

Service Date: September 4, 2014

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

IN THE MATTER OF NorthWestern Energy's)
Application for Approval of Unreflected Gas)
Cost Account Balance and Projected Gas Cost,)
and Gas Transportation Adjustment Clause)
Balance)
REGULATORY DIVISION
DOCKET NO. D2013.5.34
ORDER NO. 7282c

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

PROCEDURAL ORDER

1. On May 31, 2013, NorthWestern Corporation, doing business as NorthWestern Energy (NorthWestern), filed its *Application for the 2013 Unreflected Gas Cost Account ("UGCA") Balance and Projected Gas Cost; and Gas Transportation Adjustment Clause ("GTAC") Balance* with the Montana Public Service Commission (Commission).

2. On June 18, 2013, the Commission issued *Interim Order 7282* temporarily granting NorthWestern's 2013 application.

3. On August 8, 2013, The Montana Consumer Counsel was granted intervention in in the 2013 Natural Gas Supply Tracker Docket.

4. On March 14, 2014, NorthWestern filed a *Motion to Defer Proceedings and Consolidate this Docket with the 2014 Natural Gas Supply Tracker Docket*.

5. On May 29, 2014, NorthWestern Energy (NorthWestern) filed its *Application for Approval of Unreflected Gas Supply Cost Account Balance for the 12-Month Period Ending June 30, 2014 and Projected Gas Cost Tracking for the 12-Month Period Ending June 30, 2015; and Gas Transportation Adjustment Clause (GTAC) Balance as of April 30, 2014* with the Commission.

6. The Commission issued a *Notice of Application and Intervention Deadline* on

June 16, 2014.

7. On June 10, 2014, the Commission approved a *Notice of Commission Action* consolidating NWE's 2014 and 2013 Natural Gas Tracker Filings in Dockets D2013.5.34 and D2014.5.47.

8. On June 18, 2014, the Commission issued *Interim Order 7282b* temporarily granting NorthWestern's 2014 application.

9. This Procedural Order (Order) is effective immediately and remains effective unless modified by the Commission or staff. Nothing in this Order limits the right of the Commission or its staff to inspect the books, accounts, papers, records and memoranda of NorthWestern at any time. Mont. Code Ann § 69-3-106 (2013). A party may seek reconsideration of this Order within ten (10) days of its service date. Admin. R. Mont. 38.2.4806 (2014).

Schedule

10. This Order sets the discovery schedule for these dockets. The following pre-filed testimony and discovery must be filed at the Commission and served on all parties by the following deadlines:

- (a) September 26, 2014: Final day for written discovery (includes data requests) to utility on utility's 2014 Application.
- (b) October 10, 2014: Final day for utility to respond to discovery on utility's application.
- (c) October 24, 2014: Final day for initial prefiled testimony from intervenors.
- (d) November 7, 2014: Final day for written discovery on intervenor prefiled testimony.
- (e) November 14, 2014: Final day for the Commission to identify additional issues.*
- (f) November 21, 2014: Final day for intervenors to respond to written discovery on prefiled testimony.
- (g) December 5, 2014: Final day for utility rebuttal testimony and intervenor response testimony, if any, to intervenor prefiled testimony from both the 2013 and 2014 dockets.
- (h) December 12, 2014: Final day for discovery on utility rebuttal testimony and intervenor response testimony, if any.

- (i) December 19, 2014: Final day for utility to respond to discovery on utility rebuttal testimony and intervenors to respond to discovery on intervenor response testimony, if any.
- (j) January 7, 2015: Final day for Prehearing Memorandum.
- (k) January 22, 2015: Hearing commences and continues from day to day until concluded.

* If the Commission identifies additional issues it will issue a modified procedural order and schedule, likely changing some of deadlines f through k.

Service and Filing

11. A party must serve a copy of every pleading, motion, brief, objection, data request or response, and other document it files in this proceeding on every other party. Upon e-filing a document with the Commission, the filing party must email a copy of the document to counsel of record. In order to file a document with the Commission, a party must: (1) Submit the document electronically (e-file) on the Commission's website at <http://psc.mt.gov> ("Account Login/Registration" under "Electronic Documents" tab); and (2) physically deliver or mail the original document to the Commission at 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. The Commission will not post an e-filed document to its website until it receives the original from the filing party. Upon posting a Commission-generated document to the website, the Commission will e-mail the document to counsel of record. Service or filing by means of facsimile is prohibited. Service by mail does not extend a deadline. When emailing large and possibly undeliverable files, the Commission encourages the sending party to alert the receiving party of the impending file and the receiving party to respond if the file is not received in a reasonable amount of time; this encouragement does not alter the obligations detailed in this paragraph. This paragraph does not apply to protected material.

Intervention

12. The deadline for intervention in this proceeding was May 8, 2014. An entity seeking late intervention must file a petition to intervene setting forth: (1) The general position that it intends to take; (2) a legally protectable interest directly affected by this proceeding; (3) whether late intervention would delay the proceeding or prejudice another party; and (4) good cause for not having filed a timely petition. Late intervention will become effective only upon

action of the Commission.

