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

* * * * *

IN THE MATTER OF the Petition of)	UTILITY DIVISION
Dr. Paul Williamson, Rev. Dr. Vern)	
Klingman, Patricia Klingman & Russell)	DOCKET NO. D2010.2.14
L. Doty, on Behalf of Themselves & Others)	
Similarly Situated,)	
)	
Complainants',)	
)	
vs.)	
)	
NorthWestern Energy,)	
)	
Respondent.)	

**RESPONDENT NORTHWESTERN ENERGY'S
OPPOSITION TO COMPLAINANTS' REQUEST FOR RECONSIDERATION**

NorthWestern Corporation ("NorthWestern") opposes the Complainants' request for reconsideration.

Argument

Complainants' request for reconsideration should be rejected for two reasons: first, the request for reconsideration does not meet the requirements of ARM § 38.2.4806; and second, the request is premised on the Amended Complaint, which cannot be

considered and is an improper attempt to expand the original filing. Before the Commission for decision at this juncture is the Complainants' original complaint and the Commission's Order No. 7084a on that Complaint. No further pleadings may be introduced on a motion for reconsideration and the Commission's decision on the motion must be limited to the filings made prior to entry of Order No. 7084a and the motion for reconsideration itself.

The standard for reconsideration is set forth in ARM 38.2.4806, which provides:

38.2.4806 RECONSIDERATION

(1) Motion for reconsideration. Within ten days after an order or decision has been made by the commission, any party may apply for a reconsideration in respect to any matter determined therein. Such motion shall set forth specifically the ground or grounds on which the movant considers said order or decision to be unlawful, unjust or unreasonable. (Emphasis added.)

The Complainants' have not set forth specifically the grounds on which the Commission's order or decision is unlawful, unjust or unreasonable. The Complainants' do not challenge the Commission's decision that they do not have standing. Rather, they filed an amended complaint that adds other parties to the action while they remain parties as well. In doing so, the Complainants assent to the Commission's conclusion that they do not have standing. If the Complainants' challenge to the rationale of the Commission's decision is legally sound, then additional Complainants should not be necessary. The fact that the Complainants' have added additional parties in response to the Commission's decision obviates the fact that the Commission's decision is legally valid and should stand.

The Commission concluded that the "Complainants are not members of street and area lighting class of NWE and Complainants have not shown that they are "directly affected" by NWE's Tariff Schedule ELDS-1 as is required by § 69-3-321, MCA."

Order No. 7084a ¶ 59, quotations in original. The Complainants do not set forth why this conclusion is unlawful, unjust or unreasonable. Rather, they simply attempt to add new complainants that, in their view, meet the requirements, without removing the original complainants who do not have standing to bring this action. The Complainants' have simply ignored the Commission's ruling and added more people to the complaint, leaving themselves in as well, though they have been dismissed and the Commission has ruled that they do not have standing to bring this action. The Complainants cannot bootstrap themselves into being directly affected by NWE's Tariff Schedule ELDS-1 by adding other complainants, who may or may not be directly affected by the Tariff. The Complainants' cause of action has been dismissed, and they have not provided any plausible argument to the Commission as to why the decision should be reversed.

The Complainants' argue that because they were granted intervention in an unrelated proceeding before the Commission previously, they have standing in this action. This conflates all proceedings before the Commission into one mass action. In the Complainants' view, to come once is to be welcome always. This is not the case. The rules require that a complainant before the Commission have standing. The Complainants' have acknowledged that they do not have standing by attempting to bring in additional Complainants' that may or may not meet the standing requirements. The Complainants have provided no basis to reconsider the decision in Order No. 7084a.

Complainants argue that the "Commission ignored the Montana Constitution." In Order No. 7084a the Commission analyzed the application of Constitutional provisions to the Complaint at length. See ¶¶ 34, 35, 41, and 42. The Commission specifically concluded that standing before an administrative agency is governed by a statutory grant

thereof, not by constitutional principles. *Id.* ¶ 42. The Complainants' arguments that constitutional principles afford them standing does not justify reconsideration, but if the Commission applies constitutional principles of standing in its analysis, then the Complainants do not have standing for the reasons and arguments set forth at length in the briefs. See Order No. 7084a ¶¶ 41, 42.

