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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 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, )  
Complainants ) Docket No. D2010.2.14  
vs. )  
NorthWestern Energy, )  
Defendant )

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**NorthWestern Energy’s Answer to Complainants’ Second Amended Complaint**

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NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern”), pursuant to ARM 38.2.2107, hereby submits its *Answer to the Complainants’ Second Amended Complaint* (“Answer”). On January 4, 2013, the Montana Public Service Commission (“Commission”) issued a Notice of Staff Action, directing NorthWestern to file an answer to the Complaint within 20 days. NorthWestern’s Answer is set forth below.

## **Affirmative Defenses**

NorthWestern asserts that at all times relevant to the allegations discussed in the Complaint that it complied fully with all applicable statutes, rules, regulations, and tariffs. *See* Mont. Code Ann. §§ 69-3-201 and 69-3-305; ARM 38.5.1001; and NorthWestern's Electric Tariffs.

### **Answer**

At the beginning of the Complaint, Complainants provide a "Summary of Petition." NorthWestern does not believe a response to this section of the Complaint is required as paragraphs I through XII are not allegations of fact, but an opening statement of why the Complainants believe their Complaint is warranted. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statements made therein and therefore denies the same.

Starting on page 3 of the Complaint, Complainants provide a "Statement of Relief Sought." Again, NorthWestern does not believe a response to this section of the Complaint is required as paragraphs A through Q are not allegations of fact to which a response is required, but a prayer for relief. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the relief sought and therefore denies the same.

Finally, in several paragraphs in the Complaint, Complainants assert that they are seeking redress on behalf of all individuals similarly situated and affected by NorthWestern's alleged wrongdoings. Complainants have not been certified as a class action by the court. Thus, NorthWestern objects to all references to statements concerning individuals not named in this Complaint.

1) This petition is submitted pursuant to MCA § 69-3-321, which reads:

**69-3-321. Complaints against public utility -- hearing.** (1) The commission shall proceed, with or without notice, to make such investigation as it may deem necessary upon a complaint made against any public utility by any mercantile, agricultural, or manufacturing society or club; by any body politic or municipal organization or association, the same being interested; or by any person, firm, or corporation, provided such person, firm, or corporation is directly affected thereby, that:

- (a) any of the rates, tolls, charges, or schedules or any joint rate or rates are in any way unreasonable or unjustly discriminatory;
- (b) any regulations, measurements, practices, or acts whatsoever affecting or relating to the production, transmission, delivery, or furnishing of heat, light, water, power, or regulated telecommunications service, or any service in connection therewith is in any respect unreasonable, insufficient, or unjustly discriminatory; or
- (c) any service is inadequate. [Emphasis added.]

**Answer: NorthWestern states that the law speaks for itself.**

2) And pursuant to Montana Statutes § 69-3-301, which provides:

**69-3-301. Schedule of rates, tolls, and charges.** (1) Every public utility shall file with the commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls, and charges which it has established and which are in force at the time for any service performed by it within the state or for any service in connection therewith or performed by any public utility controlled or operated by it. Every public utility shall file with and as a part of such schedule all rules that in any manner affect the rates charged or to be charged for any service. When a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission. (2) A copy of so much of the schedule as the commission considers necessary for the use of the public shall be printed in plain type and kept on file in every station or office of the public utility where payments are made by the consumers or users. Such copy shall be open to the public and in such form and place as to be readily accessible to the public and conveniently inspected.

**Answer: NorthWestern states that the law speaks for itself.**

3) And pursuant to Montana Statutes § 69-3-304, which provides:

**69-3-304. Temporary approval of rate increases or decreases.** The commission may, in its discretion, temporarily approve increases or decreases pending a hearing or final decision. If the final decision is to disapprove an increase, the commission may order a rebate to all consumers for the amount collected

retroactive to the date of the temporary approval. If the final decision is to disapprove a decrease, the commission may order a surcharge to be paid by all consumers for the amount not collected retroactive to the date of the temporary approval. The commission shall order interest to be paid on a rebate or surcharge as determined by the commission. 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.

**Answer:** NorthWestern states that the law speaks for itself.

4) And pursuant to ARM § 385.8218, which provides:

**38.5.8218** DEMAND-SIDE RESOURCES

(1) Energy efficiency and conservation measures can effectively contribute to serving total electricity load requirements at the lowest long-term total cost. A utility should develop a comprehensive inventory of all potentially cost-effective demand-side resources available in its service area and optimize the acquisition of demand-side resources over its planning horizon.

(2) A utility should evaluate the cost-effectiveness of demand-side resources and programs based on its long-term avoidable costs. Cost-effectiveness evaluations of demand-side resources should encompass avoidable electricity supply, transmission, and distribution costs.

(3) A nonparticipant (no-losers) test considers utility-sponsored demand-side management programs cost effective only if rates to customers that do not participate in the program are not affected by the program. A utility should not evaluate the cost-effectiveness of demand-side resources using a nonparticipant test.

(4) A utility should develop and strive to achieve targets for steady, sustainable investments in cost-effective, long-term demand-side resources. A utility's investment in demand-side resources should be coordinated with and complement its universal system benefits activities.

(5) Except when the entire resource would otherwise be lost, a utility's demand-side management programs should not be focused on "cream skimming;" the least expensive and most readily obtainable resource potential should be acquired in conjunction with other measures that are cost-effective only if acquired in a package with the least expensive, most readily available resources.

(6) Prudently incurred costs related to procuring demand-side resources are fully recoverable in rates. The commission will evaluate the prudence with which demand-side resources are procured, including resources acquired through programs, subcontractors, and competitive solicitations consistent with evaluations of supply-side resources.

(7) A utility's development of demand-side resources should include an examination of innovative methods to address cost recovery issues related to

demand -side resource investments and expenses, including undesirable effects on revenues related to the provision of transmission and distribution services.

**Answer:** NorthWestern states that the rule speaks for itself.

- 5) Complainants, James T. and Elizabeth A. Gruba live at 2527 Wyoming Ave, Billings, Montana 59102.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

- 6) Complainants, James T. and Elizabeth A. Gruba, are property owners and taxpayers who obtain electric service from Northwestern Energy, all in Billings, Montana.

**Answer:** NorthWestern admits that it provides electric service to James T. and Elizabeth A. Gruba. NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.

- 7) Complainants Gruba live in Special Improvement Lighting & Maintenance Districts (SILMDs) # 261 & 262 (Yellowstone & Wyoming; and Yellowstone & Wyoming Alley).

**Answer:** NorthWestern denies that Complainants Gruba live in SILMDs #261 and 262. NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.

- 8) Complainants, Leo G. and Jeanne R. Barsanti live at 3316 Pipestone Dr., Billings, Montana 59102.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

- 9) Complainants, Leo G. and Jeanne R. Barsanti, are property owners and taxpayers who obtain electric service from Northwestern Energy, all in Billings, Montana.

**Answer:** NorthWestern admits that it provides electric service to Leo G. and Jeanne R. Barsanti. NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.

- 10) Complainants Barsanti live in Special Improvement Lighting & Maintenance District (SILMDs) # 228 (Parkland West Subd.).

**Answer:** NorthWestern admits.

11) Complainants Michael W. and Frances E. Paterson live at 3906 Heritage, Billings, MT.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

12) Complainants Michael W. and Frances E. Paterson are property owners and taxpayers who obtain electric service from Northwestern Energy, all in Billings, Montana.

**Answer:** NorthWestern admits that it provides electric service to Michael W. and Frances E. Paterson. NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.

13) Complainants Michael W. Paterson and Frances E. Paterson do not live in any Special Improvement Lighting & Maintenance District (SILMDs).

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

14) Complainants Michael W. and Frances E. Paterson share as part of their property tax bill in the street lighting costs the city of Billings and Yellowstone County pay.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

15) Complainants Michael W. and Frances E. Paterson would have standing to bring this matter before the Commission pursuant to MCA § 69-3-321 as “interested persons” if the statute were not written in an unjustly discriminatory manner to require them to be directly affect by certain actions, a hoop other entities do not have to jump through in order to have their grievances redressed by the Commission.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it does not contain allegations of fact, but is an editorial by Complainants. To the extent that the Commission deems an answer to this paragraph of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statements made and therefore denies the same.

