORMATION CENTER AND SIERRA CLUB'S RESPONSE  
TO NORTHWESTERN ENERGY'S OBJECTIONS**

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NorthWestern Corporation doing business as NorthWestern Energy ("NorthWestern") objected to data requests identified as MEIC-24, MEIC-25, MEIC-26, MEIC-27, MEIC-28, MEIC-30, MEIC-31, and MEIC-32 ("Objections"). The Montana Environmental Information Center and Sierra Club ("MEIC/SC") filed a response to NorthWestern's Objections on

November 13, 2014 (“Response”). MEIC/SC’s Response also addresses four data requests to which NorthWestern did not object: MEIC-12 through MEIC-14 and MEIC-17. NorthWestern submits this brief in reply to the MEIC/SC’s Response (“Reply”).

### ARGUMENT

**1. If the Commission accepts the MEIC/SC’s rationale for their discovery requests and why they are relevant, the scope of this docket will be improperly extended beyond an electric tracker docket.**

NorthWestern objected to the data requests identified above on the grounds that they sought irrelevant information and that Rule 26 of the Montana Rules of Civil Procedure<sup>1</sup> (“M. R. Civ. P.”) does not require a responding party to answer questions or produce documents that are not “reasonably calculated to lead to the discovery of admissible evidence.” *See* Data Response to MEIC-024. With this Reply, NorthWestern reiterates its arguments in its Objections and replies to the assertions made by the MEIC/SC in its Response as to why the information requested is relevant to this docket. The Commission should reject the MEIC/SC’s arguments on this matter. MEIC/SC’s justification as to why the information may lead to the discovery of relevant information is tenuous at best. For each of the objections, NorthWestern addresses in the sections below, specifically why the Commission should reject the MEIC/SC’s arguments and sustain NorthWestern’s Objections.

a. MEIC-24 and MEIC-25

MEIC-24 and MEIC-25 request information about Units 1, 2, 3 and 4 at Colstrip for the last five years. As NorthWestern pointed out in its objection to these data requests, this docket involves an electric tracker, which allows NorthWestern to “track” and include in rates certain costs incurred during a tracker year. With respect to Colstrip Unit 4, NorthWestern is permitted to track certain variable costs such as fuel costs, incremental changes in property taxes between

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<sup>1</sup> Again, the Commission has adopted M. R. Civ. P. 26 by administrative rule 38.2.3301(1).

general rate cases and related demand-side management lost revenues. Also, in an electricity supply tracker, NorthWestern is permitted to recover costs incurred from energy power purchase agreements. Section 69-8-103, MCA, more particularly defines “electricity supply costs” to include “the actual costs incurred in providing electricity supply service through power purchase agreements, demand-side management, and energy efficiency programs, including but not limited to (a) capacity costs; (b) energy costs; (c) fuel costs; (d) ancillary service costs; (e) transmission costs, including congestion and losses; (f) planning and administrative costs; and (g) any other costs directly related to the purchase of electricity and the management and provision of power purchase agreements.” NorthWestern reiterates that information on fixed costs associated with Colstrip Unit 4 and any other costs outside those for which NorthWestern is seeking recovery of in this docket are irrelevant because it will not lead to the discovery of admissible evidence about the costs NorthWestern does seek to recover through this tracker docket.

The MEIC/SC argues that the information requested by these data requests about Colstrip Units 1, 2, and 3 is necessary in this docket because it serves as a proxy for “what the costs at Colstrip Unit 4 would have been if the outage had not occurred” so then it can be compared to the replacement power contracts NorthWestern had to enter into due to the outage. Response, p. 7. Citing to a dissenting opinion from Commissioner Kavulla,<sup>2</sup> the MEIC/SC suggests that the replacement power costs can be calculated by taking “the difference between expected power supply costs with Colstrip Unit 4 in operation and the actual power supply costs during the

