

**MINUTES**  
of the  
**LEGISLATIVE CONSUMER COMMITTEE**  
September 7, 2012  
State Capitol, Room 405, Helena, MT

**COMMITTEE MEMBERS PRESENT**

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

**STAFF PRESENT**

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

**VISITORS PRESENT**

Dan Flynn, IBEW  
Justin Post, PSC  
Travis Kavulla, PSC  
Cathy Duncan, LFD

**CALL TO ORDER**

The meeting was called to order at 11:00 a.m. by Chairman Murphy.

**MINUTES OF THE PREVIOUS MEETINGS**

MOTION: Senator Tropila moved approval of the June 22, 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** – The Commission issued its final order and required the completion of a study by NWE with respect to

who the cost causers are for regulation services from the Dave Gates Plant. Since the Committee's last meeting, the Company filed the proposal for the study and we filed comments on their plan. Our comments stated the plan is flawed because they proposed to study 15 minute load data increments to evaluate regulation needs, and as we discussed during the hearing, the load fluctuation occurred much more frequently than in 15 minute periods, and it is possible to control the longer term fluctuations without regulation services being provided. In our view, the study needs to be performed on much smaller time increments. A lot of that information is available and we suggested that the Commission encourage the Company to engage in that kind of study. In fact, the Commission had done that in its order, so the proposed plan was also inconsistent with the Commission's existing guidance in Order 6943. There has not been any further action taken on this particular issue. Since the last meeting, NWE did file a request for clarification regarding the Carbon Offset Program that they had proposed and that the Commission had at least temporarily denied in the final order. NWE wanted clarification on whether the Carbon Offset Program was a one time obligation or whether it was an annual obligation for NWE. The Commission issued a Notice of Opportunity to Comment on planning, funding, and implementation of the Carbon Offset Program and those comments are due at the end of September.

**D2012.5.49 – NWE – 2011-2012 Electric Supply Cost Tracker** – This is the tracker that NWE files on an annual basis to true up their monthly cost trackers. In this case, NWE requested approval of an 8.5 million dollar recovery of a prior period undercollection as well as a projected increase in future costs. The Commission issued an interim order that authorized the implementation of the projected cost increases but declined to authorize the interim recovery of the deferred amount. The reason the Commission did this was because there were several components of that deferred amount that relate to electricity purchases, and Colstrip 4 costs, and as Dave Gates. NWE had proposed with respect to the Dave Gates accounts to defer those until the following tracker period. The Commission found that treatment inconsistent with the other two categories of cost. NWE requested reconsideration, which the Commission granted. On reconsideration, the Commission issued an order authorizing recovery of the Colstrip 4 and purchase deferred amounts. With respect to Dave Gates, they attempted for interim purposes to set those costs as they would have been without the extended plant outage. They issued the interim order authorizing a 6.6 million dollar interim increase. A procedural order has been issued and hearing is set for January 25, 2013. We are in the discovery phase of this case right now.

## **D2012.7.75 – NWE – Monthly Electric Trackers**

**August Electric Tracker** - Filed July 19, 2012. Residential Commodity rate decrease to \$.060575/kwh (\$.55%) \$.2 million annualized revenue requirement.

**September Electric Tracker** – Filed August 15, 2012. Residential Commodity rate increase to \$.061212/kwh (1.05%) \$3.7 million annualized revenue requirement.

## **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. We filed testimony provided by George Donkin that adjusted downward NWE’s gas cost forecast in line with recent changes in the gas markets. A couple of other intervenors filed testimony, requesting increases in the gas cost forecast that was proposed by NWE. Mr. Donkin filed responsive testimony to those other intervenors, stating that QF rates should reflect costs that NWE actually avoids when it produces electricity using natural gas. So, Mr. Donkin suggests that the natural gas price that should be used to make the calculations should reflect prices in close proximity to NWE’s system. These are prices that they would actually incur, not the national average energy forecasts that were used by the other intervenors, relating to prices in places like California and Florida and other locations that do not actually provide gas into NWE’s system. Mr. Donkin uses AECO prices, which are Alberta based prices, and the local market for NWE instead of the average national prices from the Energy Information Administration (EIA). He also did some analysis in his testimony that indicated that EIA forecasts appear to have been highly unreliable in the past couple of years, and so he believes they are flawed and should not be used. As an alternative, Mr. Donkin recommended that the Commission use the AECO forecasts for the next four years and then apply the escalation rates that are in the EIA forecast to those local AECO prices.

## **D2012.6.65 – NWE – 2012 Annual Avoided Cost Compliance Filing, Schedule**

**QFLT-1** – This is another annual avoided cost compliance filing that relates to grandfathered QF rates. We do not get too involved in this proceeding because the costs from the generation from the long term QFs are grandfathered in and are fixed with respect to the retail rate payers’ obligation by the restructuring orders that the Commission issued many years ago as part of the restructuring of NWE. We are monitoring this, and have intervened in case there are issues that come up that do impact retail rates.

