

MINUTES
of the
LEGISLATIVE CONSUMER COMMITTEE
June 14, 2013
State Capitol, Room 137, Helena, MT

COMMITTEE MEMBERS PRESENT

Senator Terry Murphy, Chairman
Representative Pat Noonan, Vice Chairman
Senator Mitch Tropila
Representative Mike Cuffe

STAFF PRESENT

Robert A. Nelson, Consumer Counsel
Suzanne Snow, Secretary

VISITORS PRESENT

No visitors were present

CALL TO ORDER

The meeting was called to order at 10:00 A.M. by Chairman Murphy.

MINUTES OF THE PREVIOUS MEETINGS

MOTION: Representative Noonan moved for approval of the March 27, 2013, meeting minutes.

VOTE: The motion passed unanimously.

STATUS OF CASES

Bob Nelson presented an overview of the status of cases.

NWE – D2012.5.49 – 2011-2012 Electric Supply Cost Tracker, filed 6/1/12.

The issues raised by the MCC in this docket are primarily concerned with the Company's hedging practices for electricity supply costs, and with replacement power costs incurred due to the outage at the Dave Gates Generating Station in early 2012.

A study was done with respect to the cost and savings that result from the energy efficiency programs because lost revenues associated with that are flowed through to ratepayers. Although MCC didn't raise any significant issues, some minor adjustments were made to which Jaime is testifying.

All parties filed their testimony and the Commission issued a Notice of Commission Action on the last day of May. It directed counsel of record to address issues it felt had been inadequately addressed. MCC was instructed to introduce evidence that had been introduced in prior electric trackers regarding the lost revenue adjustment mechanism, as well as information on some issues raised in the evaluation report concerning energy efficiency programs.

The Commission's approach was prompted by the Company's objections in the recent NorthWestern gas case. Normally, it is Commission practice to allow into the record all of the data responses, which may include hundreds of pages of material. In the gas general rate case the Company objected to the introduction of those responses.

The Company filed a motion for reconsideration of the Notice of Commission Action, indicating that it would appeal on grounds of a violation of due process rights, if the Commission did not reverse its earlier action. On June 7, 2013, the Commission issued a Notice of Commission Action on Reconsideration, in part granting and in part denying the motion.

The hearing was taking place at the time of the Consumer Committee meeting.

NWE – D2013.5.33 – Electric Supply Cost Tracker, filed 5/31/13.

This new annual tracker has been filed before a final order is issued in the last supply cost tracker. These rates were implemented on an interim basis. The Company is claiming an over-collection of about \$750,000, broken down among various components, including significant over-collections in its market purchase supply and Colstrip 4 costs, but also a very significant under-collection for the Dave Gates Generating Station costs.

Although the Company also projects slight increases in future costs, and despite the net under-collection, a rate increase of about 3% is requested in this case. This reflects a lost revenue claim of about 8.6 million dollars for revenues lost as a result of energy efficiency and demand side management programs. MCC will begin the discovery and audit phase in the next couple of weeks.

Bob Nelson addressed Senator Tropila's question - If NWE wins this case, would there be a 3% increase on consumers that use NWE in the State of Montana, and if the Consumer Counsel agreed with the 3% increase? Bob Nelson replied that the answer is complicated. If the Company's projections are correct, then that would result in about a 3% increase. These rates are changed on a monthly basis, so if in the future the reality turns out to differ from the projections, then that number could change. MCC will make a determination in the case based on its discovery and audit.

Senator Tropila requested Bob Nelson elaborate on a previous statement that NWE attributed part of this increase on energy savings throughout the state of Montana.

Several years ago the Company implemented a lost revenue mechanism that was approved by the Commission. MCC opposed it for various reasons, but the Commission approved it. The theory was to remove disincentives for utilities in making energy efficiency investments. While MCC believes that utilities should make cost effective, energy efficiency investments, the issue was whether they would without this mechanism. The Commission at that time thought there was an incentive problem, so it adopted this mechanism that would not normally apply to traditional rate making. The Company's rates, in broad terms, are generally comprised of commodity costs and fixed costs. Commodity costs are what the utilities incur to purchase gas and electricity, and fixed costs are the pipes, wires and administrative costs. If customers conserve energy the Company doesn't save those fixed costs. The costs still exist, but the Company isn't recovering, in between rate cases, those fixed costs that are a component of those unit rates. The Company's revenues may have increased, but it may not have increased as much as it would have without the energy efficiency investments.

