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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,)	REGULATORY DIVISION
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)	

**NorthWestern Energy's Response to Complainants'
Motion for Reconsideration and Request for an Order to
Show Cause**

NorthWestern Corporation d/b/a NorthWestern Energy ("NorthWestern") submits this *Response to Complainants' Motion for Reconsideration and Request for an Order to Show Cause* ("Response") in the above-captioned docket. NorthWestern respectfully requests that the Montana Public Service Commission ("Commission") deny the Complainants' *Motion for Reconsideration and Request for an Order to Show Cause* ("Motion") for the reasons noted below.

Procedural Background

On July 3, 2012, the Commission certified Complainants' Second Amended Complaint ("Complaint"). On January 24, 2013, NorthWestern filed a timely¹ Answer the Complaint. After a duly noticed work session, on April 25, 2013, the Commission issued Procedural Order No. 7084e ("Order"). The Order requires briefing on seven legal issues and provides deadlines for each party to file its respective briefs. *See* Order at ¶ 3. The Order also establishes how a party must file and serve documents that are submitted to the Commission in this docket. *Id* at ¶ 7. On Monday, May 6, 2013, the Complainants mailed via the U.S. Postal Service the Motion to the Commission and parties. As of the filing of this Response, the Commission had not posted the Motion to its website.

Discussion and Analysis

The Commission should deny the Motion for the following reasons: (1) the Motion was not timely filed; (2) the Complainants has not met the necessary requirements established by the Commission's Administrative Rule 38.2.4806; and (3) the request for an order to show cause is inappropriate as it shifts the burden to NorthWestern.

A) The Motion was not timely filed by the Complainants.

Pursuant to the Order, every document filed with the Commission must be submitted electronically with the original document physically delivered or mailed to its office in Helena, Montana. *See* Order at ¶ 7. The Order further notes that the Commission will not post an electronically submitted document to its website until the original document is received and that

¹ NorthWestern's Answer was filed more than six months after the Commission had certified the Complainants' Second Amended Complaint because after extensive briefing the Commission granted NorthWestern's request to stay the proceeding pending the Complainants' appeal to the Montana Supreme Court. *See* Notice of Commission Action Granting NorthWestern's Motion to Suspend Proceedings and Denying Complainants' Motion for Hearing dated September 26, 2012.

“[s]ervice by mail **does not extend a deadline.**” *Id.* (emphasis added). Consistent with ARM 38.2.4806, the Order provides that “a party may apply for reconsideration of this Order within ten days of its service date.” *Id.* at ¶ 2.

The service date of the Order is April 25, 2013. Ten days from the service date is May 5, 2013, which was a Sunday. Therefore, pursuant to ARM 38.2.313, the deadline for a party to file a motion for reconsideration of the Order was Monday, May 6, 2013. Complainants mailed the Motion on May 6. The Order in this matter very clearly articulates that to file a document with the Commission, the document itself must be physically received by the Commission by the deadline. Once the physical copy of the document is received, it will be posted to the website. Since the Commission has not posted the Motion to its website, it can be presumed that the Commission has not received the Motion. The Order also very clearly articulates that if a party chooses to mail a document, this will not extend a deadline. Again, the deadline for filing a motion for reconsideration of the Order was May 6 and the Complainants mailed the Motion that has yet to be posted to the Commission website.

Additionally, Complainants have not asked the Commission for an extension of time in which to file a motion for reconsideration or asked the Commission to accept a late-filed motion. Pursuant to ARM 38.2.312, with good cause being shown, the Commission may grant a request to extend any time period prescribed by the Commission or its rules. The rule further provides that “all requests for extensions shall be made before the expiration of the period originally prescribed.” ARM 38.2.312. Since the deadline to file a motion for reconsideration was May 6 and Complainants did not seek an extension prior to expiration of the deadline or file the Motion by the deadline, the Commission should find that the Motion was not timely filed in accordance

with the Order and the Commission's administrative rules and should therefore not consider the Motion.

B) The Motion does not comply with the Commission's Administrative Rule 38.2.4806.

