Service Date: July 7, 2005

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

* * * * *

IN THE MATTER of the Complaint by GRS Energy, LLC, against NorthWestern Energy and NorthWestern Energy Development Corporation	))))	UTILITY DIVISION DOCKET NO. D2005.4.50 ORDER NO. 6671

FINAL ORDER

Background

1. On April 7, 2005, GRS Energy, LLC (GRS) filed a Petition for Review and Complaint (Complaint) against NorthWestern Energy (NWE) and NorthWestern Energy Development Corporation (NWED) with the Public Service Commission (Commission). NorthWestern Energy Development, LLC (NWEDL) is a subsidiary of NWE. NWEDL owns Montana Megawatt I, LLC, which in turn owns the Montana First Megawatts (MFM) project. GRS asserted that it was harmed by NWE's failure to sell MFM to it after GRS had responded to a Request for Proposals (RFP) issued by NWEDL. On April 22, 2005, the Commission issued a Notice of Complaint. On May 5, 2005, the Commission granted the requests of Andrew S. Hicks and Adam P. Schiffer to appear *pro hac vice* in this docket.

2. On May 16, 2005, NWE filed a Motion to Dismiss NorthWestern Energy (Motion). On May 26, 2005, GRS filed its Response to NorthWestern Energy's Motion to Dismiss, Request for Oral Hearing, and Pre-Hearing Discovery (Response). On June 20, 2005, NWE filed NorthWestern Energy's Reply Brief (Reply).

3. On June 28, 2005, at a regularly scheduled and noticed work session, the Commission considered GRS request for an oral hearing, request for pre-hearing discovery, and NWE's Motion.

Discussion

4. GRS requested that NWE's Motion be set for oral hearing. ARM

38.2.1501 provides, in part, "Motions filed with the commission will be promptly disposed of by the commission at the commission's . . . discretion." The Motion, Response and Reply with appendices consist of approximately 73 pages. The Commission finds that the Motion, Response and Reply adequately and completely inform it of the issues germane to decision on the Motion. No purpose will be served by delaying this matter to facilitate oral hearing. GRS's request for an oral hearing is denied.

5. GRS requested pre-hearing discovery. As the Commission has determined to deny the request for an oral hearing, the request for pre-hearing discovery is moot and is denied.

6. NWE asserts the Commission does not have complaint jurisdiction over GRS's claims. NWE argues that the Commission's jurisdiction over complaints extends only to complaints that a utility: (1) is charging regulated rates that are unreasonable or unjustly discriminatory; (2) is providing regulated services in an unreasonable, insufficient or unjustly discriminatory manner; or (3) is providing inadequate utility service.

7. GRS asserts that the Commission has jurisdiction over the complaint due to: (1) its duty to supervise and regulate the operation of public utilities under § 69-1-102, MCA: (2) its being invested with full power of supervision, regulation, and control of public utilities under § 69-3-102, MCA; and (3) because GRS's claims relate to practices or acts affecting or relating to the production of power that are unreasonable, insufficient or unjustly discriminatory.

8. The Commission's jurisdiction is broader than that asserted by NWE but narrower than that argued by GRS. The Commission has jurisdiction over any complaint against a public utility when the complaint pertains to a regulated activity of the public utility. For a public utility (or any successor) that has restructured in accordance with Title 69, Ch. 8, MCA, the generation of electricity using assets that are not included in the public utility's rate base is not a regulated activity. NWE is such a public utility. The MFM assets have never been included in NWE's rate base. To the extent that GRS's complaint relates to generation of electricity using assets not included in NWE's rate base or the acquisition or disposition of generation equipment not included in rate base by

NWE, it does not pertain to a regulated activity of a public utility. The Commission does not have jurisdiction over a complaint against NWE related to practices or acts in disposing of an indirect subsidiary's non-regulated generation assets.

9. The acquisition of electrical energy for default supply customers by NWE is a regulated activity. NWE is obligated to prudently acquire such energy. NWE's decisions and activities related to MFM may provide evidence related to NWE's fulfillment, or lack thereof, of this obligation. NWE's default supply procurement is not the subject of this docket. Nothing in this Order should be construed in any manner as adjudicating the prudence of NWE's default supply procurement practices. This Order is without prejudice to any determination the Commission may make with respect to MFM in any future proceeding.

10. The Commission's jurisdiction is limited to public utilities, common carriers, railroads and other regulated industries as provided by the legislature. GRS asserted a claim against NWED. The Commission has not been able to identify any legal entity known as NorthWestern Energy Development Corporation. NWED is not a public utility in Montana. NWEDL is a Delaware limited liability company authorized to transact business in Montana. NWEDL issued the RFP to which GRS responded. NWEDL is not a public utility in Montana. The Commission does not have jurisdiction over NWEDL.

Conclusions of Law

1. The Commission regulates the rates and services of public utilities. Title 69, Chapter 3, MCA.

2. NWE is a public utility as defined in § 69-3-101, MCA, that also engages in activities that are not subject to regulation by the Commission.

3. NWED is not a public utility as defined in § 69-3-101, MCA.

4. NWEDL is not a public utility as defined in § 69-3-101, MCA.

5. The Commission does not have any jurisdiction over a complaint filed against NWE unless the complaint pertains to the regulated activities of NWE.

6. The Complaint in this matter does not pertain to the regulated activities of NWE.

7. The Commission does not have jurisdiction over the subject matter of the Complaint.

8. The Commission does not have personal jurisdiction over NWED, if such entity exists, or NWEDL.

Order

THEREFORE, based on the foregoing, IT IS HEREBY ORDERED as follows:

1. GRS request for an oral hearing is denied.

2. GRS request for per-hearing discovery is denied as moot.

3. GRS's Complaint against NWE is dismissed for lack of subject matter jurisdiction.

4. GRS's Complaint against NWED is dismissed for lack of personal jurisdiction.

DONE AND DATED this 28th day of June 2005, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chairman

BRAD MOLNAR, Vice-Chairman

DOUG MOOD, Commissioner

ROBERT H. RANEY, Commissioner

THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.