NWE – D2008.8.95 – Application for Approval to Construct and Operate the Mill Creek Generating Station to Supply Regulation Service, filed 8/25/08.

The Commission agreed with MCC, with respect to allocating the costs of Dave Gates (previously Mill Creek Generating Station) between wholesale customers and retail customers. They agreed there was a problem with the Company's allocation methodology based on peak use of the plant.

The Commission agreed with MCC's recommendation that a study be conducted to determine the actual usage of the regulation capability of that plant on a moment to moment basis. It was a precedent-setting approach for utility regulation because these types of services are new. The Commission opted to adopt the Company's recommended approach, for now, because FERC also takes that approach. In addition, the Company was required to do a study to determine a more accurate measurement of the factors behind these moment to moment fluctuations.

The Company then proposed a study that was unnecessarily expensive in MCC's opinion. MCC filed comments and objected to the study plan. Discussions have recommenced on what the study should entail. Those discussions are ongoing.

The Company also just filed its revised carbon offset plan. The Company based its revised cost cap on the Carbon Offset cost, with a cap of 2.5% of the annual revenue requirement. There was an issue about the proper calculation of that annual revenue requirement. In this plan, the Company calculated that cost cap at \$162,000, and proposed that 20% of that be reserved for

counties within 25 miles of the Dave Gates Plant. In addition, the Company proposed that certain administrative costs would be eligible for inclusion, and that eligible projects would be limited to conservation projects that are not funded by the USB program, or the Company's existing demand side management program. There were some initial proposals for reforestation projects but the Company agreed to develop a list of qualifying projects from which the Commission could select. The plan has been filed and is awaiting Commission action.

NWE – D2012.1.3 – Application for Approval of Avoided Cost Tariff Schedule QF, filed 1/17/12.

There had been a limitation of a 50MW cap for new small wind resources. The Commission lifted what had been called a cap in its order. A dispute occurred over whether the cap had been included as a noticed issue in the case and the Company has appealed.

The Company filed a motion for the Commission to stay the effect of its own order regarding the 50MW cap. The Commission held a hearing in March and in April issued an order granting the stay pending the appeal in district court.

The Commission found that no opposing party would be harmed by the stay. However, if the stay was not granted then ratepayers and NorthWestern could be harmed if they were forced to enter into contracts with additional small wind QFs. This is pending until the resolution of the court appeal.

PSC – Notice of Public Hearing on Amendment of ARM 38.5.1902 Pertaining to QFs, issued 5/13/13.

This is the Commission's investigation into the proposed reduction in the size of the QFs that are required to participate in competitive solicitations for long term contracts from 10MW to 100KW, which is the minimum required by Federal regulation, and relates back to the same issues that were covered in HB188.

Representative Noonan inquired about the proposed reduction in the size of the QFs from 10MW to 100KW. He asked where the Consumer Counsel stood in relation to this matter. Bob Nelson replied that in the past MCC has not looked at the issues involved in reducing the size of QFs as low as 100KWs. He also stated that he was aware and sensitive to the fact that this was something that was debated extensively in the Legislature resulting in HB188 being vetoed by Governor Bullock.

Representative Noonan extended the question to the rest of the Committee that he would be interested in how the Committee feels about the PSC proposal of adopting the Federal minimum of 100KWs.

After a lengthy discussion it was agreed that the Consumer Counsel would forward to the Committee the comments it submits to the PSC relative to this matter. As part of this discussion Senator Tropila asked the Consumer Counsel to keep a watch on avoidance of QF costs from large utilities.

Representative Noonan also inquired whether the executive salaries of utilities should be proprietary or public information. Bob Nelson mentioned that the salaries of the top executives are available to MCC during audits of the company.

The following two Dockets are annual compliance filings with respect to the QLFT-1. These are rates that are grandfathered and only apply to QFs that existed back in the 1980's. Irrespective of what happens between the Company and the QFs themselves, the rates are fixed.

There had been a debate about the computation of the escalation rates that were agreed to and there are several years of disputes still outstanding and in docket D2012.6.65. The Commission finally approved arbitration awards that settled those multiple year disputes, and a new adjustment was filed this June.

