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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 Application For)	REGULATORY DIVISION
(1) Unreflected Gas Cost Account Balance and Projected)	
Cost; and (2) Gas Transportation Adjustment Clause)	DOCKET NO. D2013.5.34
Balance)	
)	
and)	
In the Matter of NorthWestern Energy’s Application For)	
(1) Unreflected Gas Cost Account Balance and Projected)	DOCKET NO. D2014.5.47
Cost; and (2) Gas Transportation Adjustment Clause)	(consolidated)
Balance)	

**NORTHWESTERN ENERGY’S MOTION FOR THE MONTANA PUBLIC
SERVICE COMMISSION TO RESERVE ISSUE AND MOTION TO STRIKE
TESTIMONY OF GEORGE L. DONKIN ON BEHALF OF THE MONTANA
CONSUMER COUNSEL**

NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern”) respectfully moves the Montana Public Service Commission (“Commission”) for an order reserving the issue of NorthWestern’s recovery of USB-related lost revenues until after the Commission issues a final order in Docket No. D2014.6.53 and for an order striking the

portions of the prefiled testimony of George Donkin on behalf of the Montana Consumer Counsel (“MCC”) related to that issue¹ and related to NorthWestern’s out-of-pocket expenses for its natural gas USB programs.

Background

On May 13, 2013, NorthWestern filed its 2013 Natural Gas Tracker. On November 27, 2013, the MCC filed the Pre-filed Direct Testimony of George L. Donkin in Docket No. D2013.5.34 (“Donkin 2013 Testimony”). Mr. Donkin advocated, “that the Commission deny NWE’s request for gas tracker recovery of USB-related lost revenues, for both the 2012-13 program period and for future program periods.” Donkin 2013 Testimony, 15:19-16:2.

On April 23, 2014, as part of the Partial Settlement entered into by NorthWestern and the Commission in Montana Second Judicial District Court, Silver Bow County Cause No. DV-13-399, the Commission agreed , in part, “to open a separate docket” to address the Lost Revenue Adjustment Policy issue **for both electric and natural gas efficiency programs**” (emphasis added). Although the MCC is a party to the court case, it took no position on the settlement.

On May 29, 2014, NorthWestern filed its 2014 Natural Gas Tracker. On March 18, 2015, the MCC filed the Pre-filed Direct Testimony of George L. Donkin (“Donkin 2015 Testimony”). In the Donkin 2015 Testimony, Mr. Donkin stated, “I recommend therefore that the Commission terminate lost revenue recovery for USB-related activities in NWE’s natural gas tracker.” Donkin 2015 Testimony, 16:18-19.

On June 16, 2014, the Commission issued a Notice of Contested Case and Intervention Deadline (“LRAM Notice”) initiating Docket No. D2014.6.53, *In the Matter of the Lost Revenue Adjustment Mechanism of NorthWestern Energy* (“LRAM Docket”). In the LRAM Notice, the Commission placed the issue of LRAM application to USB activities directly in focus when it quoted a prior Commission order stating, “The Commission observes that the policy of allowing lost revenue recovery for USB programs appears particularly questionable given that such programs are required by law.” Notice, p. 3.

¹ NorthWestern is filing rebuttal of George Donkin’s testimony on the same date as this Motion. If the Commission reserves the issue and strikes the requested portions of George Donkin’s testimony, NorthWestern will withdraw the portions of its rebuttal testimony that relate to this issue, particularly Joe Schwartzenberger’s Prefiled Rebuttal Testimony.

The procedural order in the LRAM docket required parties to file initial testimony by December 19, 2014. NorthWestern's witness, Patrick R. Corcoran, addressed the Commission's concerns about lost revenues related to USB activities in his Prefiled Direct Testimony at page 18, line 1 through page 19, line 10. The MCC's witness, Dr. John W. Wilson, addressed the issue in his Direct Testimony in the LRAM Docket ("Wilson LRAM Direct"). In the Wilson LRAM Direct, Dr Wilson stated :

The Company estimated that these programs [USB] accounted for 0.59 aMW of annual electricity savings and 26,009 dKt of annual natural gas savings. At current prices I estimate that this amount of conservation would save about \$300,000 of energy costs annually.

...

It is my understanding that the related level of USB energy efficiency conservation program activity is therefore required by law. Consequently, NWE is not in a position to avoid promoting cost-effective USB energy efficiency programs, with or without electric tracker recovery of lost revenue that result from such programs. LRAM treatment is not appropriate for USB revenues in this case.

Wilson LRAM Direct, p. 17.

