

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.

DOCKET NO. D2010.2.14

NORTHWESTERN ENERGY,

Defendant.

4  
5 AMENDED PRE-FILED WRITTEN DIRECT TESTIMONY OF COMPLAINANTS'  
6 WITNESS, LEO G. BARSANTI  
7 Pre-filed March 27, 1915

8 Q. Please raise your right hand. Do you solemnly swear or affirm that the written  
9 testimony below and any written or oral testimony or responses to data requests following it  
10 will be the truth the whole truth and nothing but the truth, so help you God?

11 A. I do.

12 Attorney: You will be under oath during this entire proceeding.

13 [Proof of Complaint ¶¶ 8 – 10.]

14 Q. Please state your name and address.

15 A. I am Leo G. Barsanti. I live with my wife, Jeanne R. Barsanti at 3316 Pipestone Dr.,  
16 Billings, Montana 59102.

17 Q. Are you and Jeanne complainants in this proceeding?

18 A. Yes.

19 Q. Please tell us about your education and occupations?

20 A. I graduated from high school in Havre, Montana, and have a Bachelor's degree from  
21 Northern Montana College. I have a double major in History & Economics as well as English. I

1 was a teacher for a few years and then worked for the Burlington Northern RR. I entered  
2 business in the early 1990's manufacturing a line of firearms maintenance products. I sold that  
3 business and retired in 2005.

4 **Q. Please tell us about your wife's education and occupation?**

5 A. Jeanne graduated from Billings West high and has a Bachelor's degree from Eastern  
6 Montana College with a BS-BA in accounting. She was employed by CENEX as an oil and gas  
7 accountant.

8 **Q. Do you own the property where you live and pay property taxes on that property?**

9 A. Yes, we own the property at 3316 Pipestone Dr. and pay taxes on that property.

10 **Q. Who supplies you with electricity?**

11 A. NorthWestern Energy has admitted that it provides electric service at our address.

12 This confirms Complaint ¶ 9 & the admission is found in C-004-RFA 4.

13 **Q. Do you live in a Special Improvement Lighting & Maintenance District, sometimes  
14 known as a SILMD?**

15 A. Yes, NorthWestern admits (Complaint ¶ 10) that it is SILMD # 228, also known as the  
16 Parkland West Subdivision.

17 **Q. As a property owner in in SILMD 228 did you at some time have questions  
18 concerning the charges you incurred in your lighting district?**

19 A. Yes. After we had lived in our subdivision Parkland West and within SILMD 228 for  
20 over 17 years we began to question why the amounts we were being charged for street lighting  
21 remained so high.

22 **Q. What did you do about your concerns?**

1           A. Since the only figures we ever received for street lighting were the charges that  
2 appeared once a year on our property tax bill, I went to the City of Billings and asked to see the  
3 tariff for our particular lighting district. We eventually were provided a copy of the bill-

4           **Q. What did you discover when you received a copy?**

5           A. There were several different charges for services on the bill. Four charges dealt with  
6 electricity, its cost and transportation. One charge was for operation costs and another was for  
7 maintenance of the system. Most of these charges were reasonably minor. However, one fee,  
8 the monthly Ownership Fee, I quickly deduced amounted to over 80% of the total bill. Frankly,  
9 we were somewhat shocked!

10          **Q. What did you do after analyzing the tariff?**

11          A. I started to do some research in regard to my particular light district, SILMD 228.

12          **Q. What sort of research?**

13          A. First of all, since the ownership fee was 80% of my bill I wanted to know exactly what  
14 the ownership fee was for and how long we had been paying it.

15          **Q. What were you able to discover?**

16          A. I found that our light district SILMD 228 had been put into service in 1984. We asked  
17 NorthWestern to admit that the original contract date was 3/12/1984 and that is admitted in its  
18 May 2, 2014, updated response to C-041. From data available through the City of Billings, I tried  
19 to ascertain the cost of the original lighting infrastructure but was only able to garner rough  
20 approximations of the cost of the lights that had been installed. However, we took those figures  
21 and came up with an initial estimate.

1           **Q. Have you also been able to get original cost figures for street lights in SILMD # 228**  
2 **from NorthWestern?**

3           A. No. NorthWestern admitted on May 2, 2014, in its updated response to C-041,  
4 footnote C, that “The average cost of each light cannot be determined from utility electronic  
5 billing system nor from paper files.” NorthWestern gave that same answer admitting it does not  
6 know the original cost of street lights in 99 Billings SILMDs on our exhibits (including the two  
7 lighting districts where Grubas pay for NorthWestern-owned street lights). NorthWestern said it  
8 knew the original cost in only three SILMDs and could estimate the cost in five SILMDs.

9           **Q. How did you estimate the original cost of the street lights in SILMD # 228?**

10          A. By looking at NorthWestern’s tariff you can tell which Ownership Charge Range  
11 SILMD # 228 is being billed in. Based on the bill, that would be the \$1,400 to \$1599 average cost  
12 of lighting range or Unmetered Rate Code (listed on page 9 of updated C-041) of LP007. Then if  
13 you multiply \$1,599 by the 29 lights in our district, you get the absolute maximum the lights  
14 would have cost.

15          **Q. What did you do with your estimated figures for SILMD # 228?**

16          A. We were just curious to see how long it took to pay off the infrastructure cost; that is  
17 the cost of the street lights in SILMD 228. We took the monthly ownership fee per light and  
18 multiplied it times the 29 lights in our district. We then divided that into our approximation of  
19 dollar infrastructure cost to see how many year it would be before the ownership charge  
20 equaled the maximum from the average cost range for our 29 lights. However, we certainly  
21 realized that there was more involved than that simple mathematical division. We knew that

1 there would be utility rates of return involved in any computation and probably rate base  
2 issues.

3 **Q. Have you read Order No. 7084i?**

4 **A. Yes. I have read NorthWestern's motions to strike as well, and your opposition to**  
5 **the motion to strike.**

6 **Q. What did you read in Order No. 7084i?**

7 A. Well, in Order No. 7084i, ¶ 16, the Hearing Examiner found that NorthWestern said  
8 my testimony "is replete with irrelevant testimony, hearsay, ... and opinion testimony filed by  
9 non-expert witnesses." And in paragraph 27 of that order, it is found that NorthWestern argued  
10 (without identifying which portions) that some of my testimony should be stricken because I'm  
11 not an expert but that I've nonetheless provided an opinion on matters such as ratemaking, and  
12 loan amortization.

13 **Q, What were you required to do about it?**

14 A. Order paragraph 39(d) then required us to refile testimony that did not "contain  
15 statements by lay witnesses offering expert witness testimony."

16 **Q. When you read the Order, did you agree with the statement that you are not an**  
17 **expert on public utility ratemaking?**

18 A. Certainly, I said so at page 28, line 8 of my March 21, 2014, pre-filed direct testimony.  
19 However, that should not prevent me from testifying about what I know if I've done sufficient  
20 research to verify what I've observed. Nor should it prevent me from telling the reasons why I  
21 brought this petition. If those reasons are faulty, then let the "experts" call them into question.

1           **Q. What did Order 7084i say would be required to show you have sufficiently**  
2 **demonstrated that your factual observations are acceptable?**

3           A In the words of the Hearing Examiner (§ 28), my opinions or inferences must be  
4 “rationally based on the perception of the witness and helpful to a clear understanding of the  
5 witness’ testimony or the determination of a fact issue.”

6           **Q. Did you read what the Hearing Examiner said in Order No. 7084i about how lay**  
7 **witnesses did not have to provide scientific economic analysis because experts would provide**  
8 **it?**

9           A. Yes. In paragraph 35 she said the Commission will undergo scientific economic  
10 analysis “as necessary” as part of its investigation. Well what if they do not think analysis is  
11 necessary? We have been waiting for over four years for them to undertake an investigation on  
12 the Commission’s own motion and nothing has happened.

13           Even now, the Hearing Examiner has limited the case to problems in three SILMDs when  
14 we have demonstrated overcharges in more than 100 Billings SILMDs. How come no scientific  
15 analysis was done by so-called experts on those districts before the case was limited to three  
16 SILMDs? This case is about how for years the “experts” at the utility pulled the wool over the  
17 eyes of the “experts” for the Consumer Council and Public Utilities Commission. If my  
18 observations about what should have happened are incorrect, then let the experts challenge  
19 them on the record.

20           **Q. What do you believe would happen to your case if you took your observations and**  
21 **inferences out of the record without a proper specific objection being made about them?**

1           A. It simply is not fair for the Hearing Examiner to ask me to take those observations out  
2 of the record voluntarily before the Commission has even had a look at them, and thereby open  
3 our case up to yet another motion by NorthWestern to dismiss, this time based on an allegation  
4 that we have failed to demonstrate a case. If such a motion were made and granted, then  
5 conceivably we would never get to the stage where Commission experts would provide  
6 scientific economic analysis.

7           **Q. What have I told you about what may be necessary for you to prevent your**  
8 **testimony from being stricken if a specific motion is made to do that?**

9           A. You've said I have to lay a foundation for it by describing how I came to know what  
10 I'm saying. I'm an economics major with years of successful experience in investing and my wife  
11 is an accountant with years of background. And we are both well familiar with amortization and  
12 depreciation. Those principles that we are familiar with in the loan context also apply in  
13 ratemaking--you can see it in literature.

14           **Q. So, let's lay some additional foundation on how you approached your investigation**  
15 **of what you were being charged for street lighting. After you realized that there was more**  
16 **involved in determining how long it would take to pay off the cost of your street lights than**  
17 **the first calculation you did, what did you do next?**

18           A. We were only vaguely familiar with utility rate bases and rates of return. That  
19 included general background gained over the years by reading about public utility rate raises in  
20 the news. Subsequently, we did a little research to broaden our knowledge.

21           **Q. What research did you do?**

1           A. I read some Montana law on public utilities, specifically Montana Statutes, Section  
2 69-3-109. Prior to that, we assumed that the value of street lights from our lighting district had  
3 been placed into the utility's rate base. So, I wanted to find out whether that was the  
4 procedure.

5           **Q. What understanding of "utility rate base" did your research lead you to?**

6           A. The rate base is the value of property on which a public utility is permitted to earn a  
7 specified rate of return in accordance with rules set by a regulatory agency. In our case that  
8 would be the Montana Public Service Commission. A utility's rate base consists of the value of  
9 property used by the utility for providing service. That rate base can be calculated different  
10 ways for accounting purposes. According to my wife, most accountants use the original cost of  
11 something for accounting.

12           **Q. Were you able to determine what rate base is used in Montana?**

13           A. Yes. I said I read Montana law, one section of which is MCA § 69-3-109, which  
14 requires valuation of utility property that "may not exceed the original cost of the property."  
15 The use of original cost less depreciation to evaluate the value of lighting plant is also  
16 confirmed by NorthWestern's admission (C-025, RFA 25) to the wording the Commission used  
17 in Order 5484n at § 538, namely: "... the Commission also requests MPC to analyze and testify  
18 on the merits of selling its company-owned street lighting plant to customers (e.g., cities) at  
19 original cost less depreciation."

20           **Q. After reading Order 7084i, did you do additional research into rate bases?**

21           A. Yes, more recently I've read the testimony of John W. Wilson, the Consumer Counsel  
22 witness in PSC Docket No. 2008-6-69. It confirmed our impression about original cost and

1 depreciation. I learned that Dr. Wilson has participated in Montana rate cases as a witness for  
2 the PSC or Consumer Council since 1975 and presumably knows as much about ratemaking  
3 here as anybody. In his testimony, Dr. Wilson notes how the Federal Energy Regulatory  
4 Commission (FERC) has in the past issued orders requiring NorthWestern to record certain  
5 facilities at “original cost less depreciation.” That is precisely what we are seeking here. Dr.  
6 Wilson recalled (p. 35):

7           Reliance on original cost ratemaking began many decades ago because  
8           utilities were engaging in multiple asset transfers for the sole purpose of increasing  
9           their plant investment rate base and, thus, increasing their rates.

10  
11           I’ve also read the testimony of our witness Tom Towe before filing my testimony. Tom  
12 discusses in greater detail how increasing of plant investment by fictitious write-ups happened  
13 in Montana leading to legislation he authored. Here NorthWestern has used a different method  
14 of increasing plant investment simply by not writing it down as tariff revenues paid for it.

15           So, my wife’s original impression about the use of original cost appears to be applicable  
16 to public utility rate bases. We didn’t need to be experts to figure that out.

17           **Q. You mentioned that you understood there was more involved in seeing when the**  
18 **original cost was paid for by what has been billed than the simple calculation you did initially.**  
19 **What else have you since considered?**

20           A. Rate of return. We discovered that the PSC had allowed various rates of return over  
21 the years, ranging from as high as 11.65% to as low as 7.92%. Subsequently, we redid our math  
22 equations including those utility rates of return. That certainly lengthened the time it took to  
23 pay off the light district infrastructure cost, but in no way accounted for the number of years

1 that our district had been paying them. I'll talk more about how we used rate of return later in  
2 my testimony.

3 **[Proof of Complaint ¶¶ 45 – 48, 50]**

4 **Q. As property owners, and because your wife is an accountant, are you both familiar**  
5 **with depreciation schedules, sometimes called amortization schedules?**

6 A. Yes.

7 **Q. What is your understanding of how a depreciation schedule works?**

8 A. Well, as I'm sure the members of this Commission and any individual that has ever  
9 purchased a home understands, to purchase property most individuals, must first obtain a  
10 mortgage. A mortgage or a loan, or a bond used to finance a project is simply a legal agreement  
11 whereby you borrow money, usually from a financial institution, to purchase property. Most  
12 mortgages are multi-year agreements. They are set up with a depreciation, or amortization  
13 schedule which governs how much principle, along with interest is paid each month so as to  
14 completely amortize the loan, or to pay it off, over a period of years.

15 **Q. When the loan is completely paid for do you have to pay more to amortize the**  
16 **loan?**

17 A. No. You own the property free and clear because the loan has been completely  
18 amortized or paid back.

19 **Q. Did you apply your understanding of loan amortization and depreciation schedules**  
20 **to what you are paying for street lights?**

21 A. Yes, I did.

1           **Q. Did you also determine how long it would take to amortize a loan equaling the**  
2 **lowest numbers in the cost range categories of NorthWestern’s ELDS-1 tariff?**

3           A. Yes. I also calculated how long it would take to amortize a loan equaling the highest  
4 numbers in the cost range categories of NorthWestern’s ELDS-1 tariff.

5           **Q. What rates of return did you use in your calculations?**

6           A. 11.65% and 9.09%. I calculated both rates of return allowed NW Energy at different  
7 times by the PSC to give a comparison of how the rates of return affected the time it took to  
8 amortize a loan.

9           **Q. What formula did you use in your calculation?**

10          A. The formula was the one that the Excel spreadsheet uses to calculate amortization. It  
11 is NPER ((rate%/12,-payment, principle value, future value (of 0))/12). It returns the number of  
12 periods for payoff of an investment or loan based on periodic, constant payments and a  
13 constant interest rate.

14          **Q. I am showing you what has been marked as Complainants’ Exhibit 2. Do you**  
15 **recognize that exhibit?**

16          A. Yes, It is the amortization table that we have been talking about.

17          **Q. How do you know the figures in Columns A, B, and C are correct?**

18          A. On January 27, 2014, we asked NorthWestern to admit that Complainants’ Exhibit 2  
19 calculations are correct. (C-016, RFA 16 through C-022, RFA 22) NorthWestern admitted the  
20 cost ranges of columns A & B and corrected one cell in column D (which we have also  
21 corrected). The correction does not affect our Billings calculations. [See C-016, RFA 16]

22          **Q. Did NorthWestern admit the correctness of the other figures in Exhibit 2?**

1           A. No. NorthWestern declined to verify or dispute the accuracy of the amortization  
2 calculations in Complainants' Exhibit 2. Instead NWE objected to the calculations as irrelevant  
3 claiming the docket as limited does not have anything to do with a loan or amortization of a  
4 loan. [See C-017, RFA 17 through C-022, RFA 22].

5           **Q. What is your response to NorthWestern's contention that a loan or amortization of  
6 a loan does not have anything to do with this docket as it has been limited?**

7           A. NorthWestern's attempt to confuse matters is not convincing. The utility has not  
8 shown that it financed the building of utility -owned street lights from internally generated  
9 capital. It is likely that to the extent consumers did not front the money to install street lights.  
10 That money likely came from either bond proceeds, a bank loan, or issuance of stock. While  
11 NorthWestern does not condescend to call that a "loan," the economic and accounting  
12 principles involved in recovering the initial amount used to finance a project are identical. That  
13 is, whatever rate covers repayment for the initial amount paid to install lights plus allowed rate  
14 of return would not be different from a payment to cover principle and interest on a loan.

15           **Q. What was your understanding of how a rate base would be amortized?**

16           A. One would depreciate a properly constructed rate base with proper amortization  
17 rates. We have used the rates most favorable to NWE in constructing our claim that NWE is  
18 overcharging. NWE also refused to construct for the ranges it admitted were correct on the  
19 ELDS-1 tariff, its own amortization table. [See C-038, I 11] Such a table would indicate when  
20 the amounts collected by the tariff would completely cover the cost of the street lights assigned  
21 to a range of revenue collection in the tariff plus the allowed rate of return.

1            Since NorthWestern refuses to admit the accuracy of our Column E, F, G, and H  
2 calculations or to dispute the accuracy of the calculations, or to construct its own amortization  
3 table/depreciation schedule based on its Ownership Charge Ranges, the factual mathematical  
4 calculations in Exhibit2 must be presumed to be correct.

