

*Montana PSC – One Week Calendar of Scheduled Events
(This is not an official schedule of PSC activities)*

January 10 -14, 2022

MONDAY 10	
TUESDAY 11	<p>9:00 AM – WEEKLY SCHEDULING MEETING (Commission Conference Room) (No web/audio feed)</p> <p>9:30 AM – BUSINESS MEETING (Bollinger Room) Call To Order Pledge of Allegiance Public Comment – Please follow the directions under ‘Public Involvement’ on the Agenda Announcement of Changes to the Agenda Action Items:</p> <ol style="list-style-type: none"> 1. Approval of the Commission Minutes for the week of December 13, 2021 <p>Work Sessions:</p> <ol style="list-style-type: none"> 1. 2020.09.094 – Commission Initiated – Commission Investigation of North Star - To provide an update on the status of North Star Water and Sewer 2. Commission Initiated - Bluebook Delegation of Authority - To consider adopting a new policy in the Bluebook regarding authority delegated to staff 3. 2021.04.047 – NorthWestern Energy - NorthWestern's Application to Increase the PCCAM Base - To consider the parties motions for reconsideration <p>3:30 PM – INFORMATIONAL MEETING – ESG Webinar (Bollinger Room)</p>
WEDNESDAY 12	
THURSDAY 13	
FRIDAY 14	

***Next Commission Business Meeting Tuesday, January 19, 2022**

MONTANA PUBLIC SERVICE COMMISSION

AGENDA NO. 22-01-11

Date Published: January 7, 2022

For Week Commencing: January 10, 2022

Place of Meetings: All meetings are held at the Commission's office, 1701 Prospect Avenue, Helena, Montana, unless otherwise noted.

Commission Meetings:

Commission Scheduling Meeting: Tuesday, January 11, 2022, 9:00 a.m.

Commission Business Meeting: Tuesday, January 11, 2022, 9:30 a.m.

Action Items

All items identified below are for action at the Commission's Business Meeting this week:

1. Approval of Commission Minutes (Patricia)

Approval of the Commission Minutes for the week of December 28, 2021.

Work Sessions

All items identified below are for Commission discussion or action at the Commission's Business Meeting this week:

1. 2020.09.094 – Commission Initiated – Commission Investigation of North Star - To provide an update on the status of North Star Water and Sewer
2. Commission Initiated - Bluebook Delegation of Authority - To consider adopting a new policy in the Bluebook regarding authority delegated to staff
3. 2021.04.047 – NorthWestern Energy - NorthWestern's Application to Increase the PCCAM Base - To consider the parties motions for reconsideration

Other Meetings

1. 1/11/2022, 3:30 PM – Informational Meeting – ESG Webinar (Bollinger Room)

Notice Items: All items identified below are noticed for public involvement purposes. Unless otherwise stated in the text of the Notice, the items will be action items on a subsequent Agenda. Public Comments on this Agenda's items need to be submitted within 5 calendar days following publication of this Agenda. Public comments on a

noticed matter must be submitted within the required deadline provided in the Notice. Please refer to the “Public Involvement” item in this Agenda for options and assistance.

None

Transportation Notice Items: Motor carriers with proper standing may protest Applications. Protests related to an Application for Class A, B, and E passenger authority is limited to a protest of the motor carrier’s ability to meet the requirements of Mont. Code Ann. §§ 69-12-323(5) and 69-12-415. Protests must include the proper fee, as required by Mont. Admin. R. 38.3.402(c), and conform to the requirements at Mont. Admin. R. 38.3.405 or 38.3.406 as applicable. A protest form is available on the Commission’s website <http://psc.mt.gov/For-Regulated-Utilities/Compliance-Materials#undefined>. If no written protests are received by the deadline, the Commission may issue a final decision on the Application (including a decision by delegation of authority to Commission staff pursuant to established internal operating procedures) without a public hearing, pursuant to Mont. Code Ann. § 69-12-321.

None

Protective Orders – Notice Items: The Commission has received the following requests for Protective Order(s) pursuant to Mont. Admin. R. 38.2.5007. Comments on the requests may be submitted at any time prior to ruling. Copies of these requests may be viewed on the Commission’s website <http://psc.mt.gov>.

None

Protective Orders – Information Items: The Commission has issued the following Protective Order(s). These Order(s) may be challenged pursuant to Mont. Admin. R. 38.2.5008. Copies of the Order(s) may be viewed on the Commission’s website <http://psc.mt.gov>.

None

Information Items: All items identified below are for *information only*.
Information Items:

None

New Regulatory Filings Received in Past Week:

None

New Transportation Filings Received in Past Week:

None

General Information: This is the Commission's Agenda for the week designated above. The Agenda is posted a week in advance on the public information bulletin board at the Commission's office, is emailed to all persons who have requested notice by email, and is posted on the Commission's website <http://psc.mt.gov>.

Public Involvement: The Commission invites the public's involvement in its proceedings. Options are:

- (1) provide written comments at the Commission's website <http://psc.mt.gov>, select "Documents & Proceedings" Tab; select "Comment on a Proceeding", select "Continue as Guest", complete form, select "Submit";
- (2) get on the Commission's "Watch List" for a Docket at the Commission's website <http://psc.mt.gov>, select "EDDI" icon on the main page, create an account for "ePass", under "Watch List" Tab enter the Docket number—the Commission's case you are interested in following;
- (3) watch the meeting's "Live Webcast" from your computer at <http://psc.mt.gov/livestream>;
- (4) attend a Commission meeting in person and provide comments;
- (5) attend a Commission meeting via Zoom to provide public comment:
 - a. Please call the Commission's toll-free number at 1-800-646-6150 by 4:30 p.m. on the day before the scheduled Business Meeting.
 - b. You will need to provide your name; the docket number or a description of the docket on which you wish to provide comment; your phone number; and your email address.
 - c. You will be given an identifier, such as "Commenter 1, 2, etc." This identifier will be how you are recognized to provide public comment during the business meeting.
 - d. Once you have provided public comment at the business meeting, you will no longer be able to provide public comment. You may stay in the meeting, or you may leave the meeting and continue to listen in on the Commission's live stream.
 - e. You may also provide written comments as outlined in paragraph (1) under "Public Involvement." These comments are not made publicly available but are provided to the docket work team and Commissioners.
- (6) sign up on the Commission's "Email List" to receive Notices by email for the following categories: Rules, Motor Carrier, Energy West Applications, MCC & PSC Taxes, MDU Applications, NorthWestern Energy Applications, PSC Orders, Telecommunications Applications, PSC Agendas, and PSC Hearings.
- (7) mail or deliver written comments to the Commission's office, 1701 Prospect Ave., P.O. Box 202601, Helena, MT 59620-2601;

(8) contact your District's Commissioner; and

(9) contact the Commission's Consumer Assistance staff at 1-800-646-6150 or email pschelp@mt.gov. They are happy to assist you!

Live Webcast: Visit <http://psc.mt.gov/livestream> to watch live stream of Commission meetings and hearings.

Inquiries: For general inquiries concerning this Agenda, contact Patricia Trooien at (406) 444-6199 or the Commission's Consumer Assistance Staff at 1-800-646-6150.

Accommodations for Individuals: Individuals needing accommodations to attend or participate at a Commission meeting or hearing may contact the Commission's Consumer Assistance Staff at 1-800-646-6150 or by email pschelp@mt.gov prior to the meeting or hearing. The Commission will make every effort to provide assistance.

****Qualifies for Staff Action. Upon receipt of a written request by a Commissioner or an interested person submitted within five (5) business days of the date published on this Agenda, the Commission will review this item.***

At the meeting of the Public Service Commission of the State of Montana held at the Commission's Offices in Helena, Montana, on Tuesday, December 28, 2021, at 9:30 a.m., the following members were present:

James Brown, Chairman
Brad Johnson, Vice Chairman, appearing remotely
Tony O'Donnell, Commissioner, appearing remotely
Randy Pinocci, Commissioner, appearing remotely
Jennifer Fielder, Commissioner, appearing remotely

PUBLIC COMMENT

None

APPEARANCE

Patricia Trooien, Commission Secretary

(260) In the matter of the approval of Commission Minutes for the week of December 13, 2021.

Commissioner Pinocci moved to ADOPT the Commission Minutes for the week of December 13, 2021. Commissioner O'Donnell seconded the motion, which passed unanimously.

APPEARANCE

Tina Shorten, Consumer Assistance Manager

(261) 2021.08.110 In the matter of Citizens Telecommunications Company of Montana, LLC- Advice 2021-2 submittal requesting a name change on all tariffs to Ziplly Fiber of Montana LLC, dba Ziplly Fiber,

Commissioner Fielder moved to ADOPT Advice No. 2021-2 in Docket 2021.08.110. Commissioner O'Donnell seconded the motion, which passed unanimously.

APPEARANCE

Lucas Hamilton, Legal Division

(262) 2021.08.106 – NorthWestern Energy – Application for Approval of Interconnection Procedures – Consider QFs' Motion to Dismiss and Motion to Stay.

Chairman Brown moved to DENY the QFs' motion to dismiss. Commissioner Fielder seconded the motion, which passed unanimously.

Chairman Brown moved to DENY the motion to stay and directed Staff to hold a status conference to discuss the nature and scope of further process in this matter and issue an amended procedural order. Commissioner Fielder seconded the motion, which passed unanimously.

APPEARANCE
Lucas Hamilton, Legal Division

(263) 2021.10.126 Montana-Dakota Utilities Company (“MDU”) - Application of MDU for Authority to Implement a Fuel and Purchased Power Cost Tracking Adjustment for Contact Service Rate 35 – To Act on MDU’s filing.

Commissioner Pinocci moved to APPROVE rates on an interim basis effective January 1, 2022. Commissioner O’Donnell seconded the motion, which passed unanimously.

ANNOUNCEMENT
Chairman Brown, District 3

There will be no Commission Business Meeting next Tuesday, January 04, 2022. The next meeting will be Tuesday, January 11, 2022.

There being no further business to come before the Commission, the meeting was adjourned at 10:00 a.m.

JAMES BROWN, Chairman

BRAD JOHNSON, Vice Chairman

TONY O’DONNELL, Commissioner

RANDALL PINOCCI, Commissioner

JENNIFER FIELDER, Commissioner

ATTEST:

Patricia Trooien, Commission Secretary
(SEAL)

PSC Work Session Request

Date of request: January 3, 2021

(to be included on the agenda for the next following business meeting request must be made by 5:00 p.m. Monday)

Week work session to be held: January 11, 2019

Request is:

- routine -- on agenda, normal day and time of work sessions
- special -- on agenda, special day or time:
- out-of-cycle -- not on agenda, day and time:
- other meeting, day, time and location:

Called by: Ben Reed, Grant Fink

Participants: Ben Reed, Grant Fink

Docket Number: 2020.09.094

Applicant or Petitioner: Commission Initiated

Case or Subject: Commission Investigation of North Star

Purpose: To provide an update on the status of North Star Water and Sewer

Staff Recommended, Suggested or Alternative Motions: Informational meeting, not action contemplated.

