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**DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA**

IN THE MATTER OF NorthWestern Energy's	)	REGULATORY DIVISION
Application for Authority to Increase its	)	
Retail Electric Utility Service Rates	)	DOCKET NO. D2018.2.12
and for Approval of its Electric Service	)	
Schedules and Rules and Allocated Cost of	)	
Service and Rate Design	)	

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**NORTHWESTERN ENERGY'S  
OPENING BRIEF**

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**I. Introduction**

In this docket, for the first time, the Montana Public Service Commission (“Commission”) is reviewing NorthWestern Energy’s (“NorthWestern”) electric generation, transmission, and distribution rates and service as a vertically integrated utility.<sup>1</sup> Perhaps reflective of the significance of NorthWestern’s application, this docket attracted a number of intervenors representing a wide range of interests, from individual residential customers and advocacy groups to large corporations and government agencies. Despite the number of

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<sup>1</sup> In Docket No. D2009.9.129, the Commission considered NorthWestern’s electric distribution and transmission rates and service, but not generation.

intervenors and the complexity of the case, various parties were able to forge three stipulations resolving many of the contested issues. The primary stipulation resolves NorthWestern's request for approval of a revenue requirement, cost allocation, and some rate design ("Revenue Requirement Stipulation"). The other two stipulations settle intervenors' requests for a review of NorthWestern's renewable energy product tariff ("Green Tariff Stipulation"), NorthWestern's request to treat demand side management costs as a regulatory asset, and Human Resource Council, District XI and the Natural Resources Defense Council's (collectively, "HRC/NRDC") proposal for a Fixed Cost Recovery Mechanism ("FCRM") pilot program, providing there is no reduction to cost of equity ("DSM Stipulation").

The stipulating parties did not agree to NorthWestern's proposals for a separate net energy metering class, an after-hours reconnection fee, or an increase to the residential customer charge. Nevertheless, the Commission should approve NorthWestern's proposals in these three areas as furthering the policy of moving toward rates that reflect the cost of service.

Other parties raised new issues that were not part of NorthWestern's application, such as a special tariff for Malmstrom Air Force Base ("Malmstrom"), a jurisdictional cost of service study, and a transition away from using Colstrip Unit 4 ("CU4") as a generation resource. The chart attached as Exhibit A includes a list of the parties and issues, noting which parties agree to or contest which issues.

Because NorthWestern's proposals, including the three stipulations, balance customer protection, fairness to investors, and NorthWestern's long-term viability, while implementing Montana legislative policy, the Commission should approve them. The Commission should reject proposals that only further the goals of a special sub-group of consumers and do not achieve a balance among NorthWestern, its customers, and legislative policy.

## **II. The Stipulations Satisfy the Commission’s Criteria for Approval**

The Commission routinely approves stipulations that satisfy the criteria of a reasonable resolution of the issues that results in just and reasonable rates. *See e.g.*, Order No. 7573f, Docket No. D2017.9.79 (June 13, 2018); Order No. 7634a, Docket No. D2018.6.40 (January 24, 2018); Order No. 7501, ¶ 6, Docket No. D2016.1.9 (August 5, 2016); Order No. 7122c, Docket No. D2010.9.98 (May 24, 2011). The Commission considers whether the stipulated results fall within a zone of reasonable outcomes. Order No. 7249e, Docket No. D2012.9.94 (May 7, 2013). All three stipulations in this docket meet these criteria. The results of the stipulations are within the range of possible reasonable outcomes had the docket been more fully litigated, without the burden of that litigation. The parties who entered into the stipulations, and who intervened to represent the customers who pay the rates that will be implemented as a result of the stipulations, support the stipulations as resulting in just and reasonable rates. Notably, the Revenue Requirement Stipulation, resolves all of the issues that the Large Customer Group (“LCG”) presented in the case. Hearing Transcript (“Tr.”) p. 55:17-25.

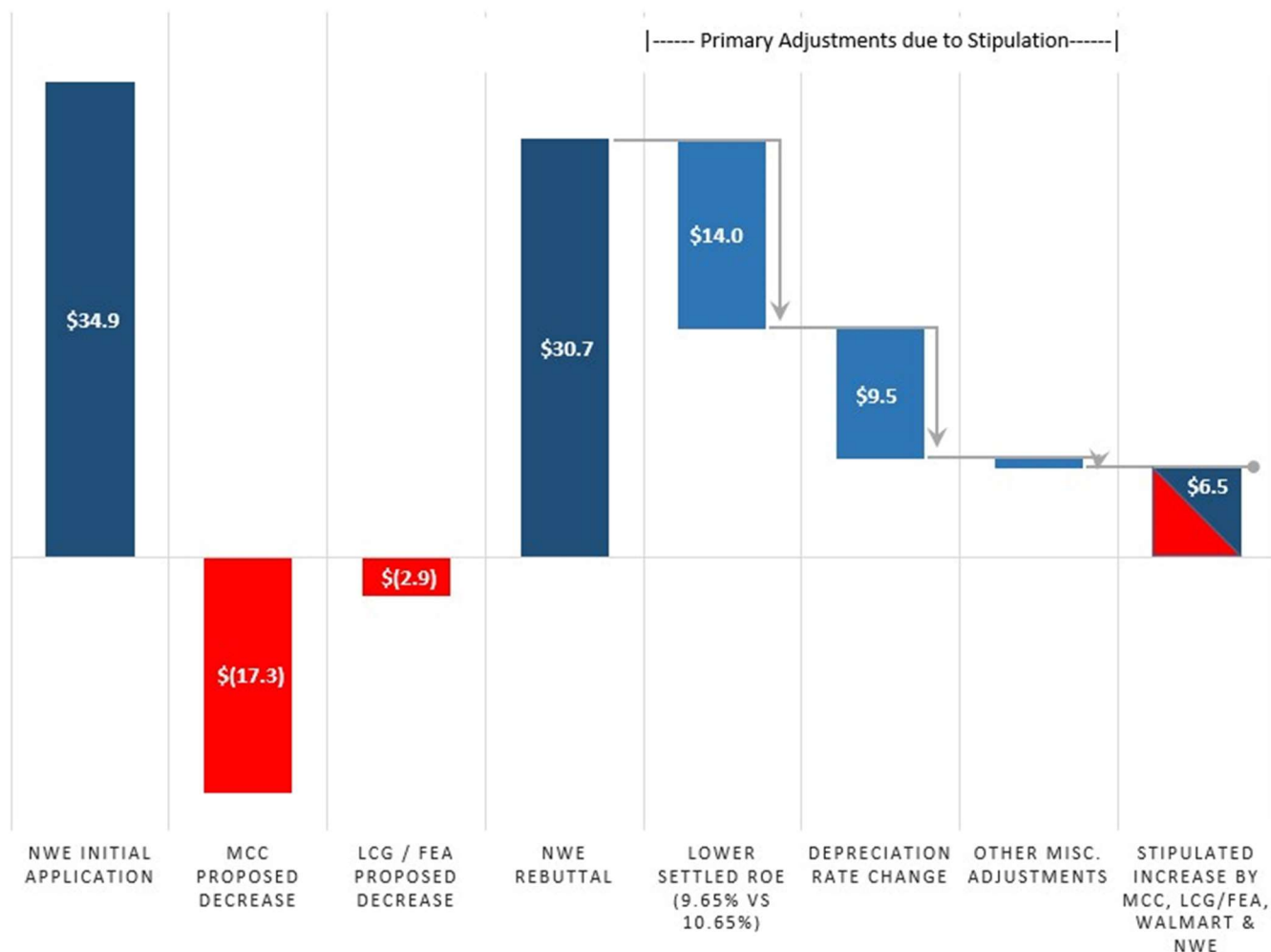
### ***A. The Revenue Requirement Stipulation Is Reasonable***

NorthWestern requested a \$30.7 million increase to its revenue requirement. Hearing Exhibit (“Ex.”) NWE-28, Exhibit\_\_(GJG-6). The LCG/Federal Executive Agencies (“FEA”) and Montana Consumer Counsel (“MCC”) recommended approximately \$2.9 million and \$17.3 million reductions to the revenue requirement, respectively. Ex. LCG/FEA-3; Ex. MCC-1. The Revenue Requirement Stipulation, which includes a \$6.5 million increase to NorthWestern’s revenue requirement, is within the range of possible reasonable outcomes in this docket and represents the agreement of the parties to “meet in the middle.”

NorthWestern agreed to a lower revenue requirement than it requested, but received additional benefits such as a reduction in depreciation expense by approximately \$9.5 million annually, which helps maintain earnings. Tr. p. 66:20. NorthWestern also benefitted from an industry-average 9.65% Return on Equity (“ROE”) and resolution of other contested issues that have a monetary value, such as the 2012 Depreciation Study, the amount of Excess Accumulated Deferred Income Taxes, and the baseline for the Power Costs and Credits Adjustment Mechanism (“PCCAM”). The LCG/FEA and MCC agreed to increase the revenue requirement \$9.4 and \$23.8 million more than their original proposals, respectively, but also benefitted from resolution of the ROE and cost allocation issues. Notably, the Revenue Requirement Stipulation results in the lowest overall rate of return (“ROR”) for NorthWestern and its predecessor, The Montana Power Company (“MPC”), for the last 39 years. *See* Order No. 7046h, ¶ 228, Docket No. D2009.9.129 (December 2010) (Commission found that the overall ROR of 7.92% was the lowest overall rate of return for NorthWestern and MPC, for the last 30 years.). *See also* Tr. p. 71:8-10 (Mr. Bird testified that the ROR for the non-Colstrip portion is 6.93%). Additionally, the parties’ compromise on cost allocation and rate design reflects gradualism, which stands for the regulatory principle that even though it is desirable to move to cost-based rates, that movement does not have to be accomplished all at once. Tr. pp. 988-990.

The parties’ movement on their revenue requirement positions is reflected in the graph below.

