

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 PRE-FILED WRITTEN DIRECT TESTIMONY OF COMPLAINANTS' WITNESS,
6 RUSSELL L. DOTY
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
10 it 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 Q. Please state your name and address.

14 A. I am Russell L. Doty. I live at 4957 W. 6th St., Greeley, Colorado 80634.

15 Q. Why are you testifying in this proceeding?

16 A. Bruce Simon a former Legislator from Billings alerted me to what he thought was an
17 overcharge in street lighting. I looked into his allegations and brought this case. Bruce has since
18 died. Before he died he submitted pre-filed testimony under oath. I will stand for cross-
19 examination on that testimony on his behalf. In addition, there are certain matters that I have
20 investigated and will comment on in lieu of hiring an expert witness, which Complainant's
21 cannot afford.

1 **Q. Are you a lawyer in this proceeding?**

2 A. Yes.

3 **Q. Are you familiar with Rule 3.7 of the Montana Rules of Professional Conduct?**

4 A. Yes. I briefed that rule in this proceeding.

5 **Q. Are you also aware of the PSC Order 7084i ruling in this proceeding ordering**
6 **you to strike all attorney testimony?**

7 A. Yes.

8 **Q. Then why are you submitting this testimony?**

9 A. I have researched Rule 3.7 and discussed it a couple of times prior to the
10 Commission's Order 7084i and after it with Ethics Council at the Montana Bar Association.
11 Those discussions and other research lead me to the conclusion that I have not violated any
12 ethical restraint and am not doing so by submitting this testimony. The Commission may not be
13 aware of Ethics Opinion 140519 that appeared in June/July Issue of the Montana Bar
14 Association, pp. 10-12. It appeared after the issue of "attorney as a witness" was briefed in this
15 proceeding and comports substantially with the views expressed in my brief.

16 If after considering Ethics Opinion 140519, the Commission or its hearing examiner or
17 attorneys believe my interpretation is wrong, they may of course seek a clarification from the
18 Court or other appropriate body. I would be happy to join in seeking such an opinion.

19 Meanwhile, I have complied with the Commission order by striking attorney comments
20 from the other pre-filed testimony even though Rule 3.7 would not require me to do so.

21 In addition, I respectfully submit that the Commission only quoted part of Rule 3.7 in
22 Order 7084i, leaving out consideration of important distinctions. That quote left the impression
23 that I was being unethical in dealing with prepared written testimony; it's not an impression that

1 anyone would want as the capstone of a pro bono effort to bring justice to Montana’s
2 municipalities. In PSC Docket No. D2010.2.14, Order No. 7084i, the Commission found:

3 36. ... Rule 3.7 of the Montana Rules of Professional Conduct makes it clear that it is
4 generally inappropriate for a lawyer acting as an advocate to testify. No examples have
5 been provided of an instance in which a lawyer representing a party before the
6 Commission was permitted to testify in that same proceeding.

7
8 This ruling leaves out the reference to “at a trial.” This is not a trial before a jury. It is an
9 administrative hearing where there is no need to prevent confusion between the advocacy and
10 advocate roles. The “at a trial” wording which the Commission ignored in Order 7084i, is part of
11 Rule 3.7. I briefed that trial vs. hearing distinction prior to the issuance of Order No. 7084i,
12 writing:

13 The relevant portion of Rule 3.7, Lawyer as Witness, provides:

- 14 **(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a**
15 **necessary witness unless:**
16 **(1) the testimony relates to an uncontested issue;**
17 **(2) the testimony relates to the nature and value of legal services rendered in the**
18 **case; or**
19 **(3) disqualification of the lawyer would work substantial hardship on the client.**
20

21 Some cases, like *Heard v. Foxshire Assocs., LLC*, 806 A.2d 348 (Md. Ct.
22 Spec.App. 2002), hold that ethics rules distinguish between “trial” and “hearing” and thus
23 do not prohibit lawyers from giving evidence on behalf of clients before administrative
24 agencies. Montana’s Administrative Procedure Act, references this proceeding as a
25 “hearing.” See MCA § 1.3.219 which begins “(1) The **contested case hearing** shall be
26 conducted before the decision making authority of the agency or a hearing officer”
27 [Emphasis added]

28 The Maryland’s Rules, Appendix, Rules of Professional Conduct, Rule 3.9
29 comment (2002) mirrors this view:

30 We conclude, therefore, that there exists a distinction between a "trial" and
31 a "hearing" in the applicability of the Rules of Professional Conduct. We further
32 conclude that the MRPC does not preclude the giving of evidence by an attorney
33 of record for a party before an administrative agency. However, we do not say
34 that the evidence given by an attorney in those circumstances does not have to be
35 under oath, or that it can be given by way of statement or narrative as an advocate,
36 rather than as a sworn witness. It is imperative that evidence given before an
37 adjudicatory body be under oath, whether from an attorney or lay person, a lay
38 witness or an expert witness.

1
2 Thus, any statements by Complainants' attorney in bold would have to be sworn
3 before being considered as evidence rather than other narrative.

4 In *In re Leventhal*, 2012 WL 1067568 (Bkrtcy. N.D.Ill. March 22, 2012), the
5 court denied a motion to disqualify a lawyer who was also a witness concluding:
6 "Because the trial will be a bench trial, not a jury trial, there is no risk whatever that the
7 trier of fact will confuse the roles of advocate and witness." *Id.* at *5; *see also United*
8 *States v. Johnston*, 690 F.2d 638, 644 (7th Cir. 1982) (advocate-witness rule is applied
9 more flexibly in a bench trial); *Saline River Prop., LLC v. Johnson Controls, Inc.*, No.
10 10-10507, 2011 WL 4916688 *3 (E.D.Mich. 2011).

