

**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 ON BEHALF OF THEMSELVES &)	REGULATORY DIVISION
OTHERS SIMILARLY SITUATED,)	
Complainants.)	
VS.)	
)	DOCKET NO. D2010.2.14
NORTHWESTERN ENERGY,)	
Defendant.)	

**COMPLAINANTS' MOTION REQUIRING NORTHWESTERN TO
RESPOND ADEQUATELY TO COMPLAINANTS' THIRD SET OF DISCOVERY
OR FACE SANCTIONS**

MOTION

Complainants move to compel NorthWestern Energy (NWE) to response to Complainants' Third Set of Discovery requests as set forth below.

Complainants also ask for oral argument on the motion. Pursuant to MCA § 2-4-612(1) which provides: "Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved."

BRIEF SUPPORTING MOTION

NorthWestern Energy's (NWE's) Inadequate May 2, 2014 Response to Complainants'

Third Set of Discovery Requests.

A) NWE failed to admit the REWRITE OF C-057, RFA 36, which stated:

- 1) Please admit that in June of 2009, the \$0.56 month per light operations charge and a \$0.54/month per light maintenance charge levied on each street light NorthWestern owned in Billings SILMDs was not levied on city owned lights in Billings SILMDs.

NWE contends that admitting this would not lead to relevant information because it does "not relate to the ownership charge claim." The information is needed to foreclose

argument on possible defenses NWE are expected to raise because of statements made by NWE personnel to the public and Montana elected officials concerning NWE's alleged "reasonableness" of its ownership overcharge. Complainants' plainly stated that the admission was needed to clarify NWE's "response to Petition ¶ 168." It is relevant for that purpose.

NWE says, "The ownership charges contained in NorthWestern's ELDS-1 tariff are a component of a customer's bill in instances where NorthWestern owns the street lights not the customer." We are simply putting into evidence the realization that the same is true for the operations and maintenance charges. In order to determine whether the entire ELDS-1 tariff and components of the rate (including the ownership charge) adopted by it are just, its application must be thoroughly understood.

REMEDY: Therefore, pursuant to MCA § 2-4-612 (6), the Commission is asked to take notice of its ELDS-1 tariff, which provides for charges to both utility-owned and customer-owned lights and to accept as true the C-057 statement which should have been admitted.

Montana's Administrative Procedures Act, MCA § 2-4-612 (6), provides:

Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data. They shall be afforded an opportunity to contest the material so noticed.

B) NWE has refused to respond to C-075, C-076, C-079, C-082, C-083, C-085, C-086, C-087, and C-088 based on its claim that it is not required to respond to these data requests because they exceed the 50 written interrogatories allowed under Mt.R.Civ.P., Rule 33(a)(1)

without Commission approval. Complainant's response to these identical NWE arguments is repeated for requests C-079, C-083, C-085, C-086, C-087, and C-088 as follows:

Complainants designated C-075 as a data request, not an interrogatory.¹ There does not appear to be a limit on the number of data requests. However, even if there were a limit Rule 33 permits the Commission to allow more interrogatories.

Remedy: Complainants respectfully request that the Commission allow additional interrogatories or to accept them as data requests for which there are no limits. The alternative to achieving this information via written discovery prior to lengthy cross-examination to obtain it at trial would be through an unproductive deposition (at additional expense to all parties and with NWE objections similar to this one to be expected without the ability to call a judge to resolve the objection as would be possible in a District Court setting.)

In addition to the often asserted "too many interrogatories claim," NWE states other reasons for refusing to respond to C-075, C-079, C-082, C-083, C-086, and C-088, and, in response to other data requests, other reasons, not including the excessive interrogatories claim, all of which are addressed separately below.

