

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

IN THE MATTER OF the Montana Public ) REGULATORY DIVISION  
Service Commission’s Review of Rates to )  
Recover NorthWestern Energy’s Electricity ) DOCKET NO. D2017.5.39  
Supply Costs ) ORDER NO. 7563

**ORDER GRANTING INTERVENTION TO WINDATA, LLC.**

**Procedural History**

1. On May 18, 2017, the Montana Public Commission (“Commission”) issued a Notice of Commission Action (“NCA”) acknowledging the passage of House Bill 193 (“HB 193”), which repealed the mandatory recovery of prudently incurred electricity supply costs for NorthWestern Energy (“NorthWestern”) contained in Mont Code Ann. § 69-8-210(1). Through this NCA, the Commission intended to initiate a process in which to develop a replacement electricity tracker for NorthWestern as a result of this change in law. This NCA set a schedule for a discovery conference and comments from interested individuals. NCA (1) 2 (May 18, 2017).

2. In a subsequent NCA, the Commission set a deadline for intervention of July 14, 2017, on the specific question of whether to require NorthWestern to submit information that conforms to the requirements contained in Mont. Admin. R. 38.5.101 through 38.5.195 by September 30, 2017. NCA (2) ¶ 21 (Jul. 7, 2017). The Commission stated that it would “issue a separate deadline for intervention and procedural schedule on the new tracker mechanism once NorthWestern makes its filing on July 14, 2017.” *Id.* The Commission granted intervention in this specific portion of the proceeding to the Montana Consumer Counsel (“MCC”) and WINData, LLC (“WINData”) on July 17, 2017.

3. On July 14, 2017, NorthWestern filed its Proposed Electric Power Costs and Credits Adjustment Mechanism (“PCCAM”) Proposal with the Commission. As indicated in the NCA issued July 7, 2017, the Commission issued a separate Notice of Proposal, Intervention Deadline, and Initial Procedural Schedule (“Notice”) addressing NorthWestern’s PCCAM

Proposal setting August 9, 2017 as the intervention deadline. In this Notice, the Commission stated “that parties seeking to intervene in this proceeding to address NorthWestern’s Proposal must file a separate petition for intervention.” Notice 1 (Jul. 18, 2017).

4. On August 8, 2017, WINData, LLC filed its Second Application for General Intervention of WINData, LLC and Request for Ruling (“Application”). On August 11, 2017, NorthWestern filed an Objection to WINData, LLC’s Second Application for General Intervention (“Objection”). On August 24, 2017, the Commission held a regularly scheduled work session to discuss and act on WINData’s Application for Intervention.

#### **Discussion, Findings of Fact, and Conclusions of Law**

5. Under Mont. Admin. R. 38.2.2403, requests for general intervention must disclose: 1) the name and address of the party intervening; 2) the name and address of his attorney; 3) a clear and concise statement of the direct and substantial interest of the petitioner in the proceeding; 4) his position in regard to the matter in controversy; 5) and a statement of the relief desired.

6. WINData provided the name and address of the party intervening and the name and address of its attorney. WINData App. 3 (Aug. 8, 2017). WINData states it has an interest in the proceeding because it participated in the process on whether to require NorthWestern to submit information that conforms to the requirements contained in Mont. Admin. R. 38.5.101 through 38.5.195 by September 30, 2017. *Id.* Additionally, it claims it has “has a direct interest in the Commission’s determination of the issues raised in the Proposal which address compensation for [Qualifying Facilities (“QFs”)], recovery of rates through particular mechanisms established for NorthWestern and the impact any recovery mechanism and methodology and rate structure will have on NorthWestern’s avoided costs.” *Id.* at 3–4. In regards to its position in this proceeding, WINData states it “seeks general intervention in this docket and intends to participate as the docket progresses, and reserves the right to develop its position in response to the additional information filed by NorthWestern and any other parties.” *Id.* at 4. WINData states the same in addressing the relief desired. *Id.* at 4–5.

7. In its objection, NorthWestern expressed concern that WINData would broaden the issues in this docket. NorthWestern Objection 2–3 (Aug. 11, 2017) (citing *In re Mont. Pub.*

*Serv. Investigation into Mountain Water Co.'s Rates*, Docket D2016.2.15, Order 7475b (Mar. 1, 2017)). In Order 7475b, the Commission stated:

The Commission's rules regarding intervention are articulated in Mont. Admin. R. 38.2.2401, *et seq.* Mont Admin. R. 38.2.2401 states that any person "interested in and directly affected by the subject matter of any hearing or investigation pending before the commission may petition to become a party thereto." Mont. Admin. R. 38.2.2403 states that any person who desires to appear in a Commission proceeding "and who does not desire to broaden the issues of the original proceeding, may petition in writing for leave to intervene in the proceeding." Mont. Admin R. 38.2.2405 states that the Commission "may" grant a petition for intervention if it appears that "the petition or motion discloses a substantial interest in the subject matter of the hearing, that participation of the petitioner will be in the public interest, or that the granting of the petition would not unduly broaden the issues in the proceeding."