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

– Shortly after the last meeting NWE filed a motion for reconsideration of a couple of aspects of the Commission’s order. NWE did not request reconsideration of the denial of the waiver for 2013 and 2014 but they did request consideration of the conclusion that NWE had not demonstrated that those CREP projects were not available and that NWE unreasonably failed to issue an RFP in 2011. There has not been any Commission action on the request for reconsideration and so by operation of the Commission’s rules it is deemed denied. The Company has recently issued an RFP for additional CREP resources and is in the process of discussions with the interested potential bidders.

Senator Tropila asked what Mr. Nordell’s reasons were for stating in his testimony that he thought NWE was making a good faith effort and were trying to comply and why he thought the PSC disagreed with Larry Nordell’s testimony. Larry explained his reason for thinking that NWE had made a good faith effort to comply was that NWE had issued an RFP, they pursued the applications that were offered to them and that would satisfy the CREP requirements. The failure to meet the CREP requirements was due to a decision that one of the proposals could be cost effectively expanded to provide more of a renewable resource. This expansion would put it outside the threshold of a CREP. NWE decided that it was worth pursuing the expansion rather than sticking with a more expensive smaller resource that would have satisfied the CREP. They thought it would be best to satisfy the REC requirements and to request a short-term waiver of CREP requirements for the balance of the three year period. They had issued an RFP, they did pursue the proposals that were offered and they have acquired resources as a result of that proposal. Senator Tropila stated that he is glad that the Commission ruled the way they did because he thinks if a smaller CREP was available that NWE should have taken it and put it in their portfolio. Larry said he would have agreed had it not been the same project. It was a question of acquiring a particular project at a level that would meet the CREP or expanding the same project and getting more renewable energy and more renewable energy credits to meet the REC standard better at a lower cost. There was a failure to meet the CREP requirement but Larry believes the intent was justifiable. Senator Tropila for the record stated that he feels like time and time again NWE is trying to bypass the CREP statute.

**D2012.5.59 – NWE – Application for Approval of BPA Residential Exchange Credit**

- There was not any controversy in this docket. We intervened and reviewed the docket but did not see any problems. The Commission has issued an order approving the proposed rate credits as requested by NWE.

**D2012.3.25 – NWE – Application to Place Battle Creek Natural Gas Production Resources in Rate Base** – Filed in March 2012. The Company for the last few

years has been engaged in trying to monitor opportunities to acquire gas production properties. This a relatively small acquisition and we filed testimony of Mr. Donkin that did not object to the rate base treatment and cost recovery for Battle Creek. Mr. Donkin noted that it was reasonably priced based on market projections that existed at the time of the acquisitions. The market projections have since changed and because of these changes, Battle Creek resulted in excess costs of \$955,512 in 2011. Based on current forecasts, Battle Creek will not produce NPV benefits. In view of all that and as part of this ongoing review of gas property acquisitions, Mr. Donkin further recommended in his testimony that the Commission consider limiting or at least encouraging NWE to limit its acquisition to cases where there are shorter term crossovers between the projected cost of production and projected market price. The longer the crossover period is out into the future, the greater the risk is that market price changes and other changes in production costs will go the other direction and there will be a situation like this where there aren't any benefits. We have been participating in general discussions with the Company about gas acquisition practices, specifically the purchase of producing properties, and we are trying to come to some meeting of the minds on what the parameters should be for appropriate risks in those cases. We will continue those discussions. There is a hearing in this docket at the end of September.

**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 only thing that has occurred in this docket since the last meeting is that the Commission issued a notice of application and set the intervention deadline for the end September.

**D2012.7.74 – NWE – Monthly Gas Trackers**

**August Gas Tracker** – Filed in July 2012, shows gas cost decrease from \$3.94 to \$3.92 and Residential Rates from \$7.16 to \$7.14.

**September Gas Tracker** – Filed in August 2012, shows gas cost increase from \$3.92 to \$4.00 and Residential Rates from \$7.14 to \$7.22.

**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 have intervened and will be reviewing this filing. During the last Propane Tracker filing we asked the Commission to revisit NWE's study that evaluated the cost of extending natural gas service to Townsend. We thought that those costs might have changed with the

market price forecast for propane and natural gas. Paul and George Donkin have been in discussions with the Company and we have done a lot of further analysis. Our conclusions about the cost and benefits are a little different from the Company's, but we all have reached the conclusion that it would be uneconomic at least for the foreseeable future to provide that extension. We will be providing a report to the Commission stating that conclusion in the near future.

