

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Complaint of)	
DR. PAUL WILLIAMSON, REV. DR. VERN)	UTILITY DIVISION
KLINGMAN, PATRICIA KLINGMAN &)	
RUSSELL L. DOTY, on Behalf of Themselves)	DOCKET NO. D2010.2.14
& Others Similarly Situated,)	ORDER NO. 7084c
)	
Complainants,)	
)	
v.)	
)	
NORTHWESTERN ENERGY,)	
)	
Defendant.)	

ORDER REVERSING COMMISSION FINDING IN ORDER NO. 7084b

FINDINGS OF FACT

Background

1. On February 11, 2010, the Montana Public Service Commission (Commission) was in receipt of a formal complaint from Paul Williamson, Vern Klingman, Patricia Klingman and Russell Doty (Complainants) against NorthWestern Energy (NWE). Complainants contend, among other things, that NWE's street lighting tariff ownership charges are excessive, unreasonable, and unjustly discriminatory.

2. On February 25, 2010, the Commission served its Notice of Complaint on NWE calling upon NWE to satisfy or answer the complaint in writing within twenty days of service (citing ARM 38.2.2101-38.2.2107).

3. On March 17, 2010, NWE filed its Answer to the formal complaint.

4. On March 22, 2010, NWE filed its Motion to Dismiss and Brief in Support.

5. On April 2, 2010, Complainants filed their Motions to Compel Answer, to Strike Defenses & to Prevent Fees for Respondent's Attorney from Being Paid by Consumers (Motions)

with an accompanying Affidavit and Brief in Support of Complainants' Motions (Complainants' Motions are addressed in a separate Commission order). Complainants also filed on April 2, 2010 an affidavit and brief in opposition to NWE's Motion to Dismiss.

6. On May 12, 2010, the Commission issued Order No.7084 addressing Complainants' Motion to Compel Answer, To Strike Defenses & to Prevent Fees For Respondent's Attorney from Being Paid by Consumers.

7. On May 20, 2010, the Commission issued Order No. 7084a addressing Respondent-NWE's Motion to Dismiss. Order No. 7084a dismissed the formal complaint on the basis of lack of standing of Complainants to bring the action. An errata to Order No. 7084a was issued on May 21, 2010.

8. On June 2, 2010, Complainants filed their Motion for Reconsideration of Order No. 7084a.

9. At its scheduled business meeting on June 15, 2010, Staff recommended, and the Commission accepted Staff's recommendation, to Deny Complainants' Motion for Reconsideration due to a failure to file the request within 10 days after issuance of Order No. 7084a, the Commission order dismissing the complaint due to lack of standing of Complainants.

Analysis/Ruling

10. The Staff recommendation to deny the reconsideration request overlooked applicable provisions of ARM 38.2.313, the Commission rule addressing computation of time, which provides in relevant part:

"(b) When a document is required to be filed or served on a particular day, the postmarking of the document on or before that day will satisfy this rule."

11. Complainants' Motion for Reconsideration was postmarked on the due date, *viz.*, June 1, 2010. The Motion for Reconsideration was, therefore, timely filed. The Commission will reverse its findings in Order No. 7084b which was a denial of the reconsideration request due to untimely filing. The Commission also finds a need to extend the time within which it can consider Complainants' Motion for Reconsideration on its merits to July 14, 2010. Lastly, NorthWestern Energy filed a responsive pleading to Complainants' reconsideration request on June 14, 2010. Complainants should be afforded until June 24, 2010 within which to respond to the pleading if they choose to do so.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission has jurisdiction over this formal complaint through the provisions of the Montana Administrative Procedure Act (§§ 2-4-601 *et seq.*), Title 69, MCA, specifically §§ 69-3-321, 69-3-201, 69-3-301, and 69-3-304, MCA.

2. Complainants Motion for Reconsideration was, in fact, timely filed under the Commission's administrative rules. The Commission therefore REVERSES its holding in Order No. 7084b which found that the pleading was not timely filed.

ORDER

Complainants Motion for Reconsideration is hereby found to have been timely filed. The Commission will consider the merits of the reconsideration request before July 14, 2010. Should Complainants determine that they wish to respond to NorthWestern's June 14, 2010 pleading responsive to Complainants' Motion for Reconsideration, Complainants should file their responsive pleading by June 24, 2010?

Done and dated this 22nd day of June 2010, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chair

KEN TOOLE, Vice Chair

GAIL GUTSCHE, Commissioner

BRAD MOLNAR, Commissioner

JOHN VINCENT, Commissioner

ATTEST:

Verna Stewart
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten days. See 38.2.4806, ARM.