## COMPARISON AND RECONCILIATION OF REVENUE REQUIREMENT POSITIONS (MILLIONS)



Because the parties' movement from their initial revenue requirement proposals does not reflect the totality of contested issues that have a monetary value, their movement does not call into question the parties' original positions. Rather, the movement is indicative of the number, complexity, and relationship of issues included in this contested case. As the Commission has stated on the subject of cost allocation, "Assigning revenue responsibility to customer classes is fraught with complexity, competing economic views, and social equity

issues.” Order No. 7046h, ¶ 232, Docket No. D2009.9.129 (December 2010). The Commission should not depart from its past practice of approving stipulations that satisfy the criteria of a reasonable resolution of the issues that results in just and reasonable rates, or its recognition of the complexity and interrelated elements of the issues, by altering or amending the Revenue Requirement Stipulation.

**1. There Is No Credible Opposition to the Revenue Requirement Stipulation**

At the hearing, the Montana Environmental Information Center and Sierra Club (“MEIC/SC”) called the Revenue Requirement Stipulation “a complete black box.” Tr. p. 73:24. This characterization is simply not true. A black box settlement, like the stipulation in Montana-Dakota Utilities Co.’s (“MDU”) rate review in Docket No. D2018.9.50, hides the ROE. Tr. p. 113:1-19. That is not the case here, as the stipulation in this docket expressly identifies the ROE. Moreover, the parties came to an agreement only after thoroughly considering all issues through rounds of testimony and significant discovery. The Commission admitted all of that testimony and discovery into the evidentiary record, which is the opposite of hiding the parties’ positions in a black box. The parties who oppose the Revenue Requirement Stipulation, Mr. Barsanti and the MEIC/SC, chose to advocate for specific positions regarding street lighting and the early closure of CU4, respectively. They did not provide credible opposition to the issues resolved in the Revenue Requirement Stipulation. The Commission is not in the dark regarding the results of the stipulation.

In addition to the revenue requirement and ROE, the stipulation resolved setting the PCCAM baseline. No party filed testimony or otherwise raised an issue concerning the baseline or the methodology NorthWestern uses to calculate the baseline. The Commission did not raise any issues about this topic in its Notice of Additional Issues process. This lack of opposition to

NorthWestern's proposal is due to the fact that the Commission had already approved the methodology for setting the baseline in Docket No. D2017.5.39 and the fact that NorthWestern's baseline calculation implements that Commission decision. As Mr. Markovich testified in this case, "And once again, Mr. Langston, I can only follow the order in the PCCAM docket. The order in the PCCAM docket said to do it the exact way that we did it." Tr. p. 1817:9-12. In other words, NorthWestern's application only concerned updating the baseline pursuant to the Commission-approved methodology. The Commission did not provide any notice, as required by the Montana Administrative Procedure Act, that changing that methodology would be an issue in this docket. *See* § 2-4-601, MCA.

Despite this lack of notice, at the hearing the Commission questioned its approved methodology for calculating the baseline. Tr. pp. 1799-1821. For example, the Commission questioned how to address the possibility that certain costs in the baseline will change before NorthWestern's next rate review. The Commission itself already answered that question when it approved NorthWestern's tariff in the PCCAM docket. As clearly stated in the tariff the Commission approved on February 12, 2019, the baseline is fixed until adjusted as part of a general rate review or otherwise upon Commission approval. Changes in several factors might suggest the need to update the baseline before the next rate review. These factors include weather (e.g. snow pack runoff and wind), market prices, and the expiration of contracts in the baseline. Tr. p. 1834:1-12; p.1805:24-25. Under the current tariff, if changes in these factors warrant an update to the baseline, a party such as NorthWestern or the MCC could file a petition to reset the baseline. Tr. p. 1834:13-22.

Because no party raised any issue concerning NorthWestern's proposal for the PCCAM baseline, the Commission should approve the Revenue Requirement Stipulation in its entirety,

including the PCCAM baseline, without modification. Furthermore, the Commission should not alter the methodology for setting that baseline without first affording the parties notice of the issue and the opportunity to provide testimony and conduct cross-examination on the issue. *See* § 2-4-612, MCA (Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.).

**2. The Commission Should Reject the MEIC/SC's Attack on Colstrip**

In the Revenue Requirement Stipulation, the parties accepted NorthWestern's proposal for the CU4 revenue requirement. This proposal included the addition of 2009 - 2017 capital expenditures to CU4's rate base. The Commission initially established the CU4 rate base value in Docket No. D2008.6.69 ("the Colstrip Docket"). The MEIC/SC seek to re-litigate the same issue that the Commission already decided in the Colstrip Docket – the initial rate base value of CU4. The MEIC/SC essentially make the same argument that the MCC made in 2008. That argument is that the \$407 million rate base value exceeded NorthWestern's "original cost less depreciation plus some acquisition adjustment." Order No. 6925f, ¶ 242, Docket No. D2008.6.69 (November 13, 2008). The Commission fully evaluated this argument in 2008 and decided then that the \$407 million rate base value is consistent with § 69-3-109, MCA, and § 69-3-201, MCA, and that there is no evidence that the sum of the original cost plus the acquisition premium is less than \$407 million. *Id.* ¶¶ 246; 250. The Commission should not attempt to either re-litigate or reverse that decision here.

The principal reason why the Commission should not reverse its 2008 decision in this docket is because the Montana Legislature prohibited this type of reconsideration for generation assets approved under § 69-8-421(7), MCA ("the Preapproval Statute"). In the Preapproval Statute, the Legislature specifically prohibited the Commission from using hindsight to change



the initial rate base stating, "...the commission may not subsequently disallow the recovery of costs related to the approved electricity supply resource...." The purpose of that prohibition is to prevent precisely what the MEIC/SC hope to accomplish here – Commission disapproval of the \$407 million that it originally approved for Colstrip. The statute prevents the Commission from conducting a 20/20 hindsight review of NorthWestern's decision to place CU4 in rate base, which would "spook" investors away from supporting any investment for fear of the Commission retroactively changing its determination that the investment was in the public interest. See McDermott, Karl. *Cost of Service Regulation in the Investor-Owned Electric Utility Industry: A History of Adaptation*, p. 13 (2012). As Professor Bonbright, a leading authority in the field of public utility regulation, articulated in 1988, "Pre-approval involves a new regulatory compact in which the utility and commission contract for new capacity and the regulatee and regulator are held to the contract...The utility gets the commission to **stick with the decision** and to make a clear commitment to reimburse the utility according to the contract." J. Bonbright, A Danielson, & D. Kamerschen, *Principles of Public Utility Rates*, ch. 16 at p. 389 (2d ed.1988) (*Emphasis added.*). Under the Preapproval Statute, and consistent with this regulatory policy, the Commission may not reverse its decision.

In addition to seeking a disallowance for CU4's rate base value, the MEIC/SC originally recommended that the Commission disallow NorthWestern's capital investments in Colstrip since 2009. Ex. MEIC-2, p. 43:1-8. These capital investments are required by the Colstrip Ownership and Operating Agreement to maintain reliability, compliance, and capacity. Tr. p. 2430:17-20; Ex. NWE-56, p. 9:3-6. The MEIC/SC asked the Commission to apply the wrong standard for these investments by suggesting that NorthWestern must provide documentation showing that the investments were prudent. Ex. MEIC-2, p. 45:1-2. The correct standard,

however, begins with a presumption that NorthWestern exercised reasonable judgment. As the U.S. Supreme Court stated, “Every investment may be assumed to have been made in the exercise of reasonable judgment, unless the contrary is shown.” *State of Missouri ex rel. Sw. Bell Tel. Co. v. Pub. Serv. Comm’n of Missouri*, 262 U.S. 276, 289, 43 S. Ct. 544, 67 L. Ed. 981 (1923). (Justice Brandeis, Justice Holmes, concurring, footnote 1.). The MEIC/SC have not shown that NorthWestern’s decisions lacked reasonable judgment.

Specifically, the MEIC/SC criticized NorthWestern’s investment in SmartBurn controls and \$527,646 for repair costs. Tr. p. 2130:15-16; Tr. p. 2139:10-21. The MEIC/SC’s criticism of these expenditures lacks credibility. First, it is peculiar for the MEIC/SC, who represent environmental interests, to challenge NorthWestern’s expenditures for environmental controls. The Idaho Public Utilities Commission (“IPUC”) recognized this peculiarity when the Sierra Club advanced this argument for disallowance of the same costs in Avista’s general rate case. Ex. NWE-56, pp. 20:16 - 21:5. In that case, the IPUC found the Sierra Club’s argument unpersuasive and approved Avista’s investments in the SmartBurn controls as prudent. IPUC Final Order No. 33953, p. 13, Case No. AVU-E-17-01 (December 28, 2017). Like the IPUC, this Commission should find that the SmartBurn controls were a cost-effective way to incrementally reduce NOx emissions and were reasonable. *See Id.* Second, the MEIC/SC argument for a disallowance of an insurance deductible is similarly disingenuous. The majority of the repair costs that the MEIC/SC criticize, \$375,000, are comprised of a property insurance deductible. Disallowance of these costs would be inconsistent with the past Commission order encouraging insurance coverage. Order No. 7283h, Consolidated Docket Nos. D2013.5.33/D2014.5.46 (May 13, 2016). Finally, at the hearing, the MEIC/SC appeared to back down from their recommendation, admitting, “The swing in the settlement between what the

company asked for and what they settled for, that's bigger than the number we're suggesting the overcharge is." Tr. p. 2100:18-21.

Rather than providing a meaningful basis for a disallowance, the MEIC/SC arguments represent their support for an early closure of Colstrip. MEIC/SC witness Mr. Binz considers his role in overseeing the early closure of two coal power plants as Chairman of the Colorado Public Utilities Commission as a significant accomplishment. By his own description, his anti-coal positions cost him an appointment to the Federal Energy Regulatory Commission ("FERC"). See Ex. MEIC-1, Employment History, Exhibit RJB-1. The MEIC/SC have not presented evidence that would justify a modification to the Revenue Requirement Stipulation.