Additional Information:

Reference materials: Staff email and update from North Star
(memos and materials to be distributed by last work day of week request is made, if possible)

Estimated time required: 10 minutes

Jonathan Motl
Bitterroot Law
PO Box 1312
Hamilton, MT 59840
Phone 406-431-5513
Attorney for North Star

Informal Response To Group Members Identified by PSC Counsel, Ben
Reed

IN THE MATTER OF the)	REGULATORY DIVISION
Investigation by the)	
Commission of the Rules,)	DOCKET NO. 2020.09.094
Practices and Services of)	
North Star Development, LLC,)	
and the Adequacy of Service)	<u>North Star's Informal</u>
Being Provided Thereby to its)	<u>Response to Ben Reed's Six</u>
Customers)	<u>Questions Plus Its Proposed</u>
		<u>Rate Tariff Posed for</u>
		<u>Informal Review.</u>

At the direction of Ben Reed North Star responds informally to six specific questions posed to North Star by Mr. Reed. In addition, North Star offers a proposal setting out a volume centered increase in Utility water use rates. North Star expects responses from participants and directions from Ben Reed before it files formally with the PSC.

1. What is the legal basis for the discontinuance of service to those homes who demonstrably refuse access to the water operator?

The legal basis is 38.5.2505 ARM. A draft discontinuance notice accompanies this in response.

2. What are the notice requirements for discontinuance of service?

The notice requirements are set out in the accompanying discontinuance notice.

3. Where is the shutoff for the homes located?

The shutoff is in a buried sump box located in front of each home on the feeder line between the home and the Utility water line located in the street easement.

4. Is there a means to water lawns, or to use water for other agricultural purposes, in which the access to water (spigot, hose bib, etc.) is situated upstream from the meter in the house?

There is no proper such means, but a homeowner who has plumbing skills or who has access to plumber could, without permission from the Utility, dig down and tap into the feeder line for the home before that line (“upstream”) reaches the register.

5. Could the parties provide the total water capacity the system can produce daily?

The attached statement of Tyler Stuck sets out the volume of water pumped each month of 2021 into the Utility water distribution tank. The daily pumping data is available. The “capacity” is more than the amount pumped as pumping volume was not exceeded in any day in 2021. The 2021 water limitations were due to equipment failure and operation concerns, not pumping volume concerns. The pumping “capacity” was generally measured 4 times a month and it ranged from 184 to 360 gallons per minute, depending on the time of year, the amount of water use and the number of wells in operation. The Utility’s water permit does set a gpm limit on what the Utility can pump into the distribution tank.

6. Of that total daily capacity, how much can customers use?

Utility customers can “use” 100% of the amount that is available after being pumped into the distribution tank. The word “available” means that the pumping equipment has to be working properly and all first priority water reserves for emergency services are met. In addition, there is leakage in the system so the water leaked is not available for use.

7. Proposed Rate Tariff Changes

The Utility includes the proposed rate tariff changes as part of this information discussion. The information set out in the proposed rate tariff responds to or is related to several of the above six questions.

Dated this 7th day of January, 2022.

_____ *Jonathan Mott* _____

Unsworn Declaration of Tyler Stuck, Made Under Penalty of Perjury Pursuant
to §1-6-105, MCA

* * * * *

Made and Executed in:
The STATE OF MONTANA
County of Lewis and Clark

1. I am Tyler Stuck and I am the manager of Rocky Mountain Operations, LLC (RMO); formerly known as Integrated Water. I have served as the manager of this business, under its current or former names, since 2015. My email address is tstuck@rockymountainops.com. My phone is 406-431-2143.

2. RMO is the water operator for the North Star Utility and, in that role, it is on-site and monitoring the water system on a daily basis.

3. I have been asked to present data concerning a water surcharge rate for peak water use by the largest volume users of water supplied by the Utility. I first reviewed the water uptake records for the Utility for 2021. By water uptake I mean the measure of water flowing from the wells into the holding tank where it is then pumped by the distribution pump to the homes served by the Utility. Those water uptake records are:

January uptake was:	03.9168 acre feet	or 1,276,300
gallons		
February uptake was:	03.5513 acre feet	or 1,157,200
gallons		
March uptake was:	04.0101 acre feet	or 1,306,700
gallons		
April uptake was:	04.3759 acre feet	or 1,425,900
gallons		
May uptake was:	11.2699 acre feet	or 3,672,300
gallons		
June uptake was:	22.1264 acre feet	or 7,209,900
gallons		
July uptake was:	15.1078 acre feet	or 4,922,900
gallons		
August uptake was:	11.8505 acre feet	or 3,861,500
gallons		
September uptake was:	12.9464 acre feet	or 4,218,600
gallons		
October uptake was:	05.7038 acre feet	or 1,858,600
gallons		

November uptake was: 03.7569 acre feet or 1,224,200
gallons
Dec. 2020 uptake was: 03.9432 acre feet or 1,284,900
gallons

Total water uptake from wells for 2021 was 102.5590 acre feet

4. North Star's water permit allows pumping of 124.25 acre feet per year from the North Star wells. While the 2021 uptake of 102.5590 acre feet uptake was well below permitted pumped uptake water volume, there was a "no water" restriction in place during a high use 30-day period, so the water volume uptake would have been higher but for this unusual restriction. In other words, there was more water that could have been pumped but for the equipment failure.

5. The water volume uptake does not necessarily translate into water volume use by customers. There will be some leakage (10% in most systems) and the Utility is not yet measuring all of the water used by its customers due to defective registers that need replacement. Nevertheless, from Utility records I provide the following use-based information with the understanding that this data is measuring water use by only part of the homes served by the Utility:

a. Peak Water Use As Shown by June 2021 Data

In June of 2021 there were no water restrictions of any sort in place at any time during the month. June measurements showed the largest uptake (pumped volume) of 2021 with 7,209,900 gallons measured as pumped into the holding tank for distribution to Utility water users. In turn, the registers that were working measured a collective use of 3,979,020 gallons by Utility customers, also the largest volume measured in 2021. The data is as follows:

- i) There were 121 defective registers with no data reading at all (thus the large difference between the two numbers).
- ii) The functioning register readings showed water use during the month of June as follows: 29 registers showed less than 5,000 gallons, 23 registers showed between 5,000 to 11,000 gallons, 45 registers showed between 11,000 and 21,000 gallons, 44 registers showed between 21,000 and 31,000 gallons, 26 registers showed between 31,000 and 41,000 gallons, 5 registers showed

between 41,000 and 51,000 gallons and 9 registers showed above 51,000 gallons with two of the nine showing over 100,000 gallons.

b. Non-Peak Water Use as Shown by November 2021 Data

In November of 2021 there were no water restrictions in place at any time during the month. November water measurements showed a pump volume of 1,224,200 gallons measured as pumped into the holding tank for distribution to Utility water users. In turn, the functioning registers measured a collective use of 859,620 gallons by Utility customers. The data is as follows:

- i) There were 60 defective registers with no data reading at all.
- ii) The functioning register readings showed water use during the month of November as follows: 92 registers showed less than 3,000 gallons, 69 registers showed between 3,000 to 4,000 gallons, 33 registers showed between 4,000 and 5,000 gallons, 16 registers showed between 5,000 and 6,000 gallons, and 21 registers showed between 7,000 and 14,000 gallons.

6. We have worked with the Utility long enough to recognize two past issues in regard to water. First, during July of 2021 the Utility has had a water delivery or equipment failure, that being the distribution pump failure. Rocky Mountain Operations is working to update and back up equipment so as to lessen the possibility of a future water delivery failure. Second, the Utility has had water volume problems during summer months of some past years when demand for lawn watering pushes water demand above the sustained pumping capacity of the Utility wells.

7. With the above water volume in mind a tariff arrangement that increases rates at the upper end of use such that it encourages avoidance of extreme water use during summer months should be applied.

8. Please note that these rate increases will only come into play for a minority of Utility customers and for those only during the summer months of high use. From my perspective the rates should be viewed as a means to discourage wasteful water use.

9. Further note that someone using water at 100,000 gallons per month will use almost an acre foot of water during the 3 summer months. I am not sure how someone uses an acre foot

of water in one summer on a lot the size of those in the subdivision. Our staff intends to visit with those Utility water users to see what is going on. Perhaps there is a leak on the irrigation system that they are unaware of or maybe something else is happening, but that is a lot of water use and the tariff I suggest will make the users more aware of the water they are using and make sure that in the future any such extreme water use is financially discouraged.

10. Rocky Mountain Operations serves other water systems in the Helena valley. It is my experience that water use declines when water use is measured and assessed a higher rate for higher volume use. In particular, I note that maximum use in the other water systems we serve is generally at 50,000 gallons a month, with normal high use in the 20,000 to 30,000 range for those homeowners who are watering lawns.

DATED this 6 day of January, 2022 in Helena,
Montana.


Tyler Stuck

Unsworn Declaration of Doug Boutilier, Made Under Penalty of Perjury
Pursuant to §1-6-105, MCA

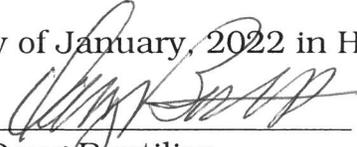
Made and Executed in:
The STATE OF MONTANA
County of Lewis and Clark

1. I am Doug Boutilier and I a member owner of North Star Development, the entity that owns North Star Utility.

2. I have reviewed the statement of Tyler Stuck, including paragraph 11, regarding water use by customers of North Star Utility during 2021.

3. Based on Tyler's data summary and analysis, I suggest that the current tariff of \$2 per thousand for any use above 10,000 gallons per month remain in place for up to 30,000 gallons use per month. I further suggest that water users be assessed water use above 30,000 gallons at the following rates: 30,000 to 40,000 gallons at \$5 per thousand gallons; 40,000 to 50,000 at \$10 per thousand gallons; 50,000 to 60,000 at \$15 per thousand gallons; 60,000 to 70,000 at \$20 per thousand gallons; 70,000 to 80,000 at \$25 per thousand gallons; 80,000 to 90,000 at \$30 per thousand gallons; 90,000 to 100,000 at \$35 per thousand gallons and anything above 100,000 gallons at \$50 per thousand gallons.

DATED this 7th day of January, 2022 in Helena,
Montana.



Doug Boutilier

NOTICE TO NORTH STAR HOMEOWNER OF DISCONTINUANCE OF
WATER SERVICES BASED ON VIOLATION OF RULES

Whereas, North Star Development, LLC (North Star) is a Private Utility providing water services to residents of the North Star Subdivision.

Whereas, North Star's water pumping and delivery system pumps and delivers sufficient water to meet the household and domestic needs of each and every resident of the North Star Subdivision.

Whereas, at certain times North Star cannot maintain and deliver this amount of water if the water is diverted by residents from household and domestic use by use in lawn watering.

Whereas, North Star has implemented rules restricting lawn watering that are familiar to each and every resident of the North Star subdivision. These rules include a "No Watering" rule during times of reduced water supply.