C) Alleging its excessive interrogatories claim discussed above as one reason for non-response, **NWE refused to answer Data Request C-075. C-075 seeks to** further clarify NWE's Refusal to Admit C-057 (RFA 36). It asked:

Please explain why in June of 2009, the \$0.56 month per light operations charge and a \$0.54/month per light maintenance charge levied on each street light NorthWestern owned in Billings SILMDs was not levied on city owned lights in Billings SILMDs.

¹ C-075 is not listed in the interrogatory section of the discovery request.

NWE contends that an answer to the C-075 data request would not lead to relevant information because it does “not relate to the ownership charge claim.”

Complainants’ Response to Objection: Even if NWE’s irrelevancy argument were true, it overlooks the fact that Complainants are allowed by statute and rule to make offers of proof. Complainant’s are allowed to make offers of proof comparing what it would cost if customers chose to install LED lighting to circumvent NWE’s monopolistic practice of supplying lights that use twice as much electricity as LEDs. Complainants also are allowed to make offers of proof concerning the unjustness of billing charges applied only to customer owned lights. Knowing the reason for the difference in billing between the two lights will lead to a more factual offer of proof regarding those issues.

Complainants have requested for months that NWE specifically clarify its defenses. Until that happens NWE cannot contend that this request is not relevant to its defense.

As testified to by Complainant’s witness Tom Towe, NorthWestern representatives have told various Montana city officials and residents that ownership charges pay for items that they do not seem to be paying for. One reason for these data requests is to establish by the process of elimination exactly what components of operating and rate base amortization expenses, etc. are not covered by the ownership charge. While NWE has admitted that billing and operations charges are not meant to cover infrastructure costs, we may still need to know what billing and operations charges do cover. These questions are a cross check to verify the more direct responses to other questions about what expenses or non-revenue items the ownership charge covers so that double revenue recovery does not occur. Responses are therefore relevant to sort out the veracity of what various utility personnel are telling the public generally. The answer to

Data Requests C-075 and C-088 discussed next merely verifies what expenses are not defrayed by the ownership charge.

Also, the fact that the operations charge is not levied on customer-owned lights might indicate that for utility-owned lights, the operations charge covers much the same items as the billing charge, which only applies to customer owned lights. There is a mistaken notion in this case that Complainants are only challenging ownership charges. While that is a large part of the claim, other well pled aspects of overcharges resulting from overcharges occurring in the energy and billing components (and perhaps other components) of the street lighting rate were also raised in the petition. For example, petition paragraph L asked:

L. For an order directing Northwestern Energy to develop a non-metered tariff to provide energy to lights previously served pursuant to Northwestern Energy's Schedule No. ELDS-1, Electric Lighting Delivery Service Tariff where the customer owns its own lights; and in addition to other appropriate charges or ways of billing, to include in that tariff an energy charge rate for LED lights based on the wattage of the lights and the hours of full usage and dimmed usage the lights are set for; **and to include in that tariff a modification of its billing charge to reflect actual costs. (It does not cost Northwestern \$269.33 a month to computer-generate a bill for unmetered lights in Billings SILMD # 13—the current billing overcharge);**

If the Commission wants to allow NWE the unjust and discriminatory \$269.33 a month just to print and mail a computer generated bill in SILMD 13 (See Complainants' Exhibit 9, page 4) while the cost for that same service is much less in other SILMDs (e.g. \$141.91 LS Billing Charge in Billings SILMD 14 {Complainants' Exhibit 9, page 8} and as little as \$2.07 in Billings SILMD 18 {Complainants' Exhibit 9, page 12} and \$0.92 in Billings SILMD 203 {Complainants' Exhibit 9, page 40}), then Complainants will have been denied due process in their attempt to call attention to this aspect of NorthWestern's overcharges.

A Commission ruling here requiring a sufficient response from NWE to these interrogatories will help insure that the unjust and discriminatory billing overcharge is not going

to continue. It is now based on a per-lighting-fixture charge that has no rational relationship to what it costs to generate a bill by computer and mail it.