5                            **RELATING THE OWNERSHIP CHARGE TO THE OVERCHARGE ISSUE**

6            **Q. A moment ago you mentioned the formula you used to arrive at the figures on**  
7 **Complainants' Exhibit 2. Please give an example of the formula.**

8            A. An example of the formula used for the bottom of the Ownership Charge range in Column A  
9 row 1 would be =NPER (11.65%/12,-\$D1,\$A1,0)/12. This formula and other examples of the  
10 formulas I used may be found in lines four and five of Complainants' Exhibit 2. The rate is  
11 divided by 12 because we are using monthly payment period since the ownership charge is paid  
12 once a month. Column D is the monthly payment expressed as a minus because that amount in  
13 principle and interest is subtracted from the amount to be amortized, which is in column A. The  
14 \$ signs in the calculation keep the column following the dollar sign the same when the formula  
15 is copied down the column to different rows. As the formula moves from row to row, the  
16 number following the column changes so the result is correct as the amount to be amortized  
17 and its corresponding payment increases. The final zero in the formula keys Excel that the  
18 payment is made at the end of the month rather than at the beginning. The final division by 12  
19 converts the monthly result from the first part of the formula to years.

20

COMPLAINANTS' EXHIBIT 2 (Barsanti & C-016, RFA 16 through C-022, RFA 22)

NUMBER OF YEARS NEEDED TO AMORTIZE A LOAN OF THE AMOUNTS AT EACH END OF THE OWNERSHIP CHARGE RANGES

Excel Amortization Formula Used:

(for Col. E, row 1) =NPER(11.65%/12,-\$D1,\$A1,0)/12; (for Col. F, row 3) =NPER(11.65%/12,-\$D3,\$B3,0)/12\*

(for Col. G, row 1) =NPER(9.09%/12,-\$D1,\$A1,0)/12; (for Col. H, row 1) =NPER(9.09%/12,-\$D1,\$B1,0)/12

	A	B	C	D	E	F	G	H
	Ownership Charge Cost Range		Modified Top*	June 2009 Tariff Unit Rate Per Month	Number of years to amortize a loan of the amount in the (bottom of range) row indicated, Col. A, at 11.65% Rate of Return if the monthly Ownership Charge in Col. D was made as payment	Number of years to amortize a loan of the amount in (top of range) rows 1 & 2, Col. C and rows 3 - 14, Col. B, at 11.65% Rate of Return if the monthly Ownership Charge in Col. D was made as payment	Number of years to amortize a loan of the amount in the (bottom of range) row indicated, Col. A, at 9.09% Rate of Return if the monthly Ownership Charge in Col. D was made as payment	Number of years to amortize a loan of the amount in the (top of range) row indicated, Col. B, at 9.09% Rate of Return if the monthly Ownership Charge in Col. D was made as payment
	Bottom	Top						
1	\$ 200	\$ 399	\$ 270	\$ 2.70	10.95	30.49	9.09	33.98
2	\$ 400	\$ 599	\$ 594	\$ 5.77	9.64	32.13	8.22	17.05
3	\$ 600	\$ 799		\$ 8.97	9.04	17.26	7.80	12.40
4	\$ 800	\$ 999		\$ 10.77	11.01	19.91	9.13	13.39
5	\$ 1,000	\$ 1,199		\$ 12.95	11.95	19.76	9.71	13.34
6	\$ 1,200	\$ 1,399		\$ 15.72	11.66	17.21	9.53	12.38
7	\$ 1,400	\$ 1,599		\$ 19.17	10.65	14.31	8.90	11.03
8	\$ 1,600	\$ 1,799		\$ 21.58	10.97	14.29	9.11	11.02
9	\$ 1,800	\$ 1,999		\$ 24.32	10.93	13.80	9.08	10.76
10	\$ 2,000	\$ 2,199		\$ 26.04	11.81	14.78	9.63	11.27
11	\$ 2,200	\$ 2,399		\$ 28.53	12.09	14.89	9.80	11.33
12	\$ 2,400	\$ 2,599		\$ 30.99	12.02	14.52	9.76	11.14
13	\$ 2,600	\$ 2,799		\$ 33.47	12.10	14.41	9.80	11.08
14	\$ 2,800	\$ 2,999		\$ 35.97	12.16	14.30	9.84	11.03

\* The top of range does not amortize at the monthly rate specified in the first two rows, so the top range was lowered to the amounts in Col. C for the Column F calculation in rows 1 & 2 and to \$340 for the Col. H calculation in row 1. Average original costs below the original or modified tops will amortize in fewer years than shown. The amortization formula for Col. F, row 1 =NPER(11.65%/12,-\$D1,\$C1,0)/12

1           **Q. Please explain Columns A, B and D in Complainants' Exhibit 2.**

2           A. Column A contains the bottom end of each NorthWestern ELDS-1 Ownership Charge  
3 Range. Column B contains the top end of each range. So the range at which an Ownership  
4 Charge, shown in Column D would be applied would be if the average cost of lights were  
5 between the dollar-amounts shown in the same row as the Column D Ownership charge. For  
6 example, in row 3, street lights costing between \$600 (Col. A) and \$799 (Col. B) would have  
7 been assessed an ownership charge of \$8.97 (Col. D) each month under the 2009 ELDS-1 tariff.

8           **Q. Please explain what the numbers in row 3, columns E and F represent?**

9           A. They are the number of years to pay off a loan of the principle amounts in columns A  
10 and B to zero or to amortize a rate base equal to the amount in columns A and B to zero. That  
11 is, it will take 9.04 years (Col. E, row 3) to completely amortize a loan or rate base of \$600 (Col.  
12 A, row 3) if the interest rate is a constant 11.65% and the monthly payment is a constant \$8.97  
13 (Col. D, row 3). And at the top of the range, it will take 17.26 years (Col. F, row 3) to completely  
14 amortize a loan or rate base of \$799 (Col. B, row 3) if the interest rate is a constant 11.65% and  
15 the monthly payment is a constant \$8.97 (Col. D, row 3). I have bolded Column F.

16           **Q. Your table uses an interest rate of 9.09%. Why not use the lowers interest rate of**  
17 **7.92%?**

18           A. The 7.92% rate did not go into effect until July 8, 2011. Most of the utility owned  
19 street lights in Billings were installed before then.

20           **Q. What if the allowed interest rate is 9.09%?**

1           A. Then the \$600 loan or rate base (Col. A, row 3) would be paid off in 7.8 years (Col. G,  
2 row 3) and the \$799 loan or rate base (Col. B, row 3) would be amortized in 12.4 years (Col. H,  
3 row 3) when the monthly payment is a constant \$8.97 and the interest rate is 9.09%.

4           **Q. Why is it important to know the average original cost of street lights in a SILMD?**

5           A. You can see from Complainants' Exhibit 2 that if the average original cost was \$600,  
6 the light's cost would be fully amortized at the most in 9.04 years. While if the original cost was  
7 \$799, the lights would be fully amortized at the most in 17.26 years.

8           If the allowed rate of return varied and dropped below 11.65% as has been the case for  
9 Montana Power and NorthWestern, the amortization period would obviously be much  
10 shorter—in my example more than 8 years shorter.

11          **Q. Why is it important to know when street lights are first put into service?**

12          A. It is important because that service date is more than likely the date when the  
13 ownership charge begins. One can then count from that service start date in order to determine  
14 when the lights have been completely amortized.

15          **Q. Why is it important to know when the street lights have been completely**  
16 **amortized?**

17          A. I think it is extremely important because it goes directly to the heart of this case.  
18 When the original cost of the lighting infrastructure within any particular SILMD has been  
19 totally and completely amortized or paid off then that cost amount should be expunged from  
20 the utility's rate base. Customers in that SILMD would then stop paying to amortize the rate  
21 base for their lighting district because it would have been amortized.

1           Removing that cost also would then lower the value remaining in the overall rate base  
2 that the utility keeps for its street lighting customer class. If that cost is not purged from the  
3 base, then the utility is continuing to earn a rate of return on a phantom SILMD rate base.  
4 Obviously, when the utility's investment in any SILMD has been paid off, but is still allowed to  
5 remain within the overall rate base one can only conclude that the rate base itself is being  
6 inflated. That rate base does not then accurately reflect the diminution or reduction in value  
7 produced when a component SILMD of that overall rate base has been fully amortized.

8           **[Proof of Complaint ¶¶ 52 & 53]**

9           **Q. At the point when amortization is complete for a SILMD, why would the rate base**  
10 **no longer exist for that SILMD?**

11           A. It would not exist because the amortization has been completed. The ratepayers  
12 within that light district have then totally repaid the utility and its investors for their investment  
13 (or bank loan) which was the cost of the original lighting infrastructure. In addition, the utility  
14 also garnered a very generous, guaranteed, allowed rate of return from those ratepayers as  
15 well. You will note that in my answer I state that the rate base within any SILMD that has been  
16 fully amortized should drop to zero. However, there will still be unamortized value left in the  
17 overall rate base for street lights because newer lighting districts will not as yet have fully  
18 amortized their infrastructure costs.

19           Currently, rate payers within SILMD's that have already amortized their lighting  
20 infrastructure are continuing to be charged ownership fees long after the rate base in their  
21 particular SILMD has been fully amortized. Subsequently, the present overall lighting rate base

1 does not accurately reflect the reduction in value produced by these fully amortized districts. It  
2 is hugely inflated.

3 **Q. In addition to your view that the overall street lighting rate base should be reduced**  
4 **to reflect the fact that the original cost of the lights for that portion of the rate base has been**  
5 **fully recovered along with a reasonable return on investment by the utility, do you know of**  
6 **any other explanation of that view?**

7 A. Yes.

8 **Q. Who expressed the view you are referring to?**

9 A. Former PSC Attorney Jim Paine.

10 **Q. When was Mr. Paine's view expressed?**

11 A. He explained his view to the Montana Public Service Commission in a 2/23/2010 PSC  
12 Work Session.

13 **Q. Is it possible for us to have Mr. Paine testify now?**

14 A. No. Unfortunately he died.

15 **Q. How did you find out about Mr. Paine's explanation?**

16 A. I listened to a recording of what Mr. Paine said and read a partial transcript of the  
17 recording.

18 **Q. Where can Mr. Paine's statement be found?**

19 A. It is an official public record which is online at the PSC web site.

20 **Q. Do you have a copy of Mr. Paine's statement?**

21 A. Yes. It was copied from the online transcript.

22 **Q. How do you know the transcript is correct?**

1 A. I listened to the recording of Mr. Paine’s explanation and compared it to what I saw on  
2 the transcript to make sure the transcript was correct.

3 **Q. What does the transcript show?**

4 A. It demonstrates Mr. Paine’s state of mind on the issue of rate base depreciation on the  
5 date he voiced a legal opinion to the Montana Public Service Commission.

6 **Q. Please read the partial transcript of Mr. Paine’s explanation that you believe to**  
7 **be like yours into the record.**

8 **A. PSC Attorney Jim Paine:** Mr. Chairman and Commissioner Molnar basically the  
9 assertion or allegation in the petition is that once the ownership fee over the years  
10 completely pays for the costs of the infrastructure plus a reasonable return, then the  
11 ownership fee should be eliminated. And only the use, or the energy use, should be  
12 assessed the City and the district.

13 **Commissioner Molnar:** ... I mean wherever this similar scenario sets up, do people say  
14 “It's paid for so you don't get a reasonable rate of return on investment?”

15 ...

16 **PSC Attorney Jim Paine:** Well the rate base concept, if the utility did not invest in its  
17 rate base and just allowed it to completely depreciate, eventually the rates would only  
18 reflect their variable costs. There would be no element in rates for fixed charges. There  
19 would be no rate base. There would be no return of, no depreciation, no return on a rate  
20 base. What is alleged here is that the assets have been paid for and therefore this  
21 ownership charged separately identified in the street lighting tariff should be limited.

22 **Commissioner Molnar:** So it's more like, I'm just trying to get my arm around this  
23 because this has been going on in Billings, going for a long time. It started with Former  
24 Representative Simon. And so what they're saying is that if it's fully depreciated, then  
25 there should be no payment on the original structure if it's a hundred percent depreciated?

26 **PSC Attorney Jim Paine:** Commissioner Molnar, I think that summarizes it pretty well.  
27 Basically what is an investor looking for? He's looking for a return of and a return on his  
28 or her investment. And once that is realized what more do you want?

29

30 **Q. What do you conclude from reading Mr. Paine’s legal opinion to the Commission?**

31 A. My understanding of and testimony about how either a loan or rate base is or should  
32 be depreciated appears to be correct.

33 **[Proof of Complaint ¶¶ 123 – 124, 127]**

34 **NORTHWESTERRN’S CONTINUING STREET LIGHTING OVERCHARGE**

1 **Q.-You just mentioned that you paid property taxes on 3316 Pipestone Dr. Is the**  
2 **information on the taxes you pay available as a public record?**

3 A. Yes. As we pled in ¶ 123 of our Petition, the last 10 years of that public record are  
4 available online at:  
5 <http://www.co.yellowstone.mt.gov/gis/csaprop.asp?propid=217325> . Once at that web site, for  
6 example, if one clicks 2009 for that year, it will lead to the following URL:

7 <http://www.co.yellowstone.mt.gov/gis/csatydet.asp?propid=A25059&lyear=2009> .

8 **Q. Did NorthWestern acknowledge the truth of Complaint ¶ 123 in its answer?**

9 A. No. So it was again asked in C-026 to admit the ¶ 123 allegations or indicate why the  
10 allegations were denied. NWE claims it cannot confirm the accuracy of the material at the link  
11 because of a disclaimer on the County's web site. So, I have had to dig out my property tax bills  
12 where the street lighting assessment appears.

13 **Q. Looking at information in the last URL you cited, please tell us what you paid for**  
14 **street lighting in 2009?**

15 A. As we pled in ¶ 124 of our Petition, in tax year 2009, Jeanne and I were assessed  
16 \$92.64 for street lighting in SILMD # 228. I got that number from the line on our property tax  
17 bill reading "L228 0228 BLGS LIGHT MAINT 46.32 46.32 92.64." It is the total for the tax year to  
18 pay for street lights in Light Maintenance District (SILMD) 228, and is the last number in the  
19 line. NorthWestern refused to acknowledge the truth of ¶ 124 in its answer to our Petition. So  
20 it was again asked in C-027.to admit the ¶ 124 allegations or indicate why the allegations were  
21 denied. This time NWE admitted the \$92.64 figure assessed for 3316 Pipestone was at the web  
22 site but said it could not confirm the accuracy of the information because of the disclaimer at

1 the site. It also said the link did not tell who lived at 3316 Pipestone in 2009. Well we paid the  
2 electric bill to NorthWestern from that address in 2009, so our ownership could have been  
3 proven from NWE's own billing records.

4 **[Proof of Complaint ¶¶ 129]**

5 **Q. Do you know how many street lights owned by NorthWestern Energy there are in**  
6 **SILMD 228 and the type of technology the street lights utilize?**

7 A. NorthWestern has admitted Complaint ¶ 129 indicating that there are 29, 100 watt  
8 cobra head high pressure sodium street lights in Billings SILMD # 228, all owned by  
9 NorthWestern Energy.

10 **[Proof of Complaint ¶¶ A, 25, 41 – 44, 95, 96, 130, 136 - 138, 140, 165, 168 & 169]**

11 **Q. When were the street lights in your SILMD installed?**

12 A. NorthWestern has admitted Complaint ¶ 130 indicating that the SILMD # 228  
13 contract between Billings and NorthWestern was executed on March 12, 1984. NorthWestern  
14 did not reveal when billing for those lights began (C-041, I 14). So, I assumed they were installed  
15 within 5 months after that date and treated the bill as having started five months after the  
16 contract.

17 **Q. What was the total original material and installation cost of the 29 SILMD # 228**  
18 **street lights when they were installed in 1984?**

19 A. NorthWestern placed the lights in the rate cost category of costs ranging between  
20 \$1400 and \$1599 per luminaire. Assuming NorthWestern's placement was correct, the cost  
21 could have been anywhere in that range.

1           **Q. In June of 2009, what was the total monthly ownership charge that NorthWestern**  
2 **was charging the City of Billings for all 29 lights in SILMD # 228?**

3           A. \$555.93. NorthWestern admitted that in its answer to Petition ¶ 140.

4           **Q. Did the ownership charge reflect the cost of energy, billing charge, maintenance**  
5 **fee, or the other components of the street lighting bill?**

6           A. NorthWestern has admitted that those charges are “in addition” to the ownership  
7 charge. [See C-012, RFA 12] NorthWestern also relates that “In addition to the material costs,  
8 the labor, contract, and overhead associated with installing these materials [i.e., the base to  
9 which the pole holding the luminaire is attached, the pole, mast-arm, luminaire and wiring from  
10 the utility's distribution system to the luminaire which are included in the street light rate base]  
11 is also capitalized and included in FERC plant account 373.1, Street Lighting.” [Bracketed  
12 material added from the C-032 I5 discovery request eliciting this answer] To avoid the confusing  
13 nuances of utility ratemaking that make it so difficult for anyone to understand what is  
14 happening, I’m simply contending that the ownership charge is levied solely for the purpose of  
15 paying for the utility street light infrastructure. I base that assertion to some extent on  
16 NorthWestern’s admission of Petition paragraphs 34 and 35; but primarily on the fact that no  
17 ownership charge is assessed to the City of Billings on lighting infrastructure that it has installed  
18 and it owns. Yet, as Mr. Towe’s testimony sets out in greater detail, the other most significant  
19 tariffed charges levied by NorthWestern are assessed on both city-owned and utility-owned  
20 lights. Therefore, one must conclude that the ownership charge is assessed only to recover the  
21 original cost of the street lights plus an allowed rate of return. In C-034, I 7, we asked  
22 NorthWestern to clarify its admission to Petition Paragraphs 34 & 35. However, NWE objected

1 to this discovery and the Commission said NWE did not have to answer the question at this  
2 time, but that we could ask the question later.

