

Service Date: May 13, 2016

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
	)	ORDER NO. 7283h
IN THE MATTER OF NorthWestern	)	
Energy's 2013-2014 Electricity Supply	)	DOCKET NO. D2014.5.46
Tracker	)	ORDER NO. 7283h

**FINAL ORDER**

**APPEARANCES**

**FOR THE APPLICANT:**

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**FOR THE INTERVENORS:**

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*Human Resource Council, District XI, and Natural Resources Defense Council*  
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**FOR THE COMMISSION:**

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BEFORE:

Brad Johnson, Chairman  
Travis Kavulla, Vice Chairman  
Roger Koopman, Commissioner  
Bob Lake, Commissioner  
Kirk Bushman, Commissioner

**PROCEDURAL HISTORY**

1. NorthWestern Corporation, doing business as NorthWestern Energy (“NorthWestern” or “Company”), filed its 2012-2013 *Application for Approval of Electricity Supply Cost Account Balance and Projected Electric Supply Cost* (“2012-2013 Tracker”) on May 31, 2013 with the Montana Public Service Commission (“Commission”). The Commission issued *Interim Order 7283* on June 18, 2013 and granted intervention to the Montana Consumer Counsel (“MCC”), Natural Resources Defense Council and Human Resource Council District XI on August 2, 2013.
2. The Commission consolidated the 2012-2013 Tracker and the soon to be filed 2013-2014 *Application for Approval of Electricity Supply Cost Account Balance and Projected Electric Supply Cost* (“2013-2014 Tracker”) on May 6, 2014. Notice of Commn. Action, Dkt. D2013.5.33 (May 12, 2014). NorthWestern filed its 2013-2014 Tracker on May 29, 2014.
3. On May 31, 2014, the Commission issued a *Notice of Application and Intervention Deadline*, setting an intervention deadline for the 2013-2014 Tracker of July 18, 2014.
4. On June 18, 2014 the Commission issued *Interim Order 7283a*, approving NorthWestern’s proposed rates in the 2013-2014 Tracker on an interim basis.
5. On August 19, 2014, the Commission granted general intervention to the Montana Environmental Information Center and Sierra Club (“MEIC”).
6. On October 22, 2014, the Commission issued *Procedural Order 7283b* for the consolidated trackers.
7. On December 19, 2014, Siemens Energy, Inc. (“SEI”) filed a *Motion to Intervene*, a *Motion for Protective Order and Brief in Support*, and the *Affidavit of John P. Musone*. MEIC filed a *Response to SEI’s Motion to Intervene and Motion for Protective Order* on December 26,

2014, reserving the right to challenge the protection of information alleged by SEI to be trade secret.

8. On January 7, 2015, PPL Montana, LLC (PPLM) filed a *Motion to Intervene for the Limited Purpose of Applying for Protective Order, Motion for Protective Order* and the *Affidavit of Charles S. Baker*.

9. On January 13, 2015, the Commission granted SEI's *Motion to Intervene* and *Motion for Protective Order*. Order 7283c, (Jan. 20, 2015). On February 5, 2015, the Commission granted PPLM's *Motion to Intervene* and *Motion for Protective Order*. Order 7283e (Feb. 5, 2015).

10. On February 27, 2015, the Commission issued *Amended Procedural Order 7283f*.

11. On May 8, 2015, MEIC filed the *Direct Testimony of David A. Schlissel* and the MCC filed the *Direct Testimony of George L. Donkin and John W. Wilson*.

12. On July 9, 2015, NorthWestern filed an *Unopposed Motion for an Extension*, seeking a one-week extension to file rebuttal testimony. On July 14, 2015, the Commission granted NorthWestern's motion and amended *Procedural Order 7283f*.

13. On July 24, 2015, NorthWestern filed rebuttal testimony.

14. On September 15, 2015, the Commission issued a *Notice of Public Hearing*. A public hearing was held in Helena on October 6-7, 2015.

15. On November 24, 2015, NorthWestern filed its *Post-Hearing Brief*. The MCC and the MEIC filed briefs on December 18, 2015 and December 22, 2015, respectively. On January 15, 2016, NorthWestern filed its *Reply Brief*.

16. This case was deemed submitted on January 15, 2016, following the filing of NorthWestern's *Reply Brief*. The Montana Administrative Procedures Act (MAPA) requires the Commission "to issue written decisions containing findings of fact and conclusions of law within 90 days of the submission of a contested case for decision." Mont. Code Ann. § 2-4-623(10)(2015). The Commission found good cause to extend the deadline to issue a final decision to May 16, 2016, for a total of 120 days. Good cause existed because the Commission had to closely review NorthWestern's consolidated Trackers and the Commission had several important decisions to issue around the same deadline.

## FINDINGS OF FACT

### Application

17. In NorthWestern's 2012-2013 Tracker application, NorthWestern proposed supply rates to collect revenues of \$387.358 million, in order to recover electricity supply costs of \$238.473 million; Colstrip Unit 4 ("CU4") fixed costs of \$75.916 million; CU4 variable costs of \$25.838 million; Dave Gates Generating Station ("DGGS") fixed costs of \$25.587 million; DGGS variable costs of \$12.215 million; Spion Kop fixed costs of \$6.246 million; and Spion Kop variable costs equaling \$83,795. Ex. NWE-21, internal exhibit (CAH-6), p. 4. NorthWestern also proposed deferred supply rates to amortize \$746,835 in prior period over-collections. Appl. p. 3 (May 31, 2013). The proposed rates represented an increase of \$2.60 million in revenues from prior rates. Ex. NWE-21, internal exhibit (CAH-6) pp. 2, 5. The Commission allows NorthWestern to adjust Electric Supply Rates monthly based on "rolling 12-month forecasts of default supply costs and loads." Order 6496f / 6574e, Dkt. D2003.6.77 and D2004.6.90, p. 57 (Dec. 14, 2005). Monthly tracker adjustments remain subject to annual review and approval or disallowance by the Commission.

18. In its 2013-2014 Tracker application, NorthWestern proposed rates that applied to forecasted load for the period July 2014 through June 2015, which were designed to recover electricity supply costs of \$218.563 million; CU4 fixed costs of \$75.995 million; CU4 variable costs of \$26.104 million; DGGS fixed costs of \$28.617 million; DGGS variable costs of \$12.043 million; Spion Kop fixed costs of \$8.705 million; and Spion Kop variable costs equaling \$17,976. Ex. NWE-25, internal exhibit (JSJ-6), p. 4. NorthWestern also proposed deferred supply rates to amortize \$32.044 million in prior period under-collections. Appl. p. 3 (May 1, 2014). The proposed rates represented an increase of \$40.05 million in revenues from prior rates. Ex. NWE-25, internal exhibit (JSJ-6) pp. 2, 5.

### Data Responses in Evidence

19. On September 18, 2015, parties submitted prehearing memoranda pursuant to *Procedural Order 7283f*. The MCC stated its intent to move for the introduction of all data request responses. MCC Prehr. Memo. p. 2 (Sept. 18, 2015). MEIC stated that it believed all data request responses should be moved into evidence and also stated its intent to specifically move for the introduction of: MEIC-005, 009, 011, 025, 026, 028, 039, 040, 043-051, 053, 060-

066, 069-084, 088, 090, MCC-015, 017, 018, 024, 056, 118, 141, 142, PSC-009, 051, 055, 059, 060, 064. MEIC Prehrg. Memo. p. 2 (Sept. 18, 2015).

20. On September 25, 2015, NorthWestern filed an *Objection to Introduction of Data Requests Into Evidence*. NorthWestern stated that under the Montana Rules of Evidence, only relevant evidence is admissible, and asserted that the Commission had not screened discovery requests and responses for admissibility. NorthWestern asserted that many discovery responses were not relevant to the issues in the proceeding, including some identified in MEIC's prehearing memorandum. On September 30, 2015, MEIC filed a *Response to NorthWestern Energy's Objection to Introduction of Data Requests Into Evidence*. MEIC stated that all of the data request responses it identified in its prehearing memorandum are relevant and admissible because they pertain to the replacement power costs NorthWestern sought to recover in the proceeding.

21. The specific data request responses MEIC identified in its prehearing memo were admitted into evidence without objection at the hearing. *Supra* ¶ 19; Hr'g. Tr. 21:12-18, 317:1-13 (Oct. 6, 2015).

22. The Commission stated at the hearing that if the parties were unable to reach a stipulation on the admissibility of the remaining data responses by October 19, 2015, the Commission would rule on the admissibility of the remaining responses in its final order. After reviewing the other data requests and responses, and the arguments made by the parties in the prehearing memoranda and during the hearing involving admissibility, the Commission declines to admit the following data responses on the grounds of relevance: PSC-003, 010, 012, 013(d), 013(e), 014, 015, 019-021, 024, 026, 027, 041, 044, 046, 049, 070, 072, 075, MEIC-010, 017, 021, 023, 024, 029, 030, 055, MCC-003, 011, 030. The MCC's motion is granted with respect to the remainder of the PSC, MEIC, NorthWestern, and MCC data requests and responses, which are relevant and therefore entered into the record.