Failure to require answers to these interrogatories based on NWE's contention that Order No. 8074f prevents these inquiries will mean that the Commission has denied Complainants their MCA § 69-3-321 and Article II, § 17, Montana Constitutional due process rights. Those laws compel the PSC to investigate, or have its staff investigate, the billing charges that Complainants' Exhibit 9 demonstrates are unreasonable and unjustly discriminatory and to require an unmetered tariff for LED technology that does not encumber the many small SILMDs in Complainants customer class with a burdensome metering charge embedded in the billing charge or shift that charge to larger SILMDs.

Order 7084f, ¶ 10 holds in abeyance any decision on the LED tariff question (e) briefed as part of the Commission's briefing order.

D) Alleging its excessive interrogatories claim discussed above as one reason for non-response, **NWE failed to answer Data Request C-088** a rewrite of C-060 (I 16) which sought to clarify NWE's billing practices. C-088 asked:

- 1) Please explain in detail why NorthWestern's LS billing charge is not applied to street lights NorthWestern owns.

Since this request was a rewrite of I 16 (C-060) it did not exceed the 50 interrogatory limitation without additional Commission permission found in Rule 33. That is, C-088 should be substituted for the 16th interrogatory (C-060).

NWE also contends this request is irrelevant because it does not relate to the ownership charge. So Complainants' counter-arguments made with regard to C-075 above concerning the billing charge are adopted as reasons why C-088 must be responded to.

REMEDY: The Commission is respectfully asked to order an answer to Data Requests C-075 and C-088.

E) Alleging its excessive interrogatories claim discussed above as its only reason for non-response, **NWE refused to answer Data Request C-076.** C-076 narrowed the scope of admissions sought when NorthWestern objected to and refused to admit **C-052** (RFA 31), **C-053** (RFA 32) and **C-054** (RFA 33). NWE said it was objecting to those claims because they sought admissions about events occurring prior to when “The ownership charges contained in NorthWestern's ELDS-I tariff were first established by tariff in 1997.” Therefore, C-076 asked:

Please describe in detail how NorthWestern or its predecessor, Montana Power, arrived at the value of street lights in SILMDS 97, 161, 162, and 228 in order to place them in the 1997 ELDS-1 tariff.

Curiously, while NWE would not enlighten us concerning how it arrived at the value used to place SILMDS 97, 161, 162, and 228 in the proper ELDS-1 category, NWE also denied that it could not provide such an explanation. That was in response to C-077 (RFA 39). So, since that denial that it could not provide such an explanation is in fact an admission that it can provide the explanation NWE should be required to do so.

This is an important data request. NWE’s response to C-041 (I14), footnote C, indicates that with regard to SILMDS 97, 161, 162, and 228, “C. The average cost of each light in SILMD cannot be determined from utility electronic billing system nor from paper files.” If NWE cannot demonstrate what the original cost of the lights in these SILMDs was, it cannot show us that the correct original cost value was assigned to the lights when they were placed in the ELDS-1 Unmetered Rate Code categories.

REMEDY: If NWE does not respond fully within 30 days to C-076, Complainants request that C-077 be deemed admitted and a finding made that NWE had no rational

basis for assigning Billings street lights to the Unmetered Rate Codes prior to when SILMD 265 was created and the conversion to ELDS-1 took place.

F) NWE said it was not required at this time to respond to Complainants' REASKING of C-028, C-029, C-030, C-034, seeking facts, documents, and identity of witnesses concerning NWE's affirmative defense that NWE had "complied fully with all applicable statutes, rules, regulations, and tariffs."