16) Addresses of other interested persons in the class on whose behalf this action is being brought are too numerous to list. They include:

- a. all street lighting districts within service areas of Northwestern Energy, a company which is under the jurisdiction of the PSC,
- b. all customers of those lighting districts,
- c. all taxpayers who support those lighting districts,
- d. all users of area lighting within the service area of Northwestern Energy, a company which is under the jurisdiction of the PSC,

- e. the Montana Consumer Council,
- f. various consumer, environmental, business and industry groups, and news media in Northwestern Energy's service area, and
- g. manufacturers of LED and other street lighting technologies.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it does not contain allegations of fact, but is an attempt by Complainants to make this matter a class action lawsuit. To the extent that the Commission deems an answer to this paragraph of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statements made and therefore denies the same.

- 17) In lieu of serving all the above interested persons, it is requested that the Commission give notice pursuant to ARM § 38.2.1801, to all of the above interested parties as members of the public and rule that it is otherwise sufficient notice that the documents in this proceeding be posted on the PSC website.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it does not contain allegations of fact, but is a request from Complainants. To the extent that the Commission deems an answer to this paragraph of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statements made and therefore denies the same.

- 18) Northwestern Energy is an electric and gas utility serving customers in various parts of Montana (herein called Northwestern's service area).

**Answer:** NorthWestern admits.

- 19) Northwestern Energy's retail rates and service to street lighting, residential, and small and large commercial customers are regulated by the Montana Public Service Commission (MT-PSC).

**Answer:** NorthWestern admits.

- 20) Pursuant to Montana law Green Electricity Buying Cooperatives are not permitted to compete in Northwestern Energy's service area.

**Answer:** NorthWestern states that the law speaks for itself.

- 21) Pursuant to Montana law, Rural Electric Cooperatives are limited to competing only for large customers in Northwestern Energy's service area.

**Answer:** NorthWestern states that the law speaks for itself.

22) Pursuant to Montana law, no entity is allowed to compete with Northwestern Energy in providing street lighting service within its territory.

**Answer:** NorthWestern states that the law speaks for itself.

23) Northwestern Energy is a governmentally-granted, albeit regulated monopoly.

**Answer:** NorthWestern denies.

24) Montana law requires NorthWestern to use the original cost depreciated method of calculating the value of utility property placed into its utility rate base.

**Answer:** NorthWestern states that the law speaks for itself.

25) Billings has contracts with Respondent for Street Lighting service to many SILMDs.

**Answer:** NorthWestern is not sure who the “Respondent” is that is referred to in the paragraph. NorthWestern assumes for purposes of answering this Complaint that “Respondent” is NorthWestern.

NorthWestern admits that it has contracts with the City of Billings for Street Lighting service. NorthWestern is without sufficient information to admit or deny if said contracts cover “many SILMDs” and therefore denies the same.

26) A utility or other entity may not avoid reasonable regulation by contract.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a legal conclusion. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same.

27) All of the contracts for street lighting between Billings and Respondent make the charges under each contract subject to PCS approved street lighting tariffs.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny that all of its contracts with the City of Billings have the alleged provision, but does admit that some of its contracts with the City of Billings contain such a provision.

28) None of the contracts that Northwestern Energy has with the City of Billings for the lighting districts mentioned in Tables 2 & 3 contains the words “lease,” “rent,” “lessor,” “lessee,” “landlord,” or “tenant,” or plurals of those words

**Answer:** NorthWestern is without sufficient knowledge to admit or deny that all of its contracts with the City of Billings do not have the words contained in the

**paragraph, but does admit that some of its contracts with the City of Billings do not contain such words.**

- 29) If a Northwestern Energy customer does not own a street light, and if Northwestern Energy provides a street light for that customer, Northwestern levies an ownership charge on each street light that Northwestern provides under its Schedule No. ELDS-1, Electric Lighting Delivery Service Tariff.

**Answer: Northwestern admits that it levies an ownership charge on street lights that it provides under the Tariff noted in the above paragraph. Northwestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.**

- 30) In addition to levying an ownership charge, Northwestern also charges for the energy used, for transmission and distribution of that energy, and charges to cover billing, operation, maintenance, USBC and CTC-QF expenses for each street light it serves under its Schedule No. ELDS-1, Electric Lighting Delivery Service Tariff.

**Answer: Northwestern denies that it also charges for all of those items noted in the paragraph above under its Schedule No. ELDS-1. Northwestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.**

- 31) The charges in the preceding two paragraphs are regulated by the MT-PSC.

**Answer: Northwestern admits.**

- 32) The MT-PSC has approved Northwestern Energy's Schedule No. ELDS-1, Electric Lighting Delivery Service Tariff and has approved its predecessor rate schedules.

**Answer: Northwestern admits.**

- 33) Northwestern Energy's Schedule No. ELDS-1, Electric Lighting Delivery Service Tariff, applies to street lighting services, energy and transmission and distribution of the energy Northwestern Energy provides to the City of Billings and other cities in Montana.

**Answer: Northwestern admits that Schedule No. ELDS-1 applies to street lighting services, but denies that it applies to energy and transmission and distribution of energy that it provides to the City of Billings and other cities in Montana.**

- 34) Northwestern's street lighting infrastructure includes but is not limited to the base to which the pole is attached, pole, mast-arm, luminaire and wiring from the utility's distribution system to the luminaire.

**Answer: Northwestern admits.**

35) NorthWestern includes the cost of its street lighting infrastructure detailed in paragraph 34) in its utility rate base.

**Answer:** NorthWestern admits.

36) When Northwestern provides a customer with a street light, it determines the average total per-unit cost of that street light (or those street lights).

**Answer:** NorthWestern states that the paragraph above is vague as it is unsure what definition Complainants have given to the term “customer.” As such, NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

37) The infrastructure cost detailed in paragraph 36) does not include energy, transmission, distribution, USBC, billing, or CTC-QF costs.

**Answer:** NorthWestern admits that the infrastructure costs detailed in paragraph 34 do not include energy, transmission, distribution, USBC, billing, or CTC-QF costs.

38) Once it has determined the average total per-unit cost of a street light, to determine the Ownership charge, Northwestern looks to see what cost range that installation falls in on Schedule No. ELDS-1 and places the unit (or units) in the proper “Cost Range.”

**Answer:** NorthWestern admits that the ownership charge is calculated by consulting the applicable tariff to determine the proper “Cost Range.” NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.

39) Once the unit to be provided to Northwestern’s customer has been placed in the proper “Cost Range,” and the street light is operational, Northwestern begins to charge the customer a monthly unit rate ownership charge associated with the “cost range” specified in Schedule No. ELDS-1.

**Answer:** NorthWestern states that the paragraph above is vague as it is unsure what definition Complainants have given to the term “customer.” As such, NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same

40) At some point in time, the ownership charge that Northwestern levies will completely recover the total costs of providing the street lighting infrastructure detailed in paragraph 34) and repay Northwestern Energy for its investment plus an allowed rate of return on that investment.

**Answer:** NorthWestern denies.

41) Between 9/23/1970 and 7/30/1984, the PSC has never allowed NorthWestern's predecessor (Montana Power) to earn more than an 11.65% return on overall cost of capital.

**Answer:** NorthWestern states that the Commission's orders authorizing a specific rate of return for NorthWestern speak for themselves.

42) The allowed cost of capital allowed Montana Power or NorthWestern was:

- a. 9.51% in Docket # 6454, Order 4350d {4/4/1978};
- b. 10.34% in Docket # 80.4.2, Order 4714a {12/19/1980};
- c. 11.39% in Docket # 82.8.54, Order 4938 {10/18/1982};
- d. 11.63% in Docket # 82.854, Orders 4938a {date not known} and 4938b {6/30/1983}, and Docket # 83.9.67, Order 5051 {3/21/1984};
- e. 10.44% in Docket # 88.6.15, Order 5360d {8/29/1989};
- f. 10.24% in Docket # 90.6.39, Order 5484k {7/12/1991}; and
- g. 9.09% in Docket # 93.6.24, Order 5709d {4/28/1994}.

**Answer:** NorthWestern states that the orders speak for themselves.

43) On 7/30/1984, the Montana Public Service Commission was allowing NorthWestern's predecessor (Montana Power) to earn an 11.65% on overall cost of capital. (Docket # 83.9.67, Order 5051c).

**Answer:** NorthWestern states that the Order speaks for itself.

44) Since 7/30/1984, neither Defendant nor its predecessor has been allowed to earn an overall rate of return in excess of 11.65%.

**Answer:** NorthWestern admits.

45) Assuming the tariff in effect in June 2009, (as indicated in Col. 3, Table 1a) the number of years it took for Northwestern Energy's ownership charges to completely pay for street lighting infrastructure placed in each cost range on Schedule No. ELDS-1 plus 11.65% interest on the investment in the street lighting infrastructure are indicated in Table 1a, columns 4 and 5.

For purposes of responding to the Complaint, NorthWestern has deleted the referenced Table 1a.