3 NorthWestern denied Petition paragraph 30 and only admitted part of paragraph 33,  
4 relating to this assertion, apparently because it's ELDS-1 tariff cross-referenced some other  
5 tariffs containing the charges for other components of the charge for street light services rather  
6 than those components being listed in the tariff other than by cross-reference. Apparently our  
7 allegations did not reveal that distinction as artfully as they might have, given the complicated  
8 nature of the tariff cross-references. To clarify, we asked NorthWestern to admit that it bills for  
9 separate components of its cost of providing street light service either as a charge contained in  
10 ELDS-1, or as a charge contained in another tariff referenced in ELDS-1. NorthWestern admitted  
11 C-012, RFA 12 but was unable to admit C-011, RFA 11 because it did not know whether we were  
12 referring to petitioners (whom it claims are not customers) or to the City (whom it claims is a  
13 customer). Either way, the question could have been answered assuming Jeanne and I wanted  
14 a yard light covered under the ELDS-1 tariff. This quibbling by claiming it doesn't know what is  
15 meant by the word "customer" is further indication of how this large utility refuses to play fair  
16 with us. Fact is, as we pled if NWE provides a customer a light it levies an ownership charge,  
17 regardless of whether that customer is the city or Jeanne and me. If NorthWestern believes the  
18 ownership charge is levied for any other purpose than to defray the original cost of  
19 infrastructure in FERC Plant Account 373.1 plus an allowed rate of return, then it can enlighten  
20 us through its testimony.

21 **Q. Is there anything else that leads you to believe the ownership charge is meant to**  
22 **cover the original cost of the street lights?**

1           A. Yes. The way NorthWestern assigns street lights to its tariff is an indicator of what  
2 range of values the original cost of the lights fall in. For example On pages 8 (Column W) of  
3 NorthWestern's C-041, I 14 updated May 2, 2014 response to discovery, NorthWestern lists the  
4 total original cost (\$103,525) and average original cost (\$2,113/unit) for 50 street lights in  
5 SILMD 301 (Josephine Crossing. In Column AA, we see the NorthWestern has placed the lights  
6 in ELDS-1 tariff category LP010 and levied an ownership charge of \$26.64. On page 9, we see  
7 that LPO10 is the category for lights in the cost range of 2,000 to 2,199. He average original cost  
8 of lights in Billings SILMD 301 falls slightly above the midpoint of the 2,000 to 2,199 range. So it  
9 is reasonable to conclude that if NorthWestern is placing street lights is the proper Unmetered  
10 Rate Code, we can know what the original cost of the lights was within a range of \$200 per  
11 light.

12           **Q. In 2009, what would the monthly ownership charge be per luminaire?**

13           A. Dividing \$555.93 total ownership charge by 29 lights would give you \$19.17 a month  
14 per light. NorthWestern admitted that was the ownership charge per luminaire in June of 2009  
15 (C-056, RFA 35) Incidentally that is the amount of the ownership charge in 2009 associated with  
16 the \$1400 to \$1599 range of average original cost of the lights.

17           **Q. What did complaint ¶s 168 & 169 allege was the bill for an individual light in SILMD**  
18 **228?**

19           A. \$20.17. The complaint was incorrect and should be amended to conform to my  
20 evidence.

21           **Q. What has been the rate of return allowed on the average original cost rate base**  
22 **since the SILMD # 228 lights were first contracted for?**

1           A. To the best of my knowledge our original information showed the rate of return  
2 allowed has varied from 9.09% to 11.65%. NorthWestern supplied an answer to C-037 I 10  
3 indicating allowed rate of return as low as 7.80%. NorthWestern has admitted (Complaint ¶ 44)  
4 that the maximum allowed rate of return on its cost of capital has never exceeded 11.65% and  
5 confirmed that in response to C-014 RFA 14. Therefore 11.65% is the rate we used in  
6 determining the amortization tables for various SILMDs including # 228 where I live. In the  
7 future, we would like to calculate the amortization/depreciation tables using the varying rates  
8 of return coupled with the changes in ownership charges.

9           **Q. You said the allowed rates of return have varied. Is that data publically available?**

10           A. Yes, it is available on the Montana Public Service Commission website from orders  
11 the PSC has issued. Our initial analysis looked at orders from 9/23/1970 and 7/30/1984. Rates of  
12 return from those orders were set forth in complaint ¶¶ 41, 42 & 43. In a separate written  
13 motion, we have asked the Commission to take administrative notice of those authorized rates  
14 of return.

15           **Q. You've indicated the highest allowed rate of return the PSC approved on the overall**  
16 **cost of capital. Please tell us again what that was and whether NorthWestern agrees with**  
17 **your numbers.**

18           A. Complaint ¶ 43 alleged that on 7/30/1984, the Montana Public Service Commission  
19 was allowing NorthWestern's predecessor (Montana Power) to earn an 11.65% on overall cost of  
20 capital. That data comes from PSC Docket # 83.9.67, Order 5051c. NorthWestern admitted that  
21 was correct in C-014 RFA 14]

1 Complaint ¶ 41 alleged that between 9/23/1970 and 7/30/1984, the PSC had never  
2 allowed NorthWestern's predecessor (Montana Power) to earn more than an 11.65% return on  
3 overall cost of capital. NorthWestern admitted that in C-036, I 9.

4 **Q. Were lower rates of return alleged in your complaint?**

5 A. Yes in Complaint ¶ 42.

6 **Q. Please tell us what those allowed rates of return were and indicate the PSC**  
7 **orders they came from and tell whether NorthWestern agree with those numbers.**

8 A. In its response to response to C-013 RFA 13, NorthWestern admitted the numbers in  
9 Complaint ¶ 42(b) through 42(g) were correct. NorthWestern also said the authorize rate of  
10 return number alleged in Complaint ¶ 42(a) should have been 9.50% rather than 9.51% and it  
11 corrected the date of Order 4350d setting the rate of return to 4/24/1978. Complaint ¶ 42(a)  
12 should be amended to reflect NorthWestern's correction.

13 **Q. Have you corrected Complaint ¶ 42 so that NorthWestern should agree to all of**  
14 **the numbers based on its answers to discovery?**

15 A. Yes, the corrected Complaint ¶ 42 should now read:

- 16 a. 9.50% in Docket#6454, Order 4350d {4/24/1978};  
17 b. 10.34% in Docket # 80.4.2, Order 4714a {12/19/1980};  
18 c. 11.39% in Docket # 82.8.54, Order 4938 {10/18/1982};  
19 d. 11.63% in Docket # 82.854, Orders 4938a {date not known} and 4938b {6/30/1983},  
20 and Docket # 83.9.67, Order 5051 {3/21/1984};  
21 e. 10.44% in Docket # 88.6.15, Order 5360d {8/29/1989};  
22 f. 10.24% in Docket # 90.6.39, Order 5484k {7/12/1991}; and  
23 g. 9.09% in Docket # 93.6.24, Order 5709d {4/28/1994}

24  
25 **Q. Did NorthWestern provide the allowed rate of return for all Orders issued after**  
26 **4/28/1994, the date of the last order mentioned in Complaint ¶ 42?**

27 A. Yes, in response to C-037 I 10.

1 **Q. What did NorthWestern’s response indicate?**

2 A. The more recent allowed rates of return have been:

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

3  
4  
5 **Q. Do you draw any conclusions from NorthWestern’s admissions and correction of**  
6 **the discovery on allowed overall rate of return that we have been discussing?**

7 A. Yes, since 1970, the allowed overall rates of return have never been higher than  
8 11.65%, the rate allowed for 61 months beginning in July of 1984, during the era of high interest  
9 rates. Since 1978, the allowed overall rates of return have never been lower than 7.8%. For a  
10 period exceeding the last 20 years (beginning in April of 1994) the allowed overall rate of return  
11 has never exceeded 9.09%.

12 **Q. Assuming the lights in your SILMD # 228 averaged \$1599 per light, and assuming**  
13 **that Montana Power and NorthWestern earned 11.65% on the \$1599, if the ownership**  
14 **charge were \$19.17 a month, using your amortization table (Complainants’ Exhibit 2) how**  
15 **long would it take to pay off those lights?**

16 A. No longer than 14.31 years. You see that in Col. F, row 7.

17 **Q. You used the words “No longer than 14.31 years.” Why?**

18 A. Because we do not know exactly what the original average cost was. We know only  
19 the range of average original cost, \$1400 to \$1599. NorthWestern says that original cost

1 information is not available in its fixed asset accounting system. It searched paper documents  
2 to provide the information, but could not find it. Therefore, if the original cost for a light was  
3 lower than the maximum \$1599 for the range, those lights would have been paid for in less  
4 than 14.31 years. To do the calculation, we used the maximum \$1599 number, so  
5 NorthWestern could not prove that it would have taken longer than 14.31 years to pay for the  
6 lights in SILMD # 228. If the original cost of the lights was in the lower end of the range  
7 (\$1,400), they would have been amortized in 10.65 years (Exhibit 2, row 7, Col. E) using a rate  
8 of return of 11.65%.

9 **Q. Let's clarify. You mentioned using the top end of the tariff range applied to SILMD #**  
10 **228 street lights of \$1599 in your amortization calculation. In terms of the amortization**  
11 **schedule, does it make a difference where within the range the lights are placed?**

12 A. Most definitely! Lights which might have cost \$1400, on the low end of the ownership  
13 charge cost range, would certainly be paid for much sooner than lights costing \$1599, because  
14 under the tariff they both would have been assessed the same ownership charge (which in  
15 2009 was \$19.17 a month per light). Until NorthWestern provides the original per unit cost of  
16 this group of lights and their installation date in SILMD # 228, it will be difficult to estimate the  
17 exact time when the ownership charge paid for the original cost of lights. You have to have all  
18 those numbers to be able to determine the exact date the overcharge began. Since we do not  
19 have those numbers, we made conservative estimates concerning them, giving NorthWestern  
20 the benefit of the doubt.

21 **[Proof of Complaint ¶¶ D, E & P]**

22 **INFORMATION ON LENGTH OF OWNERSHIP CHARGE NEEDED IN STREET LIGHT BILLS.**

1           **Q. Have consumers found it difficult to obtain information on the original cost of their**  
2 **street lights and when the ownership charge would completely cover that cost?**

3           A. You will recall that in his letter of January 9, 2010, Rick Burt, Director – Business  
4 Development & Community Relations for NorthWestern Energy, refused to provide the average  
5 original cost of street lights in a small random sample of 14 SILMDs. (BILLINGS SILMD 8: Account  
6 # 0712544-6; BILLINGS SILMD 97: Account # 0712557-8; BILLINGS SILMD 114: Account #  
7 0712563-6; BILLINGS SILMD 159: Account # 0712602-2; BILLINGS SILMD 191: Account #  
8 0712629-5; BILLINGS SILMD 214: Account # 0712651-9; BILLINGS SILMD 224: Account #  
9 0712658-4; BILLINGS SILMD 253: Account # 0719644-7; BILLINGS SILMD 265: Account #  
10 0721556-9; BILLINGS SILMD 272: Account # 0905005-5; BILLINGS SILMD 277: Account #  
11 1058710-3; BILLINGS SILMD 288: Account # 1303978-9; BILLINGS SILMD 296: Account #  
12 1481537-7; BILLINGS SILMD 301: Account # 1687005-7). Thus, absent cooperation from  
13 NorthWestern, it is hard for us little-guy consumers to sort through whether or not the  
14 methods used by NorthWestern to calculate our street lighting rates comply with the law. That  
15 is why part of the remedy we have pled [in Complaint Paragraphs D, E & P] includes a  
16 requirement that NorthWestern make data available on its bill for each SILMD including:

17           E. Pursuant to MCA § 69-3-301 for an order directing Respondent to provide to a  
18 city or other entities, including but not limited to affected property owners, taking new  
19 street light service involving an ownership charge, the average per unit (street light)  
20 original cost of all facilities involved in calculating the ownership charge, the name of  
21 each item involved in the ownership charge calculation, and an itemized list of all costs  
22 involved in determining the ownership charge.

23  
24           D. Pursuant to MCA § 69-3-301 for an order directing Respondent to include in  
25 its bills to all ELDS-1 customers:  
26           a. The date when the ownership charge shall have fully paid for the facilities it is  
27 being applied to;  
28           b. The date when the ownership charge shall cease;

1 c. The per-lighting-unit original cost of any new LED or other installation that an  
2 ownership charge is being applied to.

3  
4 And,

5  
6 P. For an order directing Northwestern to include a notification to all property  
7 owners in a proposed lighting districts stating when any ownership charges will cease and  
8 clearly stating that the ownership charge will drop out of the rate once the original cost of  
9 the infrastructure plus the allowed rate of return on that original cost has been defrayed  
10

11 **Q. Is there an assumption in your calculation that would tend to increase the 14.31-**  
12 **year time it took to pay off your street lights in SILMD # 228?**

13 A. Perhaps. We also are using the 2009 ownership charge. If recent history is an  
14 indication, it may have increased slightly over some of the years prior to 2009. So, to the extent  
15 that the ownership charge was lower than \$19.17 a month, it would lengthen the payoff rate in  
16 the amortization schedule. However, the ownership charge in 2008 was actually higher than in  
17 2009, so it may be that the use of the 2009 ownership charge figures favored NorthWestern.  
18 Also, remember, as I discussed earlier, since the actual average original cost figure might not  
19 have been at the maximum in the range we used in the calculation, and since the 11.65%  
20 allowed rate of return was not at that maximum rate throughout the time the SILMD # 228 rate  
21 base was in play, I assumed the variation in ownership charge that likely varied during the time  
22 the lights were paid for was balanced by the use of the maximum rate of return and maximum  
23 original cost figures we used in the calculation.

24 In addition as I said above, I added 5 months to the 14.31 year figure when calculating  
25 the date the lights were paid for. That was done to account for the possibility that the contract  
26 date of March 12, 1984, might not have been the date of the first bill, and in order to be doubly

1 sure that NorthWestern was fully compensated with allowed rate of return for its investment in  
2 our street lights.

3 **Q. Let's clarify, in your calculation, how did you adjust the March 12, 1984, original**  
4 **date of the contract between the City of Billings and Montana Power (NorthWestern Energy's**  
5 **predecessor) for street lighting service to SILMDs # 228?**

6 A. It may have taken some time for the lights to be installed after the contract was  
7 signed so since NorthWestern apparently is incapable of providing the first bill date, we built a  
8 five-month cushion into the calculation and assumed that the lights would have been installed  
9 by five months after the contract date.

10 **Q. Taking into account the 14.31 years in your amortization (i.e., depreciation)**  
11 **schedule plus the extra five-months cushion, calculating from the March 12, 1984, date the**  
12 **contract was signed for street lights in SILMD # 228, on what date do you calculate the 29**  
13 **SILMD # 228 lights should have been paid for?**

14 A. No later than December 1, 1998. That is assuming that NorthWestern was allowed to  
15 earn an 11.65% overall rate of return on its investment in **SILMD # 228** lights, the **lights would**  
16 **have been completely paid for with 11.65% interest by December 1, 1998.**

17 **[Proof of Complaint ¶ 169]**

18 **Q. What should have happen to the ownership charge in SILMD # 228 after December**  
19 **1, 1998, once the street lights in that SILMD had been completely paid for?**

20 A. Once the SILMD # 228 lights had been paid for, the ownership charge NorthWestern  
21 (and its predecessor Montana Power) was imposing to defray the cost of the lighting  
22 infrastructure, should have ceased.

1           **Q. Why do you say that?**

2           A. Because I determined that the street lights in our SILMD had been fully amortized,  
3 but we were being charged as if they had not been paid for. When you pay off a mortgage, the  
4 bank can't come around and say, "Oh by the way we want you to continue to make your  
5 mortgage payment for another 16 years after you paid it off!" However, that is exactly what  
6 NorthWestern has been allowed to do for that many years -- charge for street lights as if we  
7 had not paid for them.

8           As attorneys Jim Paine and Tom Towe explained, the rate base concept and Montana  
9 law do not allow a utility to recoup more than the original cost depreciated plus the allowed  
10 rate of return on items it puts in its rate base. Therefore, because the ownership charge did not  
11 cease on December 1, 1998, approximately 16.6 years ago as of March 20, 2015, Jeanne and I  
12 and other taxpayers in SILMD # 228 have been paying vastly inflated amounts for street lighting  
13 service that NorthWestern has supplied to our SILMD.

14           **Q. You just testified about how long the ownership charge has been assessed in SILMD**  
15 **# 228 beyond when the original cost of lights were paid for. What was the length of**  
16 **overcharge alleged in the complaint?**

17           A. Complaint ¶ 169 averred that the overcharge had gone on for 13.8 years. Time has  
18 passed since the Complaint and by March 20, 2015, the overcharge will have existed for 16.6  
19 years.

20           **[Proof of Complaint ¶¶ 118, 139 – 144, 167, 170]**

1           **Q. How much have you and Jeanne been assessed to help pay for SILMD # 228 street**  
2 **lights since December 1, 1998, the date when you calculated that your street lights had been**  
3 **fully paid for?**

4           A. Approximately \$1,296 from December 1, 1998, through December 31, 2014.

5           **Q. Why do you say “approximately \$1,296”?**

6           A. Because I don’t have exact figures for 1999 and 1998, so I used the 2000 figure as an  
7 estimate of the 1999 tax. The 1998 figure is estimated as 1/3 of the 2000 tax because the  
8 overcharge only occurred for the last 4 months in 1998. The SILMD #228 tax for 2000 through  
9 2014 was \$1,234.88 and with the one-third year of estimated tax, the total comes to  
10 approximately \$1,296.26. Also the past overcharge that I calculated would have been higher if  
11 the tax numbers for 2015 had been posted on the County web site by March 20, 2015. Since  
12 they were not, I could not include that in my calculation.

