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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 MOTION TO STRIKE THE MONTANA CONSUMER  
COUNSEL'S REPLY IN SUPPORT OF MOTION TO COMPEL**

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NorthWestern Corporation doing business as NorthWestern Energy ("NorthWestern") submits this *Motion to Strike the Montana Consumer Counsel's Reply in Support of Motion to Compel* ("Motion"). In support of NorthWestern's Motion it provides the following:

On November 7, 2014, NorthWestern objected to ten data requests ("Objections") promulgated by the Montana Consumer Counsel ("MCC"). On November 21, 2014, the MCC

filed a *Motion to Compel Responses to Data Requests or Alternatively to Disallow Certain Costs<sup>1</sup> and Brief in Support* (“MCC’s Motion”). In its Motion, the MCC responded to NorthWestern’s Objections, but it also asserted that NorthWestern had not fully responded to several of the MCC’s data requests. Specifically, the MCC identified eight data requests to which it argues NorthWestern did not fully respond. On November 26, 2014, NorthWestern submitted a timely response to the MCC’s Motion (“Response”). On December 5, 2014, the MCC submitted a *Reply in Support of Motion to Compel Responses to Data Requests* (“Reply”). NorthWestern moves the Commission to strike the Reply as untimely. Alternatively, if the Commission accepts the Reply as timely, NorthWestern moves the Commission to strike those portions of the Reply that discuss NorthWestern’s Objections.

**1. The MCC’s Reply is untimely and therefore should be stricken.**

With the exception of Data Request MCC-052,<sup>2</sup> the Commission should strike the MCC’s Reply because it was not filed timely. The Commission adopted an administrative rule providing that it “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.” ARM 38.2.2702(1). In this case, the Commission issued Procedural Order No. 7283b (“Order”).<sup>3</sup> The Order, ¶ 13, provides that a party “may move within fourteen calendar days after service of the response for an order compelling an answer.” The Order, ¶ 15, further provides that a party

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<sup>1</sup> MCC’s counsel advised NorthWestern’s counsel that the MCC’s Motion does not contain a request to disallow certain costs and that inclusion of this verbiage in the title to the Motion was an error.

<sup>2</sup> Given when NorthWestern’s Response was due, NorthWestern was unable to adequately respond to the MCC’s arguments concerning MCC-052. NorthWestern Response, p. 11. NorthWestern did file an Additional Response addressing MCC-052 on December 3, 2014, which provided its argument in response to the MCC’s arguments. Since NorthWestern’s Additional Response was served on December 3, the MCC’s Reply with respect to MCC-052 was timely filed. It should be noted that NorthWestern also updated MCC-027 in the Additional Response; however, it did not provide additional argument in response to the MCC’s argument. NorthWestern’s argument concerning MCC-027 was filed on November 26, and thus, the MCC’s reply should have been filed by December 1, 2014.

<sup>3</sup> The Commission issued a Notice of Staff Action on November 17, 2014, which provided that certain dates found in paragraph 4 of the Order were suspended but that “[a]ll other deadlines and provisions in [Order] shall remain effective unless again modified by the Commission or staff.”

responding to a prehearing motion<sup>4</sup> “must file and serve its response brief within seven calendar days of service of the motion.” Finally, the movant may file a reply but “it must file and serve its reply brief within **five calendar days** of service of the response brief.” *Id* (emphasis added). Since these provisions of the Order are still effective, they control the deadlines for the parties’ pleadings. *Bates v. Anderson*, 2014 MT 7, ¶ 23, 373 Mont. 252, 316 P.3d 857 (quoting *Raiser v. Utah County*, 409 F.3d 1243, 1247 (10<sup>th</sup> Cir. 2005) (“no litigant should ignore deadlines established by applicable rules, and sanctions may well be appropriate.”)). In this case, as those provisions apply to this situation, the MCC’s Reply should have been filed on December 1, 2014, which is five calendar days from the date NorthWestern filed its Response. Instead, the MCC filed its Reply on December 5, four days after the deadline. Thus, the Reply is untimely. For those reasons set forth above, the Commission should strike the MCC’s Reply and, therefore, should not consider any of the arguments contained therein when deciding the MCC’s Motion.

**2. Notwithstanding the argument above, portions of the MCC’s Reply should be stricken as NorthWestern, as the movant/objector, is entitled to the final argument.**

If the Commission rejects the argument above and finds that the MCC’s Reply should be considered when deciding the MCC’s Motion, it should nevertheless strike the portions of the Reply that discuss NorthWestern’s Objections. Motion practice typically consists of a motion, a response and a reply by the movant. Instructions for Motions, Montana Judicial Branch, <http://courts.mt.gov/library/topic/motions.mcp.x>. In responding to the MCC’s data requests, NorthWestern objected to ten data requests. By objecting to the MCC’s data requests, NorthWestern argued that it should not have to provide answers for those reasons found in the Objections. As the movant on this issue, NorthWestern is entitled to the final argument before the Commission rules on the Objections. NorthWestern presented its final argument on the

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<sup>4</sup> The MCC’s Motion is a prehearing motion as it is a motion filed before the hearing in this matter.

Objections in the Response to the MCC's Motion. The MCC's Reply ignores standard motion practice rules, rules which this Commission has adopted in the Order, and improperly includes arguments rebutting NorthWestern's final arguments. Therefore, the Commission should refuse to consider the arguments made by the MCC in the Reply regarding MCC-004, -005, -006, -007, -030, -068, -069, -070, -072, and -088.

Respectfully submitted this 8<sup>th</sup> day of December, 2014.

NORTHWESTERN ENERGY

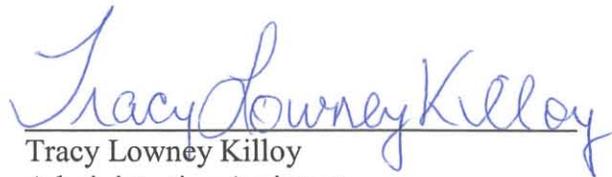
By:   
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of NorthWestern Energy's Motion to Strike The Montana Consumer Counsel's Reply in Support of Motion to Compel 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: December 8, 2014



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Docket No. D2013.5.33/D2014.6.46  
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