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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)	

**NORTHWESTERN ENERGY'S
REPLY BRIEF**

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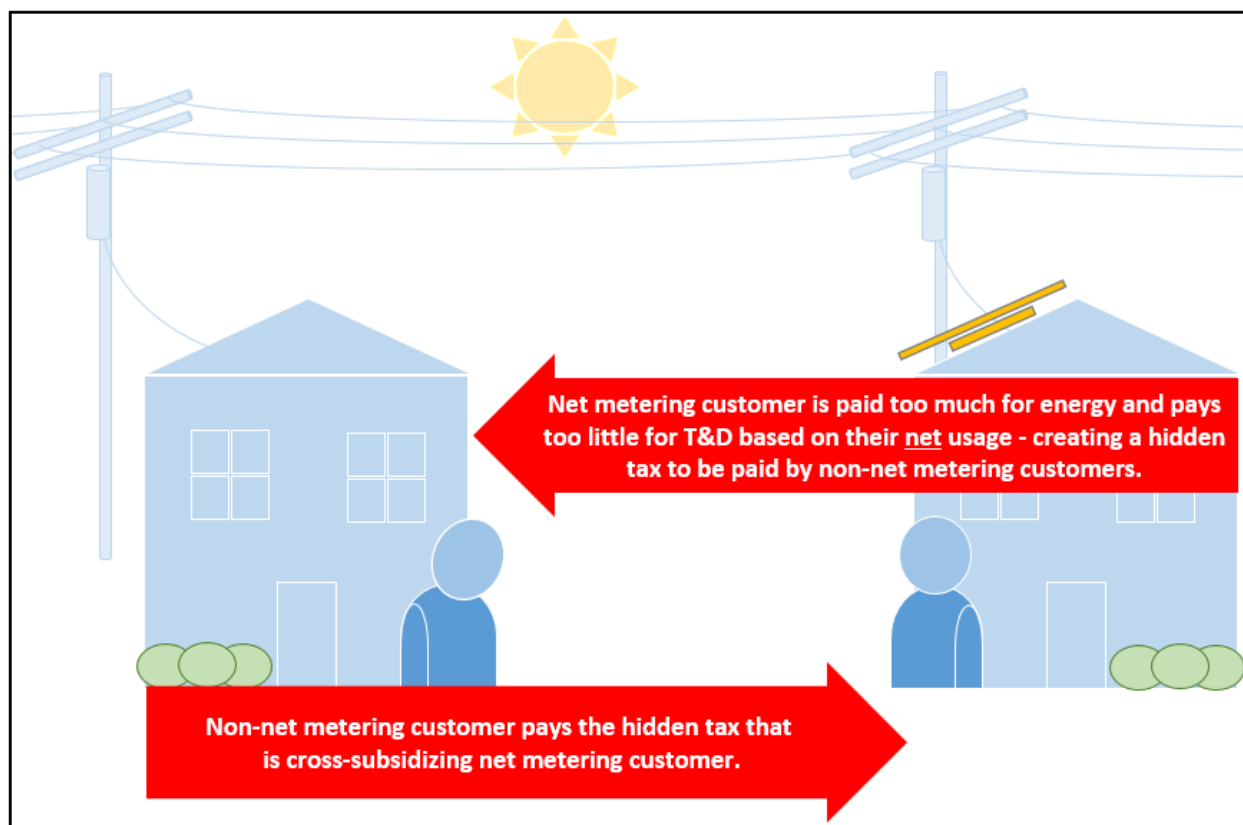
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INTRODUCTION

In its first review of NorthWestern Energy (“NorthWestern”) as a vertically integrated utility, the Montana Public Service Commission (“Commission”) will approve just and reasonable rates by reaching decisions that help NorthWestern continue to provide safe and reliable service to its customers at just and reasonable rates, continue to invest in its Montana electric utility service, and continue to meet customer needs, and decisions that help NorthWestern improve its financial metric in order to ensure that it can best perform its role to its customers. The Commission can strike this balance by approving the Revenue Requirement Stipulation in which the parties agreed to meet in the middle, and by approving a decoupling proposal without adjustment to NorthWestern’s return on equity (“ROE”) that will allow NorthWestern to lay the foundation to offer additional services and pricing options. The Commission should also make decisions in this docket that further the ratemaking principle of moving toward rates that reflect the cost of service, including approval of a modest increase to the customer charge and an after-hours reconnect fee.