Whereas, certain North Star homeowners ignore the No Watering rule and use water for lawn sprinkling such that they thereby endanger the Utility's ability to deliver water to all homeowners for household and domestic use.

Whereas, North Star is regulated by a State Agency, the Montana Public Service Commission (PSC).

Whereas, the PSC has directed North Star to take action to reserve water for household and domestic use by each and all North Star residents.

Whereas, the PSC, at 38.5.2505 ARM (see below), allows discontinuance of water services to those who do not follow the rules of the Utility.

1) Notice of Discontinuance.

(a) No utility shall discontinue service to any consumer for violation of rules or for nonpayment of bills, without first having tried diligently to induce the consumer to comply with its rules, or to pay outstanding bills. A record of these efforts must be maintained by the utility.

(b) A utility may not terminate service to any consumer unless written notice is sent by first class mail to the consumer that bills are ten or more days delinquent, or that the violation of the rules must

cease. If no response to the first notice is received within ten days of mailing, the utility must send a second notice by first class or certified mail, or personally serve the customer at least ten days prior to the date of the proposed termination. If no response to the second notice is received within ten days of mailing or service, the utility shall leave notice in a place conspicuous to the consumer that service will be terminated on the next business day unless the delinquent charges have been paid or the violation of the rules have ceased.

(c) A utility may terminate water service without advance notice to the consumer when the utility's regulating or measuring equipment has been tampered with, or where the fraudulent use of water service by an unauthorized person is detected. The utility may assess a reconnection charge as provided in ARM [38.5.2505](#)(2) before service is recontinued.

(d) All disconnections shall be performed by the utility between the hours of 8:00 a.m. and 12:00 noon, and in no case shall the utility discontinue service on Friday, Saturday, Sunday, or a day prior to holiday except as provided in ARM [38.5.2505](#)(1) (c) .

Now therefore North Star provides the homeowner at - _____ a First Notice that his/her water services will be terminated for watering his/her lawn on _____ in violation of a posted No Watering rule. This **First Notice** was mailed by first class mail to the above listed homeowner address on _____ and a homeowner response is due within ten days of that date. A homeowner response must consist of an agreement to cease lawn watering and immediately abide by No Watering rules.

Second Notice (used only if no response to first notice): Because no response was received to the First Notice this **Second Notice** was mailed to the above address on _____. A failure to respond to the Second Notice could result in a shut off of water services by the Utility.

Summary of Notices and Placement of Notice of Termination Date (used only if no response to second notice):

The First Notice was mailed on the _____ day of _____, 2021 by Rocky Mountain Operators, the water operator for the Utility. The Second Notice was mailed the _____ day of _____, 2021 by Rocky Mountain Operators, the water operator for the Utility. There was no response to either Notice. Accordingly this is Notice that water service will be terminated (shut-off) on _____, the same date being the next business day falling on a Monday through Thursday and not consisting of a Holiday. This Notice of Termination was hand-posted at the above homeowner address by Rocky Mountain Operators on _____.

Any questions should be addressed to the following person:

Jonathan Motl
Bitterroot Law
PO Box 1312
Hamilton, MT 59840
Email jon@bitterrootlaw.com
Phone 406-431-5513
Attorney for North Star

PSC Work Session Request

Date of request: January 3, 2021

(to be included on the agenda for the next following business meeting request must be made by 5:00 p.m. Monday)

Week work session to be held: January 11, 2019

Request is:

- routine -- on agenda, normal day and time of work sessions
- special -- on agenda, special day or time:
- out-of-cycle -- not on agenda, day and time:
- other meeting, day, time and location:

Called by: Lucas Hamilton, Ben Reed

Participants: Lucas Hamilton, Ben Reed

Docket Number: None

Applicant or Petitioner: Commission Initiated

Case or Subject: Bluebook Delegation of Authority

Purpose: To consider adopting a new policy in the Bluebook regarding authority delegated to staff

Staff Recommended, Suggested or Alternative Motions: To approve the new Bluebook policy on authority delegated to staff

Additional Information:

Reference materials: Draft Policy

(memos and materials to be distributed by last work day of week request is made, if possible)

Estimated time required: 10 minutes



Department of Public Service Regulation

DELEGATION OF AUTHORITY

[REF. #]

Responsibility Area	Legal Division
Responsible Person	Chief Legal Counsel
Effective Date	[date]
Revised Date	
Approved by:	[Public Service Commission]

STATEMENT OF POLICY

Delegations of Authority to Staff

The Commission delegates authority to Department staff as follows:

1. **Motions.**

- a. Department attorneys may rule on any of the following motions:
 - i. Motions for protective orders and term protective orders consistent with Mont. Admin. R. 38.2.5001 through 38.2.5031;
 - ii. Pre-hearing motions to compel discovery consistent with Mont. Admin. R. 38.2.3301;
 - iii. Pre-hearing motions to evidentiary issues, including motions in limine, consistent with the Montana Rules of Evidence;
 - iv. Pre-hearing motions to withdraw an application or petition, if the motion is uncontested; and
 - v. Any motion filed by a party seeking issuance of an order, notice, waiver, or other action for which Department attorneys have an explicit delegation of authority.
- b. At least 48 hours prior to taking any action in the foregoing motions, Department attorneys shall notify the Commissioners of the motion and the proposed action to be taken. At any time prior to the issuance of a decision, any Commissioner may request that the Commission review and act on the motion, in which case the matter shall be decided by the Commission.

2. **Orders, Notices, Subpoenas, and Waivers.** Department attorneys may issue the following on behalf of the Commission:

- a. Orders consolidating proceedings consistent with Mont. Admin. R. 38.2.3911;

- b. Waivers of Mont. Admin. R. 38.2.4806(5);
 - c. Subpoenas consistent with Mont. Admin. R. 38.2.3303;
 - d. Notices granting timely petitions for intervention when filed by a party with standing;
 - e. Notices rejecting filings consistent with Mont. Admin. R. 38.2.315;
 - f. Notices extending for a period not more than 30 days the deadline for issuance of a final order, consistent with Mont. Code Ann. § 2-4-623(1);
 - g. Notices extending, by not more than 30 days, the time within which a party may file a motion for reconsideration, consistent with Mont. Admin. R. 38.2.4806(1), when the request for extension of time is filed within ten days of the service date of the Commission order or decision in question;
 - h. Procedural orders, which may set procedural deadlines, status and scheduling conferences, oral arguments, briefing schedules, evidentiary hearings, and other procedural requirements;
 - i. Notices extending the period for answering a complaint filed with the Commission by not more than 20 days past the deadline established in the Notice of Complaint issued by the Commission; and
 - j. Petitions to intervene in federal agency proceedings If it is not possible to bring the matter before the Commission prior to expiration of an applicable deadline. Department attorneys shall present such decisions to the Commission for review and approval at the earliest opportunity.
3. **Presiding Officers.** Department attorneys may preside over:
- a. Rulemaking hearings;
 - b. Status conferences; and
 - c. Scheduling conferences.
- Prior to presiding over the aforementioned proceedings, Department attorneys shall notify the Chairman of the proceeding and the Chairman or his designee shall serve as the presiding officer.
4. **Administrative Authority.** Appropriate Department legal and/or regulatory staff may:
- a. Approve transcript corrections;
 - b. Approve termination of services pursuant to Mont. Admin. R. 38.5.1410; and
 - c. Approve uncontested rate schedules that are submitted in compliance with Commission orders.
5. **Uncontested Matters.**

- a. In addition to the specific matters delegated under this policy, Department legal and/or regulatory staff may act on any application, petition, request, or contested case proceeding in which:
 - i. no interested party has been granted intervention; or
 - ii. a party has been granted intervention, but no party has requested additional process.
 - b. Following the expiration of the applicable deadline for intervention, comment, protest, or request for additional process:
 - i. In matters initially noticed on the Commission’s weekly agenda, staff will resolve the docket through a notice of staff action and a notice item on the Commission’s weekly agenda; and
 - ii. In matters initially noticed by publication, staff will notify the Commission that the matter is uncontested and will be resolved by staff absent an objection from a Commissioner. Said objection must be made within two business days. Staff’s notice to Commissioners will identify the Commission districts affected by the decision.
 - c. At any time prior to the issuance of a decision by staff, any Commissioner may request that the matter be elevated to the Commission for consideration and action, in which case the matter shall be decided by the Commission unless three Commissioners object to placing it on the Commission Calendar.
 - d. At the conclusion of the matter staff will issue a default order or notice of staff action, which shall carry the full force and effect of a decision of the Commission.
 - e. Nothing in this policy shall affect the rights of parties to request reconsideration under ARM 38.2.4806. If a party timely files a request for reconsideration, the request must be considered by the Commission.
- 6. Electronic Signatures on Orders and Notices of Commission Action**
- a. The Commission delegates the authority to the Commission Secretary to sign all Commission Orders and Notices of Commission Action (“NCA”) electronically on behalf of all Commissioners who voted for the Order or Action as follows:

/s/ [COMMISSIONER NAME]
[COMMISSIONER NAME], [COMMISSIONER TITLE]
 - b. At least 48 hours prior to the issuance of any document for which an electronic signature is authorized, Commission staff responsible for preparing the document shall send an email to Commissioners with the document, in its final form, as an attachment. The email shall state:
 - i. the date on which the action described in the document was approved by the Commission;

- ii. a brief summary of the action approved; and
 - iii. a statement which indicates that a Commissioner may respond to the email to indicate that Commissioner's belief that the document, as drafted, does not accurately reflect the intent of the Commission as expressed when the action was taken.
- c. If a Commissioner believes that the document, as drafted, does not accurately reflect the intent of the Commission, that Commissioner must respond to the staff email in writing so indicating. Staff shall then work with individual Commissioners to revise the document to accurately reflect the action taken by the Commission.
 - i. Commissioners may not use this opportunity to offer revisions to the document other than those that necessarily clarify or correct inconsistencies between the document, as drafted, and the action taken by the Commission. Such revisions are encouraged, and Commissioners and staff should endeavor to work cooperatively to ensure drafting of the document is done in a manner which is acceptable to each Commissioner with the understanding that the Commission is comprised of five individuals and drafting specific language which is acceptable to each individual Commissioner may not be possible.
 - ii. In cases of contradicting input from commissioners, deference shall be given to the commissioner who made the motion and voted in favor of it, and the other commissioners who voted in favor of the motion, respectively.
- d. If a Commissioner does not respond within 48 hours of the above-described email from staff, that Commissioner's silence shall be interpreted as his/her assent to the document, as drafted, and the Commission Secretary shall sign the document electronically on behalf of each such Commissioner.

REASON FOR THIS POLICY

This delegation of certain decision-making authority is provided to facilitate prompt and effective administration of matters which are largely ministerial in nature.

INDIVIDUALS AND ENTITIES AFFECTED BY THIS POLICY

Policies of the Department of Public Service Regulation

All Commissioners and staff.

EXCLUSIONS

At all times, Commissioners retain authority to act on any matter that could otherwise be acted upon by legal staff under this Delegation of Authority Policy.

RESPONSIBILITIES

Division Administrators: Ensure delegation and performance. Ensure Commissioners are adequately informed of processes, outcomes, and opportunities to effect changes in any of the processes described herein.

