

1 and requests costs and pursuant to Rule 11 requests attorney's fees of \$400 for having to make
2 this motion.

3 **2) TO STRIKE FALSE STATEMENT IN ¶ 22 OF RESPONDENT'S ANSWER**

4 Respondent's Answer ¶ 22 claims "Other items not included in the Commission
5 approved ownership charge are operations and maintenance related to the street and area lights,
6 which are rates approved by the Commission." That statement is false. For the time period in
7 question in this proceeding, June of 2009 NWE billed street lighting districts for operation and
8 maintenance charges separately from its ownership charge--\$0.56/month per light operations
9 charge and \$0.54/month per light for maintenance charge. NWE should be required to reexamine
10 its other answers in light of that after it admits the allegations in ¶ 22.

11 **Therefore, Petitioners** move to strike the aforementioned sentence in ¶ 22 if
12 Respondent's answer and pursuant to Rule 11 requests costs and attorney's fees of \$200 for
13 having to make this motion.

14 **3) TO ACCEPT AS FACT VARIOUS AVERMENTS IN THE PETITION**

15 As has been briefed, NorthWestern failed to respond adequately to the Petition by
16 admitting fact that it knew or could have reasonably obtained information on.

17 **Therefore, Petitioners** move to have the averments in Petition ¶s V, 5, 6, 7, 8, 9, 10, 22,
18 58, 59, 60, 61, and 64 admitted as fact.

19 **4) TO STRIKE ALL OF RESPONDENT'S AFFIRMATIVE DEFENSES**

20 As set forth in the accompanying brief, all of Respondent's Affirmative Defenses are
21 insufficient and therefore may be stricken pursuant to MT.R.Civ Proc., Rule 12.06. In addition
22 Respondent's Affirmative Defenses are not well founded in either law or fact. Further, they are

1 imposed for an improper purpose, namely to delay and unnecessarily increase the costs of
2 litigation in violation of Rule 11.

3 Each month that NWE can delay these proceedings it is able to bank an overcharge. In at
4 least one case before this Commission (when Respondent's attorney was attorney for this
5 Commission), a five year delay in relief for ratepayers was caused by a utility's legal
6 maneuvering. It cost Montanans million. Now that Respondent's attorney has switched horses,
7 she should not be allowed to go to school on her prior adversaries by adopting their tactics of
8 delay.

9 **Therefore, Petitioners** move to strike; compel answers to Petition ¶s I, III, IV, 22, 23, 49
10 & 50; and requests costs and attorney's fees for \$400 for having to make this motion.

11 **5) TO REQUIRE THAT ALL NWE ATTORNEY'S FEES AND LITIGATION COSTS**
12 **IN THIS CASE BE PAID FROM STOCKHOLDER AND NOT RATEPAYER FUNDS.**

13 Ratepayers should not be required to fund litigation that is not in their interest. Any
14 prolonging of this litigation by NorthWestern is not in ratepayer interest. If it were acting in the
15 interest of its ratepayers, NorthWestern would be more enlightened. It would want to reduce
16 litigation costs by not opposing Petitioner's request to have some appearances be done
17 electronically, and by reducing nighttime lighting and therefore its consumers' bills.

18 Other utilities are enlightened. For example, Pacific Gas & Electric has embarked on a
19 program to replace 162,000 of its utility-owned street lights with LEDs. It and others have
20 already promulgated tariffs to ensure that consumers receive savings for reducing nighttime
21 lighting by 50%.

22 Utilities like PG&E and Detroit Edison have policies of allowing consumers to install
23 customer owned LED street lights on PG&E and Detroit Edison poles. PG&E even provides a

1 \$50 to \$200 rebate to the customer if that is done. So why should NorthWestern's ratepayers
2 fund efforts by lawyers for NWE's shareholders to deny them the cost-savings and improved
3 lighting benefits of a fine new technology?

4 **Therefore Petitioners** move for a Commission ruling requiring that all NWE attorney's
5 fees and litigation costs in this case be paid from stockholder and not ratepayer funds.

6 **6) TO AMEND THE PETITION TO UPDATE FIGURES IN TABLES**

7 Petitioner's have discovered rate of return number that are more appropriate to use than
8 the estimated 8% rate of return utilized in calculations for tables in the Petition. They have also
9 discovered that ownership charges have varied over time for individual street lighting sub-
10 classes. In the latter case the adjustment will make the length of the overcharge longer and in the
11 latter case it will make it shorter. How that will net out remains to be calculated. Thus a more
12 precise statement of actual effects of the ownership charge will be forthcoming as additional data
13 is developed.

14 **Therefore Petitioners**, pursuant to A.R.M. § 38.2.1207, MT.R.Civ Proc., Rules 15.01,
15 15.02 and 15.04 move to amend the Petition to conform with the evidence that is expected to be
16 presented during the proceeding and which will be developed after discovery.

17 **7) TO CERTIFY A CLASS**

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19 Respectfully submitted,

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April 1, 2010

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CERTIFICATE OF SERVICE

I, Russell L. Doty, certify that on April 1, 2010, a true and accurate copy of the foregoing

MOTIONS TO COMPEL ANSWER, ETC. was served upon the parties listed below by

depositing it, postage prepaid, in the US mail.

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