### **Colstrip Unit 4 Outage**

#### **Background**

23. On May 5, 2013, CU4 was taken out of service for planned maintenance involving rotor removal and core inspection. PPLM, the plant operator at the time of the maintenance procedure, now Talen Energy Montana, LLC ("Talen"), contracted with Siemens

Power Generation, Inc. (“Siemens”) to perform the maintenance. Upon completion of the maintenance, CU4 was returned to service on June 27, 2013. On July 1, 2013, CU4’s generator went offline after experiencing a stator ground fault which caused significant damage to the generator core. Siemens repaired the damaged core by removing the rotor again and replacing and restacking the stator core laminations. This repair work kept CU4 out of service until January 23, 2014. The owners of CU4 include NorthWestern, Avista Utilities, PacificCorp, Portland General Electric, and Puget Sound Energy. The CU4 plant owners’ insurer, FM Global, covered \$26.5 million of the cost to repair the core. Ex. NWE-40 p. 4:12-15; Hr’g. Tr. 261:23-25.

24. NorthWestern did not initially provide testimony in its 2013-2014 Tracker application accounting for the incremental cost of replacing CU4 generation during the period the plant was out of service due to the core failure. After it had filed its application to recover these incremental costs, and after Commission staff estimated a possible incremental cost of \$11.135 million, NorthWestern eventually provided an estimate of \$8.243 million. Ex. NWE-34 p. 11:1-2; Ex. MCC-4 p. 14:6-12.

25. Talen retained Ronald Halpern and Robert Ward, engineers specializing in large electric generators, to perform a root cause analysis of the outage which was completed on November 18, 2013. Ex. NWE-38 pp. 5:18-6:3. The root cause analysis concluded that a combination of inadequate interlaminar insulation and damage from the rotor, skid pan, or air gap baffles during generator reassembly likely caused stator laminations to short, generating heat that further damaged the core by melting laminations. *Id.* at 7:5-16, internal exhibit RAH-4 p. 1.

26. An ownership and operating agreement (Operating Agreement) between NorthWestern and the other Colstrip Unit 3 (“CU3”) and CU4 owners speaks to consequential damages, including replacement power costs, in the event of a maintenance-related outage. Data Response (“DR”) MCC-19 (Nov. 7, 2014). Under the operating agreement, each of the plant’s owners or users releases all other owners or users and their respective agents from any consequential damages, including any replacement power costs, arising out of the operation, maintenance, or repair of the plant. *Id.* at Attach. sec. 3, amend. 2, p. 23.

27. In addition, a supply and service agreement between Siemens and Talen, which governed both the initial maintenance and the subsequent core repair, speaks to consequential damages. According to that agreement, these parties agree that neither party, nor its suppliers,

will be liable for indirect, special, incidental or consequential loss or damage, including fuel cost and cost of purchased or replacement power. DR MEIC-69 p. 40 (Aug. 12, 2015).

28. Talen and NorthWestern operate their respective shares of CU3 and CU4 according to a reciprocal sharing agreement. DR MCC-24 Attachment 1 (Nov. 7, 2014). Under this agreement, NorthWestern and Talen each have rights to 15 percent of the generating capacity at CU3 and CU4. *Id.* at 2. As a result, while CU4 was out of service, each party lost 111 megawatts (“MW”) of production. Ex. NWE-33 p. 9:18-23.

### Summary of Parties’ Positions

29. NorthWestern acknowledged that CU4 tripped off line due to a stator ground fault on July 1, 2013 and that the plant returned to service on January 23, 2014 following repairs. *Id.* at 9:9-14. The Company reported that it relied on market purchases and Basin Creek to replace lost production from CU4. NorthWestern did not quantify the cost of replacing lost production from CU4 or present a reasoned analysis justifying the prudence of the replacement power costs in its initial application in Docket D2014.5.46. *Id.* at 10:19-23.

30. The MCC testified that according to NorthWestern, the outage was caused in part or in whole by work performed by Siemens on the generator during the planned overhaul. Ex. MCC-4, p. 6:3-13. The MCC also testified that NorthWestern failed to determine whether the plant operator, Talen, believes that any of the work performed on the generator during the planned overhaul was done improperly, negligently, or outside of industry standards. *Id.* at 7:1-18. The MCC noted that NorthWestern also failed to conduct its own evaluation of whether the planned maintenance procedure that caused the outage was performed improperly, negligently, or outside of industry standards and that it would have been prudent for NorthWestern to determine whether these performance conditions were met prior to seeking recovery from ratepayers. *Id.* at 8:1-9:4.

31. The MCC testified that NorthWestern failed to determine whether it could recover replacement power costs from Siemens or any other party, and that it would have been prudent to make those determinations before requesting recovery from customers. *Id.* at 12:1-13:1-10.

32. The MCC also criticized NorthWestern for not evaluating insurance coverage for replacement power costs prior to the outage. The MCC pointed out that in *Order 7219h*, addressing an outage at the DGGs, the Commission determined that NorthWestern’s failure to

evaluate outage insurance prior to the outage was imprudent. *Id.* at 11:1-10. The MCC also noted that NorthWestern had not proposed a Tracker adjustment to reflect \$120,000 in cost savings from furloughing 36 workers for 90 days during the outage. *Id.* at 15:13-16:9.

33. The MCC testified that the Commission authorized NorthWestern to acquire CU4 based on an expectation that the resource would protect customers from market risk. *Id.* at 16:10-20. Therefore, according to the MCC, it would be reasonable to allow recovery of replacement power costs up to the total fixed and operating costs of CU4, but not more than that amount. *Id.* at 10:20-11:6. The MCC asserted that the Commission should either deny recovery of replacement power costs, or allow partial recovery once NorthWestern clearly demonstrates the prudence of such costs. *Id.* at 17:17-18:1.

34. MEIC observed that although the root cause analysis did not find Talen negligent or imprudent with respect to the core damage that occurred during the generator overhaul procedure, it was silent with respect to imprudence or negligence on the part of Siemens, the entity that performed the overhaul. Ex. MEIC-1, pp. 3:6-14 and 12:12-13:6. MEIC asserted that it was imprudent for NorthWestern to seek recovery of replacement power costs from its customers before determining whether there was cause for action against Siemens. *Id.* at 4:6-10.

35. MEIC also testified that business interruption insurance or outage insurance would have protected customers from replacement power cost risk, and that NorthWestern failed to evaluate the availability, cost, and potential benefit of such insurance before the outage. *Id.* at 17:2-17. MEIC faulted NorthWestern for not evaluating such insurance given that CU4 experienced a forced outage in 2009 and has experienced significant problems since. MEIC maintained that because customers are obliged to continue paying for the plant's significant fixed costs during plant outages, they deserve economically justifiable protection from replacement power costs. According to MEIC, NorthWestern's failure to evaluate outage insurance provides sufficient grounds for denying recovery of replacement power costs that could have been insured. *Id.* at 4:13-5:20 and 17:12-21:5.

36. Like the MCC, MEIC faulted NorthWestern for not accounting for reductions in operation and maintenance ("O&M") expenses resulting from the outage, such as cost savings from the furloughing of 36 workers for approximately three months during the outage. *Id.* at 5:21-6:7 and 21:7-23-10; MCC- 4 15:15-16:9.

37. In rebuttal testimony, NorthWestern contended that the Commission previously recognized in *Final Order 7219h* issued in Docket D2012.5.49 that replacement power costs are electricity supply costs and that Montana law requires the Commission to allow full recovery of such costs if they were prudently incurred. Ex. NWE-35, pp. 4:5-5:5.

38. NorthWestern asserted that if outage insurance is considered an alternative to replacement power costs, the cost of that insurance would need to be included in rates. *Id.* at 5:15-21. NorthWestern contended that utilities do not typically obtain outage insurance to hedge replacement power cost risks because it involves large deductibles, exclusions, policy limits, and recovery restrictions based on market fluctuations that make it difficult to justify the cost. Ex. NWE-37, p. 14:5-15. NorthWestern stated that independent power producers and utilities that own nuclear plants are more likely to purchase outage insurance than a typical utility. *Id.* at 14:17-15:15.

39. NorthWestern testified that it acted prudently in not evaluating outage insurance options in connection with the scheduled CU4 outage because it is well known in the industry that such insurance is not cost effective. *Id.* at 15:17-16:8. According to NorthWestern, at the time of the 2013 outage none of the other plant owners were purchasing outage insurance. The company however, did not provide affidavits or other documentation to this effect. Ex. NWE-40, p. 9:4-7. NorthWestern acknowledged that some power plant owners buy outage insurance in order to satisfy particular financing requirements. Ex. NWE-37, pp. 14:20-15:3. In addition, NorthWestern stated that CU4 has performed well since the Company acquired it, when accounting for the effect of the reciprocal sharing agreement. The plant's combined equivalent availability factor ("EAF") was 81.41 percent during the period 2009-2014, even with the outages in 2009 and 2013. For the period 2005-2014, the plant's combined EAF was 85.02 percent, and for the period 1995-2004 it was 84.38 percent. NorthWestern states that the plant's EAF from 2009-2014 is less than 3 percent below the 24 year average of 84.34 percent. Ex. NWE-40, pp. 5:9-6:5.

40. NorthWestern asserted that the only possible way the damage that caused the outage could have been detected was with a robotic inspection or a second electromagnetic core imperfection detector ("El Cid") test after rotor insertion, but before air gap baffle insertion, neither of which are industry standard. DR MEIC-080 (Aug. 12, 2015); DR PSC-060(b) (Aug.

28, 2015). NorthWestern admitted that rotor insertion can cause damage but asserted it rarely occurs and is unforeseeable. Ex. NWE-38, p. 13:9-10.