11 In cases, like *In Re Leventhal*, *supra*, the court also denied a motion to disqualify
12 an attorney after evaluating the two tests that must be applied to disqualify, and noting (at
13 ¶ 2(a)) that "Under Rule 3.7(a)(3), an attorney may act as an advocate at trial, even
14 though he is likely to be a necessary witness, if his disqualification 'would work
15 substantial hardship on the client.' Model Rules of Prof'l Conduct R. 3.7(a)(3) (2011)."
16 So, even if the bolded comments and argument of Complainants' attorney found along
17 with attorney questions in the pre-filed testimony were considered attorney testimony,
18 disqualification of Complainants' attorney would work a substantial hardship on
19 Complainants. He has represented Complainants on a pro bono basis in this case for more
20 than four years and as a former Minnesota Contract Administrative Law Judge hearing
21 complex utility rate cases, is familiar with the nuances of utility ratemaking. Thus,
22 requiring Complainants to find another pro bono Montana attorney conversant with
23 public utility law would work a substantial hardship on them.

24
25 Further, it was never made clear to me that I had to provide examples of other lawyers
26 who had testified before the Commission. In the request for a rule requiring LED lighting,
27 attorneys for involved utilities spoke at the roundtable. Also, the attorney for NorthWestern is the
28 only named legal person attesting to legal statements in responses to Complainants' discovery. If
29 the Commission's interpretation is to be continued, then equal treatment would require
30 NorthWestern to either strike its answers to discovery or specify a legal witness to sponsor them.

31 **Q. It has been written by the hearing examiner that the Commission staff or**
32 **Consumer Council will provide any expert witness testimony needed on behalf of**
33 **Complainants. What is your response to that?**

34 A. Perhaps some of my testimony will elicit areas of investigation for staff and Consumer
35 Council witnesses.

1 The Commission’s Hearing Examiner has expressed its view that Complainants’
2 witnesses may not provide expert testimony. That makes it necessary for me to step into that
3 capacity. Therefore, I am requesting permission to testify here because it would work a hardship
4 on Complainants to have to hire experts, and because experts of other participants that the
5 Commission believes will represent complainants have not to date indicated that they will in fact
6 be acting in what complainants perceive to be their interest.

7 **Q. Please tell us about your education?**

8 A. I attended Montana State University in Bozeman for two years before transferring to
9 Washington State University where I graduated with a BA in Political Science. I have a Master’s
10 Degree in Political Science with a minor in economics from the University of Montana. I wrote a
11 book, *Poles Apart*, on electric and gas utility rate regulation that was published by the University
12 of Montana Press. I have additional education credits from several schools; courses in business
13 management as part of ongoing training with the US Postal Service; graduate and undergraduate
14 credits in Computer Information Systems and undergraduate credits in statistics from Regis
15 University and my Juris Doctorate from William Mitchell College of Law.

16 **Q. Where are you admitted to practice law?**

17
18 A. Montana and Colorado. I am on inactive status in Minnesota and before the Northern
19 Cheyenne Tribal Court.

20 **Q. What experience have you had in public utility cases and with energy issues?**

21 A. I was counsel for the utility division of the Montana Public Service Commission from
22 February 1995 through October 1996. Part of that time, I was supervising attorney. I also
23 consulted for the Montana Commission in November of 1996.

1 In my Minnesota private law practice I obtained needed access to phone equipment for
2 10,000 deaf senior citizens and won three cases for the Minnesota Radio Common Carrier
3 Industry (mobile phones) against Northwestern Bell during the breakup of AT&T. I also
4 represented the North Dakota Bar Association during an ethics investigation of a Minnesota
5 Public Utilities Commissioner.

6 In Minnesota I had a part time contract with the Office of Administrative Hearings
7 presiding as an Administrative Law Judge in utility matters spanning six years. My
8 recommended orders were acted on by Minnesota's Public Utility Commission. Although I did
9 not work for it.

10 **Q. You said you presided in utility cases but did not work for the Minnesota Public**
11 **Utility Commission. Who did you work for while presiding in utility cases?**

12 A. Minnesota's Public Utility Commission did not hire administrative law judges. The
13 Minnesota Office of Administrative Hearings hired the judges so the judicial function would be
14 separate from the regulatory and advocacy staffs. During that time, I presided in 60 cases
15 involving 13 public agencies. That included issuing 325 pages of orders or recommended orders
16 in 15 cases in the areas involving electricity, natural gas, railroad, telephone, trucking, and
17 warehouse matters pending before the Minnesota Public Utilities Commission. Somewhere in the
18 neighborhood of 700 billable hours were spent on those utility cases.

19 **Q. What did those cases involve?**

20 A. The Interstate Power, Northern Natural Gas, and Central Telephone cases were full
21 blown rate cases. Smaller rate cases entailed Minnesota railroads, and petroleum truckers. All
22 cases involve attorneys and witnesses from the state of Minnesota. Depending on the case I also

1 made ruling on participation and testimony of attorneys and witnesses from electric, natural gas,
2 phone or other companies.

3 **Q. Do you understand how original cost rate bases work?**

4 A. Yes. As I stated, I wrote a book on it. That book and my testimony before an interim
5 legislative committee was part of the reform that went into creation of the present five-member
6 PSC and the consumer counsel and which helped spawn reform of the so-called fair-value
7 system of valuing rate bases, something that was not fair at all.

8 **Q. Are you familiar with James Bonbright?**

9 A. Yes. His book *Principles of Public Utility Rates*, is listed in the bibliography as a
10 source of my book, *Poles Apart*. I notice that Professor Bonbright is lauded by Montana Power's
11 witness, Thomas E. Wilde, in PSC Docket D96.3.33 at page 6 of his testimony supporting the
12 change to the ownership charge tariff for Montana Power's (now NorthWestern Energy's) street
13 lights.

