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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, and Leo G. and Jeanne R. )	REGULATORY DIVISION
Barsanti, )	
Complainants )	DOCKET NO. D2010.2.14
vs. )	
NorthWestern Energy, )	
Defendant )	

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**NorthWestern Energy’s Opposition to Complainants’ Motion  
for a Temporary Rate Decrease**

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NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern”) submits this timely Opposition to Complainants’ Motion for a Temporary Rate Decrease (“Opposition”) for the Montana Public Service Commission’s (“Commission”) consideration when deciding Complainant’s Motion for a Temporary Rate Decrease and Brief Supporting Motion (“Motion”). For those reasons noted below, NorthWestern requests that the Commission deny Complainants’ Motion as the Motion is inappropriate given the facts and circumstances of this case.

**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 timely 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 the briefing by the parties, the Commission narrowed the scope of this docket to one issue alleged by Complainants against NorthWestern: whether NorthWestern's ownership charge in its street lighting tariff is unreasonable or unjustly discriminatory. *See* Order No. 7084f, ¶ 17. After a period of opportunity to intervene, the Montana Consumer Counsel ("MCC") was granted general intervention in this docket. Pursuant to the Procedural Order that was in effect at the time, Complainants filed with the Commission their prefiled direct testimony on March 21, 2014, and April 7, 2014. NorthWestern requested that the Commission strike portions of this testimony in whole or in part for various reasons. *See* NorthWestern's Motions to Strike Complainants' Testimony filed on April 1, 2014, and April 17, 2014. These motions are currently pending before the Commission for disposition. To date, NorthWestern has not filed any testimony in this docket as Procedural Order No. 7084h was suspended by the Notice of Staff Action issued on April 17, 2014 ("Notice"). On April 10, 2014, Complainants filed their Motion. Per the Notice, NorthWestern submits this Opposition by the deadline established therein.

### **Argument**

The Commission should deny Complainants' Motion. A temporary rate reduction as proposed by Complainants in this case is inappropriate because (1) of the type or nature of this case, (2) there is no support for or determination of an alleged amount by which rates are recommended to be reduced, and (3) Complainants support for their Motion is derived from baseless allegations. Each of these reasons is discussed more fully below.

**A temporary rate reduction is unlawful and inconsistent with Commission rules due to the nature of this case.**

In support of their Motion, Complainants cite to Montana statute, § 69-3-304, MCA, which provides the Commission with the statutory authority to grant temporary rate increases or decreases pending a final hearing. Motion, pp. 1-2. Section 69-3-304, MCA, provides that:

[t]he 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.

(Emphasis added.) As is emphasized in the statute above, this authority is discretionary. Thus, a Commission decision regarding a temporary rate change is optional; however, when ruling on the request it must ensure that its decision is “based upon consistent standards appropriate for the nature of the case pending.” Thus, one reason the Commission should not exercise its discretion in favor of Complainants’ Motion is due to “the nature of the case pending” before it in this docket.

The nature of this case is a complaint against a public utility. The Commission’s jurisdiction over this issue is found in § 69-3-321, MCA. This case is a formal complaint filed by residents who live in City of Billings Special Improvement Lighting and Maintenance Districts (“SILMD”) alleging that NorthWestern has overcharged them for street lighting infrastructure in

their respective SILMDs.<sup>1</sup> To the best of NorthWestern’s knowledge, the Commission has never granted interim rates in a complaint docket, nor should it. This docket is not a rate case proceeding. Rather, it involves one component of NorthWestern’s street lighting tariff. A rate case proceeding is one in which the utility has filed an application with the Commission seeking a change in the current rate(s) for the reasons outlined in its application. Examples of rate case dockets are general electric or natural gas rate cases, electric or natural gas supply tracker dockets and avoided costs rate filings regarding qualifying facilities. In rate case proceedings, the Commission applies its administrative rules when deciding interim rate increase requests. *See* ARM 38.5.501 through 38.5.508. Upon review of these rules, it is clear that the nature of the case in which the Commission grants interim rate requests involves rate-case dockets, not complaint dockets. Thus, given the nature of this case, the granting of a temporary rate reduction is inappropriate and the Commission must deny Complainants’ Motion.

Additionally, § 69-3-321(2), MCA, provides that

**No order affecting such rates**, tolls, charges, schedules, regulations, measurements, practices, or acts complained of **shall be entered without a formal hearing**, except the commission may issue an order to provide service to a residential consumer pending a hearing on a complaint by such consumer or by the consumer counsel on behalf of such consumer against a public utility, providing that the hearing is held within 20 days unless further delayed by consent of all parties.

