

## LITIGATION

### State District Court Cases

#### 1. 350 MONTANA, ET AL. V. MONT. PUB. SERV. COMM'N, ET AL.

MONT. 4<sup>TH</sup> JUD. DIST. CT., CAUSE NO. DV-32-2021-0000684-1J

- The Attorney General's office is representing the Commission in this matter.
- May 28, 2021 – Complaint filed by Plaintiffs.
- Names the State of Montana, the Commission, and NorthWestern Energy as Defendants.
- Asks the Court to find that Mont. Code Ann. § 69-8-421—the “pre-approval” statute—is unconstitutional.
- On May 6, 2022, the Court found that the pre-approval statute is a “special act” within the meaning of Article 5, Section 12 of the Montana Constitution, and is therefore unconstitutional.
- Next steps:
  - Rule on Broad Reach Power's Motion to Dismiss in Docket No. 2021.11.132.

#### 2. CAITHNESS BEAVER CREEK V. MPSC AND NWE

MONT. 1<sup>ST</sup> JUD. DIST. CT., CAUSE NO. CDV-2020-290

- Received Order from District Court, May 9, 2022, remanding the matter to the Commission.
- Procedural order issued July 13, 2022, requires NorthWestern to submit a new compliance filing based on Court's order. A short briefing schedule follows regarding claimed issues with NorthWestern's filing.

#### 3. RIKKI HELD, ET AL., V. STATE OF MONTANA, ET AL.

MONT. 1<sup>ST</sup> JUD. DIST. CT., CAUSE NO. CDV-2020-307

- The Attorney General's office is representing the Commission in this matter.
- March 18, 2021 – Complaint filed by Plaintiffs.
- Names the State of Montana, Governor, DEQ, DNRC, DOT, and the Commission as Defendants.
- Asks for broad declaratory relief that MCA 90-4-1001(c)-(g), and MCA 75-1-201(2)(a) are unconstitutional.
- Ask for injunctive and equitable relief:
  - Permanent injunction regarding both the State's Energy Policy and the Climate Change Exception.
  - Order defendants to prepare an accounting of Montana's greenhouse gas emissions.
  - Order defendants to develop a remedial plan to reduce emissions.
  - Appoint a special master if necessary.
- Defendants moved to dismiss on standing, prudential limitations, and failure to exhaust administrative remedies.
- August 4, 2021 - Court issued Order on Motion to Dismiss. Dismissed several injunctive and equitable relief requests; found that the plaintiffs had standing.
- September 17, 2021 – Defendants' Answer filed.
- December 21, 2021 – Scheduling Order setting trial February, 2023.

- Plaintiffs' counsel deposed Will Rosquist on June 17, 2022, as the PSC's Rule 30(b)(6) designee.
- Discovery continues.

#### 4. LEE ENTERPRISES V MONT. PUB. SERV. COMM'N.

MONT. 1<sup>ST</sup> JUD. DIST, CAUSE NO. ADV 2021-1189

- The Attorney General's office is representing the Commission in this matter.
- Complaint filed Dec. 3, 2021
- Answer and counterclaim filed Jan. 19, 2022
- Plaintiff's MSJ filed Feb. 4, 2022
- PSC's MSJ filed Apr. 4, 2022
- June 8, 2022 – the Court denied our MSJ, granted Lee's; PSC must bear costs of legal review.
  - Legal review is ongoing, information is being transmitted to Lee as it is reviewed.

#### 5. JAWBONE HOLDINGS LLC V. MT DEPT. OF PUB. SVC. REG., MONT. PUB. SERV. COMM'N., AND NORTHWESTERN

MONT. 1<sup>ST</sup> JUD. DIST, CAUSE NO. ADV 2021-1189

- Jawbone filed petition for judicial review of the Commission's Final Order and Order on Reconsideration in Jawbone's application to set terms and conditions of its power purchase agreement with NorthWestern.
- All briefs have been filed.
- Oral argument is set for August 2, 2022, however, MCC has filed a motion to continue the oral argument due to a scheduling conflict. The Court has not yet ruled on MCC's motion.

#### 6. BROAD REACH, CLENERA, CED v MONT. PUB. SERV. COMM'N.

MONT. 1<sup>ST</sup> JUD. DIST, CAUSE NO. CDV 2022-095

- NorthWestern dismissed its interconnection forms application before the Commission, and on June 7, 2022, Broad Reach filed a Notice of Voluntary Dismissal of the petition for judicial review.
- On June 28, 2022, the District Court found the Commission had jurisdiction over this matter (following the Montana Supreme Court's decision in *CED Wheatland*) and remanded the matter to the Commission.
- On July 11, 2022, the QF petitioners moved for relief from the Court's Order based on the fact that they had already dismissed this case.
- Response briefs from NorthWestern and the Commission are due on July 25, 2022.

