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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)	

NorthWestern Energy’s Opposition to Complainants’ Motion Asking the Commission to Require LED Street Lights or for a Reduction in the Tariff Energy Charge

NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern”) submits this timely Opposition to Complainants’ Motion Asking the Montana Public Service Commission (“Commission”) to Require LED Street Lights or for a Reduction in the Tariff Energy Charge (“Opposition”) for the Commission’s consideration when deciding Complainant’s Motion Asking the Commission to Require NorthWestern to Implement LED Street Lighting or to Reduce Tariff Energy Charge (“Motion”). For those reasons discussed more fully below, NorthWestern requests that the Commission deny Complainants’ Motion because the subject of the request is irrelevant to the docket currently pending before it and the legal issue concerning authority to order a utility to use LED street lights has yet to be determined by the Commission.

Procedural Background

The following is the relevant procedural background for this Opposition. 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.

On April 16, 2014, Complainants filed their Motion. Per the Notice of Commission Action issued on April 17, 2014, NorthWestern submits this Opposition by the deadline established therein.

Argument

The Commission must deny Complainants' Motion because (1) this docket is not about LED street lighting; and (2) the Commission has yet to rule on the legal issue of whether it has statutory authority to require NorthWestern to take such action as is requested by Complainants in their Motion.

This docket is not about LED street lights.

Complainants ask the Commission to require NorthWestern to install 800 LED street lights a month or be "docked" by being forced to reduce its energy charge for street lights. Motion, p. 1. Additionally, Complainants request that the Commission order NorthWestern to establish a non-metered tariff for LED street lights. *Id.* As NorthWestern has argued in several of

its recent filings, in Order No. 7084f, the Commission narrowed the scope of this docket to one issue: whether the ownership charge is unjust or unreasonably discriminatory. *See* Order No. 7084f. This one remaining issue has nothing to do with LED street lights. Notwithstanding that fact, Complainants continue to advocate for LED street lights. In support of their Motion, Complainants recite much of the testimony that NorthWestern has requested the Commission strike in this case. Matters outside the scope defined by Order No. 7084f, and testimony that discusses these matters, are irrelevant. *See* NorthWestern's Motions to Strike Complainants' Testimony filed on April 1, 2014, and April 17, 2014. For purposes of efficiency, NorthWestern does not repeat its arguments in this Opposition with respect to why LED street lights are irrelevant. However, given the fact that the Commission narrowed the scope of this docket and thus LED street lights are irrelevant, the Commission must deny Complainants' Motion.

Complainants' Motion disrespectfully disregards the Commission's prior order in this docket.

Complainants' Motion completely ignores the Commission's prior order. As discussed above, the Commission has determined that this docket is not about LED street lights. Complainants continually fail to acknowledge this point. They continue to argue and assert that this docket is about LED street lights. It clearly is not. As noted above in the Procedural Background section of this Opposition, the Commission requested the parties to brief seven legal issues concerning issues raised by Complainants' Complaint. Two of the legal issues were:

- Pursuant to what authority can the Commission order NorthWestern Energy to use a specific type of equipment, such as LED technology, in street lighting districts? Briefly explain.
- Pursuant to what authority can the Commission require NorthWestern to develop a technology-specific charge within the electric lighting tariff, as contemplated in L on page 5 of the Second Amended Complaint? Briefly explain.

Order No. 7084f, ¶ 2(d) and (e). After the parties briefed these two issues as well as the other issues identified by the Commission, the Commission held as follows:

[t]he remaining issues on which the Commission ordered and received legal briefing relate to the remedies requested by Complainants in their Second Amended Complaint, and therefore, **the Commission need not decide these issues unless and until the Commission makes a finding in favor of Complainants**. The arguments put forth by the parties, therefore, are taken under advisement.

Id., at ¶ 10 (Emphasis added). The two legal issues set out above are issues that the Commission took under advisement in Order No. 7084f. By bringing their Motion to the Commission, the Complainants are disrespecting the Commission's authority and ignoring its prior determination to decide issues regarding LED street lights, if necessary, at a later date. Unless and until LED street lights are determined by the Commission to be an issue in this docket, there should be no testimony or discovery regarding LED lighting and no motions or legal arguments on this issue. NorthWestern will respect the Commission's decision to discuss the issue at a later date. Therefore, NorthWestern does not rebut the specific arguments made by Complainants in support of forcing NorthWestern to install LED street lights. If the Commission reverses its previous determination and now finds that LED street lights are relevant to the docket, NorthWestern reserves the right to specifically address Complainants' arguments in support of their Motion. Consistent with its prior order, the Commission must deny the Complainants' Motion because legal issues concerning LED street lights and non-metered tariffs for such lighting technology have been taken under advisement. If Complainants meet their burden of proof and show that NorthWestern's ownership charge is unjust or unreasonably discriminatory, the Commission will then decide whether they have the authority to order NorthWestern to use a specific type of equipment, such as LED technology, in street lighting districts, or the authority

to require NorthWestern to develop a technology specific charge within the electric lighting tariff. Unless and until this occurs, Complainants should not be allowed to raise these issues in this docket.

Oral Argument

Complainants have requested oral argument on their Motion. Motion, p. 1. Complainants cite to § 2-4-612(1), MCA, as support for their request for oral argument. *Id.* This statute does not require the Commission to grant oral argument. Section 2-4-612(1), MCA, only requires that the Commission afford a party an opportunity to present arguments on all issues. The filing of Complainants' Motion is their opportunity to present arguments on this issue.¹ Thus, requests for oral argument are solely within the Commission's discretion. NorthWestern does not believe oral argument on this matter is worthwhile or necessary and that the Commission can decide the Motion based on the briefs. If the Commission grants Complainants' request for oral argument, NorthWestern will participate.

Conclusion

LED street lights are not an issue before the Commission. The Commission has already decided that certain legal issues concerning LED street lights were taken under advisement and will be decided if Complainants meet their burden in this case proving that NorthWestern's ownership charge is unjust or unreasonably discriminatory. Given these facts, Complainants' request to reduce the tariff energy charge in NorthWestern's street lighting tariff is inappropriate and should be denied. Based on the foregoing reasons, NorthWestern opposes Complainants' Motion and respectfully requests that the Commission deny the Motion.

¹ As argued above by NorthWestern, it does not believe LED street lights are an issue in this docket due to a previous Commission order.

Respectfully submitted this 28th day of May 2014.

NORTHWESTERN ENERGY

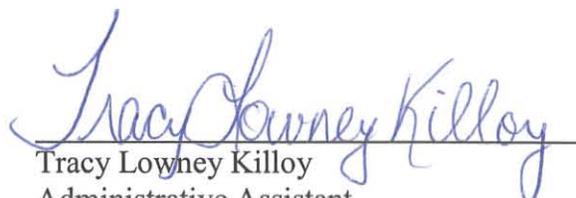
By: 

Sarah Norcott
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CERTIFICATE OF SERVICE

I hereby certify that a copy of Northwestern Energy's Opposition to Complainants' Motion Asking the Commission to Require LED Street Lights or for a Reduction in the Tariff Energy Charge 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 28, 2014


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