**Answer:** NorthWestern denies that its entire street lighting infrastructure in the City of Billings has been paid for. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

46) Assuming respondent was allowed an 11.65% return on its investment in existing High Pressure Sodium lights, if the monthly ownership charge levied by Northwestern is:

- a. between \$19.17 and \$35.97 a month (Table 1a, Column 3, rows G through N), the infrastructure supporting existing street lights would be paid for within 12 to 15 years or less (Table 1a, Cols. 4 & 5, rows G through N) ;
- b. \$8.97 or \$15.72 a month, (Table 1a, Column 3, rows C & F), the infrastructure supporting existing street lights would be paid for in 11.7 to 17.3 years or less (Table 1a, Cols. 4 & 5, rows C & F);
- c. \$10.77 or \$12.95 a month (Table 1a, Column 3, rows D & E), the infrastructure supporting existing street lights would be paid for in 12 to 20 years or less (Table 1a, Cols. 4 & 5, rows D & E) ; and
- d. \$2.70 or \$5.77 a month (Table 1a, Column 3, rows A & B), the infrastructure supporting existing street lights would be paid for in between 11 to 30 years more or less depending on the original cost of the infrastructure per luminaire (Table 1a, Cols. 4 % 5, rows A & B).

**Answer:** NorthWestern denies that its entire street lighting infrastructure in the City of Billings has been paid for. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

- 47) An overcharge exists in any lighting district where the monthly ownership charge of:
- a) between \$19.17 and \$35.97 a month has been levied for more than 15 years;
  - b) \$8.97 or \$15.72 a month has been levied for more than 17.3 years;
  - c) \$10.77 or \$12.95 a month has been levied for more than 20 years; or
  - d) \$2.77 or \$5.77 a month has been levied for more than 30 years if the original cost of the infrastructure averaged in the \$200 - \$269 or \$400 to \$575 range per luminaire.

**Answer:** NorthWestern denies that an overcharge exists. NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.

- 48) It is unreasonable and unjustly discriminatory to continue collecting the monthly ownership charge in any lighting district where the monthly ownership charge of:
- a. between \$19.17 and \$35.97 a month has been levied for more than 15 years;
  - b. \$8.97 or \$15.72 a month has been levied for more than 17.3 years;
  - c. \$10.77 or \$12.95 a month has been levied for more than 20 years;
  - d. \$5.77 a month has been levied for more than 30 years if the original cost of the infrastructure was in the \$400 to \$575 range per luminaire; or
  - e. \$2.70 a month has been levied for more than 30 years if the original cost of the infrastructure was in the \$200 to \$269 range per luminaire.

**Answer:** NorthWestern denies that its ownership charge is unreasonable and unjustly discriminatory. NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.

- 49) Since the 2009 rates were in effect, the Schedule No. ELDS-1, Electric Lighting Delivery Service Tariff rates have increased.

**Answer: NorthWestern admits that rates have changed.**

- 50) Assuming the tariff in effect on January 1, 2011, (as indicated in Col. 3, Table 1b) the number of years it took for Northwestern Energy's ownership charges to completely pay for street lighting infrastructure placed in each cost range on Schedule No. ELDS-1 plus 11.65% interest on the investment in the street lighting infrastructure are indicated in Table 1b, columns 4 and 5.

For purposes of responding to the Complaint, NorthWestern has deleted the referenced Table 1b.

**Answer: NorthWestern denies that its entire street lighting infrastructure in the City of Billings has been paid for. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.**

- 51) Under the rates in effect in 2009, approximately 80% of the street lights that NorthWestern owns in Billings, Montana, were completely paid for including the allowable rate of return or higher. (See Table 3, Col. I, and paragraph 180)

**Answer: NorthWestern denies that its entire street lighting infrastructure in the City of Billings has been paid for. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.**

- 52) If the ownership charge has completely paid for the infrastructure in a Street Lighting and Improvement District, as it has in most Billings SILMDs, there is no reason the tax and ratepayers in those district should see the increase in ownership charges they have experienced because the ownership charge should not be in the tariff for those districts.

**Answer: NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the rest of the statement made and therefore denies the same.**

- 53) To the extent that the ownership charge is still being levied in SILMDs where past ownership charges have completely covered the cost of the utility street lighting infrastructure in that SILMD, the tax and ratepayers in the SILMD containing lights where the ownership charge has covered the cost of street lighting infrastructure in that SILMD are subsidizing the tax and ratepayers in other customer classes or in street lighting

customers in SILMDs where the ownership charge has not completely defrayed the cost of street lights in that SILMD.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same.

54) Cross-subsidization is illegal under Montana law.

**Answer:** NorthWestern states that the law speak for itself.

55) The property tax information for the Gruba Complainants may be found online at: <http://www.co.yellowstone.mt.gov/gis/csaprop.asp?propid=200511> , and <http://www.co.yellowstone.mt.gov/gis/csatydet.asp?propid=A10354&lyear=2009>

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement of Complainants' property tax information. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the information and therefore denies the same.

56) In tax year 2009, Complainants Gruba were assessed \$113.06 for street lighting in SILMD # 261. (<http://www.co.yellowstone.mt.gov/gis/csatydet.asp?propid=A10354&lyear=2009> line reading "L261 0261 BLGS LIGHT MAINT 56.53 56.53 113.06")

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement of Complainants' property tax information. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the information and therefore denies the same. In further responding, NorthWestern refers back to its answer to paragraph 7 of the Complaint.

57) In tax year 2009, Complainants Gruba were assessed \$13.04 for street lighting in SILMD # 262. (<http://www.co.yellowstone.mt.gov/gis/csatydet.asp?propid=A10354&lyear=2009> , line reading "L262 0262 BLGS LIGHT MAINT 6.52 6.52 13.04")

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement of Complainants' tax information. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the information and therefore denies

**the same. In further responding, NorthWestern refers back to its answer to paragraph 7 of the Complaint.**

- 58) In tax year 2009, Complainants Gruba were assessed \$1,140.17 for Billings (Levy District). (<http://www.co.yellowstone.mt.gov/gis/csatydet.asp?propid=A10354&lyear=2009>, line reading “Billings (Levy District) 570.09 579.08 1,140.17”)

**Answer: NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement of Complainants’ tax information. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the information and therefore denies the same.**

- 59) Part of the \$1,140.17 went to defray the City of Billings pro rata share of street lighting service that the city defrays.

**Answer: NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.**

- 60) Complainants Gruba pay their share of the SILMD # 261 and # 262 costs as part of their tax bill which is illustrated via the above citation in paragraphs 56) and 57) to <http://www.co.yellowstone.mt.gov/gis/csatydet.asp?propid=A10354&lyear=2009>, a public document available online which the Commission may take administrative notice of.

**Answer: NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same. In further responding, NorthWestern refers back to its answer to paragraph 7 of the Complaint.**

- 61) To the extent that the “fee,” “assessment” “tax” or “amount” (however one wishes to denote it) shown on their “Detail Property Tax Information” statement for their share of the SILMD # 261 and SILMD # 262 and the Billings (levy district) costs go up or down, Complainants Gruba are directly affected because the amount shown on their property tax bill is directly affected.

**Answer: NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a legal conclusion. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same. In further responding, NorthWestern refers back to its answer to paragraph 7 of the Complaint.**

62) There are 18, 100 watt cobra head high pressure sodium street lights in lighting Billings SILMD # 261, all owned by NorthWestern Energy.

**Answer:** NorthWestern admits. In further responding, NorthWestern refers back to its answer to paragraph 7 of the Complaint.

63) There are 86, 100 watt and 24, 200 watt cobra head high pressure sodium street lights in lighting Billings SILMD # 262, all owned by NorthWestern Energy.

**Answer:** NorthWestern admits. In further responding, NorthWestern refers back to its answer to paragraph 7 of the Complaint.

64) Complainants Gruba are bothered in sleeping at night and by their inability to enjoy the night sky in their yard by the SILMD # 262 light in their alley.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same. In further responding, NorthWestern refers back to its answer to paragraph 7 of the Complaint.

65) Complainants would like for the light in their alley to either be eliminated or put on a motion sensor so that it is deployed only when needed and off in the early hours of the morning and off at other times when traffic is not present.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same. In further responding, NorthWestern refers back to its answer to paragraph 7 of the Complaint.

