

**MINUTES**  
of the  
**LEGISLATIVE CONSUMER COMMITTEE**  
June 22, 2012  
State Capitol, Room 172, Helena, MT

**COMMITTEE MEMBERS PRESENT**

Senator Terry Murphy, Chairman  
Representative Mike Cuffe  
Senator Mitch Tropila

**STAFF PRESENT**

Robert A. Nelson, Consumer Counsel  
Heather Voeller, Secretary  
Paul Schulz, Rate Analyst  
Mary Wright, Attorney

**VISITORS PRESENT**

Jeff Hubbard, CenturyLink

**CALL TO ORDER**

The meeting was called to order at 1:30 p.m. by Chairman Murphy.

**MINUTES OF THE PREVIOUS MEETINGS**

**MOTION:** Representative Cuffe moved approval of the March 13, 2012 meeting minutes.

**VOTE:** The motion passed unanimously.

**BOB NELSON PROVIDED THE FOLLOWING HIGHLIGHTS OF CASES CURRENTLY PENDING:**

**D2008.8.95 – NWE - Application for Approval to Construct and Operate the Mill Creek Generating Station to Supply Regulation Service** - We filed the testimony of Dr. John Wilson in the cost recovery part of this case. He had proposed that the Commission not adopt the methodology that NWE was proposing which is called the 12CP methodology and allocates on the peak usage of the system. Dr. Wilson recommends that the Commission measure what the actual regulation uses are and when they occur and who is responsible for that usage. The Commission adopted a final order on March 21<sup>st</sup>. In that order they approved the final revenue requirement

which in the first year is about 34.5 million dollars and in the second year is 39 million dollars. The Commission also found that the total regulation capacity of the plant is 105 MW and that the traditional regulation needs are 60 MW. The remaining 45 MW is allocated directly to VERs which means, in effect, wind. The 60MW traditional need is split between the retail customers and the wholesale customers. The Commission agreed with Dr. Wilson that system peaks do not align with the periods that experience the greatest within-hour load variation so they found that there is no basis for the Company's proposed 12CP methodology which allocates the regulation costs based on the 12 peak hours of the year. Unfortunately, they also found no evidence that allocation based on all hours would be an improvement over the 12CP proposal since they said the provision of some regulation services is obviously greater in some hours. The Commission ordered NWE to conduct the study that Dr. Wilson had suggested to determine exactly when those regulation needs occurred so they could determine who was responsible for those costs. In the meantime, even though they found the 12CP methodology to not be reasonable in the long term, they allowed NWE to implement it for two reasons; it had been implemented already on an interim basis, and FERC traditionally applies this methodology so they were concerned with a revenue gap in the meantime if they adopted a different methodology. The Commission denied the carbon offset proposal by NWE pending clarification of two items; one is the application of the cost cap provision and the second item is clarification of the definition of cost effectiveness because they are not supposed to adopt carbon offset programs that are not cost effective. After the issuance of the Commission order, NWE filed a regulation requirement study plan on May 23. In this study plan NWE is proposing to engage a consultant to conduct a study of 3 years of 15 minute data at a cost for the study between \$500 -\$600,000. After receiving the NWE proposal, the Commission issued a Notice of Opportunity to Comment on the study plan. The comments are due on June 29<sup>th</sup> and we will be filing comments.

**ER10-1138-000 – NWE - FERC Docket** - This is the FERC docket that relates to the Dave Gates Generating Station. In this case, FERC Staff, Large Industrial Customers (wholesale customers) and NWE are all proposing the 12CP cost allocation methodology. A significant difference between the parties and the Company is that the Company is still proposing the 105 MW capacity with 60 MW of traditional regulation to be allocated among the customers. The FERC staff and the Large Industrial Customers claim that the plant is capable of 150 MW of generation because that is its rated capacity. They would allocate anywhere from 4 to 45 MW instead of 60 MW to traditional regulation. The percentage when you increase the denominator and decrease the numerator gets very small, and instead of being about 60% allocated to traditional regulation, it is more like 4 to 45%. Even though our suggestion to FERC is that regulation should be allocated in a different manner, we do support the Company's proposal to use a 60MW over 105MW fraction for

allocating those costs to traditional regulation. This has been pending at FERC and a hearing was recently held from June 11 through June 14. We expect an initial decision by late summer.

