

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

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IN THE MATTER OF NorthWestern Energy's) REGULATORY DIVISION
Application for Approval of Unreflected Gas)
Cost Account Balance and Projected Gas Cost,) DOCKET NO. D2013.5.34
and Gas Transportation Adjustment Clause)
Balance) DOCKET NO. D2014.5.47

**MONTANA CONSUMER COUNSEL RESPONSE TO NORTHWESTERN
ENERGY'S MOTIONS TO RESERVE ISSUE AND STRIKE TESTIMONY**

Montana Consumer Counsel (MCC) submits the following Response to NorthWestern Energy's (NWE, or Company) April 24, 2015, "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" (Motion). The Commission should deny these motions for the reasons set forth below.

Motion to Strike

NWE's Motion is built on a false premise. It cites, at p. 5, the three topics that MCC Witness, George Donkin, indicated in his introductory material he would address: increased tracker revenues related to USB-related lost revenue claims, out-of-pocket expenses associated with "E+ Free Weatherization" USB programs, and out-of-pocket expenses associated with "E+ Energy Audit for the Home" USB programs. With respect to the latter two topics, Mr. Donkin explains that they relate to his recommendation on USB-related lost revenues in that they "represent() further support for my recommendation that the Commission reject NWE's request to include estimated lost revenues from USB activities in its recoverable gas costs in these consolidated dockets

and in future filings.” Donkin March 18, 2015, Pre-Filed Testimony, 17:5-9. Nowhere does Mr. Donkin recommend changing funding or allocations for USB programs.

Despite this testimony, NWE claims it is “not entirely clear” whether Mr. Donkin is making recommendations with respect to the funding of the programs, the last two topics of his outline. It nevertheless jumps to the unwarranted conclusion that Mr. Donkin’s testimony is irrelevant and inadmissible because USB funding levels and allocation are not at issue in this docket. That the point of Mr. Donkin’s testimony seems unclear to NWE is reason enough to reject the extreme result of striking testimony nearly in its entirety. It is not reasonable that one can claim to not understand testimony, and at the same time move to strike it as irrelevant. Moreover, it is clear from reading Mr. Donkin’s testimony, and his recommendations, that it relates only to treatment of USB-related lost revenues which are clearly relevant as discussed below and tacitly admitted by NWE. It is entirely irrelevant and off point that the Commission has issued orders in other dockets establishing USB program funding and allocations, and MCC does not in any way seek to “attack” those prior orders, as NWE suggests. The Commission should reject NWE’s strawman argument, and deny its motion to strike.¹

Finally, NWE summarily states that, if its motion to reserve (discussed below) is granted, testimony on ‘topic 1’, i.e. USB-related revenues, is irrelevant and should be stricken. The reasons to deny NWE’s motion to reserve are discussed below. However, even if the Commission decided such a procedure is proper here, the testimony would not become irrelevant. A determination regarding it would simply be postponed.

Motion to Reserve Issue

Docket No. D2013.5.34 was filed on May 31, 2013, nearly two years ago. Substantial references were made to natural gas USB programs and USB-related revenues in that filing. In fact, four NWE witnesses addressed these topics in depth. NWE witness

¹ Because it should be entirely rejected, the Commission need not address the details of NWE’s Motion. Its breadth is surprising, however. NWE would allow only part of the introduction and the conclusion of Mr. Donkin’s 2013 testimony. It is even proposing, e.g., to strike the simple observation that “One of the components for Commission approval is the estimated lost revenues that result from its estimates of Dkt reductions in natural gas usage ...” This topic is covered extensively in NWE testimony in these dockets.

Thomas specifically explained that the purpose of his testimony is, in part, to testify to “lost revenues associated with DSM and USB program activities.” May 31, 2013 filing at WMT-3, 1.17. The 965 page SBW Consulting report regarding USB programs was also filed as an exhibit.

A Notice of Application and Intervention Deadline was issued June 19, 2013, establishing an intervention deadline of July 30, 2013. MCC intervened and filed testimony on November 27, 2013, clearly joining and highlighting the issue of USB-related lost revenues. Mr. Donkin specifically referenced the statutory mandate associated with USB expenditures and its relationship to NWE incentives. Donkin November 27, 2013, testimony, 16:9-14.

NWE’s recent motion to reserve² rests on a year-old settlement wherein the Commission agreed to withdraw certain findings it had made related to LRAM in an electric tracker and raise them in a separate docket. The Commission is, of course, free to withdraw an issue it raised itself in the 2013 tracker, and agree not to raise it in a future tracker. MCC was not a party to and took no position with respect to that settlement for the simple reasons that MCC had not raised this issue in the proceeding to which it pertained, and that the settlement did not control the rights of interested parties to raise relevant issues in proceedings where NWE was asking the Commission to make a determination of parties’ rights. These gas tracker dockets are such proceedings. MCC has filed substantial testimony on the focused issue of USB-related lost revenue recovery, a topic raised by NWE in both applications. Striking that testimony or reserving the issue for another proceeding that is now near the end of its own procedural schedule with most filing dates in the past would be prejudicial and would arguably lead, at this late date, to a

² NWE cites two instances where it argues the Commission has established precedent for reserving issues. The MDU case, D2010.8.82, involves a situation where the Commission had itself raised an issue regarding inverted block rates in D2007.7.79. When all parties settled that case, the Commission “reserved” its own issue for future consideration. A final rate order was issued, however. Order 6846f, ¶ 34. In the NWE tax tracker case, D2005.12.170, the Commission again raised an issue (transmission tax allocation). It concluded that the record was lacking, and disallowed recovery pending additional testimony. NWE subsequently filed the supplemental testimony in the same docket, not a separate proceeding. These were not cases where the Commission was “reserving” issues raised by parties.

less developed record.³ NWE is in no way prejudiced by continuing to consider this issue in these dockets; it recently filed 28 pages of rebuttal testimony on the subject. Prefiled Testimony of Joe Schwartzberger, April 24, 2015. On the other hand, acceptance of NWE's Motion at this point would deprive MCC of the opportunity to file this testimony in the Commission's LRAM docket.

For the foregoing reasons, the Commission should deny NWE's motions to strike and reserve issues.

Respectfully submitted May 11, 2015.


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³ NWE notes that HRC/NRDC is not a party to these dockets. This was HRC/NRDC's decision. As noted above, the USB lost revenue issue was raised extensively by NWE in its May 2013 filing, and joined by MCC in November 2013 testimony. No requests to intervene, timely or untimely, were made in all this time. NWE argues in its own motion that "the Commission should not permit the MCC to fail to advocate in the appropriate dockets ..." Motion, p. 6. This principle should be equally applied.