#### 7. RONAN TELEPHONE CO. V. MT DEPT. OF PUB. SVC. REG., MONT. PUB. SERV. COMM'N., AT&T, AND SPRINT

MONT. 1<sup>ST</sup> JUD. DIST, CAUSE NO. CAUSE NO. DDV-2021-1061

- Ronan Telephone Company filed a petition for judicial review concerning the Commission's determination of the applicable statute of limitations for a billing error.
- Commission's response brief was filed in early April.
- Reply briefs were filed by April 22, 2022.
- Matter is fully briefed and ready for oral argument, which is scheduled for October 3, 2022.

## Montana Supreme Court Cases

### I. BROAD REACH POWER, LLC & NORTHWESTERN ENERGY V. MONT. PUB. SERV. COMM'N.

MONT. 1ST JUD. DIST. CT., CAUSE NO. CDV-202-27

- January 9, 2020 – Petition for Declaratory Judgment filed jointly by Broad Reach and Northwestern.
- Seeks a declaration from the court that the Commission's practices of questioning witnesses, engaging in investigation, and admission of evidence in contested cases is unlawful.
- October 13, 2020 – December 30, 2020 – Parties filed cross-motions and supporting briefs for summary judgment.
- March 23, 2021 – Oral Argument on Summary Judgment Motions held before Hon. Judge Seeley.
- December 6, 2021 – Judge Seeley denied Petitioners' motion for summary judgment and dismissed the petition.
- NorthWestern appealed on May 4, 2022.
- The Commission's response brief is filed.

### 2. MONTANA ENVIRONMENTAL INFORMATION CENTER v. MONT. PUB. SERV. COMM'N, ET AL.

MONTANA SUPREME COURT CASE NO. DA 19-0565

- September 24, 2018 – Commission issued its Final Order granting NorthWestern Energy waivers of its obligation to satisfy Community Renewable Energy Project ("CREP") standards (Mont. Code Ann. § 69-3-2004) for compliance years 2015 and 2016.
- November 16, 2018 – Montana Environmental Information Center filed a Petition for Judicial Review with the Montana Eighth Judicial District Court, Cascade County, asking the Court to declare the Commission's decision to grant NorthWestern's CREP waivers to be arbitrary, capricious and/or contrary to law.
- August 1, 2019 – Hon. Dist. Ct. Judge Manley issued an Order reversing the Commission's Final Order granting NorthWestern's CREP waivers.
- September 30, 2019 – NorthWestern and the Commission appealed the decision of the District Court to the Montana Supreme Court.
- April 27, 2020 – Briefing by the parties concluded.
- 2021 legislation (HB 476) repealed the RPS (which includes CREP).
- September 7, 2021 – The Supreme Court dismissed the appeal (without prejudice) and sent the case back to the District Court to analyze how HB 476 affects the case.
- Briefing concluded in January 2022.
- May 9, 2022, Judge Manley denied NorthWestern's and PSC's motion to dismiss, and granted MEIC's motion to enforce – levied \$2.5m against NorthWestern
- Judgment was entered July 8, 2022; notices of appeal are due September 6, 2022.

### 3. CED WHEATLAND WIND, LLC ET AL. v. MONT. PUB. SERV. COMM'N ET AL.

MONTANA SUPREME COURT CASE NO. DA 21-0250

- March 23, 2020 – July 13, 2020 – Commission issued a series of Final Orders and Reconsideration Orders in response to the Petitions of three separate Qualifying Facilities to set avoided cost rates under PURPA.
- August 11 & 18, 2020 – Petitions for Judicial Review filed by all three Qualifying Facilities asking the First Judicial District Court, Lewis & Clark County, to declare the Commission's Final Orders and Reconsideration Orders in the underlying contested cases.
- October 5, 2020 – All three matters consolidated into one case.
- March 12, 2021 – Oral argument held by the court.
- April 19, 2021 – District Court issued a decision affirming the Commission's Orders on all disputed issues.
- May 24, 2021 – Appeal filed by QF-Petitioners with Montana Supreme Court.
- The Supreme Court issued its opinion on May 10, 2022, affirming in part and reversing in part.
- Remittitur issued. Commission Staff will host a workshop with the parties on August 24, 2022, to discuss the parties' proposals for allocating network upgrade cost responsibility.