14 **Q. What "Bonbright Principle" did Mr. Wilde purport to follow in proposing the**
15 **ownership charge?**

16 A. Mr. Wilde testified: "We should not overlook that rates should also be understandable,
17 simple, practical to apply, relatively stable to allow consumers to effectively plan for the long
18 term, and be viewed as "fair" by consumers ("Bonbright Principles")."

19 **Q. Has the ownership charge lived up to that standard?**

20 A. Of course that is a question for the Commission to address. Certainly Bruce Simon
21 and the Barsantis and Grubas do not think the ownership charge is fair.

1 NorthWestern and the hearing examiner must find the ownership charge to be complex
2 and unfathomable. Otherwise why would they wanted me to strike testimony by complainants
3 who are not public utility rate experts?

4 **Q. What have you discovered about whether or not the ownership charge**
5 **overlooked the “Bonbright Principles?”**

6 A. The ownership charge likely is fathomable. It begins with the average original cost of
7 street lights. That is expressed in NorthWestern’s tariff. However, the carrying charge which the
8 average original cost of street lights in a lighting district (SILMD) is multiplied by, is not simple.
9 And the carrying charge is not explained in the tariff sheet. So, it has not been easy to determine
10 how that charge has been derived. NorthWestern has refused multiple discovery requests from
11 Complainants to fully explain the ownership charge components. The testimony of Montana
12 Power’s witness Maxwell (who is said to have derived the carrying charge) is not available
13 online in PSC Docket D95.9.128 where he testified, neither are Montana Power’s responses to
14 discovery in that docket. The Consumer Council witnesses that I have been able to find online
15 did not address of used the carrying charge in hat docket. And the rate was stipulated to and did
16 not go to a full hearing--something which drew an objection from then-Commissioner Bob Roe.
17 If the carrying charge was addressed in a hearing subject to cross examination in Docket
18 D95.9.128 or Docket D96.3.33, where that occurred would be useful information.

19 **Q. What have you been able to find out about the carrying charge?**

20 A. In PSC Docket No. 96.3.33, there is a generic reference to the inputs required to
21 calculate the carrying charge. At page PEM-14 & 15 of his testimony Philip E. Maxwell testifies:

15 **Q. What inputs are required to calculate the carrying charge?**

16 A. The following inputs are needed:

17

18	Income tax rates:	
19	Federal	35%
20	State	6.75%
21	Taxes other than income:	
22	Environmental tax	.12%
23	MCC tax	.08%
24	PSC tax	.23%
25	Property Taxes	2.50%
26	Book Life	varies by function
27	Tax Life	20 years
28	Marginal Cost of Capital	10.33%
29	Marginal Return on Equity	12.50%
30	Rate of Inflation	2.5%
31	Tax value	\$1,000
32	Book value	\$1,000

33

34 All of the inputs are constant for all of the functions except the book life. The book life
35 for each function is listed below and is determined by The Company's depreciation
36 study submitted in MPSC Docket No. D95.9.128. Also listed below are the real and
37 nominal carrying charges.

38

		Carrying Charge		
	Book Life	Real	Nominal	
39				
40	Transmission	35 years	11.52%	14.87%
41	Substation	50 years	10.79%	14.51%
42	Distribution	25 years	12.59%	15.66%
43	Customer	25 years	12.59%	15.66%

1

1	Street Lights	25 years	12.59%	15.66%
2	Yard Lights	25 years	12.59%	15.66%
3	Post Top Lights	25 years	12.59%	15.66%

2

3 **Q. Does Mr. Maxwell give a formula for deriving the carrying charge?**

4 A. Not in his written direct testimony in Docket 96.3.33. Unless they can demonstrate
5 that they have already used it to calculate the carrying charge, application of the formula for
6 calculating the carrying charge is something that, if I were sitting as an administrative law judge
7 on this case, I would expect the experts from the Commission and Consumer Council to clearly
8 demonstrate. Complainants have asked for that formula in discovery filed March 24, 2015 (C-
9 090. RPD 11).

10 **Q. What else do you notice about Mr. Maxwell's listing of carrying charge inputs?**

11 A. Mr. Maxwell's testimony in Docket D96.3.33 lists the marginal return on equity of
12 12.5%. However, in Docket 95.9.128, Order 5865d at page 21 that allowed cost was 10.2%. I've
13 seen an 11% return on equity allowed in D96.3.33 but never 12.5%. In addition, Mr. Maxwell
14 lists the Marginal Cost of Capital input as 10.33%. If the marginal cost of capital is the allowed

1 rate of return (ROR) on the entire rate base, then Mr. Maxwell's figure is too high. The allowed
2 ROR in effect at the time was 9.09% from 4/28/1994 through 1/15/1997 when it dropped to
3 9.06%. Thus, it appears on the face of these facts that the carrying charge was calculated using
4 capital costs that were higher than those allowed. Hopefully, the experts will address that as well.
5 If those inputs were in fact incorrect, that would skew the carrying charge impermissibly upward.