**D2012.6.69 – MDU – Monthly Electric Cost Tracker** - Filed in June 2012. The Company is requesting a recovery of \$257,546 prior under collection. The Commission issued an Interim Order allowing recovery of the requested balance on an interim basis. We will be taking a look at this filing.

**August Electric Cost Tracker** – Filed in July 2012. Decrease from base of .04¢/kwh primary – total fuel and purchased power in tariff is \$0.02017/kwh.

**September Electric Cost Tracker** – Filed in August 2012. Increase from base of .459¢/kwh primary – total fuel and purchased power in tariff is \$0.02476/kwh.

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

**August Gas Cost Tracker** – Filed in July 2012. Increase of \$.18/dk, residential and general service (gs). Residential rate \$5.03/dk.

**September Gas Cost Tracker** – Filed in August 2012. Increase of \$.538/dk, residential and gs. Residential rate \$5.42/dk.

**D2012.3.24 – MDU – Petition for Certification of Eligible Renewable Resources and CREPs** – This relates to three wind facilities. Two of them, Diamond Willow I and Diamond Willow II in Fallon County, are located in close proximity, the other is Cedar Hills and is located in North Dakota. Diamond Willow I had been previously certified as an eligible renewable resource to meet the renewable portfolio standard and so MDU is requesting certification of just the other two as eligible renewable resources, and all three as community renewable energy projects to meet their obligations under both of those standards. We did not actively participate in this filing. The Commission issued a final order in July certifying Cedar Hills and Diamond Willow II as an eligible resource. They only certified Cedar Hills as an eligible CREP because they deemed Diamond Willow to be one project for purposes of these requirements, and as one 30 MW project it was too big for CREP designation. MDU has recently filed a motion for reconsideration. The reason for their concern is because their current CREP obligation of 6 MW can be met with the Cedar Hills designation as a CREP, but in 2015 their share of the CREP will go from

6 MW to 12.4 MW which will not be covered by Cedar Hills itself. They have requested reconsideration of the refusal to designate Diamond Willow as a CREP. We intervened in this docket just in case issues come up that we are interested in but at this point we don't see active participation.

### **D2012.3.33 – EWM – Monthly Gas Tracker**

**August Gas Tracker** – Filed July 2012. Residential Rate increase to \$4.97/Mcf.

**September Gas Tracker** – Filed August 2012. Residential Rate decrease to \$4.66/Mcf.

### **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. Energy West asserted that it could not meet the requirements of the ring-fencing provisions because the party with which Energy West had negotiated its new credit facilities would not agree to these provisions. Mary Wright stated that the Commission issued a final order in which many regulatory conditions were imposed on Energy West. We agreed with the final order. Energy West did file for reconsideration of three aspects of the order. The final order limited in a certain way access to the line of credit by Energy West itself and by unregulated subsidiaries of Energy West. EWM asked for clarification of a requirement that referred to when Energy West had to pay off certain loans, and also asked the Commission to change part of the order because Energy West argued that the Commission was asserting jurisdiction over unregulated entities and out of state utilities. Consumer Counsel filed comments stating we did not interpret the final order as trying to assert jurisdiction over other entities. The Commission also clarified the time frame when certain loans had to be paid off. The Commission's desire was to avoid putting Energy West into a position where its financing was jeopardized. The Commission approved certain things that Energy West wanted in this order on reconsideration. All in all Mary feels the final order was about the best result that could be obtained. Another problem in this case is that Energy West Incorporated had to get four state Commissions simultaneously to agree to the same thing.

**D2012.7.78 – Havre Pipeline – Application to Decrease Rates** – This was filed in July 2012. This is the result of a stipulation that was entered into many years ago

with Havre Pipeline's predecessor company that requires them to annually review their gas costs and flow through changes to their rural farmstead customers. There are a little over 100 of those customers in northern Montana. We will review the filing but will most likely not actively participate unless we find a problem.

**D2012.7.81 – MWC – Application to Increase Rates for Water Service** – This was filed at the end of July. The Company is requesting a revenue increase of \$919,105 (5.1%). They are proposing a slightly larger increase for certain customers including flat rate and metered rate residential customers. Also, part of this case is a request for final approval of interim power cost trackers. A Notice of Application and Intervention Deadline was issued at the end of August. Interventions are due at the end of September and we will be intervening.

**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 the 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. The only change in the status of this case since the Committee's last meeting is that a hearing was held in early July.

**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 the 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. The Commission issued a final order at the end of August approving the transfer and finding that it will have no adverse impact on rates and services for the Company's customers and actually will strengthen the Utility's ability to provide the service.

