

Ross Richardson
Henningsen, Vucurovich
& Richardson, P.C.
116 W. Granite
Butte, MT 59701
Telephone: (406) 723-3219
Fax: (406) 723-9534
rossrichardson@qwestoffice.net

Attorney for NorthWestern Energy

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

IN THE MATTER OF THE PETITION OF JAMES)	
T. AND ELIZABETH A. GRUBA, LEO G. AND)	
JEANNE R. BARSANTI AND MICHAEL W. AND)	
FRANCES E. PATERSON, ON BEHALF OF)	
THEMSELVES AND OTHERS SIMILARLY)	
SITUATED,)	DOCKET NO. D2010.2.14
Complainants,)	
VS.)	
)	
NORTHWESTERN ENERGY,)	
Defendant.)	

NorthWestern Energy's Motion to Suspend Proceedings

COMES NOW NorthWestern Energy ("NWE"), and moves the Public Service Commission of the State of Montana ("Commission" or "PSC") to suspend the proceedings in this case pending a determination by the Montana Supreme Court on an issue currently before it on appeal.

Procedural History

On February 25, 2010, the Commission issued a Notice of Complaint with regard to a pleading filed by Complainants Williamson, Klingman, and Doty, which contended that NWE's street lighting tariff ownership charges were excessive, unreasonable and

unjustly discriminatory. Complainants also sought an order from the PSC for an immediate rate reduction. NWE subsequently filed an Answer to the Complaint and moved to dismiss the Complaint. On May 20, 2010, the Commission dismissed the Complaint for lack of standing.

On June 2, 2010, an Amended Complaint was filed together with a Request for Reconsideration. The Amended Complaint was substantively the same as the Complaint, but it added additional complainants to the original parties (“Petitioners”). NWE opposed the Amended Complaint and the Commission denied the request to reconsider. The Petitioners appealed to the Yellowstone County District Court (“District Court”) which upheld the Commission’s order to dismiss. An appeal was then filed by Petitioners with the Montana Supreme Court.

The decision of the Supreme Court affirmed the District Court’s order in part, but reversed and remanded on the issue related to the standing of the Petitioners in the Amended Complaint. In its order, the Supreme Court remanded the case to the District Court with instructions to remand to the PSC so that the PSC could exercise its discretion, in the first instance, as to whether to allow the Amended Complaint in light of the Supreme Court’s decision that the Petitioners did have standing. *See Williamson v. Montana Public Service Commission*, 2012 MT 32, 364 Mont. 128.

Following the Supreme Court’s remand order to the District Court, Petitioners filed a Motion for Costs and Renewed Request to Initiate Immediate Rate Reduction (“Rate Reduction Motion”) dated March 5, 2012 in the District Court. Petitioners requested that the District Court award them costs on appeal and sought an order from the

District Court directing NWE to implement an immediate rate reduction in its street lighting tariff.

The PSC and NWE opposed the Rate Reduction Motion. On April 18, 2012, the District Court issued an Order (“Order”) denying the Rate Reduction Motion. The District Court noted that the request for immediate rate reduction was premature because, pursuant to the Montana Administrative Procedure Act¹, the District Court sits as an appellate court, reviewing decisions of the PSC, and the PSC has not had an opportunity to consider Petitioners’ request for immediate rate reduction. On May 16, 2012, Petitioners appealed the entirety of the District Court’s Order to the Montana Supreme Court, where it is now pending.

On June 11, 2012, Petitioners filed a Second Amended Complaint with the Commission requesting once again, in part, that the street lighting tariff rate reduction be immediately imposed. *See* Second Amended Complaint, Request for Relief, page 4, paragraph F. A Notice of Complaint concerning the Second Amended Complaint was issued by the Commission on July 3, 2012, requiring NWE to file an Answer or response within twenty (20) days of the Notice.

Discussion and Analysis

The appeal of the District Court’s refusal to consider the request for an immediate rate reduction creates an anomaly in the matter now before the Commission. There are two issues now pending before the Supreme Court: (1) the denial of Petitioners’ request for costs; and (2) the refusal of the District Court to order an immediate rate reduction based on Petitioners’ request in its Rate Reduction Motion.

¹ *See* Montana Code Annotated Title 2, Part 4 and Section 69-3-402.

It is well-established law that an appeal divests a lower court of jurisdiction. When a notice of appeal is filed, jurisdiction passes from the trial court and vests in the Supreme Court. Julian v. Buckley (1981), 191 Mont. 487, 490, 625 P.2d 526, 528. It then “becomes the Supreme Court’s duty to maintain the status quo of the parties until the controversy can be determined.” *Id* (quoting Benolken v. Miracle (1954), 128 Mont. 262, 273 P.2d 667) (*see also*, State ex rel. O’Grady v. District Court (1921), 61 Mont. 346, 202 P. 575; Glavin v. Lane (1903), 29 Mont. 228, 74 P. 406; Helena Adjustment Co. v. Predivich (1934), 98 Mont. 162, 37 P.2d 651; Stewart v. First National Bank & Trust Co. (1933), 93 Mont. 390, 18 P.2d 801; and State v. Groom (1931), 89 Mont. 447, 300 P. 226).

