

MONTANA PUBLIC SERVICE COMMISSION UPDATE TO  
THE ENERGY & TELECOMMUNICATIONS INTERIM COMMITTEE  
STATUS OF DOCKETS

July 19-20, 2022  
Chairman James Brown

## 1. NorthWestern Energy

### Request for Waiver of Requirement for In-Person Notice – Docket 2021.08.109

- In August 2021, NorthWestern requested a partial waiver of the Commission’s rules, 38.5.1405 and 38.5.1413, which require that utilities physically leave notices on a customer’s property prior to terminating service.
- NorthWestern asserted that it could achieve cost savings through alternative means of notification that would provide adequate notice, address customer privacy issues, and enhance employee security and safety.
- The Montana Consumer Counsel (“MCC”) intervened and opposed NorthWestern’s request. MCC contended that NorthWestern did not show that the alternative means of notification provided adequate protection for customers facing imminent disconnection and the analysis of cost savings was incomplete and did not account for new costs that would offset savings.
- The Commission conducted a public hearing on April 5, 2022.
- On June 28, 2022, the Commission denied NorthWestern’s request. The Commission determined that because it is conducting a comprehensive review of its administrative rules, including the rules NorthWestern seeks to waive, that process is better suited to addressing NorthWestern’s proposal, particularly given that multiple utilities are affected by the rules. Further, the Commission was not persuaded that NorthWestern’s alternative means of notification provided adequate protections to customers facing disconnection.

### PCCAM Annual Rate Adjustment – Docket 2021.09.112

- On August 31, 2021, NorthWestern filed its annual application to adjust its electricity supply rates under the Power Costs and Credits Adjustment Mechanism (PCCAM, a.k.a. electricity supply cost tracker). NorthWestern’s application covers the tracking period July 2020 through June 2021.
- NorthWestern seeks to recover approximately \$18 Million in deferred costs.
- If approved, the PCCAM rate adjustment would result in an increase in NorthWestern’s electricity supply rates of approximately 2%.

- Under the PCCAM, NorthWestern's proposed rate adjustments automatically took effect on October 1, 2021, subject to refund.
- NorthWestern's application also seeks approval to enter off-system fixed price hedge transactions to mitigate market price risks.
- MCC intervened in the proceeding and prefiled testimony on January 21, 2022.
- MCC opposed NorthWestern's request to engage in off-system fixed price hedge transactions.
- The Commission conducted a public hearing on April 19, 2022.
- Post hearing briefing by the parties was completed on June 13.
- The Commission will likely discuss and act NorthWestern's application at its Business Meeting on July 26.

### [Beartooth Battery Energy Storage PPA Approval Application – Docket 2021.11.132](#)

- On December 21, 2021, NorthWestern filed its application for approval of the Beartooth Energy Storage Agreement.
- The agreement involves a 20-year commitment to purchase energy, capacity, and ancillary services from a 50 megawatt battery energy storage facility to be constructed in Yellowstone County.
- Pursuant to the provisions of the preapproval statute, the Commission has 270 days to process the application, unless extraordinary circumstances arise.
- A notice of application and intervention deadline was issued on January 11, 2022.
- The Commission issued an Order in February finding that NorthWestern's application satisfied the Commission's minimum filing requirements.
- The Commission requested that parties to the docket address several issues regarding the gross costs of the energy storage agreement, its impact on NorthWestern's power costs and credits adjustment mechanism, and potential cost allocations to FERC-jurisdictional customers.
- The Commission received prefiled testimony from several intervenors on May 3, 2022.
- On May 6, the Fourth Judicial District Court declared that the preapproval statute, 69-8-421 MCA, is unconstitutional.
- On May 20, the Commission suspended the procedural schedule in the docket due to the court's decision.
- On May 27, NorthWestern filed a motion requesting the Commission hold the proceeding in abeyance pending NorthWestern's appeal of the court's decision.
- On June 3, Broad Reach Power filed its opposition to NorthWestern's motion to hold the proceeding in abeyance. Broad Reach concurrently filed a motion to dismiss NorthWestern's application on grounds that the Commission no longer has statutory authority to adjudicate the application.
- On June 17, NorthWestern filed its appeal with the Montana Supreme Court.

- The Commission is currently evaluating the motions of NorthWestern and Broad Reach Power.