REMEDY: NWE noted that the Commission decision allowing NWE to evade answers to these questions "did not prevent Complainants from asking ... [these questions] at the appropriate time later in this proceeding." Therefore, **Complainants are again asking those questions here to protect their right to ask them before deadlines for non-data request discovery were executed. NWE has had months to frame responses to these questions. Each month NWE can find a reason to delay these proceeding, it costs Billings taxpayers \$61,000 and Montanan's more than \$183,000. To prevent this delay, the Commission is respectfully asked to order responsive answers to these data requests.**

G) Alleging its excessive interrogatories claim discussed above as its only reason for non-response, **NWE refused to answer Data Request C-078** which sought a clarification of NWE's response to Petition ¶ 41 by saying:

Follow-up In response to **C-039** (l 12) NorthWestern wrote "Based on the 2012 Montana Depreciation Study, the annual depreciation accrual rate associated with all street lights is 2.89% which can be equated to a 34.6 year life."

a) Explain in detail why the 34.6 year life in NWE's response to C-039 is different from that reported in the April, 20, 2007, *Electric Utility Cost Allocation Study* done for NorthWestern by RJ Rudden, which appears to have used a depreciation rate of 40.3 years (see Appendix 3-3, pages, 1 & 2, line 12) for its street light rate base. That study is found on the PSC web site at

http://psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/D200610141_INCOMING_20070420_Part1.pdf

b) Explain in detail how the ELDS-1 tariff recovers the original cost of street lights in 34.6 years. Demonstrate in detail how that works with actual documentation of a contract specifying the original cost of street lights in a Billings SILMD where the lights were installed in 1984, 1997 & 1998. Provide copies of the rate base accounts for your demonstration.

H) Alleging its excessive interrogatories claim discussed above as its only reason for non-response, **NWE refused to answer Data Request C-079 made to clarify** NWE's response to Petition ¶¶ 24, 114, 115, 118, 119 & 164. C-079. C-079 asked:

- 1) If you do not admit any of the requests for admission in C-016, RFA 16 through C-022, RFA 22, please construct your own amortization table for the ranges and ownership charges on NorthWestern's 2009 ELDS-1 tariff and explain the formula used to calculate the number of years necessary to amortize an original cost rate base of the amounts at the bottom and top end of each ownership charge range.

When contending that C-079 was an excessive interrogatory, NWE apparently overlooked that fact that Complainants were withdrawing Interrogatory 11 (i.e., I 11) and substituting Data Request C-078 for it. That is plainly indicated in the request heading which said "**Data Request C-078 & Substitute for C-038, I 11,**"

G & H REMEDY: Since NWE refused to respond to either C-038, C-078 or C-079, Complainants respectfully ask the Commission to order a response to important requests C-078 & C-079 or to find as fact that NWE cannot demonstrate how its tariff does not recover more than the original cost of street lights in either the 40.3 or 34.5 years used to depreciate their value from the original cost rate base. Further, the Commission is asked to order that because NWE cannot demonstrate the original cost of its lights, the cost of the lights be assumed to be at the bottom of the Unmetered Rate Code Range assigned to lights in each SILMD and to impose that determination as a penalty for NWE's willful contrivance to avoid the statutory prohibition against revenue recovery exceeding original cost.

l) **NWE provided an incomplete response to Data Request C-080, RPD 9** which sought:

...a copy of the 2012 Montana Depreciation Study and a disc with the Plant and depreciation reserve data that was collected for that study for the accounts associated with street lights.

NWE objected to this request by contending it “seeks information involving matters other than electric street lighting matters.” That contention is clearly false. The Commission can see from the above request that Complainants were seeking “the Plant and depreciation reserve data that was collected for that study **for the accounts associated with street lights.**”

In failing to be forthright in its response to this request, NWE provided summary information concerning the depreciation of street lights without the sub-account. Further it included the “Vintage Grouping” showing remaining life and depreciation of its Distribution Plant. Since Street Lighting is a small part of the Distribution Plant, it is impossible to tell from the material provided exactly how the yearly depreciation rate for the Street Lighting subcategory of Distribution Plant was arrived at.