**COMPLAINANTS’ AMENDED EXHIBIT 7 (Barsanti)**  
**(Ownership Charges Assessed to Barsantis After the Original Cost of SILMD # 228**  
**Street Lights had been fully recovered by NorthWestern plus an allowed rate of return**  
**on that investment.)**

A	B	C
	Year	Tax
18	2015	
17	2014	99.26
16	2013	93.58
15	2012	94.54
14	2011	81.68
13	2010	81.68
12	2009	92.64
11	2008	92.64
10	2007	102.1
9	2006	102.1
8	2005	85.08
7	2004	79.4
6	2003	66.18

5	2002	65.02	
4	2001	52.94	
3	2000	46.04	
		<b>\$1,234.88</b>	<b>SUBTOTAL</b>
2	1999	46.04	Estimate
1	1998	\$15.34	1/3 of estimated year
		<b>\$1,296.26</b>	<b>TOTAL</b>

1

2 **Q. Please remind us again, what was the monthly ownership charge in June of 2009**  
3 **for SILMD # 228?**

4 A. \$555.93 for all 29 lights.

5 **Q. What was the total of all charges from NorthWestern in June of 2009 for SILMD #**  
6 **228?**

7 A. Complaint paragraph 167 alleged and NorthWestern admitted (in answer to Data Request C-  
8 055, RFA 34) that the total overall monthly charge to all property owners in SILMD # 228, which  
9 NorthWestern Energy billed Billings for street light service to SILMD # 228, was \$688.81 in June  
10 of 2009.

11 **Q. What percentage was the ownership charge of the total charge for SILMD # 228**  
12 **street lights in June of 2009?**

13 A. The ownership component comprised approximately 80.7% of the charge assessed to  
14 SILMD # 228 property owners. I arrived at that number by dividing \$555.93 by \$688.81.

15 **Q. Did you use the 80.7% figure in your further calculations?**

16 A. Yes. I multiplied 80.7% times the approximately \$1,296.26 in total charges Jeanne and  
17 I have been billed since December 1, 1998, to come up with an overcharge of \$1,046.08. I  
18 reasoned that 19.3% (= 100% - 80.7%) of the charge was to cover energy, maintenance,

1 operations, billing, USB, distribution, transmission, and CTF-QF costs, but not for ownership  
2 charges, which was 80.7% of the total bill.

3 **Q. Did the \$1,046.08 overcharge you calculated directly affect you and your wife?**

4 A. Yes. It meant we paid \$1,046.08 more than we should have paid on our property  
5 taxes if the utility had not been profiteering by charging the city too much for the street lighting  
6 service and if that overcharge had not been passed on to us in our tax bill. It meant that we  
7 were charged \$1,046.08 more than the original cost of the lights plus an allowed rate of return  
8 than is permitted by MCA § 69-3-109, which requires valuation of utility property that “may not  
9 exceed the original cost of the property.” It directly affected us because the utility watchdogs  
10 did not catch the overcharge. They had no legal authority or right to grant a valuation that  
11 exceeded original cost or a tariff procedure that slyly allowed for recovery of the utility  
12 investment in excess of original cost. Also, to allow recovery beyond the original cost was  
13 unwittingly allowing a rate of return in excess of the allowed rate of return.

14 **Q. Why did that overcharge passed by unnoticed by regulators?**

15 A. I am not an expert on utility ratemaking. However, I do know that the overcharge  
16 could have occurred if Montana Power and NorthWestern purposely or unwittingly  
17 mismatched the street lighting depreciation schedule and the tariff. NorthWestern has now  
18 confirmed [C-039 I 12 and C-040, I 13] that its 2012 Montana Depreciation Study found an  
19 annual depreciation accrual rate associated with street lights equating to a 34.6 year life. That is  
20 less than the 40.3 years apparently used earlier.

1 So, if the depreciation schedule is 34.6 or 40.3 years and the tariff can amortize the  
2 costs in 15 years or less, the valuation that a rate of return is allowed on stays in the rate base  
3 for two or three times longer than it should.

4 **Q. You mentioned a 40.3 year depreciation rate that NorthWestern was using for its**  
5 **street light rate base. Where did you come by that figure?**

6 A. Prior to our Data Request, preliminary information obtained from the April, 20, 2007,  
7 *Electric Utility Cost Allocation Study* done for NorthWestern by RJ Rudden appears to have used  
8 a depreciation rate of 40.3 years (see Appendix 3-3, pages, 1 & 2, line 12) for its street light rate  
9 base. That study is found on the PSC web site at  
10 [http://psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/D200610141\\_INCOMING\\_20070420 Pa](http://psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/D200610141_INCOMING_20070420_Pa)  
11 [rt1.pdf](http://psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/D200610141_INCOMING_20070420_Pa).

12 **[Proof of Complaint ¶¶ 146 – 148]**

13 **Q. You have alleged past injury and overcharges of \$1,046.08, do you want that**  
14 **money back?**

15 A. Yes. We have sustained an injury to our property right to not be charged beyond  
16 what is allowed by law. I believe NorthWestern has knowingly presented or caused to be  
17 presented a false or fraudulent claim for approval or payment to the PSC and the City of Billings  
18 and other Montana Cities. NorthWestern has knowingly made, used, or caused to be made or  
19 used a false record or statement material to a false or fraudulent claim, namely by propounding  
20 tariff and depreciation schedules for street lighting that were mismatched so that the utility  
21 was able to charge more than what was allowed under MCA § 69-3-109. NorthWestern has  
22 systematically obfuscated with regard to this allegation by refusing to be forthcoming about its

1 affirmative defense and by its refusal to respond to C-034, I 7, by not stating any reasons for  
2 circumventing MCA § 69-3-109. And it should not have been temporarily allowed to continue  
3 doing so.

4 **Q. How long has NorthWestern been aware of street lighting overcharge allegations?**

5 A. Since at least February 11, 2010, when this litigation began. During all of that time  
6 NorthWestern has benefitted from the inadvertent or purposeful submission of a false or  
7 fraudulent claim to the PSC, and Montana cities, the falsity of which was subsequently  
8 uncovered by the original pleading in this case. During that time NorthWestern has failed to  
9 disclose the false or fraudulent claim to the PSC, Billings and other cities, but continued to  
10 overcharge us.

11 **[Proof of Complaint ¶¶ B, C, F]**

12 **SILMD # 228 OWNERSHIP CHARGE INCREASED AFTER LIGHTS PAID FOR**

13

14 **[Proof of Complaint ¶ 49.]**

15

16 **Q. You mentioned that the total SILMD # 228 ownership charge in June of 2009 was**

17 **\$555.93. Has it gone up since then?**

18 A. Yes twice. NorthWestern has admitted (Complaint ¶ 49) that the Ownership Charge  
19 has increased since 2009. By February of 2013, the \$555.93 June of 2009 ownership charge that  
20 NorthWestern was billing the City of Billings for all 29 lights in SILMD # 228 had risen to \$621.47  
21 each month. The ownership charge in SILMD # 228 went down by 5 cents a light effective in  
22 February, 2014.

23 **Q. Did that increase in the ownership charge reflect any increase in the cost of energy,**  
24 **billing charge, maintenance fee, or an increase in any other charge in the street lighting bill?**

1 A. No. The ownership charge increase was separate from increases or decreases in other  
2 components of the bill.

3 **Q. Have you prepared an exhibit showing the ownership charge changes since 2008?**

4 A. Yes.

5 **Q. I'm showing you Complainants' Exhibit 4. Do you recognize it?**

6 A. Yes that is the Exhibit I was just talking about. It is Complainants' Exhibit 4. It shows  
7 the Increases in NorthWestern's ELDS-1 Ownership Charge between 1/1/2008 and 1/1/2014.

8 **Q. Please briefly explain Complainants' Exhibit 4.**

9 A. The bolded column E shows what the monthly ownership charge rates for each street  
10 light was when this docket started. Column G shows what they became in February 2013.  
11 Column H show a slight decrease in 2014. Column I shows the net dollar amount of the increase  
12 in each Ownership Charge range since 2009. And Column J shows the percentage increase.

13 **Q. What has been the percentage increase in the ownership charge since this docket**  
14 **began?**

15 A. More than 11% in every ownership charge category. You can see that in Column J,  
16 rows 1 through 14.

17 **Q. What was your reaction when you learned that the ownership charge had been**  
18 **increased by more than 11% after you had calculated that SILMD # 228 street lights had been**  
19 **fully paid for?**

20 A. OMG! Frankly, I couldn't believe it. These things have been paid off for years and yet  
21 they continue to raise the ownership fee even after we filed this case. You'd think they would  
22 leave it alone.

**COMPLAINANTS' EXHIBIT 4 (Barsanti)**  
**Increases in NorthWestern's ELDS-1 Ownership Charge**  
**1/1/2008 to 1/31/14**

A	B	C	D	E	F	G	H	I	J	
Tariff	Ownership Charge Cost Ranges		1/1/2008 Unit Rate Ownership Charge Per Month	1/1/2009 Unit Rate Ownership Charge Per Month	1/1/11 Unit Rate Ownership Charge Per Month	2/7/13 Unit Rate Ownership Charge Per Month	1/1/14 Unit Rate Ownership Charge Per Month	Net Per Unit Monthly Rate Jan, 2014 Increase over Jan. 2009	% Increase in Monthly Rate Jan, 2014 over Jan. 2009	
1	ELDS-1	200	278	\$ 2.83	<b>\$ 2.70</b>	\$ 2.89	\$ 3.02	\$ 3.01	\$ 0.31	<b>11.5%</b>
2	ELDS-1	400	594	\$ 6.06	<b>\$ 5.77</b>	\$ 6.17	\$ 6.45	\$ 6.43	\$ 0.66	<b>11.4%</b>
3	ELDS-1	600	799	\$ 9.42	<b>\$ 8.97</b>	\$ 9.60	\$ 10.03	\$ 10.00	\$ 1.03	<b>11.5%</b>
4	ELDS-1	800	999	\$ 11.31	<b>\$ 10.77</b>	\$ 11.52	\$ 12.02	\$ 11.99	\$ 1.22	<b>11.3%</b>
5	ELDS-1	1000	1199	\$ 13.60	<b>\$ 12.95</b>	\$ 13.86	\$ 14.48	\$ 14.44	\$ 1.49	<b>11.5%</b>
6	ELDS-1	1200	1399	\$ 16.50	<b>\$ 15.72</b>	\$ 16.81	\$ 17.48	\$ 17.50	\$ 1.78	<b>11.3%</b>
7	ELDS-1	<b>1400</b>	<b>1599</b>	<b>\$ 20.12</b>	<b>\$ 19.17</b>	<b>\$ 20.52</b>	<b>\$ 21.43</b>	<b>\$ 21.38</b>	<b>\$ 2.21</b>	<b>11.5%</b>
8	ELDS-1	1600	1799	\$ 22.65	<b>\$ 21.58</b>	\$ 23.09	\$ 24.11	\$ 24.05	\$ 2.47	<b>11.4%</b>
9	ELDS-1	1800	1999	\$ 25.53	<b>\$ 24.32</b>	\$ 26.01	\$ 27.16	\$ 27.09	\$ 2.77	<b>11.4%</b>
10	ELDS-1	2000	2199	\$ 27.34	<b>\$ 26.04</b>	\$ 27.87	\$ 29.10	\$ 29.03	\$ 2.99	<b>11.5%</b>
11	ELDS-1	2200	2399	\$ 29.95	<b>\$ 28.33</b>	\$ 30.53	\$ 31.88	\$ 31.80	\$ 3.47	<b>12.2%</b>
12	ELDS-1	2400	2599	\$ 32.53	<b>\$ 30.99</b>	\$ 33.16	\$ 34.63	\$ 34.54	\$ 3.55	<b>11.5%</b>
13	ELDS-1	2600	2799	\$ 35.14	<b>\$ 33.47</b>	\$ 35.82	\$ 37.41	\$ 37.32	\$ 3.85	<b>11.5%</b>
14	ELDS-1	2800	2999	\$ 37.76	<b>\$ 35.97</b>	\$ 38.48	\$ 40.19	\$ 40.09	\$ 4.12	<b>11.5%</b>
16	ELDS-1	maintenance chg./mo./lt.		\$0.570000	<b>\$0.540000</b>	\$0.580000	\$0.610000	\$0.610000	\$ 0.07	13.0%
17	ELDS-1	operations chg./mo./lt.		\$0.590000	<b>\$0.560000</b>	\$0.600000	\$0.630000	\$0.630000	\$ 0.07	12.5%
18	EDSS-1	energy supply chg./kWh		\$0.555440	<b>\$0.048000</b>	\$0.058624	<b>\$0.061636</b>	<b>\$0.059537</b>	<b>\$ 0.01</b>	<b>24.0%</b>
19	EDSS-1	transmission chg./kWh		\$0.003193	<b>\$0.003042</b>	\$0.003254	\$0.003399	\$0.003390	\$ 0.00	11.4%
20	EUSBC1	USB chg./kWh		\$0.003404	<b>\$0.003404</b>	\$0.003404	\$0.003404	\$0.003404	\$ -	0.0%
21	ELDS-1	distribution chg./kWh		\$0.028558	<b>\$0.027203</b>	\$0.029111	\$0.030400	\$0.030324	\$ 0.00	11.5%
22	CTCQF1	CTC-QF chg./kWh		\$0.003209	<b>\$0.003295</b>	\$0.003583	\$0.003350	\$0.003350	\$ 0.00	1.7%
23	ELDS-1	billing chg./lt./mo.		\$0.240000	<b>\$0.230000</b>	\$0.240000	\$0.250000	\$0.250000	\$ 0.02	8.7%

1           **Q. Does Complainants' Exhibit 4 show increases in components of NorthWestern's**  
2 **street lighting bill other than the ownership charge?**

3           A. Yes. Those are in rows 16 through 23. You will note from Column J, row 18 that the  
4 energy supply charge increased by 24% since January 1, 2009. Until the recent supply charge  
5 tracker decrease, for most of 2013 it had increased by 28%.

6           **Q. What did you observe about that increase?**

7           A. Well, NorthWestern's energy costs that it passes on to us ratepayers may have risen,  
8 but that doesn't mean the energy charge on our bill should have gone up.

9           **Q. Why do you say that?**

10          A. When this docket started and in a previous rulemaking request, the Commission was  
11 asked to require NorthWestern to install LED street lights. If that had been done in a timely  
12 fashion, the amount of energy used to light our streets would have decreased by at least 50%.  
13 Los Angeles has seen a 63% decrease and Seattle's decrease is in the mid 50%. So even if the  
14 energy supply charge was up by 28%, or 24% as it now is, we would have been needing roughly  
15 50% less electricity to light our streets. So the amount we were charged for that component of  
16 the bill would have gone down even though the rate per kWh went up.

17          **Q. Did the Commission have power to issue a rule requiring a change to more efficient**  
18 **lighting while the courts were deciding the questions about whether you could be**  
19 **complainants in this proceeding and that your court costs therein would not be borne by**  
20 **NorthWestern?**

1 A. Yes the PSC Rule quoted in my footnote<sup>1</sup> is very specific in giving the PSC authority to  
2 act on its own motion to protect the public.

3 **FUTURE OVERCHARGES LOOMING**

4 **Q. If your request to eliminate the overcharge is not granted, will there be a future**  
5 **overcharge?**

6 A. Yes. The annual ongoing damage because of the overcharge assessed against Jeanne  
7 and me † will be approximately \$80.10 a year. I calculated that by multiplying our 2014 SILMD #  
8 228 assessment of \$99.26 times 80.7% (the percentage of the assessment that is allocated to  
9 the ownership charge).

10 **[Proof of Complaint ¶¶ 153 – 159]**

11 **Q. You have said what the overcharge is to you and Jeanne, have you determined**  
12 **what the overcharge is to your neighbors in SILMD # 228?**

13 A. My estimate of the overcharge accumulated over the last 16.3 years for SILMD # 228  
14 will amount to roughly \$180,406 as of March 20, 2015. That estimate is based upon a test year  
15 of 2009 when the ownership charges for all SILMD # 228 street lights totaled \$6,671 a year.  
16 (\$555.93\*12=\$6,671) The ownership charge was more than that in the time period prior to and  
17 after 2009, and perhaps less in time periods before 2009 where I do not have data, so my  
18 estimate is not exact.

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<sup>1</sup> [38.2.2101](#) WHO MAY COMPLAIN

Complaints may be made by the commission on its own motion or by any person, having a legal interest in the subject matter, or any public utility concerned. Any public utility or other person likewise may complain of anything done or omitted to be done by the commission or any person over whom the commission has jurisdiction in violation of any law, rule, regulation or order administered or promulgated by the commission, pertaining to matters over which the commission has jurisdiction.

1 **Q. What do you calculate the ongoing overcharge to be for SILMD # 228?**

2 A. In my initial testimony, I calculated \$6,671. Since that time I have obtained the 2014  
3 bills to the City of Billings for SILMD # 228. The ownership charge assessed on them equals  
4 \$620.02 for each month from February through December 2014. It was 5 cents more than that  
5 in January. Multiplying \$620.02 \* 12 equals \$7440.24 per year. We and our neighbors in SILMD  
6 # 228 will be paying at least \$7440.24 too much each year in the future.

7 **Q. Why do you say “at least \$7440.24 too much?”**

8 A. Because the \$7440.24 figure is based on what SILMD # 228 was being assessed  
9 monthly in 2014 in excess of what MCA § 69-3-109 allows.

10 **Q. In doing your calculations for SILMD # 228, did you have to take into account the**  
11 **fact that NorthWestern had previously installed Mercury vapor lights or other lights in your**  
12 **area previously that it needed to fully amortize?**

13 A. No. There were no street lights in SILMD # 228 prior to when the high pressure  
14 sodium lights were installed there. So there was no left over rate base that needed to be  
15 recovered by Montana Power or NorthWestern as part of our calculation for that SILMD.

16 **RECOMMENDED REMEDIES**

17 **Q. When were you and Jeanne added as petitioners in this case?**

18 A. May 30, 2010.

19 **Q. Between May 30, 2010 and September 8, 2014 what have the total of assessments**  
20 **for the ownership charge in SILMD # 228 been?**

21 A. Based on the 2009 figure that I have used of \$555.93, at least \$32,243.94 during the  
22 58 months that elapsed after we joined as complainants until the time the hearing in this case

1 begins.(\$555.93 \* 58 = \$32,243.94) Again that figure is low because the ownership charge rates  
2 have increased to \$620.02 a month.