DEFINITIONS

RELATED DOCUMENTS, FORMS, AND TOOLS

HISTORY AND UPDATES

10/1/21

APPENDIX

There are no appendices to this policy

PSC Work Session Request

Date of request: January 3, 2021

(to be included on the agenda for the next following business meeting request must be made by 5:00 p.m. Monday)

Week work session to be held: January 11, 2019

Request is:

- routine -- on agenda, normal day and time of work sessions
- special -- on agenda, special day or time:
- out-of-cycle -- not on agenda, day and time:
- other meeting, day, time and location:

Called by: Lucas Hamilton

Participants: Lucas Hamilton, Will Rosquist

Docket Number: 2021.04.047

Applicant or Petitioner: NorthWestern Energy

Case or Subject: NorthWestern's Application to Increase the PCCAM Base

Purpose: To consider the parties motions for reconsideration

Staff Recommended, Suggested or Alternative Motions: To grant in part and deny in part the motions for reconsideration

Additional Information:

Reference materials: Motions for reconsideration; Staff Memo

(memos and materials to be distributed by last work day of week request is made, if possible)

Estimated time required: 15 minutes

January 7, 2022

STAFF MEMORANDUM

TO: The Public Service Commission
FROM: Lucas Hamilton, Will Rosquist, Neil Templeton, Ben Reed
SUBJECT: Docket 2021.04.047 – Motions for Reconsideration

PURPOSE

The following memo provides a brief summary of the motions for reconsideration filed by NorthWestern Energy ("NorthWestern") and the Montana Consumer Counsel ("MCC") in Docket 2021.04.047, concerning NorthWestern's Application ("Application") to update the base collections for its Power Costs and Credits Adjustment Mechanism ("PCCAM").

BACKGROUND

On December 2, 2021, the Commission's Final Order ("Order 7788f") in the Docket 2021.04.047 was served on the parties. Order 7788f granted MCC's motion to dismiss NorthWestern's Application. The analysis included in Order 7788f discussed the representations NorthWestern made in the docket that established the PCCAM, wherein NorthWestern indicated that it would seek adjustments to the PCCAM base in general rate cases.¹ The Commission's order in the original PCCAM docket approved of the idea of updating base costs in in general rate cases: "NorthWestern and MCC make persuasive arguments for updating baseline supply costs in the context of full rate cases, rather than annually in the context of applications under the tracking mechanism. The Commission approves this approach."²

The tariff NorthWestern filed following the resolution of the original PCCAM docket discussed the Commission's authority to authorize changes in the base PCCAM rates.³ In this docket, NorthWestern argued that this language authorized applications to adjust base PCCAM rates in between general rate cases.⁴ MCC, on the other hand, argued that the Commission's decision in the original PCCAM docket clearly limited base adjustments to general rate cases.⁵

To the extent there was any conflict between the PCCAM tariff and the Commission's order in the original PCCAM docket, Order 7788f concluded as a matter of law that the Commission's order would control.⁶ However, as a matter of tariff interpretation, Order 7788f also concluded that the terms of the tariff did not necessarily conflict with the Commission's original PCCAM order, because the Commission retains authority over tariff changes.⁷

On December 13, 2021, NorthWestern filed an unopposed motion for reconsideration of Order 7788f, requesting limited revisions to the Commission's conclusions about how to resolve a conflict

¹ Order 7788f, ¶ 52.

² *In re Commission Review of the Rates to Recover NorthWestern Energy's Electricity Supply Costs*, Dkt. D2017.5.39, Order 7563c, ¶ 89 (Nov. 29, 2018) (quoted in Order 778f, ¶ 48).

³ Order 7788f, ¶ 9.

⁴ Order 7788f, ¶ 32.

⁵ Order 7788f, ¶ 42.

⁶ Order 7788f, ¶ 50.

⁷ Order 7788f, ¶ 51.

between an order and a subsequent tariff. NorthWestern asserts that this conclusion is unnecessary in light of the Commission’s determination that the tariff does not conflict with the original PCCAM order. NorthWestern’s proposed revisions would leave in place the concept that “An error in approving a subsequent tariff cannot amend the Commission’s decision or otherwise void terms of an order.”⁸

Order 7788f also discussed the possibility that unforeseen or extraordinary events could cause NorthWestern to seek a base adjustment in between general rate cases. The possibility of such a request was raised by NorthWestern in the original PCCAM proceeding.⁹

MCC’s motion for reconsideration asked the Commission to reconsider the discussion of an adjustment to base rates in extraordinary circumstances. MCC argues neither the original PCCAM order nor the PCCAM tariff explicitly provide such an exception. MCC argues it would be improper to create that exception here, without due process. MCC further argues that the terms extraordinary and unforeseen are vague, and would invite additional proceedings and litigation, contrary to the Commission’s stated reasons for limiting base adjustments to general rate cases. Finally, MCC asserts that creating an extraordinary circumstances standard is beyond the scope of the present case, and would in any event be unnecessary, since accounting orders and rate riders can account for extraordinary and unforeseen circumstances.

ANALYSIS AND RECOMMENDATION

The changes requested by NorthWestern and MCC are aimed at limiting the precedential consequences of Order 7788f, instead of changing the disposition of the docket. If the Commission grants the motions, the Application would still be dismissed.

Staff also notes that, as a practical matter, part of the precedential effect of Order 7788f will also be limited by the general rate case NorthWestern expects to file in the coming year. The mechanics of the PCCAM, including the availability of base rate adjustments between general rate cases, should be fully explored and set as part of the Commission’s final order in that rate case. To the extent Order 7788f’s discussion of an extraordinary circumstances exception changed the mechanics of the PCCAM, it would be superseded by whatever PCCAM mechanism the Commission approves in NorthWestern’s next general rate. Given the imminent nature of that rate case, there is little practical incentive for NorthWestern to first file another PCCAM base adjustment application based on extraordinary circumstances.

NorthWestern and MCC are correct, however, that some of the language of Order 7788f was not essential to the disposition of the docket. The language that NorthWestern seeks to strike could be removed without undermining the Commission’s decision. Similarly, MCC’s requested revisions could be granted without limiting the NorthWestern’s ability to seek an extraordinary circumstances exception in its next rate case. Because granting the motions will do no harm to the Commission’s ultimate decision in this docket, staff recommends granting the parties’ motions for reconsideration.

⁸ NorthWestern Energy’s Unopposed Motion for Reconsideration 2 (Dec. 13, 2021).

⁹ Dkt. D2017.5.39, PSC-028a (Oct. 25, 2017).

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

IN THE MATTER OF NorthWestern) REGULATORY DIVISION
Energy’s Application to Update Base)
Power Costs and Credits in the Power) DOCKET NO. 2021.04.047
Costs and Credits Adjustment) ORDER NO. 7788f
Mechanism)

FINAL ORDER

PROCEDURAL HISTORY

1. On April 2, 2021, NorthWestern Energy filed an Application to update its Power Costs and Credits Adjustment Mechanism (“PCCAM”) base costs (“Application”). NorthWestern supplemented its Application on July 1, 2021. NorthWestern asks the Commission to increase PCCAM revenues by \$26,489,950, from the currently authorized \$138,655,703, to \$165,145,653. Markovich Updated Workpapers, Summary Tab (Jun. 30, 2021). The Commission subsequently granted intervention to the Montana Consumer Counsel, Westmoreland Rosebud Mining, LLC, Morgan Stanley Capital Group, and Powerex Corp.
2. On June 30, 2021, the Commission issued Interim Order 7788, which permitted NorthWestern to implement interim rates, subject to refund in the event of any over-collection pending final resolution of this docket. Order 7788 ¶¶ 12–13.
3. On August 2, 2021, the Montana Consumer Counsel (“MCC”) filed a Motion to Dismiss (“Motion”). The Commission subsequently received a response from NorthWestern, a reply from the MCC, and heard oral argument on this matter on September 14, 2021.
4. During a regularly scheduled business meeting on October 5, 2021, the Commission granted the MCC’s Motion by a vote of 5 to 0.

DISCUSSION

5. In 2017, the Legislature enacted House Bill 193, which eliminated NorthWestern’s mandatory electricity cost tracking mechanism. The Commission initiated

Docket 2017.05.039 to address the passage of House Bill 193 and directed NorthWestern to file an application for a new, interim supply cost tracking mechanism.

6. Relevant to this proceeding, the Commission issued Final Order 7563c, which addressed updates to base PCCAM costs between rate cases in several places:

The Commission approves the base costs as proposed by NorthWestern subject to the modifications to the PCCAM mechanism as described in this Order. The Commission agrees with the MCC that an update in the context of a rate case will provide another opportunity to look closely at the calculation of these base costs.

. . .

NorthWestern proposes to update baseline supply costs in general rate cases, using the same methodology it proposes in this case.

. . .

NorthWestern and MCC make persuasive arguments for updating baseline supply costs in the context of full rate cases, rather than annually in the context of applications under the tracking mechanism. The Commission approves this approach.

Order 7563c ¶¶ 78, 82, 89.

7. In response to Final Order 7563c, NorthWestern filed Tariff Letter No. 347-E, which included a provision which stated that “Base Power Costs and Credits are developed . . . at the time such costs, credits, and rates are reviewed and approved by the Commission. These rates are fixed *until adjusted as part of the Utility’s next electric utility general rate filing.*” Sheet No. 67.2, Original, at (B) (Dec. 20, 2018) (emphasis added). Commission staff approved the tariff on December 28, 2018.

8. The Commission’s Order on Reconsideration, issued December 18, 2018, required NorthWestern to submit a revised tariff to comply with the Order. Order 7563d ¶ 39. On January 31, 2019, NorthWestern filed Tariff Letter No. 348-E, which included additional language that stated: “These rates are fixed until adjusted as part of the Utility’s next electric utility general rate filing *or otherwise upon Commission approval.*” Sheet No. 67.2, 1st, at (B) (Jan. 29, 2019) (additional language emphasized). Commission staff approved the tariff on February 12, 2019.

9. The Tariff also includes a provision under the heading of “Service and Rates Subject To Commission Jurisdiction” that “ rates and service conditions under this Rate Schedule are governed by the rules and regulations of the Public Service Commission of Montana *and are subject to revision as the Commission may duly authorize in the exercise of its jurisdiction.*” Sheet No. 67.4, Original (Jan. 29, 2019) (emphasis added).

10. In 2019, the Legislature enacted Mont. Code Ann. § 69-3-331, which among other things, required cost sharing between customers and shareholders for revenues above or below actual base costs, if cost sharing is required by the Commission.

11. In 2019 the Commission established electric rates for NorthWestern Energy, which, based on normalized test year customer loads, permitted NorthWestern to annually recover \$600,838,037 excluding PCCAM revenue. Order 7604u, ¶ 151, “Table XVIII: NorthWestern’s Total Electric Utility Revenue Requirement.”