### Combined Electric and Natural Gas General Rate Case – Docket TBD

- In January, the Commission reported on NorthWestern’s intent to file a combined electric and natural gas general rate case sometime in the second quarter of 2022. NorthWestern now expects to file by the end of July 2022 or the first week of August 2022.
- In addition to the typical review of the sufficiency of revenue from existing rates, class revenue responsibility, and rate design matters, NorthWestern intends to request that the Commission revisit the structure of a pilot Fixed Cost Recovery Mechanism (a.k.a. decoupling) approved in the last electric rate case, which was not implemented due to pandemic-related load impacts.
- The electric rate case will likely include a request to recover Asset Retirement Obligations (“AROs”) that involve remediation and cleanup costs at Colstrip. NorthWestern has recognized such obligations for financial reporting purposes but has not previously requested recovery of related costs in rates.
- NorthWestern also plans to request that the Commission revisit the mechanics of the PCCAM and may request approval of procedures for including the costs of the Laurel Generating Plant in rates, once the plant is online.
- The natural gas case will include updated information regarding the depletion of its natural gas production assets and may address costs related to a potential acquisition by NorthWestern of the Sleepy Hollow Oil and Gas Company.

### Acquisition of Sleepy Hollow Oil and Gas – Docket 2022.04.051

- Sleepy Hollow owns and operates a natural gas distribution system in central Montana, providing service to approximately 150 customers in Winifred, Hilger, and parts of Lewistown.
- The Sleepy Hollow system interconnects with NorthWestern’s gas system west of Lewistown and NorthWestern provides natural gas supply to Sleepy Hollow on a wholesale basis.
- In December 2020, the Commission’s pipeline safety staff issued a notice of probable violation to Sleepy Hollow for failure to comply with record keeping standards in federal regulations, which the Commission enforces.
- Sleepy Hollow failed to respond to the notice within the required 60 day period.
- Subsequently, Sleepy Hollow’s operations experienced challenges related to the bankruptcy of its parent company, OsAir. One significant challenge relevant to PSC

regulation was that a receiver appointed by the bankruptcy court to liquidate Sleepy Hollow's assets became the pipeline system operator.

- With the Sleepy Hollow system under the control of an inexperienced owner and operator and the potential resignation of the single Sleepy Hollow employee physically managing the system from Winifred—the employee reported not being paid for several months—the PSC's pipeline safety staff were concerned about the unprecedented possibility of having to shut down the system.
- On April 26, 2022, the Commission issued to Sleepy Hollow an Order to Show Cause why the PSC should not seek through judicial procedures to impose penalties for violations of federal and state pipeline safety regulations.
- NorthWestern is uniquely positioned to acquire and operate the Sleepy Hollow system, given the preexisting interconnection with NorthWestern's system.
- On April 29, NorthWestern filed an Application for Emergency Authority to Operate and Acquire the Sleepy Hollow system.
- On May 5, 2022, the PSC approved an Interim Order finding that, for the safety of the communities served, without a qualified operator the Commission cannot allow the Sleepy Hollow system to operate and, on that basis, granted NorthWestern authority to act as the system operator for a period of 90 days.
- On May 24, the Montana Consumer Counsel filed a petition to intervene in the proceeding.
- The Commission issued a procedural order on May 27, which was amended on June 13.
- MCC has conducted discovery on NorthWestern's application.
- The Commission will hold a public hearing on July 26, 2022, regarding NorthWestern's application.

### Corporate Restructuring – Docket 2022.06.064

- On June 1, 2022, NorthWestern filed an application requesting approval of a corporate restructuring plan.
- Through the plan, NorthWestern's state utility operating divisions would become separate wholly owned subsidiaries of a newly formed holding company.
- NorthWestern's application states that, if implemented, the restructuring plan would serve the public interest by separating and insulating the public utility businesses in the states of Montana, Nebraska, and South Dakota while leaving services and rates to customer unchanged.
- NorthWestern states that the restructuring plan includes ring fencing measures that provide greater protection for customers than an existing stipulation between NorthWestern, the Commission, and the Consumer Counsel executed during NorthWestern's bankruptcy in 2004.

- On June 14, the Commission provided public notice of the application and established an intervention deadline of June 28.
- Colstrip Energy Limited Partnership, Consumer Counsel, and Montana Large Customer Group petitioned for and were granted intervention in the proceeding.
- Commission staff are in the process of conferring with parties to develop a procedural schedule.