**B. *The Green Tariff Stipulation Is Reasonable***

NorthWestern entered into a second stipulation with the Montana Department of Environmental Quality ("MDEQ") and Walmart which addresses the questions they raised regarding NorthWestern's E+ Green Tariff. NorthWestern's E+ Green Tariff currently provides customers with the option of supporting renewable energy products through an additional fee on their billing statement. Ex. NWE-5, pp. 3-4. This tariff is in response to a law passed in 2003 by the Montana Legislature. *Id.*, p. 4. The Commission last approved this tariff in NorthWestern Docket No. D2009.9.129, Final Order No. 7046h. Ex. MDEQ-1, p. 2. In this docket, the MDEQ and Walmart filed testimony requesting the Commission to require NorthWestern to initiate a stakeholder process to review the E+ Green Tariff and potentially develop a proposal regarding new renewable product offerings for submission to the Commission within 120 days of the issuance of the final order in this docket. Ex. MDEQ-1, pp. 13-14; Ex. Walmart-1, p. 22.<sup>2</sup>

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<sup>2</sup> It is notable that MDEQ testified that any renewable energy purchasing program must be "fair to non-participating customers." Ex. MDEQ-1, p. 12.

NorthWestern opposed the 120-day deadline as an unreasonable amount of time to complete a thoughtful and thorough review of the tariff and any related issues. Ex. NWE-5, pp. 4; 8. The MCC took a similar position as NorthWestern. See Ex. MCC-5, p. 88 (testimony that the tariff should be reviewed, but that such a process was “unlikely” to be done in 120 days).

This stipulation satisfies the criteria of a reasonable resolution of the issues that results in just and reasonable rates. First, it resolves all outstanding contested issues concerning NorthWestern’s E+ Green Tariff, mainly the appropriate time frame to complete a process and make a filing with the Commission. Ex. NWE-3, pp. 1-2. Second, it provides for a future process and a future filing with the Commission. Tr. p. 223:1-7. Thus, the Green Tariff Stipulation has no impact on the current tariff or the rates contained within that tariff. Additionally, as Ms. Schroepfel testified when asked why the Green Tariff Stipulation was a fair and reasonable resolution: “I just want to make sure that it’s done thoughtfully and that it is something that’s going to yield value to customers.” *Id.*, p. 224:2-4. Therefore, the Commission should approve the Green Tariff Stipulation finding that it is a reasonable resolution of the related issues and in the public interest with no impacts on current rates.

### **C.     *The DSM Stipulation Is Reasonable***

NorthWestern entered into a third stipulation that addresses its proposal to record DSM expenditures as a regulatory asset and its support for the FCRM pilot program. Ex. NWE-46. At a high level, DSM is comprised of the programs and activities that manage what is happening on the customer side of the meter. Ex. NWE-54, p. 3:15-18. These programs promote electric energy efficiency and conservation and are important because they reduce NorthWestern’s need to purchase or build electric supply resources. *Id.*, p. 3:20 - 4:1. As the Commission states in its rules, “Energy efficiency and conservation measures can effectively contribute to serving total

electricity load requirements at the lowest long-term total cost.” ARM 38.5.8218. Consistent with this conclusion, the Commission requires NorthWestern to include DSM in its electricity supply resource planning and approves full recovery of these costs in rates. *Id.*

Under the stipulation with the Northwest Energy Coalition (“NWE”), NorthWestern will amortize DSM expenditures over 10 years, with the amortization period beginning when the Commission approves the expenditures for inclusion in rates. The stipulating parties also came to an agreement on additional topics, including DSM cost-effectiveness calculations and support for the FCRM pilot with subsequent review of a potential adjustment to ROE. Not only does this stipulation satisfy the criteria of a reasonable resolution of the issues that results in just and reasonable rates, but it is also consistent with Montana’s policy to encourage utility investment in conservation. *See* § 69-3-712, MCA (“In order to encourage the purchase of or investment in conservation by a utility, the commission shall include conservation purchases or investments eligible under 69-3-702 and in compliance with criteria adopted under 69-3-711 in a utility’s rate base.”). The Commission has acknowledged its role in implementing this legislative policy, stating, “Eligible conservation purchases or investments shall be included in a utility’s rate base.” Order No. 5875, p. 6, Docket No. D94.11.49 (October 31, 1995). More recently, the Commission affirmed that, “In Montana, a public utility may include conservation purchases or investments in rate base.” Order No. 7375a, ¶ 56, Docket No. D2014.6.53 (October 15, 2015).

The Commission should implement the Legislature’s policy of encouraging conservation investments by approving the DSM Stipulation. As NWE’s witness stated, “DSM cost recovery should not be a burden for a utility.” Ex. NWE-1, p. 4:21. Capitalization allows a utility to treat cost recovery for DSM similarly to how it treats cost recovery for other resources. *Id.*:18-20; Ex. NWE-18, pp. 19-22. In addition, since NorthWestern’s payments for DSM

resources may be a relatively large amount, capitalization benefits customers because it allows NorthWestern to spread these large expenditures over a reasonable period of time without rate fluctuation. Ex. NWE-18, p. 21:16-19.

The DSM Stipulation also provides the mechanism for the Commission to address the changes to NorthWestern's supply portfolio and electric tracker with respect to DSM. These significant changes occurred from 2008 to 2019. From 2008 to 2018, NorthWestern acquired its own generation, adding five generation assets to its supply portfolio: CU4, Spion Kop wind farm ("Spion Kop"), Dave Gates Generating Station ("DGGS"), the hydroelectric generation, and Two Dot wind farm ("Two Dot"). Consequently, NorthWestern no longer treats all of its supply resources as expenses, as it did before it acquired generation assets. Further, in response to NorthWestern's transition toward becoming a vertically re-integrated utility, the Commission instituted a new design for NorthWestern's electricity cost tracker. This design is "simpler" and includes fewer categories. *See* Notice of Staff Action, Docket No. D2017.5.39 (June 7, 2017); Notice of Additional Issues, Docket No. D2017.5.39 (December 12, 2017). Now that NorthWestern more closely resembles a vertically integrated utility, the Commission should apply Montana's policy regarding conservation investments and its policy for "simpler" cost trackers with fewer cost categories to NorthWestern's DSM investments. *See Id.*

There is no evidence in the record to support the Commission departing from its past positions regarding conservation investments and NorthWestern's electric tracker. The NWECA supports the stipulation and the MCC ultimately recommended that the Commission require NorthWestern to begin amortization in the same year the DSM costs are incurred and cap the ultimate size of the regulatory asset. Ex. MCC-4B, p. 30:12-13; Ex. MCC-1, p. 80:5-7. The MCC's recommendation regarding amortization discourages DSM investments because it would

not provide NorthWestern the ability to recover all of its DSM costs. The MCC's recommendation to cap the size of the asset is unnecessary, as it assumes that NorthWestern will only file a rate review every nine years. The NWECA provided testimony that contradicts this assumption. Tr. p. 1715:12-15. Finally, the MCC's recommendation to track DSM expenditures ignores that recording DSM expenditures as a regulatory asset is beneficial to customers, since this treatment allows NorthWestern to spread relatively large expenditures over a reasonable time without rate fluctuation. Ex. NWE-18, p. 21:18-19. Since the MCC's recommendation does not give the Commission a basis to deviate from its past positions and the principles embodied in its rules, the Commission should approve the DSM Stipulation.

### **III. NorthWestern's Non-Stipulated Proposals Are Consistent with Fundamental Ratemaking Principles**

While the three stipulations resolve traditional rate review components and additional matters related to the green tariff and DSM, there remain significant issues that the parties did not resolve through stipulation. These issues include NorthWestern's proposal for a new net-metering class, an increase to residential customer charges, and a new tariff for an after-hours reconnect fee. All three of these proposals are consistent with the principle that the utility's revenue requirement should be distributed fairly among the beneficiaries of the service.

"Without a doubt the most widely accepted measure of reasonable public utility rates and rate relationship is cost of service." J. Bonbright, A Danielson, & D. Kamerschen, *Principles of Public Utility Rates*, ch. 16 at p. 389 (2d ed. 1988). Costs should be allocated between classes of customers, and rates should be designed to assure that customers make appropriate contributions to the costs they cause, while being mindful of other factors important to sound rate design including bill impacts. Ex. NWE-47, p. 6:18-22.

**A. *Net Energy Metering - NorthWestern's net metering proposal helps address the current imbalance existing in the residential class and would set rates that are more fair to all residential customers.***

Net metering in Montana and for NorthWestern is not a solar or renewable issue, but a pricing issue – ensuring customers pay their fair share of NorthWestern's cost of service. In that vein, in 2017, the Montana Legislature determined that the Commission needed to review net metering rate classifications, and if the Commission deemed it justified, establish a new service classification for customers who have net metering systems. § 69-8-611, MCA. As part of that legislative mandate that became law in May 2017, NorthWestern was required to conduct a cost/benefit study of net metering ("NEM Study") based on parameters established by the Commission and submit it to the Commission before April 1, 2018. § 69-8-610, MCA. Accordingly, NorthWestern submitted the completed NEM Study conducted by Navigant Consulting, Inc. ("Navigant") to the Commission on March 30, 2018 in Docket No. D2017.6.49. The new statute also required NorthWestern to submit the NEM Study in its next general rate review to be reviewed and used by the Commission for purposes of evaluating the rate service classifications. § 69-8-611(4), MCA. As a result, NorthWestern again submitted the NEM Study to the Commission in this case, along with supporting Prefiled Direct Testimonies of Eugene L. Shlatz, Tim R. Stanton, and Michael S. Babineaux.