12. The Commission also approved stipulated PCCAM base rates that permitted NorthWestern to annually recover \$138,655,703, comprised of \$96,353,668 in Category I power costs, (\$34,650,171) in Category I power credits, and \$76,952,206 in Category II power costs. *Id.* ¶ 94 “Table XIV: Stipulated PCCAM Base Costs.”¹

13. Each year, NorthWestern files an annual PCCAM true-up based on actual Category I supply costs compared to actual Category I rate revenue, with 90% of any difference converted to a deferred surcharge or refund to customers. Order 7563c ¶¶ 90, 106.

14. The amount of actual PCCAM costs in relation to PCCAM rate revenues fluctuates. For example, in 2019, NorthWestern requested recovery of \$23,865,278 for 2018 PCCAM costs in excess of PCCAM rate revenues (Dkt. 2019.09.058, Order 7708f ¶ 1); for the 2019 tracking period, \$4,534,335 (Dkt. 2020.08.091, Order 7764d ¶ 18); and for 2020, \$18,056,581 (Dkt. 2021.09.112, Appl. at Ex. ADD-1, Tab 3).

15. MCC asks the Commission to dismiss NorthWestern’s current PCCAM Application, based on the various party representations in the 2017 docket and the language of Order 7563c. The MCC’s Motion and the responsive pleadings are based entirely on Order 7563c, NorthWestern’s relevant PCCAM tariffs, and the evidentiary record from D2017.5.39.

¹ Category I net costs are the costs primarily at issue in this docket. Category II costs are QF-related costs, which are not subject to sharing. NorthWestern is asking to increase QF revenues by about \$650,000, but Category I costs make up the majority of NorthWestern’s total request.

There are no material issues of contested fact regarding whether the Commission should dismiss the Application as a matter of law, and fact development beyond the provided briefing is not required. *Anaconda Pub. Schs. v. Whealon*, 2012 MT 13, ¶ 15, 363 Mont. 344, 268 P.3d 1258; *Citizens for Allegan County, Inc. v. FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1968) (“However, the right of opportunity for hearing does not require a procedure that will be empty sound and show, signifying nothing. The precedents establish, for example, that no evidentiary hearing is required when there is no dispute on the facts and the agency proceeding involves only a question of law.”).

16. The MCC and NorthWestern’s positions, and a Commission decision, are discussed below.

I. Party Positions

A. MCC’s Motion to Dismiss

17. MCC argues that NorthWestern’s application would establish a “tracker within a tracker,” which would skirt the 90%-10% cost-sharing required by Mont. Code Ann. § 69-3-331(1)(b), and be inconsistent with the Montana-Dakota Utilities’ (MDU’s) electric supply cost tracking mechanism. Mot. at 1.

18. MCC notes that “the effect of resetting base rates between rate cases would be akin to that of a deadband.” *Id.* at 3. Just “as a deadband reduces the size of annual adjustments by shaving off part of any annual over- or under-collection, resetting base rates between rate cases would reduce the size of subsequent adjustments.” *Id.*

19. According to MCC, “the amount shaved off the first annual adjustment following a resetting of base rates could be much greater than what might have been excluded under the now defunct deadband.” *Id.* Though a deadband “reduces the size of annual adjustments but *increases* what is subject to sharing, periodic base cases would reduce the size of annual adjustments *and reduce* what is subject to sharing.” *Id.* at 4 (original emphasis). This “would reduce the incentive to control costs that both the Commission and the Legislature sought to create through 90-10 cost sharing.” *Id.*

20. MCC asserts the “record from the initial PCCAM docket strongly supported the Commission’s decision in *Final Order 7563c* to only update PCCAM base rates in the context of

general rate cases.” *Id.* at 1. MCC contends NorthWestern’s “insertion of different language over a month after reconsideration (which involved unrelated issues)—different language than what NorthWestern itself proposed throughout the seventeen-month proceeding—was not authorized and should now be considered null and void.” *Id.*

21. On this point, MCC cites to several examples of record evidence from NorthWestern during the 2017 docket:

- a. NorthWestern witness Kevin Markovich noted that “base PCC is an important component of NorthWestern’s proposed PCCAM. If approved, the Base PCC established in this docket will remain unchanged until subsequently adjusted in future NorthWestern electric general rate filings.” *Id.* at 5 (citing Test. of Kevin J. Markovich, Dkt. D2017.5.39, at 4 (Jul. 14, 2017)). Markovich also testified that “NorthWestern’s proposal to update the Base PCC in general rate cases more reasonably achieves simplicity without additional litigation.” *Id.* at 6 (citing Add’l Issue & Rebuttal Test. of Kevin J. Markovich, Dkt. D2017.5.39, at 7 (Feb. 7, 2018)).
- b. NorthWestern witness Joe Schwartzberger affirmed this point: “NorthWestern proposes to establish its initial Base PCC . . . in this docket. Once approved by the Commission in this proceeding, the Base PCC and associated base rates will remain in effect until they are reset in NorthWestern’s 2018 general electric rate filing and approved by Commission order in that docket. Thereafter, the Base PCC and associated base rates will be reestablished as part of, and remain in effect and unchanged between, NorthWestern’s electric general rate filings.” *Id.* at 5 (citing Test. of Joe Schwartzberger, Dkt. D2017.5.39, at 4 (Jul. 14, 2017)).
- c. NorthWestern’s prehearing memorandum listed Base PCC as an uncontested issue: “NorthWestern and the MCC agree to NorthWestern’s proposal to update the Base PCC in NorthWestern’s next general rate case to be filed in September and in every general rate case thereafter.” *Id.* at 6 (citing NorthWestern Prehearing Memo, Dkt. D2017.5.39, at 2 (May 22, 2018)).
- d. In response to Commission discovery requests, Schwartzberger noted that NorthWestern “could conceivably file an application requesting an adjustment to Base PCC and rates as a result of extraordinary events or unforeseen regulations

between general rate cases.” *Id.* at 5–6 (citing PSC DR-028, Dkt. D2017.5.39 (Oct. 25, 2017)).

- e. In its post-hearing initial brief, NorthWestern noted that its proposed PCCAM “functions exactly the way the Commission described in its testimony before the Legislature when it stated, ‘First a baseline of costs for fuel and purchased power is established in a general rate case based on historic or projected costs.’” *Id.* at 7 (citing NorthWestern Post-Hearing Initial Brief, Dkt. D2017.5.39, at 2 (July 23, 2018)).

22. MCC also cites to the Commission’s Final Order 7563c, which notes that “NorthWestern and MCC make persuasive arguments for updating baseline supply costs in the context of full rate cases, rather than annually in the context of applications under the tracking mechanism. The Commission approves this approach.” Final Order 7563c, ¶ 89. Additionally, the order noted that NorthWestern advocated for establishing base costs which would “remain in effect and unchanged between NorthWestern’s electric general rate filings.” *Id.* ¶ 68.

23. MCC notes that no parties moved for reconsideration of this language from Order 7563c. MCC asserts that NorthWestern’s January tariff filing improperly included language that permitted NorthWestern to request the ability to revise base costs “upon Commission approval,” and that NorthWestern noted this language “is consistent with the Commission’s decision in this docket, but NorthWestern inadvertently failed to include the language in the previous filing.” MCC Mot. at 10. MCC notes that this statement refers to Order on Reconsideration 7563d, which MCC notes “was silent on this issue.” *Id.*

24. MCC continues: “After having proposed to update base rates only in rate cases throughout the proceeding, received an explicit Commission decision to do so . . . and declined to seek reconsideration of this decision, NorthWestern is not free to unilaterally alter what had been approved.” *Id.* at 10–11. Thus, the second compliance filing from January of 2019 should be found null and void: “Thirteenth-hour, substantive changes such as the one made here should be discouraged, not rewarded (regardless of inadvertence), lest compliance filings become a new way to modify or relitigate settled matters without participation from all parties.” *Id.* at 11. To do otherwise, MCC asserts, would violate MCC’s right to due process because it was not provided a meaningful opportunity to be heard. *Id.* at 11-12. Even if the Tariff language remains in place, MCC argues that it does not authorize NorthWestern’s application, that it will establish a new

type of single-issue filing that creates regulatory uncertainty and requires substantial resources. *Id.* at 12–14.

25. MCC concludes: “[r]ather than needlessly expending scarce State time and resources on a second, unauthorized PCCAM filing this year, the Commission should dismiss this case and await Northwestern’s routine PCCAM filing” because adjusting the base rates by which 90-10 sharing is measured whenever a party deems it necessary would fundamentally alter the incentive to control power costs between rate cases. *Id.* at 2.

B. Northwestern’s Response

26. Northwestern responded on August 12, 2021, and argued that the Commission must deny the Motion because its arguments do not satisfy any standard for dismissal. NWE Resp. at 1.

27. “The essence of the MCC’s argument,” Northwestern asserts, “is that the Commission lacks authority to consider Northwestern’s application.” *Id.* This argument “runs counter to the Commission’s statutory responsibilities and its long-standing tariff condition that preserve its authority to adjust rates,” which state that the PCCAM rates and service conditions “are subject to revision as the Commission may duly authorize.” *Id.* Northwestern argues that because tariffs have the force of law, there is no legal basis to dismiss the application on jurisdictional grounds, yet, because the Commission’s duties as a quasi-judicial body are not discretionary, the basis for dismissal must be legal. *Id.* at 2.

28. Northwestern argues that the Commission should apply standards of dismissal from the Montana Rules of Civil Procedure, and cites to examples where the Commission has done so with previous decisions. *Id.* at 2 (citing Order No. 7603, ¶ 4, Dkt No. D2018.1.5 (May 8, 2018); Order No. 7572, ¶ 5, Dkt No. D2017.4.33 (Oct. 17, 2017)). Northwestern claims MCC’s Motion is a Rule 12(b)(1) Motion to Dismiss for lack of subject matter jurisdiction. *Id.* at 2-3. To grant the Motion under the standard for that Rule, the Commission must find that it “clearly lacks authority to hear and adjudicate” the Application. *Id.* at 3.

29. Northwestern argues that neither Mont. Code Ann. § 69-3-331, the PCCAM Tariff, nor the Commission’s final order from 2018 preclude the Commission from considering this Application or adjusting PCCAM base outside of general rate cases. *Id.*

30. Regarding statutory authority, NorthWestern notes that the Commission has general ratemaking authority which broadly permits the Commission to consider NorthWestern's application. And when doing so, the Commission "has a duty to ensure that utilities' tariffs and schedules reflect rates that are just and reasonable," which "requires balancing consumer and utility interests." *Id.* (citing Mont. Code Ann. §§ 69-3-201, 69-3-302; *Federal Power Commission v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944); *Grand Council of Crees (of Quebec) v. FERC*, 198 F.3d 950, 956 (D.C. Cir. 2000)). This permits the Commission to adjust rates at the request of utilities, consumer groups, or even by unilateral Commission action (per Mont. Code Ann. § 69-3-324).