The Commission should also approve NorthWestern’s proposal related to net metering. This proposal has been characterized as anti-solar. This characterization is wrong. It is a fairness issue. Should most NorthWestern customers continue to subsidize a specific subset of customers who are drastically different from the rest? The Montana Legislature gave the Commission the authority to answer this question in 2017 with the passage of House Bill (“HB”) 219. Coupling that authority with the evidence in this case, the answer is unequivocally no. Interestingly, Vote Solar and the Montana Renewable Energy Association (“VS/MREA”) agree from an economic perspective that, “public policy should try to level th[e] playing field and people should essentially pay for their own cost causations and not pass it on to someone else.”

Transcript (“Tr.”) p. 1895:1-4. The Commission must act now and eliminate the continued growth of the hidden tax that is currently imposed on customers who do not have net metering systems. To do otherwise perpetuates unfair cross subsidization that is contrary to the basic principles of utility ratemaking.



This is a subject on which NorthWestern and the Montana Consumer Counsel (“MCC”) agree. The MCC states that “now is the right time to establish a fairer rate structure ... for future net metering systems.” MCC Response Brief, p. 22. The MCC also agrees with NorthWestern that the current situation allows net metering customers “to avoid charges for transmission and delivery services that they continue to consume” and that “[t]he unique load patterns and physical characteristics of customer-generators also justify the creation of a new rate class.” *Id.*, p. 23. Finally, NorthWestern and the MCC agree that the appropriate rate design for this new class includes a demand charge. *Id.*, p. 24. The only point of contention is the amount. The

MCC proposes a demand charge of \$4.49 per kilowatt (“kW”) while NorthWestern proposes \$7.69 per kW. *Id.*, compared to NorthWestern’s Opening Brief, p. 28.

<i>ISSUE IDENTIFIED</i>	<i>NWE</i>	<i>MCC</i>	<i>VS/MREA</i>
<i>Separate customer class for future net metering customers</i>	✓	✓	✗
<i>NEM Study shows costs exceed benefits</i>	✓	✓	✗
<i>COS Studies show net metering customers are not paying cost of service</i>	✓	✓	✗
<i>Net metering customers have different load shapes than non-net metering customers</i>	✓	✓	✗
<i>Three-part rate design</i>	✓	✓	✗
<i>Demand charge is appropriate for net metering customers</i>	✓	✓	✗

In this brief, NorthWestern responds to the intervenors’ arguments on these issues as well as other important ratemaking issues before the Commission in this docket.

ARGUMENT

I. The Revenue Requirement Stipulation Results in Just and Reasonable Rates.

Although there are three stipulations in this docket, the primary stipulation resolves NorthWestern’s request for approval of a revenue requirement, ROE, cost allocation, and some rate design (“Revenue Requirement Stipulation”). Not only does this stipulation satisfy the Commission’s criteria of a reasonable resolution of the issues that results in just and reasonable rates, but it also comports with the Montana Supreme Court’s repeated recognition of “a very strong, almost overriding public policy in favor of settlement.” *Back v. Benefis Health System, Inc.*, 2018 WL 6265356, Eighth Judicial District Court, No. CDV160230, (Feb. 22, 2018) (citing *Durden v. Hydro Flame Corp.*, 1999 MT 186, 295 Mont. 318, 983 P.2d 943). The Commission should continue its practice of approving stipulations that satisfy the criteria of a reasonable resolution of the issues by approving the Revenue Requirement Stipulation. As that stipulation states, the stipulation as a whole provides NorthWestern a reasonable opportunity to recover its prudently incurred costs. Consequently, the reasonableness of the stipulation is dependent upon the Commission’s approval of the stipulation in its entirety.

Despite the reasonableness of the Revenue Requirement Stipulation, and the fact that it was the result of the parties agreeing to meet in the middle, the Montana Environmental Information Center and Sierra Club (“MEIC/Sierra Club”) oppose the Commission approving it. The Commission can easily reject the MEIC/Sierra Club’s arguments as neither is based in law nor supported by the facts.

A. The Pre-Approval Statute Prohibits Denying NorthWestern Recovery of Colstrip Unit 4’s Original Rate Base Value.

The Commission cannot lawfully implement the MEIC/Sierra Club’s request to deny NorthWestern the ability to recover the Commission-approved rate base value of Colstrip Unit 4 (“CU4”). NorthWestern applied for approval to place CU4 in rate base in direct response to the Commission’s interest in CU4 as source of electricity for Montanans. Ex. NWE-20, p. 20:12-17. NorthWestern’s application was conditioned upon the Commission approving the rate base value of \$407 million. The Commission accepted that condition, explicitly approving a value of \$407 million. Ex. NWE-20, pp. 20:12-22:6. Montana’s statute regarding the Commission’s approval of electricity supply resources (“Pre-Approval Statute”) prohibits the Commission from subsequently disallowing any portion of that \$407 million. The statute states,

Notwithstanding any provision of this chapter to the contrary, if the commission has issued an order containing the findings required under subsection (6)(c), the commission may not subsequently disallow the recovery of costs related to the approved electricity supply resource based on contrary findings.