- **NWE – D2012.6.65 – 2012 Annual Avoided Cost Compliance Filing, Schedule QFLT-1**, filed 6/20/12.
- **NWE – D2013.6.44 – 2013 Annual Avoided Cost Compliance filing, Schedule QFLT-1**, filed 6/11/13.

NWE – D2013.4.28 – Petition for Declaratory Ruling on Availability of QF Rates for 13 Year Contract, filed 4/11/13.

This project was built mainly to serve Idaho Power. United Materials did not have an outlet for this power during the summer months and started selling it to NWE as a QF provider. This has been done on an annual contract basis in the past, but the Company is now requesting a long term contract with NWE. The Company filed a Petition for Declaratory Ruling, asking which QF rate the Horseshoe Bend project is eligible for. The Commission requested comments, and MCC filed comments in May.

The main point of the comment was that the 25 year long term rates are out of sync with the time period on which the 13 year rate options would be based, and that short-term rate should apply.

NWE – D2013.5.39 - Petition of United Materials to Set Terms and Conditions for Horseshoe Bend QF Project, filed 5/8/13.

This is the petition of United Materials, the owner of the Horseshoe Bend project, under Montana's Mini PURPA law to set terms and conditions for the Horseshoe Bend QF project. These are expedited dockets that are required to be processed within 120 days, as opposed to the normal nine month period. MCC filed an intervention and there has been no activity except for the issuance of an interim order. The Commission in that order authorized United Materials, or Horseshoe Bend, to choose between certain shorter term options, not the 25 year long term option, at least on an interim basis.

The next four items presented in the status report are NWE Petitions for certification of either a Community Renewal Project, or an Eligible Renewable Resource under the Montana Renewable Portfolio Standard. MCC does not expect any controversy in these dockets.

- **NWE – D2013.5.35 – Petition for Certification of Community Renewable Project**, filed 5/9/13.
- **NWE – D2013.5.36 – Petition for Certification of an Eligible Renewable Resource**, filed 5/9/13.
- **NWE – D2013.5.37 – Petition for Certification of an Eligible Renewable Resource**, filed 5/9/13.
- **NWE – D2013.5.38 – Petition for Certification of an Eligible Renewable Resource**, filed 5/9/13.

The following three items relate to NWE's monthly electric trackers that were filed in May and June. One out of period tracker change filed concerned the expiration of the Dave Gates rebate. It related to the fact NWE's costs were not as high as originally anticipated when the interim was issued, due largely to a bonus depreciation law that was passed. This was a significant \$7 million annual revenue reduction and rates went up to reflect that expiration.

- **NWE – D2012.7.75 – May electric tracker**, filed 4/15/13.
- **NWE – D2012.7.75 – Expiration of DGGS Rebate**, filed 5/10/13.
- **NWE – D2012.7.75 – June electric tracker**, filed 5/15/13.

NWE – D2012.9.94 – Application to Increase Natural Gas Delivery Service Rates, filed 9/28/2012.

This case involves a general rate increase on the non-commodity portion of the Company's operation (pipes, administrative costs, transmission of the gas commodity). The Company had requested a \$15.7 million increase, which is a little over 15%. MCC filed testimony and the Commission granted an interim increase of \$13.2 million. MCC entered into a revenue requirement stipulation with NorthWestern and the Large Customer Group, which was a participant in this case. MCC also entered into a cost allocation and rate design stipulation with those same parties, as well as the Human Resource Council in Missoula, which was a participant in the docket with respect to cost allocation and rate design.

The stipulations proposed a revenue requirement increase of \$11.5 million dollars as opposed to the \$15.7 million requested, roughly an 11% increase in the non-gas component and an overall increase of about 6%. Also, included in this stipulation was a stipulated return on equity of 9.8%. With respect to the cost allocation and rate design, the stipulation specified certain class cost increases, including a 10.6% increase for residential and 9.5% for general service. The residential and small business rate increases were lower than the overall 11% increase for the Company. The stipulation agreed to a much smaller increase in the residential service charge than the Company had proposed. A hearing was held in April and a final order was issued in May. In that Order both stipulations were approved by the Commission.

NWE – D2012.5.48 – Annual Gas Cost Tracker, filed 5/30/12.

The Company proposed a projected cost of gas of \$3.94 and a 6.5% residential rate increase in this case, based on cost projections. The Commission issued a Notice of Opportunity and Request for Hearing. MCC did analysis and discovery on the Company's filing but did not file

any testimony. The Commission issued a final order in May approving the rate changes as requested by the Company.