31. Regarding Mont. Code Ann. § 69-3-331 specifically, NorthWestern notes that there "is absolutely no language in the statute that supports the MCC's argument that a PCCAM Base adjustment alters the 90/10 sharing ratio or creates a deadband." *Id.* at 4. Rather, "without a reasonably accurate base, the 90/10 sharing ratio is meaningless and results in gaming. . . . As a result, reasonable adjustments are necessary to ensure the 90/10 sharing ratio functions as designed." *Id.*

32. Regarding the language in Sheet No. 67.4 concerning the Commission's authority, NorthWestern notes that "for decades, the Commission has included explicit language in tariffs that preserve authority to adjust rates as the Commission may authorize." NorthWestern concludes this language "gives the Commission jurisdiction to adjudicate NorthWestern's application." *Id.* at 4-5.

33. Regarding the PCCAM tariff language in Sheet No. 67.2 that MCC argues contradicts the Commission's Final Order in the 2017 docket, NorthWestern argues this language "was included as part of a compliance filing the Commission accepted," and "nearly three years later, the MCC asserts that NorthWestern cannot rely on the language in the tariff. Not only can NorthWestern rely on the language, the MCC and NorthWestern are bound by it." *Id.* at 5. The Commission has previously noted that "the tariff contains more than just a rate—it also includes specific terms that govern the contractual relationship between NorthWestern and its ratepayers" and "until a tariff is prospectively amended or repealed, the Commission must enforce all of its terms." *Id.* (citing Order No. 7708f, ¶¶ 12, 17, Dkt. No. 2019.09.058 (Nov. 18, 2020)). Thus "[considering] the general language preserving the Commission's authority to adjust rates and the specific language allowing for an adjustment to the PCCAM Base,

NorthWestern's Electric Tariff makes it impossible for the Commission to find a legal basis to dismiss NorthWestern's application." *Id.*

34. Regarding Final Order 7563c, NorthWestern argues that the tariff "accurately memorializes the Commission's decision." *Id.* at 6. In the Commission's Notice of Additional Issues in that docket, the Commission asked parties to respond to whether to require annual updates to PCCAM base costs. NorthWestern claims MCC never raised the issue of prohibiting NorthWestern from requesting inter-rate case PCCAM base cost adjustments, but "[i]f it had, the Commission would have needed to specifically address this issue in the Final Order, especially since such a prohibition would contradict statutory and tariff language. *Id.* The "Final Order contains no such determination because the MCC never raised it as an issue." *Id.* NorthWestern continues: "This issue of a prohibition against an application between rate cases is completely absent from the Final Order. It therefore follows that NorthWestern did not seek reconsideration of the prohibition because the Commission never made such a decision prohibiting itself from adjudicating an application." *Id.* at 6-7.

35. Finally, NorthWestern responds that MCC's due process argument is baseless: "In fact, if the Commission dismisses the application, arguably, NorthWestern's due process rights are violated because NorthWestern never had the opportunity to present a case or cross-examine the MCC's witnesses on their position that even in light of extraordinary events NorthWestern is prohibited from filing an application." *Id.* at 7. Thus, the Commission "cannot remedy the MCC's failure to state its opposition in another docket by granting a motion to dismiss in this docket," rather, the Commission "can conduct a contested case proceeding to consider NorthWestern's application in this docket, thereby ensuring due process for all parties." *Id.*

36. NorthWestern concludes: "The only question before the Commission is whether it has the legal authority to hear NorthWestern's application. MCC's policy and factual arguments about whether the Commission should grant or deny NorthWestern's request are reserved for adjudication in a contested case proceeding." *Id.* To the point: "The Commission has discretion to either grant or deny NorthWestern's application, after conducting a contested case proceeding. But the duty to serve in a quasi-judicial role to consider an application is non-discretionary. The Commission has no legal basis to dismiss NorthWestern's application." *Id.* at 7-8.

C. MCC's Reply

37. MCC replied on August 23, 2021, and noted that nothing requires the Commission to hear this case: “no set of facts, taken as true, could entitle [NorthWestern] to the relief requested. On the contrary, allowing ‘the Base PCC and associated base rates’ to change ‘between . . . general rate filings’ would violate Final Order 7563c, § 69-3-331(1), MCA, and the due process rights of the Montana Consumer Counsel.” MCC Repl. at 1.

38. MCC disagrees that Rule 12(b)(1) provides the correct standard of decision and argues that the Commission has broad discretion to determine which standard to apply. *Id.* at 2 (citing Mont. Code Ann. §§ 69-2-101, 69-3-103, 69-3-302, 69-3-310).

39. When NorthWestern sought dismissal of a Commission proceeding under Rule 12(b)(6) (contrary to what NorthWestern requests here), the Montana Supreme Court reiterated that the rules of civil procedure only provide guidance to the Commission: “Although the Montana Rules of Civil Procedure do not govern PSC proceedings, they may still serve as guidance for the agency and the parties. . . . In the absence of rules published by the PSC addressing the standards for evaluating motions to dismiss, the following rules serve as guidance.” *Williamson v. Mont. Pub. Serv. Comm’n.*, 2012 MT 32, n. 5, 364 Mont. 128, 272 P.3d 71 (internal citations omitted).

40. Instead of Rule 12(b)(1) providing the correct standard of decision, MCC argues that Rule 12(b)(6) is more instructive (though not binding). *Id.* at 4. Under this standard, the focus “is whether the complaint is facially sufficient to state a cognizable legal claim entitling the claimant to relief on the facts pled,” and while “all allegations of fact are taken as true, it is not necessary ‘to take as true legal conclusions or allegations that have no factual basis or are contrary to what has already been adjudicated.’” *Id.* (citing *Stowe v. Big Sky Vacation Rentals, Inc.*, 2019 MT 288, ¶ 12, 398 Mont. 91, 454 P.3d 655; *Williamson*, ¶ 33).

41. Under Rule 12(b)(6), MCC argues that NorthWestern’s application is contrary to what has already been adjudicated and should be dismissed: “No set of facts will make it consistent with the [PCCAM] as approved, under which ‘the Base PCC and associated base rates will be reestablished as part of, and remain in effect and unchanged between, NorthWestern’s electric general rate filings.’” *Id.* (citing Order 7563c, ¶ 68). Thus “Until the mechanism itself is revisited and restructured following a full contested case proceeding akin to Docket D2017.5.39, any request to adjust base PCCAM base [*sic*] rates between rate cases fails to state a cognizable legal claim and is contrary to what was adjudicated in *Final Order 7563c.*” *Id.* at 4–5.

42. MCC replies that the PCCAM does not permit base changes outside the context of full rate cases: “Regardless of whether the Commission could theoretically change PCCAM base rates between rate cases—in addition to PCCAM deferred rates annually—it chose not to do so.” *Id.* at 5. NorthWestern now “wants a different PCCAM,” and while MCC’s “concerns about workloads and resource constraints may be characterized as ‘policy’ arguments . . . NorthWestern has confirmed that there will be numerous requests to change base rates in the coming years if this case is allowed to go forward.” *Id.* at 6, n. 19 (citing NorthWestern’s Responses to Data Requests MCC-003b (“NorthWestern anticipates more frequent filings to update its PCCAM base”); MCC-002b (“the PCCAM base should be updated to incorporate [the] latest market forecasts.”); MCC-004a (listing certain capacity resources NorthWestern believes will “likely affect the PCCAM Base.”); MCC-009 (proposing “to update the PCCAM Base” again “prior to the hearing in this docket”).

43. According to MCC, this results in “a tracker within a tracker, with 90-10 sharing for the inner tracker and 100 percent tracking for the outer tracker. This would effectively establish a unidirectional deadband between rate cases,” which “would not be consistent with what the Legislature intended when it passed Senate Bill 244 because it would not result in 90-10 sharing of incremental supply costs between rate cases as has always been done for [MDU].” *Id.* at 6-7.

44. MCC also argues that the filed rate doctrine does not require the Commission to hear this case. The doctrine, MCC asserts, codified at Mont. Code Ann. § 69-3-305, does not “require the Commission to entertain a rate filing that does not comply with its minimum filing requirements and that violates statute and precedent. Unlike the *rates* for utility service, the Commission’s jurisdiction over future rates and its authority to prescribe the mode and manner of rate proceedings is not fixed by tariff.” *Id.* at 10.

45. Even if the doctrine were to control, MCC asserts that the Commission should interpret the general Tariff language in Sheet No. 67.4, which permits general rate adjustments upon “Commission approval,” to “mean a separate, prior Commission approval (e.g., preapproval),” and not a request to update base rates merely based on fluctuating market prices. *Id.*

46. Finally, MCC concludes that the Commission can lawfully require utilities to request base rate increases only through general rate case proceedings. “To the extent its existing

base rates are insufficient, NorthWestern is free to request a rate increase at any time.” *Id.* at 11. A general rate case would be a more appropriate vehicle than the current Application. *Id.* The “Commission has no ‘duty’ to hear any rate filing made by a utility, regardless whether it follows applicable rules,” and NorthWestern’s cited authorities “do not create any such ‘duty’ on the part of the Commission.” *Id.* at 11–12. Thus, if NorthWestern “truly wants to invoke the Commission’s quasi-judicial role to increase base rates, then NorthWestern must file an application that conforms to the requirements of ARM 38.5.101 through 38.5.195.” *Id.* at 12.

II. Commission Decision

47. As an initial matter, the Commission declines to determine whether the MCC’s motion should be reviewed under Mont R. Civ. P. 12(b)(1) or 12(b)(6). The Commission has the power to “regulate the mode and manner of all investigations and hearings of public utilities and other parties before it,” and has the power “to do all things necessary and convenient in the exercise of the powers conferred by” Title 69, Chapter 3. Mont. Code Ann. § 69-3-103. This includes the power to “adopt and publish reasonable and proper rules to govern its proceedings. Mont. Code Ann. § 69-3-103(2)(b). In previous dockets, the Commission has utilized standards of decision from Montana’s Rules of Civil Procedure to inform its proceedings. *See In re AmeriMont Complaint*, Dkt. D2018.1.5, Order 7603 (Jun. 4, 2018). However, Montana’s Rules of Civil Procedure “do not govern PSC proceedings,” even though they “still serve as guidance for the agency and the parties.” *Williamson*, n. 5. Here, the Commission declines to construe the MCC’s motion to dismiss under either Mont. R. Civ. P. 12(b)(1) or 12(b)(6), as the MCC’s initial motion did not ask the Commission to do so. Rather this only became an issue in subsequent response briefing. The Commission will review this issue based on its broad statutory and procedural powers. *See, e.g.*, Mont. Code Ann. § 69-3-103.