§ 69-8-421(7), MCA. The plain meaning of the statute is that if the Commission issues an order finding the utility’s application for a supply resource is in the public interest and consistent with the requirements for resource planning and procurement, it cannot, at a later date, make findings contrary to the original findings to disallow the recovery of costs related to the resource.

In 2008, the Commission issued an order finding that NorthWestern’s application to rate base CU4 at a \$407 million value was in the public interest and consistent with resource planning and procurement requirements. Order No. 6925f, ¶ 236, ¶¶ 249-255. Under the Pre-Approval Statute, since the Commission made these findings with regard to the \$407 million value, it cannot make a different finding that limits NorthWestern’s ability to recover that \$407 million. The MEIC/Sierra Club argue that the Commission did not approve rate basing CU4 at \$407 million in 2008, but only approved placing CU4 in rate base, generally. MEIC/Sierra Club Brief p. 12 (arguing that the findings in § 69-8-421(7), MCA, all relate to the decision to place the asset in rate base, not the amount in rate base). They then argue that since the Commission only approved placing CU4 in rate base, the Pre-Approval Statute does not prohibit the Commission from “revising its cost of service determination,” i.e., changing its decision to approve the \$407 million value. MEIC/Sierra Club Brief, p. 12.

The MEIC/Sierra Club’s argument fails because in 2008 NorthWestern did not ask for a general approval to place CU4 in rate base. Rather, NorthWestern asked the Commission for a specific approval to place CU4 in rate base at a \$407 million value, and the Commission granted that specific approval. Recognizing the specificity of the request, the Commission included language in the 2008 order that explicitly precludes the argument that MEIC/Sierra Club now make. The following excerpts from Order No. 6925f, with emphasis added, negate the MEIC/Sierra Club’s argument in its entirety:

25. Notwithstanding the Montana law at § 69-8-421(6)(a), MCA, which permits the PSC to approve or deny an application for an electricity supply resource in whole or in part, NWE asserted its Application should be deemed withdrawn unless the terms and conditions listed above are met.

32. Hanson stated that NWE is offering to place the asset into rate base **as long as the PSC agrees the rate base value of the asset is \$407 million....**

251. The PSC found that rate-basing **at the \$407 million** value proposed by NWE in its Application is in the public interest....

Ordering paragraph 1. NWE's Application for approval of its interest in Colstrip Unit 4 as an electricity supply resource **under certain terms and conditions is approved.**

At the hearing in this docket, the Commission staff asked MEIC/Sierra Club's witness, Ronald Binz, questions indicating that it agreed that the Commission could not now make findings contrary to its 2008 findings. Specifically, the staff asked Mr. Binz if he was aware that the Pre-Approval Statute says that the Commission cannot arrive at different findings now than it did in 2008. Tr. p. 2075:9-13. More specifically, the staff pointed out to Mr. Binz that since the Commission made a finding in the 2008 order regarding future energy prices, the Commission could not arrive at a contrary finding in this docket. Tr. p. 2079:7-13. The Commission staff affirmed that regardless of changes in energy prices, changing the rate base value now was contrary to one of the Commission's primary reasons for the approval of the \$407 million rate base value – protecting consumers from volatility in energy markets. Tr. p. 2080:4-8.

The MEIC/Sierra Club's argument also fails because it contradicts the fundamental rule of statutory construction that if the legislative intent can be determined from the plain language of the statute, the plain language controls. *See Montanans for Justice v. State ex rel. McGrath*, 2006 MT 277, ¶ 60, 334 Mont. 237, 146 P.3d 759. The MEIC/Sierra Club try to create an ambiguity in the statute that does not exist. The statute's purpose, as it clearly states, is to get the Commission to make a clear commitment for the utility's reimbursement according to the terms of its pre-approval order. *See J. Bonbright, A. Danielson, & D. Kamerschen, Principles of Public Utility Rates*, ch. 16 at p. 389 (2d ed. 1988) (stating the purpose of pre-approval statutes).