66) Current technology does not allow for the high pressure sodium street lights to be deployed by motion sensor.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

67) New technology LED lights may be deployed with motion sensors or dimming so that in low traffic areas they are only on when needed because auto or foot traffic is in the area.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

68) Complainants Gruba are directly affected by the deployment of high pressure sodium lights in their alley because they are bothered in their sleep and night sky enjoyment by them.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by

**Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same.**

- 69) The Commission may take administrative notice of the publically available facts (at <http://www.co.yellowstone.mt.gov/gis/csaprop.asp?propid=200511> ) that for their share of the total costs in SILMDs # 261 and # 262 after the ownership charge completely paid for the cost of the street lights, Complainants Gruba were assessed \$343.46 as follows.

For purposes of responding to the Complaint, NorthWestern has deleted the table contained in this paragraph.

**Answer: NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a request to take administrative notice. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same. In further responding, NorthWestern refers back to its answer to paragraph 7 of the Complaint.**

- 70) The monthly ownership charge in June of 2009 was \$707.40 of the overall \$913.60 amount NorthWestern Energy billed Billings for street light service to SILMD # 261.

**Answer: NorthWestern denies. In further responding, NorthWestern refers back to its answer to paragraph 7 of the Complaint.**

- 71) Thus the ownership component comprised approximately 77% of the charge assessed to SILMD # 261 property owners.

**Answer: NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.**

- 72) To the extent that the ownership charge was included in the \$234.18 of SILMD # 261 assessments appearing on Complainants Grubas' Property Tax Information Statements for 2.4 tax years, they was overcharged approximately \$180.80 for street lighting service within SILMD # 261 ( $\$234.18 * 77\%$ ).

**Answer: NorthWestern denies that the Complainants were overcharged. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same. In further responding, NorthWestern refers back to its answer to paragraph 7 of the Complaint.**

- 73) The monthly ownership charge in June of 2009 was \$3756.32 of the overall \$4340.36 amount NorthWestern Energy billed Billings for street light service to SILMD # 262.

**Answer:** NorthWestern denies. In further responding, NorthWestern refers back to its answer to paragraph 7 of the Complaint.

74) Thus the ownership component comprised approximately 86.5% of the charge assessed to SILMD # 262 property owners.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

75) To the extent that the ownership charge was included in the \$108.65 of SILMD # 262 assessments appearing on Complainants Grubas' Property Tax Information Statements for 8.4 tax years, they was overcharged approximately \$94.03 for street lighting service within SILMD # 262 ( $\$108.65 * 86.5\%$ ).

**Answer:** NorthWestern denies that the Complainants were overcharged. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same. In further responding, NorthWestern refers back to its answer to paragraph 7 of the Complaint.

76) The \$274.83 overcharge assessment imposed on Complainants Gruba because of their involvement in SILMDs # 261 and 262, directly affected their property tax payment; that is a personal interest beyond the common interests they have as taxpayers with other taxpayers.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a legal conclusion. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same. In further responding, NorthWestern refers back to its answer to paragraph 7 of the Complaint.

77) Thus, Complainants Gruba are persons directly affected by the improper rates and profiteering imposed via the tax collection procedure. That is, the rates imposed on Complainants Gruba, which were \$274.83 too high, directly affected them because their cumulative property tax bill over the last 8.4 years was \$274.83 too high.

**Answer:** NorthWestern denies any allegation of improper rates or profiteering. NorthWestern further does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a legal conclusion regarding directly affected. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same.

78) Other persons who are property taxpayers in SILMD 261, 262 and other SILMDs where NorthWestern Energy owns street lights that have been fully paid for are similarly situated to Complainants Gruba.

**Answer:** NorthWestern denies that all of its street lights have been fully paid for. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same. In further responding, NorthWestern refers back to its answer to paragraph 7 of the Complaint.

79) To the extent to which Complainants Gruba are directly affected by the \$274.83 cumulative 8.4 year overcharge assessed against them they have sustained injury to a property right and have thus alleged past injury.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a legal conclusion regarding injury. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging customers.

80) The annual ongoing overcharge assessed against Complainants Gruba is \$88.77 a year  $((77\% * \$113.06) + (86.5\% * \$13.04))$ .

**Answer:** NorthWestern denies any allegations of overcharging customers. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

81) To the extent to which Complainants Gruba are directly affected by the ongoing overcharge of \$88.77 a year overcharge assessed against them they will sustain future injury to a property right and have thus alleged present and threatened injury.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a legal conclusion regarding injury. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging customers.

82) Using the same methodology to calculate the past, present, and future overcharge in a property selected from SILMD # 228 (378 Cape Cod Dr.) one would come up with past

overcharge for years that data is publically available, and with present and future annual overcharges different from those Grubas are experiencing.<sup>1</sup>

**Answer:** NorthWestern states that it is unsure which Complainant lives at the street address noted in this paragraph and therefore the Commission should reject this paragraph of the Complaint. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging customers.

83) While there are some similarities in how the injuries have occurred, the present and future injury to be sustained by the Grubas is distinguishable from the present and future injury sustained by SILMD #228 property owners living at 378 Cape Cod Dr.

**Answer:** NorthWestern states that it is unsure which Complainant lives at the street address noted in this paragraph and therefore the Commission should reject this paragraph of the Complaint. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

84) Also, the past injury alleged by Complainants Gruba is distinguishable from the past cumulative injury of property taxpayers living at 378 Cape Cod Dr.

**Answer:** NorthWestern states that it is unsure which Complainant lives at the street address noted in this paragraph. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

85) The past, present and future injury alleged by complainants Gruba is distinguishable from injury that will be sustained by others in other SILMDs, and are different from taxpayers who are not in a lighting district but who help pay for the City's share of street lighting in the Property taxes, and from renters who pay taxes through their rent.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

86) The original date of the contract between the City of Billings and Montana Power (NorthWestern Energy's predecessor) for street lighting service to SILMDs # 261 and 262 was September 23, 1970.

**Answer:** NorthWestern denies.

87) Complainants Gruba and other property taxpayers in SILMDs # 261 and 262 began to receive electric service pursuant to a September 23, 1970, contract the City of Billings had

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<sup>1</sup> Persons living at 378 Cape Cod Dr. are not complainants in this proceeding.

with Montana Power and any extensions of that contract with Montana Power or Defendant.

**Answer:** NorthWestern denies.

88) Pursuant to a ruling by the Montana Supreme Court Complainants Gruba are directly affected by the rates set forth pursuant to the PSC tariff adopted in the aforementioned September 23, 1970, contract and its extensions.

**Answer:** NorthWestern states that the Montana Supreme Court's decision speaks for itself.

89) Complainants Gruba and other taxpayers in the class they represent in SILMDs # 261 and 262 and other Montana SILMDs have depended on the PSC and the City of Billings (as fiduciaries and officials charged with understanding utility rates) to represent their interests in watch-dogging utility rates to insure that those rates are not excessive.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same. In further responding, NorthWestern refers back to its answer to paragraph 7 of the Complaint.

90) The original 1970 contract called for 45, 175 watt mercury vapor lights to be on 17 foot poles and for energy to be provided pursuant to tariff SL-69P approved by the PSC.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same. In further responding, NorthWestern refers back to its answer to paragraph 87 of the Complaint.

91) The 1970 contract rate for 45, 175 watt mercury vapor units was \$4.91 per unit/month (including energy supply, operation, and maintenance).

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same. In further responding, NorthWestern refers back to its answer to paragraph 87 of the Complaint.

92) The 175 watt mercury vapor (MV) lights were changed to 100 watt high pressure sodium lights pursuant to a 1982 order of the PSC.

**Answer:** NorthWestern states that the Commission 1982 order speaks for itself.

93) The PSC is asked to take administrative notice of its 1982 order for the fact that it allowed Montana Power 7 years to complete the transition to HPS street lights.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a request to take administrative notice. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same.

94) At the latest, then the HPS lights in SILMD # 261 and 262 would have been operational by 1/1/1990.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but is an assumption by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same.

95) The Commission is asked to take administrative notice of the facts set forth in paragraphs 42) and 43) above that:

- a. between the street lighting contract date of 9/23/1970 and 7/30/1984, the PSC had never allowed Defendant's predecessor (Montana Power) to earn more than an 11.65% return on overall cost of capital;
- b. on 7/30/1984, it was allowing Defendant's predecessor (Montana Power) to earn an 11.65% on overall cost of capital. (Docket # 83.9.67, Order 5051c); and
- c. since 7/30/1984, neither Defendant nor its predecessor has been allowed to earn an overall rate of return in excess of 11.65%.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a request to take administrative notice. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same.

**Notwithstanding NorthWestern's answer to this paragraph, NorthWestern objects to the request to take administrative notice of the facts set forth therein.**

96) Assuming that NorthWestern was allowed to earn an 11.65% overall rate of return on its investment in SILMD # 261 lights, the lights would have been completely paid for with 11.65% interest by January 14, 2010 and completely paid for in SILMD # 262 by approximately January 1, 2004.

