



## **SECOND DEFENSE**

Answering the specific allegations of Complainants' Petition, NorthWestern admits, denies and alleges as follows:

### **SUMMARY OF PETITION**

I. The Commission's Orders and all documents filed in N2009.4.45 are matters of public record, and such documents speak for themselves. NorthWestern denies all characterizations or allegations regarding the documents filed or issued by the Commission in N2009.4.45 that are not contained within the documents themselves, and refer the Commission to those documents for the information contained therein. NorthWestern denies all remaining allegations contained in paragraph I.

II. The allegations contained in paragraph II are based upon speculation and conjecture, unsupported and unsubstantiated by evidence, and NorthWestern is without information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies the same.

III. The Commission's Orders and all documents filed in N2009.4.45 are matters of public record, and such documents speak for themselves. NorthWestern denies all characterizations or allegations regarding the documents filed or issued by the Commission in N2009.4.45 that are not contained within the documents themselves, and refers the Commission to those documents for the information contained therein. NorthWestern denies all remaining allegations contained in paragraph III.

IV. The Commission's Orders and all documents filed in N2009.4.45 are matters of public record, and such documents speak for themselves. NorthWestern denies all characterizations or allegations regarding the documents filed or issued by the

Commission in N2009.4.45 that are not contained within the documents themselves, and refers the Commission to those documents for the information contained therein.

NorthWestern denies all remaining allegations contained in paragraph IV.

V. NorthWestern is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph V and therefore denies the same.

VI. NorthWestern is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph VI and therefore denies the same.

**INFORMATION REQUIRED BY ARM § 38.2.1202(1)(A)**

A. The allegations contained in paragraph A are legal conclusions to which no responsive pleading is necessary, and NorthWestern therefore denies the same. NorthWestern denies the allegations contained in paragraph A and denies that the Petitioners are entitled to the relief requested in paragraph A.

B. NorthWestern denies the allegations contained in paragraph B and denies that the Petitioners are entitled to any relief.

C. NorthWestern denies the allegations contained in paragraph C and denies that the Petitioners are entitled to any relief.

D. NorthWestern denies the allegations contained in paragraph D and all subparagraphs thereto, and denies that the Petitioners are entitled to any relief.

E. NorthWestern denies that the Petitioners are entitled to the information requested in paragraph E and denies all allegations contained in paragraph E and denies that the Petitioners are entitled to any relief.

F. NorthWestern denies that the Petitioners are entitled to temporary approval of an interim rate decrease pursuant to § 69-3-304, M.C.A., and denies all of the allegations contained in paragraph F. NorthWestern specifically denies the allegations regarding the charts and tables compiled by the Petitioners, which are unverified and have no evidentiary support, and denies that the Petitioners are entitled to any relief.

G. NorthWestern denies the allegations contained in paragraph G and denies that the Petitioners are entitled to any relief, including an order amending NorthWestern's contractual agreements with third parties. Moreover, the Petitioner has failed to demonstrate that the Commission has the requisite jurisdiction and authority to amend private, third party contracts between NorthWestern and various municipalities pursuant to the *Mobile-Sierra Doctrine*. See, *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 130 S.Ct. 693, (2010)(the Mobile-Sierra doctrine, holding that contractual agreements may only be abrogated in circumstances of unequivocal public necessity, applies to all challenges to contract rates regardless of whether or not the challenging entity was a party to the contract).

H. NorthWestern denies the allegations contained in paragraph H, asserts that the relief sought is supported by neither facts nor the law, and denies that the Petitioners are entitled to any relief. The Petitioner has failed to demonstrate that the Commission has the requisite jurisdiction and authority to amend private, third party contracts between NorthWestern and various municipalities pursuant to the *Mobile-Sierra Doctrine*. See, *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 130 S.Ct. 693, (2010).

I. NorthWestern denies the allegations contained in paragraph I, asserts that the relief sought is supported by neither facts nor the law, and denies that the Petitioners are entitled to any relief.

J. NorthWestern denies that the Petitioners are entitled to deviations from rates pursuant to § 69-3-305, M.C.A., asserts that the relief sought is supported by neither facts nor the law, and denies all of the allegations contained in paragraph J.

