

MINUTES
of the
LEGISLATIVE CONSUMER COMMITTEE
December 7, 2012
State Capitol, Room 172, Helena, MT

COMMITTEE MEMBERS PRESENT

Senator Terry Murphy, Chairman
Representative Pat Noonan, Vice Chairman (via Teleconference)
Representative Mike Cuffe
Senator Mitch Tropila

STAFF PRESENT

Robert A. Nelson, Consumer Counsel
Heather Voeller, Secretary
Suzanne Snow, Assistant Secretary
Paul Schulz, Rate Analyst
Mary Wright, Attorney
Larry Nordell, Economist
Jaime Stamatson, Economist

VISITORS PRESENT

No visitors were present

CALL TO ORDER

The meeting was called to order at 11:30 a.m. by Chairman Murphy.

MINUTES OF THE PREVIOUS MEETINGS

MOTION: Representative Noonan moved approval of the September 7, and September 13, 2012 meeting minutes.

VOTE: The motion passed unanimously.

BOB NELSON PROVIDED THE FOLLOWING STATUS OF CASES CURRENTLY PENDING:

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

This docket relates to the Dave Gates Generating Station. The initial case was decided a few years ago and approved by the Commission. Since that time there have been some challenges bringing it online and regarding allocation of costs. One issue still pending is the Commission's consideration of the Carbon Offset Program that relates to Dave Gates.

The Commission initially denied NWE's proposal for the Carbon Offset Program. NWE filed a request for clarification of what that Carbon Offset Program should entail and the Commission, after due consideration, on November 26, 2012, issued a Notice of Commission Action. The Commission determined that the implementation of the Offset Projects may be a one-time only expenditure, or may occur on an ongoing annual basis. The Carbon Offset Program is capped at 2.5% of the cost of the energy, but this particular plant is primarily for regulation and was not meant to produce energy, causing some complications. The Commission determined that the cost cap applies to the cost of the firm and non-firm energy produced by the plant, and that the cost effective Offset Projects are those that have the lowest relative cost per ton of carbon offset and at the same time meet the cost cap. Given those determinations, the Commission directed NWE to submit a revised plan by next March.

NWE– FERC - ER10-1138-100 - Revisions to Schedule 3, Regulation and Frequency Response Service of NWE's OATT. Filed 4/29/10.

This docket also relates to the Dave Gates Generating Station. At issue is the allocation of the regulation portion of the Plant between the wholesale customers regulated by FERC and the retail customers regulated by the Montana Commission.

As discussed previously, the company proposed allocating 45 MW of 105 MW regulation capacity directly to retail customers, as it relates to wind. The other 60 MW they propose allocating roughly 80% to retail customers and 20% to wholesale customers. NWE continued to propose allocating those costs based on 12 CP. MCC has proposed trying to measure what the relative wholesale and retail customer responsibility is, and until that kind of study is done, allocating those costs based on energy.

The initial decision by the FERC was issued on September 21, 2012, when they adopted a fixed cost revenue requirement of about \$38.2 million, which is close to the revenue requirement adopted by the Montana Commission. However, they made significant changes in what they felt was appropriately attributed to wholesale customers, based on the regulation

requirements of this Plant. Mr. Nelson indicated that what the Company had proposed and what the Montana Commission adopted, was that the plant was capable of 105 MW of regulation and that 60 MW would be attributable to traditional regulation, and 45 MW attributable to wind regulation. What the Company was proposing and what the Commission had adopted was 60/105 to allocate those costs to traditional regulation.

The FERC ALJ determined the amount of regulation needed by NWE was not 60 MW, but rather 19 MW, and that the capacity of the plant was not 105 MW but 150 MW. Thus, instead of allocating 60/105 to traditional regulation, they allocated 19/150, a much smaller portion of the plant. The initial decision also determined that NWE should continue using the 12 CP allocator to allocate those costs, noting that the Montana Commission had adopted that at least in the interim, and also that there was no certainty as to when the study that the Commission ordered was going to be complete to determine what another measure for those regulation costs might be.

MCC did file exceptions to that order. This is the FERC equivalent to filing a Motion for Reconsideration. We asked for reconsideration on the amount of regulation capacity needed. FERC had excluded all the down regulation, based on the theory that you had to have that running anyway. This is a highly unusual situation, and is probably the first plant built strictly for regulation. Where other systems may have their resources running anyway, regulation down may not impose these kinds of costs. Given that this plant was built specifically for regulation MCC did not think that was taken into account, and so are asking for reconsideration of that fact. That would add at least another 32 MW of regulation requirement. MCC also asked for reconsideration of the 150 MW total of regulation capacity, believing that that amount is higher than the plant can produce, and asked for reconsideration of the use of the 12 CP methodology for allocating those regulation costs. Mr. Nelson stated that he was uncertain of the time frame for the FERC decision.