3 **Q. Did you ask for a temporary rate reduction in this case?**

4 A. Yes, that was requested in 2009 before we were added to the case as parties. We  
5 have requested that as part of the amended pleadings and in a motion as well. However, so far  
6 that request has not been ruled on. If it had been granted, all of us in SILMD # 228 could share  
7 \$32,243.94 to spend on putting our kids through school or for other things. Each month the  
8 temporary rate reduction is not granted may cost SILMD property owners \$620.02 a month  
9 unless the overcharge can be clawed back.

10 **Q. Do you have a child in school?**

11 A. Yes, a son who began as a freshman at MSU-B in the fall of 2013.

12 **Q. You mentioned claw back. Are you recommending a refund?**

13 A. Yes. Since this overcharge has been ongoing and was collected illegally in the first  
14 place, I recommend a refund of the entire estimated \$108,406 overcharge through March 20,  
15 2015, plus whatever else we pay after that at a rate of \$620.02/month. At a minimum all  
16 payments made after a temporary rate refund was requested should be refunded. That would  
17 be \$32,243.94 plus whatever ownership charge we pay after March 20, 2015 at a rate of  
18 \$620.02/month.

19 **RECOMMENDATION TO ALLOW REFUNDS TO FINANCE MORE EFFICIENT LIGHTING**

20 **Q. As part of your testimony, would you like to talk about the request made in the**

21 **Complaint to utilize more efficient street lighting as part of how the refunded money would**

22 **be spent?**

1 A. Yes, however the Commission decided to forgo consideration of cost effects of more  
2 efficient lighting and only consider the ownership overcharge issue. Therefore, the following  
3 testimony is interlineated to comply with Order 7084f and Order 7084i and remains in the  
4 record as an offer of proof of what would have been submitted in support of the cost savings  
5 that would accrue by reducing the energy component of street lighting rates by more than 50%  
6 with implementation of efficient lighting.

7 **Q. If that \$32,243.94 had been applied to fund LED luminaires for the 29 street lights in**  
8 **SILMD # 288, how much would have been available to pay for each street light?**

9 A. Not considering the energy and maintenance savings, and only taking into account  
10 the reallocation of the excessive ownership charge, \$1111.86 per luminaire. ( $\$28,352$   
11  $\$32,243.94/29$ )

12 **Q. Do you know what it would have cost to replace the 29, 100-watt high pressure**  
13 **sodium street lights in SILMD # 228 with equivalent LED fixtures?**

14 A. Not exactly. Perhaps other witnesses can expand the record on that. I do know that  
15 quality fixtures were obtainable in 2010 by others, if purchased in quantities of 2,000, for less  
16 than the \$375 per luminaire, \$65 photo-cell cost, and \$150 installation cost that we pled in the  
17 Complaint. Mr. Smalley would have testified that Seattle is getting bids for the cost of lights in  
18 the \$150 per luminaire range. NorthWestern should have been able to purchase LEDs for us  
19 and other SILMDs on its system for bulk purchase prices. In addition, NorthWestern should  
20 have been able to install the new LEDs and purchase motion sensor and dimming controls for  
21 the \$977. Also, if LEDs had been installed in 2010, our energy costs would have decreased by at

1 least 40% (maybe 63% as has happened in Los Angeles) and street light maintenance costs  
2 would have gone down too.

3 ~~Q. If the accumulated overcharge for lighting in SILMD # 228 were clawed back and~~  
4 ~~applied to purchase more energy efficient lighting would there need to be an increase in your~~  
5 ~~property tax to cover the cost of those improvements?~~

6 A. No. Reallocation of the overcharge would more than pay for retrofitting our fixtures  
7 with equivalent LED street lighting.

8 ~~Q. If a small portion of the excess ownership charge were allocated to purchase LED~~  
9 ~~street lighting with motion sensing and dimming capability in SILMD # 228 have you~~  
10 ~~calculated what that would do to the SILMD line on your property tax statement?~~

11 A. Yes. The resulting property tax on that line assessed for 100 watt HPS lights would  
12 drop approximately 88%. It would reduce our property taxes by \$87.34 a year.  $(99.26 * .88)$   
13 Imagine a local government bringing about that much of a decrease in local property taxes for  
14 persons in lighting districts. Persons of every political persuasion ought to favor that!

15 ~~Q. Why would the savings you calculated materialize?~~

16 A. The savings I calculated would result because the ownership charge would be  
17 eliminated by the past overcharges being clawed back and applied to purchase and install the  
18 new lights and the energy charge would drop by roughly 50%. There also would be additional  
19 maintenance savings. And since the lights would last longer, NorthWestern's maintenance of its  
20 lights would improve.

21 ~~Q. Why do you say it would improve?~~

1           A. Because the new light will be equipped with electronic tracking to tell NorthWestern  
2 when the lights are out, so they can fix them in the daytime instead of having to wait until dark  
3 to verify the light outage and they would not have to make as many calls to replace lights that  
4 are out.

5           ~~Q. If this Commission determines that there has been an overcharge to you and your~~  
6 ~~neighbors, do you have a preference for how the overcharged that is clawed back should be~~  
7 ~~used?~~

8           A. Yes. First it should be allocated back to our lighting district to pay for improved LED  
9 luminaires with motion sensors and dimming devices to help us lower our property taxes. In  
10 cases where the amount rebated is sufficient to cover the cost of solar powered LED street  
11 lights, we should be allowed them. That way street lighting costs would be completely  
12 eliminated.

13           ~~COMMISSION ORDERED A CHANGE TO MORE EFFICIENT LIGHTING TECHNOLOGY IN 1982~~

14           ~~Q. Has the Commission ordered changes from old technology to more efficient street~~  
15 ~~lighting technology in the past?~~

16           A. Yes, in 1982 the Commission ordered a change to high pressure sodium lights.

17           ~~REQUEST FOR AN UNMETERED TARIFF FOR LED STREET LIGHTS~~

18           ~~[Proof of Complaint ¶ L]~~

19           ~~Q. Did you want to address the NorthWestern's refusal to develop an unmetered tariff~~  
20 ~~for LED lights?~~

21           A. Yes.

22           ~~Q. Why?~~

1 ~~A. To reduce the added cost that a meter adds in small SILMDs that causes a~~  
2 ~~disincentive to switching to LEDs. I also wanted to make it so that LED technology is treated~~  
3 ~~equally and fairly with other technologies whose street lights are billed on an unmetered basis.~~

4 ~~**Q. Why are you striking this request from your testimony?**~~

5 ~~A. To comply with Orders 7084f and 7084i which limited us to consideration of the~~  
6 ~~ownership charge issue. So this interlineated testimony is an offer of proof as to what I would~~  
7 ~~have said but for the decision to forego consideration of requiring an unmetered LED tariff.~~

8 ~~**Q. Is the energy used by the high pressure sodium lights in SILMD # 228 metered?**~~

9 ~~A. No. The ELDS-1 tariff assesses energy use based on the amount of nighttime hours~~  
10 ~~multiplied by the known use of electricity a certain watt high pressure unit will require.~~

11 ~~**Q. Is part of your petition in this case, a request that NorthWestern provide a non-**~~  
12 ~~**metered tariff for LED lights?**~~

13 ~~A. Yes, One would think that if NorthWestern could change its ELDS-1 tariff three times~~  
14 ~~since 2009, that it could develop an unmetered tariff for LED lights as has been done by utilities~~  
15 ~~in Los Angeles, Seattle and other places.~~

16 ~~**Q. Where in your petition did you request an unmetered LED tariff?**~~

17 ~~A. It is in the required Statement of Relief Sought, at page 5, paragraph L.~~

18 **CLASS ACTION REQUEST**

19 **[Proof of Complaint ¶¶ 143, 16, 145, 149 - 152]**

20 **Q. One thing that comes up with regard to standing issues when requesting class**  
21 **action status is whether you share a common interest with others. Do you share a common**  
22 **interest with others affected by street lighting?**

1           A. Certainly. The overcharge assessment imposed on Jeanne and me directly through  
2           our property tax payment establishes a personal interest. Beyond that we share common  
3           interests with other taxpayers in seeing that we are charged appropriately for street lighting,  
4           and with persons who benefit from street lighting by seeing that the lighting is energy efficient  
5           and produces the illumination needed to ensure roadway safety.

6           **[Proof of Complaint ¶ 16.]**

7           **Q. Did you file this proceeding to help others whose street lights had also been paid**  
8           **for?**

9           A. Yes. We filed this as a class action on behalf of customers in all street lighting districts  
10          within service areas of NorthWestern Energy; on behalf of all taxpayers who support those  
11          lighting districts; on behalf of various consumer, environmental, business and industry groups,  
12          and news media in NorthWestern Energy's service area; and on behalf of manufacturers of LED  
13          and equivalent energy-efficient street lighting technologies.

14          **Q. Are the interests of the persons and groups you just mentioned similar to yours?**

15          A. Yes. Other persons who are property taxpayers in SILMD 228 and other SILMDs  
16          statewide where NorthWestern Energy owns street lights that have been fully paid for are  
17          similarly situated to Jeanne and me even though there are differences due to street lighting  
18          assessments (even within SILMD # 228) based on property values.

19          **Q. If you went online to obtain the property tax statement for your neighbor in your**  
20          **SILMD # 228, and calculated past, present, and future overcharges in that property using**  
21          **the same methodology that you used to calculate your overcharges, would the amount of**  
22          **the overcharges be the same as the overcharges you calculated for yourself?**

1 A. No. As mentioned in my previous answer, each of us has different property values, so  
2 we are each assessed differently to pay for our street lights.

3 **Q. Are there similarities in how you were both overcharged?**

4 A. Yes, there are several similarities. For example, we all help pay for the lights, and we  
5 all have overpaid for them. However, as I just said, in addition to these similarities, there are also  
6 differences in the amount of the overcharge assessed to each of us because of the differences in  
7 property values. For example, I said Jeanne and I have been overcharged a total of \$1111.86 as  
8 of March 20, 2015. However, the total overcharge, that is the \$1111.86 cumulative past injury I  
9 just confirmed is not the same as the amount of the past cumulative injury experienced by our  
10 neighboring property taxpayers living at 378 Cape Cod Dr. even though we both live in the same  
11 SILMD #228.

12 **Q. Are the overcharges you and your wife sustained the same as overcharges**  
13 **experienced by property taxpayers in other SILMDs?**

14 A. No. The overcharges are different. You can see that by looking at the numbers in  
15 columns D and E of Complainants' Exhibit 3, which I will discuss shortly. Since none of the  
16 numbers in rows 1 through 26 are alike in those columns, the injury we sustained because of  
17 NorthWestern's overcharging is distinguishable from injury sustained by others in other  
18 SILMDs. Our injuries also are different from those experienced by taxpayers who are not in a  
19 lighting district but who help pay for the City's share of street lighting in their property taxes,  
20 and from renters who pay taxes through their rent.

21 **BILLINGS, MONTANA LIGHTING DISTRICT VERIFIED & ESTIMATED**  
22 **OVERCHARGES**

23  
24 ~~**Q. Did you want to address NorthWestern's overcharges in Billings and the rest of its**~~  
25 ~~**Montana service area?**~~

1 A. Yes.

2 **Q. Why?**

3 A. ~~To reduce the overcharges in every Billings district where we found them to exist. I~~  
4 ~~also wanted to make it so that property tax and rate payers in all street lighting districts were~~  
5 ~~treated equally and fairly so that the overcharge was not allowed to continue elsewhere and so~~  
6 ~~that those folks would get the refunds they are entitled to when the overcharges are~~  
7 ~~eliminated.~~

8 **Q. Why are you striking consideration of overcharges in other Billings lighting districts**  
9 **from your testimony?**

10 A. ~~To comply with Orders 7084f and 7084i which limited us to consideration of the~~  
11 ~~ownership charge issue in only SILMDs 228, 161 and 162. So this interlineated testimony is an~~  
12 ~~offer of proof as to what I would have said but for the decision to forego consideration of more~~  
13 ~~than \$60,000 a month in overcharges in other Billings SILMDs.~~

14 **Q. As a history teacher, do you have some knowledge about the development of**  
15 **SILMDs?**

16 A. ~~It used to be that developers could develop a plot of land with few improvements.~~  
17 ~~There are subdivisions in Billings that have no pavement, sidewalks, sewer, or streetlights etc.~~  
18 ~~Slightly before the time our Parkland West Subdivision was developed, codes were established~~  
19 ~~which required improvements such as streets lighting. Since most developers utilize borrowed~~  
20 ~~capital to complete their projects, partnering with a utility to provide street lighting likely saved~~  
21 ~~them costs.~~

22 **[Proof of Complaint ¶¶ 93 & 94]**

1 **Q. Do you know when the switch to high pressure sodium street lights began?**

2 A. Complainants' Exhibit 1 (p. 772) shows the City of Billings began using high pressure  
3 sodium in 1978 in SILMD 196 and other new installations. HPS street lights showed up in  
4 SILMDs where NorthWestern owned the lights in January of 1979. See SILMD 205 at  
5 Complainants' Exhibit 1 (p. 596 – 599). For all the SILMDs after number 205, there would have  
6 been no left over rate base that needed to be recovered because the lights in those districts  
7 were all new HPS installations and not retrofits.

8 **Q. What about the retrofits?**

9 A. NorthWestern's predecessor, Montana Power asked the Commission for permission  
10 to retrofit existing street lights. That permission was granted in 1982 in the order quoted in the  
11 footnote to this sentence.<sup>2</sup> The Commission gave NorthWestern seven years to make the

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<sup>2</sup>Order No. 4938a, pp. 56-60 in PSC Docket No. 82-8.54, ¶¶ 186 & 198 provided:  
186. Lighting Rates and Conversion Study. In Order No. 4714d the Commission  
identified four areas in which the lighting costing/pricing mechanism was deficient,  
including: 1) "the allocation of administrative and direct assignment costs to the lighting  
schedules"; 2) "the amortization of plant and resulting endless stream of facilities  
charges, despite inefficient lighting districts dating back 50 years"; 3) "the fixed dusk to  
dawn, 9,000 hours of annual burn at a time when the consumer is willing to reduce  
consumption" and 4) "incandescent lighting at a time when maintenance is costly and  
high pressure sodium vapor (HPSV) results, in some cases, one fourth the energy  
consumption." Pending an outcome of these issues the Commission opted to maintain the  
then existing rate design and to not increase rates over those resulting from Order No.  
4677a (the so-called Settlement Proceeding).  
198. The Commission finds that lights should be converted on the basis of cost  
effectiveness criteria. **MPC should proceed on a prioritized basis (most cost effective  
to least cost effective) to convert the Company-owned street lights to HPSV.** This  
program should take place over the seven year period as proposed by MPC. **Ample  
opportunity will arise during this seven year conversion program to reevaluate the  
cost effectiveness of converting the subset of, for example, new mercury vapor lamps  
identified by the representatives of Butte and Anaconda. The MPC is authorized to  
depreciate the unamortized plant over a seven year period.** [Emphasis added]  
And in Docket # 90-6-39, Order 5484n at ¶ 538, the PSC ruled:

1 changeover. NorthWestern has now admitted the provisions of this Order No. 4938a [C-024  
2 RFA-24]

3 ~~Q. Was there left over rate base that needed to be recovered by Montana Power as~~  
4 ~~part of retro-fitting its street lights to HPS luminaires?~~

5 ~~A. As paragraph 198 of Order No. 4938a indicates, Montana Power had seven years to~~  
6 ~~depreciate unamortized street lights. So, there should have been no stranded rate base that~~  
7 ~~was not recouped as a result of the change. The new rate base with high pressure sodium lights~~  
8 ~~would start by at least January 1, 1990 – seven years after the PSC order authorizing the change~~  
9 ~~to HPS luminaires. In some SILMDs the rate base would started prior to 1990, unless the HPS~~  
10 ~~lights were installed after that time in newer SILMDs.~~

11 ~~Q. Was there some unamortized rate base for non-high pressure sodium street lights~~  
12 ~~that was recovered after January 1, 1990?~~

13 ~~A. There appears to have been. Montana Power's Annual Report for 1990 (pp. 48 & 49),~~  
14 ~~which is online at the PSC web site, shows Account 373.1 Retirement of Converted Streetlights~~  
15 ~~totaling \$145,600.10 in December of that year. However, that was for lights in several~~  
16 ~~subaccounts that were only identified by number and not by the name of the location. No~~

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538. Second, although uncertain of the economic benefits, the Commission also requests ~~MPC to analyze and testify on the merits of selling its company-owned street lighting plant to customers (e.g., cities) at original cost less depreciation. This option would allow customers the opportunity to replace worn out plant, bulbs and other routine maintenance instead of having MPC perform the same.~~ It is unclear to the Commission whether customers would find this option economical given the fact the same customers buying out the plant will have to pay for the recent high pressure sodium vapor conversion costs. So long as the choice is optional the customer can perform its own cost-benefit analysis. At this time MPC need not file a tariff allowing for this option, but its next COS testimony must address the merits of this option. [Emphasis added.]

1 Annual Reports were online for the years 1991 through 1997. So since no verification of  
2 retirement of lights in Billings after 1/1/1990 could be confirmed and since the PSC order  
3 provided otherwise, we did not have a reason to calculate for rate recovery of any unamortized  
4 lights in post 1/1/1990 calculations. NorthWestern failed to break out backup sheets (i.e. sub-  
5 accounts) as asked in response to our request for street lighting rate base data or provide  
6 original cost data. [C-041 I 14 & C-044 RPD 3] So, it may not do so with this earlier data. If  
7 NorthWestern enlightens us about whether or not any of those sub-accounts relates to lights in  
8 Billings and if so to which SILMD are they allocated, we can easily subtract those amounts off  
9 from the overcharge we calculated or make other appropriate accounting adjustments.