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<sup>2</sup> In several points in their argument, the MEIC/SC cite to Commissioner Kavulla’s dissenting opinion regarding NorthWestern’s interim request in this docket. Response, pp. 7 and 9. These references should not be given much weight. Evidence is defined to include “witness testimony, writings, physical objects, or other things presented to the senses.” § 26-1-101, MCA. A dissenting opinion of one Commissioner is neither evidence nor an order of the entire Commission binding on future Commissions. Therefore, to cite to this opinion as leading to relevant evidence on how to calculate replacement power costs or facts concerning other prior outages is improper as it is not binding law or evidence.

outage.” *Id.* This argument should be rejected for at least two reasons. First, information about the costs to run the other Colstrip Units will not assist in this calculation. If that is in fact how replacement power costs can be calculated, one would need to know the costs to run Colstrip Unit 4, not the other units. Each unit has its own costs that are separate and apart from the other units. Second, costs from Colstrip Units 1 and 2 will not lead to any relevant discovery about the costs of Colstrip Unit 4 as they are very different plants. Units 1 and 2 were built in the mid-1970s with each having approximately 307 megawatts of net generating capacity. Whereas, Units 3 and 4 were built in the mid-1980s with each having approximately 740 megawatts of net generating capacity. Therefore, knowing the cost information for the other units at Colstrip will not lead to an estimate regarding the cost to run Unit 4 but for the outage because they are different. Additionally, this information is not necessary for a prudence review.

Finally, providing five years of information for Colstrip Unit 4 is also irrelevant to this docket. If the MEIC/SC believes that replacement power costs can be calculated as suggested by Commissioner Kavulla, NorthWestern, in its Application, has already provided the relevant information that would allow such calculation to be made and therefore additional requested information is irrelevant. *See* the Prefiled Direct Testimony and Exhibits of Frank V. Bennett. Going back to tracker year 2009/2010 will not lead to relevant information regarding the replacement power costs that resulted from the outage. Based on the foregoing and for those reasons found in NorthWestern’s Objections, the Commission should find that the information requested in these data requests is irrelevant as it will not lead to the discovery of admissible evidence in this docket. The Commission should sustain NorthWestern’s objections to MEIC-24 and MEIC-25.

b. MEIC-26 through MEIC-28

Like MEIC-24 and MEIC-25, MEIC-26 through MEIC-28 seek information that is not relevant as they seek information about coal-fired facilities other than Colstrip Unit 4. MEIC/SC argues that the information requested is relevant as it will allow for a “comparison between the cost and frequency of outages at Colstrip Unit 4 and the cost and frequency of outages at similar coal-fired units.” Response, p. 8. First, the MEIC/SC’s argument wrongly assumes that all other coal-fired units for which information is requested are similar. As noted above, Units 1 and 2 at Colstrip are not similar to Units 3 and 4. Additionally, other coal-fired units that NorthWestern either owns or partially owns are not necessarily similar to Colstrip Unit 4. For example, Big Stone coal plant in South Dakota has been online since 1975 and has a capacity of 475 megawatts. Coyote Station in North Dakota has been online since 1981 and has a capacity of 427 megawatts.

Notwithstanding the above, the MEIC/SC is attempting to improperly shift the focus of this docket from a prudence review of one event at Colstrip Unit 4 to a very broad review concerning the reliability of coal plants in general. Instead of asking solely for information about other outages that occurred at Colstrip Unit 4, the MEIC/SC has asked for information about all outages at all other coal plants saying this “will lead to evidence of NorthWestern’s ‘situational awareness’ of the particular risks of an outage occurring at Colstrip 4.” Response, p. 9. Outages at other coal-fired facilities will not lead to “situational awareness” of whether an outage would occur at Colstrip Unit 4 as the plants and particulars of each outage are different. Information about other outages at Colstrip Unit 4 could, however, lead to evidence of NorthWestern’s “situational awareness” and so NorthWestern did not object to providing this information for Colstrip Unit 4.