In addition to their attempt to insert ambiguity where none exists, the MEIC/Sierra Club argue that despite the Pre-Approval Statute, another statute, § 69-3-109, MCA, gives the Commission the ability to re-set the initial \$407 million rate base value. Again, the MEIC/Sierra Club's argument contradicts a fundamental rule of statutory construction – the rule that the more specific statute prevails. § 1-2-102, MCA. Since § 69-3-109, MCA, applies to the Commission's general authority to value property, and the Pre-Approval Statute applies to the Commission's specific authority to pre-approve a utility's acquisition of a supply resource, the Pre-Approval Statute prevails. In fact, the MEIC/Sierra Club's application of § 69-3-109, MCA, would have the absurd result of rendering the Pre-Approval Statute's prohibition against a disallowance meaningless, which by itself portrays the error of the MEIC/Sierra Club's position.

There is no reason for the Commission to adopt the MEIC/Sierra Club's attempts to create ambiguities in the Pre-Approval Statute or render it meaningless. That application of the statute is inconsistent with the legislative intent, and the Commission must reject it to comply with law.

B. NorthWestern Demonstrated That It Prudently Invested in Colstrip.

In addition to challenging the Commission's 2008 approval of Colstrip's initial rate base value, the MEIC/Sierra Club assert that NorthWestern did not justify the capital investment in Colstrip that it seeks to recover in this case. That argument is entirely based on a complete disregard for the testimony and exhibits of NorthWestern's witness, Michael Barnes. The MEIC/Sierra Club recycled an argument from an old docket to assert that NorthWestern blindly followed the recommendations of the plant operator, Talen Montana, LLC ("Talen"). Mr. Barnes invalidated this argument in his testimony when he explained Talen's role as operator, the role of the Project Committee, and NorthWestern's process for planning and approval of investment in

Colstrip. Ex. NWE-56, pp. 2 -10. The MEIC/Sierra Club also allege that NorthWestern did not provide information to justify the investment in Colstrip. In fact, the evidentiary record contains a significant amount of documentation in support of the capital investments. For example, Mr. Barnes's testimony includes a listing of all of the capital investment projects over \$50,000 and a description of each project. Ex. NWE-56, Exhibit__(MJB-1). NorthWestern's response to Data Request MEIC-047 provides more detailed descriptions of all projects exceeding \$165,000. As Mr. Barnes explained, these capital investments are necessary primarily to maintain capacity and reliability and meet compliance requirements at a reasonable cost. Ex. NWE-56, p. 13:4-11.

The MEIC/Sierra Club ask the Commission to, at a minimum, disallow NorthWestern's payment of a property insurance deductible and repair costs, as well as NorthWestern's costs for "SmartBurn" technology. MEIC/Sierra Club Brief, pp. 17-19. MEIC/Sierra Club argue that it was imprudent for NorthWestern to pay for an insurance deductible and repair costs that were necessary to return the unit to service after an outage. *Id.* p. 18. They give no reason for a finding of imprudence except that the Commission previously disallowed NorthWestern's costs for power purchased during the same outage. *Id.* The MEIC/Sierra Club have failed to connect the dots between the replacement power purchases and the insurance deductible and repair costs. As the Commission staff pointed out at the hearing, it was prudent for NorthWestern to take the action necessary to return the unit to service. Tr. p. 2138:13-18; p. 2139:3-5.

Similarly, there is no evidence to support the MEIC/Sierra Club's request for a disallowance of NorthWestern's investment in SmartBurn technology. The Commission should reject the MEIC/Sierra Club's argument that investment in pollution controls is only prudent after the utility has violated a permit limit. The suggestion that NorthWestern should wait until a permit violation occurs (and incur the costs of a fine), shut down the unit (and incur the costs of

power purchases), and then install the pollution controls is absurd. As Mr. Barnes explained, without the SmartBurn controls, the unit was at risk of violating its permit limits. Ex. NWE-56, p. 17: 8-22. The SmartBurn controls also allow NorthWestern to comply with Environmental Protection Agency regulations requiring reasonable progress in addressing regional haze. Ex. NWE-56, p. 18: 1-22. Finally, the MEIC/Sierra Club's statement that the record does not contain documentation of an analysis of an alternative to SmartBurn controls is simply false. See MEIC Reply Brief, p. 19. NorthWestern provided a report that included cost estimates of alternative technology that would cost 15 times more than SmartBurn. Ex. NWE-56, Exhibit __ (MJB-2).

NorthWestern's witness Mr. Barnes completely refuted all of MEIC/Sierra Club's arguments. If the Commission disallows NorthWestern's recovery for the investments it has made in Colstrip, it will simultaneously void the Revenue Requirement Stipulation. The MEIC/Sierra Club have not given the Commission a reason to take such an extreme action.