48. Moving to the merits, Order 7563c approved updating base rates only during a subsequent, full rate case: “NorthWestern and MCC make persuasive arguments for updating baseline supply costs in the context of full rate cases, rather than annually in the context of applications under the tracking mechanism. The Commission approves this approach.” Order 7563c ¶ 89. This decision was based on NorthWestern’s unopposed testimony: “Base PCC and associated base rates will be reestablished as part of, and remain in effect and unchanged between, NorthWestern’s electric general rate filings.” *Id.* ¶ 68 (citing Schwartzenberger Direct

Test. 4). It was also premised on the fact that resetting base costs in the context of an ongoing rate case will “provide the Commission with a complete picture of the utility’s costs, revenues and volumes for purposes of setting base rates.” *Id.* (citing DR PSC-063). It was also based on considerations of simplicity. *Id.* ¶¶ 82, 89 (citing Add’l Issues and Rebuttal Testimony Kevin Markovich 6-7 (Feb. 7, 2018) (“As stated in the May 18, 2017 Notice of Commission Action issued in this docket, the Commission is interested in an adjustment mechanism that would be simpler and less burdensome than NorthWestern’s current mechanism. Requiring an annual update to the Base PCC using a production cost model or a QF-1 rate would not further the Commission’s goals of simplicity but would instead create complexity, require additional proceedings, and invite litigation – factors the Commission wants to avoid. NorthWestern’s proposal to update the Base PCC in general rate cases more reasonably achieves simplicity without additional litigation.”)).

49. No parties contested this issue. NorthWestern Prehearing Memo., Dkt. D2017.5.39, at 2 (May 22, 2018). NorthWestern’s 2018 Compliance Filing reflected this conclusion. Original Sheet No. 67.2, at (B) (“These rates are fixed until adjusted as part of the Utility’s next electric utility general rate filing.”). No parties sought reconsideration of this issue. Regardless, the Commission approved a materially different Tariff in 2019. Sheet No. 67.2, 1st Revision, at (B) (“These rates are fixed until adjusted as part of the Utility’s next electric utility general rate filing or otherwise upon Commission approval.”).

50. The Commission “speaks through its orders.” *See Bangor Gas Co., LLC v. H.Q. Energy Servs. United States*, 695 F.3d 181, 191 (1st Cir. 2012). Under MAPA, the Commission’s decision must be in writing, with separately stated findings of fact and conclusions of law. Mont. Code Ann. § 2-4-623(1)(a). Consistent with this MAPA provision, among others, the Commission issued Order 7563c. Paragraph 107 indicated that rates consistent with Order 7563c would become effective January 1, 2019. Paragraph 108 directed NorthWestern to file a compliance filing to effectuate this rate change. The PCCAM Tariff does not, and should therefore not be construed as, the Commission’s decision—Order 7563c is. A clerical error in approving a subsequent tariff cannot amend the Commission’s decision or otherwise void terms of an order. To the extent a Commission-approved tariff conflicts with a Commission order, the Commission concludes that the order controls.

51. The Commission is not convinced in this case, however, that the terms of the tariff and the terms of Order 7563c are necessarily in conflict. The tariffs filed following Order 7563c merely restate the Commission's broad discretion and authority to order subsequent tariff changes. Nothing in Order 7563c suggests the Commission intended to limit its own authority or jurisdiction to consider future rate changes. Instead, the Commission decided, for reasons outlined below and reflected in NorthWestern's testimony in Docket D2017.5.39, that adjustments to the PCCAM base should be made only in general rate cases.

52. Similarly, the Commission is not persuaded by NorthWestern's argument that Order 7563c did not specifically address the issue of when the PCCAM base could be adjusted. Although NorthWestern faults MCC for not raising the issue, NorthWestern itself represented to the Commission that base adjustments would be limited to general rate cases. It would have been a waste of time for MCC to make an issue about an element of the PCCAM that both MCC and NorthWestern evidently agreed upon. Based primarily on NorthWestern's own representations, Order 7563c expressly stated that adjustments to the PCCAM base would be made in general rate cases. Order 7563c ¶¶ 78, 82, 89.

53. NorthWestern's present Application asks the Commission to reconsider its prior determination that PCCAM base adjustments should be made only in the context of a general rate case. The Commission declines to exercise its discretion and reconsider this determination, for the policy reasons discussed below.

54. Historically, the Commission has preferred to avoid single-issue ratemaking, a policy addressed in NorthWestern's 2017 PCCAM filing. Final Order 7563c, ¶ 43 ("The Commission has generally eschewed widespread single-issue ratemaking. . . . The Commission has also determined that for vertically integrated utilities such as NorthWestern, rate adjustments between rate cases require added scrutiny."). That docket, while authorizing NorthWestern's electricity cost tracker, limited reviews of PCCAM base costs to general rate cases. *Id.* This would ensure in the future that the Commission could appropriately "match" its review of PCCAM costs, revenues, and loads, with a broader and more comprehensive review of NorthWestern's remaining costs, revenues, and loads. This matching principle promotes "comprehensive regulatory oversight and alignment between utility rates, costs, and sales volumes" and "means that revenues, expenses, operating assets, and customer loads are all appropriately matched within a period when rates are set (such as a regulatory test year for a

general rate case).” *In re NorthWestern’s Lost Revenue Adjustment Mechanism*, Dkt. D2014.6.53, Final Order 7375a, ¶ 36 (Oct. 15, 2015). Importantly, no additional fact development is required in this case to determine whether NorthWestern’s Application would undermine these ratemaking principles. NorthWestern’s application undeniably focuses on a single issue—PCCAM costs—without allowing an analysis and matching of revenues and expenses overall.

55. Here, the Commission exercises its discretion to adhere to these important ratemaking principles. NorthWestern has requested a significant increase to PCCAM base revenues: \$26,489,950, from the currently authorized \$138,655,703, to \$165,145,653. Markovich Updated Workpapers, Summary Tab (June 30, 2021). NorthWestern’s Application does not, however, allow a corresponding review of NorthWestern’s non-PCCAM electric revenue requirement, and the Commission would have no way of knowing whether the requested PCCAM rate increase in this Application would result in rates which are just and reasonable in light of NorthWestern’s entire revenues and expenses. Mont. Code Ann. § 69-3-330. A request of this magnitude (almost 20% from currently authorized base PCCAM revenues) is more appropriately administered in a full rate case.

56. The Commission also notes that enabling utilities to apply for review of PCCAM costs and revenues between rate cases introduces a gaming incentive. Under the tracking statute and NorthWestern’s current PCCAM, deferred revenues are the difference—after sharing—in recovered costs (i.e. revenues) and actual costs over a period. Under-recovered deferrals are recovered in a surcharge to customers, over-recovered deferrals are refunded to customers. Because the under- and over-recoveries are shared 90% to customers and 10% to shareholders before deferral, customers benefit from an under-recovered position (they only have to pay for 90% of the under-recovered costs), and the utility benefits from an over-recovered position (it keeps 10% of the over-recovery). If actual costs are expected to significantly exceed base recovery, increasing base revenues decreases the expected under-recovery of costs (potentially turning to over-recovery), which reduces the utility’s loss due to sharing. If increased base revenues exceed actual costs, the updated base allows the utility to retain 10% of the over-recovery.

57. Mathematically, it is always in a utility’s interest to have a higher base, as it reduces the risk of an under-recovery and increases the possibility of an over-recovery.

Conversely, it is always in the ratepayers' interest to have a lower base. Just as the Commission generally would not consider an application from MCC to lower the PCCAM base in isolation, without considering the full financial picture of NorthWestern, the Commission declines NorthWestern's invitation to increase the base without considering the entirety of NorthWestern's revenues and expenditures.

58. Just as nothing in Order 7563c indicated the Commission was limiting its jurisdiction, nothing in this Order should be construed to bar consideration of adjustments between rate cases due to "extraordinary events or unforeseen regulations" (Dkt. D2017.5.39, PSC-028a (Oct. 25, 2017)), which require immediate cost-tracking (for example, as required by the 2017 Federal Tax Cuts and Jobs Act). The present Application does not assert that this case stems from extraordinary events or unforeseen regulations. Instead, NorthWestern merely asserts that the current base "does not reflect an accurate forecast of NorthWestern's fuel and power costs." App. 1. The Commission notes that many forecasts involved in NorthWestern's last rate case are likely out of date, and this fact alone does not amount to an extraordinary event. Absent "extraordinary events or unforeseen regulations," the Commission concludes that the better policy is to permit updates to NorthWestern's base PCCAM revenues only in general rate cases.

59. Consistent with Order 7563c, NorthWestern may request an increase to PCCAM revenues under the procedures the Commission has established for general rate cases. *See generally* Mont. Code Ann. § 69-3-302. Importantly, dismissal does not prohibit NorthWestern from continuing to materially recover any cost disparities compared to actual base revenues, consistent with the 90/10 percent sharing specified in Mont. Code Ann. § 69-3-331. Nor does dismissal prohibit NorthWestern from requesting updates for PCCAM base costs regarding future "extraordinary events or unforeseen regulations," as originally contemplated by NorthWestern, and affirmed by the Commission, during the 2017 PCCAM docket. PSC-028a (Oct. 25, 2017).

ORDER

60. NorthWestern's Application is DISMISSED.

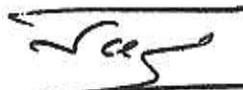
61. NorthWestern shall update its PCCAM Tariff to reflect base PCCAM revenues established in Docket 2018.2.12, which will remain in effect until NorthWestern's next rate case, or in an application that presents extraordinary events or unforeseen regulations.

62. NorthWestern shall also update its PCCAM Tariff to reflect the language of Order 7563c. Specifically, the Tariff should be updated to reflect the language in Sheet No. 67.2, Original, at (B) (Dec. 20, 2018): "Base Power Costs and Credits are developed . . . at the time such costs, credits, and rates are reviewed and approved by the Commission. These rates are fixed *until adjusted as part of the Utility's next electric utility general rate filing.*" Sheet No. 67.2, Original, at (B) (Dec. 20, 2018) (emphasis added).

63. Within 14 days of the date of this Order, NorthWestern shall file with the Commission a plan to refund the interim rate adjustment provided in this docket, with interest under Mont. Code Ann. § 69-3-304. If NorthWestern files a Motion for Reconsideration of this Order, NorthWestern shall be permitted to file its plan to refund the interim rate with interest within 14 days of the resolution of NorthWestern's Motion for Reconsideration.

DONE and DATED October 5, 2021.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION



JAMES BROWN, Chairman



BRAD JOHNSON, Vice-Chairman



TONY O'DONNELL, Commissioner



JENNIFER FIELDER, Commissioner

Randall D Pinocci

RANDALL PINOCCI, Commissioner

ATTEST:

Patricia Trooien

Patricia Trooien
Commission Secretary



CERTIFICATE OF SERVICE

I certify that on the 2nd day of December, 2021, a true and accurate copy of the foregoing was served by email to the following:

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Notification of Northwest Energy Filings

Commission Orders

By: /s/ Tina Shorten

Tina Shorten

Montana Public Service Commission

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

* * * * *

IN THE MATTER OF NorthWestern) REGULATORY DIVISION
Energy's Application to Update Base)
Power Costs and Credits in the Power) DOCKET NO. 2021.04.047
Costs and Credits Adjustment)
Mechanism)

**MOTION FOR RECONSIDERATION AND
BRIEF IN SUPPORT OF THE MONTANA CONSUMER COUNSEL**

The Montana Public Service Commission (“Commission”) correctly dismissed the *Application for Approval to Update PCCAM Base* filed by NorthWestern Energy (“NorthWestern”). In doing so, however, it appears to have established a new “extraordinary events or unforeseen regulations” standard for PCCAM base adjustments going forward. This new standard for adjustments between rate cases was not formally proposed by NorthWestern, affirmed by the Commission, or written into the original PCCAM tariff in Docket D2017.5.39. Announcing this new standard is not only unnecessary to dismiss this case, but also circumvents due process on a fundamental issue of PCCAM mechanics.