10 ~~[Proof of Complaint ¶¶ 171, 193 – 196 & 201 – 204]~~

11 ~~**Q. Has the amortization schedule in Complainants' Exhibit 2 been applied to the street**~~  
12 ~~**lights in Billings?**~~

13 ~~A. Yes.~~

14 ~~**Q. In applying the Exhibit 2 amortization schedule, were you able to determine the**~~  
15 ~~**exact average original cost of the lights or the exact time when the ownership charge began?**~~

16 ~~A. No. NorthWestern did not provide that data for a random number of SILMDs when~~  
17 ~~you sought it in 2009 and 2010. We have submitted Data Requests C-041, I 14; C-045, RPD 4; C-~~  
18 ~~0465, RPD 5 & C-047, RPD 6 to obtain that information. In 99 Billings SILMDs, NorthWestern has~~  
19 ~~failed to provide the requested data because its accounting system allegedly does not have it.~~

20 ~~**Q. What did you do to adjust your calculations to account for the fact that**~~  
21 ~~**NorthWestern had not supplied the needed data?**~~

1           A. ~~The same methodology was used in other SILMDs that was used in SILMD # 228. We~~  
2 ~~knew the original cost in any given ownership charge range could not exceed the top number in~~  
3 ~~the range, so we used that top of the range number. We also had some contract dates, so we~~  
4 ~~assumed that it would not take more than five months beyond the date of a contract to install~~  
5 ~~the new lights and begin charging for them, so we used the date of the contract plus five~~  
6 ~~months as the begin date. In some cases, we knew approximately when a SILMD was created,~~  
7 ~~so we used a date near where the SILMD was created as the begin date. Where the dates were~~  
8 ~~known, and it was certain that the Ownership Charge had completely amortized the cost of the~~  
9 ~~lights, we showed that in Table 2 attached to our Complainant. Where the start dates were less~~  
10 ~~certain, we estimated them. The results of those procedures were shown in Table 3 attached to~~  
11 ~~our complaint.~~

12           **Q. Have you updated Table 2?**

13           A. ~~Yes. Where NorthWestern's answers to discovery gave us actual numbers, we used~~  
14 ~~those in the update. The update calculates what taxpayers have paid in excess of what is~~  
15 ~~necessary to completely amortize the cost of the street lights in the SILMDs listed on Exhibit 2~~  
16 ~~as of March 20, 2015. NorthWestern sent answers to discovery contending a few of the~~  
17 ~~numbers on Complainants Exhibit 5 were not correct. [See C 023 RFA 23] With one exception,~~  
18 ~~those minor changes are do not affect Complainants' Exhibits 3 and 10, which calculate the~~  
19 ~~overcharge. One SILMD that NorthWestern contested is involved in Complainants' Exhibit 10--~~  
20 ~~that is SILMD 262. NorthWestern contends that "the correct amount of ownership charge for~~  
21 ~~Column Q of SILMD 262 is \$2,108.70." However, that amount is correctly noted on line 112a of~~  
22 ~~Complainant's Exhibit 5. NorthWestern then contends the column Q total is overstated by~~

1 ~~\$1,648.62. If that is the case, then NorthWestern has overbilled the City of Billings by that much~~  
2 ~~every month because the June 2009 bill for SILMD 262 reflects the ownership charge of~~  
3 ~~\$1,648.62 shown on line 112b of Complainants Exhibit 5, a figure which is in the column Q total.~~  
4 ~~SILMD 262 has two sets of utility owned lights, one set has 86 lights, the other 24 lights, totaling~~  
5 ~~110 lights—exactly the number of lights for which the \$19.17 monthly ownership charge was~~  
6 ~~levied in June of 2009. [See Complainants’ Exhibit 8, page 224, the June 2009 bill for SILMD 262]~~  
7 ~~Perhaps NorthWestern would care to say whether our original calculations for column Q in~~  
8 ~~Exhibit 5 are correct or admit to a monthly overcharge of \$1,648.62 for 24 lights in SILMD 262?~~  
9 ~~Bottom line, the raw data from NorthWestern’s bills that was used in calculating Complainants’~~  
10 ~~Exhibits 3 and 10 is correct.~~

11 ~~NorthWestern also says a few contract dates are not correct, but fails to name them. [C-~~  
12 ~~041-114] So we could not address the issue of when bills began other than as we have.~~

13 **Q. I am showing you what has been marked as Complainants’ Exhibit 3. Do you**  
14 **recognized it?**

15 A. Yes. Exhibit 3 is Complaint Table 2 updated to reflect overcharges accruing as of  
16 September 8, 2014.

17 **Q. Please explain the numbers on Complainants’ Exhibit 3?**

18 A. Each of the SILMDs where we have start dates for street lighting are listed Column A  
19 along with the name of the SILMD in Column B. The years accruing since the Ownership charge  
20 completely amortized the original costs of all of the utility-owned HPS street lights in that  
21 SILMD are listed in Column C and the Verified Monthly overcharge at 2009 rates for all utility-

1 owned HPS lights in the SILMD is in Column D. Column E is the cumulative overcharge accruing  
2 after the lights in the SILMD had been fully amortized.

3 ~~Q. Are you advocating that the existing ownership charge be redirected to pay for~~  
4 ~~LEDs?~~

5 ~~A. Only if the Commission fails to claw back past overcharges. As you will see from my~~  
6 ~~testimony below, I want the cumulative past ownership overcharge in Column F to be applied to~~  
7 ~~the cost of LEDs. If that is done, the annual cost of street lighting in each SILMD will be~~  
8 ~~reduced by approximately the percentage found in Column I—between 70% and 88% reduction~~  
9 ~~in the Street lighting charge on property in affected SILMDs.~~

10 **Q. What do columns G and H show on Complainants' Exhibit 3?**

11 A. They show what street lights provided to us by NorthWestern were costing in 2009  
12 (Col. G compared with the cost after crediting part of the overcharge to install LEDs (Col. H). In  
13 my SILMD the annual street lighting bill would drop 88% (Col. I, row 12) to \$989/year (Col. H,  
14 row 12) for our 29 lights, down 88% (Col. I, row 12) from \$8,288 (Col. G, row 12).

15 ~~Q. Does your cost comparison assume that the LEDs would be fully paid for?~~

16 ~~A. Yes. Many of us have already paid for installation of energy efficient lighting. We~~  
17 ~~have done that by paying too much ownership charge. If this Commission applies what we have~~  
18 ~~already paid to purchase LEDs with controls, the cost would drop because the ownership charge~~  
19 ~~would go away and our energy use would be cut by at least 50%. Actually the bills should go~~  
20 ~~down even more than the 50% we have estimated if controls are installed with the new lights~~  
21 ~~because that will reduce energy use by about 70%.~~

22

COMPLAINANTS' EXHIBIT 3 (Barsanti) (Numbers as of 3/20/2015)

VERIFIED NORTHWESTERN ENERGY STREET LIGHTING OVERCHARGE IN BILLINGS (Cols. D & E) and SAVINGS AFTER ENERGY EFFICIENT LEDS ARE PAID FOR FROM REBATE OF THE OVERCHARGE (Col. I)

A	B	C	D	E	F	G	H	I	J
SILMD	Location / Description	Years of ownership overcharge	Verified Monthly Overcharge for all Units of this Type in Lighting District	Verified Cumulative Overcharge for All Units of this Type in Lighting District	Minimum # of Years to payoff of Replacement LEDs***	2009 Annual Cost of Lighting	Annual Utility Cost after LEDs are paid for	% savings after LEDs are paid for	# Lights Owned by NWE
97	Downtown Area	11	\$7,294	\$962,813	6.9	\$147,797	\$32,365	78%	338
117	Yegan Addition Subd	8.8	\$2,068	\$219,191	4.9	\$33,023	\$5,372	84%	192
159	Broadwater	14.8	\$410	\$72,574	6.9	\$8,308	\$1,819	78%	19
159	Broadwater	14.8	\$153	\$27,145	4.5	\$2,598	\$432	83%	8
206	Dixon Street	18.4	\$220	\$48,638	1.4	\$3,411	\$477	86%	14
207	Castle Rock Subd	18.4	\$252	\$55,586	1.4	\$3,898	\$545	86%	16
209	Kings Green Subd	17.9	\$362	\$77,735	1.4	\$5,603	\$784	86%	23
214	Normal and North	20.7	\$281	\$69,574	4	\$4,850	\$827	83%	13
216	Park Side Subd	16.7	\$94	\$18,864	1.4	\$1,462	\$205	86%	6
224	Montana /	12.7	\$712	\$108,262	9.8	\$18,354	\$5,267	71%	55
228	Parkland West Subd	16.3	\$556	\$108,406	1.2	\$8,266	\$989	88%	29
229	Woodland Hills Subd	16.1	\$288	\$55,497	1.2	\$4,275	\$511	88%	15
230	Aspen Grove Subd	15.7	\$671	\$126,139	1.2	\$9,976	\$1,193	88%	35
231	Oaks Subdivision	15.7	\$403	\$75,683	1.2	\$5,986	\$716	88%	21
232	Centennial Subd	5.3	\$1,744	\$109,902	1.2	\$25,937	\$3,102	88%	91
237	Tepee Trail &	11.6	\$267	\$37,146	1.4	\$4,142	\$580	86%	17
239	Beverly Hills	11.4	\$63	\$8,615	1.4	\$975	\$136	86%	4
241	4th North /	14.3	\$367	\$63,100	4	\$6,342	\$1,082	83%	17
245	North Pointe Sq. Subd	13.3	\$43	\$6,862	6.9	\$874	\$191	78%	2
246	Parkland West Subd	13.2	\$230	\$36,346	1.2	\$3,420	\$409	88%	12
247	Grand Avenue	12.2	\$561	\$81,918	6.9	\$11,369	\$2,490	78%	26
248	North 27th /	12.5	\$1,230	\$184,509	6.9	\$24,924	\$5,458	78%	57
249	Descro Subdivision	12.2	\$1,898	\$277,083	1.2	\$28,218	\$3,375	88%	99
258	Central Acres	5.1	\$1,687	\$102,905	1.2	\$25,082	\$3,000	88%	88
261	Straw Subdivision	4.8	\$345	\$20,013	1.2	\$5,130	\$614	88%	18
-	<b>Totals</b>	-	<b>\$22,198</b>	<b>\$2,954,506</b>	-	<b>\$396,582</b>	<b>\$71,941</b>	-	<b>1,234</b>

Q. Why are some of these rows interlinedated?

A. To comply with the Commission's determination that only SILMDs where Complainants live are being considered in this case. My SILMD is 228, so I left it in. I also left in Bruce Simon's SILMD 97 because he provided testimony on that SILMD.

1 **Q. What do the totals on Complainants' Exhibit 3 show?**

2 A. In Billings, Montana lighting districts where the street lights are not owned by the city  
3 or private developers, verified cumulative overcharges in 25 lighting districts where street lights  
4 are owned by NorthWestern Energy will total \$2,821,317 as of 9/8/14 (Column E, row 27,  
5 bolded text).

6 **Q. You previously testified that even though NorthWestern's supply costs had gone**  
7 **up more than 28% in the last 49 months, the energy supply component of the bills for street**  
8 **lighting would not have increased if energy efficient LEDs had been installed. Does**  
9 **Complainants' Exhibit 3 illustrate that?**

10 A. It partially illustrates that point. You can see from row 27, Columns G and H that the  
11 overall cost for the 1,234 street lights in the SILMDs shown on this exhibit would have gone  
12 from \$396,582 down to \$72,637. That's a decrease of 82%. It is true that part of the decrease  
13 comes from elimination of present ownership charges and claw back of the past ownership  
14 overcharges, which will hopefully be rebated and applied to cover the cost of energy efficient  
15 lights. And part of the cost comes from a projected 50% reduction in energy supply costs.

16 **[Proof of Complaint ¶¶ 169, 172 – 176, 186, 193 – 196 & 201 -204]**

17 **Q. Were you able to estimate overcharges in other Billings SILMDs?**

18 A. Yes. That was found in Table 3 attached to our Complaint. I have updated that table as  
19 well.

20 **Q. I am showing you what has been marked as Complainants' Exhibit 10. Do you**  
21 **recognized it?**

22 A. Yes. Exhibit 10 is the Complaint Table 3 I just mentioned updated to reflect overcharges  
23 accruing as of September 8, 2014. There are a few changes in the SILMDs listed on the exhibit

**COMPLAINANTS' EXHIBIT 10 (Barsanti) (Numbers as of 9/8/2014)**  
**ESTIMATED NORTHWESTERN ENERGY STREET LIGHTING OVERCHARGE IN BILLINGS (Cols. D & E) and**  
**SAVINGS AFTER ENERGY EFFICIENT LEDS ARE PAID FOR FROM REBATE OF THE OVERCHARGE (Col. I)**

	A	B	C	D	E	F	G	H	I	J
	SILMD	Location / Description	Years of ownership overcharge	Estimated Monthly Overcharge for all Units of this Type in Lighting District	Estimated Cumulative Overcharge for All Units of this Type in Lighting District	Minimum # of Years to payoff of Replacement LEDs***	2009 Annual Cost of Lighting	Annual Cost of Lighting After LEDs are paid for	% savings after LEDs are paid for	# Lights Owned by NWE
1	17	Various Locations	10.4	\$153	\$19,170	4.5	\$ 2,598	\$ 432	83%	8
2	99	1st South / 27th - 30 <sup>th</sup>	4.9	\$544	\$32,090	9.8	\$14,016	\$ 4,022	71%	42
3	107	Carlson/Evergreen Subds.	10.4	\$1,227	\$153,360	1.2	\$18,242	\$ 2,182	88%	64
4	109	Central Heights Subd.	10.4	\$3,029	\$378,608	1.2	\$45,034	\$ 5,387	88%	158
5	114	Burg Subdivision	10.4	\$652	\$81,473	1.2	\$ 9,691	\$ 1,159	88%	34
6	115	Glock Subdivision	10.4	\$153	\$19,170	1.2	\$ 2,280	\$ 273	88%	8
7	116	Curtis & Van Bramer	10.4	\$403	\$50,321	1.2	\$ 5,986	\$ 716	88%	21
8	121	College Subdivision	10.4	\$1,725	\$215,663	1.2	\$25,652	\$ 3,068	88%	90
9	122	North 25th/11th - 12 <sup>th</sup>	7.5	\$126	\$11,318	1.4	\$ 1,949	\$ 273	86%	8
10	123	Westridge Subdivision	10.4	\$230	\$28,755	1.2	\$ 3,420	\$ 409	88%	12
11	124	Clark & Yellowstone	10.4	\$671	\$83,869	1.2	\$ 9,976	\$ 1,193	88%	35
12	125	Avenue E & F	10.4	\$268	\$33,548	1.2	\$ 3,990	\$ 477	88%	14
13	126	700 Block Ave C	10.4	\$134	\$16,774	1.2	\$ 1,995	\$ 239	88%	7
14	127	Country Club Heights	7.5	\$472	\$42,444	1.4	\$ 7,309	\$ 1,023	86%	30
15	128	Clark Ave /	7.5	\$330	\$29,711	1.4	\$ 5,116	\$ 716	86%	21
16	129	Suncrest and	10.4	\$230	\$28,755	1.2	\$ 3,420	\$ 409	88%	12
17	130	So. 36th / 5th - State	4.8	\$86	\$4,997	1.9	\$ 1,474	\$ 273	82%	8
18	131	2900 Block of Howard,	10.4	\$594	\$74,284	1.2	\$ 8,836	\$ 1,057	88%	31
19	133	Central Heights - 5 <sup>th</sup>	4.8	\$140	\$8,121	1.9	\$ 2,395	\$ 443	82%	13
20	134	North Park	4.8	\$334	\$19,364	1.9	\$ 5,711	\$ 1,057	82%	31

21	135	Lillis Subdivision	7.5	\$346	\$31,126	1.4	\$ 5,360	\$ 750	86%	22
22a	136	600 Block Ave D	10.4	\$307	\$38,340	1.2	\$ 4,560	\$ 545	88%	16
22b	136	600 Block Ave D	4.8	\$11	\$625	1.9	\$ 184	\$ 34	82%	1
23	137	So. 27th / 2nd State	4.8	\$172	\$9,995	1.9	\$ 2,948	\$ 545	82%	16
24	138	Alderson / 8th 11th W.	10.4	\$518	\$64,699	1.2	\$ 7,696	\$ 921	88%	27
25	139	1900 & 2000 Block	10.4	\$173	\$21,566	1.2	\$ 2,565	\$ 307	88%	9
26	143	Sweet Acres Subdivision	10.4	\$403	\$50,321	1.2	\$ 5,971	\$ 701	88%	21
27	144	Maplewood Subdivision	10.4	\$19	\$2,396	1.2	\$ 284	\$ 33	88%	1
28	145	Burlington /	7.5	\$314	\$28,296	1.4	\$ 4,873	\$ 682	86%	20
29	146	Saint Johns /	10.4	\$249	\$31,151	1.2	\$ 3,705	\$ 443	88%	13
30a	147	EMC/Rimrock & Poly	10.4	\$268	\$33,548	4.5	\$ 4,547	\$ 756	83%	14
30b	147	EMC/Rimrock & Poly	4.8	\$11	\$625	7.1	\$ 224	\$ 54	76%	1
31	149	1st Avenue South	4.8	\$151	\$8,745	7.1	\$ 3,134	\$ 755	76%	14
32	150	Lee Heights Subdivision	7.5	\$503	\$45,274	1.4	\$ 7,796	\$ 1,091	86%	32
33	151	Southwest Billings Subd	10.4	\$441	\$55,114	1.2	\$ 6,557	\$ 785	88%	23
34	152	Vaughn to Jans	10.4	\$2,971	\$371,419	1.2	\$44,179	\$ 5,285	88%	155
35	153	Forest Park Subdivision	7.5	\$362	\$32,540	1.4	\$ 5,603	\$ 784	86%	23
36	154	17th to Dahlia	7.5	\$817	\$73,570	1.4	\$12,669	\$ 1,773	86%	52
37	155	Saint Johns /	10.4	\$345	\$43,133	1.2	\$ 5,130	\$ 614	88%	18
38	157	Jackson Heights Subd	7.5	\$613	\$55,177	1.4	\$ 9,502	\$ 1,330	86%	39
39	158	Partington Park Subd	10.4	\$556	\$69,491	1.2	\$ 8,266	\$ 989	88%	29
40	160	Streeter Brothers Sub	10.4	\$498	\$62,303	1.2	\$ 7,411	\$ 886	88%	26
41	161	Yellowstone & Wyoming	7.5	\$707	\$63,666	1.4	\$10,963	\$ 1,534	86%	45
42	164	Mountainview Subd	7.5	\$252	\$22,637	1.4	\$ 3,898	\$ 545	86%	16
43	165	900 Blk Ave D, E, F	10.4	\$613	\$76,680	1.2	\$ 9,121	\$ 1,091	88%	32
44	167	Spring Valley Sub #1	7.5	\$157	\$14,148	1.4	\$ 2,436	\$ 341	86%	10
45	171	Forest Park Subdivision	7.5	\$377	\$33,955	1.4	\$ 5,847	\$ 818	86%	24
46	172	Windsor Imperial Sub	4.8	\$323	\$18,740	1.9	\$ 5,527	\$ 1,023	82%	30
47	173	Kimberly Heights #1	7.5	\$786	\$70,740	1.4	\$12,181	\$ 1,705	86%	50
48	174	Kimberly Heights #2	7.5	\$660	\$59,422	1.4	\$10,232	\$ 1,432	86%	42