The focus of this docket is: “Were NorthWestern’s actions with respect to the outage at Colstrip Unit 4 prudent?” In a prior electricity supply tracker docket, the Commission noted the following on standard for prudence: “the standard by which the [Commission] judges the prudence and reasonableness of actual electricity supply costs is what [NorthWestern] knew, or should reasonably have known, at the time it incurred the cost obligations.” *In re NorthWestern Energy*, Order No. 6836c, ¶ 155, Docket Nos. D2006.5.66 and D2007.5.46 (June 24, 2008). Thus, for this case, the question is: “What did NorthWestern know or what should it have known at the time the costs were incurred?” In order to answer this question, the Commission should look at the facts surrounding the Colstrip Unit 4 outage and ask questions such as: “What caused the outage?” “Was the cause of the outage the fault of an owner or the operator of Colstrip Unit 4 that NorthWestern then ignored their actions?” and “Could the outage have been prevented?” The outage rates for other coal-fired facilities, including those not within the jurisdiction of the Commission, will not lead to admissible evidence that will assist the Commission in answering these and similar questions about the outage at Colstrip Unit 4. The MEIC/SC’s argument to the contrary is incomprehensible. NorthWestern disagrees that the history of outages at other coal-fired facilities that are not similar to Colstrip Unit 4 could lead to evidence that “suggests that NorthWestern was, or should have been, aware of aging equipment or consistent maintenance problems” at Colstrip Unit 4. Response, p. 9. Information about Colstrip Unit 4 outages would be the relevant information to disclose in this case. For the reasons noted above and those found in NorthWestern’s objections, the Commission should find that information about coal-fired facilities other than Colstrip Unit 4 is irrelevant as it will not lead to the discovery of admissible evidence, and therefore, NorthWestern’s objections should be sustained.

c. MEIC-30

MEIC-30 seeks information about the reliable operation of Colstrip Unit 4. Again, the MEIC/SC is attempting to shift the focus of this docket as discussed above. The Colstrip Unit 4 outage did not occur because Colstrip Unit 4 is unreliable. The Root Cause Analysis<sup>3</sup> provides that “[n]othing [PPLM]<sup>4</sup> did or could have done, could have prevented this failure.” This conclusion suggests that the outage was not the result of the operation of the facility. Therefore, based on the foregoing and those reasons found in NorthWestern’s objections, the Commission should find that the information requested in MEIC-30 is irrelevant as it will not lead to the discovery of admissible evidence and therefore should sustain NorthWestern’s objection to MEIC-30.

d. MEIC-31

MEIC-31 asked for the useful life NorthWestern assigned to Colstrip Unit 4 for planning purposes as well as what year NorthWestern would assume that the facility was fully depreciated. NorthWestern reiterates that this information will not lead to the discovery of relevant information for a tracker docket, which only tracks electricity supply costs and certain variable costs of owned generation as discussed above. The MEIC/SC’s Response argues that this information is relevant because if the useful life was about to conclude, NorthWestern should be winding down capital spending and looking at ways to replace the energy produced by Colstrip Unit 4. Response, p. 12. First, the MEIC/SC argument fails to understand the scope of tracker dockets. Repair costs or other capital costs are not included in tracker dockets. These types of costs would be reviewed by the Commission as part of a general rate case in which

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<sup>3</sup> Siemens has advised NorthWestern that this document contains information that it considers trade secret information. Once the Commission has acted on a forthcoming Siemens’ protective order, NorthWestern will produce a copy of this document.

<sup>4</sup> PPL Montana (“PPLM”) is the operator of Colstrip Unit 4.