6 **Q. How would you expect the rate base to be depreciated or amortized?**

7 A. I would expect the utility to be allowed its approved rate of return plus enough to
8 cover depreciation on its original cost. Of course the utility should be allowed operating
9 expenses. However, that should be in a separate component of the utility rate. Income taxes, the
10 Environmental, MCC, PSC and property taxes are all operating expenses. They should not be
11 intermingled with what it takes to amortize an original cost rate base. That is what Tom Towe's
12 amendment to MCA § 69-3-109 was all about--it was to prevent various methods of pumping
13 phantom costs into ratemaking. Thus Complainants have sought to have various explanations on
14 their bill so what they were being charged would be apparent. For example if a 20 cent billing
15 charge and a 49 or 50 cent operations or maintenance fee or a USB or Res. CTC-QF fee can be
16 billed separately, certainly various taxes can be accounted for separately as well. Utilities in
17 other states or on phone bills frequently bill taxes separately. We would respectfully request the
18 Commission to require NorthWestern to change the way it bills so that the ownership charge
19 covers only amortization of the original cost of lights in a district.

20 **Q. What do you notice about Mr. Maxwell's listing of Rate of Inflation as a carrying**
21 **charge input?**

22 A. Mr. Maxwell lists a 2.5% Rate of Inflation. What is being inflated? If it is costs, then
23 that should be part of operating costs. If it is energy charge, then that should be part of the energy

1 charge. If it is rate base, then that is impermissible because the utility cannot recover more than
2 its original cost (plus allowed return and operating expenses). This component of the carrying
3 charge appears to be simply another attempt to get around original cost ratemaking established
4 by Senator Towe's amendment to MCA § 69-3-109. Under the original cost method of
5 ratemaking, a utility does not get to write up its rate base. The old way of doing things in
6 Montana was to write up the rate base by valuing it at today's value. As Senator Towe explained
7 that was called reproduction cost new ratemaking. It resulted in massive overcharges to the
8 ratepayer and profiteering on the part of the utility. As Commission Attorney Jim Paine
9 explained as quoted in testimony by Senator Towe and Mr. Barsanti, a utility investor gets back
10 his investment plus an allowed rate of return. As Mr. Barsanti explained, a banker gets back the
11 principal on his mortgage plus interest not adjusted for inflation, no more.

12 **Q. What do you notice about Mr. Maxwell's listing of the MCC and PSC tax**
13 **carrying charge inputs?**

14 A. Mr. Maxwell assigns an input 0.23% tax rate to cover the tax to pay for the operating
15 budget of the Montana Consumer Council. However, at the time in Docket D95.9.128, Order
16 5865b established a rate of 0.18%. If the MCC tax input was in fact incorrect, that would skew
17 the carrying charge impermissibly upward. In addition, you will recall that one of the "Bonbright
18 Principles" was that rates should be relatively stable. In fact Maxwell testified that his inputs
19 were constant. However, they have not been. The budget for the Consumer Council was slashed
20 by the 2009 legislature at the urging of NorthWestern's lobbyists after a Consumer Council
21 witness testified for a valuation of a Colstrip plant that NorthWestern disagreed with. So that
22 budget has not remained constant. Unless the MCC tax amount in the carrying charge was
23 adjusted downward to reflect the cut in the Consumer Council budget, the ironic effect of the

1 legislative budget cut would have been to put more money in the pockets of NorthWestern and
2 its shareholders. Why? Because if the carrying charge remained constant after the MCC budget
3 cut, NorthWestern would have continued collecting to defray the cost of that carrying charge
4 input while not having to pay it out to the Consumer Council. It is possible however, that some
5 other adjustment might have been made to reduce the MCC tax collected. That is where the rate
6 gets hard to understand. However, I'm sure the experts will clear this matter up in their testimony
7 so even Complainants can understand it.

8 **Q. Tax value and book value are included in Mr. Maxwell's inputs to be the same.**
9 **Do you know whether or not that valuation remains the same over the life of the street**
10 **lights?**

11 A. While the values likely started out to be the same, I suspect that the values differ over
12 time. Perhaps the experts can tell us whether that difference makes any difference in the outcome
13 of the carrying charge formula.

14 **Q. Property taxes are said to vary in Mr. Maxwell's inputs. Why would street light**
15 **consumers be assessed for property taxes?**

16 A. In one place Mr. Maxwell claims these are constant inputs and here he says they vary
17 by function. If property taxes vary by function, then what are they for street lights? Inquiring,
18 non-expert minds would like to know. This brings up the query about whether legitimate
19 property tax expenses are properly allocated to the class or category that causes the expense. If
20 property taxes are properly fully allocated to energy charge or transmission or distribution
21 expenses, places where an assessment for property taxes occur, then there would be no need to
22 allocate them as part of the ownership charge. Ratepayers in all rate categories would pay them
23 as part of what they are billed for energy, transmission or distribution. Beyond that, it seems like

1 double collecting to require city taxpayers like Grubas and Barsantis also to reimburse the utility
2 for property taxes cities have collected from the utility when those taxes should have already
3 been allocated to the energy, transmission and distribution component of the bill. If indeed those
4 taxes to support the PSC and MCC, etc. should be allocated to everyone taking power, one might
5 also want to get some revenue from cities that own their own lights. As far as I can tell, the
6 carrying charge is not assessed under the tariff to those who own their own street lights. Possibly
7 the experts can convince us that including a property tax component in the carrying charge is not
8 double collecting and explain why it is not necessary to assess these expenses equally on both
9 customer-owned and utility-owned luminaires

10 **Q. Please explain why book life would be a component in calculating carrying**
11 **charge?**

12 A. I wish I knew. Absent the formula, it is not easy to tell. I also can't explain why the
13 book life is 25 years and the time it takes to depreciate the street light rate base has varied from
14 40.3 years to 34.6 years. Complainants' discovery has not been able to produce an explanation
15 from NorthWestern. Unless future discovery unearths it, we'll have to call upon the experts to
16 enlighten us.