41. NorthWestern contended that a damage claim against Siemens would be unsuccessful because NorthWestern is not a party to the contract governing Siemens' maintenance work on CU4. According to NorthWestern, absent a direct contractual relationship, it would not have been prudent for NorthWestern to pursue an action against Siemens. Ex. NWE-36, p. 7:2-11. NorthWestern further asserted that it would be futile and imprudent to pursue action against Talen because the ownership and operation agreement releases all plant owners from consequential damages relating to replacement power costs. *Id.* at 9:5-10:10.

42. NorthWestern asserted that waivers of consequential damages, such as those in the supply and service agreement between Siemens and Talen, are industry standard and that such waivers are routinely included in major equipment repair and construction contracts in the power industry. Ex. NWE-37, pp. 8:17-9:11. According to NorthWestern, the risk to vendors and contractors of consequential damages is potentially unlimited and if vendors and contractors were required to absorb that risk the price of their services would contain a substantial contingency to mitigate their exposure. Therefore, waivers of consequential damages generally reduce costs for the plant owners. *Id.* at 12:24-13:16.

43. NorthWestern stated that the labor expenses affected by worker furloughs during the outage are not electricity supply costs. Rather, such costs are general O&M expenses which are addressed in general rate cases, not electricity supply cost trackers. NorthWestern noted that in Docket D2005.5.88, the Commission rejected a NorthWestern proposal to track labor costs for its Demand Side Management Program Coordinator on grounds that the costs were not electricity supply costs. Ex. NWE-35, 7:9-9:12; Final Order 6682d, ¶¶ 70-72 (July 11, 2006).

## COMMISSION DECISION

### Colstrip Unit 4 Outage

44. NorthWestern is required to manage electricity supply resources such as CU4 to mitigate risks, ensure rates are just and reasonable, and provide reliable service at the lowest long-term cost. Mont. Code Ann. § 69-8-419. Even after the Commission approves the acquisition of an electricity supply resource such as CU4, it may subsequently disallow rate recovery for the costs that result from the failure of a public utility to reasonably manage,

dispatch, operate, maintain, or administer electricity supply resources in a manner consistent with Mont. Code Ann. §§ 69-3-201, 69-8-419, and Commission rules.

45. The Commission must establish an electricity supply cost recovery mechanism that allows NorthWestern to fully recover prudently incurred electricity supply costs, subject to the provisions of Mont. Code Ann. §§ 69-8-419, 69-8-420, and Commission rules. Mont. Code Ann. § 69-8-210. The Montana Legislature has declined to define what costs are “prudently incurred” as a matter of law. Mont. Code Ann § 69-8-103. Instead, it delegated authority to the Commission, using agency expertise and fact finding mechanisms, to determine which costs are “prudently incurred” on a case-by-case basis. *See e.g.* DGGGS disallowance, Final Order 7219h. Generally speaking, in the public utility context, prudence involves exercising judgment and choosing those alternatives that a reasonable utility manager would choose in the same or similar circumstances given the same information. The Commission has clarified that “[t]he standard by which the PSC judges the prudence and reasonableness of actual electricity supply costs is what NorthWestern knew, or should reasonably have known, at the time it incurred the cost obligations.” Order 6836c, Dkt. D2007.5.46, ¶ 155 (June 3, 2008). Commission rules specify that “[p]rudent electricity supply resource planning and procurement includes evaluating, managing, and mitigating risks associated with the inherent uncertainty of wholesale electricity markets and customer load.” Mont. Admin. R. 38.5.8219(1) (2016).

46. In this case, NorthWestern seeks to recover from customers \$8.243 million for incremental CU4 replacement power expenses in addition to approximately \$21 million that customers already paid for the fixed costs of CU4, including an allowance for profit, during the six month period that the plant was not operational. Ex. NWE-9, internal exhibit (FVB-1) 13-14, p. 1:7 and internal exhibit NWE-21, internal exhibit (CAH-6) 13-14, p. 3:40 and DR MEIC-25 (March 6, 2015). Ironically, it is possible, NorthWestern’s proposal could allow the Company to collect more from ratepayers than if the outage had never occurred because it would fully recover the replacement-power costs and retain other cost savings while the plant was out of service. *Supra* ¶ 32.

47. A reciprocal sharing agreement with Talen reduced by half the generating capacity lost as a result of the outage, by providing that any loss at CU4 or CU3 would be shared between two co-owners, NorthWestern and Talen. DR MCC-024 (Nov. 7, 2014). This agreement was negotiated by the Montana Power Company (“MPC”) and PPLM in 1999, prior

to NorthWestern's acquisition of MPC assets in 2003. *Id.* NorthWestern became subject to the agreement through its purchase of part of CU4. In addition, property insurance purchased under the terms and conditions of the operating agreement protected CU4 owners from costs associated with repairing the core damage, but not from the need to replace the lost production during the outage. Hr'g. Tr. 261:19-263:2, DR MCC-024 (Nov. 7, 2014). Intervenors, including the MCC, made compelling arguments that NorthWestern could and should have taken additional steps, above and beyond the default protections in the reciprocal sharing and operating agreements, to identify and cost-effectively manage and mitigate CU4 outage risk.

48. The Commission's decision in this matter is based on several different reasons. First, the Commission finds that NorthWestern failed to demonstrate that it acted prudently in managing, operating and monitoring the plant. In fact, persuasive evidence exists regarding steps NorthWestern could have taken to mitigate or prevent the outage. Even ignoring this evidence, however, the absence of testimony from the plant operator, Talen, and the maintenance contractor, Siemens, rendered NorthWestern incapable of demonstrating the prudence of replacement power costs, given that the Company outsourced the responsibility to operate and maintain the plant to these entities. Second, the Commission finds, based on the record evidence, that NorthWestern failed to adequately mitigate the risks and costs of a possible outage as required by Mont. Code Ann. § 69-8-419. As a result, the incremental replacement power costs necessitated by the outage were not prudently incurred. Third, the Commission finds that the inclusion of the replacement power costs would not result in just and reasonable rates to NorthWestern's customers. Finally, NorthWestern failed to meet its burden of proof in this proceeding.

*Failure to reasonably manage, operate and monitor CU4*

49. CU4's generator core is composed of thousands of steel laminations stacked face-to-face and insulated from each other by an extremely thin (a fraction of one thousandth of an inch) coating of a material called Alkophos. Ex. NWE-38 p. 8:5-9; Hr'g. Tr. 147:2-12. Alkophos is intended to prevent interlaminar contact and shorting that would allow that portion of the core to act as a conductor and generate heat. Ex. NWE-38 p. 8:11-14. According to the root cause analysis, a combination of inadequate interlaminar Alkophos insulation and damage from the rotor, skid pan, or air gap baffles during generator reassembly likely caused laminations

to short, resulting in sufficient heat to melt the core and require an extended repair outage. Inadequate insulation may be found either on the faces of the laminations, or on the edge of the laminate. Hr'g. Tr. 147:13-148:5, 190:8-22; Ex. NWE-38, internal exhibit RAH-4 pp. 28-29, 43. Contact between four or five laminations can create enough heat to melt the core. Ex. NWE-38 p. 8:14-17; *Id.* at internal exhibit RAH-4 p. 29.

50. In order to test generator cores for potentially damaging shorts between laminations the utility industry uses an El Cid test. Ex. NWE-38 p. 12:11-14. It is considered standard practice to perform El Cid tests on generator cores during outages and following core maintenance. Ex. NWE-38 p. 12:11-15. NorthWestern testified that an El Cid test takes about four hours to complete. Hr'g. Tr. 191:5-6.

51. Three El Cid tests were performed on CU4's core during the generator overhaul, all of them before the rotor was reinstalled. Hr'g.Tr. 150:10-20. According to NorthWestern, these tests would have detected any shorts between laminations at the time of the tests. *Id.* However, because these El Cid tests were performed before the rotor was reinstalled, they could not have detected any shorts caused by the rotor, skid pan, or air gap baffles contacting the core during reassembly. *Id.* at 169:15-170:6. NorthWestern stated that it knows of no utility that performs El Cid tests after installing the rotor and removing the skid pan. It contends that such testing is not warranted because the statistical probability of core damage from reassembly of the rotor is "very, very low." *Id.* at 177:17-22, 182:12-19.

52. Although the statistical probability of damaging the core during reassembly of the rotor may be very low, this does not imply that the risk is in fact low, because risk, in this instance, is an amalgam of probability and cost. In fact, Siemens knew there were operational risks of rotor-out maintenance before the CU4 event. NorthWestern acknowledged the risk associated with rotor-out maintenance, noting that this risk is one reason for an observed increase in the time period between major generator maintenance events in the industry. Hr'g. Tr. 154:16-25; DR MEIC-89 Attach. 2 p. 12:13-23 (Aug. 26, 2015). The existence of significant risk is further corroborated by the consequential damages provisions in the supply and services agreement. *Supra* ¶¶ 27, 41-42.

53. The source of the risk is well-known: reassembling the generator requires inserting a 50 ton generator rotor into the cylinder within the core with only an inch or two clearance. Hr'g. Tr. 178:19-20. A slight shift in the position of the rotor can damage the core

without maintenance personnel even knowing. *Id.* at 178:17-25. With respect to the CU4 event, NorthWestern testified that it was probably very subtle and went unnoticed. *Id.* at 183:22-184-7. The result, however, was tens of millions of dollars in repair costs, loss of service for about six months, and incremental replacement power costs of over \$8 million for NorthWestern alone. “Very, very low probability,” as testified to by a NorthWestern witness, is no consolation to NorthWestern ratepayers when they experience \$8.243 million in incremental replacement power costs, in addition to the regular fixed plant costs of approximately \$21 million for the six month time period that the plant was out of service. Ex. MEIC-1 pp. 19-20, DR MEIC-25 (Nov. 5, 2014) and MEIC Post Hrg. Br. p.1 (Dec. 22, 2015).