NWE –D2012.11.123 – Petition for Certification of Eligible Renewable Resource. Filed 11/29/12. This is NWE's attempt to meet their Eligible Renewable Resource requirement. This docket relates to certification of the Lower South Fork Hydroelectric Project, a small QF located in Carbon County with a nameplate rating of about a .5 MW. The Commission issued a notice of opportunity to comment. Comments are due 12-10-12. MCC is unlikely to file any comments.

Senator Murphy asked for clarification as to who owned South Fork. Mr. Nelson is to get back to Senator Murphy with this information.

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

This is an annual true-up that was filed to true-up monthly trackers. NWE is requesting approval of a net under- collection of about \$8.5 million, projecting an \$8.3 million dollar, or 5.9%, increase. Since the Committee’s last meeting the implemented procedural schedule was suspended, due to protective order issues. It has been re-established, with a hearing set for 6/12/13. This case is in the discovery phase.

Representative Cuffe asked about the electric supply cost tracker and the request for approval of net \$8,502,457 under-collections, to clarify if that figure reflected bills that consumers had not paid. Mr. Nelson explained that the under-collection is not a non-payment issue. Rather, the Commission sets monthly tracker rates for electricity based on the company’s projected costs. Market prices for electricity, the amount of electricity sold and other factors fluctuate. The Commission tracks them and allows the company to recover its actual costs.

NWE – D2012.7.75 – Monthly Gas Tracker

These Dockets are the monthly Electric Trackers showing the fluctuations in the NWE commodity portion of its retail electric rates.

October Electric Tracker. Filed 9/17/12. Residential Commodity rate decrease to \$.061193/kwh (=0.03% decrease)

November Electric Tracker. Filed 10/15/12. Residential Commodity rate increase to \$.061633/kwh (=0.72% increase)

December Electric Tracker. Filed 11/16/12. Residential Commodity rate increase to \$.062433/kwh (=1.3% increase)

NWE – D2012.3.25 – Application to Place Battle Creek Natural Gas Production Resources in Rate Base. Filed 4/29/10.

Since the last meeting MCC entered into a stipulation with NWE that was filed on September 18, 2012, in this Docket. The testimony that George Donkin had filed on MCC’s behalf indicated agreement with the prudence of acquiring these properties at the price that NWE had paid, based on market prices at the time the calculations were made. However, Mr. Donkin had expressed concern about the crossover point. MCC is looking at these things on a life cycle basis; for example, projecting production costs for these properties twenty years in the future to see how they compare to projected market prices. The concern was that the crossover point of costs versus market prices needs to be sooner, because the further out in time, the more risk there is in the assumptions, and the more risks that those anticipated benefits do not actually occur. Thus, Mr. Donkin had recommended that the crossover point be about three years, rather than the five or six that might have been in the Company’s filings. The stipulation

addressed the issue of the crossover point, and agreed to a scaled unit cost market price crossover point, so that the crossover could vary depending on what the market prices were at the time. It was noted that the risks are different depending on the absolute price.

A hearing was held in late September, and a Final Order was issued November 16, 2012, determining that NWE did act prudently in acquiring Battle Creek, based on what was known at the time.

It now appears that these properties are going to be slightly more expensive than the current market projections. In his testimony, Mr. Donkin, discussed at some length how this market price and production cost comparison had turned around. The Commission, in this Order, found that concern about current prices was irrelevant because that would constitute a review of Battle Creek based on hindsight.

Mr. Nelson stated that he believed this actually is a misperception on the Commission's part, because in his view, Mr. Donkin had not actually recommended any disallowance. Rather, he was illustrating risks involved in long term market projections to support his cross-over point testimony. The Commission found the cross-over point provisions in the stipulation in the public interest, and they approved that stipulation. MCC also entered into a cost of capital stipulation earlier on in this docket, and the Commission found the cost of capital stipulation to be just and reasonable.

NWE - D2012.9.94 – Application to Increase Natural Gas Delivery Service Rates. Filed 9/28/12. This relates to the non-gas portion of the rate (e.g., pipes and physical assets of the company). Notice of Application was issued. NWE is requesting a \$15,738,100 (15%) increase in non-gas costs. This case is in the discovery phase.

NWE - D2012.5.48 –Annual Gas Cost Tracker. Filed 5/30/12.

