

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

DISSENTING OPINION OF COMMISSIONER KIRK BUSHMAN

The Montana Public Service Commission (“Commission”) assumes imprudence on the part of the utility, uses hindsight to draw conclusions, applies poor regulatory practice in its use of single issue ratemaking, and draws technical conclusions well beyond the Commission’s ability in this docket. The Commission also seems to neglect the operational arrangement of the owners of Colstrip.

A theme of presumption of imprudence unless proven otherwise presents itself in the motion to deny NorthWestern Energy (“NorthWestern”), and throughout the final order. *See* Order 7283h, Dkt. D2013.5.33, ¶¶ 29, 33, 34, 48, 63, 66, 67, 71. Assigning imprudence to NorthWestern because of the way it presented its case in front of the Commission is misplaced. It is inconceivable that a replacement power purchase can be deemed imprudent as a result of how the utility presented evidence and witnesses during a docket that deals with an outage that occurred previously in time. Doing so in the final order portrays onto the utility a presumption of imprudence and an expectation that the utility presents its case under a cloud of suspicion.

The final order put out by this Commission deviates considerably from the original motion on March 29th of 2016. According to the minutes, the motions regarding this docket reads as follows:

MAIN MOTION: Commissioner Koopman moved to ISSUE an order finding that the replacement power costs caused by the Colstrip outage were imprudently incurred, that because no stipulation resolving the admissibility of certain data requests was received that the Commission will determine their admissibility in the final order, and that good cause exists for

the Commission to extend the deadline for an issuance of the order another 30 days. Commissioner Kavulla seconded the motion.

AMENDED MOTION: Commissioner Kavulla moved to AMEND the motion to include that certain costs associated with modeling and administrative activities are not electricity supply costs. Commissioner Koopman seconded the motion, which passed 3 to 2. Commissioners Lake and Bushman dissenting.

The main motion as amended passed 3 to 2. Commissioners Lake and Bushman dissenting.

This motion is incoherent respective to the case that was presented to the Commission. It seems to imply that the utility should buckle to the will of the Commission lest it be judged and punished. In the motion there is no mention of any imprudent actions relative to the outage of Colstrip Unit 4 (CU4) or the purchase of replacement power. The motion takes on the characteristics of a “placeholder” to allow the Commission time to construct a final order to their liking.

It appears that there were third party communications and coordination that were done out of the public arena. These actions are personified even more when I, as a Commissioner, was denied a chance to offer a motion, thus deviating from a long held tradition which allows the Commissioner of the district that encompasses the facility in question, to be the initial movant. The State of Montana is known for transparency laws which have roots in our State’s constitution. It is a shame that Montana was given a “D” rating from the Center for Public Integrity.¹ Perhaps this rating is justified when we review cases such as this. I do not pretend to know the impetus or motivations behind the biased behavior of the Commissioners but it is disturbing and should be called out. There is a history here that cannot be denied and should be reviewed by the powers that be. The decision reached in this docket is short sighted to say the least and sets in motion events which if not corrected, will result in more harm to the rate payers than the eight million dollars in question in this docket.

The issue of outage insurance is disconnected and conflicted in this docket. The Commission is speaking out of both sides of its mouth when it tries to fault NorthWestern for not having outage insurance and then ordering it not to go purchase it. In paragraph 61, the Commission relies on evidence which supports the purchase of outage insurance to be financially

¹Available at <https://www.publicintegrity.org/2012/03/19/18196/montana-gets-d-grade-2012-state-integrity-investigation>

worthwhile. To make this conclusion the order relies totally on hindsight which is like buying a lottery ticket after you have seen the numbers, or playing a hand of Texas Hold'em after you have seen the flop. The industry standard was and still is that outage insurance does not benefit the rate payer in the long run. In paragraphs 32 and 35, the final order references the Montana Consumer Counsel's (MCC) and the Montana Environment Information Center's (MEIC) criticism of NorthWestern for not evaluating outage insurance. This critique fails to complete the argument that this was imprudent. How was it imprudent? Did this evaluation indicate that outage insurance was worthwhile? Did it conclude anything?