17 **Q. Using the data that you have been able to come up with, have you constructed a**
18 **table to investigate street lighting overcharge?**

19 A. In some cases, yes. We do have data about the average data base for every street
20 lighting range when Montana Power converted to the ownership charge. From Commission and
21 NorthWestern Data we have the number of street lights in each range during that time and the
22 first ownership charge. They are:

	A	B	C	D	E	F	G	H	I	J	K
1				12/31/1994	2/9/1996	2/9/1996	2/15/1997	4/1/1997	1/1/1998	11/29/2000	5/8/2001
2	LPO	Ownership Charge Cost Range		Test Year Utility-owned Street Light Units (\$000)	Total # of units	Average cost per street light	1/1/97 postponed to 2/15/97 Unit Rate Ownership Charge (LS-1 Original) Per Month	4/1/1997 (Sheet 66.1-1st rev) Unit Rate Ownership Charge(LS-1) Per Month	1/1/1998 (Sheet 66.1-2nd rev) Unit Rate Ownership Charge(LS-1) Per Month	11/29/2000 (Sheet 66.1-5th rev) Unit Rate Ownership Charge(LS-1) Per Month	5/8/2001 (Sheet 66.1-6th rev) Unit Rate Ownership Charge(LS-1) Per Month
3	LP001	200	278	\$ 1,649	7,574	\$ 217.74	\$ 2.32	\$ 2.33	\$ 2.39	\$ 2.58	\$ 2.60
4	LP002	400	594	\$ 21,637	46,385	\$ 446.46	\$ 4.99	\$ 5.01	\$ 5.13	\$ 5.54	\$ 5.59
5	LP003	600	799	\$ 4,842	6,692	\$ 723.61	\$ 7.74	\$ 7.77	\$ 7.96	\$ 8.60	\$ 8.68
6	LP004	800	999	\$ 5,207	5,993	\$ 868.77	\$ 9.29	\$ 9.33	\$ 9.55	\$ 10.32	\$ 10.41
7	LP005	1000	1199	\$ 1,035	991	\$ 1,044.29	\$ 11.17	\$ 11.22	\$ 11.49	\$ 12.41	\$ 12.52
8	LP006	1200	1399	\$ 4,913	3,875	\$ 1,267.87	\$ 13.56	\$ 13.62	\$ 13.95	\$ 15.07	\$ 15.20
9	LP007	1400	1599	\$ 4,111	2,661	\$ 1,544.93	\$ 16.53	\$ 16.60	\$ 17.00	\$ 18.37	\$ 18.53
10	LP008	1600	1799	\$ 1,828	1,051	\$ 1,739.71	\$ 18.61	\$ 18.69	\$ 19.14	\$ 20.68	\$ 20.86
11	LP009	1800	1999	\$ 78	40	\$ 1,960.95	\$ 20.97	\$ 21.06	\$ 21.57	\$ 23.30	\$ 23.51
12	LP010	2000	2199	-	0	\$ 2,100.00	\$ 22.47	\$ 22.56	\$ 23.10	\$ 24.96	\$ 25.18
13	LP011	2200	2399	-	0	\$ 2,300.00	\$ 24.61	\$ 24.71	\$ 25.30	\$ 27.33	\$ 27.58
14	LP012	2400	2599	-	0	\$ 2,500.00	\$ 26.74	\$ 26.85	\$ 27.49	\$ 29.70	\$ 29.96
15	LP013	2600	2799	-	0	\$ 2,700.00	\$ 28.88	\$ 29.00	\$ 29.70	\$ 32.09	\$ 32.37
16	LP014	2800	2999	-	0	\$ 2,900.00	\$ 31.02	\$ 31.15	\$ 31.90	\$ 34.46	\$ 34.77
17			Total	\$ 45,300	75,262						

COMPLAINANTS' EXHIBIT 25 (Doty) , Page 2

1		L	M	N	O	P	Q	R	S	T	U
2	A	1/1/2005 (Sheet 40.1, Rev. 1) Unit Rate Ownership Charge (ELDS-1) Per Month	1/1/2006 (Sheet 40.1, Rev. 2) Unit Rate Ownership Charge (ELDS-1) Per Month	3/1/2006 (Sheet 40.1, Rev. 3) Unit Rate Ownership Charge (ELDS-1) Per Month	1/1/2007 (Sheet 40.1, Rev. 4) Unit Rate Ownership Charge (ELDS-1) Per Month	2/1/2007 (Sheet 40.1, Rev. 5) Unit Rate Ownership Charge (ELDS-1) Per Month	4/1/2007 (Sheet 40.1, Rev. 6) Unit Rate Ownership Charge (ELDS-1) Per Month	1/1/2008 (Sheet 40.1, Rev. 7) Unit Rate Ownership Charge (ELDS-1) Per Month	1/1/2009 (Sheet 40.1, Rev. 8) Unit Rate Ownership Charge (ELDS-1) Per Month	2/1/2009 (Sheet 40.1, Rev.9)Unit Rate Ownership (ELDS-1) Charge Per Month (same rate for June 2009)	1/1/2010 (Sheet 40.1, Rev. 11 [Rev. 10 not used]) Unit Rate Ownership Charge (ELDS-1) Per Month
3	LP001	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
4	LP002	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
5	LP003	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
6	LP004	\$ 10.43	\$ 10.81	\$ 10.70	\$ 10.79	\$ 11.02	\$ 10.99	\$ 11.31	\$ 10.97	\$ 10.77	\$ 10.99
7	LP005	\$ 12.55	\$ 13.00	\$ 12.87	\$ 12.98	\$ 13.25	\$ 13.21	\$ 13.60	\$ 13.19	\$ 12.95	\$ 13.21
8	LP006	\$ 15.23	\$ 15.78	\$ 15.62	\$ 15.75	\$ 16.08	\$ 16.04	\$ 16.50	\$ 16.00	\$ 15.72	\$ 16.03
9	LP007	\$ 18.57	\$ 19.24	\$ 19.05	\$ 19.21	\$ 19.61	\$ 19.56	\$ 20.12	\$ 19.51	\$ 19.17	\$ 19.55
10	LP008	\$ 20.90	\$ 21.66	\$ 21.44	\$ 21.62	\$ 22.07	\$ 22.01	\$ 22.65	\$ 21.97	\$ 21.58	\$ 22.01
11	LP009	\$ 23.56	\$ 24.41	\$ 24.17	\$ 24.37	\$ 24.88	\$ 24.82	\$ 25.53	\$ 24.76	\$ 24.32	\$ 24.80
12	LP010	\$ 25.23	\$ 26.14	\$ 25.88	\$ 26.10	\$ 26.64	\$ 26.57	\$ 27.34	\$ 26.52	\$ 26.04	\$ 26.56
13	LP011	\$ 27.64	\$ 28.64	\$ 28.35	\$ 28.59	\$ 29.19	\$ 29.11	\$ 29.95	\$ 29.05	\$ 28.53	\$ 29.10
14	LP012	\$ 30.02	\$ 31.11	\$ 30.79	\$ 31.05	\$ 31.70	\$ 31.61	\$ 32.53	\$ 31.55	\$ 30.99	\$ 31.61
15	LP013	\$ 32.44	\$ 33.61	\$ 33.27	\$ 33.55	\$ 34.25	\$ 34.16	\$ 35.14	\$ 34.08	\$ 33.47	\$ 34.14
16	LP014	\$ 34.84	\$ 36.10	\$ 35.74	\$ 36.04	\$ 36.79	\$ 36.69	\$ 37.76	\$ 36.62	\$ 35.97	\$ 36.69