The common thread throughout Mont. Admin. R. 38.2.2401, *et seq.* is that parties seeking general intervention may be permitted to join a Commission proceeding as long as they do not "broaden the issues" of the proceeding. The scope of this proceeding is limited to the inquiry of whether Mountain Water's current rates are just and reasonable, and whether Mountain Water is in violation of any ring fencing provisions. *See* Notice of Investigation and Intervention Deadline (Feb. 3, 2016); Order 7475 (Feb. 8, 2016). This proceeding is not a continuation of Docket No. D2014.12.99, rather it is separate and distinct.

Order 7475b ¶¶ 5–6. NorthWestern argues that WINData's concern about how rate structures will have an impact on WINData and QF projects is not accurate. NorthWestern Objection at 3. NorthWestern asserts that "the rates that NorthWestern pays to QFs for their output will not be impacted in any way by this docket." *Id.*

8. The Commission finds that WINData's Application does not expand the scope of the docket. WINData has requested the Commission make modification to NorthWestern's base rates. *See* App. at 1–2 (requesting to implement the methodologies applied to QFs in Dockets D2016.12.103, D2016.7.56, and D2016.5.39 on the NorthWestern's hydroelectric assets approved in Docket D2013.12.85); NCA (3) 2 (Aug. 30, 2017) (denying WINData's request for immediate relief); *but see* Mont. Code Ann. § 68-8-421(7) ("if the commission has issued an order containing the findings required under subsection (6)(c), the commission may not subsequently disallow the recovery of costs related to the approved electricity supply resource based on contrary findings"). The Commission has expressed interest in modifying the base rates of NorthWestern in this tracker proceeding. *See* NCA (2) ¶ 10 (Jul. 7, 2017). Although the

Commission declined to require NorthWestern to submit information that conforms to the requirements contained in Mont. Admin. R. 38.5.101 through 38.5.195 by September 30, 2017, the Commission remains interested in potential adjustment to base rates. NCA (3) 2 (Aug. 30, 2017). The Commission will allow the parties in the proceeding, including WINData, to raise arguments addressing NorthWestern's base rates throughout the course of this contested case proceeding.

9. Additionally, WINData has expressed concern as to how QF purchase power agreements will be recovered in rates. App. at 3–4 (explaining it has “a direct interest in the Commission’s determination of the issues raised in the Proposal which address compensation for QFs, recovery of rates through particular mechanisms . . .”). NorthWestern has proposed full cost recovery, rather than a split of 90/10 cost sharing between the utility and customers, for QF contracts. Test. Crystal Lail 6–7 (Jul. 14, 2017). Recovery of costs associated with QFs impacts how NorthWestern interacts with QFs. The Commission previously acknowledged this by ordering a cost-sharing arrangement for NorthWestern and a QF over the use of proprietary modeling software in an avoided-cost docket. *See In re Greenfield Wind, LLC*, Docket D2014.4.43, NCA (4) (Oct. 20, 2014). Likewise, if the Commission ultimately disagreed with NorthWestern’s proposal to track dollar-for-dollar costs associated with QFs, it would naturally follow that the utility’s incentives would change relative to QFs. Accordingly, it’s appropriate for WINData to be permitted intervention in this proceeding to address the question how costs related to QFs will be recovered by NorthWestern.

10. The Commission warns that the purpose of this proceeding is not to relitigate any of the QF issues addressed in Dockets D2016.12.103, D2016.7.56, and D2016.5.39. The purpose of this proceeding is to examine the base and variable rates recovered through NorthWestern’s existing electricity tracker and conduct a contested case proceeding on NorthWestern’s PCCAM Proposal. The Commission may take future steps, if necessary, to ensure that WINData’s Application does not expand the scope of the docket.

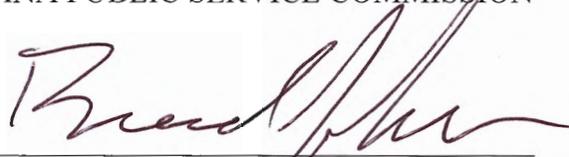
**ORDER**

Based on the foregoing,

**IT IS HEREBY ORDERED THAT:**

11. WINData, LLC's Second Application for General Intervention is GRANTED, subject to the limitations expressed in paragraph 10 of this Order.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION



BRAD JOHNSON, Chairman



TRAVIS KAVULLA, Vice Chairman



ROGER KOOPMAN, Commissioner



BOB LAKE, Commissioner (dissenting)



TONY O'DONNELL, Commissioner (dissenting)

ATTEST:



Mike Maas  
Administrative Assistant

(SEAL)