(Emphasis added.) The plain language of the statute supports NorthWestern’s position that temporary rate reductions in complaint dockets are unlawful. Based on the statute,

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<sup>1</sup> Complainants throughout their Motion repeatedly make the incorrect argument that “**Montana consumers** may continue losing more than \$181,000 a month...” and “...unless this temporary rate reduction request is granted, **Montanans** may not be able to claim a refund...” (Emphasis added.) Motion, p. 6. Notwithstanding the basic error of the argument regarding a refund, with statements such as these, Complainants appear to be arguing that this request for a temporary rate reduction is necessary to protect all Montanans. Complainants do not represent the interests of all Montanans in this case. They represent their own interests. The MCC, the constitutionally established consumer representative, is an intervenor in this docket. The MCC represents the interests of all Montanans.

the Commission can only issue an order affecting a rate in a complaint docket after a formal hearing. A formal hearing would include presentation of testimony by all parties with an opportunity for cross-examination. *See* ARM 38.2.601(1)(e).<sup>2</sup> In considering temporary rate requests in a rate case proceeding, this formal hearing does not occur. Typically, the Commission decides the requests based on the application, testimony and exhibits, the legal motions and briefs, if any, filed by the parties at the time a decision is made on the request.

Oral argument on the temporary rate issue may also occur. However, oral argument deals with the legal issues not the factual issues that a formal hearing would deal with. The statute does note one exception for when a formal hearing is not necessary before an order is issued in such a docket. The exception does not involve temporary rates. Therefore, granting a temporary rate change in a complaint docket would be a violation of Montana law. For these reasons, the Commission must deny the Complainants' Motion.

**Additionally, a temporary rate reduction is inappropriate because Complainants fail to provide support for or determination of an alleged amount by which rates are recommended to be reduced.**

Even if the Commission were to determine that it is lawful and consistent with Commission rules to consider a temporary rate reduction in this docket, a rate reduction is inappropriate because Complainants failed to provide a defined amount by which rates should be reduced. Complainants' Motion moves the Commission for a "temporary street lighting ELDS-1

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<sup>2</sup> "Hearing' means any public meeting in a contested case on any matter that is noticed for "hearing" by the commission in accordance with applicable statutes at which an opportunity shall be given to **all interested persons to present such written and/or oral testimony** as the commission shall deem relevant and material to the issues." (Emphasis added.)

tariff rate reduction...where the [NorthWestern] ‘ownership charge’...has paid for the lighting infrastructure” but “that while the reduced rate begins on the date it was approved, [NorthWestern] need not change its street lighting tariff to reflect the reduction until otherwise ordered.” Motion, p. 1. Complainants’ request fails to provide any evidence to support a rate reduction, or tariff computations to support any alleged reduction to NorthWestern’s street lighting rates. Complainants fail to show what an appropriate rate reduction should be in this case. They argue in generalities and not in specifics.

In order to grant a rate increase or decrease, the Commission requires a defined and fully supported dollar amount upon which to base the adjustment. The Commission’s administrative rules regarding temporary or interim rate requests require that such request contain specific details about what is proposed to be changed in the utility’s tariff. See ARM 38.5.505(3)(c) (a request must be supported by “Rate schedules - current and proposed.”) By failing to provide this information, Complainants’ Motion falls outside the parameters of the controlling statute, § 69-3-304, MCA. Again, § 69-3-304, MCA, permits a temporary rate increase or decrease pending a final hearing. This statute permits the utility to immediately change its rates on a temporary basis pursuant to a Commission order. The plain language of the statute does not permit the Commission to approve a temporary rate reduction that requires the utility to collect reduced rates, but not change its tariff until a later date.

Furthermore, what Complainants have proposed in their Motion is prohibited by law. Section 69-3-305(1)(a), MCA, provides that “a public utility may not[ ] charge, demand, collect, or receive a greater or less compensation for a utility service performed by it within the state or for any service in connection with a utility service **than is specified in the printed schedules**, including schedules of joint rates, that may at the time be in force.” (Emphasis added.) Thus, in

order for a temporary rate increase or decrease in a rate case proceeding to be lawful, the Commission must know and approve the revised amount that the public utility is required to temporarily collect from its customers pending a final decision and the public utility must change its tariff to reflect this temporary change. Therefore, since Complainants' Motion is not specific regarding the amount by which the rate is proposed to be reduced and it contemplates a rate reduction without a change to NorthWestern's tariff. The Commission should exercise its discretion and deny the Complainants' Motion.