This case relates to the gas commodity portion of the rates. A procedural order was issued, and the hearing is set for 6/4/12. This case is in the discovery stage, which involves analyzing the testimony, writing discovery, and onsite audits.

Senator Tropila stated that in the last couple of meetings the Committee had discussed how gas prices keep falling and the supply of gas keeps increasing. His interpretation of this information is that there is a significant increase for residential gas. Senator Tropila requested an explanation of the reasoning behind NWE's application to increase natural gas delivery service rates, based on what is happening more broadly with natural gas in the world today.

Mr. Nelson replied that gas price fluctuations are probably based on several factors. He noted the slight increase by a couple of percentage points, and noted there may be gradual increases in future.

Mr. Nelson added that the company tried to hedge its future market prices by entering into long-term purchases. The up-front costs are based on the assumption that costs will dip below market prices in the long run. But, in the immediate future there will be cost increases. An example was given of the Battle Creek production properties.

NWE – D2011.6.45 – Annual Propane Supply Tracker Filing - Townsend. Filed 6/2/11.

MCC, after extensive discussions with NWE, made a recommendation to the Commission that it was not economical to extend natural gas service to Townsend at this time. The Commission agreed with the recommendation and issued a Notice of Commission Action, closing that issue in this docket.

NWE – D2012.5.47 – Townsend Propane Supply Cost Tracker. Filed 5/4/12.

NWE is requesting recovery of an under-collection of about \$55,000, and a reduction in the current propane costs. MCC reviewed this docket and did not notice any concerns. A hearing is set for February 2, 2013. MCC does not intend to file testimony at this point. Senator Murphy asked Mr. Nelson to give some background/history as to when NWE started the propane program in Townsend. Mr. Nelson called on Paul Schulz, who stated it was late 1999. Mr. Nelson added that before that time most people were using propane tanks, but that NWE did not have a distribution system. Mr. Nelson stated that he was not sure why NWE decided to establish a distribution system in Townsend, but assumed that it looked like a good business proposition for them.

MDU – D2012.6.69 - Annual Electric Cost Tracker

MDU is part of a regional transmission organization, which involves purchases and sales. Electric supply costs are tracked on a monthly basis. These three items show the fluctuations in costs to MDU.

October Electric Cost Tracker – Rate 58. Filed 9/18/12.

Increase of .082¢/kwh primary – total fuel and purchased power in tariff is \$0.02558/kwh

November Electric Cost Tracker – Rate 58. Filed 10/11/12.

Decrease of .034¢/kwh primary – total fuel and purchased power in tariff is \$0.02524/kwh

December Electric Cost Tracker – Rate 58. Filed 11/15/12.

Decrease of .066¢/kwh primary – total fuel and purchased power in tariff is \$0.02458/kwh

MDU – D2012.3.24 – Petition for Certification of Eligible Renewable Resources and CREPs.

Filed 3/13/12.

The Commission had determined that one of the three projects that MDU had requested for CREP certification would be certified. Two of the others would be deemed as one project, and would be too large to be certified. The Company asked for reconsideration, and subsequently filed briefs on that issue. A hearing was set for November, but the Company requested that the hearing be waived because they believed this was strictly a legal issue involving interpretation of the statute. The Commission agreed and did waive that hearing. No decision has yet been issued.

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

MDU has requested a general gas rate increase. This applies to the non-commodity portion of their rate. MDU is requesting about a \$3.5 million increase, which is about 6% overall. They are proposing to allocate a little more of that to residential, so the residential proposed increase is about 8%. MDU is also proposing a weather normalization revenue stabilization tracker in this case. MCC intervened in this docket in October. A Procedural Order was issued and the hearing is set for next May.

MDU – D2012.4.38 – Conservation Program Tracking Mechanism Rate 90. Filed 4/2/12.

MDU is allowed to track its conservation costs and lost distribution revenues. In this docket they sought recovery of a loss of about \$311,000 due to program expenses in lost revenues. MCC had taken no issue with that application and the Commission issued a Final Order approving their request at the end of October.

MDU – D2012.11.118 – Conservation Program Tracking Mechanism Rate 90. Filed 11/19/12.

MDU filed an application to make changes to its Conservation Programs. A Notice of Opportunity to Comment and a Request Hearing was issued 11/29/12. This docket is in the discovery phase, with MCC doing analysis and asking questions of the Company.

In response to Representative Cuffe's question for clarification on what the Conservation Program Tracking Mechanism Rate 90 entailed, and whether it had to do with Smart Meters, Mr. Nelson stated that the Conservation Program Tracking Mechanism Rate 90 is a rate that relates to the Conservation Program expenses that MDU incurs. MDU has a program that subsidized the expense of energy efficient furnaces above a ninety percent efficiency rating and

also for energy efficient thermostats. The program costs that they incur were recoverable in rates, as well as their calculated loss of revenue associated with the loss of sales that they did not realize as a result of those, and they are allowed to track those expenses.

