

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

IN THE MATTER OF NorthWestern ) REGULATORY DIVISION  
Energy's 2012-2013 Electricity Supply )  
Tracker ) DOCKET NO. D2013.5.33  
)  
IN THE MATTER OF NorthWestern ) DOCKET NO. D2014.5.46  
Energy's 2013-2014 Electricity Supply )  
Tracker )

**NOTICE OF COMMISSION ACTION**

NorthWestern Corporation, doing business as NorthWestern Energy (NorthWestern), filed its 2012-2013 Electricity Supply Tracker on May 31, 2013. The Montana Public Service Commission (Commission) issued a *Notice of Application and Intervention Deadline* on June 19, and granted intervention to the Montana Consumer Counsel (MCC), Natural Resources Defense Council and Human Resource Council District XI on August 2, 2013. NorthWestern filed its 2013-2014 Electricity Supply Tracker on May 29, 2014. *See Notice of Commn. Action*, Dkt. D2013.5.33 (May 12, 2014) (consolidating the two trackers). On May 31, 2014, the Commission issued another *Notice of Application and Intervention Deadline*, setting an intervention deadline of July 18, 2014.

On July 18, 2014, the Montana Environmental Information Center (MEIC) and Sierra Club filed a *Petition for General Intervention* (Petition). According to their Petition:

MEIC and Sierra Club intend to present expert testimony in this proceeding to demonstrate that NorthWestern Energy has not established that it prudently incurred the costs associated with Colstrip Unit 4 for which it now seeks customer reimbursement. . . . To the extent that NorthWestern Energy purchased replacement power from other coal-fired generating units (including other Colstrip units) during the period of the Colstrip Unit 4 outage, such power may not have represented the lowest cost option. . . . Further, Petitioners believe the Colstrip Unit 4 outage may have been avoided through proper maintenance and upkeep.

Pet. pp. 3, 5 (“Petitioners intend to limit their testimony to the operative question . . . of whether NorthWestern Energy’s costs due to the Colstrip Unit 4 outage were ‘prudently incurred.’”).

On August 1, 2014, NorthWestern filed an *Objection to the MEIC and Sierra Club's Petition* (Objection). NorthWestern agreed that “the question to be decided by the Commission” is whether its electricity supply costs were “prudently incurred,” but nonetheless asserted that “the Petition clearly seeks to broaden the issues,” and urged the Commission to either deny or somehow limit general intervention. NorthWestern asserted that because the interests of the MEIC and Sierra Club are “substantially similar” to those of the MCC, they “are already adequately represented.” Obj. pp. 2, 8.

In their *Reply in Support of Petition* filed August 7, 2014, the MEIC and Sierra Club argued that the issues they seek to raise “fall within the scope of the prudence review that NorthWestern acknowledges should be undertaken.” Reply p. 2. They further asserted:

[U]nlike other legal standards for intervention that are inapplicable here, regulations governing Public Service Commission proceedings contain no requirement that a potential intervenor prove that existing parties do not adequately represent its interests. Even if such a requirement were in force, Petitioners have more specific interests than MCC and there is no evidence that MCC will make the same arguments as Petitioners in this case.

*Id.* According to the MEIC and Sierra Club, granting their Petition “will ensure that the Commission has a record that enables it to fulfill its commitment to ‘conduct rigorous examinations in annual supply trackers of the prudence of [NorthWestern’s] expenses related to CU4.’” *Id.* at p. 5 (citing Or. 6925f, Dkt. D2008.6.69, ¶ 227 (Nov. 13, 2008)).

“A litigant's standing before an administrative agency depends on the language of the statute and regulations which confer standing before that agency.” *Klingman v. Mont. Pub. Serv. Commn.*, 2012 MT 32, ¶ 30, 364 Mont. 128; Mont. Code Ann. §§ 69-3-303, 69-3-103 (2013). According to the Commission’s rules governing intervention, any person who desires to “appear and participate” and “does not desire to broaden the issues of the original proceeding” may file a petition for general intervention setting forth:

[A] clear and concise statement of the direct and substantial interest of the petitioner in the proceeding; his position in regard to the matter in controversy; and a statement of the relief desired.

Admin. R. Mont. 38.2.2403 (2014). The Commission may grant such a petition if it “discloses a substantial interest in the subject matter of the hearing, that participation of the petitioner will be in the public interest, or that the granting of the petition would not unduly broaden the issues in the proceeding.” *Id.* at 38.2.2405.

The Commission's rules for intervention are broader than the rules for intervention in district court. *See* Mont. R. Civ. P. 24 (not requiring intervention where existing parties adequately represent the movant's interest). As a result, participation in a Commission proceeding does not necessarily entitle a party to intervention on appeal.

This proceeding is the "electricity cost recovery mechanism that allows [NorthWestern] to fully recover prudently incurred electricity supply costs," subject to certain statutes and Commission rules. Mont. Code Ann. § 69-8-210(1). The Commission has previously concluded that replacement power costs resulting from an outage at a utility-owned plant are "electricity supply costs." Or. 7219h, Dkt. D2012.5.49, ¶ 101 (Oct. 22, 2013); *see also* Mont. Code Ann. § 69-8-103(8). Thus, an allegation that "electricity supply costs" were not "prudently incurred" falls squarely within the "the issues of the original proceeding." Admin. R. Mont. 38.2.2403.

On August 19, 2014, the Commission granted general intervention to the MEIC and Sierra Club because they disclosed "a substantial interest in the subject matter" of this proceeding and do not seek to "unduly broaden the issues in the proceeding." *Id.* at 38.2.2403. The Commission took the opportunity to remind all parties that general intervention is limited to the scope of the original proceeding by definition, and that even after granting intervention, the Commission may limit participation at the hearing or dismiss a party (other than the MCC) "upon notice and a reasonable opportunity to be heard." *Id.* at 38.2.2405-2406.

BY THE MONTANA PUBLIC SERVICE COMMISSION

W. A. (BILL) GALLAGHER, Chairman  
BOB LAKE, Vice Chairman  
KIRK BUSHMAN, Commissioner  
TRAVIS KAVULLA, Commissioner  
ROGER KOOPMAN, Commissioner