If the Commission decides that the Motion was timely filed and thus decides to consider the Motion, the Motion should be denied as it does not comply with the Commission's administrative rules. Parties that appear before the Commission are provided with a right to seek reconsideration of a Commission decision or order. *See* ARM 38.2.4806. Specifically, ARM 38.2.4806(1) provides in pertinent part that "[s]uch motion shall set forth specifically the ground or grounds on which the movant considers said order or decision to be unlawful, unjust or unreasonable." The Complainants fail to set forth adequate grounds, if any, showing why the Order is unlawful, unjust or unreasonable.

The Complainants have two issues with the Order. The first issue discussed in the Motion is that Complainants wish to modify the opening paragraph of the Order, which contains the relevant procedural history to date in this docket, because they allege the paragraph is incomplete. *See* Motion at pp. 1-2. Complainants fail to provide any reasoning as to why the Commission's opening paragraph as written is in any way unlawful, unjust or unreasonable. The opening paragraph as written by the Commission does not misstate the procedural history in this docket. Thus, since paragraph 1 of the Order is correct (although it may not include as much detail as the Complainants would have liked), there is nothing unlawful, unjust or unreasonable about it. Therefore, with respect to this issue, the Commission should deny Complainants' request to reconsider the Order.

The second issue that the Complainants have with the Order is that the Commission should also order NorthWestern to brief seven issues related to the docket. *Id* at p. 3.

Complainants argue that NorthWestern should be required to brief seven issues “in the interest of fairness.” *Id*. Presumably, Complainants feel that since the Commission has required them to address seven issues that NorthWestern should also be required to address seven issues. Without going into great detail regarding each suggested issue, the problem with Complainants’ argument on fairness, besides being very tenuous, is that Complainants are trying to shift the burden to NorthWestern to disprove claims alleged by Complainants. The suggested issues are matters that Complainants must prove in order to succeed in this case. Since Complainants filed a complaint against NorthWestern, Complainants have the burden to prove said allegations. *See Ryan v. Flemming*, 187 F.Supp. 655, 656 (D. Mont. 1960) (holding that “the burden of proof rest upon one who files a claim with an administrative agency.”).

Based on the foregoing, Complainants have failed to comply with the Commission’s administrative rules on reconsideration by failing to show why the Order is unlawful, unjust or unreasonable, and Complainants are trying to shift their burden onto NorthWestern.

C) *Complainants’ request to set a date for NorthWestern to appear and show cause as to why a temporary rate reduction should not be ordered by the Commission is inappropriate.*

NorthWestern believes that this is not the proper proceeding for consideration of a request for a temporary rate reduction. For the sake of argument, even if the Commission did determine that this was the proper venue for such consideration, the burden of proof lies with the Complainants, not NorthWestern. A request for hearing in which NorthWestern must appear and present evidence that shows why a temporary rate reduction should not be granted shifts the burden to NorthWestern. The Complainants claim a temporary rate reduction is needed. Thus,

they must present a full and complete record documenting that such a reduction is warranted. A show cause hearing in which NorthWestern is required to respond to unfounded allegations regarding Commission-approved rates does not provide due process based on a fully developed record, as is the case in a general rate filing. Therefore, Complainants' request should be denied.

Conclusion

Based on the foregoing, NorthWestern respectfully requests that the Commission deny the request from Complainants to reconsider Procedural Order No. 7084e and Complainants' request to set a date for a show cause hearing.

Respectfully submitted this 10th day of May, 2013.

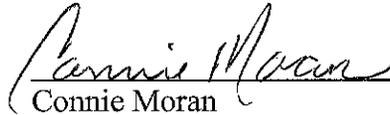
NORTHWESTERN ENERGY

By:  _____
Sarah Norcott
Attorney for NorthWestern Energy

CERTIFICATE OF SERVICE

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

Date: May 10, 2013

A handwritten signature in cursive script, reading "Connie Moran", is written over a solid horizontal line.

Connie Moran
Administrative Assistant
Regulatory Affairs

**A. Service List
D2010.2.14
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