### Advanced Metering Opt-Out Tariff – Docket 2022.06.067

- On June 13, 2022, NorthWestern filed an application for approval of an advanced metering opt-out tariff.
- NorthWestern proposes to allow customers to opt out of NorthWestern’s deployment of advanced meters for a fee of \$75 per service. If a customer opts out, NorthWestern will install a non-communicating meter and the customer will have two meter-reading options: NorthWestern will read the meter for \$15 per month, or the customer can self-read the meter for \$5 per month.
- NorthWestern states that it will incur material costs to install non-communicating meters and manage the meter reading process. It states the proposed fees would not fully cover these costs but reflect prevailing industry rates for opt out services.
- NorthWestern states that its proposed opt-out tariff balances utility needs with customer choice.
- The Commission provided public notice of NorthWestern’s application on June 17 and established an intervention deadline of July 1, 2022.
- The Montana Consumer Counsel petitioned to intervene.
- Commission staff are working on developing a procedural schedule.

## 2. PURPA Implementation

### ConEd Development Petitions for Contract Rates and Terms – Dockets 2019.09.067 and 2019.10.076

- In 2020 the Commission issued a series of Final Orders and Reconsideration Orders in response to the petitions of three separate QFs, comprising about 120 MW of wind generation, to set avoided cost rates under PURPA.
- Petitions for Judicial Review were filed by all three QFs in the First Judicial District Court and the Court consolidated the matters into a single case.
- In pertinent part, the issues on appeal involved the Commission’s jurisdiction over, determinations regarding, the QFs’ responsibilities for costs to upgrade NorthWestern’s transmission system in order to accommodate the receipt and delivery of the QFs’ energy.
- The District Court affirmed the Commission’s orders.

- In May 2021, the QFs appealed to the Montana Supreme Court.
- In May 2022, the Supreme Court affirmed in part and remanded in part.
- The Supreme Court affirmed the Commission’s jurisdiction, but remanded the cases to the Commission for further proceedings regarding the proper apportionment of the cost of system upgrades among the QFs’, NorthWestern’s customers, or other energy projects.
- Commission staff are working with the parties in the underlying dockets to develop a limited procedural schedule for a remand proceeding. In addition, in August, Commission staff will conduct a workshop with the parties to discuss potential principles and methods for apportioning costs.

#### [Jawbone Holdings, LLC, Petition – Docket 2020.12.126](#)

- Jawbone is an approximately 80 MW wind facility to be located near Harlowton, in Wheatland County.
- Jawbone submitted its Petition, pursuant to Mont. Code Ann. §69-3-603, in December 2020 requesting that the Commission set avoided cost rates and terms for a contract with NorthWestern.
- The Commission conducted a public hearing in May 2021 and issued a final order on October 29, 2021.
- NorthWestern and Jawbone each filed motions for reconsideration in November.
- The Commission issued an Order on Reconsideration on January 26, 2022.
- Jawbone petitioned for judicial review of the Commission’s orders on February 25, 2022.

#### [Caithness Beaver Creek \(“CBC”\) Petition – Docket 2021.12.134.](#)

- In December 2021, Caithness Beaver Creek filed a petition requesting that the Commission establish the contract rates and terms of a QF power purchase and sale agreement for two QF projects located in the same general area as two other CBC projects for which rates were established in Docket 2019.06.034.
- The two additional projects are also hybrid wind-battery energy storage projects.
- Each project would consist of 50 MW of installed wind capacity and 30 MW of installed battery storage capacity.
- NorthWestern and MCC intervened in the proceeding.
- The Commission held a hearing on April 27-28, 2022.
- On June 16, 2022, the Commission issued a final order (Order No. 7823g).
- On June 27, NorthWestern and CBC each filed motions for reconsideration regarding various elements of the Commission’s final decision, which the Commission is reviewing.

## Application for Approval of Interconnection Procedures and Agreements for QFs – Docket 2021.08.106

- In August 2021 NorthWestern filed an application for approval of interconnection procedures and agreements that would control interconnection of PURPA qualifying facilities (“QFs”) to NorthWestern’s transmission system.
- MCC and several QFs intervened, including Caithness Beaver Creek, Broad Reach Power, Clenera, and Colstrip Energy LP.
- The Commission initially scheduled a public hearing for May 25, 2022.
- As discussed above, in May the Montana Supreme Court issued a decision regarding an appeal of several QF rate orders issued by the Commission in 2020. The Court affirmed the Commission’s jurisdiction over the interconnection of QFs to NorthWestern’s transmission system but remanded the decisions to the Commission for further proceedings on the proper apportionment of transmission costs.
- On June 6, 2022, NorthWestern withdrew its application in this docket based on the Supreme Court's decision. NorthWestern stated it would refile its application after the Commission issues a ruling in the remand proceeding.