49	175	Acheson Subdivision	7.5	\$220	\$19,807	1.4	\$ 3,411	\$ 477	86%	14
50	178	Glewood Subdivision	7.5	\$173	\$15,563	1.4	\$ 2,680	\$ 375	86%	11
51	179	Silverwood Subdivision	7.5	\$346	\$31,126	1.4	\$ 5,360	\$ 750	86%	22
52	180	Spring Valley Subd #2	7.5	\$236	\$21,222	1.4	\$ 3,654	\$ 511	86%	15
53	181	Glock Subdivision	10.4	\$1,169	\$146,171	1.2	\$17,387	\$ 2,080	88%	61
54	182	Hilltop Subdivision	7.5	\$393	\$35,370	1.4	\$ 6,091	\$ 852	86%	25
55	183	Golden View Subd	7.5	\$786	\$70,740	1.4	\$12,182	\$ 1,705	86%	50
56	184	Kimberly Heights #3	7.5	\$252	\$22,637	1.4	\$ 3,898	\$ 545	86%	16
57	185	Pryor View Subdivision	7.5	\$94	\$8,489	1.4	\$ 1,462	\$ 205	86%	6
58	187	Pineview Subdivision	7.5	\$157	\$14,148	1.4	\$ 2,436	\$ 341	86%	10
59	188	Meadowood Subdivision	7.5	\$189	\$16,978	1.4	\$ 2,924	\$ 409	86%	12
60	189	Kimberley Heights #4	7.5	\$157	\$14,148	1.4	\$ 2,436	\$ 341	86%	10
61	190	Sun Village and	7.5	\$817	\$73,570	1.4	\$12,669	\$ 1,773	86%	52
62	191	Kimberley Heights #5	4.9	\$283	\$16,695	1.4	\$ 4,352	\$ 581	86%	18
63	192	Spring Valley Subd #3	7.5	\$204	\$18,392	1.4	\$ 3,167	\$ 443	86%	13
64	193	Toole Circle	7.5	\$503	\$45,274	1.4	\$ 7,796	\$ 1,091	86%	32
65	198	Luther Circle	7.5	\$79	\$7,074	1.4	\$ 1,218	\$ 170	86%	5
66	201	Stewart Court	7.5	\$330	\$29,711	1.4	\$ 5,116	\$ 716	86%	21
67	242	Tierra West Subdivision	10.4	\$58	\$7,189	1.2	\$ 855	\$ 102	88%	3
68	244	Clevenger Subdivision	10.4	\$77	\$9,585	1.2	\$ 1,140	\$ 136	88%	4
69a	251	Sahara Sands Subd	10.7	\$2,109	\$269,914	1.2	\$31,353	\$ 3,750	88%	110
69b	251	Sahara Sands Subd	10.7	\$537	\$68,705	4.5	\$ 9,094	\$ 1,511	83%	28
70	252	Summerhill Subdivision	9.7	\$383	\$44,474	1.2	\$ 5,701	\$ 682	88%	20
71	253	Governors Boulevard	7.8	\$1,169	\$108,751	4.5	\$19,811	\$ 3,292	83%	61
72a	262	1200 Calico Avenue	10.4	\$1,649	\$206,078	1.2	\$30,033	\$ 8,453	72%	86
72b	262	1200 Calico Avenue	10.4	\$460	\$57,510	4.5	\$22,057	\$15,558	30%	24
73		<b>Exhibit 10 Totals</b>		<del>\$ 38,255</del>	<del>\$4,200,551</del>		<del>\$610,743</del>	<del>\$100,209</del>	<del>84%</del>	<del>2,197</del>
74		<b>Exhibit 3 Totals</b>		<del>\$ 22,308</del>	<del>\$2,821,217</del>		<del>\$396,582</del>	<del>\$ 72,589</del>	<del>82%</del>	<del>1,234</del>
75		<b>Combined Totals</b>		<del>\$ 60,563</del>	<del>\$7,021,768</del>		<del>\$1,007,325</del>	<del>\$172,798</del>	<del>83%</del>	<del>3,431</del>

1 to reflect more caution in our estimates, an adjustment to the date formulas to more  
2 accurately reflect times, and because as time has elapsed, the costs of lights in additional  
3 SILMDs may have been completely amortized.

4 **Q. Please explain the numbers on Complainants' Exhibit 10?**

5 A. Each of the SILMDs where we did not have contract or billing start dates for street lighting  
6 are listed Column A along with the name of the SILMD in Column B. The years accruing since  
7 the Ownership charge completely amortized the original costs of all of the utility-owned HPS  
8 street lights in that SILMD are listed in Column C. That is how long the ownership overcharge  
9 has lasted in each SILMD. And the Estimated Monthly overcharge at 2009 rates for all utility-  
10 owned HPS lights in the SILMD is in Column D. Column E lists the estimated cumulative  
11 overcharge accruing after the lights in the SILMD had been fully amortized.

12 **Q. What does Columns F show on Complainants' Exhibit 10?**

13 A. If the ownership charge is applied to the cost of replacing existing high pressure  
14 sodium street lights with energy efficient LEDs, it would take the number of years shown in  
15 Column F to pay for the improvement in the SILMD listed in Column A of the same row.

16 **Q. What do columns G and H show on Complainants' Exhibit 10?**

17 A. They show what street light service was costing in 2009 (Col. G) compared with the  
18 cost after crediting part of the overcharge to install LEDs (Col. H). If you look at row 73, the  
19 Totals row for Complainants' Exhibit 10, you see the total annual street lighting bill would drop  
20 an average of 84% (Col. I, row 73) to \$100,209/year (Col. H, row 73) for 2197 lights (Col. J),  
21 down from \$610,743 (Col. G, row 73).

22 **Q. What do the totals on Complainants' Exhibit 10 show?**

1 A. In the 72 Billings SILMDs with street lights owned by NorthWestern Energy where we  
2 estimated our results, the cumulative overcharge will be approximately \$4,200,551 as of  
3 9/8/14. (Complainants' Exhibit 10, Column E, line 73, third row from bottom).

4 **Q. Much of Exhibit 10 has been crossed out. Why is that?**

5 A. The commission is only considering SILMDS involving the Grubas and Barsantis. The  
6 yellow remaining row relates to one of the Gruba's SILMDs. These are being interlineated so  
7 they will remain in the record as an offer of proof as to what I would have said if consideration  
8 of other SILMDs had been permitted.

9 ~~**Q. Did you add the Column E total on Complainants' Exhibit 10 to the Column E total**~~  
10 ~~**on Complainants' Exhibit 3?**~~

11 ~~A. Yes, adding the cumulative overcharges from Column E on Exhibit 3 to those in~~  
12 ~~Column E on Exhibit 10, we see that the combined Billings cumulative overcharges as of~~  
13 ~~September 8, 2014 will have become \$7,021,768 (Complainants' Exhibit 10, Column E last row).~~

14 **[Proof of Complaint ¶ 51]**

15 ~~**Q. Do you know the number of street lights involved in the overcharges you have**~~  
16 ~~**shown on Complainants' Exhibits 3 and 10?**~~

17 ~~A. Yes the total number of lights that have been completely amortized and which should~~  
18 ~~have been deleted from NorthWestern's database is 3,431. That is shown on Complainants'~~  
19 ~~Exhibit 10, column J, line 75. Again, that number would increase if the rates of return that were~~  
20 ~~actually allowed were used instead of the 11.65% maximum we used in the~~  
21 ~~amortization/depreciation calculations.~~

22 ~~**Q. How many street lights did NorthWestern own in Billings in 2009?**~~

1 A. Our spreadsheet shows ~~4,329~~ street lights. There were undoubtedly a few more for  
2 some areas where we do not have numbers.

3 **Q. ~~What percentage of the total street lights that NorthWestern owned in Billings in~~**  
4 **~~2009 will be completely amortized by the time the hearing in this docket begins?~~**

5 A. ~~79% (-3431/4329).~~

6 **Q. ~~What can we observe from your results about what NorthWestern has been~~**  
7 **~~overcharging for street light service outside of Billings?~~**

8 A. These overcharges have undoubtedly been replicated in cities, towns, and counties in  
9 NorthWestern's Montana service areas. If you assume that Billings has one third of the street  
10 lights in NorthWestern's service area, you can project that NorthWestern owned roughly  
11 ~~12,987 (-4329\*3)~~ street lights in 2009 and that of those roughly ~~10,293 (-3431\*3)~~ were fully  
12 depreciated and should have been eliminated from NorthWestern's rate base.

13 The total cumulative overcharges within NorthWestern's Montana service area is  
14 roughly \$21.6 million (\$7.2 million \* 3). And that number may be low because a study done  
15 about this overcharge in Great Falls indicates 92% of the 9,341 lights in that city are owned by  
16 NorthWestern.

17 **ATTORNEY MOTION: We move the Commission to take administrative notice of the**  
18 **public document entitled "City of Great Falls Street Lighting Districts Ownership Analysis"**  
19 **which is Complainants' Exhibit 12, a 12 page exhibit. It can be found online at**

20 [http://wgmgroupp.com/great\\_falls.pdf](http://wgmgroupp.com/great_falls.pdf)

1 ~~Q. Have we asked NorthWestern to provide us with the number of street lights it~~  
2 ~~owned in 2009 and 2014, the number it carried in its rate base in 2009 and 2014; and the~~  
3 ~~number that were older than 15 years in 2009 and 2014?~~

4 ~~A. Yes. However, NorthWestern is trying to limit the case so it has not provided number~~  
5 ~~for cities outside of Billings.~~

6 ~~Q. How long have these overcharges gone on?~~

7 ~~A. Between 4.3 and 20.2 years, depending on what SILMD you are looking at. By~~  
8 ~~September 8, 2014, the verified cumulative overcharges in Billings, Montana, will have gone on~~  
9 ~~for at least 4.3 years (in Straw Addition SILMD # 261, Complainants' Exhibit 3, line 26, column~~  
10 ~~C). The overcharge will have existed for at least 20.2 years (in SILMD # 214) (Yellow shaded cell,~~  
11 ~~Complainants' Exhibit 3, line 9, column C).~~

12 ~~Q. If NorthWestern does not collect enough to cover certain of its energy costs, is it~~  
13 ~~allowed to retroactively collect additional money to cover the shortfall?~~

14 ~~A. That is my understanding, yes.~~

15 ~~Q. How would you like to see that principle applied when NorthWestern has over-~~  
16 ~~collected for some item?~~

17 ~~A. The principles of equity prevent a regulated utility that is allowed to retroactively~~  
18 ~~collect additional monies from consumers when it has under billed require a utility to disgorge~~  
19 ~~excess profits when it has over collected.~~

20 ~~Q. What then should happen to over-collected monies?~~

1 A. Any overcharge that has not been discharged in the Montana Power or  
2 NorthWestern bankruptcies should added to the amount of over-collected monies that are  
3 recoverable by consumers.

4 **[Proof of Complaint ¶¶ F, 180 – 185, 189 - 192]**

5 **MONTHLY OVERCHARGE IN BILLINGS AND ELSEWHERE**

6 **~~Q. What are the combined verified and estimated monthly overcharge in Billings,~~**  
7 **~~Montana?~~**

8 ~~A. \$60,563 a month (Complainants' Exhibit 10, Column D, last row, bolded text).~~

9 **~~Q. What happens every month this overcharge is allowed to continue?~~**

10 ~~A. Every month that the PSC allows this verified overcharge to continue, Billings~~  
11 ~~taxpayers are required to pay approximately \$60,563 that could have gone or could go to help~~  
12 ~~with the city budget or be given out in tax relief, or which could pay for new energy efficient~~  
13 ~~LED lighting without an increased cost to NorthWestern's customers. That is why we have~~  
14 ~~sought a temporary rate reduction.~~

15 **~~Q. Is this overcharge happening in other Montana cities?~~**

16 ~~A. It is more likely than not that what is occurring with the ownership overcharge in~~  
17 ~~Billings is happening in other Montana cities and counties served by NorthWestern Energy; that~~  
18 ~~a significant proportion of their street lights are also experiencing excessive, unreasonable, and~~  
19 ~~unjustly discriminatory ownership overcharges, and that their city budgets or taxpayers would~~  
20 ~~also benefit from the granting of a temporary rate reduction and the granting of this petition.~~  
21 ~~Complainants' Exhibit 12 certainly demonstrates the overcharge has gone on in Great Falls.~~

1 **Q. If the Commission granted your temporary rate reduction request, what effect**  
2 **would that have on taxpayers in Montana cities and counties in NorthWestern's service area?**

3 ~~A. Once the ownership overcharge is eliminated, that will save taxpayers in Montana~~  
4 ~~cities and counties approximately \$181,689 a month (\$60,563\*3) or \$2,180,268 a year~~  
5 ~~(12\*\$181,689).~~

6 **[Proof of Complaint ¶¶ 177 – 178, 186- - 188]**

7 **Q. Who is Bob Rowe?**

8 A. NorthWestern Energy's CEO and Board Member of NorthWestern Energy.

9 **Q. Did he serve as a Montana Public Service Commissioner?**

10 A. Prior to becoming CEO and Board Member of NorthWestern Energy, Mr. Rowe was a  
11 member of and chaired the Montana Public Service Commission.

12 **Q. Did Mr. Rowe serve on the PSC while any of the overcharge you have demonstrated**  
13 **occurred?**

14 A. Yes. The overcharge has gone on for more than 20 years in at least one SILMD. Mr.  
15 Rowe was a Commission member for 8 of those years when his second term on the PSC ended  
16 in 2004.

17 **Q. What would you have expected from Mr. Rowe as a Public Service Commissioner**  
18 **who became the head of a utility he regulated?**

19 A. The PSC exists to protect us little guys from the kind of overreaching utilities have  
20 historically engaged in. Mr. Rowe was obviously not alert enough during a time when  
21 overcharges in many of the street lighting districts were not discovered and therefore were  
22 allowed to continue. Thus, he failed in his duty to protect us. The utility he now heads and

1 previously regulated should not be allowed to continue profiteering because of his earlier  
2 regulatory oversight.

3 That oversight can be rectified now. With his vast experience, Mr. Rowe certainly should  
4 understand the justice and equity involved in requiring a utility that has over-earned to be  
5 required to disgorge excess profits. He should facilitate that, rather than allowing his colleagues  
6 to put roadblocks in our way. We have been fighting now for more than 4 years, to eliminate  
7 this outrageous overcharge and to get energy efficient lighting. We've had to go to the  
8 Supreme Court to even get the right to bring this case. We've endured attempts by  
9 NorthWestern to prevent us from obtaining billing information from the City of Billings and  
10 refusals by NorthWestern to respond when the city finally authorized release of billing  
11 information. And we are continually having to fight unnecessary motions when NorthWestern  
12 was faced with having to reveal information that would prove our case. My gosh! Enough is  
13 enough.

14 **FURTHER RECOMMENDED REMEDIES:**

15 **[Proof of Complaint ¶¶ A, B, C, I, J, 120, 160 – 164, 166, 170, 179, 193 – 196 & 201 -**  
16 **204]**

17 **Q. You mentioned a preference for how refunded overcharges would be used in**  
18 **SILMD # 228. Do you have a preference for how they should be used in other SILMDs?**

19 A. Yes. First, the ownership overcharge in SILMDs where the original cost of street lights  
20 has been completely amortized with allowable rate of return should cease immediately. And,  
21 the repayment of overcharges should come from revenues allocated to stockholders for return  
22 on investment. That is because stockholders have already benefitted unjustly because of the

1 over-collection of revenues involved. The repayment should be allocated back to the lighting  
2 districts involved to pay for improved LED luminaires with motion sensors and dimming devices  
3 to help them lower their property taxes.

4 Second, part of remainder of the overcharge refund should be used to fund a special  
5 master to calculate overcharges in all SILMDs (using proper original cost figures to be supplied  
6 by NorthWestern or reasonable estimates of original cost if such documentation is not  
7 forthcoming) and to recommend refunds and payment for LED installations.

8 Third, some of the remaining refund of the overcharge left over after implementing my  
9 first and second suggestions, should be used to defray attorney's fees for anyone who acted as  
10 a private attorney general in bringing this case to benefit Montana tax and ratepayers, and to  
11 defray the expenses of any attorney and his witnesses. To date, we are the only ones in this  
12 proceeding who the ratepayers are not paying to participate. It is curious to me that consumers  
13 pay the attorneys and witnesses to build a case to bilk them, but we do not get reimbursed for  
14 presenting a case on behalf of consumers.

15 **Q. If the Commission is not inclined to grant attorney's fees and expenses pursuant to**  
16 **the private attorney general principle, do you have a further recommendation?**

17 A. Yes. If that be the case, then I'd appreciate it if the Commission's order herein  
18 specifically required any costs, and attorney and witness fees associated with NorthWestern's  
19 and all other participation in the case be allocated to be borne by NorthWestern's stockholders  
20 and that such be disallowed as operating or other expenses defrayed by ratepayers.