The procedural order in the LRAM docket required parties to file response testimony by March 25, 2015. Human Resource Council, District XI and Natural Resources Defense Council ("HRC/NRDC") filed the Response Testimony of Dr. Thomas Michael Power ("Power LRAM Response"). In his Power LRAM Response, Dr. Power disagreed with Dr. Wilson's position regarding recovery of LRAM for USB-related activities. Power LRAM Response, pp. 2 and 14-15. NorthWestern filed the Response Testimony of Ric Gale in the LRAM Docket ("Gale LRAM Response Testimony)." Mr. Gale addressed lost revenue recovery for USB-related activities at RG-25:1-11 of the Gale LRAM Response Testimony. The parties to the LRAM docket may address this further in the rebuttal testimony round.²

Motion to Reserve Issue

The Commission should reserve the issue of NorthWestern's recovery of lost revenue related to USB activities in this docket. The Commission has often used the reserved issue process when it was inappropriate to make a decision based on the record before it. *See, e.g., In re Montana-Dakota Utilities Co.*, Docket No. D2010.8.82, Order No.

² Unlike most Commission dockets, each party in the LRAM docket is permitted to file initial, response, and rebuttal testimony.

7115d (July 26, 2011) (discussing witness's testimony regarding issues of inverted block rate structures and smart metering reserved for Docket No. D2007.7.79); *In the Matter of the Application of NorthWestern Energy for Automatic Rate Adjustment and Tracking for Taxes and Fees*, Docket No. D2005.12.170, Order No. 6716 (February 8, 2006) (reserving issue of allocation of transmission tax increases). Formerly, the Commission's procedural orders included a deadline for the establishment of a reserved issues procedure. *See, e.g., In the Matter of NorthWestern Energy Electric Default Supply Tracker Filing*, Docket No. D2003.6.77, Order No. 6496d, ¶ 3(n) (September 20, 2004); *In the Matter of the Application of Wilder Resorts, Inc., d/b/a/ Fairmont Hot Springs Resort, for Increased Rates for Sewer Service*, Docket No. D2003.12.173, Order 6569 (May 26, 2004); *In the Matter of Montana Power Company, Annual Application to Implement its Unreflected Gas Cost, Gas Cost Tracking, and Gas Transportation Adjustment Clause*, Docket No. D99.11.247, Order No. 6212b (December 27, 1999).

The considerations that have supported reserved issues in the prior dockets are present in this docket. First, the Commission has reserved issues when it provided an opportunity for a more fully developed record. The Commission will have a more full record on this issue in the LRAM Docket. In that docket, more parties (MCC, HRC/NRDC, and NorthWestern) have weighed in on this specific issue. Pursuant to the Commission's Notice in the LRAM Docket, the parties are addressing the specific policy issues related to the recovery of lost revenues associated with all USB activities in two or three rounds of testimony each. In this docket, the only testimony regarding this issue could be Mr. Donkin's two response testimonies and NorthWestern's rebuttal testimony, which was prepared and filed for the Commission's consideration if it does not grant this motion. The parties in this docket will not and cannot develop the record as fully as they can and will in the LRAM Docket.

Second, the Commission has reserved issues when it was administratively efficient. Reserving this issue in this docket serves administrative efficiency. The Commission will only need to consider the issue once. This docket cannot establish precedent for the other docket because not every party in that docket is a party in this docket. More specifically, HRC/NRDC have weighed in on this specific issue in the LRAM Docket; HRC/NRDC are not parties to this docket. Additionally, reserving this issue in this docket will avoid the

possibility of conflicting decisions by the Commission. Finally, no party is prejudiced by reserving the issue. MCC is a party in the LRAM Docket and is advocating its position relative to this specific issue in that docket. NorthWestern, and all others concerned, will benefit from the finality of decisions on all other issues in this long-delayed consolidated docket without needing to wait for the decision in the LRAM docket. NorthWestern's customers are protected because any recovery of LRAM related to USB activities will continue to be on an interim basis, subject to refund with interest.

The Commission should support fairness and the public interest by reserving the issue in this docket.

Motion to Strike

In the Donkin 2013 Testimony, Mr. Donkin stated that he was addressing three USB-related topics:

1. Increased gas tracker revenues that NWE collects to recover its estimates of lost revenue that result from decreases in gas consumption by participants in the Company's USB programs;
2. Actual out-of-pocket expenses associated with NWE's "E+ Free Weatherization Program;" and
3. Actual out-of-pocket expenses associated with NWE's "E+ Energy Audit for the Home" Program.