Upon receiving the results of the NEM Study which indicated, among other things, that "non-net metering customers significantly subsidize net metering customers ...", NorthWestern determined that further investigation was necessary regarding whether to create a separate rate class. Exhibit NWE-47, pp. 17-18. To that end, "NorthWestern engaged the Brattle Group ("Brattle") to further analyze the need for a separate net metering rate class and develop a proposed [rate design] for the separate rate class." *Id.*, p. 18. Brattle's analysis then relied in



part on the cost of service studies conducted by Management Applications Consulting, Inc. (“MAC”) to support the proposal that a new rate classification of service was appropriate and justified. *Id.* As Dr. Faruqui from Brattle testified, the analysis shows that there is “an unintended cross-subsidy from non-NEM customers ... to NEM customers.” Ex. NWE-38, p. 10.

This invisible cross-subsidy, or hidden tax, is a result of the current rate structure of the residential class and how net metering customers use NorthWestern’s electric grid differently than other residential customers. *Id.* NorthWestern’s investment in infrastructure necessary to serve its customers, i.e., distribution and transmission poles, wires, and other fixed assets, is paid for mainly through a volumetric rate. That means that these fixed assets are largely paid for and supported based on customer usage. Customers who self-generate through a net metering system will likely require less energy from NorthWestern, and thus, will pay less for the investments NorthWestern made on their behalf. Because rates are set through a revenue requirement relying on historic costs and normalized usage, customers who do not net meter end up covering these costs. *Id.* As such, this overpayment is a hidden tax on customers who do not net meter. NorthWestern’s proposal in this case attempts to address this hidden tax by ensuring that customer-generators fairly pay for the costs that NorthWestern incurs to serve them.<sup>3</sup>

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<sup>3</sup> It should also be noted that net metering customers currently receive a credit for any excess generation delivered to NorthWestern at NorthWestern’s full retail rate (approximately \$0.11 per kWh), which rate includes the fixed costs for transmission and distribution (“T&D”). So, even though they are not paying their full T&D cost of service, net metering customers receive a credit equal to that amount. This situation exacerbates the problem that NorthWestern hopes to partially alleviate through its three-part rate design proposal.

There are two questions for the Commission to answer in this case – first, should a new customer class be established to serve future residential net metering customers,<sup>4</sup> and second, how should rates be structured to address the hidden tax? NorthWestern submits that the evidence supports the Commission answering the first question in the affirmative and adopting NorthWestern’s proposed three-part rate design that includes a demand charge in response to the second question.

**1. The Navigant NEM Study Demonstrates that There Is Value in Net Metering Generation but at the Expense of Those Customers Who Do Not Net Meter**

As required by the Commission’s minimum information filing requirements set in Docket No. D2017.6.49, Navigant analyzed the costs and benefits of net metering under two tests – the Utility Cost Test (“UCT”) and the Ratepayer Impact Measurement (“RIM”) test. Ex. NWE-42, p. 4. The UCT “calculates the benefits and costs from NorthWestern’s perspective” whereas the RIM test “calculates the benefits from the customers’ perspective.” *Id.*, Exhibit \_\_ (ELS-2) – REVISED, p. 4. The UCT is generally “used to quantify the net benefits that NEM provides to the utility” while the RIM test “is often used to inform whether the amount paid or credited to the solar owner exceeds the net benefits from NEM realized by the utility.” *Id.* As shown in the tables below, the overall results of these two tests demonstrate that under the UCT, NorthWestern does receive some value from net metering generation ranging from \$0.036 per

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<sup>4</sup> Customers who interconnect to NorthWestern’s system on or before the issuance of a final order in this case establishing a new separate class for net metering customers would be grandfathered in the residential class unless they elect to move to the new class. § 69-8-612, MCA. Mr. Schwartzenberger’s testimony further clarifies that NorthWestern proposal that net metering systems with documented approval by the applicable local and municipal electric code official(s) before the Commission issues a final order would meet the legal requirement for interconnection set forth in the grandfathering law. Ex. NWE-48, pp. 14-15.

kilowatt-hour (“kWh”) to \$0.046 per kWh; however, under the RIM test, that value is outweighed by the current credit that net metering customers receive for their generation showing a net value ranging from negative \$0.100 per kWh to negative \$0.108 per kWh:<sup>5</sup>

**Table 13. Tabular Levelized Net Avoided Costs in \$/kWh Based on UCT Test**

<b>Value Stream</b>	<b>Adoption Forecast: CO<sub>2</sub> Price Scenario:</b>	<b>Low On</b>	<b>Med On</b>	<b>High On</b>	<b>Low Off</b>	<b>Med Off</b>	<b>High Off</b>
Avoided Energy Costs		\$0.032	\$0.031	\$0.030	\$0.030	\$0.029	\$0.029
Avoided Capacity Costs		\$0.005	\$0.005	\$0.005	\$0.005	\$0.005	\$0.005
Avoided T&D Capacity Costs		\$0.003	\$0.003	\$0.002	\$0.003	\$0.003	\$0.002
Avoided System Losses		\$0.003	\$0.002	\$0.002	\$0.002	\$0.002	\$0.002
Avoided RPS Compliance Costs		\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Avoided Environmental Compliance Costs		\$0.006	\$0.005	\$0.005	\$0.000	\$0.000	\$0.000
Market Price Suppression Effects		\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Avoided Risk		\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Avoided Grid Support Services Costs		\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Avoided Outages Costs		\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Non-Energy Benefits		\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Reduced Revenue		N/A	N/A	N/A	N/A	N/A	N/A
Administrative Costs		-\$0.003	-\$0.003	-\$0.003	-\$0.003	-\$0.003	-\$0.003
Interconnection Costs		\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Integration Costs		\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
<b>Net Value</b>		<b>\$0.046</b>	<b>\$0.044</b>	<b>\$0.042</b>	<b>\$0.039</b>	<b>\$0.037</b>	<b>\$0.036</b>

*Source: Navigant analysis*

<sup>5</sup> Both the UCT and RIM results are on a 25-year levelized basis.

Table 14. Tabular Levelized Net Avoided Costs in \$/kWh Based on RIM Test

Value Stream	Adoption Forecast: CO <sub>2</sub> Price Scenario:	Low On	Med On	High On	Low Off	Med Off	High Off
Avoided Energy Costs		\$0.032	\$0.031	\$0.030	\$0.030	\$0.029	\$0.029
Avoided Capacity Costs		\$0.005	\$0.005	\$0.005	\$0.005	\$0.005	\$0.005
Avoided T&D Capacity Costs		\$0.003	\$0.003	\$0.002	\$0.003	\$0.003	\$0.002
Avoided System Losses		\$0.003	\$0.002	\$0.002	\$0.002	\$0.002	\$0.002
Avoided RPS Compliance Costs		\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Avoided Environmental Compliance Costs		\$0.006	\$0.005	\$0.005	\$0.000	\$0.000	\$0.000
Market Price Suppression Effects		\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Avoided Risk		\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Avoided Grid Support Services Costs		\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Avoided Outages Costs		\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Non-Energy Benefits		\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Reduced Revenue		-\$0.146	-\$0.144	-\$0.144	-\$0.146	-\$0.144	-\$0.144
Administrative Costs		-\$0.003	-\$0.003	-\$0.003	-\$0.003	-\$0.003	-\$0.003
Interconnection Costs		\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Integration Costs		\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Net Value		-\$0.100	-\$0.101	-\$0.102	-\$0.107	-\$0.107	-\$0.108

Source: Navigant analysis

*Id.*, pp. 20 and 22. The Commission should find that these results are reasonable and, in turn, find that they demonstrate that future net metering customers should be served in a separate class in compliance with Montana law. The overwhelming majority of the total net metering benefits were derived utilizing methodologies approved by this Commission for other similar matters. Also, the party who represents the interests of NorthWestern’s customers, the MCC, agrees with the results (although in a few cost categories, it testified that NorthWestern was too liberal in its analysis in favor of net metering). Finally, the Commission should reject the results of Vote Solar and the Montana Renewable Energy Association’s (“VS/MREA”) analysis as an outlier that over-values net metering generation and would perpetuate the hidden tax being levied on non-net metering customers today.

Regarding the methodologies used, the two cost categories with the largest values across all six scenarios were the avoided energy and avoided capacity costs with avoided energy costs varying between \$0.029 and \$0.032 per kWh and avoided capacity at \$0.005 per kWh. As

detailed by Mr. Babineaux, NorthWestern used the PowerSimm™ model to derive the avoided energy costs. Ex. NWE-50, p. 3. This calculation used the Commission-approved methodology for determining avoided energy costs using the model. *Id.* NorthWestern decided to use the PowerSimm model in lieu of the methodology used to determine avoided cost rates for standard-offer sized qualifying facilities (“QF-1”) because it provides a more accurate representation of NorthWestern’s avoided energy costs. *See* Ex. NWE-49, p. 13 (testimony explaining why PowerSimm more appropriately determines avoided energy costs in light of the need to consider various penetration levels of solar net metering generation).

The simple premise behind calculating avoided energy costs is trying to determine the value of the resource that NorthWestern can avoid if, in this case, solar net metering generation is received from customers. Tr. p. 1695:15-22. As the evidence shows, the PowerSimm model is a better tool to perform this calculation than the QF-1 methodology. PowerSimm models NorthWestern’s current supply portfolio with and without consideration of the next supply resource. Ex. NWE-50, pp. 4-5. This means that it can “capture the impacts of various levels of solar penetration, i.e., low, medium, and high.” Ex. NWE-49, p. 13. Unlike PowerSimm, the QF-1 methodology uses a proxy resource, specifically a combined cycle combustion turbine, to determine avoided energy costs. *Id.*, p. 4. This results in a methodology that cannot “produce results which measure the system impacts of adding various amounts of NEM generation on NorthWestern’s system.” *Id.*, p. 13. Therefore, the Commission should find that use of PowerSimm for purposes of the NEM Study was reasonable, and that the resulting avoided energy costs are also reasonable.

