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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 Motion for and Brief in Support of
Reconsideration of the February 27, 2014
Notice of Commission Action**

Pursuant to 38.2.4806 of the Montana Public Service Commission’s (“Commission”) Administrative Rules of Montana (“ARM”), NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern”) hereby submits this *Motion for and Brief in Support of Reconsideration of the February 27, 2014 Notice of Commission Action* (“Motion”) in the above-captioned docket. Specifically, NorthWestern moves the Commission for reconsideration of its decision to overrule NorthWestern’s objection to Complainants’ First Request for Admissions and First Interrogatories and Request for Production of Documents.

Procedural Background

On July 3, 2012, the Commission certified as a formal complaint Complainants' Second Amended Complaint ("Complaint"). On January 24, 2013, NorthWestern filed a timely¹ Answer to the Complaint. After a duly noticed work session, on April 25, 2013, the Commission issued Procedural Order No. 7084e. This Procedural Order required briefing on seven legal issues and provided deadlines for each party to file its respective briefs. After completion of briefing by the parties, the Commission narrowed the scope of this docket to one issue alleged by Complainants against NorthWestern: whether NorthWestern's street lighting tariff is unreasonable or unjustly discriminatory. *See* Order No. 7084f, ¶ 17. Subsequent to a period for intervention closing, on January 22, 2014, the Commission issued Procedural Order No. 7084g ("Order No. 7084g" or "Order").

On January 27, 2014, Complainants' attorney emailed several documents to the email service list set forth in Order No. 7084g. Included in these documents was First Request for Admissions and First Interrogatories and Request for Production of Documents (collectively "Discovery") directed to NorthWestern and requiring responses within 30 days. On February 4, 2014, NorthWestern filed an objection to this Discovery arguing that it was prohibited by the terms of Order No. 7084g and therefore was premature ("Objection"). On February 25, the Commission voted 4 to 1 (Commissioner Koopman dissenting) to overrule NorthWestern's Objection. On February 27, the Commission issued a Notice of Commission Action ("NCA") that provided the Commission's written decision on the Objection.

¹ NorthWestern's Answer was filed more than six months after the Commission had certified the Complainants' 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.

Argument

Pursuant to ARM 38.2.4806, NorthWestern moves the Commission to reconsider its decision to overrule NorthWestern's Objection with respect to certain questions asked by Complainants in the Discovery. ARM 38.2.4806(1) provides in pertinent part that "[w]ithin ten days after an order **or decision** has been made by the commission, any party may apply for a reconsideration in respect to any matter determined therein."² (Emphasis added.) NorthWestern believes the Commission has wrongly overruled its Objection with respect to certain discovery questions propounded by Complainants. Because the Commission issued an NCA and not an Order, the Commission has not provided its reasons and/or support for its decision to overrule the Objection. Therefore, NorthWestern is unable to ascertain on what grounds the Commission based its decision. As a result, NorthWestern provides the following argument in support of its Motion based on the Commission's work session on February 25, 2014 ("Work Session").

The rationale that Complainants need this information to help them "make their case" is not applicable to all discovery questions from Complainants.

During the Commission's Work Session, the Commissioners' discussion centered on a characterization of this docket as individuals fighting against "the big gorilla in the room" and, as such, in order for those individuals to help **build** their case, they would need information that is in the hands of the other party. This appears to be one of the reasons³ the Commission overruled NorthWestern's Objection that the Discovery was premature under the terms of the procedural order. Based on that discussion, NorthWestern seeks reconsideration of the Commission's

² Ten days from February 27 is March 9, a Sunday. Therefore, March 10 is the deadline to seek reconsideration of the NCA.

³ The other reason the Commission appeared to give to support its decision to overrule the Objection is that Complainants found a "loophole" in the language of the procedural order in that the procedural order does not appear to speak to the use of interrogatories and other forms of discovery utilized in civil court dockets. Therefore, use of these discovery methods is permitted and the procedural order does not control their use, but the rules of civil procedure do.

decision as it relates to questions propounded by Complainants which seek information about NorthWestern's case and its defenses to this action. For example, several of the interrogatories propounded on NorthWestern ask, "With reference to the affirmative defense asserted by NorthWestern...please set forth all facts which support that defense." *See* First Set of Interrogatories and Request for Production of Documents, Interrogatory No. 1; *see also* Interrogatory Nos. 2, 3, and 7. These questions do not help Complainants build their case, but are attempts to break down or attack NorthWestern's case. NorthWestern has not filed any testimony in this docket. After NorthWestern has filed testimony, Complainants will have an opportunity to ask these types of questions of NorthWestern. Thus, sustainment of NorthWestern's Objection by the Commission of these types of questions will not harm Complainants. On the other hand allowing discovery of this nature at this time disadvantages NorthWestern by requiring it to provide information regarding its case before it presents its case. Therefore, questions similar to those interrogatories identified above are premature and NorthWestern's Objection should be sustained with respect to them.

Conclusion

Based on the foregoing, the Commission should grant NorthWestern's Motion and sustain NorthWestern's Objection as it relates to premature discovery that seeks to attack NorthWestern's position in this docket, specifically, Interrogatory Nos. 1, 2, 3, and 7.

Respectfully submitted this 10th day of March, 2014.

NORTHWESTERN ENERGY

By: 

Sarah Norcott
Attorney for NorthWestern Energy

CERTIFICATE OF SERVICE

I hereby certify that a copy of NorthWestern Energy's Motion for and Brief in Support of Reconsideration of the February 27, 2014 Notice of Commission Action in Docket No. D2010.2.14 has been hand delivered to the Montana Public Service Commission and to the Montana Consumer Counsel this date. They will be e-filed on the PSC website and served on the most recent service list by mailing a copy thereof by first class mail, postage prepaid. They will also be emailed to appropriate parties per Procedural Order 7084h.

Date: March 10, 2014



Tracy Lowney Killoy
Administrative Assistant
Regulatory Affairs

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Docket D2010.2.14
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