The Complainants' argue about the meaning of the word "direct" and cite to various Montana statutes using the word "direct." The Commission's analysis of standing relies upon the Complainant's assertion of a right under § 69-3-321, MCA, and finds that standing in an administrative proceeding must be conferred by statute. Order 7084a ¶ 44. The Commission's analysis turned on application of § 69-3-321, MCA to the Complainants' request for relief. Nothing in the request for reconsideration citing numerous other definitions of "direct" in various statutory contexts pertains to whether the Complainants are afforded standing pursuant to § 69-3-321, MCA. The fact that other Montana statutes use the word "direct" does not change the fact that the Complainants in this case have not suffered the kind of direct harm necessary to confer standing under § 69-3-321, MCA. The Complainants "are not directly paying NWE for the provision of street lighting service in their respective cities of Billings and Missoula" (Order ¶ 53) and nothing in the motion for reconsideration explains why the Commission's decision that they do not have standing under § 69-3-321, MCA is unjust, unlawful or unreasonable.

The Complainants argue that they have been told by the Billings City Council to "go to the PSC." Request for Reconsideration p. 9. This does not confer standing under § 69-3-321, MCA, and does not make the Commission's decision unjust, unlawful or

unreasonable. The Commission's analysis is based upon the Complaint that was filed and the briefs arguing for dismissal based on principles of standing. Whether local governments are likely to challenge NWE or not has no bearing on whether these Complainants in this case are directly affected by the provision of street lighting service in Billings or Missoula. Further, the Commission clearly concluded that "NWE contracts with Billings or Missoula do not afford anyone" standing "as an alleged third party beneficiary of such contracts [...]" Order ¶ 56. The Complainants do not have standing to challenge these contracts before the PSC. Nothing in their request for reconsideration justifies a conclusion to the contrary.

The Complainants argue that the PSC didn't look closely at NWE's rates or it would not have approved them, and that the cost of service study was flawed. No authority or factual background is included to explain whether this is true, and why that would confer standing on these Complainants to bring an action under § 69-3-321, MCA. The request for reconsideration on the basis of inaccurate PSC conclusions should be denied.

Finally, the Complainants' attempt to amend their complaint should be rejected. The Complainants' argue that they are entitled to amend their complaint under § 38-2-1207, ARM. That rule provides:

38.2.1207 AMENDMENTS

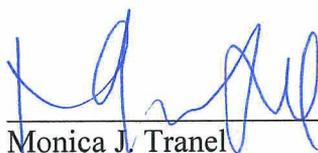
(1) Any pleading or document may be amended prior to notice of the hearing. After notice of a hearing is issued, motion for leave to amend any pleading or document may be filed with the commission and may be authorized in the discretion of the commission or the hearing examiner. Any amendments filed shall contain a certificate of service upon all known interested parties. Post-notice amendments to any pleading or document shall not unduly broaden the scope of the issues originally filed with the commission, unless the commission shall in its discretion allow such amendments. If a post-notice amendment is approved, the commission shall afford the parties notice of the approval and adequate opportunity to prepare for hearing.

Nothing in this rule allows for amending a complaint that has been dismissed. The Complainants' have provided no basis or procedural mechanism that entitles them to file serial complaints with the Commission. The request for reconsideration must be judged on the original complaint and the briefing on that complaint, as well as the Commission's Order No. 7084a, without including extraneous documents. The request for reconsideration has not met the requirements of ARM § 38.2.4806 and the amended complaint may not be considered as part of the motion.

Conclusion

For the foregoing reasons, the Commission should reject the Complainants' request for reconsideration.

Respectfully submitted June 14, 2010.

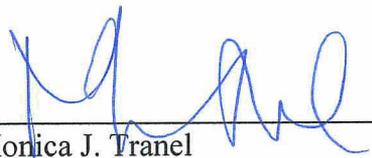


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CERTIFICATE OF SERVICE

I, Monica J. Tranel, certify that on the 14th day of June, 2010, a true and accurate copy of the foregoing NORTHWESTERN ENERGY'S OPPOSITION TO REQUEST FOR RECONSIDERATION 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 th Street West Billings, MT 59102
Kate Whitney 1701 Prospect Avenue PO Box 202601 Helena, MT 59620-2601	Nedra Chase NorthWestern Energy 40 E Broadway St Butte, MT 59701-9394
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