In addition to the avoided energy costs, the Commission should find that NorthWestern’s avoided capacity cost calculation is reasonable. Similar to the calculation of avoided energy

costs, NorthWestern relied on the Commission-approved methodology to determine the capacity contribution of solar for purposes of determining the avoided capacity costs. Ex. NWE-50, p. 13. Upon reviewing the results of that calculation, Navigant determined that the capacity contribution factor approved by the Commission in the last QF-1 docket, Docket No. D2016.5.39, was the more appropriate value for purposes of the NEM Study as it fully captured the geographic diversity of solar on NorthWestern's system. Ex. NWE-44, p. 11. As such, Navigant used the Commission-approved 6.1% capacity contribution for solar as "it provides a reasonable estimation of Effective Load Carrying Capacity ("ELCC") for NEM solar within NorthWestern's Montana service territory." *Id.*, p. 10. The Commission should find NorthWestern's approach for determining avoided capacity costs is reasonable, and therefore, find that the resulting value is reasonable.

Next, the MCC agrees with NorthWestern. MCC witness, Dr. Dismukes, "agree[d] with the general results of the Company's CBA [or NEM Study] that NEM customers are creating more costs than benefits." Ex. MCC-4A, p. 21. He then testified that based on the results of the NEM Study, he agreed with NorthWestern that a separate rate class should be created for future net metering customers. *Id.*, p. 22. As noted earlier, the MCC represents the interest of the consumers in matters before this Commission. In this case, the MCC provided evidence that it believes customers' interest requires the Commission to create a separate customer class for future residential net metering customers. The logical next conclusion from the MCC's position is that if a new class is not created, there will be harm to NorthWestern's non-net metering customers that will continue to grow with the adoption of solar net metering as shown by the evidence in this docket. *See* Ex. NWE-38, p. 20 (figure showing cost shift to non-net metering customers); *see also* Ex. NWE-42, Exhibit\_\_(ELS-2) – REVISED, p. 2 (solar adoption forecast).

The Commission should avoid decisions that harm customers, but should instead issue decisions that are fair to all customers.

Finally, taken together that NorthWestern used Commission-approved methodologies and the MCC generally agrees with the results, the Commission should reject the position taken by VS/MREA as unreasonable. Unlike the MCC, the party tasked with representing customers, VS/MREA are parties interested in advancing solar generation in Montana who claim the value of solar exceeds the costs and urge the Commission to maintain the status quo thereby allowing net metering customers to remain in the existing residential class. Ex. VS/MREA-1, p. 5. VS/MREA support this position by allegedly correcting NorthWestern's NEM Study finding instead "significant net benefits" from net metering. *Id.*, p. 6. According to VS/MREA, under the UCT, the value of net metering generation to NorthWestern ranges from \$0.1593 to \$0.1713 per kWh. *Id.*, Exhibit BSK-6, p. 1. These values are more than four times higher than those from NorthWestern's NEM Study. Under the RIM test, unlike NorthWestern's analysis, VS/MREA believe that the value received by NorthWestern from net metering customers is not outweighed by the credit those customers receive from NorthWestern for solar generation. *Id.* Again, these conclusions led VS/MREA to recommend that the Commission do nothing in this case regarding net metering.

NorthWestern, however, provided ample evidence showing the Commission why "doing nothing" is not a fair and balanced option in this case. Through the prefiled rebuttal testimonies of Messrs. Shlatz, Stanton, and Bushnell, NorthWestern provided evidence that VS/MREA's conclusions were not supported by factual evidence nor sufficiently justified. *See* Ex. NWE-43, pp. 5-19 (refuting conclusions reached about VS/MREA's analysis regarding solar adoption forecasts, avoided transmission and distribution costs, avoided losses, environmental costs,

administrative benefits, and cost of capital); *see also* Ex. NWE-45, pp. 3-6 (explaining why the Commission should reject VS/MREA's contentions regarding avoided energy costs, avoided capacity costs, and reduced revenues); *see also* Ex. NWE-49, pp. 5-12; 14-16 (testimony repudiating VS/MREA's analysis regarding avoided energy and avoided capacity costs). The MCC also found that several of VS/MREA's analyses of the costs and benefits were in error. *See, e.g.*, Ex. MCC-4A, pp. 67; 70. In light of that evidence, the Commission should reject VS/MREA's recommendation to sit idle and do nothing as the credible, substantial evidence suggests that something must be done as required by Montana law to correct the hidden tax situation impacting non-net metering customers.

**2. Brattle's Analysis Shows that Net Metering Customers Are Markedly Different from Non-Net Metering Customers While MAC's Analysis Shows that They Are Underpaying for the Costs Incurred to Serve Them; Together These Analyses Support Creation of a New Customer Class**

When customers have significantly different usage characteristics, justification exists to separate that group of customers into their own class as these differences "lead to a significant and disproportionate shift in the recovery of power system infrastructure costs." Ex. NWE-38, p.

12. This justification aligns with the theory of cost-based rates discussed by Professor James Bonbright. Specifically, in *Principles of Public Utility Rates*, Professor Bonbright said

just as each individual consumer should pay rates at least sufficient to cover the costs allocable expressly to him or her, so also the residential consumers as a group should pay rates at least sufficient to cover the incremental costs of supplying that group. Failure to meet this standard of intermediate-cost coverage would involve internal subsidies, contrary to the spirit of financial self-sufficiency.

J. Bonbright, A Danielson, & D. Kamerschen, *Principles of Public Utility Rates*, p. 429 (2d ed. 1988). The evidence presented in this docket shows how this basic theory of utility ratemaking



is being violated as it relates to net metering. Brattle's analysis of NorthWestern's load data found that net metering customers' average annual net consumption is less than that of non-net metering customers by about 24% while 97% of net metering customers exported energy to NorthWestern's system and their average monthly maximum demand for energy was 16% higher than non-net metering customers. Ex. NWE-38, pp. 16-17. Thus, even though net metering customers produce some of their own energy for personal consumption, most are still reliant on the grid both to receive power when the sun is not shining and to accept power from them when they produce more energy than they need personally. In fact, net metering customers' higher monthly maximum demands indicate that they rely more heavily on T&D infrastructure than other customers, but they do not currently contribute sufficiently to cover these fixed costs.

Given the different usage characteristics of net metering customers, the next analysis would be consideration of cost of service. As described by Mr. Schwtzenberger, "[t]his step allocates the respective costs of providing utility service that make up the electric system revenue requirement to the various customer classes ... based on their use of the electric system." Ex. NWE-47, p. 5. MAC analyzed this information for NorthWestern and provided both an embedded cost of service study (i.e., allocating individual costs) and a marginal cost of service study (calculating the incremental costs of serving additional load or customers), which were presented by Mr. Normand. For purposes of determining the costs to serve existing net metering customers, MAC "considered pre-net metering kWh sales, and calculated and adjusted their corresponding demands for coincident peaks, class peaks, and sales." Ex. NWE-37, p. 16. As testified by Mr. Normand, the unique characteristics of net metering customers – those noted above – result in the embedded cost of service study showing that, based on the current rate, the revenues received from net metering customers is below the level of costs incurred to serve these

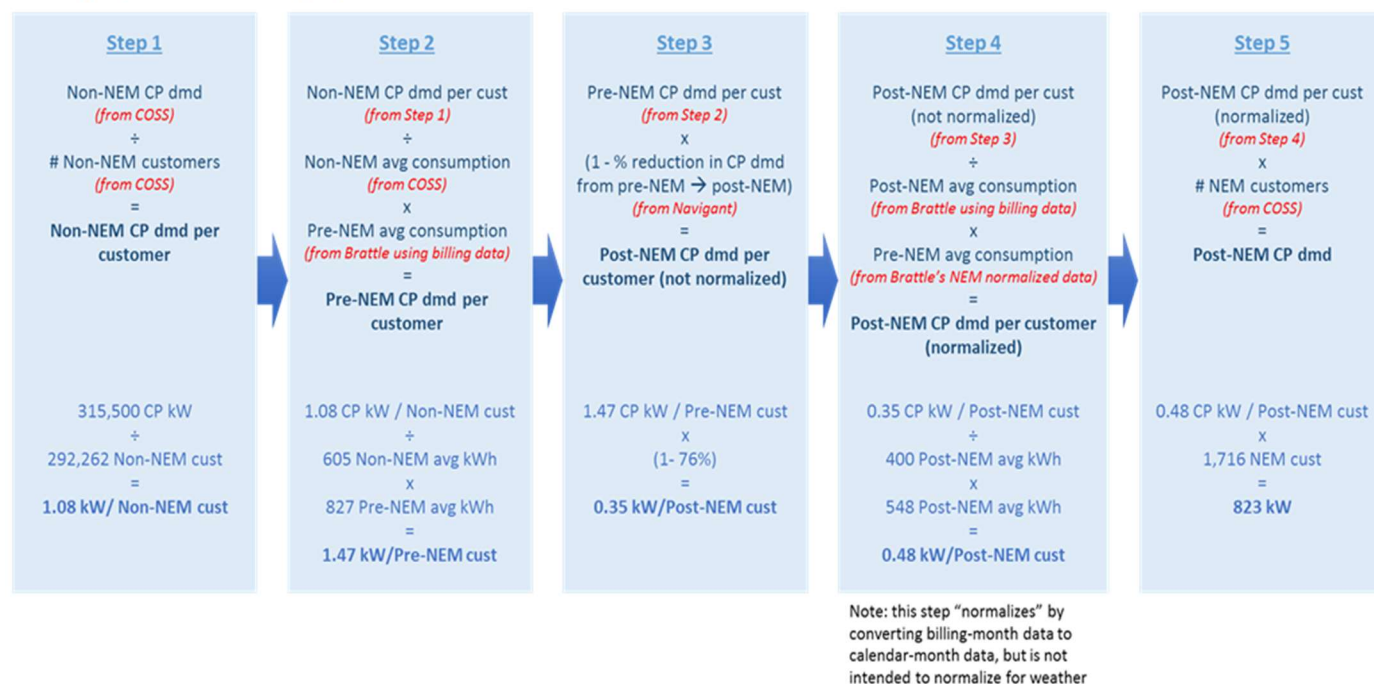
customers. *Id.*, p. 17; *see also* Statement L, pp. 6 and 13 (Column (n) on page 6, line 34 showing that existing net metering customers are producing a rate of return of -1.06% at present rates (i.e., revenues under current rates are less than the cost of service), and page 13, line 80 showing revenues for these customers would need to increase by 64.1% to reflect their full cost of service). He further testified that a rate that is “based primarily on a kWh recovery” should never be used for customers who use the system as net metering customers. *Id.*, p. 18.