REMEDY: Complainants have clearly alleged in their petition and proven in their testimony that NWE has created an ownership charge tariff that recovers more than the allowed original cost (plus allowed return) because the depreciation schedule for lights is too long. NWE’s deception will be further unmasked if this question is answered candidly. Therefore, Complainant’s respectfully ask the Commission to order that the information specifically relating to street lights and their sub-account sought by C-080 be required. And that further NWE be ordered to pay \$5,000 in attorney’s fees because Complainants have had to engage in protracted motions to compel discovery uncovering the depth of NWE’s evasive deceptive and unlawful practices.

J) **NWE's partial response to answer Data Request C-081** which followed-up on NWE's commitment to provide information relating to C-041 (I 14) was not in the requested spreadsheet format, but rather was in PDF format converted from the requested spreadsheet format. This cost Complainants several hours of work to copy the data unto usable format in order to calculate the actual time it took to depreciate lights in various SILMDs.

REMEDY: At this time the only remedy requested for this deliberate maneuver to make it harder to develop evidence is an assessment of \$1,000 against NWE for the time needed to convert the data to a usable format.

K) Alleging its excessive interrogatories claim discussed above as its only reason for non-response, **NWE refused to answer Data Request C-082 which also followed up on C-041 to clarify** NWE's response to Petition ¶¶ 52, 53, 94, 105, 106, 165, 166, 175, 185, 202, 204 & Petition Tables 2 & 3. C-082 said:

In response to Data Request C-041, NorthWestern wrote "the average original cost of street lights for each of the Billings SILMDs where street lights are owned by NorthWestern Energy per Exhibit 6 is not available within our fixed accounting system."

a) If that information is available in an electronic or non-electronic system other than the fixed accounting system, please provide:

1) the name of that system and the data requested.

If NWE did not have the requested information in an accounting system other than its fixed accounting system, a simple response so stating would be sufficient. Its attempt to use the "too many interrogatories" claim here leaves the distinct impression that NWE is attempting to hide information by claiming something that may be correct with regard to its fixed accounting system, but which is not true regarding other data information systems it keeps, data for example in its FERC Accounts discussed next.

L) **NWE refusal to answer Data Request C-089 (RPD 10).** We know that NWE keeps accounts for tax a Federal Energy Regulatory Commission (FERC) purposes. That is why Complainants made **Data Request C-089 (RPD 10)** asking NWE:

Please provide copies of FERC plant account 373.1, Street Lighting and all sub accounts for Street Lighting Account for years

NWE objected to this request by contending it was vague because it did not specify which years were requested. Complainants apologize for this lack of specificity and amend the request to read:

Please provide copies of FERC plant account 373.1, Street Lighting and all sub accounts for Street Lighting Account for years 1984, 1997, 1998 & 2013.

NWE also objected to this request as irrelevant because it seeks entries for all street lighting account entries and not just those limited to Billings Street lights.

NWE's claim that this case is limited to Billings Street Lights is not correct. Complainants' Petition clearly alleges overcharges resulting from all NWE-owned street lights. Indeed, paragraphs A (page 3), F, J, 160, 174, 183, 184, 191, and 212 of the Petition allege damage to Montana ratepayers caused by NWE's ownership overcharge. NWE's failure to respond to the following data request demonstrates conclusively that NWE knew better when it contended this case is limited to Billings street lights.

M) Alleging its excessive interrogatories claim discussed above as its only reason for non-response, **NWE failed to respond to Data Request C-085** which also followed up on NWE's insufficient response to Data Request C-044. C-085 asked:

In response to Data Request C-044 NorthWestern refused to provide an electronic copy of its Uniform System of Accounts containing all NorthWestern Energy accounting entries related to the Customer Class involving street lighting and the backup sheets for those accounting entries, writing that "This docket involves street lights in the City of

Billings. Information about all of NorthWestern's street lighting customers is therefore not relevant to Complainants' claims or defenses."

- a) Please indicate where in PSC Order 7084f or elsewhere that this docket is limited to ownership charges that relate only to the City of Billings and quote that wording.

