

Service Date: March 2, 2004

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

IN THE MATTER of the Submission)	
of Northwestern Energy's Default)	UTILITY DIVISION
Electricity Supply Resource)	
Procurement Plan)	DOCKET NO. N2004.1.15
)	ORDER NO. 6532

PROCEDURAL ORDER

NOTE: PLEASE READ CAREFULLY. PROVISIONS OF THIS ORDER MAY MODIFY PREVIOUS PSC PROCEDURAL AND SCHEDULING POLICY. THIS IS NOT A PROPOSED ORDER. RECONSIDERATION IS AVAILABLE FOR GOOD CAUSE.

Introduction and Explanation
of Docket and Procedure

1. On January 29, 2004 NorthWestern Energy (NWE), pursuant to § 69-8-420(1), MCA, and ARM 38.5.8226(1), filed its default electricity supply resource procurement plan. Section 69-8-420, MCA, reads:

Default supply resource procurement plans - comment on plans.

(1) The default supplier shall develop default supply resource procurement plans. The plans must be submitted to the commission at intervals determined in rules adopted by the commission pursuant to 69-8-419.

(2) A default supply resource procurement plan must demonstrate the default supplier's achievement of the objectives provided in 69-8-419 and compliance with the rules adopted pursuant to 69-8-419.

(3) The commission shall:

(a) review the default supply resource procurement plan;

(b) provide an opportunity to the public to comment on the plan;

and

(c) issue written comments that identify;

(i) any concerns of the commission regarding the default supplier's compliance with the rules adopted pursuant to 69-8-419; and

(ii) ways to remedy any concerns.

2. This section is largely self-explanatory; however, to avoid any possible confusion, the Commission restates and explains as follows. First, § 69-8-420 requires NWE to develop and submit an electricity "default supply resource procurement plan[".

(Emphasis added). To the extent NWE has filed something else, pursuant to this section, either intentionally or inadvertently, then it is in violation of the section. Second, the plan NWE submits "must demonstrate [NWE's] achievement of the objectives provided in 69-8-419" and compliance with Commission rules adopted pursuant to § 69-8-419(3), MCA. Third, to determine whether NWE has successfully made this demonstration the Commission is required to review the plan and to give the public an opportunity to comment on the plan. Fourth, the Commission must issue certain written comments following review and public comment.

3. Section 69-8-420 is somewhat ambiguous on certain points; however, those ambiguities are resolved either by reasonable interpretation or reference to other parts of the law. The process established by § 69-8-420 is not a contested case. "Contested case" is defined as, "a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to rate making, price fixing and licensing." § 2-4-102(4), MCA. Section 69-8-420 does not require or authorize Commission approval of the NWE plan or of any specific resource acquisition; the section does not require a hearing and, even if it did, the comments the Commission is required to make do not constitute a determination of legal rights, duties or privileges. Furthermore, the § 69-8-420 process is neither rate making, price fixing nor licensing.

4. Because the process required at § 69-8-420 is not a contested case, the Commission is not obligated to comply with contested case requirements, including an opportunity for discovery on NWE. Prior to issuing comments the Commission is required only to review the plan and give an opportunity for public comment, which opportunity could be limited at the Commission's discretion, consistent with the law. The Commission concludes, however, that taking such a narrow view of the § 69-8-420 process would not well serve the public, NWE or the Commission. Some members of the public may want and need only an opportunity for brief verbal or written comment after

cursory review of the plan or plan summaries. Other members of the public, and the Commission itself, may want the opportunity to evaluate the plan in detail, which opportunity may require that NWE answer questions about the plan, and perhaps provide certain supplemental information.

5. Therefore, written inquiries directed to NWE about the plan are hereby authorized, so long as such inquiries are done in accordance with this order and are within the scope of 69-8-420, and this docket. The scope of this docket is stated most succinctly at § 69-8-420(2), MCA. On objection by NWE the Commission will decide whether inquiries are beyond the scope of the docket. Unless it is not practical to do so, the Commission encourages NWE to err on the side of answering a question, even when there is a plausible scope issue presented.

6. In addition to written inquiries, the Commission will also schedule in this docket one or more "workshops" wherein participants will have the opportunity to meet with NWE representatives and inquire into and discuss various aspects of the plan. Details of the workshop(s) will be provided by separate notice.

7. The Commission establishes in this order a procedural schedule and procedural requirements for Docket No. N2004.1.15.

Schedule

8. The following schedule applies in this docket:

<u>Action</u>	<u>Deadline</u>
Written Inquiries Directed to NWE	March 16 through April 20, 2004
Written Responses from NWE	As able, but not later than ten days after receipt of inquiries
First Workshop	Week of March 8, 2004
Second Workshop	If needed, to be determined

Satellite Public
Comment and
Information Sessions

Scheduled at various
locations throughout
May, 2004

Final Date for
Written Comments
from Participants

June 1, 2004

Commission Comments
Pursuant to § 69-8-420(3)(c), MCA

By August 3, 2004

Ex Parte Communications

9. Ex Parte communications are not prohibited by law in this proceeding. However, communications that would be unlawful ex parte in a contested case should be avoided or kept to a minimum by Commissioners, NWE and participants.

Procedure

General

10. The procedure governing this docket is set forth at § 69-8-420, MCA, and this order.

Service and Filing

11. Ten copies of written inquiries and responses should be served on the Commission. NWE and participants may arrange for electronic service, but hard copies must be provided on request. Deadlines are receipt dates at the Commission. Commission staff may grant reasonable extensions.

Participation

12. There is not intervention and there are no parties to this docket. Persons who have indicated a desire to participate in the docket pursuant to the February 11, 2004 notice may make written inquiries of NWE and participate in the workshop(s). A current list of docket participants is included with the service list attached to this order. All members of the public may participate in the satellite sessions and submit electronic or hard copy comments on the plan at any time.

Written Inquiries

13. Written inquiries in this docket may be less formal than usual. However, at a minimum the Commission requests that participants number written requests sequentially throughout the docket (e.g., MCC-1, MCC-2, etc.), and that NWE's responses repeat the question and use the same numbering sequence.
14. Failing an effort to resolve an issue informally, any objections from NWE to written inquiries should be made within three business days of receipt.

Workshops

15. The objective of the workshop(s) is to provide live information and explanation and reduce the need for written inquiries. For that reason the Commission will schedule a workshop prior to the written inquiry period. Commission staff will work with NWE and participants to develop an agenda for the workshop(s).

DONE and dated this 26th day of February, 2004.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman

TOM SCHNEIDER, Vice Chairman,
Voting to Dissent

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner

JAY STOVALL, Commissioner,
Voting to Dissent

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested person may request the Commission to reconsider this decision.
A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.