**D2012.1.3 – NWE – Application for Approval of Avoided Cost Tariff Schedule**

**QF-1** – This is NWE’s annual adjustment to avoided cost tariffs. It was filed January 17, 2012. As mentioned at the last meeting, rates are based on the company’s 2011 Resource Procurement Plan which uses a market rate for the first several years and then a combined cycle gas plant for many years after that. We filed testimony of George Donkin and he suggested that NWE’s proposed avoided cost rates are actually overstated because, in his opinion, electric generation costs have declined since they filed their 2011 Resource Procurement Plan. The decline is due to the decline in the natural gas market which has affected both the market rates and gas plant costs. Mr. Donkin used more recent gas price forecasts and plugged that into the company’s calculations and came up with avoided cost rates that were about 14 to 22% lower than what NWE had proposed in its filing. The hearing in this docket is scheduled in September.

**D2012.6.5 – NWE – 2012 Annual Avoided Cost Compliance Filing, Schedule**

**QFLT-1** – This is another annual avoided cost compliance filing that relates to grandfathered QF rates. These are the rates for a supply that was included in the generation restructuring standard cost calculations and do not directly affect retail customers, but we will be monitoring this filing.

**D2011.8.68 – NWE – Petition of Hydrodynamics to Set Terms and Conditions for Flint Creek** – The Commission granted a Motion to Dismiss.

**D2011.6.53 – NWE - Petition for Short-Term Waiver from Full Compliance with Community Renewable Energy Project Purchase Requirements** – This relates to

the RPS standards. As part of these requirements, there is a 50 MW Community Renewable Energy requirement. This is a statewide standard. The Commission issued a final order June 13. In the order the Commission found that NWE had failed to take all reasonable steps to comply with the CREP requirement because they had not issued a competitive solicitation in 2011 as they had in 2008 and 2009. Without the competitive solicitation the Commission believed that there was no way to determine what NWE could have developed or uncovered through the solicitation process for the compliance years of 2013 and 2014. The Commission thus granted the waiver for 2012 and denied it for 2013 and 2014. The Commission also found NWE had not demonstrated that the cost of CREPs exceeded the cost of an equivalent quantity power over an equivalent term.

Senator Tropila asked why the Consumer Counsel supported NWE on the waiver request.

Bob stated that NWE had been pursuing a wind resource that would have qualified to be counted for the CREP, but towards the end of the process the company increased the size of the project. Because it became larger it was no longer eligible for CREP credits. NWE had done that to the benefit of ratepayers because it drove down per unit costs. It also appeared that they had made a good faith effort to acquire resources through competitive solicitations and our interest is also in trying to not acquire resources that cost substantially more than alternative resources.

Senator Tropila asked if Consumer Counsel is solely looking at rates for consumers in Montana even if certain companies are trying to circumvent laws and trying to get the lowest rate regardless of what the statute says. Senator Tropila also questioned whether the energy companies have been trying to make good faith efforts in keeping with the CREP.

Bob stated that we would not ignore state law in pursuing consumer interests. In our view, in this case, we thought one could reasonably view the evidence to conclude that NWE had made a good faith effort and had complied with the CREP requirement. We were not trying to ignore the CREP requirement.

Senator Tropila states that he agrees with the Public Service Commission and he does not agree that NWE acted in good faith to meet the CREP requirements.

**N2011.12.96 – NWE – 2011 Electricity Supply Resource Procurement Plan** – We submitted comments of Larry Nordell in April. The comments stated that NWE's Plan represented good utility practices primarily in recognizing uncertainty and risks. He also emphasized that the planning process is an informational process and not a decision docket so it should remain flexible and not frozen in time. Because of that, responsibility remains with management. He also suggested the Commission's rules should clarify that the Commission is not limited to Plan information in setting QF rates. Larry also commented that requests for approval of resources should explain how those decisions compare with the planning information and procedures used in the Plan. There was some comment about the 2007 legislation that allowed NWE to acquire resources and reintegrate their operations and these comments indicated that is an opportunity but not a requirement for the company. To the extent that they decide to reintegrate their operation and acquire resources, the trade offs in doing that should be explained and that cost and risks should be minimized. There is a meeting to further discuss this and to receive comment from the public on June 26.

**D2012.5.49 – NWE – 2011-2012 Electric Supply Cost Tracker** – This was filed June 1, 2012 and is requesting approval of a recovery of about an 8.5 million dollar undercollection which represents about a 6% increase in power costs. We will be intervening in this docket and reviewing the filing.

**D2011.7.59 – NWE – Monthly Electric Trackers**

**April Electric Tracker** - Filed March, 15, 2012. Residential Commodity rate decrease to \$.060402/kwh (\$.04%) \$.2 million annualized revenue requirement.

