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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 REPLY TO MONTANA CONSUMER COUNSEL’S
RESPONSE TO MOTION TO RESERVE ISSUE AND STRIKE TESTIMONY**

NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern”) respectfully replies to the Montana Consumer Counsel’s (“MCC”) Response to NorthWestern Energy’s Motion to Reserve Issue and Strike Testimony (“Response”).¹

¹ Procedural Order No. 7282c provides, in part, “If the movant wishes to reply it must file and serve its reply brief within five (5) calendar days of service of the response brief.” ¶20

Background

On April 24, 2015, NorthWestern filed its 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”). NorthWestern requested that the Montana Public Service Commission (“Commission”) reserve 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 (“LRAM Docket”) and strike Mr. Donkin’s testimony related to that issue and related to NorthWestern’s out-of-pocket expenses for its natural gas USB programs. On May 11, 2015, the MCC filed an untimely² Response to the Motion. The Commission should disregard the MCC’s Motion that was filed ten days after the seven-day period allowed.

Motion to Reserve Issue

NorthWestern maintained that the Commission should reserve the issue of NorthWestern’s recovery of lost revenue related to USB activities in this docket because it will have a more full record on this issue in the LRAM Docket (Motion, p. 4) and because reserving the issue will serve administrative efficiency.

The MCC incorrectly argues that the Motion “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.” Response, p. 3. NorthWestern’s motion actually is based on the following:

- The Commission is currently conducting a comprehensive review of LRAM in another docket;
- The MCC has filed three rounds of testimony in the LRAM Docket addressing a broad range of LRAM-related issues, chose not to file rebuttal testimony in that docket, and still has the opportunity to file additional issues response testimony;
- NorthWestern has filed four rounds of testimony in the LRAM Docket, and still has the opportunity to file additional issues response testimony;

² “A responding party must file and serve its response brief within seven (7) calendar days of service of the motion.” Procedural Order No. 7282c, ¶ 20. The deadline for the MCC to file a response to the Motion was May 1, 2015.

- The Natural Resources Defense Council, and Human Resource Council – District XI have filed three rounds of testimony in the LRAM Docket, chose not to file rebuttal testimony in that docket, and still has the opportunity to file additional issues response testimony;
- Discovery has been conducted after each round of testimony in the LRAM Docket; and
- The order in the LRAM Docket should inform the Commission’s decision with respect to this issue in this docket.

MCC argues that striking Mr. Donkin’s testimony or reserving the issue for another proceeding that is now near the end of its own procedural schedule (the LRAM Docket) would be prejudicial and would arguably lead, at this late date, to a less developed record. Response, pp. 3-4. With the opportunity for five rounds of simultaneous testimony each followed by discovery in the LRAM docket, it is hard to imagine the possibility of a “less developed record”.

Rather than acknowledging these concerns and recognizing that the initiation of the LRAM Docket changes the landscape, the MCC merely represents that it has filed substantial testimony on the issue in this docket, that NorthWestern has filed testimony in this docket, and that reserving the issue would somehow deprive the MCC of the opportunity to file this testimony in the LRAM Docket. As shown above, MCC has also filed substantial testimony in the LRAM Docket, including testimony regarding lost revenue related to USB activities. If MCC felt it was important to further develop its position on recovery of USB related lost revenues in the LRAM docket, it clearly has had that opportunity. NorthWestern stated that its filed testimony rebutting Mr. Donkin would be withdrawn in this docket if the lost revenue issue is reserved. Motion, p. 2. Finally, the MCC acknowledges that if the issue is reserved, “the determination regarding [the issue] is simply postponed” which negates their deprivation argument. Response, p. 2. The MCC totally ignores the substantial burden the repeated litigation of similar issues places on the Commission, NorthWestern, and other parties; the MCC insists that it is entitled to at least three bites at the apple of LRAM policy issues. It is premature to consider lost revenues now when the identical issue is being thoroughly discussed in another ongoing docket

specifically opened to address lost revenues.

The Commission should support fairness and the public interest by reserving the issue in this docket and resolving it after the Commission issues a final order in the LRAM docket that will be based on a fully developed record.

Motion to Strike

NorthWestern requested that the Commission strike the portions of Mr. Donkin's testimony that relate to his self-identified 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.

Motion, p. 5. The MCC states that this testimony "relates only to treatment of USB-related lost revenues." Response, p. 2. The MCC offers no rationale as to how or why actual out-of-pocket expenses are relevant to the USB-related lost revenues. Absent such rationale, the Commission should strike the portions of Mr. Donkin's testimony identified by NorthWestern.

Request for Relief

For the reasons stated above and in its Motion, NorthWestern respectfully requests that the Commission issue orders:

1. Disregarding the MCC's Response as out-of-time and granting NorthWestern's unopposed Motion, or alternatively,
2. 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; and
3. Striking the portions of Mr. Donkin's testimony identified in the Motion.

RESPECTFULLY SUBMITTED this 15th day of May 2015.

NORTHWESTERN ENERGY

By:  _____

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of NorthWestern Energy's Reply to Montana Consumer Counsel's Response to Motion to Reserve Issue and Strike Testimony 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 15th day of May 2015.