54. NorthWestern’s claim that it is not industry standard practice to perform another El Cid test following the insertion of the rotor into the core is not persuasive. Since such a test is neither prohibitively expensive nor time consuming, and could detect potentially catastrophic core damage that might otherwise go unnoticed, it should have been performed. Hr.’g Tr. 191:3-6, 228:4-8. NorthWestern’s representations, moreover, are conclusory statements from witnesses that were not supported with evidence from industry technical manuals. The fact that following the CU4 outage event Talen decided to modify its rotor-out inspection procedures to include an additional El Cid test after rotor insertion and skid pan removal further undermines NorthWestern’s claim regarding industry standard practices at the time. DR MEIC-062(c) (Apr. 10, 2015); Hr’g. Tr. 227:11-19. In light of these facts, the Commission affords little weight to claims that not doing a four-hour-long test to prevent tens of millions of dollars in damage is an industry standard. On the contrary, a supplemental El Cid test easily could have been conducted, and could have detected the damage to the core before the plant catastrophically failed.

55. While acknowledging the known risk of damaging the core while installing the rotor, NorthWestern nevertheless contended that it was more likely that core damage occurred during installation of the air gap baffles. Hr’g. Tr. 196:21-23 (NorthWestern’s witness was about 75 percent sure that the stator laminations were damaged during this process). An El Cid test cannot be performed after installation of the air gap baffles because there is not sufficient space for the equipment. Ex. NWE-38, 12:15-17. Notably, however, the root cause analysis did not reach the same conclusion as NorthWestern. It found that damage likely resulted from rotor insertion, skid pan insertion and removal, or air gap baffle installation, but did not assign separate likelihoods. There is simply no evidence to support NorthWestern’s asserted likelihood

that installation of the air gap baffles caused the damage. The Commission finds the root cause analysis more credible and persuasive than NorthWestern's witness testimony, because it was presented to all co-owners and for multiple purposes, instead of being offered only in the context of litigation and a proceeding where the witness may have a motivation to bolster the case of a party that sponsored the witness' testimony. The Commission therefore believes that rotor insertion, skid pan removal, and air gap baffle installation were all equally likely culprits of the damage to the interlaminar insulation and the resulting core damage, and finds that an El Cid test was likely to identify such damage.

56. As another utility co-owner observed, the root cause analysis was inconclusive. DR MEIC-35 (Nov. 26, 2014), Attach. 1, p. 13. Because Siemens did not perform a supplemental El Cid test, and neither NorthWestern nor Talen insisted on one, it will never be known with total certainty the actual cause of the outage.

57. The evidence in this case shows that there was a known risk of core damage during the rotor reassembly phase of the CU4 rotor-out maintenance procedure, that damage incurred during rotor reassembly most likely caused the CU4 outage, that an El Cid test performed after rotor installation and skid pan removal could have cost-effectively identified core damage attributable to these operations in the rotor reassembly process, and that an El Cid test was not performed at this stage of the reassembly of the CU4 generator during its rotor-out maintenance. The Commission is not convinced that the failure to conduct another El Cid test conformed to industry standards. Based on a preponderance of evidence in this case and its own expertise, the Commission finds that NorthWestern did not reasonably manage, operate, and maintain CU4 with respect to the testing of the interlaminar insulation.

*Failure to mitigate risks to ratepayers by not investigating outage insurance was imprudent*

58. NorthWestern failed to evaluate outage insurance for CU4 prior to the outage. DR MEIC-039(b) (Nov. 26, 2014). The Commission previously held that NorthWestern's failure to evaluate the availability, price, and terms of outage insurance guaranteed that outage-related incremental replacement costs would be unavoidable if and when an outage occurred. Order 7219h ¶ 34. CU4 differs from DGGs because, in contrast to DGGs, CU4 is a typical power plant with an extensive operating history, not a new, one-of-a-kind power plant. Hr'g. Tr. 351:21-22. As in the DGGs case, purchasing insurance may or may not have been cost

effective, but the record is void of any information because NorthWestern failed to consider risks and evaluate mitigation options prior to the outage.

59. Like property insurance, outage insurance has a cost. Since the timing of forced outages are generally unpredictable, it follows that a primary purpose of acquiring outage insurance is to spread potentially significant outage-related replacement power costs over a longer period of time so that they are not incurred all at once if an outage occurs. Outage insurance is essentially a hedge against significant short-term supply cost increases due to a major plant outage.

60. NorthWestern analyses performed after the outage suggest that purchasing outage insurance over the periods 2002-2014 would not have been cost effective. Ex. NWE-40 pp. 8:18-17:13, internal exhibit MJB-2; Hr'g. Tr. 265:12-267:9. The MCC asserted NorthWestern's analyses were distorted by premium quotes it obtained after an "adverse experience." Hr'g. Tr. 341:17-23.

61. NorthWestern's insurance estimates were performed after the fact. Yet even its after-the-fact analysis shows that outage insurance would have been cost effective for the period since CU4 became a regulated utility generating resource. Ex. NWE-40, internal exhibit MJB-2. In that regard, the evidence fails to support NorthWestern's claim that such insurance is simply not cost effective. However, the Commission agrees with the MCC that the credibility of an after-the-fact analysis is questionable.

62. Since NorthWestern did not even bother to look at the availability and cost of outage insurance, the Commission affords little weight to analysis of whether, in the end, power plant owners are likely to purchase outage insurance. Ex. NWE-37. NorthWestern's expert witness Fred Lyon draws a distinction between regulated utilities, which he claims typically do not purchase outage insurance, and independent power producers which do. Hr'g. Tr. 133:20-134:3. He ascribes the latter's interest in outage insurance as deriving, in part, from the less skilled operations personnel who are more prone to cause outages. Hr'g. Tr. 132:23-133:15. Colstrip, operated by an unregulated utility, but co-owned mostly by regulated utilities, appears to fall somewhere in the middle. Here, Talen appears not to have purchased outage insurance, although without a Talen witness such representations cannot be taken as a given. Ex. NWE-40, p. 9:4-7. Mr. Lyon also framed the decision as one primarily about shareholder and note-holder risk. Independent owned projects have outage insurance because there is no one else to fall back

upon to make up revenues in the event of an outage. Hr'g. Tr. 139:2-12. The Commission notes that the difference appears to be that a regulated utility is often larger and can attempt to avail itself of its monopoly position relative to a set of captive customers to make up the lost revenue. This analysis is not persuasive as to whether outage insurance should be investigated and sometimes purchased to ameliorate the underlying risk of plant outage. It speaks only to the political-economic incentives of two different businesses. That is not a persuasive explanation.

63. Regardless, NorthWestern did not even begin to evaluate the cost and availability of outage insurance until after the outage occurred, in preparation for litigation. By failing to do so, NorthWestern failed to mitigate risks as required by Montana law and Commission rules and was imprudent.

64. Based on a totality of circumstances where NorthWestern's inaction or inattention imposed risks of outage costs on its customers, this failure raises serious questions about the prudence of CU4 outage-related replacement power costs. NorthWestern has failed to prove that the replacement power costs that it incurred during the CU4 outage were prudently incurred. To allow NorthWestern to recover an additional \$8.243 million for incremental power purchase costs would not result in just and reasonable rates for consumers. Based on the above findings, the Commission finds NorthWestern did not take available and reasonable steps to manage and mitigate the risk to customers of a major outage at the CU4 plant.

*Failure of NorthWestern to meet its burden of proof*

65. As the applicant, NorthWestern bears the burden of proving that electricity supply costs it seeks to recover from customers were prudently incurred. *Infra* ¶ 94. In this case, NorthWestern initially failed to explain the cause of the outage, quantify the financial impact on customers, or document steps NorthWestern took to mitigate that impact, which it sought to recover from customers. Although the root cause analysis was completed on November 18, 2013, NorthWestern's May 2014 Application neither mentioned it nor included testimony from its authors. When that application was filed, the Commission had only recently issued a ruling on another plant outage involving the issue of failing to investigate outage insurance. *See* Order 7219h. Additionally, the Commission in that docket took note of operational errors regarding that plant. NorthWestern therefore should have known that an unanticipated \$8 million expense caused by a major outage at an owned generating plant would be scrutinized in the annual tracker

mechanism. Mont. Code Ann. § 69-8-210(1). NorthWestern should have been aware that basic information regarding the causes and costs of the outage would be essential to demonstrating that replacement power costs were prudent. Mont. Admin. R. 38.5.8213. Instead, it chose to file an application with essentially no details on the cause of the outage, its behavior relative to outage insurance, and any possible operational or oversight problems involving the plant. Indeed, no witness who bore any responsibility for the plant's operations even testified in NorthWestern's initial application. By failing to present such information in the early stages of this proceeding, NorthWestern, put intervenors at a disadvantage and created fewer opportunities for it to meet its burden of proof.

66. NorthWestern waited until its rebuttal testimony to address CU4 operations and what the company did and did not do to mitigate the risk of a forced outage. The Company's witnesses included Mike Barnes, NorthWestern's Superintendent of Joint Owned Operations, and the root cause analysis authors, Robert Ward and Ronald Halpern. NorthWestern did not sponsor any testimony from the plant operator, Talen, or its maintenance contractor, Siemens, even though the direct knowledge of these witnesses would have created a more robust evidentiary record.

