Service Date: May 26, 2015

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

IN THE MATTER OF Havre Pipeline Company's Service Quality and Its Response to Notice of Commission Action in N2014.11.92	)	REGULATORY DIVISION DOCKET NO. D2015.3.32 ORDER NO. 7413
IN THE MATTER OF the Request of the Montana Public Service Commission for Havre Pipeline Company Service Quality Information	)	DOCKET NO. N2014.11.92

PROCEDURAL ORDER

1. On November 14, 2014, the Montana Public Service Commission (Commission) issued a *Notice of Commission Action* initiating an N docket based upon the receipt of quality of service complaints regarding Havre Pipeline Company's (HPC) natural gas service in north Montana. HPC is majority owned by NorthWestern Corporation doing business as NorthWestern Energy (NorthWestern). The Commission required HPC to file a plan within 20 days of the issuance of the *Notice* to explain how HPC will meet its obligations as a public utility to provide reasonable natural gas service.

2. On November 20, 2014, NorthWestern filed *Havre Pipeline Company's Motion for Extension*, requesting that HPC be granted until January 5, 2015 to respond to the Commission's *Notice*. The Commission, satisfied with NorthWestern's assurances that HPC would continue to provide service during the winter heating season, granted the *Motion for Extension* via a second *Notice of Commission Action* on November 26, 2014.

3. On January 5, 2015, NorthWestern filed Havre Pipeline Company's *Response to the Montana Public Service Commission's Notice of Commission Action issued on November 14, 2014*. On April 1, 2015, the Commission issued a *Notice of Commission Action and Notice of Filing and Intervention Deadline*. The Docket No. N2014.11.92 was consolidated with Docket No. D2015.3.32.

4. On April 22, 2015, the Montana Consumer Counsel (MCC) filed its *Petition of*

the Montana Consumer Counsel for Intervention. On April 27, 2015, the Commission granted the MCC's request for intervention.

5. The Commission, through delegation to staff, hereby establishes this Procedural Order (Order) to be followed in this proceeding. This Order is effective immediately and remains effective unless modified by the Commission or staff. Nothing in this Order limits the right of the Commission or its staff to inspect the books, accounts, papers, records and memoranda of NorthWestern or HPC at any time. Mont. Code Ann. § 69-3-106 (2013). A party may seek reconsideration of this Order within ten (10) days of its service date. Admin. R. Mont. 38.2.4806 (2015).

Schedule

6. This Order sets the following procedural schedule for this Docket:

(a) June 1, 2015: Final day for discovery to HPC/NorthWestern related to NorthWestern's *Response to Notice of Commission Action* (N2014.11.92).

(b) June 15, 2015: Final day for NorthWestern to respond to discovery issued by June 1, 2015.

(c) June 29, 2015: Final day for intervenor testimony.

(d) July 8, 2015: Final day for the Commission to identify additional issues, if any*.

(e) July 13, 2015: Final day for discovery to intervenors.

(f) July 27, 2015: Final day for intervenors to respond to discovery issued by July 13, 2015.

(g) August 10, 2015: Final day for NorthWestern to file rebuttal testimony.

(h) August 24, 2015: Final day for discovery to NorthWestern related to rebuttal testimony.

(i) September 8, 2015: Final day for NorthWestern to respond to discovery related to rebuttal testimony filed by August 24, 2015.

(j) September 16, 2015: Final day for NorthWestern and intervenors to file pre-hearing memoranda.

(k) Hearing: TBA

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

Service and Filing

7. A party must serve a copy of every pleading, motion, brief, objection, data request or response, and other document it files in this proceeding on every other party. Upon e-filing a document with the Commission, the filing party must email a copy of the document to counsel of record. In order to file a document with the Commission, a party must: (1) Submit the document electronically (e-file) on the Commission's website at http://psc.mt.gov ("Account Login/Registration" under "Electronic Documents" tab); and (2) physically deliver or mail the original document to the Commission at 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. The Commission will not post an e-filed document to its website until it receives the original from the filing party. Service or filing by means of facsimile is prohibited. Service by mail does not extend a deadline.

Intervention

8. The deadline for intervention in this proceeding was April 22, 2015. An entity seeking late intervention must file a petition to intervene setting forth: (1) The general position that it intends to take; (2) a legally protectable interest directly affected by this proceeding; (3) whether late intervention would delay the proceeding or prejudice another party; and (4) good cause for not having filed a timely petition. Late intervention will become effective only upon action of the Commission.

Discovery

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

(a) Assign a unique, consecutive number to each data request (e.g., MCC-001), regardless of the party to whom the request is directed (e.g., the Commission may direct PSC-001 through 008 to NorthWestern, PSC-009 through 016 to MCC, and PSC-017 through 019 again to NorthWestern).