This order leaves the question unanswered as does the record; therefore, I cannot support the argument of imprudence. In addition to this, comparisons to the David Gates Generating Station (DGGs) outage fail to describe the major differences between DGGs and CU4. DGGs is a unique plant used in a unique manner. It was the first of its kind in the country. There were reasons to plan for the unknowns in that situation. NorthWestern was faulted for not planning for a scenario that resulted in the facility shutting down. This reasoning cannot be applied to CU4, a long operating standard base load generating facility.

Paragraphs 32 and 36 also reference the MCC & MEIC's argument of workers who were furloughed during the outage. This issue is considered single issue rate making, as it deals with a payroll expense that does not fall under the tracker mechanism. Payroll issues are dealt with during rate cases. However, as the issue is discussed it becomes obvious that it is an unfair discussion that is missing relevant aspects such as whether additional maintenance workers were brought on. Was there overtime to other employees? The Commission and the MCC cherry pick this issue all the while ignoring other obvious expenses such as the property insurance deductible. This form of single issue ratemaking is frowned upon and usually avoided by regulatory bodies.

The issues surrounding the fault of CU4 are extremely technical and complicated, although the Commission is afforded much latitude of expertise regarding issues of the utilities, this latitude is stretched thin in this docket. There were expert witnesses with years of experience who put forth testimony. The Commission made conclusions in this docket that go beyond their abilities to understand such technical issues. Conclusions about what test should have been done and what a non-operator such as NorthWestern could have done or what

oversight could have been provided are far beyond this Commission's ability. The Commission is a utility regulator not a plant operator.

The operational arrangement and owners group is not a unique nor new arrangement to the Commission. This arrangement was in existence when the Commission promoted the purchase of CU4 shares by NorthWestern, thus the Commission stamped it with its approval. The Commission lacks reason or evidence to impugn NorthWestern with imprudence without addressing NorthWestern's implied deviation from the rest of the owners group. In other words, how can NorthWestern be imprudent without Talen Energy, the operator, being imprudent? Paragraph 45 of the order references the term "prudently incurred" and it gives context when it states: "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." Regarding the CU4 outage we have five utilities from four different states which gives us a group of reasonable utility managers who were all in the same circumstance. Although the different states have different regulatory mechanisms and each utility has different shares of each unit resulting in different amounts and different allowances, these utilities were all facing the same scenario when CU4 experienced its outage. No other Commissions or Commissioners found imprudence regarding the outage of CU4. This information may not be in the record but it is certainly in the Commission's purview to guide its regulatory authority. Of the five affected regulated utilities from four different states, NorthWestern is the most recent owner to acquire assets within the Colstrip facility and owns approximately 12 percent of the facilities generation. NorthWestern's participation in the owners group is the only link to the operations of the plant, which is performed by Talen Energy (PPL at the time of incident). The work being performed on the generator was deemed so complex that it was required to be done by the manufacturer of the turbine, Siemens. The fact that NorthWestern is not the operator of the plant seems to be ignored.

In paragraph 34, the final order refers to the observations of the MEIC. Although the MEIC is free to opine on the situation, it fails to consider the owners group and the reciprocal sharing agreement. The question of why NorthWestern would not conclude they acted prudently, when they did not perform the work during the outage, is completely ignored. NorthWestern is a minority vote in the owners group. A fact that the Commission approved when CU4 was purchased and has never objected to since. The MEIC also fails to provide any

expert witnesses to back up the assertions they make through misrepresentations of the testimony provided.

NorthWestern's actions not to pursue damages against Siemens cannot be deemed imprudent. This would simply be a foolish waste of time and money via legal fees. This is supported by the fact that FM Global, the property insurance company who covered the owners group's claims for damages caused by Siemens, never pursued damages. It is clear that the insurance company had the most to lose and was the most incentivized entity to find fault with Siemens. The witness, Mr. James Goetz, an attorney from Bozeman covers this in his testimony.

The evidence in this docket does not support the conclusion of imprudence by NorthWestern and presents a dramatic deviation from traditional regulatory practice. The final order issued in this docket is not the proper place for conceptual changes in regulatory practice.

• Therefore, I respectfully DISSENT with the order,

A handwritten signature in black ink, appearing to read "Kirk Bushman", with a stylized flourish at the end.

Kirk Bushman, Commissioner