In Alpine Buffalo, Elk and Llama Ranch, Inc.. v. Andersen (2001), 307 Mont. 509, 38 P.3d 815, an issue arose over whether the Supreme Court appeal divested the district court of jurisdiction to address a motion which was pending at the time of the appeal. The appellant argued that the appeal did not divest the district court of jurisdiction to address her motion to set aside the underlying deficiency judgment which was not appealed. She conceded that an appeal would divest the district court of jurisdiction over the matter from which the appeal was taken and “any matter embraced therein”. However, she argued the appeal did not affect the underlying deficiency judgment. The Supreme Court denied her request and held that if the matters are embraced within each other, the district court is divested of jurisdiction on both issues. *Id.*

As previously indicated, the Second Amended Complaint reflects that the request for an immediate rate reduction is a part of the relief sought before the Commission in the

current proceeding. In fact, before the Commission can reach a conclusion that a rate reduction is appropriate, it must decide the allegations set forth in the Second Amended Complaint. Those allegations must be proven by the Petitioners. In sum, the request for immediate rate reduction is an integral part of the relief that the Petitioners are seeking in the matters now filed with the Commission and, therefore, is embraced with the matter being appealed.

These general principles of law on jurisdiction remain the same in this instance, where, instead of a district court, the matter is pending before the PSC. The issue concerning an immediate rate reduction cannot proceed simultaneously before the Commission and the Supreme Court. There exists the possibility that the PSC's need to review might be mooted by future developments in the Supreme Court. In Montana Consumer Counsel v. Public Service Commission (1975), 168 Mont. 177, 541 P.2d 769, the Montana Supreme Court held that the PSC was acting beyond its jurisdiction when it issued subsequent orders in a matter that was currently pending before the Supreme Court on appeal. Thus, the PSC is divested of jurisdiction when the matter is pending before the Montana Supreme Court.

Conclusion

As noted, the issue concerning the immediate rate reduction, which is now on appeal at the Montana Supreme Court, is inextricably intertwined with matters set forth in the Second Amended Complaint. Thus, until the Supreme Court decides the pending appeal, the jurisdiction of the PSC regarding the Second Amended Complaint is removed and is vested with the Supreme Court. See Montana Consumer Counsel, *Id.* (holding that “during the pendency of this appeal, the [PSC] shall refrain from further actions which

may tend to interfere with this Court's jurisdiction on appeal of this matter.")

NorthWestern therefore requests that the Commission suspend the proceedings in this case pending a determination by the Montana Supreme Court regarding the current appeal of the District Court's Order. In the event the Commission declines to suspend these proceedings, NWE requests twenty (20) days from the date of that decision to file a formal response to the Second Amended Complaint.

Respectfully submitted this 19th day of July, 2012.

NorthWestern Energy

By 
Ross P. Richardson
Attorney for NorthWestern Energy

CERTIFICATE OF SERVICE

I hereby certify that a copy of NorthWestern Energy's Motion to Suspend Proceedings in Docket D2010.2.14 has been served by mailing a copy thereof by first class mail, postage prepaid to the service list in this Docket and by hand-delivering to the Montana Public Service Commission and the Montana Consumer Counsel. This Motion has also been efiled with the PSC.

Date: July 19, 2012

A handwritten signature in cursive script that reads "Nedra Chase". The signature is written in black ink and is positioned above a horizontal line.

Nedra Chase
Administrative Assistant
Regulatory Affairs

A. Service List
D2010.2.14

Leo & Jeanne Barsanti
3316 Pipestone Dr.
Billings MT 59102

Nedra Chase
40 E. Broadway
Butte MT 59701-9394

Russell Doty
3878 N. Tanager LN
Billings MT 59102

James T. Gruba
Elizabeth A. Gruba
2527 Wyoming Ave.
Billings MT 59102

Vern & Patricia Klingman
1020 14th St. West
Billings MT 59012

Robert A. Nelson
Montana Consumer Counsel
111 North Last Chance Gulch
Suite 1B Box 201703
Helena MT 59620-1703

Michael W. Paterson
Frances E. Paterson
3906 Heritage
Billings MT 59102

Ross Richardson
Attorney At Law
116 W. Granite
Butte MT 59701

Kate Whitney
Public Service Commission
1701 Prospect Ave.
Box 202601
Helena MT 59620-2601

Paul Williamson
509 Westview Dr.
Missoula MT 59803