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COMPLAINANTS' EXHIBIT 25 (Doty), Page 3

1	A	V	W	X	Y	Z	AA	AB	AC	AD
2		7/8/2010 (Sheet 40.1, Rev. 12) Unit Rate Ownership Charge (ELDS-1) Per Month	1/1/2011 (Sheet 40.1, Rev. 15 [Rev. 13 & 14 not used]) Unit Rate Ownership Charge (ELDS-1) Per Month	6/16/2011 (Sheet 40.1, Rev. 16) Unit Rate Ownership Charge (ELDS-1) Per Month	7/8/2011 (Sheet 40.1, Rev. 17) Unit Rate Ownership Charge (ELDS-1) Per Month	1/1/2012 (Sheet 40.1, Rev. 20 [Rev. 18 & 19 not used]) Unit Rate Ownership Charge (ELDS-1) Per Month	1/1/2013 (Sheet 40.1, Rev. 21) Unit Rate Ownership Charge (ELDS-1) Per Month	2/7/2013 (Sheet 40.1, Rev. 22) Unit Rate Ownership Charge (ELDS-1) Per Month	1/1/14 Unit Rate Ownership Charge Per Month	3/1/15 Unit Rate Ownership Charge Per Month
3	LP001	\$ 2.93	\$ 2.89	\$ 2.97	\$ 2.98	\$ 2.91	\$ 3.02	\$ 3.02	\$ 3.01	\$ 3.02
4	LP002	\$ 6.27	\$ 6.17	\$ 6.35	\$ 6.37	\$ 6.22	\$ 6.46	\$ 6.45	\$ 6.43	\$ 6.46
5	LP003	\$ 9.74	\$ 9.60	\$ 9.88	\$ 9.91	\$ 9.68	\$ 10.05	\$ 10.03	\$ 10.00	\$ 10.24
6	LP004	\$ 11.68	\$ 11.52	\$ 11.85	\$ 11.88	\$ 11.60	\$ 12.04	\$ 12.02	\$ 11.99	\$ 12.04
7	LP005	\$ 14.06	\$ 13.86	\$ 14.26	\$ 14.30	\$ 13.97	\$ 14.50	\$ 14.48	\$ 14.44	\$ 14.50
8	LP006	\$ 17.05	\$ 16.81	\$ 17.29	\$ 17.34	\$ 16.93	\$ 17.57	\$ 17.54	\$ 17.50	\$ 17.57
9	LP007	\$ 20.81	\$ 20.52	\$ 21.11	\$ 21.17	\$ 20.68	\$ 21.46	\$ 21.43	\$ 21.38	\$ 21.47
10	LP008	\$ 23.41	\$ 23.09	\$ 23.76	\$ 23.83	\$ 23.27	\$ 24.15	\$ 24.11	\$ 24.05	\$ 24.15
11	LP009	\$ 26.38	\$ 26.01	\$ 26.76	\$ 26.84	\$ 26.21	\$ 27.20	\$ 27.16	\$ 27.09	\$ 27.20
12	LP010	\$ 28.26	\$ 27.87	\$ 28.67	\$ 28.75	\$ 28.08	\$ 29.14	\$ 29.10	\$ 29.03	\$ 29.15
13	LP011	\$ 30.96	\$ 30.53	\$ 31.41	\$ 31.50	\$ 30.76	\$ 31.93	\$ 31.88	\$ 31.80	\$ 31.93
14	LP012	\$ 33.63	\$ 33.16	\$ 34.12	\$ 34.22	\$ 33.42	\$ 34.69	\$ 34.63	\$ 34.54	\$ 34.68
15	LP013	\$ 36.31	\$ 35.82	\$ 36.85	\$ 36.96	\$ 36.10	\$ 37.47	\$ 37.41	\$ 37.32	\$ 37.48
16	LP014	\$ 39.02	\$ 38.48	\$ 39.59	\$ 39.71	\$ 38.78	\$ 40.25	\$ 40.19	\$ 40.09	\$ 40.26