**A temporary rate reduction is also inappropriate because Complainants' support for such request is based only on groundless, unsubstantiated allegations.**

Complainants' Motion contains self-serving, conclusory statements in an attempt to try and justify their request for reduced rates. Complainants' Motion is replete with allegations that do not support their request to reduce rates. As is noted by the Commission's administrative rules, the Commission may grant temporary rates after the movant has made a clear showing that supports such request with clear evidence and supporting materials, such as those items noted in ARM 38.5.505(3).<sup>3</sup> Complainants cite to portions of their prefiled direct testimony and exhibits to support their Motion.<sup>4</sup> Motion, pp. 2-4. They claim that based on such testimony they "have now proven the overcharge." Motion, p. 3. With such a statement, Complainants seem to believe that any statement in their testimony filed with the Commission is accurate, truthful and based on facts. Notwithstanding that insinuation, the testimony cited to in support of their Motion is not

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<sup>3</sup> ARM 38.5.505(3) provides that "[a]ny applications for interim authority to increase utility rates to meet increased costs of a single, clearly measurable expense item (tracking cases) shall be supported by the following: (a) Letter of transmittal; (b) Application; (c) Rate schedules - current and proposed; (d) Detail of increased expense item; (e) Summary of base cost of expense item and proposed adjustment; (f) Statements showing effects of proposed adjustment, including operating income, rate of return, and return on average equity; [and] (g) Most recent 12 month balance sheet and income statement."

<sup>4</sup> NorthWestern notes that pending before the Commission are several motions to strike portions of Complainants' testimony. If the Commission grants these Motions, much of the testimony cited to by Complainants in support of their Motion for temporary rates will be stricken.

demonstrative of a clear showing that interim rates are appropriate. Complainants fail to recognize that their testimony has not been subject to discovery or cross-examination by the other parties or questioned by the Commission in this docket. Furthermore, NorthWestern has very strong reservations regarding whether certain witnesses' testimony is appropriate non-expert opinion testimony, including, for example, the witness, Mr. Barsanti, whose testimony is restated in the Motion. *See* NorthWestern's Motion to Strike Portions of the Complainants' Testimony filed on April 1, 2014, p. 5. Complainants' testimony completely fails to prove NorthWestern has overcharged its customers.

Complainants also believe that a simple loan amortization table supports their request for temporary rates. Motion, p. 5. They believe that “[t]here doesn't need to be any more facts in this case in order for that particular issue to be temporarily decided because mathematically one can easily deduce that the ownership charge has paid for most street lights involved.” *Id.*, p. 6. This belief is false. As explained by NorthWestern in response to discovery from the MCC, ratemaking is not a simple process and the ownership charge was established by Commission order after a contested case that presented, among other things, allocated cost of service and rate design proposals to the Commission for consideration. *See* NorthWestern's response to MCC-001. Thus, there is much more to ratemaking than is suggested by Complainants' argument that an amortization table proves wrongdoing by NorthWestern in this case.

Finally, NorthWestern has yet to file testimony in this docket. Complainants' Motion repeatedly makes statements regarding NorthWestern's collection of the ownership charge as being “unlawful” and that NorthWestern “has failed to respond candidly and completely to Complainants' discovery.” Complainants also state in their Motion that NorthWestern “maneuvered around the law” and that NorthWestern's current CEO, Bob Rowe, approved a

tariff when he was Chairman of the Commission that allowed such a tariff rate to exist thereby suggesting that something untoward was permitted to continue. Motion, pp. 4 and 5.

Complainants' testimony fails to support such statements and NorthWestern takes issue with them. The Complainants are required to demonstrate through clear and convincing evidence that the ownership charge in NorthWestern's Commission-approved street lighting tariff is unjust or unreasonably discriminatory. At the appropriate time in this docket, NorthWestern will rebut Complainants' positions. At this point, NorthWestern does not believe Complainants have met their burden. Because the Complainants support their Motion with baseless allegations, which NorthWestern contests, the Commission should exercise its discretion and deny the Complainants' Motion.

#### Conclusion

Montana statute provides the Commission with the discretionary authority to grant temporary rates. In this case, temporary rates are unlawful and inconsistent with Commission rules and should not be granted. For these reasons, NorthWestern opposes Complainants' Motion and respectfully requests that the Commission deny the Motion.

Respectfully submitted this 19<sup>th</sup> day of May 2014.

NORTHWESTERN ENERGY

By:   
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Sarah Norcott  
Attorney for NorthWestern Energy

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of Northwestern Energy's Opposition to Complainants' Motion for a Temporary Rate Decrease 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 No. 7084h.

Date: May 19, 2014

  
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