Since NWE failed to indicate any order it could rely on to support its contention that this case is limited to consideration of Billings street lights, NWE's argument that the following data request is too broad must be rejected.

N) Alleging its excessive interrogatories and request is too broad claims discussed above as reasons for non-response, **NWE failed to answer Data Request C-086**. C-086 followed up on NWE's refusal to provide a sufficient response to C-044. C-086 asked:

In response to Data Request C-044 NorthWestern provided Attachment 1 indicating that NWE had limited the request for complete system street lighting data to revenue data within a "Billings town Code."

- a) Please provide the SILMD numbers for all street lights within the "Billings Town Code."
- b) Where there are no SILMD numbers for the accounts, provide the NWE account number and if the NWE customer is a government agency, the billing address where the bill for the lights is sent.
- c) Since NWE did not object to this data request within the 10 days allotted by PSC Order 7084g, ¶ 10, the time for objection passed. Therefore, please respond to the question by providing:
 - 1) For the year 2013, please provide in a searchable Excel spreadsheet format, an electronic copy of the Uniform System of Accounts containing all NorthWestern Energy accounting entries related to the Customer Class involving street lighting and the backup sheets for those accounting entries.

O) Alleging excessive interrogatories claim discussed in Section B above as its only reason for non-response, **NWE failed to answer Data Request C-087** which also followed up on NWE's refusal to provide a sufficient response to C-044. C-087 asked:

- a) NWE's response with regard to the Billings Town Code only included only partial revenue components of the Uniform System of Accounts. Please provide all revenue, expense and other categories related to street lighting.

REMEDY: It should be noted that while the cover letter indicated if we have questions Joe Schwartzberger was to be contacted, no witness or attorney from NWE signed NWE's responses to Complainants' Third Set of Discovery Requests. Also, Complainant's attorney may not contact Mr. Schwartzberger without permission from NWE's attorney. So, the responses to Complainant's Third Set of Discovery Requests do not rise to the level of trustworthiness required when responses to discovery are made pursuant to the Rules of Civil Procedure.

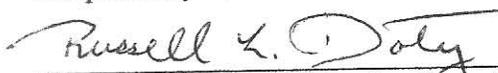
Therefore the Commission is respectfully requested to require a completely candid, responsible answer to C-041, C-082, C-085, C-086, C-087 & C-089 and to require that all past and present NWE responses to data requests must be attested to by the attorney and person who prepared the response.

CONCLUSION

All of the requests for Remedies specified separately above should be granted.

Respectfully submitted.

May 12, 2014

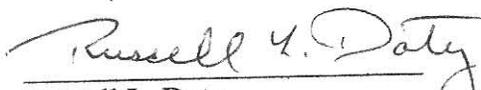


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CERTIFICATE OF SERVICE

I certify that pursuant to ARM 38.2.313, 38.2.1209 and the Procedural Order dated January 16, 2014, on May 12, 2014, an accurate copy of **Complainants' Motion Requiring Northwestern to Respond Adequately to Complainants' Third Set of Discovery or Face Sanctions in Docket No. D2010.2.14** were served upon the parties listed below in the manner provided:

<input type="checkbox"/> XX US Mail Original <input type="checkbox"/> Hand-deliver <input type="checkbox"/> Via Fax: <input checked="" type="checkbox"/> XX E-mail:	Kate Whitney, Montana Public Service Commission 1701 Prospect Av, PO Box 202601 Helena, MT 59620-2601 Email: kwhitney@mt.gov
<input type="checkbox"/> XX US Mail <input type="checkbox"/> Hand-delivery <input type="checkbox"/> Via Fax: <input checked="" type="checkbox"/> XX E-mail:	Laura Farkas, Montana Public Service Commission 1701 Prospect Av, PO Box 202601 Helena, MT 59620-2601 Email: lfarkas@mt.gov
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