

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

**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 arriving 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