1

1 **Q. What do you wish to call the Commission’s attention to on page 1 of**

2 **Complainant’s exhibit 25?**

3 A. First. At test year end 1994 NorthWestern owned 75,262 street lights. You see that in
4 line 17, Column E. NorthWestern’s rate base for those 75,262 street lights was \$45,300,000. You
5 see that in line 17, Column D. The lights are clustered in LPO Ranges 1 through 9. You can see
6 that in Column E, lines 3 through 11. There were no lights in LP010 through LP014 prior to
7 1997, although an exhibit shows one in each apparently to make the spreadsheet work. Dividing
8 the amounts in Column D of each row by the amount in column E of each row gives you the
9 average cost of lights (Column F) used to place them in the ownership charge range. Note for
10 example that the average cost of lights in the LP001 \$200 to \$399 cost range was \$217.74--close
11 to the lower end of that range. The original monthly ownership charge that the Commission
12 allowed for that range was \$2.32. It was allowed on January 1, 1997. However, due to a
13 computer complication, NorthWestern did not begin applying the rate until February 15, 1997.
14 See line 3, Col. F. At the time NorthWestern was applying a carrying charge of 12.59% to the
15 average cost in the rate base.

16 **Q. How many years would it take to depreciate the \$217.74 average rate base for the**
17 **7,574 street lights left in LP001 at the start of this ownership charge rate schedule using the**
18 **carrying charge of 12.59%?**

19 A. Using the NPER formula in the Excel spread sheet, $33.36 \text{ years} = \text{NPER}(12.59\%/12,$
20 $-\$2.32, \$217.74, 0, 0)$ if everything remained constant and the “Bonbright Principles” were
21 followed. However, that number is too high. If the overall rate of return of 9.06 % allowed by the
22 PSC at the time and the 8.46% ROR applied when it became effective on 5/8/2001 had been used
23 instead of 12.59% the remaining rate base in LP001 would have been amortized in 33.36 years.

1 The Excel formula NPER (9.06%/12, -\$2.32, \$217.74,0,0) is used to calculate this. Each month
2 the \$217.74 rate base is lowered by the amount of principle that is amortized and the formula is
3 calculated again. Also, as the ownership charge changes, the \$2.32 figure changes beginning the
4 month the change is effective. Likewise the 9.06% rate becomes 8.46% beginning in May of
5 2001.

6 **Q. So the amortization period changes over time?**

7 A. Yes, with the change in the ownership charge, and the allowed ROR. You will notice
8 that by 2014, the ownership charge has grown from \$2.32/month to \$3.01/month over a period of
9 rate increases and decreases. Using the NPER formula in the Excel spread sheet and the same
10 inflated carrying charge of 12.59% (throughout the entire amortization period), the rate base in
11 LP001 would be fully amortized in fewer than 18 years, not 33.6.

12 **Q. What happens if you run the amortization table (using 12.59% carrying charge)
13 as the ownership charge increases until it completely amortizes the rate base?**

14 A. All of the lights in LP001 were completely amortized by January 2015 and they
15 should all come out of the NorthWestern's rate base and the taxpayers, cities and counties in
16 those lighting districts should be credited with whatever bills they paid. That is it would have
17 taken 18 years (not the 34 year depreciation life claimed in some NorthWestern documents) from
18 the original start February 15, 1997 date when the ownership charge was first being applied to
19 completely amortize all of the LP001 lights even using NorthWestern's overstated 12.59%
20 carrying charge.

21 **Q. How long does it take to amortize a rate base of \$217.74 using the 9.06% and 8.46
22 overall rates of return and the various ownership charges allowed over the years?**

1 A. 11.67 years. The rate base for the lights in LP-001 would have been paid off by mid-
2 September 2008 using the allowed rates of return. However that would not have compensated
3 NorthWestern for any legitimate costs in the carrying charge. It becomes a problem trying to
4 back out the legitimate charges that are coupled with the unjustified 2.5% inflation rate and the
5 overstated cost of capital and return on equity. My preference when a utility attempts to bilk the
6 public is to treat this as one would any other type of profiteering and penalize the utility for
7 making ratemaking so complicated that regulators and the public have trouble seeing through the
8 unjustified charges and use the overall rate of return as the correct number, while foregoing any
9 carrying charge components that would otherwise be legitimate expenses if they had been
10 properly allocated to operating expense. Hopefully the experts will urge the Commission to order
11 the utility to get right with the law or face future penalties.

12 **Q. How many Billings lighting districts are in the LP-001 category?**

13 A. 13 Billings Lighting Districts (SILMDs) have some or all of their lights in the LP-001
14 ownership charge range. They are SILMDs 8, 9, 10, 97, 99, 107, 119, 152, 162, 176, 205, 221,
15 and 238. The street lights in those districts were all installed prior to the date of the combined
16 1994 test year rate base. So they would be included in the remaining rate base for the test year
17 Montana Power used when establishing the ownership charge. Tax/ratepayers in those districts
18 all should receive immediate rate reductions and refunds back to September of 2008. SILMD
19 162 is one of the SILMDs encompassing where Grubas live and Bruce Simon's testimony
20 describes SILMD 97, which is in this grouping.

21 **Q. Have you performed an amortization analysis of the other LP00 ranges?**

22 A. Yes. That is summarized in Complainants' Exhibit 26, below.

23 **Q. What does Complainants' Exhibit 26 show?**

1 A. Even if one uses NorthWestern's exaggerated 12.59% carrying charge as the
2 percentage to apply in the amortization calculation all 75,262 of the street lights in
3 NorthWestern's rate base in 1994 will have been fully amortized by May of 2015. Lights in
4 those SILMDs should come out of the rate base because the original cost has been fully
5 recovered with a handsome ROR in excess of that authorized. And tax payers in those lighting
6 districts should have the ownership charge eliminated from their tax statements.