NorthWestern denies that the Petitioners are entitled to any relief, including any refunds.

K. NorthWestern denies that the Petitioners are entitled to any relief and asserts that the relief sought is supported by neither facts nor the law, and denies all allegations contained in paragraph K.

L. NorthWestern denies all allegations contained in paragraph L, asserts that the relief sought is supported by neither facts nor the law, and denies that the Petitioners are entitled to any relief.

M. NorthWestern denies that the Petitioners are entitled to any relief, and specifically denies that the Petitioners are entitled to a separate proceeding.

N. NorthWestern objects to the Petitioners requests to appear via telephone or videoconference and asserts its constitutional right to confrontation. NorthWestern requests that all parties be required to attend all hearings and all parts of this proceeding in person.

O. NorthWestern denies that the Petitioners are entitled to any relief and denies that the Petitioners are entitled to an order modifying NorthWestern's contractual agreements. . Moreover, the Petitioner has failed to demonstrate that the Commission has the requisite jurisdiction and authority to amend private, third party contracts between

NorthWestern and various municipalities pursuant to the *Mobile-Sierra Doctrine*. See, *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 130 S.Ct. 693, (2010).

P. NorthWestern denies the allegations contained in paragraph P and denies that the Petitioners are entitled to any relief. Moreover, the Petitioner has failed to demonstrate that the Commission has the requisite jurisdiction and authority to amend private, third party contracts between NorthWestern and various municipalities pursuant to the *Mobile-Sierra Doctrine*. See, *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 130 S.Ct. 693, (2010).

#### **JURISDICTIONAL STATEMENT IN SUPPORT OF PETITION**

1) The statement contained in paragraph 1) is a legal conclusion to which no responsive pleading is necessary and NorthWestern refers the Commission to the statutory language contained in § 69-3-321, M.C.A., and denies all characterizations, emphases, or interpretations of that statute contained in paragraph 1).

2) The statement contained in paragraph 2) is a legal conclusion to which no responsive pleading is necessary and NorthWestern refers the Commission to the statutory language contained in § 69-3-301, M.C.A., and subparts thereto, and denies all characterizations, emphases, or interpretations of that statute contained in paragraph 2).

3) The statement contained in paragraph 3) is a legal conclusion to which no responsive pleading is necessary and NorthWestern refers the Commission to the statutory language contained in § 69-3-304, M.C.A., and denies all characterizations, emphases, or interpretations of that statute contained in paragraph 3).

4) The statement contained in paragraph 4) is a legal conclusion to which no responsive pleading is necessary and NorthWestern refers the Commission to the statutory language contained in A.R.M. § 38.5.8218., and denies all characterizations, emphases, or interpretations of that statute contained in paragraph 4).

**INFORMATION REQUIRED BY A.R.M. § 38.2.1202(1)(b)**

**PETITIONERS' ADDRESSES**

**INFORMATION REQUIRED BY A.R.M. § 1.3.308(1)(A)(I):**

5) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph 5) and therefore denies the same.

6) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments regarding the Petitioners' status as taxpayers. NorthWestern denies that Petitioners have standing based solely on their status as taxpayers. NorthWestern denies the allegations contained in paragraph 6) and further denies that the Petitioners have standing to bring this action.

7) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph 7) and therefore denies the same.

8) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments regarding the averments contained in paragraph 8) and therefore denies the same. NorthWestern denies that Petitioners have standing based solely on their status as taxpayers. NorthWestern denies the allegations contained in paragraph 8) and further denies that the Petitioners have standing to bring this action.

9) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph 9) and therefore denies the same.

10) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments regarding the Petitioner's status as a taxpayer. NorthWestern denies that Petitioners have standing based solely on their status taxpayers. NorthWestern denies the allegations contained in paragraph 10) and further denies that the Petitioners have standing to bring this action.

11) NorthWestern denies that there is a certified class on whose behalf the Petitioners are authorized to act, and denies that any interested persons are being represented by the Petitioners. NorthWestern denies the allegations contained in paragraph 11) and all subparts thereto.