**Answer:** NorthWestern denies that all of its street lights are paid for in the City of Billings. NorthWestern is without sufficient knowledge to admit or deny any

**material allegation contained in this paragraph and therefore denies the same.**

97) Once the SILMD # 261 and # 262 lights had been paid for, the ownership charge NorthWestern (and its predecessor Montana Power) was imposing to defray the cost of the lighting infrastructure, should have ceased in SILMDs # 261 and # 262.

**Answer: NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but is a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same.**

98) Thus, because the ownership charge did not cease on January 14, 2010, and January 1, 2004, since that time (more than 2.4 years in the case of SILMD # 261 and 8.4 years in the case of SILD # 262) Complainants Gruba and others taxpayers similarly situated in SILMDs # 261 and 262 have been paying too much for street lighting service that NorthWestern has supplied to SILMDs # 261 and 262.

**Answer: NorthWestern denies that taxpayers in SILMDs have been paying too much for street lights in the City of Billings. NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.**

99) The verified monthly overcharge for all lights in SILMD # 261 has been \$345.08 and the verified annual overcharge has been \$4,141.

**Answer: NorthWestern denies any allegation regarding overcharging. NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.**

100) The best estimate of the overcharge accumulated as of June 11, 2012, for all lights in SILMD # 261 amounts to approximately \$10,007.

**Answer: NorthWestern denies any allegation regarding overcharging. NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.**

101) The estimated monthly overcharge for all lights in SILMD # 262 has been \$2,109 and the estimated annual overcharge has been \$25,308.

**Answer: NorthWestern denies any allegation regarding overcharging. NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.**

102) The best estimate of the overcharge accumulated as of June 11, 2012, for the all of two different types of lights in SILMD # 262 amounts to approximately \$212,979 (\$46,468 + \$ 166,511).

**Answer:** NorthWestern denies any allegation regarding overcharging. NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.

103) During the time that has elapsed since May 30, 2010 when Grubas were first added to this case per motion before the PSC which should have been granted, the overcharge in SILMDs # 261 and # 262 has increased by approximately a total of \$2454 a month or a 23 month total of \$78,528.

**Answer:** NorthWestern denies any allegation regarding overcharging. NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.

104) Via the temporary rate reduction statute, the \$78,528 overcharge that has mounted since May 30, 2010 should be immediately refunded to rate and taxpayers in SILMDs 261 and 262 or used to defray the costs of installing quality energy efficient LED street lights in the district.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a request for relief. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the request made and therefore denies the same.

105) Until the utility provides the original per unit cost of this group of lights and their installation date in SILMDs 161 and 162, it will be difficult to estimate the exact overcharge because in order to determine the exact date the lights were paid for by the ownership charge, it is necessary to know the per luminaire cost within the cost range of the lights.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a request for information. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the request made and therefore denies the same.

106) To the extent that NorthWestern Energy persists in refusing to provide the original per unit cost of this group of lights and their installation date in SILMD 161 it risks being found in violation of Montana's False Claims Act, MCA § 17-8-403(1)(c),(g) & (h), something that would not be beneficial to its ratepayers.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement of Complainants' position on an issue. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the position and therefore denies the same.

107) The accumulated overcharge for SILMDs # 261 and # 262 of \$212,979 could be applied to purchasing more energy efficient LED street lighting without any increase assessment to property tax payers like Complainants Gruba in SILMDs # 261 and 262.

**Answer:** NorthWestern denies any allegation regarding overcharging. NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.

108) The cost of replacing the 104, 100 watt HPS lights in SILMDs 261 & 262 would be no more than \$61,360 (Assuming a luminaire cost of \$375, photo cell cost of \$65 and per unit installation cost of \$150, all of which can be reduced in cost with mass relamping).

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

109) The cost of replacing 24, 200 watt HPS in SILMD 262 would be no more than \$33,000 (Assuming a luminaire cost of \$1375, photo cell cost of \$65 and per unit installation cost of \$150, all of which can be reduced in cost with mass relamping).

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

110) If the Commission ordered an immediate \$78,528 rate reduction rebate to property tax ratepayers in SILMDs 261 and 262, retroactive to the date and subtracted that from the total \$212,979 overcharge, that would still leave \$134,471 in cumulative overcharge to defray the cost of the \$94,360 LED upgrade in SILMDs 261 and 262.

**Answer:** NorthWestern denies any allegation regarding overcharging. NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.

111) Under the scenario in paragraph 110) the ownership charge would be eliminated from the SILMD line on the property tax of homeowners in SILMDs 261 and 262 and the property tax on that line assessed for 100 watt HPS lights would drop approximately 77% to 86%.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

112) In June of 2009, the overall cost showing on the billing Northwestern Energy provided to Billings for SILMD # 261 was \$20.30/mo./unit total charge.

**Answer:**     **NorthWestern denies.**

113) That included a \$16.72 ownership charge plus a \$1 operations and maintenance charge per month per unit.

**Answer:**     **NorthWestern denies.**

114) Once the ownership charge completely defrays the cost of the infrastructure plus the allowed rate of return in SILMD # 261, the original cost of that infrastructure should be completely depreciated pursuant to Montana's original cost depreciated rate base requirement.

**Answer:**     **NorthWestern denies.**

115) Once the ownership charge completely defrays the cost of the infrastructure plus the allowed rate of return in SILMD # 261, that charge should drop out of NorthWestern's original cost depreciated rate base and also out of the rates charged for street lighting service.

**Answer:**     **NorthWestern denies.**

116) NorthWestern Energy does not levy ownership or operation and maintenance charges on City owned lights.

**Answer:**     **NorthWestern admits that it does not levy an ownership charge on City owned lights but denies that it does not levy an operation and maintenance charge on City owned lights.**

117) Since the \$19.17 (now \$20.52) per light ownership charge in SILMD # 261 should have ceased more than 2.4 years ago, it is an overcharge.

**Answer:**     **NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement of Complainants' position on an issue. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the position and therefore denies the same. In further responding, NorthWestern denies any allegation regarding overcharging.**

118) NorthWestern Energy uses a depreciation schedule for its street lights that assumes SILMD # 261 street lights will be paid for in approximately 30 years when in fact the ownership charge completely pays for them in less than 15 years.

**Answer:** NorthWestern admits that it has a depreciation schedule for street lights but denies all other allegations in this paragraph.

119) Because the rate schedule pays for street lights in less time than the depreciation schedule used for street lighting, NorthWestern Energy has been allowed to keep the value of street lights in its rate base for far longer than allowed under Montana law.

**Answer:** NorthWestern states that the law speaks for itself. NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.

120) To allow NorthWestern Energy to continue its overcharge would be to allow it to continue engaging in profiteering in violation of Montana's False Claims Act, MCA § 17-8-403(1)(c),(g) & (h).

**Answer:** NorthWestern states that the law speaks for itself. NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement of Complainants' position on an issue. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the position and therefore denies the same.

121) If the Commission adopts petitioner's approach SILMD # 261 taxpayers would see a substantial drop in their bill.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

122) For Complainants Gruba, if the overcharge were eliminated by crediting past overcharges to pay for installation of LEDs and energy charges reduced, their bill would drop from \$113.06 to approximately \$16 a year—an annual savings of \$97.

**Answer:** NorthWestern denies any allegation regarding overcharging. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

123) The property tax information for the Barsanti Complainants may be found online at: <http://www.co.yellowstone.mt.gov/gis/csaprop.asp?propid=217325> , and <http://www.co.yellowstone.mt.gov/gis/csatydet.asp?propid=A25059&lyear=2009>.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement of Complainants' property tax information. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the information and therefore denies the same.

124) In tax year 2009, Complainants Barsanti were assessed \$92.64 for street lighting in SILMD # 228.  
(<http://www.co.yellowstone.mt.gov/gis/csatydet.asp?propid=A25059&lyear=2009> line reading “L228 0228 BLGS LIGHT MAINT 46.32 46.32 92.64”)

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement of Complainants’ property tax information. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the information and therefore denies the same.

125) In tax year 2009, Complainants Barsanti were assessed \$2,068.29 for Billings (Levy District). street lighting in SILMD # 228.  
(<http://www.co.yellowstone.mt.gov/gis/csatydet.asp?propid=A25059&lyear=2009> line reading “Billings (Levy District) 1,034.15 1,034.14 2,068.29”)

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement of Complainants’ tax information. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the information and therefore denies the same.