Donkin 2013 Testimony, pp. 4-5.

In the Donkin 2015 Testimony, Mr. Donkin repeated his 2013 arguments regarding USB-related topics and provided updated versions of his 2013 exhibits. Donkin 2015 Testimony, pp. 4:1-10:7, 11:1-16:9. Although not entirely clear, with regard to topics 2 and 3, it appears that Mr. Donkin is asserting the funding for the programs is too high or that rates for natural gas USB activities are too high. Neither of those issues are properly in this docket. Because this portion of Mr. Donkin's testimony is irrelevant, it is not admissible, and the Commission should strike it.

In consolidated Docket Nos. D2004.7.99, D2004.12.192, and D2005.6.106, Order No. 6679e, the Commission established funding levels for all of the natural gas USB programs and a mechanism for annual tracking on natural gas USB charges and expenses. For periods relevant to these consolidated dockets, NorthWestern made required annual filings in Docket Nos. D2012.3.32, D2013.3.20, and D2014.4.30. The MCC was a party to

each of those dockets. The MCC did not advocate for any change in the allocation of natural gas USB funds and for any adjustment to the overall level of natural gas USB funding in any of those dockets. The Commission has issued final orders in those dockets, Order No. 7243a in Docket No. in D2012.3.32 and Order No. 7354a in Docket Nos. D2013.3.20 and D2014.3.30.

This is a contested case. The Commission is bound to follow the Montana Rules of Evidence. § 2-4-612(2), MCA. Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Mont. R. Evid. 401. Evidence which is not relevant is not admissible. Mont R. Evid. 402. NorthWestern’s out-of-pocket expenses for its natural gas USB programs are not of any consequence to this docket. The Commission has already issued final orders concerning those expenses. NorthWestern’s allocation of funds to specific USB programs is not of any consequence to this docket. Order No. 6679e controls NorthWestern’s allocation of funds. Since none of the issues with respect to Mr. Donkin’s topics 2 and 3 are, or even properly could be, at issue in this docket, Mr. Donkin’s testimony on these issues is irrelevant and inadmissible. The Commission should strike it for that reason. Furthermore, if the Commission grants NorthWestern’s motion to reserve the issue stated above, Mr. Donkin’s testimony on topic 1 is irrelevant and also should be stricken.

Additionally, Mr. Donkin appears to be making a late collateral attack on prior Commission orders. The Commission decided these matters. The MCC, a party to the dockets in which the Commission made its decisions, chose not to advocate in those dockets. Now the MCC seeks to engage in a piecemeal attack against those prior orders. A collateral attack on a Commission order should only be possible if the Commission order was void on its face or if the Commission did not have jurisdiction over the matter. *C.f.*, *Glickman v. Whitefish Credit Union Ass’n*, 1998 MT 8, ¶ 13, 287 Mont. 161, 951 P.2d 1388. The Commission had jurisdiction to issue Order Nos. 6679e, 7243a, and 7354a. Nothing in the orders indicates that they are void on their face. The Commission should not permit the MCC to fail to advocate in the appropriate dockets and now to make a collateral attack on the Commission’s orders in those dockets.

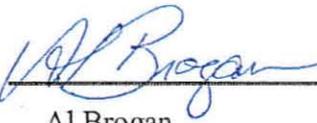
Request for Relief

For the reasons stated above NorthWestern respectfully requests that the Commission issue orders:

1. Reserving the issue of NorthWestern's recovery of lost revenues related to USB activities until after the Commission has issued a final order in Docket No. D2014.6.53;
2. Strike the following portions of the Donkin 2013 Testimony:
 - a. Page 4, line 10 through page 16, line 14, and associated exhibits;
3. Strike the following portions of the Donkin 2015 Testimony:
 - a. Page 4, line 1 through page 10, line 7; and
 - b. Page 11, line 1 thorough page 17, line 9

RESPECTFULLY SUBMITTED this 24th day of April 2015.

NORTHWESTERN ENERGY

By: 

Al Brogan
Ross Richardson
Attorneys for NorthWestern Energy

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of NorthWestern Energy's Motion for the Montana Public Service Commission to Reserve Issue and Motion to Strike Testimony of George L. Donkin on Behalf of the Montana Consumer Counsel in Docket Nos. D2013.5.34/D2014.5.47. This will be hand delivered to the Montana Public Service Commission and Montana Consumer Counsel and also e-filed with the Montana Public Service Commission. It will also be served upon the following persons by postage prepaid via first class mail as follows:

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DATED this 24th day of April 2015.

