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

IN THE MATTER OF the Montana Public Service) REGULATORY DIVISION
Commission's Review of Rates to Recover)
NorthWestern Energy's Electricity Supply Costs) DOCKET NO. 2017.5.39

Reply to WINData's Opposition to NorthWestern's Motion to Strike

The Montana Public Service Commission ("Commission") must strike the posthumous declaration of Martin Wilde from the administrative record in order to prevent a violation of NorthWestern Corporation d/b/a NorthWestern Energy's ("NorthWestern") due process rights. If the Commission does not strike this document from the record, NorthWestern will be forced into a position of filing testimony rebutting statements of the deceased. Not only is this result nonsensical, but there is no justification for the Commission to divert from the definition of "testimony" or from the standard regulatory practice of accepting declarations from living witnesses. WINData, LLC ("WINData") argues that it is "entitled to have a substitute witness sponsor the testimony of Mr. Wilde, a process NorthWestern has utilized numerous times in varying dockets." WINData is not entitled to have a witness sponsor the posthumous declarations of Mr. Wilde. While substitute witnesses have been used in certain regulatory proceedings, the initial testimony is always limited to declarations made by the living.

Additionally, in the case of NorthWestern, the testimony is adopted by another employee who performs the same or similar functions of the unavailable employee. Requiring NorthWestern to defend itself against the deceased is surely a violation of the Confrontation Clause and NorthWestern's due process rights. This violation is precisely the reason why the Commission must strike the posthumous declaration from the administrative record.

WINData is the party in this proceeding, not Mr. Wilde. A Commission decision to strike the document will have no impact on WINData's ability to file testimony or otherwise participate in this docket. The Commission recognized this when, at its November 28, 2017 work session, it denied WINData's motion to stay the proceeding. The Commission did not, at that work session, find it necessary or even logical to allow Mr. Wilde to submit posthumous "testimony."

The Commission will soon issue a new procedural schedule to take into account the Notice of Additional Issues, and WINData will be able to participate in the docket according to that schedule. The Commission should strike Mr. Wilde's posthumous declaration and proceed with this docket according to that procedural schedule.

Respectfully submitted this 27th day of December 2017.

NORTHWESTERN ENERGY .

By: Ann B. Hill
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of NorthWestern Energy's Reply to WINData's Opposition to NorthWestern's Motion to Strike in Docket No. D2017.5.39 has been hand delivered to the Montana Public Service Commission and the Montana Consumer Counsel this date. It has also been e-filed with the Montana Public Service Commission, emailed to counsel of record, and served upon the remainder of the service list by postage prepaid via first class mail as follows:

Date: December 27, 2017


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