During the hearing, there were questions about why MAC relied on information and data that was different from that used by Brattle when determining load shapes for net metering customers. *See, e.g.* Tr. p.1181:7-13; p. 1187:9-12. As explained by Mr. Normand and Mr. Schwartzenberger, use of different data by different consultants performing different analysis is not an issue that should call into question the results of either Brattle’s or MAC’s analysis. Tr. p. 1187:13-17; p. 1640:10-15. Brattle’s analysis focused on rate design for net metering customers, i.e., it required an understanding of patterns in individual customer’s demand, whereas MAC’s analysis focused on class cost allocation for each class as a whole, i.e., it required an understanding of the demand of each class. This difference in the scope of the analysis – one rate design while the other class cost allocation – necessitated the use of different data and analytical approaches. Mr. Normand explained that he used load shapes created by the National Renewable Energy Laboratory that were also used in the Navigant NEM Study instead of the individual data of customers in the load sample provided to Brattle because he “did the calculations consistent to involve the coincident peak and non-coincident peak.” Tr. p. 1272:4-5.

Even though Brattle and MAC appropriately used certain data from different sources, they also used common data when it made sense. Brattle provided MAC with limited specific information. As Mr. Normand testified, “Brattle[] only gave me the pre and post increase to the

kilowatt hours” for net metering customers. Tr. p. 1248:6-7. The data MAC used for purposes of its analysis is graphically represented below, and all information contained in the graphic is part of the record through either NorthWestern’s prefiled testimonies and exhibits or statements:

*Example for the month of April:*



### **3. Demand Charges for Future Net Metering Customers Are Reasonable and Are an Appropriate Pricing Mechanism to Recover Costs**

The Commission should adopt a rate design for the new net metering customer class that includes a demand charge. The evidence in this case supports approval of NorthWestern’s proposed rate design because: 1) it is the best option for recovery of fixed T&D costs from net metering customers; 2) demand charges are understandable and provide customers with a price signal and the ability to manage their bills; and 3) other utility commissions have found the rate design to be appropriate. Brattle initially proposed two rate design options for a net metering customer class – a three-part rate that included a demand charge and a two-part rate that had a high fixed customer charge. Ex. NWE-38, p. 7; p. 42. Regarding the second option (high fixed

customer charge), Dr. Faruqui testified that increasing the fixed charge to ensure recovery of costs from net metering customers “would not provide customers with a price signal to manage peak demand.” *Id.*, p. 42. For that reason, Dr. Faruqui explained that the demand charge in the proposed three-part rate provides customers “an efficient signal to manage their energy demand in a way that will reduce system costs and, ultimately, customer bills.” *Id.* He further testified that

[t]he proposed three-part rates more closely match demand, fixed, and variable costs with demand, fixed, and variable charges and will reduce this inequity so that all customers will pay their fair share of the costs associated with the generation of electricity, its delivery through utility’s transmission and distribution system, and customer service.

*Id.*, pp. 34-35. The MCC supports a rate design that includes a demand charge. Ex. MCC-4B, p.

26. Dr. Dismukes agreed with Dr. Faruqui stating that a “demand charge will better align net metering customers’ bills with the costs they impose upon the grid.” *Id.* The only parties opposed to a demand charge in this case are VS/MREA, whose arguments against demand charges revolve around fairness and lack of understanding – meaning they lack an actionable price signal and they are unpopular. Ex. VS/MREA-1, p. 135; *See also* Ex. VS/MREA-2, p. 19. The evidence in the record refutes these arguments.

First, demand charges are understandable despite arguments to the contrary from VS/MREA and thus, they provide clear price signals to customers. Under NorthWestern’s proposal, customers in the new class would be charged a \$7.69 per kilowatt (“kW”)<sup>6</sup> demand charge each month in addition to a fixed customer charge and a volumetric charge. *Id.*, p. 8. The demand charge is designed to recover NorthWestern’s costs related to T&D investment, or the

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<sup>6</sup> Dr. Faruqui’s testimony that, based on the Amended Stipulation, NorthWestern’s proposed demand charge would be reduced from \$8.64 per kW to \$7.69 per kW. Tr. p. 1276:15-24.

grid costs, as these are the costs under the current rate design that are not being fully recovered from net metering customers. *Id.*, pp. 34-35. As proposed by NorthWestern, the charge would apply to the single hour in the month that had the highest demand or usage of energy. *Id.*, p. 41.

A simple way to think about demand charges is through the following analogy: Each billing cycle, a future net metering customer starts with an empty bucket. Then every hour during that billing cycle, a demand meter measures the customer's electricity consumption, and hypothetically, the bucket is filled with water to the maximum amount of kW used during that hour. During a certain hour, the customer usage is 2 kW. If during a subsequent hour in the billing cycle, the customer uses more than the 2 kW in any hour, more water is added to the bucket to the new maximum level with all water being dumped from the bucket at the end of the billing cycle and the process starts again. Customers can strive to minimize their monthly demand charge (or by analogy, the maximum amount of water in the bucket) by timing the use of their electric appliances – waiting to run the dishwasher until the clothes dryer is done, for example. Thus, customers are able to manage their electricity consumption and resulting bill with a demand charge. In fact, Dr. Faruqui noted the “logical disconnect in suggesting that the same NEM customers who are capable of understanding the complexity of 20-year rooftop solar leases or purchases could not understand the concept of demand charges.” Ex. NWE-39, p. 19. Thus, evidence shows that net metering customers should be able to understand a demand charge and what impacts that charge so that they can, in turn, manage their electric bills.

Next, demand charges are not as unpopular as VS/MREA allege. In September 2017, the Kansas Corporation Commission (“KCC”) adopted a demand charge for a net metering customer class for Westar Energy, Inc. *See* KCC Final Order in Docket No. 16-GIME-403-GIE that was

provided in response to Data Request VS/MREA-183d. After considering similar evidence as presented in this case, the KCC concluded that

the current two-part residential rate design is problematic for utilities and residential private DG [distributed generation] customers because DG customers use the electric grid as a backup system resulting in their consuming less energy than non-DG customers, which results in DG customers not paying the same proportion of fixed costs as non-DG customers.

*Id.*, ¶ 22. It went on then to find that “DG customers are thus being subsidized by non-DG customers.” *Id.* To alleviate this subsidization, the KCC identified rate design options that would be appropriate for residential net metering customers with one of those options being a three-part rate that includes a demand charge. *Id.*, ¶ 23a. That decision recently withstood a legal challenge from Vote Solar when the Court of Appeals in Kansas affirmed the KCC’s decision finding that “the rate design bears a rational relationship to the utility’s cost recovery and does not impose a disproportionate burden on the [new net metering] class. Ex. NWE-40 (Memorandum Opinion in Docket No. 120,436), p. 14.

In addition to the KCC, Flathead Electric, a Montana electric cooperative, recently implemented a rate design that includes a demand charge for its residential customers. Tr. pp. 1358:24 - 1359: 1. Furthermore, evidence in the record demonstrates that several other utilities have demand charges as part of their residential rates. *See* Ex. NWE-38, Appendix C. These utilities include, for example, Arizona Public Service and other Montana cooperatives. *Id.* Thus, given the KCC’s decision and other utilities’ implementation of demand charges, the Commission would not be covering new ground by approving a rate design, supported by the MCC, which includes a demand charge. As such, the Commission should approve NorthWestern’s proposed three-part rate design for future residential net metering customers.

**B. *NorthWestern's Proposed Residential Customer Charge Is Necessary for Proper Cost Allocation***

NorthWestern's allocated cost of service analysis indicated the need to increase customer charges for all customer classes. Included in these customer charges are non-energy costs such as metering and billing. The HRC/NRDC, MCC, and NWECA oppose an increase to the residential customer charge. Ex. HRC-2, pp. 12-14; Ex. MCC-4B, pp. 44-46; Ex. NWECA-1, p. 26. They argue that an increase is unfair to low-income customers who might use less energy and discourages the use of less energy through energy efficiency. A review of the history of customer charges shows that these arguments incorrectly emphasize certain social policy objectives over cost of service regulation and reduction of customer cross-subsidies.

In 2001, the Commission approved a \$4.60/month residential customer charge for MPC. Order No. 6271, Docket No. D2000.8.113 (May 2001). With inflation, \$4.60 equates to \$6.50 today. Nevertheless, NorthWestern is only seeking approval for a residential service charge of \$5.60/month – an increase from MPC's 2001 rates of \$1.00 over 18 years, or the equivalent of about five cents a year. Considering NorthWestern's embedded cost of service analysis supports a charge of \$10.08/month, the Commission has no justification for denying the \$5.60/month proposal. See Ex. NWE-37, Exhibit \_PMN-7, Section A. In fact, taking into consideration that NorthWestern's residential customer charge in January 2017 was \$5.30, an increase to \$5.60 would not be a shock to customers.<sup>7</sup> Ex. NWE-48, p. 5:17-18.

In addition, the intervenors' low-income and energy efficiency arguments do not convey the full story. First, some low income customers are high volume users who are subsidizing low volume users under the current rate. These low income customers would benefit from a higher

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<sup>7</sup> The current rate of \$4.10 includes a 2017 reduction from \$5.30 to \$4.10 as a result of a rate design change that removed taxes from the monthly service fee.

customer service charge that moves toward correcting that subsidy. *See* Ex. NWE - 47, pp. 11; 15-17. Second, when the customer charge does not account for customers' costs, those costs become part of the energy rate. The result is that energy efficiency improvements that reduce usage produce customer cost-related bill savings that do not translate into system savings. In short, a lower customer charge does not necessarily benefit low-income customers and it provides an uneconomic price signal that distorts the benefits of energy efficiency. *Id.*, p. 11. The Commission should strive to set rates that move toward assigning costs to the individuals or group that causes those costs. The Commission should approve NorthWestern's proposed modest increase to the residential customer charge to further the goal of assigning costs to the cost causer and reduce interclass subsidization.