126) Part of the \$2,068.29 went to defray the City of Billings pro rata share of street lighting service that the city defrays.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

127) Complainants Barsanti pay their share of the SILMD # 228 costs as part of their tax bill which is illustrated via the above citation in paragraph 123) to <http://www.co.yellowstone.mt.gov/gis/csaprop.asp?propid=217325>, a public document available online which the Commission may take administrative notice of.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same.

128) To the extent that the “fee,” “assessment,” “tax,” or “amount” (however one wishes to denote it) shown on their “Detail Property Tax Information” statement for their share of the SILMD # 228 and Billings (levy district) costs goes up or down, **Complainants Barsanti**

are directly affected because the amount shown on their property tax bill is directly affected.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a legal conclusion. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same.

129) There are 29, 100 watt cobra head high pressure sodium street lights in lighting Billings SILMD # 228, all owned by NorthWestern Energy.

**Answer:** NorthWestern admits.

130) The original date of the contract between the City of Billings and Montana Power (NorthWestern Energy's predecessor) for street lighting service to SILMDs # 228 was March 12, 1984.

**Answer:** NorthWestern admits.

131) Complainants Barsanti and other property taxpayers in SILMDs # 228 are third party beneficiaries of the March 12, 1984, contract the City of Billings had with Montana Power and any extensions of that contract with Montana Power or Defendant.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a legal conclusion. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same.

132) As third party beneficiaries of the aforementioned March 12, 1984, contract and its extensions and of the PSC tariff rates adopted in it, Complainants Barsanti are directly affected by the rates set forth pursuant to the PSC tariff adopted in the contract.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a legal conclusion. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same.

133) Complainants Barsanti and other taxpayers in the class they represent in SILMD # 228 have depended on the PSC and the City of Billings (as fiduciaries and officials charged with understanding utility rates) to represent their interests in watch-dogging utility rates to insure that those rates are not excessive.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

134) The original contract called for lights to be on 25 foot poles with 6 foot mast arms and for energy to be provided pursuant to tariff SL-83-P-4 approved by the PSC.

**Answer:** NorthWestern admits.

135) The 1984 contract rate for 29, 100 watt HPS units was \$18.08 per unit/month (including energy supply, operation, and maintenance).

**Answer:** NorthWestern admits.

136) Assuming that NorthWestern was allowed to earn an 11.65% overall rate of return on its investment in SILMD # 228 lights, the lights would have been completely paid for with 11.65% interest by August 12, 1998.

**Answer:** NorthWestern denies that all of its street lights are paid for in the City of Billings. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

137) Once the SILMD # 228 lights had been paid for, the ownership charge NorthWestern (and its predecessor Montana Power) was imposing to defray the cost of the lighting infrastructure, should have ceased.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but is a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same.

138) Thus, because the ownership charge did not cease on August 12, 1998, since that time (more than 13.8 years) petitioners Barsanti and others taxpayers in SILMD # 228 have been paying too much for street lighting service that NorthWestern has supplied to SILMD # 228.

**Answer:** NorthWestern denies that taxpayers in the SILMD have been paying too much for street lights in the City of Billings. NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.

139) The Commission may take administrative notice of the publically available facts (at <http://www.co.yellowstone.mt.gov/gis/csaprop.asp?propid=217325> ) that for their share of

the total costs in SILMD # 228 after the ownership charge completely paid for the cost of the street lights, Complainants Barsanti were assessed \$1,036.10 as follows.

For purposes of responding to the Complaint, NorthWestern has deleted the table contained in this paragraph.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a request to take administrative notice. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same. In further responding, NorthWestern denies that the ownership charge has completely paid for the cost of the street lights.

140) The monthly ownership charge in June of 2009 was \$555.93 of the overall \$688.81 amount NorthWestern Energy billed Billings for street light service to SILMD # 228.

**Answer:** NorthWestern admits that the ownership charge in June of 2009 was \$555.93 for SILMD 228. NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.

141) Thus the ownership component comprised approximately 80.7% of the charge assessed to SILMD # 228 property owners.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

142) To the extent that the ownership charge was included in the \$1036.10 SILMD # 228 assessments appearing on Complainants Barsanti's Property Tax Information Statements for tax years 1998 through 2012, they were overcharged approximately \$836.22 for street lighting service within SILMD # 228 ( $\$1036.10 * 80.7\%$ ).

**Answer:** NorthWestern denies that the Complainants were overcharged. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

143) The \$836.22 overcharge assessment imposed on Complainants Barsanti directly affected their property tax payment; that is a personal interest beyond the common interests they have as taxpayers with other taxpayers.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a legal conclusion. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same. In further

**responding, NorthWestern denies any allegations that Complainants were overcharged.**

144) Thus, Complainants Barsanti are persons directly affected by the improper rates and profiteering imposed via the tax collection procedure. That is, the rates imposed on Complainants Barsanti, which were \$836.22 too high, directly affected them because their cumulative property tax bill over the last 13.8 years was \$836.22 too high.

**Answer: NorthWestern denies any allegation of improper rates or profiteering. NorthWestern further does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a legal conclusion regarding directly affected. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same.**

145) Other persons who are property taxpayers in SILMD 228 and other SILMDs where NorthWestern Energy owns street lights that have been fully paid for are similarly situated to Complainants Barsanti even though there are differences due to street lighting assessments (even within SILMD # 228) based on property values.

**Answer: NorthWestern denies that all of its street lights have been fully paid for. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.**

146) To the extent to which Complainants Barsanti are directly affected by the \$836.22 cumulative 13.8 year overcharge (data was not available for the full 11.8 years the overcharge has existed so a few amounts were estimated) assessed against them they have sustained injury to a property right and have thus alleged past injury.

**Answer: NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a legal conclusion regarding injury. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same. In further responding, NorthWestern denies any allegations that Complainants were overcharged.**

147) The annual ongoing overcharge assessed against Complainants Barsanti is \$65.92 a year (80% \* \$81.68).

**Answer: NorthWestern denies any allegations that Complainants were overcharged. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.**

148) To the extent to which Complainants Barsanti are directly affected by the ongoing overcharge of \$65.92 a year overcharge assessed against them, they will sustain future injury to a property right and have thus alleged present and threatened injury.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a legal conclusion regarding injury. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same. In further responding, NorthWestern denies any allegations that Complainants were overcharged.

149) Using the same methodology to calculate the past, present, and future overcharge in a property selected from SILMD # 228 (378 Cape Cod Dr.) one would come up with past overcharge for 13.8 years that differ in amount from the Barsantis and with present and future annual overcharges that differ in amount from the Barsantis.

**Answer:** NorthWestern states that it is unsure which Complainant lives at the street address noted in this paragraph and therefore the Commission should reject this paragraph of the Complaint. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same. In further responding, NorthWestern denies any allegations that Complainants were overcharged.

150) While there are some similarities in how the injuries have occurred, as illustrated by the preceding paragraph the \$65.92 a year present and future injury to be sustained by the Barsantis is distinguishable from the yearly present and future injury sustained by SILMD #228 property owners living at 378 Cape Cod Dr.

**Answer:** NorthWestern states that it is unsure which Complainant lives at the street address noted in this paragraph and therefore the Commission should reject this paragraph of the Complaint. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

151) The \$836.22 cumulative past injury alleged by Complainants Barsanti is distinguishable from the past cumulative injury of property taxpayers living at 378 Cape Cod Dr.

**Answer:** NorthWestern states that it is unsure which Complainant lives at the street address noted in this paragraph and therefore the Commission should reject this paragraph of the Complaint. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

152) The past, present and future injury alleged by complainants Barsanti is distinguishable from injury that will be sustained by others in their same SILMD, in other SILMDs, and are

different from taxpayers who are not in a lighting district but who help pay for the City's share of street lighting in the Property taxes, and from renters who pay taxes through their rent.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

153) The best estimate of the overcharge accumulated over the last 13.8 years for SILMD # 228 amounts to at least \$92,284.

**Answer:** NorthWestern denies any allegations of overcharging. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

154) During the time that has elapsed since May 30, 2010 when Barsantis were first added to this case per motion before the PSC which should have been granted, the overcharge in SILMD # 228 has increased by approximately a total of \$555.93 a month or a 23 month total of \$12,786.39.

**Answer:** NorthWestern denies any allegation of overcharging. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

155) Via the temporary rate reduction statute, the \$12,786.39 overcharge that has mounted since May 30, 2010 should be immediately refunded to rate and taxpayers in SILMDs 228 or used to defray the costs of installing quality energy efficient LED street lights in the district.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a request for relief. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the request made and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

156) The accumulated overcharge for SILMD # 228 of \$92.284 could be applied to purchasing more energy efficient LED street lighting without any increase assessment to property tax payers like Complainants Barsanti in SILMDs # 228.

