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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 Deferred Cost Account Balances for Electricity Supply, CU4 Variable Costs/Credits, DGGS Variable Costs/Credits, Spion Variable Costs; and (2) Projected Electricity Supply Cost Rates, CU4 Variable Rates, DGGS Variable Rates, and Spion Variable Rates	)	REGULATORY DIVISION DOCKET NO. D2013.5.33 DOCKET NO. D2014.5.46

NorthWestern Energy's Reply to the Montana Consumer Counsel's Response to the Motion to Strike Testimony

NorthWestern Corporation d/b/a NorthWestern Energy ("NorthWestern"), by and through its undersigned counsel, submits this reply in order to respond to the arguments made by the Montana Consumer Counsel ("MCC") in its *Response of the Montana Consumer Counsel to NorthWestern Energy's Motion to Strike Testimony* ("Response"). For any arguments not specifically discussed herein, NorthWestern relies on and reasserts the arguments it made in the *Motion to Strike the Direct Testimonies of John W. Wilson and George L. Donkin filed on behalf of the Montana Consumer Counsel and Alternative Motion to Postpone the Procedural Schedule* ("Motion"). After considering the parties' pleadings on this issue, the Commission should strike the testimony as requested by NorthWestern in its Motion or, alternatively, grant NorthWestern's Alternative Motion to Postpone the Procedural Schedule.[1]

Argument

1. Due process will not be violated if the Wilson Testimony is stricken because the issue is already before the Commission and the Wilson Testimony does not assert that lost revenues included in this consolidated docket were imprudently incurred.

The MCC's Response argues that if the Commission grants NorthWestern's Motion it will "deny ratepayers an opportunity to be heard" and there will be no evidence to rebut the request to recover expenses claimed by NorthWestern. Response, p. 4. First, the ratepayers/customers of NorthWestern will be heard. Procedural due process requires in part timely and adequate notice and an opportunity to be heard. *See, e.g.,* §§ 2-4-601 and -612, MCA. The opportunity to be heard must be "at a meaningful time and in a meaningful manner." *Smith v. Board of Horse Racing*, 1998 MT 91, ¶ 11, 288 Mont. 249, 956 P.2d 752. As noted in the Motion, the MCC is an active party in the Lost Revenue Adjustment Mechanism ("LRAM") docket. The MCC's witness in the LRAM docket, John Wilson, made the same points and

[1] The MCC did not address nor argue against NorthWestern's Alternative Motion in its Response.

arguments in that docket as he has made in this docket. The Commission will consider his position on lost revenue recovery in that docket. Given that fact, customers are being represented and they are being given an opportunity to be heard on that issue. Therefore, due process will not be denied if the Wilson Testimony is stricken in this consolidated docket.

Second, Dr. Wilson does not assert the lost revenues included in this consolidated docket were imprudently incurred, and the testimony NorthWestern seeks to strike does not provide evidence the lost revenues were imprudently incurred. His conclusions about the current lost revenues are simply a repetition of his policy argument in LRAM docket that there should not be a lost revenue adjustment. While that policy argument may be pertinent to the Commission's deliberations in that docket, it is not pertinent to this consolidated docket, which is simply implementing the Commission's prior decision to establish a lost revenue adjustment mechanism. While it is appropriate to address the continuation of the lost revenue adjustment mechanism in the LRAM docket, it is not appropriate to repeat those arguments in this consolidated docket.

The decision in the LRAM docket will affect recovery of lost revenues going forward,[2] but for those lost revenues already incurred under the current lost revenue policy, NorthWestern is entitled to recovery of them on an interim basis[3] unless a party provides evidence that they were imprudent and the Commission agrees. Since the Wilson Testimony is irrelevant testimony in this consolidated docket for those reasons noted in the Motion and above, it should be stricken.

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[2] The MCC agrees with this point. Response, p. 4

[3] Lost revenues are deemed final once an independent study is conducted that establishes final energy efficiency savings for the historic evaluation period.

2. **If the Wilson Testimony is not struck, it will be a waste of time and resources with little probative value to this case.**

Requiring the parties to address the same arguments in a separate proceeding effectively makes it Groundhog Day with respect to the LRAM issue. Both the MCC and NorthWestern have fully discussed this issue in the LRAM docket. There has been extensive discovery as well as a hearing in that docket. Requiring the parties to do this again is a waste of time and resources. As such, there is little value to be gained from addressing this issue again in this docket. The MCC claims that it is not a waste of time because this consolidated docket is where "real dollars" are considered. Response, p. 4. The MCC fails to recognize that if the Commission accepts its position in the LRAM docket then "real dollars" will be affected going forward. Notwithstanding that consideration, it is still a waste of resources and time for the parties and the Commission to have to address this issue again in this consolidated docket. The Wilson Testimony should be struck to eliminate this duplication.

3. **For purposes of this consolidated tracker docket, the issue raised with respect to hedging is identical and therefore collateral estoppel bars consideration of the issue.**

The MCC claims that the prior issue "is not identical to the issue being raised in this proceeding" and that the unique factual circumstances of this record mean that the issue is not identical. Response, p. 5. The MCC cites the "changed circumstances" as "longer track record, additional losses have been incurred, and significant changes have been made in physical hedges undertaken by [NorthWestern] such as the Hydros acquisition." *Id.* The only real "changed circumstance" is the Hydros acquisition. However, the Hydros acquisition should not affect this consolidated docket since the Hydros were not acquired until after the conclusion of the tracker periods involved here. The Hydros acquisition affects the electric tracker docket filed on May 29, 2015, in Docket No. D2014.7.58. The other circumstances noted by the MCC are extensions or a

continuation of the facts alleged by the MCC in the prior electric tracker docket. These are not new. For purposes of this docket, the issue is the same: the MCC alleges that NorthWestern's off-system fixed price hedges result in substantial losses and that NorthWestern should be ordered to stop engaging in such hedges. The Commission considered this request and rejected it. The MCC again is asking the Commission to order NorthWestern to stop engaging in these hedges, but it has presented no new facts to support this request. Collateral estoppel bars the MCC from raising the issue. The Commission should therefore strike the Donkin Testimony as requested by NorthWestern's Motion.

Respectfully submitted this 15th day of June, 2015.

NORTHWESTERN ENERGY

By: Sarah Norcott

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CERTIFICATE OF SERVICE

I hereby certify that a copy of NorthWestern Energy's Reply to the Montana Consumer Counsel's Response to the Motion to Strike Testimony 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 has been 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: June 15, 2015

Tracy Lowney Killoy

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Docket Nos.
D2013.5.33/D2014.6.46
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