**May Electric Tracker** – Filed April 16, 2012. Residential Commodity rate decrease to \$.059297/kwh (1.84%) \$6.5 million annualized revenue requirement.

**June Electric Tracker** – Filed May 15, 2012. Residential Commodity rate increase to \$.059487/kwh (0.32%) \$1.1 million annualized revenue requirement.

**D2012.1.14 – NWE – Residential Smart Grid Demonstration Time-of-Use Tariff**

– This was filed January 30, 2012. The Commission approved this tariff on a temporary basis.

**N2012.5.50 – NWE – Electric Utility Line Extension Tariff** – This was filed in May and proposes adjustments to line extension allowances and reimbursements. We will be reviewing this filing.

**D2012.3.25 – NWE – Application to Place Battle Creek Natural Gas Production Resources in Rate Base**

– Filed in March 2012. NWE purchased this property. It contains about 8.4 Bcf of reserves with initial production of .52 Bcf/year. The total annual revenue requirement is proposed to be about 2.5 million dollars which works out to about \$4.85/Dkt, which is currently above market rates which are more in the low \$3, range and there are also some risks associated with this in terms of production cost and production volumes. We have intervened in this docket and testimony is due soon. We are currently reviewing data responses.

**D2012.5.48 – NWE – Annual Gas Cost Tracker** – This was filed in May 2012. This is for the historical period that is ending June 30, 2012 and the forecast period ending June 30, 2013. The projected cost of gas for the upcoming year is \$3.94 and the estimated deferred cost is about \$277,000. The Company is also proposing lost revenue recovery of about 1 million dollars for last year's lost revenue related to conservation and energy efficiency expenditures and about 1.5 million dollars for the

projected period. There is about a 6.5% rate increase that would result from those proposals. We will be doing discovery and taking a closer look at the Company's proposals in this docket.

### **D2011.7.58 – NWE – Monthly Gas Trackers**

**April Gas Tracker** – Filed in March 2012, shows gas cost decrease from \$4.50 to \$3.96 and Residential Rates from \$7.73 to \$7.18.

**May Gas Tracker** – Filed in April 2012, shows gas cost decrease from \$3.96 to \$3.63 and Residential Rates from \$7.18 to \$6.87.

**June Gas Tracker** – Filed in May 2012, shows gas cost decrease from \$3.63 to \$3.50 and Residential Rates from \$6.87 to \$6.72.

**D2012.3.32 – NWE – Annual Gas USBC Tracker** – Filed in March 2012. We intervened in this docket and will be reviewing it.

**D2012.5.47 – NWE – Townsend Propane Supply Cost Tracker** – This was filed in May 2012. The Company is requesting recovery of a prior under collection of \$54,932 and also a reduction in current propane costs. We will be taking a look at this filing. We still are working with the Company to investigate the costs and benefits of extending the natural gas system to Townsend.

### **D2011.6.47 – MDU – Monthly Electric Cost Tracker**

**April Electric Cost Tracker** – Filed in March 2012. Decrease from base of .031¢/kwh primary – total fuel and purchased power in tariff is \$0.02249/kwh.

**May Electric Cost Tracker** – Filed in April 2012. Decrease from base of .167¢/kwh primary – total fuel and purchased power in tariff is \$0.02082/kwh.

**June Electric Cost Tracker** – Filed in May 2012. Decrease from base of .134¢/kwh primary – total fuel and purchased power in tariff is \$0.01935/kwh.

**D2011.12.98 – MDU – Annual Electric Cost Tracker and True-Up Rate 35** – Filed December 2011. This is the tracker from last year. We reviewed it and did not file any testimony. The Commission issued a final order approving proposed rates.

**D2011.12.98 – MDU – Annual Electric Cost Tracker and True-Up Rate 58** – Filed June 2012. We will be taking a look at this to see if we will file discovery and testimony.

**N2011.8.70 – MDU– Biennial Electric Integrated Resource Plan** – Filed August 2011. This was submitted in compliance with ARM 38.5.102. We did not file comments on the plan. The Commission is holding a public meeting to discuss any comments on June 28.

**D2012.3.24 – MDU – Petition for Certification of Eligible Renewable Resources and CREPs** – The Commission issued an order granting this certification.

Senator Tropila asked if Consumer Counsel has found overall that MDU is having trouble meeting the CREP standard for Montana or have they asked for waivers consistently like NWE has?