NWE – D2013.5.34 – Annual Gas Cost Tracker, filed 5/31/13.

This is NWE's current annual gas cost tracker. The Company is projecting a gas cost increase to \$4.25/Dkt, compared with the 2012 rate of \$3.85. The gas markets have been trending up and NWE will have a relatively small under-collection claim of about \$300,000, but also \$1.54 million in lost revenues under a lost revenue adjustment mechanism that relates to energy efficiency investments for its gas utility. The net result of all of these changes would be about a 5% increase.

NWE – D2012.3.32 – Annual gas USBC tracker, filed 3/27/12.

This filing proposes a slight decrease in the residential and general service rate surcharge from \$.0161704 to \$.0151585/therm (6.3%).

This is the Universal System Benefits (USB) charge to recover costs related to the statutorily required USB program. After looking at the filing MCC did not file testimony or request a hearing. The Commission issued a final order approving the revisions as requested by the Company.

NWE – D2013.3.20 – Annual Natural Gas USBC Tracker, filed 3/29/13.

The Company recently filed its annual USB Tracker, which again would be a small residential decrease that results from an over-collection accumulated over the last two years of approximately \$1.4 million. MCC will analyze this case.

NWE – D2013.5.31 – Townsend Propane Annual Rate Adjustment, filed 5/6/13.

This filing is NWE's Townsend Propane annual rate adjustment. The Company is requesting a fairly substantial decrease in these rates. MCC has intervened and will examine the filing, but no significant issues are expected in this docket.

Bob next noted MDU'S monthly electric tracker filings.

- **MDU – D2012.6.69 – May Electric Cost Tracker – Rate 58**, filed 4/11/13.
- **MDU – D2012.6.69 – June Electric Cost Tracker – Rate 58**, filed 5/14/13.

MDU – D2012.9.100 – General Natural Gas Rate Increase, filed 9/26/12.

The Company requested about a \$3,500,000 increase, which is approximately a 17% increase in the non-commodity portion of its rate, or an overall increase of around 6%. The Company is requesting a 10.5% return on equity. MCC intervened in the docket and filed testimony. The Commission has issued an interim order approving a temporary increase of \$851,000. This case is currently set for hearing in early August in Billings.

MDU – D2013.4.22 – Annual Gas Conservation Tracker – Rate 90, filed 3/28/13.

This docket relates to MDU's annual gas conservation tracker. MCC intervened in this case and will be taking a look at the Company's calculations and the proposal. The Company has made

some recent changes in its program, and because of an over-collection the Company is proposing to reduce its current tracking adjustment to zero to avoid further over-collection.

MDU – D2012.9.96 – May Gas Cost Tracker, filed 4/5/13. Increase of \$.33 dk, residential and general service. Res rate \$6.07/dk.

Energy West's monthly trackers.

- **EWM – D2013.3.17 – May gas tracker**, filed 4/30/13. Res. Rate increase to \$5.93/Mcf.
- **EWM – D2013.3.17 – June gas tracker**, filed 5/16/13. Res. Rate increase to \$6.01/Mcf.

Black Hills Power, Inc. – D2013.3.15 – Petition for Waiver of CREP Requirement, filed 3/8/13.

Although Black Hills Power (BHP) is a larger company, it has a very small service area in southeastern Montana. The Company's primary focus is oil pumping equipment. The Company filed a petition for a waiver of its CREP requirement as part of the RPS. Black Hills requested a waiver for the years of 2012 to 2014. It issued an RFP in a compliance effort and showed fairly high costs. The Commission said that given those high costs and the small size of the Company those costs would be excessive and the waiver for 2012 would be granted, but for 2013 and 2014 a waiver would be moot because of legislative changes that were made. Those changes effectively exempt BHP as a smaller company in Montana from the CREP requirement.

Cut Bank Gas – D2011.1.5 – Annual Gas Cost Tracker, filed 12/5/12.

MCC has intervened and will be taking a look at the proposal.

Sleepy Hollow – D2011.4.35 – True-Up of Monthly Trackers 8/11 – 4/13. \$7,742 under-collection.

MCC will examine the filing.

Mountain Water Co – D2012.7.81 – Application to Increase Rates for Water Service, filed 7/30/12.

