

Service Date: June 7, 2017

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. D2017.5.39

NOTICE OF STAFF ACTION

House Bill 193 (2017) ("HB 193") eliminates the mandatory electricity supply cost recovery mechanism, also known as a cost tracker, in Mont. Code Ann. § 69-8-210(1) effective July 1, 2017. The Commission, however, retains discretionary authority to implement cost tracking mechanisms under general rate making procedures contained in Chapter 3 of Title 69.

The Commission initiated this docket to review alternative approaches to tracking certain electricity supply-related costs. On May 18, 2017, the Commission issued a Notice of Commission Action directing NorthWestern Energy (NorthWestern) to provide supply cost information sufficient to allow the Commission to implement, on an interim basis, one of three alternatives: 1) a cost tracker with an initial base supply cost based on PowerSimm supply cost modeling for the time period July 1, 2017 to June 30, 2018; 2) a cost tracker similar or identical to NorthWestern's current tracker, established pursuant to Mont. Code Ann. 69-8-210(1), which could serve as a starting point for establishing a modified cost tracker; or 3) any other cost tracker proposal that NorthWestern thinks would be workable and consistent with the intent of HB 193. Notice of Comm'n Action (NCA), Docket D2017.5.39, 1-2 (May 18, 2017).

The Commission expressed interest in exploring cost tracker alternatives that would be simpler and less burdensome than NorthWestern's current cost tracker. The Commission stated its interest "in *considering alternatives* that would establish an interim cost tracker . . . would be contingent on NorthWestern's filing, at a minimum, a comprehensive electric supply revenue requirements case that contains a proposal for a longer-term cost tracker by September 30, 2017." NCA at 1 (emphasis added).

The Commission directed NorthWestern to file an application for a new, interim supply cost tracking mechanism by June 2, 2017, and stated that it will hold a discovery conference on June 9, 2017, 1:00 p.m. to 4:00 p.m., where any interested person may ask questions about NorthWestern's application. NCA at 2. On May 26, 2017, NorthWestern filed a motion for reconsideration asserting that this process is "at odds with the fair hearing requirements of MAPA." Mot. for Reconsideration, Request for Oral Presentation, and Brief in Support, 6 (May 26, 2017). NorthWestern interprets the NCA to: (1) provide only the Commission and its staff a right of discovery; (2) allow people or entities to provide information outside the rules of evidence and without providing NorthWestern an opportunity to respond; (3) allow people or entities to participate without having to petition to intervene, demonstrate standing, or provide NorthWestern notice; and (4) deny NorthWestern a right of discovery. *Id.*

Staff clarifies that the purpose of this discovery conference is to gather information, which may inform a future determination of an *interim* cost tracking mechanism and supply rate. NCA at 1–2; The Commission may, in its discretion, temporarily approve rate increases or decreases pending a hearing or final decision. Mont. Code Ann. § 69-3-304. The purpose of the June 9, 2017 discovery conference is to provide for a dialogue between the Commission, its staff, NorthWestern, and interested persons in order to inform and assist the Commission in establishing an interim cost tracking mechanism and supply rate based on the information NorthWestern filed on June 2, 2017. This process is separate from the contested case process that will result in final decisions regarding a cost tracker and supply rates post July 1, 2017. *See* Mot. at 5 ("Implementing the May 31, 2017, filing on an interim basis will not compromise the Commission's ability to change the electricity supply cost tracking adjustment, on a prospective basis, for costs incurred on and after July 1, 2017"); Mont. Code Ann. § 2-4-201 ("Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing"); *Qwest Corp. v. Mont. Dep't of Pub. Serv. Regulation*, 2007 MT 350, ¶ 24, 340 Mont. 309, 174 P.3d 496 (finding that information seeking is not final agency action and does not constitute initiation of a contested case proceeding).

As stated in the NCA, "any interested person may ask questions about NorthWestern's filing." NCA at 2. At the discovery conference, no NorthWestern personnel will be sworn as witnesses. The discovery conference will be transcribed by a court reporter. Pursuant to the

NCA, NorthWestern must make available personnel who can answer questions about its filings, particularly regarding PowerSimm modeling runs and traditional cost tracker forecast methods, and the work papers included in the filing. To the extent NWE has filed information required by the prior NCA about the July 1, 2017 through June 30, 2018 tracker period in D2016.7.52, that information will be discussed in the discovery conference. The Commission waives the 20-day automatic denial provision within Mont. Admin. R. 38.2.4806(5) for NorthWestern's pending Motion for Reconsideration, Request for Oral Presentation, and Brief in Support filed on May 26, 2017.

BY THE MONTANA PUBLIC SERVICE COMMISSION

BRAD JOHNSON, Chairman
TRAVIS KAVULLA, Vice Chairman
ROGER KOOPMAN, Commissioner
BOB LAKE, Commissioner
TONY O'DONNELL, Commissioner