Bob stated that he is not aware of any problems MDU is having. He is not sure what MDU's allocation of the 50 MW is but NWE is 44, MDU would have less than 6 MW of that. They are a smaller load in Montana as well.

**D2012.4.38 – MDU – Conservation Program Tracking Mechanism Rate 90** – Filed in April 2012 requesting an increase for recovery of \$311,228 due to program expenses, lost distribution revenue and prior under collection. We will be examining this filing.

**D2011.9.77 – MDU – Monthly Gas Trackers**

**May Gas Cost Tracker** – Filed in April 2012. Decrease of \$.57/dk, residential and general service (gs). Residential rate \$4.45/dk.

**June Gas Cost Tracker** – Filed in May 2012. Decrease of \$.12/dk, residential and gs. Residential rate \$4.33/dk.

**July Gas Cost Tracker** – Filed in June 2012. Increase of \$.52/dk, residential and gs. Residential rate \$4.85/dk.

**D2012.3.20 – EWM – Application for Limited Waiver of Certain Ring-Fencing Requirements** – In this case EWM filed a request to refinance a 30 million dollar credit line and to issue senior unsecured debt in the amount 15 million dollars. The institutions involved in the refinancing require that the subsidiary operation in Energy West in Maine and North Carolina not be separated from the operations of Montana as these ring-fencing provisions would contemplate. Energy West has requested a limited waiver of the ring-fencing requirements. Since the last meeting, the Commission issued an opportunity to comment in March and we filed comments April 26. The comments state that Maine and North Carolina utilities that were also

subsidiaries of the Parent Corporation received substantial benefits under the consolidated corporate structure and importantly that our office and the Commission itself is not in a position to determine in the 60 days that the Company said that it needed a decision to determine whether EWM could obtain equivalent financing on a standalone basis. Given that inability and the assertion that those requirements were being imposed by Bank of America, the conclusion was that the Commission had little choice but to monitor performance on a going forward basis as a second best option to the structural ring-fencing provisions, and that the Commission should, if they did that, require reporting and periodic performance review. The Commission held a hearing on May 11. EWM has reopened negotiations with Bank of America on this line of credit and the debt securities, and Bank of America has extended the deadline for rolling over this line of credit for another 60 days until August 24. EWM has filed a motion to reopen the record, and renegotiated the terms of these financial instruments. Now they are proposing to present a new set of financing facilities and importantly at the same time proposing to restructure their corporate organization which would convert Montana and Wyoming operations, which are operating divisions of the company, into wholly owned separate subsidiaries. They are now proposing a 10 million dollar term note instead of 15 million dollar term note with what they call "limited guarantees" from the subsidiaries. Intervenor comment is due July 12 and a hearing is scheduled for July 19. We have recently submitted some discovery in this docket trying to determine what the costs and benefits of this proposal would be.

**D2011.9.76 – EWM Annual USBC Tracker** - This was filed in September 2011 for the yearly period ending March 2011, to true-up the expenditures and revenues the company received from its surcharge for funding USB activities. We have reviewed this and done some discovery and decided not to file any testimony. A final order was issued on May 14, 2012 approving the requested rate.

**D2011.9.78 – EWM Annual Gas Cost Tracker** - This relates to the monthly trackers and is the annual true-up. It was filed in September and would result in a decrease of \$274,000 for unreflected amounts, resulting in a credit to customers. We submitted some data requests in January and have been reviewing this case. We did not file testimony in this docket. A final order was issued on May 11, 2012 authorizing refund of the over collection as proposed.

**D2000.10.176 – EWM – Monthly Gas Tracker**

**April Gas Tracker** – Filed 3/26/12. Residential Rate decrease to \$4.49/Mcf.

**May Gas Tracker** – Filed 4/16/12. Residential Rate decrease to \$4.10/Mcf.

**June Gas Tracker** – Filed 5/15/12. Residential Rate increase to \$4.51/Mcf.

**July Gas Tracker** – Filed 6/19/12. Residential Rate decrease to \$4.41/Mcf.

**D2011.4.32 – Cut Bank Gas – Annual Gas Tracker** – This is the Company's true-up for the period of January 1, 2010 through December 31, 2010. This was filed in April of 2011. We filed a Petition to Intervene on June 15, 2011. We submitted data requests and determined not to file testimony. A final order was issued April 25, 2012 authorizing recovery of the under collection as proposed.

**D2012.1.11 – Five Valley Gas – Propane Gas Cost Tracker** – Filed May 2012 and requests recovery of \$2,735 or \$.00083/gal increase. We will be taking a look at this filing.