## Petition for Rulemaking to Incorporate FERC Rules – Docket 2021.09.118

- In September 2021, NorthWestern filed a petition for rulemaking requesting that the Commission modify its PURPA rules to reflect recent changes to the regulations of the Federal Energy Regulatory Commission (“FERC”) implementing PURPA.
- Specifically, NorthWestern requested changes to implement FERC’s decision to authorize variable rates for energy based on avoided costs calculated at the time of delivery for long-term contracts or other legally enforceable obligations.
- In November 2021, the Commission issued a Notice of Opportunity to Comment on NorthWestern’s petition. Comments were submitted by several QF developers and MCC.
- The Commission staff conducted a roundtable with stakeholders in February 2022 and shared several drafts of potential modifications.
- The Commission plans to consider this matter at its July 26 Business Meeting.

## 3. Montana-Dakota Utilities

### Authority to Offer Incentives for Conversion – Docket 2021.09.116

- In September 2022, MDU filed an application for authority to offer incentives for approximately 38 customers in the Saco/Bowdoin area to convert from natural gas service to an alternative fuel source.
- MDU stated that it does not expect to be able to reliably continue to deliver natural gas service to the customers because service is provided through a natural gas gathering system serving wells in the Bowdoin area that MDU sold in 2015. Due to third party

ownership of the gathering system and upstream gas fields, MDU no longer has control over when the wells may be shut in, which creates uncertainty over MDU's ongoing ability to purchase the gas supplies needed to serve customers. In addition, declining pressures in the wells and gathering system create reliability risks for customers due to increased water in the gas that can freeze during severe weather.

- MCC has intervened in the docket.
- The Commission has not yet established procedural schedule.

#### MDU Integrated Resource Plan – Docket 2021.09.117

- On September 15, 2021, MDU filed its biennial integrated resource plan.
- The Commission provided public notice of the plan on October 14, set a deadline for written comments of January 21, 2022, and held public comment sessions on January 25, 2022, in Helena and April 18 in Sydney.
- Pursuant to 69-3-1204, MCA the PSC may identify deficiencies in a plan, including concerns regarding compliance with PSC rules.
- The Commission tentatively plans to consider whether and what comments to make on MDU's plan at its July 26 Business Meeting.

#### MDU Application for Deferred Accounting – Docket 2021.12.138

- On December 9, 2021, MDU filed its Application for Authority for Deferred Accounting.
- MDU requested a Commission order authorizing deferred accounting treatment for costs associated with the investigation and remediation of a former manufactured gas plant site located in Missoula.
- MDU is currently investigating the scope and cost of site remediation and seeks to defer the costs for presentation in a future general gas rate case
- The Commission issued a notice of application and intervention deadline on January 10, setting an intervention deadline of January 31.
- MCC intervened, conducted discovery, and, after requesting an extension, prefiled testimony on May 6. MCC does not oppose MDU's request for an accounting order per se, but addresses the standards for evaluating whether the Commission should grant an accounting order and the scope and terms of such an order.
- The Commission initially scheduled a hearing for August 11.
- On June 20, MDU filed an unopposed motion for relief requesting that the Commission grant MDU's request for an accounting order, given that the request is unopposed.
- The Commission plans to consider this matter at its July 26 Business Meeting.

#### MDU Electric General Rate Case – TBD

- In January, the Commission reported on MDU's intent to file an electric general rate case in the third quarter of 2022. MDU now estimates it will file in November 2022.



- MDU has indicated that its rate requests will be based on a split test year comprising the second half of 2021 and the first half of 2022.
- MDU plans to request recovery for \$16 million in early retirement costs for three coal fired generating stations: Heskett 1 and 2 in North Dakota, and the Lewis and Clark Station in Sidney, Montana. The Commission previously authorized MDU to defer consideration of those costs to its next rate case. MDU also plans to request recovery for a new 88 MW natural gas fired generating station, Heskett 4, which is expected to be online in April 2023.
- In addition, MDU plans to include an analysis of depreciation rates for its various capital investments.