NorthWestern's revenue requirement was at issue. NorthWestern has clearly identified the Colstrip Unit 4 variable costs involved in this docket: fuel costs, incremental property taxes, and demand-side management lost revenues. *See* the Prefiled Direct Testimonies of Frank V. Bennett, p. 3. These variable costs are not capital costs. Second, the status of Colstrip Unit 4 would be addressed in NorthWestern's Electricity Supply Resource Procurement Plan ("Plan"). If the useful life of Colstrip Unit 4 was concluding and NorthWestern needed to purchase replacement power when Colstrip Unit 4 was no longer producing energy, NorthWestern would be required to discuss this situation in its Plan. The Plan is the appropriate, relevant place for that discussion. Again, the MEIC/SC's argument is attempting to shift the scope of this docket to a broader discussion about the risk of an outage generally versus what NorthWestern knew or should have known at the time the replacement power costs were incurred. The focus of this docket is on the facts related to why the outage occurred and the actions taken to correct the outage, not on the faulty premise that NorthWestern should have walked away from the plant because its useful life is about to end. For those reasons discussed in NorthWestern's Objections and based on the foregoing, the Commission should find that the information sought in MEIC-31 is irrelevant and will not lead to the discovery of relevant information in this tracker docket. Therefore, the Commission should sustain NorthWestern's objection to MEIC-31.

e. MEIC-32

MEIC-32 seeks information about converting Colstrip Unit 4 to natural gas. This information is not relevant and will not lead to the admission of relevant evidence on whether NorthWestern was prudent in the purchase of replacement power because NorthWestern needed energy in the short term to supply its customers. The MEIC/SC's argument again appears to be shifting the scope of this docket. This case should be focused on what NorthWestern knew or

should have known at the time the costs were incurred. NorthWestern knew that it needed power in order to serve its customers. This docket is not about whether Colstrip is currently the most economical option to supply power to its customers. The MEIC/SC also argues that “there is no presumption that the outage, including the length of the outage, was prudent – and thus there is no presumption that making replacement power purchases was prudent.” Response, p. 13. This argument is incorrect. A utility’s actions are presumed prudent. *West Ohio Gas Co. v. Public Utilities Commission of Ohio*, 294 U.S. 63, 72, 55 S.Ct. 316, 321 (1935) (“Good faith is to be presumed on the part of the managers of a business.”). The Commission should find that MEIC-32 seeks information that will not lead to the discovery of relevant information and therefore, it should sustain NorthWestern’s objection to MEIC-32.

- 2. Siemens has requested that NorthWestern not disclose certain trade secret information. Siemens has informed NorthWestern that it will be filing a motion for protective order addressing such information. In the meantime, NorthWestern has answered MEIC-12 through MEIC-14 and MEIC-17 to the fullest extent possible, at this point in time.**

NorthWestern did not object to Data Requests MEIC-12 through MEIC-14 and MEIC-17.

NorthWestern has answered these questions to the extent that it could at this point in time.

Siemens has indicated that it plans to seek a protective order for information that it considers trade secret. Given this position by Siemens, NorthWestern is contractually obligated to not disclose the information.<sup>5</sup> The MEIC/SC argues that Siemens had ample time to file the request for protection. Response, p. 6. The MEIC/SC fails to recognize that the process involved with identifying and reviewing relevant communications is more time consuming and in most circumstances takes substantially longer than the time period in which NorthWestern is provided

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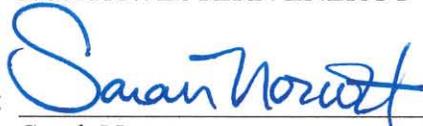
<sup>5</sup> Siemens and PPLM entered into an agreement whereby PPLM is permitted to disclose information provided to it by Siemens to an unaffiliated third party on a need-to-know basis only if that party agrees not to disclose the information.

to respond. In this case, NorthWestern needed to conduct a search for relevant communications within its records; review the documents internally; contact and meet with Siemens to discuss the situation; and then provide the communications for Siemens to review and determine whether trade secret information was contained within them. NorthWestern continues to work with Siemens to resolve this matter and have the information filed as soon as is practical.

### CONCLUSION

The MEIC/SC's data requests to which NorthWestern has objected are requests for information that are beyond the scope of this docket as discussed above and within NorthWestern's Objections. The Commission must prohibit this attempt by the MEIC/SC to expand the docket and obtain information about matters not at issue in this docket because MEIC/SC was granted general invention, which does not allow them to expand the scope of the docket. NorthWestern respectfully requests that the Commission sustain its Objections.

Respectfully submitted this 18<sup>th</sup> day of November, 2014.

NORTHWESTERN ENERGY  
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