

1 DEPARTMENT OF PUBLIC SERVICE REGULATION
2 BEFORE THE PUBLIC SERVICE COMMISSION
3 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.)
NORTHWESTERN ENERGY,) DOCKET NO. D2010.2.14
Defendant.)

4 _____
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6 COMPLAINANTS' MOTION FOR ADMINISTRATIVE NOTICE

7
8 BACKGROUND

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10 Complainants are required to refile their direct testimony in compliance with
11 Commission Order No. 7084i, paragraph 39(c) which provides: "Testimony is not to contain any
12 "attorney motions"; all motions must be made in separate filings."

13 Therefore, rather than make motions at appropriate time during consideration of pre-filed
14 testimony at the hearing (as was proposed in Complainants' April 8, 2014, brief, p. 16) these
15 motions for the Commission to take administrative notice of various items are being made to
16 afford NorthWestern and Consumer Council the notification of a request that the Commission
17 take administrative (i.e., judicial) notice of certain evidence and to have sufficient opportunity to
18 contest such material so that notice issues surrounding a request for administrative notice will not
19 be outside of requirements in MCA § 2-4-612(6), which states:

20 (6) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of
21 generally recognized technical or scientific facts within the agency's specialized
22 knowledge. **Parties shall be notified either before or during the hearing or by**
23 **reference in preliminary reports or otherwise** of the material noticed, including any
24 staff memoranda or data. They shall be afforded an opportunity to contest the material so
25 noticed. [Emphasis added.]
26

1 MOTION

2 Complainants respectfully moves the Commission to:

3 1. Grant motions stricken from the following pages in the testimony of Tom Towe, namely:

4 a. Page 8 (notice of ELDS-1 tariff only) which read:

10 ~~ATTORNEY MOTION: We move admission of Complainants' Exhibit 1 found online at~~
11 ~~http://psc.mt.gov/Docs/Electronic Documents/pdffiles/D2010214_IN_20140207_Exhibit1NW~~
12 ~~E.PDF and ask the Commission to take administrative notice of the official record of~~
13 ~~NorthWestern's ELDS-1 tariff, which is found online at~~
14 ~~[http://www.northwesternenergy.com/docs/default-](http://www.northwesternenergy.com/docs/default-source/documents/MT_Rates/Electric/ELDS-1.pdf)~~
15 ~~[source/documents/MT_Rates/Electric/ELDS-1.pdf.](http://www.northwesternenergy.com/docs/default-source/documents/MT_Rates/Electric/ELDS-1.pdf)~~

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6 The above URLs for the ELDS-1 tariff in non-pdf format are:

7 [http://www.northwesternenergy.com/docs/default-source/documents/MT_Rates/Electric/ELDS-](http://www.northwesternenergy.com/docs/default-source/documents/MT_Rates/Electric/ELDS-1.pdf)
8 [1.pdf](http://www.northwesternenergy.com/docs/default-source/documents/MT_Rates/Electric/ELDS-1.pdf)

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10 b. Page 11 which read:

9 ~~ATTORNEY MOTION: We move the Commission to take administrative notice of MCA~~
10 ~~§ 69-3-109 requiring that valuation of utility property "may not exceed the original cost of the~~
11 ~~property." Paragraph 24 of the Complaint pled "Montana law requires NorthWestern to use~~
12 ~~the original cost depreciated method of calculating the value of utility property placed into its~~
13 ~~utility rate base." NorthWestern's answer to that statement was, "...that the law speaks for~~
14 ~~itself." Indeed, the meaning of § 69-3-109 is plain; and in so speaking, limits the valuation of~~
15 ~~utility property so that the valuation and the recovery of that value cannot exceed original~~
16 ~~cost.~~

11
12
13 c. Page 12 which read:

9 ~~ATTORNEY MOTION: We move the Commission to take administrative notice of *In Petition of*~~
10 ~~*Montana Power Co. for Increased Rates and Charges in Gas and Elec. Services* and MCA § 28-~~
11 ~~2-701 for the purpose of verifying Mr. Towe's testimony.~~

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17 2. Grant motions stricken from the following pages in the testimony of James T. Gruba, namely:

18 a. Page 12 which read:

1 **ATTORNEY MOTION:** We request the Commission to take administrative notice
 2 of the information on Complainants' Exhibit 15, as it is empowered to do pursuant to MCA
 3 § 2-4-612(6) as specifically adopted by ARM § 38.2.4201 of the official public record
 4 concerning what the Grubas paid in property taxes as found through the above URLs as
 5 follows:.

Complainants' Exhibit 15 (Gruba)			
GRUBA SILMD ASSESSMENTS & OVERCHARGE			
	A	B	C
	Tax Year	SILMD # 161 Assessment	SILMD # 162 Assessment
1	2014	(2/3 year estimate) \$ 75.87	(2/3 year estimate) \$10.85
2	2013	\$113.92	\$ 16.30
3	2012	\$118.20	\$ 15.66
4	2011	\$100.64	\$ 13.04
5	2010	\$100.64	\$ 13.04
6	2009	\$113.06	\$ 13.04
7	2008	\$113.06	\$ 13.04
8	2007	\$119.92	\$ 13.04
9	2006		\$ 13.04
10	2005		\$ 13.04
11	2004		\$ 13.04
12	2003		\$ 13.04
13	2002		\$ 13.50
14	2001		\$ 13.50
15	Total Assessment for overcharge years)	\$855.31	\$187.17
16	Total overcharge 76.3% and 37% of total assessment	\$652.60	\$ 69.25