12) NorthWestern denies that any of the persons listed in paragraphs 11) or 12) are interested persons because they have not submitted motions to intervene or motions to be identified as interested persons and denies all allegations contained in paragraph 12). NorthWestern denies that anyone listed in paragraphs 11) and 12), other than the Montana Consumer Counsel, qualifies to receive notice pursuant to A.R.M. § 38.2.1801 and further avers that the Petitioners are required to comply with all of the Commission's service requirements.

#### **INFORMATION REQUIRED BY A.R.M. § 38.2.1202(1)(c)**

#### **STATEMENT OF FACTS**

13) NorthWestern admits that it is an investor owned utility with operations consisting of regulated electric and natural gas distribution, transmission and energy

supply, and that it serves customers in various parts of Montana. NorthWestern denies all remaining allegations contained in paragraph 13) and denies the Petitioners characterization of NorthWestern's service area.

14) The allegations contained in paragraph 14) are legal conclusions to which no responsive pleading is necessary, and NorthWestern therefore denies the same, and further avers that all activity regulated by the Commission is on file at the Commission and NorthWestern refers the Commissions to the documents on file and denies all characterizations, interpretations or statements regarding those documents that are not specifically contained within the documents themselves.

15) The allegations contained in paragraph 15) are legal conclusions to which no responsive pleading is necessary, and NorthWestern therefore denies the same.

16) The allegations contained in paragraph 16) are legal conclusions to which no responsive pleading is necessary, and NorthWestern therefore denies the same.

17) The allegations contained in paragraph 17) are legal conclusions to which no responsive pleading is necessary, and NorthWestern therefore denies the same.

18) The allegations contained in paragraph 18) are legal conclusions to which no responsive pleading is necessary, and NorthWestern therefore denies the same.

19) Admit that NorthWestern provides street and area lights, the costs of which are collected through Commission approved rates. NorthWestern denies all allegations in paragraph 19) not specifically admitted herein.

20) Admit that NorthWestern provides street and area lights, the costs of which are collected through Commission approved rates. NorthWestern denies all allegations in paragraph 20) not specifically admitted herein.

21) The allegations contained in paragraph 21) are legal conclusions to which no responsive pleading is necessary. Admit that NorthWestern provides street and area lights, the costs of which are collected through Commission approved rates.

22) The allegations contained in paragraph 22) are legal conclusions to which no responsive pleading is necessary, and NorthWestern therefore denies the same, and further avers that all approved tariffs on file with the Commission speak for themselves and NorthWestern refers the Commission to such documents, and denies all characterizations, interpretations or statements regarding those documents that are not specifically contained within the documents themselves.

23) The allegations contained in paragraph 23) are legal conclusions to which no responsive pleading is necessary, and NorthWestern therefore denies the same, and further avers that all approved tariffs on file with the Commission speak for themselves and NorthWestern refers the Commission to such documents, and denies all characterizations, interpretations or statements regarding those documents that are not specifically contained within the documents themselves.

24) Admit that the Commission approved ownership charges include but are not limited to the base, pole, mast-arm, luminaire and wiring. Other items not included in the Commission approved ownership charge are operations and maintenance related to the street and area lights, which are rates approved by the Commission. All charges NorthWestern assesses for street lighting infrastructure are at rates approved by Commission.

25) NorthWestern admits that there are Commission approved cost ranges contained in Commission approved tariffs for ownership charges for street and area

lights, but denies the allegations contained in paragraph 25) to the extent that they characterize or interpret those Commission documents. All charges NorthWestern assesses for street lighting infrastructure are at rates approved by Commission.

26) NorthWestern denies the allegations contained in paragraph 26) to the extent that they characterize the manner in which Commission approved rates and costs are established. All charges NorthWestern assesses for street lighting infrastructure are at rates approved by Commission.

27) NorthWestern denies the allegations contained in paragraph 27).

28) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph 28) and therefore denies the same. Moreover, NorthWestern avers that the information contained in paragraph 28) is speculative and unverified by facts or law. NorthWestern denies all allegations pertaining to “Table 1” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 1” and therefore denies all of the Petitioners allegations pertaining to “Table 1.”

29) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph 29) and therefore denies the same. Moreover, NorthWestern avers that the information contained in paragraph 29) is speculative and unverified by facts or law.

30) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph 30) and therefore denies the same. Moreover, NorthWestern avers that the information contained in paragraph 30) is speculative and unverified by facts or law.

31) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph 31) and therefore denies the same. Moreover, NorthWestern avers that the information contained in paragraph 31) is speculative and unverified by facts or law.

32) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph 32) and therefore denies the same. Moreover, NorthWestern avers that the information contained in paragraph 32) is speculative and unverified by facts or law.

33) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph 33) and therefore denies the same. Moreover, NorthWestern avers that the information contained in paragraph 33) is speculative and unverified by facts or law.

34) The allegations contained in paragraph 34) are legal conclusions to which no responsive pleading is necessary and therefore NorthWestern denies the same. Further, NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph 34) and therefore denies the same. Moreover, NorthWestern avers that the information contained in paragraph 34) is speculative and unverified by facts or law.

35) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 35) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 2” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 2” and therefore denies all of the Petitioners

allegations pertaining to “Table 2.” Moreover, NorthWestern avers that the information contained in “Table 2” is speculative and unverified by facts or law.

36) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 36) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 2” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 2” and therefore denies all of the Petitioners allegations pertaining to “Table 2.” Moreover, NorthWestern avers that the information contained in “Table 2” is speculative and unverified by facts or law.

37) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 37) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 2” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 2” and therefore denies all of the Petitioners allegations pertaining to “Table 2.” Moreover, NorthWestern avers that the information contained in “Table 2” is speculative and unverified by facts or law.

38) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 38) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 2” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 2” and therefore denies all of the Petitioners allegations pertaining to “Table 2.” Moreover, NorthWestern avers that the information contained in “Table 2” is speculative and unverified by facts or law.

39) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 39) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 2” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 2” and therefore denies all of the Petitioners allegations pertaining to “Table 2.” Moreover, NorthWestern avers that the information contained in “Table 2” is speculative and unverified by facts or law.

40) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 40) and all subparts thereto and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 2” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 2” and therefore denies all of the Petitioners allegations pertaining to “Table 2.” Moreover, NorthWestern avers that the information contained in “Table 2” is speculative and unverified by facts or law.

41) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 41) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 2” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 2” and therefore denies all of the Petitioners allegations pertaining to “Table 2.” Moreover, NorthWestern avers that the information contained in “Table 2” is speculative and unverified by facts or law.

42) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 42) and therefore denies the

same. NorthWestern denies all allegations pertaining to “Table 2” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 2” and therefore denies all of the Petitioners allegations pertaining to “Table 2.” Moreover, NorthWestern avers that the information contained in “Table 2” is speculative and unverified by facts or law.

43) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 43) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 3” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 3” and therefore denies all of the Petitioners allegations pertaining to “Table 3.” Moreover, NorthWestern avers that the information contained in “Table 3” is speculative and unverified by facts or law.

44) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 44) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 3” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 3” and therefore denies all of the Petitioners allegations pertaining to “Table 3.” Moreover, NorthWestern avers that the information contained in “Table 3” is speculative and unverified by facts or law.

45) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 45) and therefore denies the same. Moreover, the averment made in paragraph 45) is speculative and unverified by facts or law.

46) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 46) and therefore denies the same. Moreover, the averment made in paragraph 46) is speculative and unverified by facts or law.

47) NorthWestern admits that it has contracts with the City of Billings for street lighting service.

48) The allegations contained in paragraph 48) are legal conclusions to which no responsive pleading is necessary and NorthWestern therefore denies the same. Moreover, the averment made in paragraph 48) is speculative and fails to define what constitutes “time honored law.”

49) NorthWestern’s contracts with the City of Billings pertaining to regulated street and area lighting that are subject to Commission regulation speak for themselves. The remaining allegations contained in paragraph 49) are legal conclusions to which no responsive pleading is necessary and NorthWestern therefore denies the same. Moreover, the averment made in paragraph 49) is speculative and fails to define what constitutes “time honored law.”

50) NorthWestern’s contracts with the City of Billings pertaining to regulated street and area lighting that are subject to Commission regulation speak for themselves. NorthWestern denies all allegations contained in paragraph 50) not specifically admitted herein.

51) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 51) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 2” and is without

knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 2” and therefore denies all of the Petitioners allegations pertaining to “Table 2.” Moreover, NorthWestern avers that the information contained in “Table 2” is speculative and unverified by facts or law.

52) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 52) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 2” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 2” and therefore denies all of the Petitioners allegations pertaining to “Table 2.” Moreover, NorthWestern avers that the information contained in “Table 2” is speculative and unverified by facts or law.

53) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 53) and therefore denies the same. Moreover, the averment made in paragraph 53) is speculative and unverified by facts or law.

54) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 54) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 2” and “Table 3” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 2” and “Table 3” and therefore denies all of the Petitioners allegations pertaining to “Table 2” and “Table 3.” Moreover, the averment made in paragraph 54) is speculative and unverified by facts or law.

55) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 55) and therefore denies the same. Moreover, the averment made in paragraph 55) is speculative and unverified by facts or law.

56) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 56) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 2” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 2” and therefore denies all of the Petitioners allegations pertaining to “Table 2.” Moreover, the averment made in paragraph 56) is speculative and unverified by facts or law.

57) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 57) and therefore denies the same. Moreover, the averment made in paragraph 57) is speculative and unverified by facts or law.

58) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 58) and therefore denies the same. Moreover, the averment made in paragraph 58) is speculative and unverified by facts or law.

59) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 59) and therefore denies the same. Moreover, the averment made in paragraph 59) is speculative and unverified by facts or law.

60) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 60) and therefore denies the same. Moreover, the averment made in paragraph 60) is speculative and unverified by facts or law.

61) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 61) and therefore denies the same. Moreover, the averment made in paragraph 61) is speculative and unverified by facts or law.

62) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 62) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 2” and “Table 3” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 2” and “Table 3” and therefore denies all of the Petitioners allegations pertaining to “Table 2” and “Table 3.” Moreover, the averment made in paragraph 62) is speculative and unverified by facts or law.

63) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 63) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 2” and “Table 3” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 2” and “Table 3” and therefore denies all of the Petitioners allegations pertaining to “Table 2” and “Table 3.” Moreover, the averment made in paragraph 63) is speculative and unverified by facts or law.

64) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 64) and therefore denies the same. Moreover, the averment made in paragraph 64) is speculative and unverified by facts or law.

65) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 65) and therefore denies the same. Moreover, the averment made in paragraph 65) is speculative and unverified by facts or law.

66) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 66) and therefore denies the same. Moreover, the averment made in paragraph 66) is speculative and unverified by facts or law.

67) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 67) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 3” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 3” and therefore denies all of the Petitioners allegations pertaining to “Table 3.” Moreover, the averment made in paragraph 67) is speculative and unverified by facts or law.

68) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 68) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 2” and “Table 3” and is without knowledge or information sufficient to form a belief as to the truth of the

averments contained in and predicated upon “Table 2” and “Table 3” and therefore denies all of the Petitioners allegations pertaining to “Table 2” and “Table 3.” Further the allegations contained in paragraph 68) contain legal conclusions to which no responsive pleading is necessary and NorthWestern therefore denies the same. Moreover, the averment made in paragraph 68) is speculative and unverified by facts or law.

69) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 69) and therefore denies the same. Moreover, the averment made in paragraph 69) is speculative and unverified by facts or law.

70) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 70) and therefore denies the same. Moreover, the averment made in paragraph 70) is speculative and unverified by facts or law.

71) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 71) and therefore denies the same. Moreover, the averment made in paragraph 71) is speculative and unverified by facts or law.

72) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 72) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 3” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 3” and therefore denies all of the Petitioners

allegations pertaining to “Table 3.” Moreover, the averment made in paragraph 72) is speculative and unverified by facts or law.

73) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 73) and therefore denies the same. Moreover, the averment made in paragraph 73) is speculative and unverified by facts or law.

74) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 74) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 3” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 3” and therefore denies all of the Petitioners’ allegations pertaining to “Table 3.” Moreover, the averment made in paragraph 74) is speculative and unverified by facts or law.

75) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 75) and therefore denies the same. Moreover, the averment made in paragraph 75) is speculative and unverified by facts or law.

76) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 76) and therefore denies the same. NorthWestern denies all allegations pertaining to “Table 2” and is without knowledge or information sufficient to form a belief as to the truth of the averments contained in and predicated upon “Table 2” and therefore denies all of the Petitioners’

allegations pertaining to “Table 2.” Moreover, the averment made in paragraph 76) is speculative and unverified by facts or law.

77) NorthWestern admits that Bob Rowe is Chief Executive Officer (“CEO”) of NorthWestern. The remaining allegations contained in paragraph 77) are legal conclusions to which no responsive pleading is necessary and NorthWestern therefore denies the same. Moreover, the averment made in paragraph 77) is speculative and unverified by facts or law.

78) NorthWestern admits that Bob Rowe was a Commissioner of the Montana Department of Public Service Regulation, Public Service Commission, and further admits that Mr. Rowe served as the Chair of the Public Service Commission. NorthWestern denies the remaining allegations contained in paragraph 78) and is without knowledge or information sufficient to form a belief as to the averments contained in paragraph 78) that are not specifically admitted herein and therefore denies the same.

79) NorthWestern incorporates its responses to the previous six paragraphs herein and denies the allegations contained in paragraph 79). NorthWestern denies that the Petitioners are entitled to any relief.

80) NorthWestern denies the allegations contained in paragraph 80), and has provided Mr. Doty with basic information related to NorthWestern’s street lighting aspects.

81) NorthWestern denies the allegations contained in paragraph 81).

82) NorthWestern denies the allegations contained in paragraph 82).

83) NorthWestern denies the allegations contained in paragraph 83).

84) NorthWestern denies the allegations contained in paragraph 84).

85) NorthWestern denies the allegations contained in paragraph 85). Further NorthWestern avers that the allegations contained in paragraph 85) contain legal conclusions to which no responsive pleading is necessary and therefore denies the same. NorthWestern denies that the Petitioners are entitled to any relief.

86) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 86) and therefore denies the same.

87) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 87) and therefore denies the same.

88) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 88) and therefore denies the same.

89) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 89) and therefore denies the same. NorthWestern further denies that the Petitioners have the authority or standing to act on behalf of “all NorthWestern Energy’s Montana electric consumers and taxpayers in lighting districts served by NorthWestern Energy.”

90) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 90) and therefore denies the same.

91) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 91) and therefore denies the same.

92) NorthWestern is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 92) and all subparts thereto, specifically paragraphs a) through n), and therefore denies the same.

### **CONCLUSION**

NorthWestern denies the allegations contained in the Petitioners' conclusion and denies that the Petitioners are entitled to any relief.

### **AFFIRMATIVE DEFENSES**

1. NorthWestern asserts that at all times relevant to the allegations discussed in the Petition that it complied fully and consistently with all applicable statutes, rules, regulations, and tariffs.

2. The Petitioners' claims are barred by the doctrine of *res judicata*. All of the issues raised in the Petition were previously raised in Docket N2009.4.45, in which the Commission declined to initiate a rulemaking requiring utilities to replace existing HPSV street and area lights with LEDs, and the docket was closed. *Res judicata* bars a claimant from relitigating issues and claims decided in a former action or issues and claims that the litigant had an opportunity to litigate in the former action. *Balyeat Law, P.C. v. Hatch*, 284 Mont. 1, 3, 942 P.2d 716, 717 (1997).

3. The Petitioners' claims are barred because they lack standing to bring them. Where a statutory violation is alleged to have occurred, standing is a threshold jurisdictional question. *Fleenor v. Darby School Dist.*, 2006 MT 31, ¶ 7, 331 Mont. 124,

¶ 7, 128 P.3d 1048, ¶ 7. To establish standing, the Petitioners must allege a past, present, or threatened injury to a property or civil right. *Fleenor*, ¶ 9. The alleged injury must be distinguishable from the injury to the public generally, although it does not need to be exclusive to the Petitioners. *Fleenor*, ¶ 9. A plaintiff must have “such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens presentation of issues.” *Bryan v. District*, 2002 MT 264, ¶ 20, 312 Mont. 257, ¶ 20, 60 P.3d 381, ¶ 20, quoting *District No. 55 v. Musselshell County*, 245 Mont. 525, 528, 802 P.2d 1252, 1254 (1990). The Petitioners fail to allege any personal interest and injury, beyond that common interest of all citizens and taxpayers, and therefore lack standing to bring this action. *Fleenor*, ¶ 9.