The lack of a record and due process supporting the creation of a “extraordinary events or unforeseen regulations” standard requires the Commission

to reconsider this aspect of *Final Order 7788f* (“Order 7788f”).¹ This new standard is inconsistent with *Final Order 7563c* and the original tariff language and will create confusion if allowed to stand. On reconsideration, the Commission should delete paragraphs 58 and 59 and the third line of paragraph 61 from Order 7788f.

I. Order 7788f unlawfully creates a new standard for PCCAM base filings.

Without any formal proposal on the table, Order 7788f creates a new standard for PCCAM base adjustments between rate cases. Although the Commission reiterated its holding that “Order 7563c approved updating base rates only during a subsequent, full rate case” and “that adjustments to the PCCAM base should be made only in general rate cases,” it went on to say that “nothing in this Order should be construed to bar consideration of adjustments between rate cases due to ‘extraordinary events or unforeseen regulations.’” Order 7788f ¶¶ 48, 51, 58. Its finding in paragraph 59 that “updates for PCCAM base costs regarding future ‘extraordinary events or unforeseen regulations’” was “originally contemplated by NorthWestern, and affirmed by the Commission, during the 2017 PCCAM docket” is demonstrably false.²

¹ A party may seek reconsideration of a Commission order it considers to be “unlawful, unjust, or unreasonable.” ARM 38.2.4806.

² The data response cited, PSC-028, provides no support for this statement because NorthWestern never incorporated this data response into its formal proposal in Docket D2017.5.39. See *MCC Motion to Dismiss* pp. 4-9 (“At hearing, NorthWestern did not make any changes or modifications to the prefiled testimonies”). “It would have been a waste of time for MCC to make an issue about an element of the PCCAM that both MCC and NorthWestern evidently agreed upon.” Order 7788f ¶ 52.

The new latitude given for PCCAM base adjustments between rate cases is also inconsistent with other parts of Order 7788f. In dismissing this case, the Commission specifically found that *Final Order 7563c* “approved updating base rates *only* during a subsequent, full rate case,” and that “[t]his decision was based on NorthWestern’s unopposed testimony.” *Id.* ¶ 48 (emphasis added). “It was also premised on the fact that resetting base costs in the context of an ongoing rate case will ‘provide the Commission with a complete picture of the utility’s costs, revenues and volumes for purposes of setting base rates.’” *Id.* (reiterating “the Commission’s goals of simplicity” and desire to avoid mechanisms that “create complexity, require additional proceedings, and invite litigation”). The desire “to avoid single-issue ratemaking” provided further support for dismissal. *Id.* ¶ 54.

Dismissing this case based on the plain language of *Final Order 7563c* should not involve re-writing *Final Order 7563c* in the process. The new standard announced for base filings between rate cases is inconsistent with the language quoted above. In *Final Order 7563c*, the Commission *did* “specifically address the issue of when the PCCAM base could be adjusted,” and it unequivocally decided “that adjustments to the PCCAM base should be made *only* in general rate cases.” *Id.* ¶¶ 51-52 (emphasis added). Changing these mechanics now, in an order on a motion to dismiss (where this new standard for base adjustments has not even been at issue),³ would be a violation of due process. The Commission itself found that

³ “The present Application does not assert that this case stems from extraordinary events or unforeseen regulations.” Order 7788f ¶ 58.

no such standard existed prior to this case, and no such standard can be lawfully announced without first affording due process on the merits.

In paragraph 48 of Order 7788f, the Commission correctly recognizes that no “extraordinary events or unforeseen regulations” exception was proposed or adopted in Docket D2017.5.39. In that case, Mr. Schwartzberger’s proposal that base rates “remain in effect and unchanged” between rate cases was unopposed. *Id.* ¶ 49 (recognizing that no parties contested or sought reconsideration of this issue). The MCC appreciates the Commission’s recognition that “[i]t would have been a waste of time for MCC to make an issue about an element of the PCCAM that both MCC and NorthWestern evidently agreed upon.” *Id.* ¶ 52.

After putting so much time and effort into establishing the current tracker structure (over the course of multiple legislative sessions), this docket is not the time or place to make structural changes. If NorthWestern believes an “extraordinary events and unforeseen regulations” exception is needed, then it should propose such a change so that interested parties can respond. There is no record or other basis here to disturb the Commission’s clear decision in *Final Order 7563c* (based on the utility’s own proposal) to keep base rates “unchanged” between rate cases. *Id.* ¶¶ 48, 51.

II. The new standard will create confusion and regulatory uncertainty.

The addition of two new adjectives (“extraordinary” and “unforeseen”) to the lexicon of possible rate adjustments (which already include annual adjustments and

periodic rate cases) will lead to needless controversy and regulatory expense. The meanings of “extraordinary” and “unforeseen” are highly subjective and open to interpretation. By providing new grounds for reasonable lawyers to disagree on a threshold issue (making a motion to dismiss likely in every case), the new standard will only “create complexity, require additional proceedings, and invite litigation.” *Id.* ¶ 48. Far from avoiding single issue ratemaking and simplifying proceedings, allowing a new way to reset base rates between rate cases will multiply proceedings and require additional regulatory resources.

Notably, the Commission did not require that its new “extraordinary events and unforeseen circumstances” standard to be written into the tariff. Instead, it ordered a return to the original language filed on December 20, 2018. *Id.* ¶ 62. By requiring PCCAM base rates to be “fixed until adjusted as part of the Utility’s next electric utility general rate filing,” however, the original tariff language does not accommodate the Commission’s new standard.

Considering that any party can propose prospective changes to the structure of the PCCAM at any time, the Commission should limit its decision to the controversy at hand. Articulating a new standard for changes to PCCAM base rates is beyond the scope of this proceeding. Moreover, it would be unfortunate to create a new order-tariff inconsistency while attempting to resolve the order-tariff inconsistency that led to this case. Rather than writing any new standards into the tariff, the Commission should simply delete paragraphs 58 and 59 and the third line of paragraph 61 from Order 7788f.

Even if all parties agreed that an event was “extraordinary” or a regulation was truly “unforeseen” (and that rates should therefore change), adjusting PCCAM base rates would not be necessary. Another tax change on the scale of the 2017 Federal Tax Cuts and Jobs Act (“TCJA”) could be accounted for either through a rate rider (i.e., to account for changes to transmission, distribution, and supply costs simultaneously) or an accounting order, which specifically exists for unusual events. Such ratemaking mechanisms should be proposed and approved through separate, stand-alone proceedings, not direct adjustments to the PCCAM base. Like other adjustments that currently appear in PCCAM filings,⁴ these mechanisms do not require changing the PCCAM base.

Allowing NorthWestern to reset the PCCAM base anytime it believes events are “extraordinary” or regulations are “unforeseen” is not necessary to dismiss this case, which was not triggered by any such events or regulations. In addition to annual PCCAM adjustments, NorthWestern is always free to file a rate case. The Commission should reconsider Order 7788f for the limited purpose of deleting paragraphs 58 and 59 and the third line of paragraph 61.

⁴ In NorthWestern’s most recent PCCAM filing, for example, a “DGGS refund” for “the difference between final construction costs of the DGGS and estimated construction costs” is not part of the PCCAM base or 90-10 sharing but nonetheless appears in the filing. Test. Andrew D. Durkin, Dkt. 2021.09.112, pp. 9-10 (Aug. 31, 2021).

Respectfully submitted December 13, 2021.



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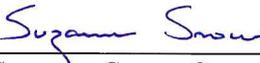
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion for Reconsideration and Brief in Support of the Montana Consumer Counsel has been served upon the following persons by email this 13th day of December 2021.

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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA**

NorthWestern Energy’s Application) REGULATORY DIVISION
to Update Base Power Costs)
and Credits in the Power Costs and) DOCKET NO. 2021.04.047
Credits Adjustment Mechanism)

**Unopposed Motion for Reconsideration of Final Order and
Brief in Support**

NorthWestern Energy (“NorthWestern”) requests that the Montana Public Service Commission (“Commission”) reconsider its Final Order for the limited purpose of correcting language in the order, a correction which does not alter the Commission’s decision. Specifically, NorthWestern requests that the Commission remove two sentences in paragraph 50 of the order. Undersigned counsel contacted the Montana Consumer Counsel (“MCC”) regarding this request. The MCC does not oppose the relief NorthWestern requests in this motion; therefore, the motion is unopposed.

NorthWestern proposes the following deletions so that the Commission’s decision in this docket remains clear and does not suggest a prospective rule of general applicability to all utilities in all future dockets.

The changes are:

50. The Commission “speaks through its orders.” *See Bangor Gas Co., LLC v. H.Q. Energy Servs. United States*, 695 F.3d 181, 191 (1st Cir. 2012). Under MAPA, the Commission’s decision must be in writing, with separately stated findings of fact and conclusions of law. Mont. Code Ann. § 2-4-623(1)(a). Consistent with this MAPA provision, among others, the Commission issued Order 7563c. Paragraph 107 indicated that rates consistent with Order 7563c would become effective January 1, 2019. Paragraph 108 directed NorthWestern to file a compliance filing to effectuate this rate change. ~~The PCCAM Tariff does not, and should therefore not be construed as, the Commission’s decision—Order 7563c is.~~ An clerical error in approving a subsequent tariff cannot amend the Commission’s decision or otherwise void terms of an order. ~~To the extent a Commission-approved tariff conflicts with a Commission order, the Commission concludes that the order controls.~~

51. The Commission is not convinced in this case, however, that the terms of the tariff and the terms of Order 7563c are necessarily in conflict...

Because the Commission states in paragraph 51 that it did not find a conflict between Order 7563c and the tariff, it is unnecessary for the Commission to resolve a hypothetical situation of a conflict between a utility tariff and a Commission order. NorthWestern proposes only limited deletions so that the Commission’s finding that an error in approving a tariff cannot change a Commission decision or tariff remains. NorthWestern’s proposal is necessary to give NorthWestern the certainty it needs in conducting its business in compliance with its tariffs. Finally, the deletions ensure that the order does not include a new rule applicable to other utilities.

NorthWestern requests that the Commission grant this unopposed motion,

which will maintain both the Commission's decision and the requirement that NorthWestern follow its tariffs.

Respectfully submitted this 13th day of December 2021.

NORTHWESTERN ENERGY

By: /s/ Ann B. Hill
Ann B. Hill
Attorney for NorthWestern Energy

CERTIFICATE OF SERVICE

I hereby certify that NorthWestern Energy's Unopposed Motion for Reconsideration of Final Order and Brief in Support in Docket No. 2021.04.047, the PCCAM Base reset docket, has been e-filed with the Montana Public Service Commission ("Commission") and emailed to the email list below.

Date: December 13, 2021

/s/ Tracy Lowney Killoy
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