67. Mr. Barnes admitted that he played a minimal role in overseeing the CU4 outage work. For example, he did not read the daily outage reports that the plant operator sent to him, which relayed the El Cid test results. Hr'g. Tr. 273:22-274:3. When asked whether he made any suggestions to the plant operator about doing supplementary due diligence during the outage, he said he did not, explaining, "I'd be disagreeing with the very entity who is charged with the responsibility of doing that prudently." Hr'g. Tr. 274:12-14. However, it is NorthWestern that is accountable under statutory and Commission requirements regarding the prudent operation and maintenance of CU4, which includes taking proper steps to mitigate outage risks. NorthWestern outsourced these responsibilities to Talen and Siemens, and then failed to provide witness testimony from these entities to support its claim that the maintenance procedure that led to the outage was performed prudently. NorthWestern may be able to delegate the operation of its property to a contractor, but it cannot outsource its statutory and regulatory obligations as a public utility to prove the prudence of costs resulting from its property's failure. *AEP Tex. Cent. Co. v. PUC*, 286 S.W.3d 450, 467-70 (Tex. App. 2008). *Infra* ¶ 100. NorthWestern has failed to

present witness testimony which might persuade the Commission of its prudent operation of the facility.

68. Additionally, not all CU4 co-owners appeared to have been as disengaged from the process as NorthWestern, regarding its oversight responsibilities on the co-owners committee. An employee of another co-owner, Portland General Electric, seemed to criticize the root cause analysis and said that the utility “need[ed]” a conclusive report for reporting purposes. DR MEIC-35 (Nov. 26, 2014), Attach. 1, p. 13; Hr’g. Tr. 277:5-280:2. The Commission is not persuaded that NorthWestern’s oversight of CU4 plant operations and maintenance was reasonable and prudent. *Infra* ¶ 98.

69. MEIC asserted that NorthWestern’s outage-related incremental costs were not prudently incurred in part because NorthWestern did not evaluate whether some or all of the replacement costs could be recovered from Siemens. *Supra* ¶ 34. NorthWestern countered that such action, whether against Siemens or Talen, would have little chance of succeeding. Ex. NWE-36 pp. 7:2-8:10, 9:5-10:20. NorthWestern also stated that neither its CU4 co-owners, who were a party to the same operating agreement as NorthWestern, nor the plant’s insurer filed or intends to file suit against Siemens. Ex. NWE-40 p. 4:7-15.

70. While NorthWestern relied on the assertion that its plant co-owners and insurance provider do not plan to pursue remedies from Siemens, the record contains no evidence that NorthWestern deliberated on this question at all. In fact, in response to multiple discovery requests over a 17 month period NorthWestern repeatedly stated, “[n]o determination has been made regarding whether NorthWestern can pursue any actions to recover all or part of the costs incurred by the outage.” DR MCC-057 (Nov. 7, 2014) and MCC-118 (April 10, 2015); Hr’g. Tr. 209:9-211:2.

71. In contrast, during the hearing NorthWestern represented that the matter was clear-cut, it asserted it had no viable cause for action. Hr’g. Tr. at 314:12-25. If indeed it was clear cut, then NorthWestern was either not seriously engaging in such analysis for the long period of time beforehand, or was misleading the Commission and parties in its representations that no determinations had been made about litigation.

72. The record shows that NorthWestern did not evaluate alternative ways of recovering replacement power costs before filing its application to recover those costs from customers. It does not show what information other entities had, or whether they evaluated

alternative ways of recovering replacement power costs before filing to recover or even whether they sought recovery of those costs. The evidence only shows that NorthWestern evaluated legal probabilities late in this proceeding, when it hired a legal expert to rebut intervenor testimony. There is no evidence to show that NorthWestern even went so far as to engage Siemens in initial conversation on the possibility of a negotiated cost-sharing agreement, short of legal action. Because NorthWestern failed to show that it timely evaluated alternatives to recovering replacement costs from customers, it has not met its burden of proof; it is unable to show that it prudently managed and mitigated plant outage risk on behalf of customers and that it thoroughly documented management decision-making pursuant to Mont. Admin. R. 38.5.8201(3).

73. As the applicant, NorthWestern bears the burden of proving that electricity supply costs it seeks to recover from customers were prudently incurred. *Infra* ¶ 94. NorthWestern's initial application contained few details of the outage, it had a disengaged attitude toward getting to the bottom of the outage cause, and it did not timely evaluate alternative recovery options for recovering the outage costs from other entities. NorthWestern has failed to meet its burden of proof through its application and testimony at the hearing that the outage costs were prudently incurred.

### **Interest**

74. NorthWestern shall refund to customers \$8,243,000 in incremental power purchase expenses, plus interest at 10.25 percent, which is the cost of equity approved by the Commission in Docket D2009.9.129. *Infra* ¶ 106.

### **Other Contested Issues**

75. The MCC recommended that the Commission avoid, as much as possible, single issue out-of-test year adjustments, such as energy efficiency program-related lost revenue adjustments. Ex. MCC-4, p. 33:14-20. It also questioned the need for off-system hedging given low and stable market prices, especially given NorthWestern's acquisition of the hydroelectric facilities after November 18, 2014. Ex. MCC-3, pp. 18:5-20:17.

76. Regarding the MCC's recommendation concerning out-of-test year adjustments for energy efficiency program-related lost revenue, the MCC has since dropped this issue with the stipulation it reached with NorthWestern in Docket D2014.7.58. Regarding hedging, NorthWestern did not enter into any new off-system fixed price term purchases at the Mid-

Columbia trading hub after November 18, 2014, and the Commission addressed future hedging in *Order 7418d*. Dkt. D2014.7.58.

77. The Commission allows the lost revenue adjustment mechanism and hedging costs incurred during the 2012-2013 and 2013-2014 tracking periods.

### **Modeling and Administrative Costs**

78. In Docket D2014.7.55 the Commission determined that NorthWestern had not shown that it is reasonable and in the public interest to allow recovery of modeling costs in the amount of \$450,988 as “electricity supply costs,” stating that these costs do not meet the definition of “electricity supply costs.” *Order 7418d* ¶ 39. The Commission found:

NorthWestern appears to have simply elected, on its own and without Commission approval, to propose planning costs associated with assets the utility owns or intends to own through the tracker. NorthWestern never disclosed, in the pre-filed testimony supporting its application, that such costs were included in the administrative and general expense category of the tracker.

*Id.* at ¶ 29.

79. NorthWestern proposed to recover \$995,862 of modeling costs for the 2012-13 and 2013-14 tracker periods. Ex. NWE-2, updated internal exhibit (FVB-1)12-13, p. 1:40; Ex. NWE-4, updated internal exhibit (FVB-1)13-14, p. 1:40. The costs of acquiring, owning, operating, and maintaining electric generation plants are generally not subject to adjustment in the tracker. Costs associated with electrical generation facilities owned by NorthWestern instead are recovered through the rates approved as a result of a general rate case or preapproval filing pursuant to Mont. Code Ann. § 69-3-301 *et. seq.* and § 69-8-421, respectively. Mont. Code Ann. § 69-8-103(13) defines “generation assets cost of service” as “a return on invested capital and all costs associated with the acquisition, construction, administration, operation, and maintenance of a plant or equipment owned or leased by a public utility and used for the production of electricity.” Therefore costs such as modeling electric generation plants should be recovered through a general rate case.

80. The Commission, if it determines it is reasonable and in the public interest to do so, may also allow other utility costs to be recovered in the electricity tracker mechanism. Mont. Code Ann. § 69-8-210(1). Yet, the Commission has never made such an affirmative finding that planning and administrative costs associated with assets the utility owns or intends to own are

reasonable and in the public interest to include in the electricity supply cost tracker. A review of past Commission orders on trackers confirms that NorthWestern has never received permission to use this tracker for such a purpose. The Commission has in several prior orders discussed the administrative expense category and stated that “[t]hese costs include outside legal, scheduling, software, broker costs and other incremental expenses **directly related** to the electric supply....” provided under third party arrangements. Order 7093c, Dkt. D2010.5.50 ¶ 12 (April 18, 2011), Order 6921c, Dkt. D2008.5.45 ¶ 29 (May 20, 2010), and Order 6836c, Dkt. D2007.5.46 ¶ 40 (June 24, 2008) (emphasis added). In fact, the Commission in *Final Order 7418d* found that modeling costs pertaining to assets the utility intends to own or does own, does not meet the definition of electricity supply costs. Order 7418d ¶ 37.

81. In the 2012-2013 Tracker filing, NorthWestern dedicates only a few sentences of pre-filed testimony to substantiating almost \$1.6 million in administrative cost expense, about which witness Frank Bennett offers:

[i]ncremental administrative and general costs which are in addition to those recovered in the last general rate case filing (Docket D2009.9.129), \$1,594,818 or 0.71% of total electric supply expenses, are also included in electricity supply costs. These costs include MPSC and Montana Consumer Counsel taxes, outside legal services, scheduling, software, broker costs, and other incremental expenses directly related to the electricity supply function (such as outside consultants used in conjunction with procurement activities).

Ex. NWE-1, p. 14:1-9.

