

Service Date: March 13, 2015

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

IN THE MATTER OF the Complaint of)	REGULATORY DIVISION
James T. and Elizabeth A. Gruba,)	
Leo G. and Jeanne R. Barsanti, and)	DOCKET NO. D2010.2.14
Michael W. and Frances E. Paterson)	
on Behalf of Themselves and Others)	
Similarly Situated,)	
)	
Complainants,)	
)	
v.)	
)	
NorthWestern Energy)	
)	
Respondent.)	

NOTICE OF STAFF ACTION

In February 2010, Complainants’ predecessors filed with the Public Service Commission (Commission) an original Complaint against NorthWestern Energy (NorthWestern) challenging certain aspects of the operation of street lighting districts in Billings in particular, and Montana, in general, including the ownership charge contained within the electric lighting tariff and the absence of light emitting diode (LED) luminaires on street lights. The Commission dismissed the original Complaint for lack of standing, and Complainants’ predecessors filed for judicial review in the Thirteenth Judicial District Court, Yellowstone County. The district court affirmed the Commission’s dismissal, and Complainants’ predecessors appealed to the Montana Supreme Court. The Montana Supreme Court affirmed the Commission’s dismissal and remanded the matter back to the Commission to consider a subsequently filed amended complaint. Now before the Commission for its consideration is Complainants’ Second Amended Complaint.

On June 10, 2014, the Commission appointed Laura Farkas to act as hearings officer for the purpose of acting on protective orders, motions, and discovery issues.

On February 6, 2015, Ms. Farkas issued Order No. 7084i granting NorthWestern's *Motion to Strike Testimony* and *Motion to Strike Testimony of Edward Smalley*. On March 3, 2015, Complainants filed their *Request for Order 7084i Clarification* and *Motion for Administrative Notice*.

Order No. 7084i clearly stated that “the Montana Rules of Professional Conduct makes it clear that it is generally inappropriate for a lawyer acting as an advocate to testify” (Or. 7084i ¶ 36 (Feb. 6, 2015)) and orders that Complainants’ Testimony “is not to contain any comments or dialogue of Complainants’ attorney.” *Id.* at ¶ 39.

Complainants’ are unsure whether or not including subheadings in their testimony would violate Order No. 7084i. *Req. for Clarification* p. 1-2 (Mar. 3, 2015). Complainants also seek clarification as to whether or not testimony may be prefaced with statements that the testimony is under oath, as well as statements about what the following question will address. *Id.*

Order No. 7084i is perfectly clear. NorthWestern, in its *Motion to Strike Testimony Filed by Complainants*, points out an instance in which Complainants’ counsel includes inappropriate statements within Complainants’ Testimony. *Mot. to Strike* p. 4 (April 1, 2015). On page 14 of the Testimony of Leo G. Barsanti, Complainants' attorney makes the following statement: [i]t becomes a [sic] hard for folk [sic] like Barsanti’s [sic] to challenge large corporations when confronted with petty nuisances like this failure to admit what ought to be admitted.”

NorthWestern argues that such statements from an attorney representing the Complainants in this proceeding is improper, and NorthWestern is correct. Certainly Complainants’ counsel can recognize the difference between his inappropriate commentary included within the witness’ testimony, and the use of subheadings. Though no further clarification should be necessary, Complainants’ may make use of subheadings, statements that the testimony to follow is under oath, and statements about what the following question will address, as long as such statements are neutral and do not contain opinions, commentary, or dialogue of Complainants’ counsel.

Regarding Complainants’ *Motion for Administrative Notice*, requests for administrative notice shall be addressed in parties’ prehearing memoranda, and can be further addressed and ruled on by the Commission during the hearing.

BY THE MONTANA PUBLIC SERVICE COMMISSION

BRAD JOHNSON, Chairman
TRAVIS KAVULLA, Vice Chairman
KIRK BUSHMAN, Commissioner
ROGER KOOPMAN, Commissioner
BOB LAKE, Commissioner