Mountain Water filed an application to increase rates for its water service, which they do routinely on a two year cycle. The Company had requested about a \$920,000, or a 5% increase. MCC filed testimony recommending instead a \$280,000, or a 1.5% increase. The Company along with its request of the \$920,000 increase also filed a recommendation that the Commission adopt the cost of capital from the prior case, which was 10%. John Wilson, MCC's witness, filed testimony in response saying that the cost of capital declined and the rate of return on equity should be set at 8.75%. This case is still pending and yet to be heard.

AquaFlo, LLC – D2011.4.34 – Application to Increase Water and Sewer Rates, filed 4/27/11.

The Company requested a \$171,000 increase. Paul Schulz filed testimony recommending a \$133,000 increase. MCC entered into a stipulation agreeing to a \$141,000 revenue requirement increase which was close to what MCC had originally recommended. A hearing was held last year and the Commission issued an order in May of this year approving the stipulation.

Valley Water System – D2013.3.18 – Application for Initial Water Rates (Northwest Missoula), filed 3/14/13.

This filing is for a new subdivision outside of Missoula. MCC has intervened in the case and will examine the request.

PSC – N2013.4.29 – Investigation into Electric and Natural Gas USB Programs and Funding. Notice of investigation issued 5/1/13.

This docket is a general investigation into Electric and Natural Gas USB Programs and Funding. The Commission is requesting comments on utility programs, funding and charges, and several specific issues.

Comments are due 6/21/2013.

PSC – N2013.5.41 – Cybersecurity Questionnaire, issued 5/31/13.

Responses requested to questions regarding cybersecurity planning.

The Commission has instituted this inquiry into utility cybersecurity preparedness.

PSC – N2013.4.27 – FCC’s Ordered Transition of Intrastate Access Charges.

The Commission requested comments on the FCC’s Ordered Transition of Intrastate Access Charges. The FCC is requiring that intrastate access charges be zero. Montana Telecom Companies, and especially the smaller Companies, have relied on these charges for revenue. The Companies have filed, in compliance with the FCC requirements, tariff changes that reflect zero cost intrastate access charges. The Commission has issued a notice of opportunity for public comment on these tariff changes.

FINANCIAL REPORT

The report provided to the Committee was dated June 13, 2013. With 92% of payroll completed there will be a substantial surplus in personal services, due to the vacancy at the beginning of the year, as well as the hiring of less experienced staff. With 95% of the year completed in the other operating categories, there will be a surplus in communications, due to a misestimate of what the costs would be for the basic internet services as the result of the move from the Steamboat Block to our current location. Contracted Services is the largest category and the biggest unknown. It is expected that a small amount of the contingency will be used.

EXPERT WITNESSES

MOTION: Representative Noonan moved to allow the retention of J.W. Wilson and Associates as expert witnesses for the NWE Electric and Gas Trackers.

VOTE: Motion carried unanimously.

A ten minute recess was called.

Chairman Murphy called the meeting back to order at 12:10 P.M.

CONSUMER STAFF AND PERSONNEL MATTERS:

Bob Nelson outlined a request for a proposed 4 and 4 percent cost of living adjustment for all Counsel staff effective July 1, 2013, as well as favorable consideration for merit increases for three of the six positions to be effective immediately.

MOTION: Representative Cuffe moved to approve the 4 percent increase cost of living increase in July 2013 and July 2014.

VOTE: Motion carried unanimously.

MOTION: Representative Noonan moved to approve the \$4,000 Merit pay increase for Ms. Wright and Mr. Schulz.

VOTE: Motion carried (Vote 3-1 - Representative Cuff voted no).

MOTION: Representative Noonan moved to approve the \$4,000 Merit pay increase for Mr. Nelson.

VOTE: Motion failed.
(Vote 2-2 - Senator Tropila and Representative Cuff voting no).

MOTION: Representative Cuffe moved to have on the agenda for the next meeting a merit raise for the Consumer Counsel, Mr. Nelson.

VOTE: Motion carried unanimously.

PUBLIC COMMENTS

There were no public comments.

NEXT MEETING

It was agreed that the next meeting date would be set at a later time.

ADJOURNMENT

There being no further business to come before the Committee, the meeting was adjourned.

Respectfully submitted,

_____, Robert Nelson, Consumer Counsel

Accepted by the Committee this 25th day of September, 2013

_____, Chairman.