**C. *The Commission Should Approve the After-Hours Reconnect Fee***

In its application, NorthWestern requested the Commission to approve a tariff rule change that includes a \$150 fee when a customer insists that power be turned on outside of NorthWestern's normal business hours. Ex. NWE-4, p. 18. NorthWestern must provide reasonably adequate service at reasonable and just rates. § 69-3-201, MCA. Historically, the Commission has coupled a determination of whether proposed rates are reasonable and just with whether approval is in the public interest. *See e.g.*, Order No. 7602c, ¶ 37, Docket No. D2018.4.24 (December 19, 2018) (conclusion of law that holds "NorthWestern's rates, as approved in this Order, are in the public interest, result in just and reasonable rates, and are consistent with [the Commission's] regulation of public utilities under Title 69, chapter 3."). As shown below, uncontested evidence supports Commission approval of NorthWestern's proposed after-hours reconnect fee under this test.



**1. The Evidence Supports Approval of the After-Hours Reconnect Fee as in the Public Interest**

NorthWestern's proposed after-hours fee is in the public interest because it helps align costs to the cost causer. NorthWestern supports this proposal with credible, uncontested testimony from Ms. Schroepfel, NorthWestern's Vice President of Customer Care, Human Resources, and Communication. For example, she testifies that such a fee is appropriate since we provide customers with every opportunity to reconnect service during normal business hours. *Id.* Thus, if customers forego these opportunities and make the choice to be reconnected outside of NorthWestern's business hours, they alone should be responsible for the costs of such reconnection, not all other customers. As such, the Commission's approval of this fee will further the goal of assigning costs to the cost causer.

Uncontested evidence shows that such a fee is standard in the industry, including for utilities in Montana. Ms. Schroepfel testified "that it's more uncommon to not charge than it is to charge." Tr. p. 246:7-8. In fact, the Commission has previously approved a similar charge for MDU. Ex. NWE-5, pp. 11-12. In addition to MDU, at least three electric cooperatives in Montana charge for reconnection after business hours, and the fee ranges from \$125 to \$631. *Id.*, pp. 12-13. The Commission should approve the proposal as in the public interest because the uncontested record evidence shows that the proposed fee helps assign costs to the cost causer and that such a fee is customary in the industry.

**2. The Evidence Also Supports Approval as Such Fee Is Just and Reasonable since It Reflects NorthWestern's Actual Costs**

NorthWestern's proposed \$150 after-hours fee is justified, and thus, will result in a just and reasonable rate. The MCC apparently believes otherwise as it urges the Commission to deny NorthWestern's proposal for an after-hours fee even though it acknowledges that all customers

end up paying for these costs. In his direct testimony, the MCC's witness, Dr. Dismukes, recommended that the Commission reject NorthWestern's proposed after-hours charge because it was "a solution in search of a problem" suggesting that the data showed that after-hour reconnections were not really an issue for NorthWestern as they were only "a small fraction of total service reconnection requests." Ex. MCC-4A, p. 65. The MCC did not take any issue with the actual proposed fee of \$150 in that testimony. This advocacy, however, changed during the hearing. Specifically, Dr. Dismukes testified as follows at the hearing:

Q. [NorthWestern, Al Brogan] Do you agree that if NorthWestern does not charge an after-hours reconnect fee to the customers that request after-hour reconnection, all customers will pay for those expenses?

A. That's correct.

Q. Why should other customers pay extra costs for those who want after-hours reconnections?

A. You know, my issue with the reconnection fee is the basis for the charge itself, which seems unsupported. I mean, the company hasn't done it's [sic] appropriate documentation on that rate. It has less to do with the philosophy of charging customers, other than the fact that the rate seems somewhat arbitrary.

Tr. p. 2176:10-22.

The evidence in the record rejects both notions that the "charge itself" is unsupported and that it is a solution in search of a problem. As Ms. Schroepfel testified, "Dr. Dismukes' position ignores the fact that there are demonstrable, incremental, and direct costs incurred by NorthWestern irrespective of whether the percentage of the after-hours reconnections are small or large." Ex. NWE-5, p. 10. Moreover, Ms. Schroepfel's testimony indicated that the "fee is based on the cost of sending a qualified journeyman to reconnect the service." Ex. NWE-4, p. 18. Furthermore, she testified that the fee equals the minimum costs NorthWestern would incur due to its union labor contracts. Ex. NWE-5, p. 10. Specifically, she stated that the \$150 "is the

actual cost” for NorthWestern to reconnect. Tr. p. 272:20. If an employee is called out after hours to reconnect service and that reconnection only takes 30 minutes, NorthWestern must still pay that employee for two hours of work per the union contract. Tr. p. 274:5-6. As explained by Ms. Schroepfel, this arrangement is reasonable. Specifically, she testified that “[i]f you’re on call 24 hours a day 7 days a week, which a lot of our guys are, and you’re working, you know, 5 - 10-hour shifts or more during the summer months, ... and you get home and you barely turn off your truck and you get a phone call and you have to go reconnect somebody, I don’t think it’s unreasonable for them to have a minimum.” Tr. p. 273:2-9. Thus, the \$150 fee is supported and explained. The evidence shows that it represents actual costs incurred by NorthWestern. This in turn justifies charging that fee to customers who specifically request reconnection after hours. As such, the Commission should find that NorthWestern’s proposed \$150 fee is just and reasonable.

**D. *Jurisdictional Cost of Service Study - The Commission should continue to accept the transmission revenue crediting mechanism, as it is the method that most fairly assigns costs to the cost causer.***

For at least ten years, NorthWestern’s retail customers have been credited for transmission revenues that NorthWestern receives from its wholesale customers. The Commission accepted this crediting mechanism in both Docket No. D2007.7.82 and Docket No. D2009.9.129. Ex. NWE-16, p. 17. How this methodology works in practice is NorthWestern includes 100% of all transmission costs (plant investment and expenses) in both the revenue requirement set by this Commission and the revenue requirement set by FERC for service to NorthWestern’s wholesale customers. *Id.* NorthWestern then credits the revenue requirement for its retail customers by normalized revenues received from its FERC customers. *Id.* As Mr.

Cashell, NorthWestern's Vice President of Transmission, testified "[t]his method most fairly assigns costs to the cost-causer while ensuring that the utility recovers all of its costs." *Id.*, p. 18.

No party presented any evidence in this docket that disputes that testimony from Mr. Cashell. The MCC provided testimony that the Commission should require NorthWestern to conduct a study in the future to determine an allocation of transmission assets between its retail and wholesale customers, but it did not suggest or provide support for an alternative methodology to the transmission revenue credit methodology described above that could be applied in this case. In fact, Dr. Dismukes, on behalf of the MCC, testified that he is "not suggestion [sic] a change." Tr. p. 2173:21; *See also* Tr. pp. 2152:25 - 2153:2153 (MCC's opening remarks stating that all they are asking for on this issue is a study). Instead, Dr. Dismukes indicated that he is simply asking the Commission to require NorthWestern to conduct a study and is not recommending that the Commission mandate that the study results be applied in the future. Tr. pp. 2180:23 – 2181:7. As discussed below, NorthWestern notes some concerns with the MCC's proposal to conduct a study that the Commission should consider before requiring such a study. Nevertheless, the record evidence in this case supports approval by the Commission of the continued use of the transmission revenue credit methodology.

**1. NorthWestern's Proposal Appropriately Protects Retail Customers through the True-Up Process**

NorthWestern's proposal to true-up the transmission revenue credit methodology also protects retail customers. On May 1, NorthWestern filed a rate review with FERC seeking to increase rates for its wholesale customers. Ex. NWE-16, p. 19. In this filing, NorthWestern proposed to update the FERC rates used to establish the credit once FERC issued a final order on the May 1 filing. *Id.*, p. 20. Once that order issues, NorthWestern would make a filing with the

Commission simply swapping the current FERC rate used in the calculation for the new FERC rate. Nothing else would change in the methodology. Tr. pp. 590:24 – 591:7.

NorthWestern believes that this proposal will benefit retail customers. Mr. Cashell testified that the rate proposed in the FERC filing is “about 55 percent higher” than the current rate. Tr. p. 626:13-21. As he further testified, “our investment has gone up substantially and, therefore, our revenue requirement [would go up],” which in turn increases the revenue credit. Tr. p. 591:20-24. Thus, even if FERC approves something less than NorthWestern’s proposed rate of \$4.86 per kilowatt-month, it is likely that it will still be more than the current rate given all the transmission investment that has occurred. Tr. p. 626:13-17. The bottom line here is that a higher rate approved by FERC means a larger credit and lower rates for Montana retail customers. Again, this proposal to true-up also ensures appropriately that the cost causer “pay[s] for their fair share of the transmission system.” Ex. NWE-17, p. 6.

## **2. The Commission Should Use Caution as It Considers the MCC’s Proposal for a Full Jurisdictional Cost of Service Study**

As noted above, the MCC’s proposal in this case related to transmission revenue credits is for the Commission to order NorthWestern to conduct a full jurisdictional cost of service study. *See* Ex. MCC-4B, p. 5. Initially, the MCC appeared to tie its request for a study to a proposal related to setting a minimum wholesale sales credit floor for the PCCAM baseline. *See* Ex. MCC-4A, pp. 34-36. However, during the hearing, the MCC withdrew its request related to the latter, the credit floor, but maintained the former, the study request. Tr. p. 2158:5-11. The MCC’s only justification for its study proposal, however, was that in another docket NorthWestern had used a different allocation than was used in this case and that a study should be ordered to “assess the costs and benefits to retail ratepayers.” Ex. MCC-4B, p. 5. NorthWestern provided evidence refuting this proposal. As Mr. Cashell testified, the MCC’s

proposal is neither supported nor explained. Ex. NWE-17, pp. 8-9. Furthermore, as shown above, the current methodology protects retail customers. Finally, the MCC admitted at hearing that the current methodology should, in theory, resolve any jurisdictional cost issues. Tr. p. 2174:7-12.