7 Please note that SILMD 161 the other lighting district appearing on Gruba's property tax
8 bill is in LP006 and SILMD 228 appears in Barsanti's property tax bill in LP007.

9 **Q. What is the result if the allowed ROR is used as the percentage to apply in the**
10 **amortization calculation?**

11 A. The allowed rates of return were 9.06% and 8.46% during the amortization period.
12 Using those numbers along with each increase and decrease in the ownership charge, we see that
13 all 75,262 of the street lights in Montana Power/NorthWestern rate base in 1994 were fully
14 amortized by 2008. Some in January and others in September or October. That means many
15 Montana cities have been overcharged since 2008 for street lights. They deserve a hefty refund.

COMPLAINANTS' EXHIBIT (Doty) 26										
A	B	C	D	E	F	G	H	I	J	K
	LPO	Ownership Charge Ranges		Date all in this LPO Completely Amortized @ 12.59%	Number of years to Amortization from 2/15/97 @ 12.59%	Date all in this LPO Completely Amortized @ 9.06%	Number of years to Amortization from 2/15/97 @ 9.06%	Billings SILMDs Completely Amortized	Unique SILMDS	SILMD Installed after 1997
1	LP001	200	399	1/15/2015	18	9/15/2008	11.67	8, 9, 10, 97, 99, 107, 119, 152, 162, 176, 205, 221, 238	13	
2	LP002	400	594	1/15/2013	16	1/15/2008	11.00	8, 9, 10, 17, 118, 119, 296	3	
3	LP003	600	799	4/15/2015	18.3	10/15/2008	11.75	17		
4	LP004	800	999	5/15/2015	18.3	10/15/2008	11.75	117, 130, 133, 134, 136, 137, 147, 149, 172	9	
5	LP005	1000	1199	5/15/2015	18.3	10/15/2008	11.75	99, 100, 191, 224, 279	3	
6	LP006	1200	1399	5/15/2015	18.3	10/15/2008	11.75	122, 127, 128, 135, 145, 150, 153, 154, 157, 161, 164, 167, 171, 173, 174, 175, 178, 179, 180, 182, 183, 184, 185, 187, 188, 189, 190, 191, 192, 193, 198, 201, 206, 207, 209, 216, 237, 239, 273, 293, 294, 296, 297, 298	44	
7	LP007	1400	1599	5/15/2015	18.3	10/15/2008	11.75	17, 107, 109, 114, 115, 116, 121, 123, 124, 125, 126, 129, 131, 136, 138, 139, 143, 144, 146, 147, 151, 152, 155, 158, 159, 160, 165, 181, 228, 229, 230, 231, 232, 242, 244, 246, 249, 251, 252, 253, 258, 261, 262, 286, 292, 295	42	
8	LP008	1600	1799	5/15/2015	18.3	10/15/2008	11.75	97, 159, 214, 241, 245, 247, 248	5	265
9	LP009	1800	1999							285, 300
10	LP010	2000	2199							271, 272, 301
11	LP012	2400	2599							277
12	LP013	2600	2799							288
13								TOTAL	119	8

1 **Q. Do you have a recommendation on use of the refund that could reduce street**
2 **lighting bills even further?**

3 A. I would like to see that refund applied to quality LED street lighting so the energy
4 component of the municipal lighting budgets would be cut by at least 50%. If solar street lights
5 are installed, the energy component of the rate could be zero.

6 **Q. What Billings lighting districts should see rate reductions?**

7 A. All listed in Column I of Complainants' Exhibit 26 should see rate reductions. That is
8 about 119 distinct SILMDs--almost all of those where NorthWestern owns street lights. It is
9 possible that those 8 distinct SILMDs listed in Column K should also see reductions. However, I
10 have not had time to run the numbers on them and am waiting for further discovery from
11 NorthWestern to do so.

12 **Q. If the revenue coming from the carrying charge is not obtained from the street**
13 **lighting class, will it have to come from other customer classes?**

14 A. No. Because both the street lighting class rate base and overall rate base will be
15 reduced and thus the commensurate overall revenue required will also be reduced. By
16 multiplying the allowed rate of return by the rate base for each individual customer class, an
17 appropriate amount of revenue will be obtained from each customer class without raising
18 additional revenue from other customer classes when the rate base allocated to street lighting is
19 adjusted to reflect what has actually been paid to reduce the customer class rate base.

20 **Q. What about the revenue lost from revised application of the carrying charge,**
21 **won't it have to come from other classes?**

22 A. Not if the revenue is not merited. For example, to the extent that the "rate of inflation"
23 component in the carrying charge is eliminated from carrying charge application to rate bases in

1 other customer classes, those classes will benefit as well. If there is a reallocation of the tax
2 components of the carrying charge, then everyone will still pay their fair share of taxes.

3 That concludes my testimony. I appreciate any consideration given it.

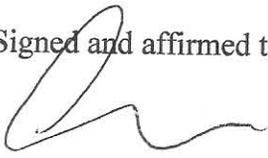
4 I, Russell L. Doty, do hereby certify that this 23 pages of typewritten material is a full,
5 correct, and truthful rendition of my pre-filed written testimony given under oath.

6
7 
8 Russell L. Doty

9
10 State of Colorado

11
12 County of Weld

13
14 Signed and affirmed to before me on March 27, 2015 by Russell L. Doty.

15
16 
17 _____

18 Notary
My Commission Expires: *March 19th, 2018*

EMILY KATE SHUSTER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20144012479
MY COMMISSION EXPIRES MARCH 19, 2018