MDU – D2010.9.92 – Annual Gas Tracker. Filed 9/10/10.

This is MDU's annual true-up of monthly trackers. There is a slight increase, reflecting some of the gradual uptick in the recent gas commodity costs. MCC intervened in this Docket, and an order was issued approving interim rates on a final basis.

MDU – D2010.9.96 – Annual Gas Tracker. Filed 9/10/12.

MDU's new Annual Gas Cost Tracker. This docket reflects a small gas cost decrease. MCC has intervened and is in the discovery phase.

MDU – D2012.9.96 – Annual Gas Cost Tracker.

These two dockets are MDU's recent Monthly Gas Cost Trackers. They show some increases since the Annual Gas Tracker filing in September. It is typical to see winter increases in gas commodity cost.

November Gas Cost Tracker. Filed 10/10/12. Increase of \$.32 dk, residential and general service. Residential rate \$5.14/dk.

December Gas Tracker. Filed 11/9/12. Increase of \$.53 dk, residential and general service. Residential rate \$5.69/dk.

EWM – D2000.10.176 – Annual Gas Tracker

These three dockets are Energy West's Monthly Tracker items. EWM recently has had some small gas cost decreases, which are reflected in these monthly Tracker changes.

October Gas Tracker. Filed 9/13/12. Residential Rate increase to \$5.06/Mcf.

November Gas Tracker. Filed 10/30/12. Residential Rate increase to 5.39/Mcf.

December Gas Tracker. Filed 11/26/12. Residential Rate decrease to 5.24/Mcf.

Cut Bank Gas – D2012.1.2 – Annual Gas Cost Tracker True-Up. Filed 12/5/12.

Cut Bank Gas now is part of Energy West. The Company has filed an Annual Gas Cost Tracker True-Up, requesting the recovery for Cut Bank of about a \$61,000 under-collection.

Havre Pipeline Co. – D2012.7.78 – Application to Decrease Rates. Filed 7/27/12.

This pipeline serves rural farmstead customers off taps to this pipeline. Many years ago, MCC entered into an agreement with Havre Pipeline, or its predecessor company, on how their costs

would be flowed through to their customers. This was an application to flow through gas cost decreases to their customers. MCC did not take any issue with this filing, and a final order was issued in October granting the authority to implement the rates that they filed.

Miller Oil Co. – D2011.1.12 – Annual Propane Cost Adjustment. Filed 5/25/12.

Miller Oil Company is a propane company in Culbertson. This docket is a request for about a \$21,000 increase related to an under-collection as part of their annual true-up. MCC is reviewing their application, but is uncertain about filing testimony at this point.

Five Valleys Gas – D2011.1.2 – Propane Gas Cost Tracker. Filed 5/18/12.

This docket is a propane gas tracker true-up for Five Valleys Gas, which is in the Seeley Lake area. MCC intervened in this docket in October and is reviewing it.

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

This Docket is Mountain Water Company's (the Missoula water company) request for a little under \$1 million increase of 5.1%. MCC intervened in this docket. A discovery audit was conducted by MCC in November, and we are currently doing written discovery and analysis.

Aquanet – D2009.12.156 – Application for Initial Water Rates. Filed 12/8/09.

This Application has been pending for some time. Aquanet requested an increase of about \$44,000. Paul Schulz, in testimony, recommended an increase of about \$19,000. MCC filed a settlement with the company for about a \$29,000 increase. This was one of a couple of cases where the Commission rejected the stipulation that MCC filed. The Commission had a second hearing in this docket, and in October issued a Final Order approving a little over \$19,000 increase. This increase was just over what Mr. Schulz had originally recommended in his testimony.

Wettington Water District, Inc. – D2010.9.93 – Application to Implement Increased Rates.

Filed 9/13/10.

Wettington Water District, which is in the Kalispell area, filed an application for increased rates. Since the Committee's last meeting a Notice of Opportunity to Comment or Request a Hearing was issued. MCC did not request a hearing. The Commission issued a Final Order in November approving the requested rates.

HLH, LLC – D2008.10.123 – Water Rate Increase Application for Big Sky Service Area. Filed 10/27/08.