Notwithstanding that fact and the supporting evidence that refutes that a study is necessary, NorthWestern highlights the following points that the Commission should also consider when ruling on this proposal. First, this type of study is unusual for utilities like NorthWestern where the state commission sets the transmission rate paid by retail customers instead of retail customers paying the rate set by FERC for transmission service. Dr. Dismukes acknowledged this fact at the hearing when questioned by NorthWestern:

Q. And where other utilities have conducted full cost-of-service studies, as you suggest, do the state commissions or FERC commissions set transmission rates for bundled retail customers?

A. Those are usually set at FERC.

Tr. p. 2173:8-12. Second, these types of studies cost money which, as noted by Dr. Dismukes at the hearing, would then be appropriately included in customer rates. Tr. p. 2181:14-24. The party proposing such a study questions whether the results should even be used in the future, and the current revenue crediting method protects retail customers. Therefore, the Commission should give critical consideration as to whether requiring such a study that may have no value is appropriate in light of the impact on customer rates. And, if such a study is ordered, the results may require that more costs be shifted to the retail customers' rates. This could also result in the situation where FERC and the Commission use different allocations: In this circumstance, NorthWestern could potentially under- or over-recover revenues. The MCC acknowledged this may happen. Tr. p. 2180:11-21. Again, since the MCC has not shown why the current

methodology is inappropriate and in fact agrees that the current methodology resolves the jurisdictional issue, ordering NorthWestern to conduct a study would appear to be a fruitless endeavor costing customers money. For all of these reasons, the Commission should reject the MCC's proposal to conduct a full jurisdictional cost of service study.

#### **IV. The Legislature Prohibited Malmstrom's Special Tariff**

The FEA filed testimony proposing a special tariff that would only apply to Malmstrom. Although the FEA based its proposal on its experience in other states, no other state has Montana's history of deregulation and re-regulation. Consequently, no other state has Montana's statutory prohibition against exactly what Malmstrom hopes to accomplish in this docket – to change Malmstrom's status as a NorthWestern supply customer. Tr. p. 1125:8-13. As NorthWestern's witness Mr. Hines explained, the Montana Legislature passed House Bill 25 in 2007, which made significant changes to § 69-8-201, MCA. Ex. NWE-57, pp. 6:19-7:3. The Legislature deleted the language that allowed for a public agency, such as Malmstrom, to have dual supply. Specifically, the Legislature struck out the sentence stating,

A customer referred to in subsection (4)(a) that is a public agency, as defined in 18-1-101, may enter into a power supply contract with the default supplier for default supply service for all or part of the public agency's load.

In other words, the Legislature struck out language that allowed a public entity, such as Malmstrom, to obtain only part of its supply from NorthWestern. The Legislature also added a provision prohibiting customers from choosing their source of supply. Nevertheless, Malmstrom proposes to do just that. Malmstrom seeks the Commission's approval to act as a public agency to receive part of its supply service from NorthWestern and choose the other part of its supply from another resource. The Commission does not have the ability to circumvent legislative policy to grant this request.

The statute prohibiting customer choice and dual supply does not apply to net metering, cogeneration, self-generation, or ancillary sales from non-utility suppliers related to deviations from scheduled energy deliveries. § 69-8-201(3), MCA. Those exceptions are not applicable to Malmstrom's proposal. Malmstrom's proposed tariff does not fall under any of these categories but only addresses the credit that Malmstrom wants to receive on its monthly bill. Ex. FEA-1, Exhibit BCC-1; Tr. p. 1095:20-24. The Legislature did not provide for the exception that Malmstrom wants the Commission to create. Malmstrom's remedy is with the Legislature, not the Commission.

#### **V. Additional Regulatory Requirements for CU4 Are Unreasonable**

The HRC/NRDC and MEIC/SC ask the Commission to use this docket as a springboard for additional regulatory requirements regarding CU4. The Commission should appreciate the risks in these additional requirements before accepting this advocacy. The HRC/NRDC recommend that the Commission require NorthWestern to file a Colstrip status report every six months regarding environmental remediation costs. Ex. HRC-2, p. 85:1-16. The MEIC/SC recommend that the Commission require NorthWestern to report on the timeframe for retirement of CU4 and NorthWestern's estimates of the costs associated with that retirement. Neither the HRC/NRDC nor the MEIC/SC explain what they hope to accomplish with these duplicative reporting efforts. NorthWestern already provides information on its liability for asset retirement obligations ("ARO"), environmental liabilities, and the prospect of early CU4 closure in three publicly available reports. The Commission took administrative notice of these reports in this docket. These reports are the Electric Utility Annual Report filed with the Commission, the quarterly 10-Q and annual 10K reports filed with the Securities and Exchange Commission ("SEC"), and the annual FERC Form 1 filings submitted to FERC.



The HRC/NRDC also ask the Commission to open a separate CU4 docket to examine all issues related to Colstrip. What the HRC/NRDC envisions is unclear, since a general examination would be inconsistent with the Commission's statement in a recent order that it would address the depreciation schedule for Colstrip Units 3 and 4 in future rate cases or other contested case proceedings. *See* Order No. 7577a, ¶ 21, Docket No. D2017.9.71 (July 10, 2018). Notably, when the Washington Utilities and Transportation Commission ("WUTC") initiated an investigation into costs associated with Colstrip Units 1 and 2, it ultimately concluded that the utility should provide detailed information about depreciation rates, decommissioning, and remediation in the next general rate review. Similarly, if the Commission would like NorthWestern to address these issues in more detail in its next general rate review, it could simply state so, instead of opening a new docket.

The Commission should exercise caution before granting ambiguous requests for additional reporting requirements and additional docketed proceedings. While NorthWestern has described the risk that certain parties will use information and proceedings to promote a premature shutdown of Colstrip, neither HRC/NRDC nor MEIC/SC describe the benefit of their recommendations for increased bureaucracy. In short, the risks involved in the Commission following these recommendations, without limitations, outweigh the benefits.

## **VI. Conclusion**

The record supports the Commission approving NorthWestern's proposals, including:

- three stipulations (Revenue Requirement, Green Tariff, and DSM),
- inclusion of Two Dot in rate base, including the true-up and finalization of the associated bridge rates,
- increases to customer charges,

- implementation of a new net metering customer class and rates, including a demand charge,
- an after-hours reconnect fee,
- application of transmission revenue credits,
- the calculation of the final true-up of DGGs construction costs,
- relief from the obligation to make annual Spion Kop reporting filings, and
- other tariff rule changes.

Respectfully submitted this 10th day of July 2019.

NORTHWESTERN ENERGY



Ann B. Hill

Attorney for NorthWestern Energy

# NorthWestern Energy - Electric Rate Review Issue Matrix

S = Settled  
C = Contested  
A = Accepted

	Intervenor / Participant											
	NWE	MCC	LCG	FEA	Walmart	DEQ	HRC & NRDC	MEIC & Sierra Club	NWEC	Northern Cheyenne Tribe	VS & MREA	Barsanti
Settled Issues	Revenue Requirement Stipulation											
	ROE	S	S	S	S	S						
	Revenue Requirement	S	S	S	S	S						
	Colstrip Unit 4 - Rev. Req.	S	S	S	S	S		C				
	PCCAM Base Cost	S	S	S	S	S						
	Depreciation Rates	S	S	S	S	S						
	EADIT	S	S	S	S	S						
	Cost Allocation	S	S	S	S	S						
	Green Tariff Stipulation											
	E+ Green Tariff	S	S			S	S					
	Alternative Energy Option	S	S			S	S					
	DSM Stipulation											
	Demand Side Management	S					A		S			
	Cost-Effectiveness Tests	S					A		S			
	Capitalization of DSM	S	C				A		S			
	Stakeholder Process for DSM	S					A		S			
Contested Issues	Fixed Cost Recovery Mechanism	S	C				A		S			
	No ROE Adjustment	S	C				A		S			
	Rate Design											
	Residential Customer Charge		C*				C					
	Net Metering Class											
	3 Part Rate										C	
	Demand Charge		C*								C	
	Colstrip Unit 4											
	Disallowance							C				
	Future CU4 Docket						C	C				
	Future Transition Issues							C		C		
	Malmstrom Air Force Base											
	Special Tariff		C		C							
	Tariff Change											
	After Hours Reconnect		C									
	Other Issues											
	Transmission Credits		C**									
	Street Lighting											C

Notes: MCC = Montana Consumer Counsel LCG = Large Customer Group FEA = Federal Executive Agencies DEQ = Department of Environmental Quality (MT)

HRC & NRDC = Human Resource Council District XI & Natural Resources Defense Council MEIC = Montana Environmental Information Center NWEC = Northwest Energy Coalition

VS & MREA = Vote Solar & Montana Renewable Energy Association Barsanti = Individual Intervenor for Street Lighting

C\* = The MCC did not contest NorthWestern's proposed Residential Customer Charge or its proposed Demand Charge; MCC contested the amount of each charge.

C\*\* = The MCC does not necessarily oppose revenue credits but wants NorthWestern to perform a Jurisdictional Cost Allocation study to determine if changes should be made in the future.

## CERTIFICATE OF SERVICE

I hereby certify that 1 original and 10 3-hole-punched copies of NorthWestern Energy's Opening Brief in Docket No. D2018.2.12 have been hand delivered to the Montana Public Service Commission with one copy hand delivered to the Montana Consumer Counsel this date. It has also been e-filed with the Montana Public Service Commission, mailed by postage prepaid via first class mail to the remainder of the service list below, and emailed to the email list below.

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