Senator Tropila asked Travis Kavulla, Chairman of the Public Service Commission, to comment on the Final Order issued in D2011.6.53, NWE's Petition for Short-Term Waiver from Full Compliance, with respect to NWE failing to take reasonable steps with respect to compliance for years 2013 and 2014. He asked why the Commission granted the waiver for 2012 and why they denied it for 2013 and 2014. Chairman Kavulla stated that basically the petition revolved around an issue were NWE had gone out to seek a competitive solicitation of Community Renewable Energy

Projects which need to be 25 MW or less in order to count as CREPs. NWE ended up having a project that morphed into a 40 MW project called Spion Kop now being built near Geyser. Upon learning that they were not going to have a CREP result from the previous competitive solicitation rather than taking any step, they filed a petition for waiver for a period of three years. The Commission in ruling on the Petition for Waiver said, we acknowledge that at the point where you found out that you were not going to have a CREP result from your previous competitive solicitation program, if they would have initiated another competitive solicitation right then they probably would not have had enough time to get a project and build a project by 2012, thus the waiver for 2012. Along the same line of logic, the Commission said if they had initiated a new competitive solicitation right after it came clear that the previous solicitation resulted in a project which was no longer a CREP they would have been able to have a project by 2013 or 2014. There is still a possibility if NWE moves quickly that they can comply.

Senator Tropila asked Bob if there was any way that the Committee could get the Status of Cases a week before the meeting. Bob stated that he could try to do that. He also stated that in the past that the Status of Cases started out as just being hand written notes that he would prepare the day before the meeting. Several years ago one of the Committee members asked if they could have a copy to follow along and so he started typing them. He has always looked at them as just notes for an oral presentation, but will try to do them further in advance.

### **FINANCIAL REPORT**

The report provided to the Committee was dated September 1, 2012 for the end of August. Bob stated that this is just two months into the fiscal year and that it doesn't provide a very good representation of where things might end up at the end of the year. Bob noted that the largest fluctuation occurs in contracted services and we had a pretty high cost month the first month of the year. Bob doesn't expect that to continue throughout the year.

### **BUDGET FOR FISCAL YEARS 2014 & 2015**

Bob provided a report showing the breakdown of the proposed budget for 2014 and 2015, as well as the eight previous years' breakdown comparing the proposed budget to the past years. The bottom line shows that the actual budget for 2012 and 2013 is about 3.28 million dollars and the proposed budget for 2014 and 2015 is 3.28 million dollars. So, the budget proposal is basically a no growth budget from our last biennial budget. It is a .08 of 1 percent increase. There are a couple of items that Bob pointed out. Looking at the 2012 actual which is the base year for 2014/2015 budget cycle, it is about 1.1 million dollars which is substantially below the budget for this current fiscal year and the proposed budget. There are two primary reasons for this; the first is because we had a staff vacancy that has affected

our actual expenditures in personal services, and the other item is contracted services. There are two components of contracted services that cause the fluctuation. One is a contingency of \$250,000 which is something that we never plan to spend so when it is not spent it shows up lower than the budget and it is something that we end up having to explain every budget cycle. The non-contingency part that we try to forecast does fluctuate quite a bit and it was down a little in 2012, so that piece also shows up as an increase in the projected budget for 2014 and 2015. What we did last budget cycle and what Bob has done in this proposed budget is to take the last 5 years experience and to average those 5 years. In this case, that 5 year average would include a couple of years that are lower than average plus our historically lowest year of 2010 is included in the average. The average results in a contracted service level of about \$645,000. That is about \$20,000 lower than the last budget. If you take the \$645,000 and look back you can see that at that budget level, it would have required in 5 of the 10 years use of contingency money. In addition to the \$645,000 there is the \$250,000 contingency which again we do not anticipate spending but because of our inability to get budget amendments because of our separate funding and status of a Legislative Agency, the legislature created that contingency provision in our statutes. The net result is that the base budget for contracted services and the \$250,000 contingency is what drives the change in the other services category and results in the \$922,000 and \$935,000 budget request. The reason that the projected budget is greater than our base year in personal services is almost entirely due to the assumption that we will be fully staffed. At the current time we have a vacant position and that vacancy is reflected in the base year. We did add a \$5,000 increment so we would have the flexibility to consider a staff salary change in the next fiscal year.

MOTION: Representative Noonan moved approval of the proposed 2014/2015 budget.

VOTE: The motion passed unanimously.

### **HIRING OF EXPERT WITNESSES**

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

D2012.7.81 – MWC – Application to Increase Water Rates: *John Wilson*

D2012.9.94 – NWE – Application to Increase Natural Gas Rates: *Al Clark & John Wilson*

D2012.9.100 – MDU – Application to Increase Natural Gas Rates: *Al Clark & John Wilson*

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

VOTE: The motion passed unanimously.

**PUBLIC COMMENTS**

There were no public comments

**NEXT MEETING**

The next meeting will be scheduled for December.

**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.