**D2011.1.12 – Miller Oil – Propane Gas Supply Cost Tracker** – Filed June 2012. Requests recovery of \$21,186 under collection or approximately 5% increase in revenues. We will be taking a look at this application.

**D2012.2.16 – BHP – Application for Approval of Contract Rate** – Filed February 3, 2012. This is a request for approval of a contract rate for a new pipeline compressor. We do not have much to do with this company because they have very few customers in Montana and their Montana customers are large commercial customers. The Commission issued a final order approving the proposed contract rate.

**D2012.3.31 – BHP – Petition for Certification of Silver Sage Wind Farm as an Eligible Renewable Resource** – Filed in March 2012 requesting certification of a wind farm in Laramie County, WY as an eligible renewable resource under the RPS. The Commission issued a final order granting certification.

Senator Tropila asked Bob to follow up on this to make sure that the power is being used in Montana because it seems strange that they would be deemed an eligible renewable resource in Montana for power that is only used in Wyoming.

Bob stated that he would confirm this for him.

**D2011.4.34 – AquaFlo - Application to Increase Water and Sewer Rates** - This application involves about a 25% increase. It is a small utility with only 143 customers. There was a discovery dispute that slowed down the processing of this case. A new procedural order was recently issued. We filed testimony of Paul Schulz that recommended an overall revenue requirement of \$133,000 as opposed to the \$171,000 that AquaFlo had requested. We entered into a stipulation with

AquaFlo on May 14 that agreed to a \$141,000 revenue requirement which is a 3.7% increase contrasted to the 25.4% increase the Company had requested. A hearing is scheduled July 9.

**D2010.6.60 North Star PUD – Initial Rate Application for Water and Sewer –**

Filed in June 2010 and resubmitted in August 2012. This is a Helena Valley Subdivision. This has been pending for awhile. Since the last meeting, the Company filed a motion for interim rate approval for an inclining rate structure which the Commission approved to some extent. This case is still being processed and there has not been a hearing held yet.

**D2012.4.39 MT Moonlight Basin Water and Sewer LLC – Application for Approval of Asset Transfer, or Petition for Declaratory Ruling –**

This was filed in April 2012. The company is requesting approval of transfer of Treeline Springs assets to Moonlight Basin Water and Sewer, LLC which is a Delaware holding company owned by MT Moonlight Basin Resort LLC. This is all part of a bankruptcy proceeding that has been pending. We have intervened in this docket and are monitoring it.

**N2012.2.17 - PSC – Proposed Adoption of Electric Line Extension Tariff Rules**

– The Commission issued a Notice of Request for Informal Comments. We filed Comments in March that suggested some clarification regarding estimates of costs and changes with respect to atypical facilities. We have not heard anything back at this point on what the Commission intends to do.

**HIRING OF EXPERT WITNESSES**

Bob described the following dockets and requested hiring the following expert witnesses:

D2012.5.49 – NWE 2011-2012 Electric Supply Cost Tracker: *John Wilson*

D2012.5.48 – NWE 2011-2012 Gas Cost Tracker: *George Donkin*

D2012.3.20 – EWM Application for Waiver of Ring-Fencing Provisions: *George Donkin*

**MOTION:** Representative Cuffe moved approval to hire the services of the expert witnesses.

**VOTE:** The motion passed unanimously.

Senator Tropila asked if it would be possible to meet Dr. Wilson or Mr. Donkin if they are ever in Helena when the meetings are taking place.

Bob stated that we will try to arrange this in the future.

**FINANCIAL REPORT**

The report provided to the Committee was dated June 1, 2012 for the end of May. Bob stated that we are in good shape and as we talked about before, we will have a surplus in salaries. Our biggest category and the largest fluctuation is the contracted services and we still have a couple of months to accumulate, but the best guess would be around \$500,000 and the base budget is \$690,000 so we will not have to use the contingency fund. In communications we are going to have a large excess because when we set this budget in August of 2010, we were at the Steamboat Block and were splitting the cost of the Wide Area Network with Fish, Wildlife and Parks. Now that we moved to the Arcade Building we are splitting the same cost among seven agencies instead of two. All the other categories will be right on target.

**PUBLIC COMMENTS**

There were no public comments

**NEXT MEETING**

The next meeting will be scheduled for September.

**ADJOURNMENT**

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

Respectfully submitted,

\_\_\_\_\_, Robert Nelson, Consumer Counsel

Accepted by the Committee this \_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_, Chairman.