Discovery

13. “The exchange of information among parties pursuant to data requests is the primary method of discovery in proceedings before the [C]ommission.” Admin. R. Mont. 38.2.3301(2). The Commission directs parties to use the following guidelines for data requests:

- a. Assign a unique, consecutive number to each data request (e.g., MCC-001), regardless of the party to whom the request is directed (e.g., the Commission may direct PSC-001 through 008 to NorthWestern, PSC-009 through 016 to an intervenor, and PSC-017 through 019 again to NorthWestern).
- b. At the beginning of each data request, consistently describe its subject in five words or less. In addition, a party may direct the request to a particular witness or include citations to exhibits or testimony.
- c. For multi-part requests, use lower case letters (a-e) to denote up to five parts.
- d. The following are examples of acceptable data requests:

PSC-006 RE: Purchased Gas Contracts
 Witness Doe, JBD-4:13-15.

Please provide the origination and expiration date for each contract.

PSC-007 RE: Bypass
 Witness Roe, FAR-14:11-26.

- a. What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

14. Objections to data requests must be filed along with answers at the response deadlines established in this Order. Objections must be sufficiently specific for the Commission to adequately rule on whether to sustain or object. The responding party need not object if an answer has been provided to a discovery request. If the requesting party finds the response inadequate, they may file a motion to compel (see Paragraph 15). Only objections based on discoverability will be considered; objections on admissibility will be overruled. The failure to

object to a data request does not waive the right to subsequently object to the admissibility of the information provided in response. The Commission may schedule oral argument before ruling on an objection.

15. If a response to a data request fails to answer the request, the discovering party may move no later than fourteen (14) calendar days after service of the response for an order compelling an answer. The motion, which the party must file with the Commission and serve on all parties, must identify the relief requested. The responding party may file a brief in opposition within fourteen (14) days of service of the motion to compel. The Commission may schedule oral argument before ruling on a motion to compel, and will set a new response deadline if it grants the motion.

16. If a data request seeks privileged information, the responding party must file a privilege log by the deadline to respond with sufficient information for the Commission to determine whether the privilege applies.

17. If a data request seeks trade secret information, a motion for a protective order must be filed at the time the data request response is due.

18. A party may submit a data request after a deadline established in this Order either by agreement of the parties or with approval of the Commission upon a showing of good cause that addresses why the discovering party missed the deadline.

19. In response to a party's failure to answer a data request, the Commission may: (1) Refuse to allow it to support or oppose related claims; (2) prohibit it from introducing related evidence; (3) strike pleadings, testimony, or parts thereof; (4) stay the proceeding until the request is satisfied; or (5) dismiss the proceeding, or parts thereof.

Pre-hearing Motions, Conferences and Memoranda

20. A party must make a pre-hearing motion, including a motion to strike pre-filed testimony, at the earliest possible time. A responding party must file and serve its response brief within seven (7) calendar days of service of the motion. 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. Upon the request of a party, the Commission may allow oral argument on a pre-hearing motion.

21. The Commission may schedule a pre-hearing conference at any time prior to the hearing to discuss the possibility of settlement in whole or in part, simplification of the

remaining issues through admissions of fact, and any other matters that may expedite the hearing.

22. Unless the parties agree to file jointly, each party must file and serve a pre-hearing memorandum listing the following information regarding the hearing: (1) Uncontested issues; (2) contested issues; (3) witnesses it intends to call; (4) exhibits and discovery it intends to introduce; and (5) any special accommodations it seeks regarding witness sequence or scheduling. If a party intends to introduce a discovery response, it must identify the number of the request, the responding witness, and the issue addressed.

Hearing

23. The hearing will be conducted as a contested case proceeding pursuant to the Montana Administrative Procedures Act. *See, e.g.*, Mont. Code Ann. § 2-4-612. Because each party is entitled to reasonable notice of what issues will be addressed at the hearing, the Commission may not allow a party to raise an issue at a hearing unless it is reasonably related to an issue previously identified in the proceeding.

24. Prior to the hearing, the parties must arrange with the court reporter and Commission staff to consistently mark all proposed exhibits, responses to data requests, and pre-filed testimony for reference.

25. A party must make each person that authored a data request response available for cross-examination at the hearing unless the Commission approves an agreement among the parties to waive cross-examination. A witness need not recite pre-filed testimony before counsel moves to admit the testimony into the record. Parties may object to the admission of evidence into the administrative record regardless of whether an objection on the same issue was raised in discovery.

26. When a party seeks to cross-examine a witness based on a document not previously filed in this proceeding, it must make copies of the document available to each Commissioner, party, and staff member, unless it shows good cause why copies are not available. A party seeking to introduce a document not previously filed in this proceeding must also provide a copy of the document to the court reporter.

27. At the discretion of the Commission, members of the public may comment on the proceeding at the hearing.

DONE AND DATED this 4th day of September 2014, by delegation to Commission staff as an Order of the Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

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