**Answer:** NorthWestern denies any allegation of overcharging. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

157) The cost of replacing the 29, 100 watt HPS lights in SILMD 228 would be no more than \$17,110 (Assuming a luminaire cost of \$375, photo cell cost of \$65 and per unit installation cost of \$150, all of which can be reduced in cost with mass relamping).

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

158) If the Commission ordered an immediate \$12,786.39 rate reduction rebate to property tax ratepayers in SILMD 228, retroactive to the date Barsantis were added to the case and subtracted that from the total \$92,284 overcharge accruing in SILMD 228, that would still leave \$79,497 in cumulative overcharge to defray the cost of the \$17,110 LED upgrade in SILMD 228.

**Answer:** NorthWestern denies any allegation regarding overcharging. NorthWestern is without sufficient knowledge to admit or deny all other material allegations contained in this paragraph and therefore denies the same.

159) Under the scenario in paragraph 158) the ownership charge would be eliminated from the SILMD line on the property tax of homeowners in SILMD 228, the energy charge would drop by roughly 50% and the resulting property tax on that line assessed for 100 watt HPS lights would drop approximately 88%

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

160) Part of the excess overcharge left over after adopting the procedure in paragraph 158) should be used to defray the expenses of the attorney and his witnesses who acted as private attorney general in bringing this case to benefit Montana tax and ratepayers.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a request for relief. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the request made and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

161) Another part of remainder should be used to fund a special master to calculate overcharges in all SILMDs (after proper original cost figures are supplied) and to recommend refunds and payment for LED installations.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a request for relief. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the request made and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

162) Any leftover amounts from the cumulative overcharge should be refunded directly to the taxpayers in the affected SILMDs, in this case to those in SILMD #228.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a request for relief. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the request made and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

163) The procedures outlined in paragraphs 155) through 162) should be followed to prevent an unjust windfall from occurring to NorthWestern and its shareholders and to prevent the continuing overcharges that have been allowed to accumulate to even larger amounts because of the machinations and roadblocks NorthWestern has thrown in the way of reason since the rulemaking hearing and before.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement to support their position. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement made and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging and unjust windfall.

164) As punishment for misleading the Commission and ratepayers by mismatching its street lighting tariff so it did not reflect the proper depreciation schedule, the Commission should assess punitive damages or other fine in addition to applying overcharges to fully fund more efficient lighting without an increase in ratebase and to the other procedures outlined in paragraphs 155) through 162).

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a request for relief. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the request made and therefore denies the same.

165) Until defendant provides the original per unit cost of this group of lights and their installation date in SILMD # 228, it will be difficult to estimate the exact overcharge.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

166) To the extent that NorthWestern Energy persists in refusing to provide the original per unit cost of this group of lights, it risks being found in violation of Montana's False Claims Act, MCA § 17-8-403(1)(c),(g) & (h), something that would not be beneficial to its ratepayers.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement of Complainants' position on an issue. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the position and therefore denies the same.

167) In June of 2009, the overall cost showing on the billing NorthWestern Energy provided to Billings for SILMD # 228 was \$23.75/mo./unit total charge.

**Answer:** NorthWestern denies.

168) That included a \$20.17 ownership plus a \$1 operations and maintenance charge per month per unit that is not levied on city owned lights.

**Answer:** NorthWestern denies.

169) Since the \$20.17 ownership charge should have ceased more than 13.8 years ago, it is an overcharge.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement of Complainants' position on an issue. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the position and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

170) To allow NorthWestern Energy to continue its overcharge would be to allow it to engage in profiteering in violation of Montana's False Claims Act, MCA § 17-8-403(1)(c),(g) & (h).

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement of Complainants' position on an issue. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the position and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

171) In Billings, Montana lighting districts where the street lights are not owned by the city or private developers, verified cumulative overcharges in 25 lighting districts where street lights are owned by NorthWestern Energy has been \$2,293,490 as of 6/11/12 (Table 2, Column E, last row, bolded text).

For purposes of responding to the Complaint, NorthWestern has deleted the table contained in this paragraph.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

172) In Billings, the estimated cumulative overcharges in 75 other SILMDs where street lights are owned by Northwestern Energy has been \$3,562,559 as of 6/11/12. (Table 3, Column E, third row from bottom).

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement of Complainants' position on an issue. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the position and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

173) The combined Billings cumulative overcharges from paragraphs 171) and 172) as of 6/11/12 are \$5,846,049 (Table 3 Column E last row).

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

174) These overcharges have undoubtedly been replicated in cities, towns, and counties in Northwestern's Montana service areas bringing the total cumulative overcharges within Northwestern's Montana service area to more than \$16 million.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement of Complainants' position/theory. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the position and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

175) The verified cumulative overcharges in Billings, Montana have gone on for at least 2.4 years (in SILMD # 261) to at least 18.3 years (in SILMD # 214) (Yellow shaded cells,

Table 2, Column C). Any retroactive debt brought on by that overcharge that has been discharged in the Montana Power bankruptcy should be subtracted from the amount of overcharge that is recoverable by consumers.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

176) The principles of equity prevent a regulated utility that is allowed to retroactively collect additional monies from consumers when it has under billed require a utility to disgorging excess profits when it has over collected.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same. In further responding, NorthWestern denies any allegation of over-collecting monies for its services.

177) Northwestern Energy's CEO is Bob Rowe.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. Nonetheless, NorthWestern admits.

178) Prior to becoming CEO and Board Member of Northwestern Energy, Mr. Rowe was a member of and chaired the Montana Public Service Commission during a time when overcharges in many of the street lighting districts were not discovered and therefore were allowed to continue. With his vast experience, he certainly should understand the justice and equity involved in requiring a utility that has over-earned to be required to disgorge excess profits.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

179) For the reasons expressed in the previous six paragraphs, petitioners contend that Northwestern Energy should repay the \$5,846,049 in verified and estimated overcharges to the City of Billings to be credited to the taxpayers of the respective lighting districts

involved and that the repayment should come from revenues allocated to stockholders for return on investment.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a request for relief. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the request and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

180) Billings taxpayers are being charged an excessive, unreasonable, and unjustly discriminatory ownership overcharge for 3,461 of the 4,330 street lights that Northwestern Energy owns in the city —80% of the lights Northwestern owns. (See Table 3, Total in Column I, last row)

**Answer:** NorthWestern denies that its rates are unjust, unreasonable or discriminatory. NorthWestern does not believe a further response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

181) The combined verified and estimated monthly overcharge in Billings Montana is \$63,258. (Table 3, Column D, last row, bolded text)

**Answer:** NorthWestern denies any allegation of overcharging. NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

182) Thus every month that the PSC allows this verified overcharge to continue, Billings taxpayers are required to pay approximately \$63,258 that could have gone or could go to help with the city budget, be given out in tax relief, or which could pay for new energy efficient LED lighting without an increased cost to Northwestern's customers.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

183) It is more likely than not that what is occurring with the ownership overcharge in Billings is happening in other Montana cities and counties served by Northwestern Energy and that their city budgets or taxpayers would also benefit from the granting of this petition.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

184) It is more likely than not that what is occurring with the ownership overcharge in Billings is happening in other Montana cities and counties served by Northwestern Energy and that a significant proportion of their street lights are also experiencing excessive, unreasonable, and unjustly discriminatory ownership overcharge.

**Answer:** NorthWestern denies that its rates are unjust, unreasonable or discriminatory. NorthWestern does not believe a further response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

185) Once the ownership charge is eliminated in SILMDs where it has completely paid for the street lighting infrastructure plus an allowed rate of return in an affected district, taxpayers in the city of Billings would be saving approximately \$63,258 a month. (Table 3, last row, Col. D)

**Answer:** NorthWestern does not believe a further response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

186) Northwestern Should Repay Cumulative Overcharge As A Matter of Law & Equity.

**Answer:** NorthWestern does not believe a further response to this paragraph of the Complaint is required as it is not an allegation of fact, but a request for relief. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the request and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

187) Petitioner's attorney has been seeking information on street lighting billing practices from Respondent for quite some time.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny any material allegation contained in this paragraph and therefore denies the same.

188) Northwestern has placed several roadblocks in petitioner's way that have caused delays in the production of that information.

**Answer:** NorthWestern denies.

189) Each month that Northwestern stalls in providing requested data is an additional month that its overcharges continue.

**Answer:** NorthWestern denies stalling. NorthWestern is without sufficient knowledge to admit or deny any other material allegation contained in this paragraph and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

190) As discussed above, each month that Northwestern stalls in providing requested data means it costs Billings's taxpayers \$63,258 in unreasonable and unjustly discriminatory overcharges.