6
 7 **The URLs referenced in this motion are found in Mr. Gruba's testimony immediately**
 8 preceding the motion. It reads:

9 **Q. You mentioned previously that you paid property taxes on 2527 Wyoming Ave. Is**
 10 **the information on the taxes you pay available as a public record?**

11 A. Yes. And many of the past years of that public record are available online at:

12 <http://www.co.yellowstone.mt.gov/gis/csaprop.asp?propid=200511> . For example, if one
 13 clicks 2009 for that year, it will lead to the following URL:

14 <http://www.co.yellowstone.mt.gov/gis/csatydet.asp?propid=A10354&lyear=2009> .

15 **3. Grant motions stricken from the following pages in the testimony of Leo Barsanti, namely:**
 16 **a. Page 18 which read:**

3 **ATTORNEY MOTION:** First, the Commission is asked to take administrative notice, as it is
 4 empowered to do pursuant to MCA § 2-4-612(6) as specifically adopted by ARM § 38.2.4201 of
 5 the official public record of the rates of return established in its own orders as set for in
 6 complaint ¶¶ 41, 42 & 43 which set forth:

7 41) Between 9/23/1970 and 7/30/1984, the PSC has never allowed NorthWestern's
 8 predecessor (Montana Power) to earn more than an 11.65% return on overall cost of
 9 capital. [As admitted by NWE in C-036 I 9]

10 42) The allowed cost of capital allowed Montana Power or NorthWestern was:
 11 a. 9.50% in Docket#6454, Order4350d {4/24/1978};
 12 b. 10.34% in Docket # 80.4.2, Order 4714a {12/19/1980};
 13 c. 11.39% in Docket # 82.8.54, Order 4938 {10/18/1982};
 14 d. 11.63% in Docket # 82.854, Orders 4938a {date not known} and 4938b
 15 {6/30/1983}, and Docket # 83.9.67, Order 5051 {3/21/1984};
 16 e. 10.44% in Docket # 88.6.15, Order 5360d {8/29/1989};
 17 f. 10.24% in Docket # 90.6.39, Order 5484k {7/12/1991}; and
 18 g. 9.09% in Docket # 93.6.24, Order 5709d {4/28/1994}. [Admitted by NWE as
 19 corrected with regard to paragraph 42a in NWE's response to C-013 RFA 13]

20 43) On 7/30/1984, the Montana Public Service Commission was allowing
 21 NorthWestern's predecessor (Montana Power) to earn an 11.65% on overall cost of
 22 capital (Docket # 83.9.67, Order 5051c). [As admitted by NWE in C-014 RFA 14]

23
 24 And to take administrative notice of the rates of return provided in response to C-037 I
 25 10, namely:

Docket No.	Order No.	Authorized Overall Rate of Return	Effective Date
D95.9.128	5865d	9.06%	7/1/1996
D2000.8.113	6271c	8.46%	5/8/2001
D2009.9.129	7046h	7.80%	1/1/2011
D2009.9.129	7046i	7.92%	7/8/2011

26 **b. Page 29 which read:**

27 **Attorney Motion:** Complainants move to have the Commission take administrative
 28 notice of pages 1 & 2 of Appendix 3-3 of the April, 20, 2007, *Electric Utility Cost Allocation*
 29 *Study* submitted by NorthWestern and which is found at the above mentioned URL for the
 30 purpose of establishing the 40.3-year rate NorthWestern uses to depreciate its street lighting
 31 rate base.

32 **c. Page 55 which read:**

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5 ATTORNEY MOTION: We move the Commission to take administrative notice of the
6 public document entitled "City of Great Falls Street Lighting Districts Ownership Analysis"
7 which is Complainants' Exhibit 12, a 12 page exhibit. It can be found online at
8 http://wgmggroup.com/great_falls.pdf

1
2 d. Page 63 which read:

3 ATTORNEY MOTION: The Commission is asked to take administrative notice of
4 sections of Montana's False Claims Practices Act, referenced by Mr. Barsanti, namely:

5 17-8-403. False claims -- procedures -- penalties. (1) Except as provided in
6 subsection (2), a person is liable to a governmental entity for a civil penalty of not less
7 than \$5,500 and not more than \$11,000 for each act specified in this section, plus
8 three times the amount of damages that a governmental entity sustains, along with
9 expenses, costs, and attorney fees, if the person:

10 ...

11 (c) conspires to commit a violation of this subsection (1);

12 ...

13 (h) as a beneficiary of an inadvertent submission of a false or fraudulent claim
14 to the governmental entity, subsequently discovers the falsity of the claim or that the
15 claim is fraudulent and fails to disclose the false or fraudulent claim to the
16 governmental entity within a reasonable time after discovery of the false or
17 fraudulent claim.
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5 Wherefore Complainants respectfully ask the Commission to take administrative
6 notice of the items mentioned in paragraphs 1(a through c), 2 (a), 3(a through d), above.

7 Further, all participants are put on notice that at the appropriate time during the hearing,
8 Complainants will orally move the Commission to take administrative notice of matters stricken
9 from the following page in the testimony of Bruce Simon, namely:

10 Page 6:

