

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

IN THE MATTER OF the Application of) REGULATORY DIVISION
NorthWestern Energy for Automatic Rate)
Adjustment for Taxes and Fees and the) DOCKET NO. D2015.10.81
Investigation of the Public Service) ORDER NO. 7451a
Commission into Taxes and Fees)

FINAL ORDER

PROCEDURAL HISTORY

1. On October 20, 2015, the Montana Public Service Commission (Commission) initiated a proceeding to: (1) Receive information about a significant increase in property taxes paid by NorthWestern Corporation, doing business as NorthWestern Energy (NorthWestern); (2) consider requirements for NorthWestern to disclose information to customers about its tax liability; and (3) receive NorthWestern's next annual tax tracker filing and any other filings required by the Commission that are related to taxes.

2. The Commission issued a *Notice of Investigation and Intervention Deadline* on October 23, and granted intervention to NorthWestern and the Montana Consumer Counsel (MCC) on November 3, 2015.

3. On November 5, 2015, the Commission issued *Procedural Order 7451*; on November 6, it issued Data Requests PSC-001 through PSC-011; and on November 13, it issued a *Notice of Roundtable*.

4. On November 20, 2015, NorthWestern responded to PSC-001 through PSC-011.

5. On December 7, 2015, the Commission conducted a roundtable discussion to receive information about a significant increase in NorthWestern's property taxes, and to consider requirements for disclosure of information about its tax liability to customers.

6. On December 11, 2015, NorthWestern filed its annual *Application for Final Rate Adjustment* (Application) to automatically adjust and track Montana state and local taxes and fees paid by the public utility.

7. On December 18, 2015, the MCC issued Data Requests MCC-001 through MCC-002, and the Commission issued Data Requests PSC-012 through PSC-020, as well as a *Notice of Public Hearing*. NorthWestern responded to these Data Requests on December 31, 2015.

8. On January 1, 2016, NorthWestern's proposed rates automatically went into effect on an interim basis as required by statute. Mont. Code Ann. § 69-3-308 (2015).

9. On January 12, 2016, the Commission conducted a public hearing in this matter.

FINDINGS OF FACT

10. The annual tax tracker automatically adjusts rates to track increases and decreases in state and local taxes and fees paid by NorthWestern. In this Tax Tracker, the total rate change, "which combines the 2016 Taxes and Fees Rate Component, the Adjusted 2015 Net Deferred Balance Rate Component, and reversal of the 2014 Prior Year Net Deferred Balance," results in revenue increases of \$2,960,849 for its electric utility and \$980,429 for its natural gas utility. (Ex. NWE-1 pp. 8, 17).

11. NorthWestern's proposed rates automatically went into effect on an interim basis on January 1, 2016. As compared to previous rates, the increase for a residential electric customer using 750 kilowatt-hours per month is \$0.38 per month or \$4.56 per year, and the projected increase for a natural gas customer using 100 therms per month is \$0.36 per month or \$4.32 per year.

12. In this Tax Tracker, NorthWestern is not proposing any true-up related to the hydroelectric facilities that it purchased from PPL Montana, LLC (PPLM) in November 2014. (Ex. NWE-1 p. 13). According to NorthWestern, "This fulfills [its] commitment made during the Hydro hearing to forego a tax true-up for the first year revenue requirement." *Id.*

13. The Commission specifically addressed property taxes when it preapproved NorthWestern's purchase of the hydroelectric facilities:

The initial revenue requirement shall only include the actual amount of property taxes currently paid by PPLM for the Hydroelectric Facilities. NorthWestern in its original filing based its property tax expense on an estimation of the \$900 million original acquisition price for the purchase. NorthWestern originally proposed a property tax expense of \$14,050,317. In response to Data Request PSC-352, NorthWestern stated that PPLM paid \$12,386,568 for the property taxes for tax year 2013 on the Hydroelectric Facilities. The Commission will only include \$12,386,568 for property taxes in the initial revenue requirement.

Final Order 7323k, Dkt. D2013.12.85, ¶¶ 138, 185-188 (Sept. 25, 2014). It ordered NorthWestern to “make a final compliance filing in December 2015 to reflect . . . the actual property tax expense for the Hydroelectric Facilities.” *Id.* ¶ 190.

14. On December 9, 2015, NorthWestern filed its *Hydroelectric Facilities Purchase Compliance Filing*. The Commission issued a *Notice of Filing and Opportunity to Comment* on December 15, 2015, and the MCC filed a *Request for Discovery and Further Opportunity to Comment* on January 4, 2016. *See* Dkt. D2013.12.85.

15. NorthWestern proposes to include “the actual 2015 property taxes” for the Hydros (less those attributable to Kerr Dam) “in the base revenue requirement for 2016,” and then “use the tax tracker method (‘60/40 Allocation’) to collect or refund any difference between 2016 actual tax and 2015 base level of property taxes.” (DR PSC-003a; *see* DR PSC-015). The Commission finds that excluding property taxes associated with the hydroelectric facilities in this case was consistent with its specific directive in Final Order 7323k.

16. The Commission initiates Docket D2016.1.9 to investigate NorthWestern’s tracking and disclosure of state and local taxes and fees paid by customers. The Commission finds that collecting all state and local taxes and fees through unified volumetric rates would provide greater transparency regarding the amount of taxes subject to automatic adjustment. The Commission observes that for other services, such as consumers’ phone bills, a specific line item attributable to taxes appears on monthly invoices as one item that sums up to the total payable amount. Based on the evidence in this docket, the Commission finds that it is not unduly burdensome for NorthWestern to create such a rate. (DR PSC-013). In this Order, it directs NorthWestern both to file proposals for separate state and local tax rates and for the disclosure of the dollar amount of a customer’s bill that consists of state and local taxes. To the degree that the tax rate requires multiple components, such as for a volumetric energy and a volumetric demand charge, those components may be listed separately for the purpose of the rate filing, but NorthWestern’s proposal should identify an approach whereby they sum up a single dollar figure for each consumer for state and local taxes on the monthly bill.

17. The Commission also observes that NorthWestern’s treatment of taxes on “construction work in progress” is inconsistent because it tracks some of these taxes but not others. (Ex. NWE-1 p. 21; Data Response (DR) PSC-012; Hrg. Tr. 17-24, 43-48 (Jan. 12,

2016)).

18. The Commission will investigate issues related to NorthWestern's implementation of the tax tracker in Docket D2016.1.9.

CONCLUSIONS OF LAW

19. The Commission has full power of supervision, regulation, and control of public utilities. Mont. Code Ann. § 69-3-102. NorthWestern is a public utility subject to the jurisdiction of the Commission, which may investigate its rates, tolls, charges, or practices at any time. *Id.* §§ 69-3-101, 69-3-324.

20. Pursuant to statute, the Commission must allow public utilities to automatically adjust rates to track "Montana state and local taxes and fees, except state income tax, paid by the public utility." *Id.* § 69-3-308(2)(a). Under this annual tax tracker, "The amended rates must automatically go into effect on January 1 following the date of change in taxes paid on an interim basis." *Id.* § 69-3-308(2)(b). These amended rates must include:

(A) adjustments for the net change in federal and state income tax liability caused by the deductibility of state and local taxes and fees;

(B) retroactive tax adjustments; and

(C) adjustments related to the resolution of property taxes paid under protest.

Id. If the Commission determines "that the revised rate schedule is in error," it may order the utility "to address any errors or omissions" within 45 days of receiving its filing. *Id.* § 69-3-308(2)(c). Failure to issue an order "is considered approval on the part of the [C]ommission." *Id.* § 69-3-308(d).

ORDER

IT IS HEREBY ORDERED THAT:

21. The amended rates that automatically went into effect on January 1, 2016 pursuant to Section 69-3-308 of the Montana Code Annotated are approved on a final basis;

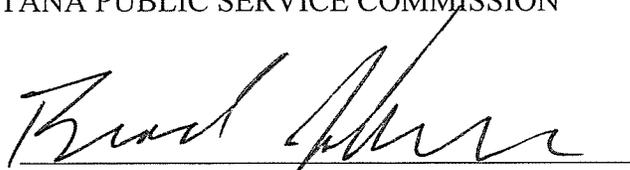
22. Within thirty days of the service date of this Order, NorthWestern propose specific volumetric rates for each rate class, designed to preserve existing inter-class allocations, to address any intra-class shift from the existing allocations, and to recover all state and local taxes and fees paid by the utility that would otherwise be collected through base rates and tax

tracker adjustments; and

23. Within thirty days of the service date of this Order, NorthWestern is to file a proposal for disclosing the specific dollar amount of each customer's bill that consists of state and local taxes.

DONE AND DATED this 25th day of January, 2016, by a vote of 4 to 1. Commissioner 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

ATTEST:


Aleisha Solem
Commission Secretary

(SEAL)