82. Included with Mr. Bennett’s testimony in the 2012-2013 tracker filing was Ex. NWE-1, updated internal exhibit. (FVB-1)12-13, pp. 1-5. One of the five types of administrative costs that the exhibit identifies is modeling costs in the amount of \$530,979. *Id.* at p. 1, l. 40. Then included with Mr. Bennett’s testimony in the 2013-2014 tracker filing was Ex. NWE-4, updated internal exhibit (FVB-1)13-14, pp. 1-5. The exhibit identifies modeling costs in the amount of \$464,883. *Id.* at p. 1, l. 40. For the two Tracker Applications, the modeling costs total \$995,862. NorthWestern’s Applications contain no greater detail on what expenses are associated with those line items. NorthWestern bears the burden of proof to show that its electricity supply costs were prudently incurred and the proposed tariffs are therefore just and reasonable. *Infra* ¶ 94. In response to the MCC data requests, NorthWestern provided a large number of invoices which NorthWestern classified as administrative costs subject to recovery as electricity supply costs. DR MCC 038 (Nov. 26, 2014) and MCC-077 (Nov. 14, 2014).

83. Mr. Bennett's testimony and these data responses demonstrate that NorthWestern is seeking to recover expenses which are related to modeling NorthWestern's portfolio, which includes assets the company owns or intends to own. The Commission finds NorthWestern is seeking through its Applications the recovery of costs that are both beyond the statutory definition of "electricity supply costs" and which the Commission has never found as reasonable and in the public interest to allow in the tracker mechanism. The Commission has reviewed all the invoices and finds that some of the invoices identified in DR MCC-077 are not "electricity supply costs." Invoices 2 and 3 in Attachment 4, and Invoices 4 and 8 in Attachment 6, are modeling costs for assets that the company owns or intends to own and do not meet the definition of electricity supply costs. The Commission finds that the modeling costs identified from the four invoices in the amount of \$282,527, which clearly involve modeling of the hydroelectric acquisition assets, cannot be recovered in the tracker.

84. The Commission can, in its discretion, permit the recovery of costs which are not "electricity supply costs" using the tracker mechanism. Mont. Code Ann. § 69-8-210. The Commission declines again to find *sua sponte* that it is reasonable and in the public interest for these modeling costs to be included in the tracker. Order 7418d. NorthWestern has not offered any argument for the appropriateness of the tracker's use in this manner, and the Commission looks skeptically upon costs which are included in the tracker without the company making an explicit and transparent request for recovery. The Commission cautions NorthWestern that its initial applications must provide sufficient information to justify its costs. The Commission will not read between the lines to find an external justification to include in the Trackers those expenses that are not statutory "electricity supply costs" or which are imprudently incurred.

85. The Commission finds that NorthWestern did not show that it is reasonable and in the public interest to allow recovery of these modeling costs as "electricity supply costs." The Commission declines to approve the inclusion of the modeling costs in the amount of \$282,527, which is a minor portion of the total modeling cost of \$995,862 contained within the administrative cost portion of the electricity tracker. Based on the record in this case, recovery of these identified hydroelectric modeling costs are both beyond the statutory definition of "electricity supply costs" and are costs the Commission has never found to be reasonable and in the public interest.

86. The Commission issued *Interim Order 7283* on June 18, 2013 allowing NorthWestern to start recovering the 2012-2013 costs included in the tracker filing on an interim basis pending a contested case proceeding and a hearing. The Commission issued *Interim Order 7283a* on June 18, 2014, allowing NorthWestern to start recovering the 2013-2014 costs included in the tracker filing on an interim basis pending a contested case proceeding and a hearing. Based on the Commission decision to exclude modeling costs from the trackers, NorthWestern is required to refund to customers modeling costs of \$282,527 with interest as required pursuant to Mont. Code Ann. § 69-3-304. Interest associated with the refund to customers shall be calculated based on the utility's last approved return on equity of 10.25 percent.

### CONCLUSIONS OF LAW

87. The Commission has full power of supervision, regulation, and control of public utilities, and has “power to prescribe rules of procedure and to do all things necessary and convenient in the exercise of the powers conferred.” Mont. Code Ann. §§ 69-3-102, 69-3-103. NorthWestern is a “public utility” subject to regulation by the Commission. *Id.* § 69-3-101.

88. The Commission has the power to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. *Id.* § 69-3-103(2)(c). The Commission has the authority to adopt rules of procedure governing its proceedings. *Id.* § 69-3-103. The Commission has the authority to inquire into the management of the business of all public utilities, shall keep itself informed as to the manner and method in which business is conducted, and has the right to obtain from any public utility all necessary information to enable the Commission to perform its duties. *Id.* § 69-3-106(1). The Commission's “experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.” *Id.* § 2-4-612.

89. The Commission may “investigate any of the rates, tolls, charges, rules, practices, and services and after a full hearing . . . make by order such changes as may be just and reasonable, the same as if a formal complaint had been made.” *Id.* § 69-3-324. “If, upon such hearing and due investigation, the rates, tolls, charges, schedules, or joint rates are found to be unjust, unreasonable, or unjustly discriminatory or to be preferential . . . [it] may fix and order

substituted therefor such rates, tolls, charges, or schedules as are just and reasonable.” *Id.* § 69-3-330.

90. “[I]t was the intention of the legislature to clothe the Commission with the power to fix the precise rate to be charged by the Utility for its commodity.” *Great N. Utils. Co. v. Pub. Serv. Comm’n*, 88 Mont. 180, 218, 293 P. 294, 303 (1930). What constitutes “just and reasonable” rates depends upon the facts in each case: “A rate altogether just and reasonable in one instance may be most unjust and unreasonable in another.” *Id.*, 88 Mont. at 203, 293 P. at 298. According to the Montana Supreme Court:

Rate structuring involves highly specialized theories of economics. The weighing and balancing of expert opinion pro and con is properly vested in the administrative agency in its field of expertise. . . .

*State of Mont. ex rel. Dept. of Pub. Serv. Regulation v. Mont. Irrigators, Inc.*, 209 Mont. 375, 381-382, 680 P.2d 963, 966-967 (1984).

91. This Order “conform[s] to the requirements of a decision in a contested case under the Montana Administrative Procedure Act.” Mont. Code Ann. § 69-3-303. The Commission has afforded all interested parties an opportunity to respond and present evidence on all issues involved in this proceeding. *Id.* § 2-4-612(1); *Supra* ¶¶ 5-7. Conclusions of law are reviewed to “determine whether the agency’s interpretation and application of law are correct.” *Klingman v. Mont. Pub. Serv. Comm’n*, 2012 MT 32, ¶ 25, 364 Mont. 128, 272 P.3d 71.

92. For a public utility whose service territory “lies [partly] within the basin of the Columbia River,” the Commission “shall establish an electricity cost recovery mechanism that allows [it] to fully recover prudently incurred electricity supply costs, subject to the provisions of 69-8-419, 69-8-420, and [C]ommission rules.” Mont. Code Ann. §§ 69-8-201(4)(a), 69-8-210(1). By statute, “electricity supply costs” are defined as:

the actual costs incurred in providing electricity supply service through power purchase agreements, [DSM], and energy efficiency programs, including but not limited to: (a) capacity costs; (b) energy costs; (c) fuel costs; (d) ancillary service costs; (e) transmission costs, including congestion and losses; (f) planning and administrative costs; and (g) any other costs directly related to the purchase of electricity and the management and provision of power purchase agreements.

*Id.* § 69-8-103(8).

93. NorthWestern’s electricity supply rates “shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.” *Id.* § 69-3-201.

94. NorthWestern bore the burden of persuasion that all its costs are electricity supply costs pursuant to Mont. Code Ann. § 69-8-103(8) and were prudently incurred. In a contested case under MAPA, the Commission is generally “bound by common law and statutory rules of evidence.” *Id.* § 2-4-612(2). Under the statutory rules of evidence, “a party has the burden of persuasion as to each fact the existence or nonexistence of which is essential to the claim for relief or defense the party is asserting.” *Id.* § 26-1-402; *Mont. Env'tl. Info. Ctr. v. Mont. Dept. of Env'tl. Quality*, 2005 MT 96, ¶ 14, 326 Mont. 502, 112 P.3d 964 (“the party asserting a claim for relief bears the burden of producing evidence in support of that claim.”); *see also* Mont. Admin. R. 38.5.182 (“A utility filing for an increase in rates and charges shall be prepared to . . . sustain the burden of proof of establishing that its proposed charges are just and reasonable”), Mont. Admin. R. 38.5.8220 (discussing how a utility may “satisfy its burden of proof.”). The Commission has previously scrutinized utility requests for cost recovery when the utility has failed to meet its burden of proof with respect to utility electricity costs. Order 5484k, Dkt. 90.6.39 ¶ 206 (July 19, 1991).

#### **CU4 Replacement Power Costs**

95. The costs of the replacement electricity service purchased from third parties were “electricity supply costs” because they were “actual costs incurred in providing electricity supply service through power purchase agreements.” Mont. Code Ann § 69-8-103(8).

96. NorthWestern is required to manage resources so as to mitigate risks, ensure rates are just and reasonable, and provide reliable service “at the lowest long-term total cost.” *Id.* § 69-8-419.

97. Nothing limits the Commission's ability to inquire into the manner in which NorthWestern has “managed, dispatched, operated, or maintained any resource. . . as part of its overall resource portfolio.” *Id.* § 69-8-421(9).

98. The Commission may “disallow rate recovery for the costs that result from the failure of a public utility to reasonably manage, dispatch, operate, maintain, or administer electricity supply resources in a manner consistent with 69-3-201, 69-8-419, and [C]ommission rules.” *Id.*

99. “As necessary, a utility’s periodic electricity supply cost tracking filings should include the information, analyses, and documentation recommended in [procurement planning]

guidelines to support its request for cost recovery related to electricity supply cost additions or changes.” Mont. Admin. R. 38.5.8226(2). *See also* Mont. Admin. R. 38.5.8213.