21 **Q. Do you have any other suggestions for how a refunded overcharge be used?**

1 A. Fourth, any leftover amounts from the cumulative overcharge should be refunded  
2 directly to the taxpayers in the affected SILMDs, including those in SILMD #228.

3 **Q. Why are the four recoupment procedures you have just outlined needed?**

4 A. These recoupment procedures will fairly reimburse customers who have been  
5 overcharged. They will allow them to lower their utility costs in the future by covering the costs  
6 of energy efficient street lighting. They will prevent an unjust windfall from occurring to  
7 NorthWestern and its shareholders and prevent continuing overcharges. And, they will reduce  
8 the amount of CO2 emissions in our environment brought about by unnecessary use of fossil  
9 fuel, thus conserving that finite fuel for use by future generations when fossil fuel use can be  
10 accomplished in a more environmentally benign way.

11 ~~**Q. You just mentioned the word “environment.” Have you read the testimony of Jim**~~  
12 ~~**Gruba, another petitioner in this case, and what he says about the environment?**~~

13 ~~A. I have read his testimony and I agree with it. I especially agree with his view that our~~  
14 ~~right to a clean and healthful environment granted by Montana’s Constitution affords us the~~  
15 ~~right to maximize energy conservation by reducing the need for fossil fuel which is now possible~~  
16 ~~if we convert high pressure sodium street lights to LED street lights. One of the reasons Jeanne~~  
17 ~~and I are petitioners in this case is because we want to make it easier for our son Parker and his~~  
18 ~~friends to cope with problems brought about by climate change that can be minimized only if~~  
19 ~~we conserve energy.~~

20 **Q. Have you thought about what the Commission should do to prevent future utility**  
21 **attempts to put one over on us?**



1 unmetered lights in SILMD # 259 were billed out at \$0.23 per luminaire under NorthWestern's  
2 LS billing charge for a monthly total of \$36.46. The whole scheme does not make sense.

3 It has been difficult to determine whether there is a billing charge is for utility owned  
4 lights that is rolled into some other tariff component. Complainants attempted to determine  
5 whether that billing component was covered by either the operations charge or the  
6 maintenance charge. Answers to C 060, I 16, and C 061 do not mention billing as a cost  
7 covered by either. Each is explained in the ELDS 1 tariff. Since the operations and maintenance  
8 charges appear to pay for the same thing, one wonders why that is allowed or why their  
9 explanations are not more definitive. The ELDS 1 tariff does not mention billing as being a cost  
10 defrayed by the ownership charge either. Regardless of whether lights are in a SILMD with  
11 customer or utility owned lights, the charge ought to be a flat rate for billing in each SILMD,  
12 based on the cost of generating a bill for a SILMD and not based on how many lights there are  
13 in a district.

14 **Q. Do you have any other recommendations?**

15 A. As punishment for not deploying energy efficient LED street lighting sooner and for  
16 not allowing use of its poles to house more efficient lighting, the cost of energy charged to  
17 cities since 2009 should be reduced by 50% and a refund issued to the cities involved. If  
18 NorthWestern had not thrown roadblocks in the way of LED deployment since the rulemaking  
19 hearing, Montana would be saving money now like more than two thousand other cities  
20 worldwide.

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

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

6 ~~---~~

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

8 ~~---~~

9 ~~(h) as a beneficiary of an inadvertent submission of a false or fraudulent claim~~  
10 ~~to the governmental entity, subsequently discovers the falsity of the claim or that the~~  
11 ~~claim is fraudulent and fails to disclose the false or fraudulent claim to the~~  
12 ~~governmental entity within a reasonable time after discovery of the false or~~  
13 ~~fraudulent claim.~~

14  
15 **BARSANTI'S ARE THIRD PARTY BENEFICIARIES OF SILMD # 228 STREET**  
16 **LIGHT CONTRACT**

17  
18 **[Proof of Complaint ¶¶ G, H, O & 131 – 133]**

19 **Q. Does NorthWestern have a contract with Billings for street lighting service to SILMD**  
20 **# 228?**

21 **A. Yes, An early version of the contract is found in Complainants' Exhibit 1, pages 705 –**  
22 **708.**

23 ~~**Attorney Comment: Your honors, the following questions are intended to build a**~~  
24 ~~**record on a question you have reserved ruling on regarding the extent to which the PSC has**~~  
25 ~~**authority over contracts between NorthWestern and its consumers. We have asked that**~~  
26 ~~**those contracts and bills sent to street lighting customers be modified to require certain**~~  
27 ~~**information which would make customers more aware of what they are being charged for**~~  
28 ~~**and how long those charges will remain on their bills. And we have asked that**~~  
29 ~~**NorthWestern's recent practice of putting clauses in its contracts to say that no ratepayers**~~  
30 ~~**are third party beneficiaries of those contracts be discontinued.**~~

31 **Q. Does the PSC have authority over that contract?**

1 A. I believe it does. I listened to an explanation of that authority given by PSC Attorney  
2 at a February 23, 2010, work session. It is short, so I'll quote it here:

3 **Commissioner Molnar:** Can we really get into the contracts between the city of Billings  
4 and NorthWestern or the city of anything and NorthWestern?

5 **PSC Attorney Jim Paine:** Commissioner Molnar, yes we can as regards to any impact  
6 such contracts have on the rates paid by the retail public.  
7

8 **Q. Who does that contract primarily benefit?**

9 A. It primarily benefits the entities who sign it, namely NorthWestern who drafted it and  
10 the City of Billings which entered it on behalf of the property owners in SILMD # 228.

11 **Q. Do you know what a third party beneficiary is?**

12 A. A person who has not signed a contract, but who the contract is intended to benefit.

13 **Q. Using the definition you have just given me, would you say that you are a third  
14 party beneficiary of the contract NorthWestern has with Billings to provide street lights to  
15 SILMD # 228?**

16 A. Jeanne and I and other property taxpayers in SILMDs # 228 certainly benefit from the  
17 street lights. So, I would say we are third party beneficiaries of the March 12, 1984, contract the  
18 City of Billings had with Montana Power and any extensions of that contract with Montana  
19 Power or NorthWestern.

20 **Q. As third party beneficiaries of the aforementioned March 12, 1984, contract and its  
21 extensions are you directly affected by the PSC tariff rates adopted in it?**

22 A. You bet, yes.

23 **Q. What do you depend on the PSC to do to protect your interest as a beneficiary of  
24 the March 12, 1984 contract and its extensions?**

1           A. Jeanne and I and other taxpayers in the class whom we represent in SILMD # 228  
2 have depended on the PSC and the City of Billings (as fiduciaries and officials charged with  
3 understanding utility rates) to represent our interests in watch-dogging utility rates to insure  
4 that those rates are not excessive and to ensure that the lights are efficient and well  
5 maintained.

6           **Q. What have you noticed about street lights being out in your neighborhood; what  
7 have you done about it; and what has the response been?**

8           A. Lights are out frequently in our neighborhood. If I see a light out near me or down  
9 where the apartments are, I'll call it in and NorthWestern will have a guy out in a bucket truck  
10 at night within a week or two to fix it.

11           **Q. If LEDs were installed, do you know how that would improve maintenance?**

12           A. Sure, first of all, LEDs last longer, so they wouldn't have to come out as often. Also, if  
13 proper controls were on the light, they could tell which light was out, so we wouldn't have to  
14 call it in. And since they would know from the signal which light was out, they wouldn't have to  
15 do their maintenance at night to see which light was not shining. They could learn that from  
16 information given during Illuminating Engineering Society and Municipal Solid State Lighting  
17 Consortium forums which Mr. Smalley may testify about.

18           ~~**Q. Is there a change that you would like to see in the SILMD # 228 street lights?**~~

19           ~~A. Yes. Jeanne and I would appreciate it if the street lights were retrofitted with more  
20 efficient LED luminaires that meet the specifications adopted by the cities of Los Angeles or  
21 Seattle or by the Municipal Solid State Lighting Consortium. Since we live on a street where  
22 there is not much traffic, we would also appreciate it if the new lights were equipped with~~

1 ~~motion sensing and dimming capability to conserve even more energy. If NorthWestern will not~~  
2 ~~do that, we would appreciate an order that allows immediate termination of the contracts~~  
3 ~~NorthWestern has with the City to allow us to purchase energy efficient lights and install them~~  
4 ~~on the poles owned by NorthWestern which we have already completely paid for and so there~~  
5 ~~should not be any charges other than maintenance, energy, transmission, etc. for use of those~~  
6 ~~poles.~~

7 **Q. Please summarize the reasons why the street lighting contracts NorthWestern has**  
8 **with cities should to be terminated by the PSC and rewritten?**

9 A. First, any contract that has a provision contending that taxpayers or residents of an  
10 SILMD are not third party beneficiaries of the street lighting contract should be declared void,  
11 unconscionable and overbearing and terminated so we don't get into future lengthy litigation  
12 on contractual issues.

13 ~~Second, the rights of cities and their taxpaying consumers must be made clear so that if~~  
14 ~~they wish to convert to LEDs and own the lights, they are not forced by virtue of the fact that~~  
15 ~~long-standing contracts with 3-year renewal clauses do not prevent them from moving forward~~  
16 ~~with light replacements that will reduce their municipal budgets.~~

17 ~~Third, NorthWestern's contracts should be rewritten to allow use of its poles to house~~  
18 ~~consumer owned lighting if cities and their taxpayers desire it. NorthWestern's refusal to allow~~  
19 ~~use of its poles by customers who want to convert to more efficient lighting is a clear violation~~  
20 ~~of anti-trust law that the PSC can remedy and thereby save NorthWestern's stockholders the~~  
21 ~~expense of being sued for treble damages because of NorthWestern's anti-competitive~~  
22 ~~practices which have been outlawed for decades.~~

1 [Proof of Complaint ¶¶ Q & 11 - 15]

2 TESTIMONY RELATING TO STANDING AS TAXPAYER

3 ~~ATTORNEY EXPLANATION: Before my next questions are asked, please let me say why~~  
4 ~~they are relevant. Part of this case relates to some standing questions that are not completely~~  
5 ~~resolved. As you know, the Montana Supreme Court found that certain Billings property tax~~  
6 ~~payers did not have standing to bring this case to the PSC because they were not directly~~  
7 ~~affected by rates as required by statute. The reason given for the ruling was that Billings~~  
8 ~~received and paid the lighting bill, therefore the City was directly affected, and not the~~  
9 ~~taxpayers. For the taxpayers without standing, payment for the lights was not itemized on~~  
10 ~~their tax statement. However, payment was itemized for persons living in SILMDs and~~  
11 ~~therefore the Court said the later folks were directly affected and could bring this case. We~~  
12 ~~are challenging that statute as being an unconstitutional violation of equal protection~~  
13 ~~because there is no rational basis let alone a compelling state interest for treating the two~~  
14 ~~differently and for treating another group of entities differently as well because members of~~  
15 ~~the other group only have to be “interested” in the issues they bring to the Commission.~~

16 ~~We explained that we were going to do that on page 5, paragraph A of the Petition,~~  
17 ~~which said:~~

18 ~~Q. For an order declaring MCA § 69-3-321 unconstitutional and in violation of the~~  
19 ~~equal protection and due process clauses of the US and Montana Constitutions~~  
20 ~~because there is no compelling state interest or rational basis for the invidiously~~  
21 ~~discriminatory distinction affording “any mercantile, agricultural, or~~  
22 ~~manufacturing society or club; by any body politic or municipal organization or~~  
23 ~~association” standing to bring a matter before the Commission if they are~~  
24 ~~“interested” while requiring any other “person, firm, or corporation” must be~~  
25 ~~“directly affected” by various events enumerated in subparagraphs “a” through~~  
26 ~~“e.”~~  
27

1           We realize that the Commission did not chose to address this question because of its  
2 belief that state law does not afford administrative bodies authority to opine on  
3 Constitutional questions, something we addressed in the brief the Commission ordered.  
4 However, a review of the video tape of the work session where this question was considered  
5 reveals that Commission Counsel did not apprise the Commission of our position in the case  
6 and that a non-lawyer made a valiant attempt to do so, but did not cover many important  
7 points. Further, with all due respect, at least some of the Commissioners did not appear to  
8 have read the brief it ordered us to prepare.

9           In light of that inadequate explanation of our position, the Commission is asked to  
10 reconsider its decision on whether to address the constitutional issue. Among those points is  
11 the fact that there is law on both sides of the question of what authority administrative  
12 bodies have to address constitutional questions. True the Courts have final say in such  
13 matters. However, administrative bodies in some circumstances are permitted to weigh in. In  
14 this circumstance, I was attempting to give the Commission the opportunity to address the  
15 only question germane to this issue. And that is to state any rational basis or compelling state  
16 interest it may have in supporting the unequal treatment fostered by the challenged statute  
17 against the original petitioners in this case who had to be directly affected in order to  
18 complain and others who only had to be interested in the matter in order to have standing.

19           While the Commission may of course continue refusing to weigh in, this series of  
20 questions relating to those issues will be in the record as an offer of proof and for the  
21 purpose of illustrating, if that becomes necessary, that the Commission did have an  
22 opportunity to state any rational basis or compelling state interest it may have for upholding

1 ~~the constitutionality of its statute. I believe that opportunity to be important for us to~~  
2 ~~demonstrate if we are to prove to the court that we exhausted our administrative remedies~~  
3 ~~regarding this question when we appeared before the PSC.~~

4 ~~**Q. Do you know of SILMDs where part of the total cost of the street lights owned by**~~  
5 ~~**NorthWestern is paid for by Billings's taxpayers living outside of a SILMD?**~~

6 A. Yes. If you look at Complainants' Exhibit 1, page 414, you will find that 25% of the  
7 cost of the street lights in that SILMD # 171 "shall be paid by the City of Billings out of the  
8 general fund and/or such other fund or funds provided for that purpose." The same  
9 arrangement occurs in SILMD # 173. You can see that at Complainants' Exhibit 1, pages 429 &  
10 430. Also see SILMD # 190, Complainants' Exhibit 1, pages 522 & 523 where all Billings  
11 taxpayers outside of SILMD # 190 are also assessed on their property tax statement (Levy  
12 District line) to pay for those lights.

13 ~~**Q. Were Mike and Francis Paterson, who were petitioners in this case before being**~~  
14 ~~**stricken by the Commission, assessed to pay for street lights in SILMDs 171, 173 & 190?**~~

15 A. Yes. The specific SILMDs do not show on their property tax statement because the  
16 City pays for those lights as part of the Levy District. Only the Levy District shows on the tax  
17 statement. The levy is for other bills incurred by the City as well.

18 ~~**Q. How do you know that?**~~

19 A. They live at 3906 Heritage, Billings, Montana. We know they pay taxes there because  
20 we can see the assessment on the Paterson's property tax statement which is a public record  
21 found by clicking on one of the years at

1 <http://www.co.yellowstone.mt.gov/gis/csaprop.asp?propid=238282> —When one clicks  
2 Paterson’s property tax statement, one notices that they are not billed for living in an SILMD.

3 **[Proof of Complaint ¶¶ 125, 126 & 128]**

4 **Q. Do you have a similar Levy District assessment on your property tax statement?**

5 A. Yes. In tax year 2009, Jeanne and I were assessed \$2,068.29 for Billings (Levy District)  
6 street lighting in SILMDs other than # 228. You can see it in the public record by clicking on the  
7 year 2009 at this URL <http://www.co.yellowstone.mt.gov/gis/csaprop.asp?propid=217325> .

8 Once you have accessed the year 2009, it will read “Billings (Levy District) 1,034.15 1,034.14  
9 2,068.29”)

10 **Q. Are you interested in what Billings pays for street lights in SILMDs 171, 173 & 190**  
11 **and elsewhere in the city where Billings is a property owner in a SILMD?**

12 A. Of course.

13 **Q. Why?**

14 A. Well, as a tax payer I am absolutely interested in seeing that the City of Billings does  
15 not pay too much for services. I may only be a little guy in the overall big picture, but I definitely  
16 recognize that ultimately we taxpayers will eventually pay the bill. So, to the extent that an  
17 excessive “fee,” “assessment,” “tax,” or “amount” (however one wishes to denote it) that is  
18 shown on our “Detail Property Tax Information” statement to pay for our share of Billings (levy  
19 district) costs, I am interested.

20 I also disagree with the determination that we are not directly affected. If I refuse to pay  
21 the amount shown on my property tax bill, the ultimate effect is for the City to foreclose on my  
22 property. Furthermore, I see absolutely no justification or reasoning for saying that if I live in an

1 SILMD, I have standing to bring my concerns about an overcharge to the Commission, but if I  
2 live within the city but outside an SILMD, I can't? The City of Billings pays the initial bill from  
3 NorthWestern in both cases. Both charges appear on our property tax statement, albeit one is  
4 itemized separately. I see absolutely no validity in supporting the two different classes of  
5 permissible complainants, one only having to be interested and the other having to show they  
6 are directly affected? In order for that discrimination to be constitutional, there must be a  
7 rational basis for it. So far neither the Commission, nor NorthWestern have expressed what  
8 that rational basis is.

9 **Q. Mr. Barsanti, thank you for your time and efforts on behalf of your neighbors, the**  
10 **City of Billings, and NorthWestern Energy customers.**

11 A. And thanks too for the work this Commission's and its staff have done in reviewing  
12 our claims.

13  
14 I, Leo G. Barsanti, do hereby certify that these 81 pages of typewritten material are a full,  
15 correct, and truthful rendition of my pre-filed written testimony given under oath.

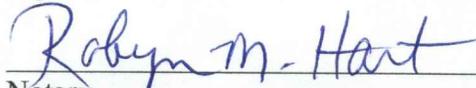
16 

17 Leo G. Barsanti

18 State of Montana

19 County of Yellowstone

20 Signed and sworn to before me on March 27, 2015 by Leo G. Barsanti.

21  
22   
23 Notary