**Answer:** NorthWestern denies stalling. In further responding, NorthWestern denies any allegation of overcharging. NorthWestern is without sufficient knowledge to admit or deny any other material allegation contained in this paragraph and therefore denies the same.

191) Each month that Northwestern stalls in providing requested data in discovery tendered as a result of this proceeding will cost taxpayers in Northwestern's Montana service area outside of Billings more than \$180,000/month.

**Answer:** NorthWestern denies stalling. NorthWestern is without sufficient knowledge to admit or deny any other material allegation contained in this paragraph and therefore denies the same.

192) Therefore to eliminate that monthly overcharge, the Commission is requested to use its power pursuant to MCA § 69-3-304 (reproduced above), for temporary elimination of the ownership charge.

**Answer:** NorthWestern does not believe a further response to this paragraph of the Complaint is required as it is not an allegation of fact, but a request for relief. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the request and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

193) The accumulated overcharge for SILMDs in Table 2 and 3 could be applied to purchasing more energy efficient LED street lighting without increasing property taxes.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

194) In most if not all SILMDs shown in Tables 2 and 3, the cost of replacing the HPS lights in those Tables would be no more than the accumulated overcharge shown in Column E.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

195) Under the scenario in paragraphs 193) and 194) the ownership charge would be eliminated from the SILMD line on the property tax of homeowners in appropriate SILMDs and the property tax on that line assessed for HPS lights would drop an average of 82.9%.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

196) The percentage savings figures in this analysis do not include savings accruing from reduced maintenance charges that can be expected with the installation of LED lighting.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

197) Maintenance savings from installing LED lighting may accrue to a city within its reduced maintenance and workers' compensation budgets rather than within its budget for utility services.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

198) **Long Term Fiscal Responsibility:** Costs of LED street lighting have now dropped to a level where we will waste more money and energy in the long run by waiting for future improvements and price cuts in LED luminaires than to move forward with LED street lighting projects.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

199) Many cities are well on their way to transitioning to LED street lighting.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

200) For example:

- a. Ouray, Colorado and Greenberg, Kansas have become all-LED cities.
- b. Los Angeles has embarked on a program to replace 140,000 of its street lights with LEDs within 5 years;
- c. as of May 17, 2012, Los Angeles had installed 79,904 LED luminaires that are cutting street lighting energy use by 64%, saving the city \$3,098,651 annually in energy costs and garnering additional savings in reduced maintenance and replacement costs because the lights are expected to last for 50,000 to 100,000+ hours (22 years) depending on the manufacturer. [bsl.lacity.org/](http://bsl.lacity.org/); and
- d. Anchorage, Alaska is completing replacement 16,000 of its street lights with LEDs.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

201) Once the LEDs have been paid for, the lighting bills for a district should decrease.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

202) The estimated percentage decrease in street lighting bills for an SILMD is shown in Column H of Tables 2 and 3 for involved districts.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

203) The yearly bills for street lighting in districts involved in Tables 2 and 3 will decrease from approximately the amount shown in Column F to that shown in Column G for a district.

**Answer:** NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

204) Once LEDs are installed and paid for and the ownership- overcharge eliminated the combined total reduction in annual energy bills for the districts shown on Tables 2 & 3 will

be in excess of 82.9%; that is the combined total street lighting bill for taxpayers in the Billings SILMDs listed on Tables 2 and 3 will go from \$1,040,244 to approximately \$177,234. (Table 3, Columns F and G, last row)

**Answer:** NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same. In further responding, NorthWestern denies any allegation of overcharging.

205) **Energy Independence:** Adoption of new energy saving infrastructure technologies, such as LEDs, can play an important role in helping the United States and the State of Montana to achieve their goals to become more energy independent and to generate less CO2.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

206) The prospect of cutting nighttime lighting energy by 15-70% would make it possible to decrease energy demand, bring new electrically powered technologies to the forefront, create an environment for new businesses and jobs, and underwrite the development of alternative energy vehicles.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

207) Freed up generating capacity coming from installation of LED street lights could be used to charge batteries at night for the coming increased use of electric and hybrid electric cars. That in turn will lessen our dependence on foreign and domestic oil producers.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

208) Petitioners have a Constitutional right to a clean and healthful environment.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

209) Petitioners believe that we live in an interdependent world. We owe it to ourselves and future generations to be good stewards of the planet.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

210) At the same time, we shoulder the responsibility to be good state leaders that manage finite resources in ways that lead to a more sustainable world.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

211) How the petitioners will be personally directly affected by the requested ruling: Petitioners are deeply concerned about long term fiscal responsibility, energy independence, the environmental health of our planet, and our collective reluctance preventing us from achieving those goals.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

212) This petition addresses all of those concerns not only for petitioners but all Northwestern Energy's Montana electric consumers and taxpayers in lighting districts served by Northwestern Energy.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

213) Environmental Health: The evidence continues to mount indicating that burning of fossil fuels is impacting our environment, health, water quality, air, and agricultural production.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this

**section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.**

214) While the effects of this impact are not totally known or understood, we do know much.

**Answer: NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.**

215) We know the legacy that we are passing on to future generations continues to degrade.

That legacy includes data supporting:

- a. 3-foot sea level rise within the next millennium or shortly thereafter, which according to World Bank maps will displace more than 100 million people and devastate island nations and coastal regions, or a later 20-foot sea level rise which will wipe out southern Florida and other low lying areas;
- b. salt water invasion of fresh water drinking supplies as most glaciers continue to melt and sea levels rise;
- c. increasingly hotter summer temperatures that are among the forces desertifying wide areas of the globe now (including 1/5 of China's land mass) which will eventually displace large numbers of people equal to the size of the combined population of Germany and France;
- d. the complete elimination of late summer water flow in many great rivers and streams including those that have already demonstrated this in Glacier Park.
- e. possible additions to dryness in Montana which is already 20% dryer now than a century ago;
- f. a 10% decline in wheat, corn and rice yields for every 1 degree Celsius rise in temperature during growing periods that we add to the climate because of increased fossil fuel burning;
- g. increased wildfires and forest fires brought on by parched vegetation;
- h. our need for water to drink, grow crops, and sustain recreational industries that will be compromised if too much of our dwindling water resource is used to cool coal electric generation plants or nuclear power plants;
- i. the enlarged range of disease-bearing insects which (already kills an African child every 30 seconds) will cause an additional 80 million cases of malaria a year;
- j. destabilization of political systems exacerbated by warming as anticipated by US defense agencies;
- k. overwhelming stress on insurance and financial systems as climate "weirding" produces freak storms and intensifies the strength of Katrina-like hurricanes and winds worldwide;
- l. continued bleaching of reefs like the Great Barrier Reef in Australia that is already about 55% bleached out;
- m. immense destruction of the earth's biodiversity as man's unremitting and sometimes unnecessary use of fossil fuel makes survival for many species increasingly difficult;

- n. more summer heat waves like the one in 2003 which killed 35,000 Western Europeans because nighttime temperatures did not cool enough to give victims relief from sweltering daytime heat.

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

216) The right to a clean and healthful environment entitles petitioners to receive street lighting from the most energy efficient source available at the reasonable prices now available so they will not be contributing to the degradation of the earth that the effects of climate change detailed in the subparagraphs of paragraph 215)

**Answer:** NorthWestern does not believe a response to this paragraph of the Complaint is required as it is not an allegation of fact, but a statement by Complainants. To the extent that the Commission deems an answer to this section of the Complaint necessary, NorthWestern is without sufficient knowledge to admit or deny the statement and therefore denies the same.

## **Conclusion**

Based on the foregoing answers, NorthWestern requests that the Commission dismiss the Complaint with prejudice on the basis that Complainants have failed to identify any wrongdoing by NorthWestern. Specifically, NorthWestern requests that the Commission find that:

1. NorthWestern has complied with all applicable statutes, rules, regulations, and tariffs; and
2. NorthWestern has not violated any applicable statute, rule, regulation, or tariff in its dealings with Complainants.

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of January 2013.

NORTHWESTERN CORPORATION  
d/b/a NORTHWESTERN ENERGY

By: Sarah Norcott

Sarah Norcott  
Attorney for NorthWestern Energy

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of NorthWestern Energy's Answer to Complainants' Second Amended Complaint in Docket D2010.2.14 has been served on the most recent service list in Docket D2010.2.14 by mailing a copy, thereof, by first class mail, postage prepaid and efiled with The Montana Public Service Commission.

Date: January 24, 2013



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Nedra Chase  
Administrative Assistant  
Regulatory Affairs

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