100. When Talen, as an operator of the Colstrip facilities, fails to reasonably operate and maintain the plant, any failures that may result can then rest on the regulated utility owner of that plant. Costs caused by a failure of a plant operator are not reasonable and just costs that may be automatically passed on to ratepayers of the regulated utility. The Commission has an obligation to closely scrutinize those costs. A Texas appellate court, when faced with the Texas Public Utility Commission’s disallowance of replacement power costs, involving damaged generators installed by a third party vendor, upheld the Commission’s decision and found that “[C]osts incurred due to the imprudence of a third-party vendor are not reasonable and necessary. The imprudence of a third-party vendor may be imputed to the utility, even if the utility has not acted imprudently. By virtue of the fact that they paid [TCC’s] base rate costs during the reconciliation period, [TCC’s] ratepayers are entitled to a reasonable level of performance from the resources that gave rise to those base rate costs.” *AEP Tex. Cent. Co.*, 286 S.W.3d at 468-69 (Tex. App. 2008). Regulated utility ratepayers are entitled to a reasonable level of performance from regulated utility resources.

101. NorthWestern’s imprudence ensured that it would incur replacement electricity costs in the event of an outage. Because the incremental replacement electricity costs were not “prudently incurred,” the Commission need not allow recovery of these costs. *Supra* ¶ 64; Mont. Code Ann. § 69-8-210(1).

102. Because cost recovery is subject to Section 69-8-419(2)(c) (requiring NorthWestern to attempt to “identify . . . risks related to its obligation to provide electricity supply service.”), *Id.* § 69-8-210(1), and NorthWestern did not attempt to identify the risk of incurring additional power costs in the event of an outage, the Commission need not allow full recovery of these costs.

103. Because the replacement electricity costs resulted from NorthWestern’s failure to reasonably manage and operate CU4, *Supra* ¶ 57, the Commission may disallow these costs, Mont. Code Ann. §§ 69-8-210(1), 69-8-421(9).

### **Modeling Costs**

104. The Commission has considered the modeling cost information contained in the administrative cost category submitted by NorthWestern in its electricity tracker filing. Due to NorthWestern's failure to provide sufficient information about those costs and whether they meet the definition of electricity supply costs, NorthWestern has not met its burden of proof in this proceeding. *Supra* ¶¶ 78-85. As a result, the Commission cannot find – as would be required under Montana law – that NorthWestern's proposed rates are just and reasonable and in the public interest with the inclusion of the identified modeling costs, so therefore those costs are excluded from the electricity tracker. Mont. Code Ann §§ 69-8-103(8) and 69-3-201.

### **Interest on Refund**

105. The Commission has authority to temporarily approve increases or decreases in rates pending a hearing or final decision as it did in Order Nos. 7283 and 7283a. Mont. Code Ann. § 69-3-304. An interim rate change “shall be based upon consistent standards appropriate for the nature of the case pending.” *Id.* Temporary approval of rates does not constitute final endorsement by the Commission of any issues, calculations, or methodologies in this proceeding. Order 7283, ¶ 26 (June 18, 2013) and Order 7283a, ¶ 13 (June 18, 2014)

106. If the rates approved in a final order represent an increase or decrease from interim rates, the Commission may order a rebate or surcharge for the appropriate amount retroactive to the date of the temporary approval. Mont. Code Ann. § 69-03-304. If the Commission orders a rebate or surcharge, it “shall order interest to be paid on [the] rebate or surcharge as determined by the [C]ommission.” *Id.* Interest associated with the rebate to customers resulting from this Order shall be computed at 10.25 percent. Order 7283, ¶ 27 (June 18, 2013); Order 7283a, ¶ 18 (June 18, 2014) (citing Docket D2009.9.129).

## **ORDER**

IT IS HEREBY ORDERED THAT:

107. NorthWestern's request to recover \$8,243,000 for incremental costs of replacement power during the CU4 outage is DENIED;

108. NorthWestern shall refund modeling costs in the amount of \$282,527 through the electricity supply tracker rates;

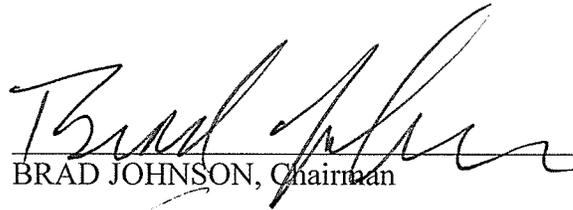
109. With the exception of the incremental costs of replacement power during the CU4 outage and the identified modeling costs, the electricity supply costs incurred by NorthWestern in the 2012-2013 and 2013-2014 tracking periods were prudently incurred;

110. The interest associated with the refund that the Commission ordered in these consolidated dockets will be computed at 10.25 percent; and

111. NorthWestern shall submit tariffs in compliance with this Order within 30 days of the service date of this Order.

DONE AND DATED on this 10<sup>th</sup> day of May, 2016, by a vote of 3 to 2. Commissioners Lake and Bushman dissenting.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

  
BRAD JOHNSON, Chairman

  
TRAVIS KAVULLA, Vice Chairman

  
KIRK BUSHMAN, Commissioner (dissenting)

  
ROGER KOOPMAN, Commissioner

  
BOB LAKE, Commissioner (dissenting)

ATTEST:

  
Aleisha Solem  
Commission Secretary

(SEAL)

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
	)	ORDER NO. 7283h
IN THE MATTER OF NorthWestern	)	
Energy's 2013-2014 Electricity Supply	)	DOCKET NO. D2014.5.46
Tracker	)	ORDER NO. 7283h

**CONCURRING OPINION OF COMMISSIONER TRAVIS KAVULLA**

After this case was finally submitted for the Commission's consideration, NorthWestern made public representations expressing disappointment that this Commission seemed poised to disallow the replacement-power costs associated with the Colstrip outage "when no other state utility commission has found the utility was imprudent."<sup>1</sup>

One of the dissenters, meanwhile, published an opinion column in a Montana newspaper, apparently taking a cue from NorthWestern's communication on this subject, in which he claimed that the three commissioners signing this order "were the only commissioners of the four states (14 commissioners total) in the Northwest to deny these recovery costs."<sup>2</sup>

The first of these statements is misleading. The second is altogether untrue.

Let me first make clear that I regard this advocacy as improper. It appears nowhere in briefing, and it did not arise at hearing. Yet, the issue has been raised, albeit *ex parte*, and I believe it is useful to respond. To some degree I regret that the Order itself does not.

Let's begin with the claim that no other utility commission in the Pacific Northwest had refused to pass along the costs of the Colstrip Unit 4 outage to customers. This is inaccurate.

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<sup>1</sup> Available online: <http://www.northwesternenergy.com/our-company/media-center/news-archive/news-archive-item/2016/03/29/Montana-Public-Service-Commission-Decision-Results-in-Supply-Cost-Disallowance-for-NorthWestern-Energy> (accessed May 12, 2016)

<sup>2</sup> Kirk Bushman, "Fighting for Inexpensive, Reliable Power," *Billings Gazette* (May 10, 2016). The column also relies on argument from an investor memo which was submitted outside the record by NorthWestern to Commission staff, and then to commissioners, in making its argument for allowing the pass-through of Colstrip outage costs to consumers. I am pleased that the Order relies exclusively on information within the record.

Pacific Power, which owns a share of Colstrip Unit 4, identified \$9 to \$12 million in replacement power costs resulting from the outage and requested “deferral accounting treatment for the replacement power costs, and for recovery of the deferred costs in base rates.”<sup>3</sup> The Washington Utilities and Transportation Commission (WUTC) denied the petition, meaning that the utility and not consumers bore the cost of this outage.<sup>4</sup>

Likewise, in the case of Avista, the WUTC issued an order acknowledging that unexpectedly high power costs, in part owing from the Colstrip outage, had pushed the company’s costs above the historic baseline, which is embedded in rates. Of the slightly more than \$5 million in excess expense, more than \$4.5 million was ordered to be “absorbed by the Company,” while the remaining sum, only about 10 percent of the total, was passed along as a surcharge to customers.<sup>5</sup>

In other words, the dissenter is simply incorrect. Other utility commissions in the region have issued orders that unequivocally “deny these recovery costs,” as he puts it.

As to NorthWestern’s more nuanced claim—that no other utility commission had found “imprudence” to justify its decision—that claim may be accurate, but misses the point. Costs in other jurisdictions are often absorbed by a utility, or shared between shareholders and customers, even without a finding of imprudence. NorthWestern, on the other hand, avails itself of Montana’s generous tracker statute, which requires the Commission to pass along, dollar for dollar, all replacement-power costs of the outage, *so long as* they are prudently incurred—and *even if*, NorthWestern argues, there are potential other sources of offsetting revenue gains, such as labor-cost savings that result from the outage and which do not flow through to customers.<sup>6</sup> This law confers importance to the prudence review because, unlike the regulatory framework that Avista is subject to, this Commission cannot simply rely on a cost-sharing mechanism as a check on the utility’s incentives in management and procurement, or as a vehicle to promote just and reasonable rates. In Montana, that work is left to the prudence review.

It is clear from the other states’ proceedings that intervenors would have been likely to challenge the prudence of the Colstrip outage, but did not because it was clear that the cost-

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<sup>3</sup> WUTC Docket UE-140762, Order 08 (March 25, 2015), at ¶254.