This Docket has been pending for some time. HLH, a water company in the Big Sky service area, requested an increase of about \$442,000. MCC intervened and submitted a stipulation, which agreed to an increase of \$337,000. The Commission rejected that stipulation and restarted this docket. HLH self-implemented the rates, which it is entitled to do nine months after the application, at MCC's stipulated level of \$337,000. Although the Commission made several adjustments in the Company's request, it determined a revenue increase of \$341,000. They determined that this amount is reasonable and close to the stipulated amount and what had been approved on an interim basis quite some time ago. The Commission ordered the interim rates of \$337,000 to be made final, thereby agreeing that the stipulated revenue requirement that MCC had filed was just and reasonable.

Southern Montana Telephone Co. – N2012.10.111 – Notice of Proposed Rate Increases for Local Service. Filed 10/25/12.

Southern Montana Telephone qualifies as a small telephone company in Montana. Under the Montana Small Telephone Company Act, the increases that they propose are final within sixty days unless ten percent of its customers object, or unless MCC objects in writing. If either happens then a hearing has to be held. At this point in time MCC will not be requesting a hearing.

FINANCIAL REPORT

The report provided to the Committee had a run date of November 30, 2012. Our major categories are Personnel expenses and Contacted Services. Because of vacancies we have had in personnel, the end of the year will be less than 100% expended. Contracted Services are always hard to project, especially at this point when we are only four months into the year. In terms of our actual invoices and payments, but looking at that on an annualized basis, MCC would be at about a \$600,000 level, which is a bit under annual budget.

PERSONNEL MATTERS

Mr. Nelson mentioned that today is Heather Voeller's last day. He wanted to publicly thank her for everything she has done for the office. It was the general consensus of the Committee that Heather's efficiency and pleasant personality was a great asset and she will be missed. The Committee noted their appreciation for her 18 years of service to the State.

Mr. Nelson indicated that the Office Manager/Secretarial position is very hard to do without. MCC has had the position open and has been conducting interviews. In the interim, MCC has temporary services from Suzanne Snow. With respect to filling the Office Manager's position, Mr. Nelson asked if the Committee wanted to get together on a conference call; or if they would feel comfortable delegating the authority to him to make the appointment within the job description and salary that were advertised.

MOTION: Senator Murphy moved to delegate to Mr. Nelson the authority to fill the position at the agreed salary level.

Seconded: Senator Tropila.

VOTE: The motion passed unanimously.

Jamie Stamatson, MCC's new Economist, was introduced to the Committee.

Mr. Nelson brought before the Committee a request for staff salary increases that had been deferred to this meeting.

There was discussion about the broadband system in place for pay scales and whether Mr. Nelson had the authority within his department to move, for instance, Mr. Schulz and Ms. Wright, along the pay scale. If not, could Mr. Nelson explain how people in other agencies and divisions received their pay raises based on the broadband system.

Mr. Nelson stated that in other agencies merit or career progression increases have been delegated to the Agency management. In MCC's case, because it is a small agency it has not been done that way. If the Committee felt comfortable delegating that authority to him, it would be consistent with the practice of the other agencies. Mr. Nelson further stated that in the last twelve months merit or career progression increases have been authorized in many other agencies.

As a result of these discussions the following motions were made:

MOTION: Representative Cuffe moved to hold the requested pay raise in abeyance until after the Legislative Session, which would be in April.

Roll call:	Representative Noonan	No
	Representative Cuffe	Yes
	Senator Tropila	Yes
	Senator Murphy	No

VOTE: The motion failed with a tie.

MOTION: Representative Noonan moved to approve the pay raises as set forth from Mr. Nelson.

Roll call:	Representative Cuffe	No
	Senator Tropila	No
	Representative Noonan	Yes
	Senator Murphy	No

VOTE: The motion failed.

Mr. Nelson reiterated that MCC had already fallen significantly behind the other Legislative Agencies and that if a generalized cost of living increase is granted that will not change the relationship among those Agencies. MCC still will not have the increases that many other agencies have received this year, so at some point he would be compelled to bring the issue back. In his opinion the issue could be a long term problem.

Mr. Nelson called upon Larry Nordell to present an update on Regional transmission issues. Mr. Nordell detailed how the various regional transmission groups were working co-operatively on projects based on the criteria set by the FERC 1000 order.

A concern was raised that the Western portion of the nation is essentially maxed out on transmission and generation capacity. Mr. Nordell added that it was his understanding that we are not on the verge of brown-outs, or disasters if one line went out. FERC and Western

Electric Co-ordination Council (WECC), do annual reviews of reserve margins and reliability of the transmission grid.

PUBLIC COMMENTS

There were no public comments.

NEXT MEETING

The next meeting will be scheduled for March, 2013.

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 ____ day of _____, 2013

_____, Chairman.