## 5. Telecommunications Regulation Modernization

### Notice Requesting Public Comment on Modernizing Telecommunications Regulation – Docket 2021.10.125

- In January, the PSC reported on its effort to review and identify options for modernizing the regulation of telecommunications services. The status of this matter remains substantially the same.
- The Montana Telecommunications Act was enacted in 1985.
- The Act establishes a policy of universal availability of basic telecommunications service at affordable rates and provides for an “orderly transition from a regulated telecommunications industry to a competitive market environment.” Mont. Code Ann. § 69-3-802.
- The Commission has adopted rules that implement the Act. Mont. Admin. R. 38.5.2701 through 38.5.4200.
- As telecommunications markets have evolved over time, the Commission’s regulation has responded. For example, in 2000, the Commission waived requirements for certain competitive local phone service providers to file tariffs or price lists, and in 2014 the Commission removed tariff requirements for the two former monopoly local phone companies (Citizens Telecommunications d/b/a Frontier Communications and CenturyLink).
- The purpose of this Docket is to assess whether, given current technology and the state of markets for telecommunications services, further changes in Commission regulation and/or governing statutes are warranted.
- As a first step in the assessment, the Commission requested public comments by January 22 on two primary issues: the appropriate level of Commission regulation given current and expected market structures and technologies; and appropriate modifications to Commission rules and regulations to achieve the appropriate level of regulation.

- The Commission received written comments from several stakeholders including the Montana Telecommunications Association, Bresnan, CenturyLink. Staff continue to review the comments and engaging with stakeholders on possible legislative and rules changes.
- No further changes to the status of this docket following the May ETIC meeting.

## 6. Other dockets and non-dockets

### 2021.05.073 – Town of Kevin’s Complaint against North Central Montana Regional Water Authority

- In January, the Commission reported on a complaint filed by the Town of Kevin alleging that the North Central Regional Water Authority (of which Kevin is a member) is a public utility and should be subject to Commission jurisdiction.
- The Commission accepted the complaint and issued a procedural order.
- Intervention was granted to City of Shelby and Montana Consumer Counsel.
- The discovery process was completed on December 3, 2021.
- On December 17, 2021, North Central Montana Regional Water Authority filed a motion to dismiss the complaint.
- In an order issued March 15, 2022, the Commission granted the motion to dismiss.
- The town of Kevin filed a motion for reconsideration on March 25.
- The North Central Montana Regional Water Authority and City of Shelby filed responses in April.
- Commission action on the motion is pending.
- No further updates on this docket following the May ETIC meeting.

### 2021.12.136 – Investigation into the Adequacy of Infrastructure of CenturyLink

- Concurrent with its dismissal of the complaint of Wibaux County, the Commission initiated an investigation into the adequacy of legacy infrastructure operated by Qwest Corporation d/b/a CenturyLink QC.
- The investigation is based on the Commission’s receipt of formal and informal complaints alleging that the infrastructure used to provide service in rural areas of Montana is inadequate, resulting in long service outages, inability to access 911 services, and falsely initiated calls to 911 services.
- The Commission consolidated this docket with docket 2021.10.137, which involves a request by CenturyLink for a temporary waiver of a Commission rule that specifies requirements for restoring service once a customer reports being out of service.
- The MCC requested and was granted intervention in the consolidated docket in February 2022 and requested additional process, such as an opportunity to conduct discovery.

- On May 27, 2022, MCC issued discovery to CenturyLink.
- On June 3, 2022, the Commission issued a procedural order establishing a July 29 deadline to submit comments or request additional process.
- On July 8, CenturyLink filed a motion requesting a 30 day continuance, in part to allow it to pursue settlement options with MCC.

### PURPA Section 111(d) – Docket TBD

- The Infrastructure Investment and Jobs Act of 2021 (“IIJA”) amended Section 111(d) of the Public Utility Regulatory Policies Act (“PURPA”) to require that states consider measures to promote greater electrification of the transportation sector, including the establishment of utility rates that:
  - Promote affordable and equitable electric vehicle charging options for residential, commercial, and public electric vehicle charging infrastructure;
  - Improve the customer experience associated with electric vehicle charging, including by reducing charging times;
  - Accelerate third-party investment in electric vehicle charging; and
  - Appropriately recover the marginal costs of delivering electricity to electric vehicles and electric vehicle charging infrastructure.
- Pursuant to Section 112 of PURPA, state regulatory authorities, such as the Commission, must commence consideration of these potential measures by November 2022.
- The Commission intends to initiate a proceeding prior to the deadline. Through the proceeding the Commission will obtain information and opinions from regulated utilities and the public relevant to the Commission’s consideration of utility rates that meet the IIJA criteria.