### 4. NORTH STAR DEVELOPMENT, LLC V. MONT. PUB. SERV. COMM'N, et al.

MONTANA SUPREME COURT CASE NO. DA-21-0224

- September 8, 2020 – Commission issued its final order on North Star's application to set rates for its small water/sewer utility.
- October 2, 2020 – North Star filed petition for judicial review challenging the Commission's determination of North Star's water/sewer rates.
- March 15, 2021 – District Court dismissed North Star's Petition for failure to exhaust administrative remedies.
- May 12, 2021 – North Star appealed dismissal by District Court to Montana Supreme Court.
- The matter was fully briefed in October 2021 and was classified for a five-justice panel on Nov. 10, 2021.
- On May 31, 2022, the Supreme Court found this petition for judicial review was correctly dismissed for failure to exhaust all administrative remedies. Remittitur issued on June 16, 2022.

## RULEMAKING PROCEEDINGS

### I. DOCKETED, BUT NO FORMAL NOTICE PUBLISHED WITH SOS

#### PURPA Rulemaking – 2021.03.037 and 2021.09.118

- January 26, 2021 - Docket initiated by Commission to begin informal comment period.
- March 17, 2021 - Solicited informal public comment.
- April 16, 2021 - Received comments from 8 interested parties.
- FERC recently enacted new rules implementing PURPA which, among other things, allows for Locational Marginal Pricing (LMP), which could greatly simplify the calculation of avoided energy pricing.
- NorthWestern Petitioned the Commission to incorporate FERC's rules (Dkt. 2021.09.118).
- The Commission has now received substantial, informal comments and recommendations from a variety of stakeholders, which the Commission will consider when updating its complete set of PURPA rules.
- The Commission expects to begin formal rulemaking soon.

### 2. PROPOSAL NOTICE PUBLISHED IN ADMINISTRATIVE REGISTER. NO FINAL RULE YET ADOPTED

#### Intervention Procedures – 2021.04.053

- Commission has solicited comments from stakeholders regarding simplification of its procedural rules regarding intervention.
- Notice of Proposed Adoption and Repeal was published on July 8, 2022, in the Montana Administrative Register.
- The one element of this rule that has attracted attention—a provision that allows the Commission to limit intervention if necessary to avoid delay, repetition of the issues, or prejudice to other parties—already exists in a different format in the Commission's rules. (See 38.2.2406, ARM).
- The distinction the Commission wishes to draw is between public participation and discovery and motion practice, the sheer volume of filings would cause prejudice to other parties.
- Most comments seem to be based on the concern that the rule is designed to limit participation, rather than to allow the agency to manage contested cases before it.

#### Utility Long-Term Planning & Competitive Solicitation – 2021.01.007

- Required to implement 2019 HB 597.
- Seeks to implement changes in the law regarding the utility long-term planning process and competitive solicitations for electric resources.
- The Commission solicited informal comments and held a roundtable earlier this year with stakeholders, including the bill sponsor.

- The Commission's formal notice of proposed adoption and repeal has been submitted to the Secretary of State and is scheduled for publication in the July 22, 2022 Montana Administrative Register.

### 3. RECENTLY FINALIZED/ADOPTED RULES

#### Montana Energy Impact Assistance Act – MAR Notice No. 38-5-250

- Required to implement 2019 HB 467
- Allows the use of securitized, ratepayer-backed Montana Energy Impact Assistance bonds to address, and lower the costs associated with, the retirement and/or replacement of electric infrastructure.
- March 17, 2020 - Apr. 12, 2022, PSC requested comments and held informal rulemaking meetings with stakeholders to develop a rule providing minimum filing standards for applications under the Montana Energy Impact Assistance Act.
- Notice of Proposed Rulemaking issued on February 11, 2022. Public hearing held March 7, 2022.
- The Commission issued an amended notice of proposed rulemaking on April 15, 2022, to make substantive changes to the proposed minimum filing requirements. Deadline for written comments was May 13, 2022.
- The Commission's adoption notice for the final rule was published on June 24, 2022.

### 4. UPCOMING OR CONTEMPLATED RULEMAKINGS

- Transportation Civil Citation Process. Similar authority exists for pipeline safety violations (see e.g. Mont. Admin. R. 38.5.2203-.2209). However, while statutory authority exists for the transportation division, no rules exist to guide procedure.
- General procedural rule revisions and overhaul is ongoing. All regulatory and legal staff are engaged in this effort, as it covers all the administrative rules under which the Commission operates. The Commission has retained a part-time dedicated, temporary rule reviewer is leading technical/legal teams through rule review and update process.