4. The Petitioners’ request for interim adjustment of Northwestern’s street lighting tariff ownership charge pursuant to § 69-3-304, M.C.A. is barred by due process. There is no legal basis upon which an interim adjustment may be granted, as the Petitioner is not likely to succeed on the merits and in fact has not succeeded on the merits in a previous proceeding raising all of the same issues.

Section 69-3-304, M.C.A., provides that “an order of the commission approving or denying a temporary rate increase or decrease shall be based upon consistent standards appropriate for the nature of the case pending and shall be an intermediate agency action subject to judicial review under the Montana Administrative Procedure Act.” The Commission rules addressing interim rate adjustments speak to rate increases, and do not address interim rate decreases. See A.R.M. § 38.5.501 *et seq.* Petitioners allege that interim relief decreasing rates should be granted because the ownership charge is unjust and unreasonable. However they provide no legal basis to justify this request.

Although the Petitioners do not provide any legal basis upon which an interim rate decrease may be granted, NorthWestern is entitled to due process of law in a proceeding that will adjudicate NorthWestern's property interests. See, *Fuentes v. Shevin*, 407 U.S. 67, 84-85, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972); see also *Montoya v. Blackhurst*, 84 N.M. 91, 93, 500 P.2d 176, 178 (1972); and also *Virginia Elec. & Power Co. v. State Corp. Comm'n*, 226 Va. 541, 312 S.E.2d 25, 28-30 (1984) (finding a violation of due process when a utility "was unaware that summary action was under consideration" and had "no opportunity to be heard"). Concerns of due process are particularly important in administrative agency proceedings because many of the customary safeguards associated with court proceedings are relaxed. See, *Virginia Elec. & Power Co.*, 101 Pub. Util. Rep. 4th (PUR) 41, 44 (Va. State Corp. Comm'n 1988); cf. *Santa Fe Exploration Co. v. Oil Conservation Comm'n*, 114 N.M. 103, 109, 835 P.2d 819, 825 (1992).

The Petitioners' have not asserted any legal or factual basis upon which interim relief can be granted and the substantive issues raised in this complaint were addressed in N2009.4.45, in which the Commission declined to initiate a rulemaking. Therefore, the Petitioners' cannot establish that they are likely to succeed on the merits in this proceeding and therefore interim relief is not warranted.

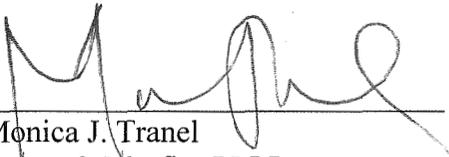
5. The Petitioners' claims are barred by estoppel, illegality, laches, release, and/or waiver.

WHEREFORE, NorthWestern respectfully requests the Commission enter judgment against the Petitioners as follows:

1. That the Petitioners' requests be denied as without merit;

2. That the Petitioners' request for interim relief be denied as without merit;
3. That the Petitioners' take nothing by way of relief for their claims; and
4. For such further equitable relief as appropriate and warranted.

Respectfully submitted March 17, 2010.

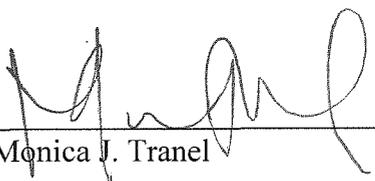


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**CERTIFICATE OF SERVICE**

I, Monica J. Tranel, certify that on the 17<sup>th</sup> day of March, 2010, a true and accurate copy of the foregoing NORTHWESTERN ENERGY'S ANSWER TO PETITION was duly served upon the parties listed below by depositing the same, postage prepaid, in the Unites States mail to:

Jason B Williams Northwestern Energy 40 E Broadway St Butte, MT 59701-9394	Paul Williamson 506 Westview Dr Missoula, MT 59803
Russell L Doty 3878 N Tanager Ln Billings, MT 59102	Vern and Patricia Klingman 1020 14 <sup>th</sup> St West Billings, MT 59102
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Monica J. Tranel