<sup>4</sup> *Id.* at ¶263.

<sup>5</sup> WUTC Docket UE-140540, Order 01 (July 10, 2014), at ¶16.

<sup>6</sup> Post-Hearing Brief of NorthWestern Energy, (Nov. 24, 2015), pp. 13, 21.

sharing mechanisms of those jurisdictions would cause those utilities to absorb at least some, and occasionally all, of the costs of those outages regardless.

For instance, Portland General Electric, another Colstrip co-owner, reported that its variable net power expenses for the year 2013 were within the \$30 million “deadband, sharing mechanism” of historic annual costs, which meant that the company would receive no adjustment in rates to make up a loss or refund an amount up to that level. The Oregon Public Utility Commission (OPUC) concluded, “Given the amount of the reported variance (\$11 million) and the value of the deadband (\$30 million), the parties reasonably concluded that any issues they might raise would not likely be material in terms of effectuating a rate change.”<sup>7</sup> In other words, that company, like Avista in Washington, was made to absorb the costs of the Colstrip outage, and no finding on prudence was even necessary.

Idaho appears to be the sole jurisdiction in the four-state region where these replacement-power costs *were* entirely recovered from consumers. That proceeding unfolded quickly, with the utility making a filing on July 30, 2014, the Idaho Public Utilities Commission (IPUC) noticing the application on Aug. 15 with a comment deadline of Sept. 15, and then on Sept. 30, 2014, the IPUC issued its order. That proceeding, in other words, left parties only one month to file comments—not testimony—and does not appear to have afforded any time for discovery or even an evidentiary hearing. It left only 15 days for the IPUC to issue an order on the matter. The circumstances of Idaho’s review of this matter and those of the Montana Commission are not comparable.

The Montana Commission, like all administrative agencies, is bound by the evidentiary record before us—not the one that exists in some other jurisdiction. It is beside the point for NorthWestern to imagine having a less well developed evidentiary record that includes “no evidence of imprudence,” when in fact the more well-developed record of this proceeding does include ample evidence of imprudence. Indeed, both dissenters have to reach to ignore the evidence of imprudence within the record, and to give NorthWestern an extraordinary benefit of the doubt as regards its burden of proof.

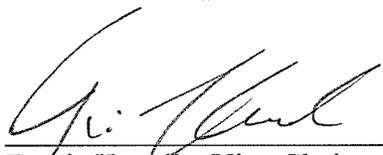
Each jurisdiction may have its different laws. But most utility regulatory statutes encourage a utility commission to ensure that a regulated utility has skin in the game for the performance of its assets in some way, shape, or form. Most utilities in this region are subject to

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<sup>7</sup> OPUC Docket UE 291, Order 14-345 (Oct. 3, 2014) at pp. 2-3.

a cost-sharing mechanism that renders moot a more in-depth prudence review. As we do not have such a mechanism in Montana, the relative importance of the prudence review is greater, and it is that review which gives meaning to the underlying objective of Montana law that rates be just and reasonable, and that only those costs that would be incurred in achieving adequate utility performance should be passed along to consumers. Montana law, and this Order, work this through their focus on prudence. NorthWestern, as is explained in the body of the Order, failed to act reasonably to mitigate the risk of an outage, and otherwise failed to demonstrate that the costs resulting from that outage were prudently incurred.

Therefore, I respectfully CONCUR with the Order,

A handwritten signature in black ink, appearing to read "Travis Kavutla", written over a horizontal line.

Travis Kavutla, Vice Chairman

Service Date: May 13, 2016

DEPARTMENT OF PUBLIC SERVICE REGULATION  
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**CONCURRING OPINION OF COMMISSIONER ROGER KOOPMAN**

Very often, rate-related matters coming before the Commission are challenging and difficult deliberations, where commissioners may reasonably disagree on the weight and credibility of complex competing evidence -- ultimately arrive at divergent conclusions when the final vote is taken. I wish I could say that this docket, and the matter of incremental supply costs related to the outage of the CU4 generating plant, fell into that category, but it did not.

Indeed, careful examination of the preponderance of evidence could only lead to one conclusion – that it would be impossible to justify passing the \$8.24 million in additional expense on to the rate-payers of NorthWestern Energy. That this matter became yet another deeply divisive issue – and divided vote – is more a reflection of the unfortunate negative dynamic of the current Commission, where two commissioners almost automatically oppose the leadership of their chairman – than it is an indication that this was a difficult decision at which to arrive.

There is no need to reiterate here, the facts, judgments and legal conclusions contained in the Commission's Order. I am in full agreement with that Order. In brief, the following facts and testimony were most influential in my decision:

1. NorthWestern Energy's lack of diligence and risk mitigation protocol in its total failure to investigate the possibility of procuring outage insurance.
2. NorthWestern Energy's lack of diligence and risk mitigation protocol in its failure to order a simple, inexpensive El Cid test at the time of generator reassembly.

3. NorthWestern Energy's lack of diligence and risk mitigation protocol in its contractual relations with Talen and Siemens, and in particular, its failure to even explore the possibility of a negotiated cost sharing with Siemens, let alone the avenue of litigation.
4. NorthWestern Energy's decision to not even address these and other key issues in its Application, and to ultimately leave the Commission with deficient testimony by never calling in expert witnesses from operator Talen or maintenance contractor Siemens.

These and other considerations make it quite clear to this commissioner that the utility had (a) failed to meet its burden of proof in attempting to justify the inclusion of these incremental expenses in rates, and (b) demonstrated a concerning level of poor judgment and imprudence in its risk management oversight of CU4, of which it is a 30 percent owner.

Notwithstanding the fears, warnings and general assertions of the two dissenting commissioners, this commissioner is wholly unimpressed with the past tendency of the Montana Public Service Commission to flout its public service responsibilities by often defaulting to a position of "let the rate-payer pay" when the utility has acted less than responsibly or performed less than efficiently. It is our job to hold the regulated utilities to a high standard, that results in the most reliable service at the most reasonable rates. Over time, this public interest-centered approach to regulation also results in the strongest companies with the best financial ratings and returns on shareholder investment: companies that do not take pass-throughs to rate payers for granted, but rather, assume a greater ownership of risk, and do a much better job of mitigation than we saw in this docket.

As I expressed at the work session on this docket, we need to move away from a regulatory culture that tends to see the consumer at the ultimate safety net for every mistake, miscalculation or act of risk mitigation imprudence a utility makes, and move to a far better paradigm, more consistent with public law and public trust. This case was a perfect opportunity to reflect that conviction, and the Commission's concomitant responsibility to protect the legitimate interests of rate-payers, while encouraging good companies like NorthWestern Energy to get better.

I am proud to be in the majority on this important and far-reaching decision.

Therefore, I respectfully CONCUR with the order,



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Roger Koopman, Commissioner

DEPARTMENT OF PUBLIC SERVICE REGULATION  
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**DISSENTING OPINION OF COMMISSIONER BOB LAKE**

My dissent is as much about process as it is about the final ruling and order. It is not in the best interest of either the consumer or the utility when the majority determines privately not only the outcome but the text of the final order. The discussion in the work session becomes nothing more than a public exercise.

The Public Service Commission's role is to weigh the merits of the utility's application and presented case, as well as the cases presented by intervenors. The Commission must also consider all documents included in the evidentiary record, and subject to examination of counsel and Commission staff. After final briefs are submitted, the Commission determines the correct decision that treats all parties fairly, equitably, and without bias. The final decision must be in the long term best interest of the consumer and allow the utility adequate revenue to maintain and grow the system, plus be financially sound in order to attract investors.

The majority determined that the statements made by the intervenors, some of whom did not present any witnesses, were to be believed above the experts provided by the utility. The statement referring to standard industry practice (Order 7283h, ¶ 54) was considered unpersuasive, even though the expert witness testified, and no proof was ever offered to dispute his testimony. The expert witness testified that this was a one-time event out of many similar repairs. However, his testimony was not considered nor was the root-cause analysis, which did not determine the actual cause with certainty.

The claims that the utility was somehow derelict in the management and operation of CU4 seem to ignore the minority ownership of NorthWestern and that the operation of the facility is by contract with Talen, formally PPLM. According to testimony, maintenance schedules were discussed with the owners but only for supply purposes.

The suggestion that outage insurance would have eliminated the loss was only made as an offhand statement by the MCC, proof was never presented to support the claim. The fact is that NorthWestern has an on-going reciprocal agreement with the CU3 owners for one-half of the generation capacity (111 MW), plus damage insurance that paid \$26.5 million for property loss. This coverage limited the loss to \$8.23 million rather than the \$35 million potential loss. The contracts in place between Siemens and Talen, and between Talen and the owners, which are specific about non-recovery of consequential damages, must be taken at face value. Order 7283h, ¶ 26. To believe that NorthWestern was irresponsible for not pursuing legal action to recover the loss is not a valid issue to deny the claim.

The high bar of imprudence must be based on fact, not random statements of biased individuals who are very vocal in their dislike of fossil fuels. The Commission must remain above the fray and base its decisions on the facts presented, nothing more and nothing less. This is not the place for personal ideology or bias.

Any reference to the fixed costs of CU4 should not be referred to in the order. Order 7283h, ¶ 46. That cost is ongoing and is based on the original cost of the facility which a prior Commission felt was in the long term best interest of the consumer. It has nothing to do with the outage and will continue until the debt is retired.

Therefore, I respectfully DISSENT with the order,

  
\_\_\_\_\_  
Bob Lake, Commissioner