(b) At the beginning of each data request, consistently describe its subject in five words or less. In addition, a party may direct the request to a particular witness or include citations to exhibits or testimony.

(c) For multi-part requests, use lower case letters (a-e) to denote up to five parts.

(d) The following is an example of an acceptable data request:

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

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

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

10. A party may file an objection to a data request within seven (7) calendar days of receipt of the request. Objections must be sufficiently specific for the Commission to adequately rule on whether to sustain or object. The responding party need not object if an answer has been provided to a discovery request. If the requesting party finds the response inadequate, they may file a motion to compel. *See infra* ¶ 14. Only objections based on discoverability will be considered; objections on admissibility will be overruled. The failure to object to a data request does not waive the right to subsequently object to the admissibility of the information provided in response. If a party objects based on privilege, it must file a privilege log by the deadline to respond with enough information for the Commission to determine whether the privilege applies. The Commission may schedule oral argument before ruling on an objection.

11. If a data request asks for protected information, the responding party must file a motion for a protective order as soon as practicable, but no later than the deadline to respond to the data request.

12. Before filing a motion for an extension to respond or object to a data request, the party requesting the extension must ask the party that issued the data request to waive the applicable response deadline and agree to the extension (specifying the new deadline and particular data request(s) for which the extension is sought). The entity that issued the data request should agree to extensions related to data requests that seek the voluminous production of documents or additional analyses unless doing so would unduly delay a subsequent deadline.

13. A party may submit a data request after a deadline established in this Order either

by agreement of the parties or with approval of the Commission upon a showing of good cause that addresses why the discovering party missed the deadline.

14. If a response to a data request fails to answer the request, the discovering party may move within seven (7) calendar days after service of the response for an order compelling an answer. The motion, which the party must file with the Commission and serve on all parties, must identify the relief requested. The responding party may file a brief in opposition within five (5) days of service of the motion to compel. The Commission may schedule oral argument before ruling on a motion to compel, and will set a new response deadline if it grants the motion.

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

16. In order to promote the efficiency of the administrative process, staff attorney Laura Farkas will act as examiner for the limited purpose of disposing of discovery disputes (including objections to data requests and motions to compel) and motions for protective order in this proceeding. Mont. Code Ann. §§ 69-2-101, 69-3-103 (2014); *see also* Admin. R. Mont. 38.2.306, 38.2.1501. "Any party may apply for reconsideration in respect to any matter determined" in a Commission order or decision, including the examiner's final written decision. Admin. R. Mont. 38.2.4806.

Pre-hearing Motions, Conferences and Memoranda

17. A party must make a pre-hearing motion, including a motion to strike pre-filed testimony, at the earliest possible time. A responding party must file and serve its response brief within seven (7) calendar days of service of the motion. If the movant wishes to reply, it must file and serve its reply brief within five (5) calendar days of service of the response brief. Upon the request of a party, the Commission may allow oral argument on a pre-hearing motion.

18. The Commission may schedule a pre-hearing conference at any time prior to the hearing to discuss the feasibility of settlement in whole or in part, simplification of the remaining issues through admissions of fact, and any other matters that may expedite the hearing.

19. Unless the parties agree to file jointly, each party must file and serve a pre-hearing memorandum listing the following information regarding the hearing: (1) Contested

issues; (2) uncontested issues; (3) witnesses that it intends to call; (4) exhibits and responses to data requests that it intends to introduce (other than responses to data requests related to additional issues response testimony); (5) any special accommodations sought regarding witness sequence or scheduling. Each party's pre-hearing memorandum must also list any responses to data requests that the parties have collectively agreed to introduce. Whenever a party moves for the admission of a response to a data request, it must identify the number of the request.

Hearing

20. The Montana Rules of Evidence in effect at the time of the hearing will govern the hearing. *See* Mont. Code Ann. § 2-4-612(2). Because each party is entitled to reasonable notice of what issues will be addressed at the hearing, the Commission may not allow a party to raise an issue at a hearing unless it is reasonably related to an issue previously identified in the proceeding.

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

22. A party must make each person that authored a data request response available for cross-examination at the hearing unless the Commission approves an agreement among the parties to waive cross-examination. A witness need not recite pre-filed testimony before counsel moves to admit the testimony into the record.

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

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

25. "In the discretion of the commission or hearing examiner persons desiring to testify at a commission hearing may be allowed to do so without filing a petition to intervene." Admin. R. Mont. 38.2.2401.

DONE AND DATED this 26th day of May, 2015, by delegation to Commission staff as an Order of the Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

BRAD JOHNSON, Chairman
TRAVIS KAVULLA, Vice Chairman
KIRK BUSHMAN, Commissioner
ROGER KOOPMAN, Commissioner
BOB LAKE, Commissioner