C. The Commission Should Not Approve Additional Colstrip Requirements at this Time.

Not only do the MEIC/Sierra Club oppose the Commission allowing NorthWestern to recover its investment in Colstrip, but they, along with the Human Resource Council, District XI and the Natural Resources Defense Council ("HRC/NRDC") and the Northern Cheyenne Tribe ("Tribe"), also ask the Commission to adopt additional special requirements for Colstrip. These special requirements include the Commission opening a docket of undefined purpose, the Commission advocating for a rate increase, and NorthWestern providing reports for the MEIC/Sierra Club and HRC/NRDC's benefit. At the hearing, the Commission staff was rightfully skeptical of this unusual regulatory approach.

Regarding a rate increase, the MEIC/Sierra Club asked the Commission to require NorthWestern to set aside funding for compliance with environmental regulatory requirements

for remediation. The Tribe asked the Commission to require NorthWestern to set aside funding for community transition funding. Through questioning of the MEIC/Sierra Club's witness, the staff pointed out that the Commission should not ask customers to pay for compliance with environmental regulatory requirements that do not yet exist. Tr. pp. 2083:21-2084:4. The staff's questions align with NorthWestern's testimony distinguishing between NorthWestern currently recording an Asset Retirement Obligation under Generally Accepted Accounting Principles (GAAP) for future estimated remediation costs and NorthWestern seeking Commission approval for recovery of those costs at a later date when there is more certainty regarding the amount of costs. Ex. NWE-20, p. 29:7-23. Staff also pointed out the awkwardness of the Commission, rather than the utility, asking for the rate increase that would be necessary to cover these costs. Tr. p. 2085:4-13; p. 2088:6-10. Closing the door on a Commission requirement for community transition funding, staff's questioning of the MEIC/Sierra Club's witness confirmed that without special legislation granting it the authority to do so, the Commission lacks the ability to require NorthWestern to pay for community transition funding. Tr. p. 2089:2-14.

In its Opening Brief, NorthWestern pointed out the unreasonableness of the MEIC/Sierra Club and HRC/NRDC's demands for additional Colstrip requirements. Neither party resolves NorthWestern's concerns with this unreasonableness in their response briefs. In fact, HRC/NRDC ask NorthWestern to not only report on NorthWestern's future plans for Colstrip, but on the other owners' plans as well. HRC/NRDC Brief p. 11. Holding NorthWestern accountable for the actions of other parties is truly unreasonable. In addition, the HRC/NRDC provided no clarification of what purpose the special Colstrip docket would serve, but instead maintain their position that the docket is necessary to examine the expansive scope of "Colstrip related issues." The Commission cannot reasonably open such a broad and undefined inquiry.

The Commission cannot ignore the identity of the parties seeking these additional reporting requirements and docketed proceedings. Before granting these requests, the Commission should consider these identities and their roles in public utility regulation and compare them with the MCC's role of representing consumers and the MCC's power to investigate. §§ 69-2-203 and -204, MCA. The obvious contrast in roles and interests will inform the Commission to take action that balances NorthWestern's interests against consumer interests, instead of furthering the goals of a small set of special interests.

II. The Four-year FCRM Pilot Balances NorthWestern and Customer Interests.

HRC/NRDC proposed a pilot decoupling mechanism, called a Fixed Cost Recovery Mechanism ("FCRM"), to break the link between sales and recovery of fixed delivery service and generation costs for the residential and GS-1 secondary non-demand customers. Other intervenors, such as the Northwest Energy Coalition ("NWECC") and the Montana Department of Environmental Quality ("DEQ"), support the FCRM. *See* NWECC Brief, I and DEQ Brief, pp. 12-13. NorthWestern supports the FCRM as a means of better aligning its interests with customer interests by removing the disincentive to promote energy efficiency and offer more robust service and pricing options to customers, both of which benefit customers, but only if there is no adjustment to ROE.

The MCC opposes the FCRM and argues that, if it is approved, the Commission should reduce the ROE by a minimum of 25 basis points. The MCC has historically opposed decoupling and continues to do so here. The MCC's longstanding distaste for a decoupling mechanism should not, however, stand in the way of the Commission's adoption of the FCRM as a pilot as suggested by HRC/NRDC and modified by NorthWestern. The FCRM benefits customers by moderating risk and helps NorthWestern better serve its customers' interest

through removing disincentives for implementing energy efficiency programs and offering alternative services and pricing options. Because so many jurisdictions have adopted decoupling, there is an extensive record of its success. NorthWestern responds directly to the MCC's criticisms of the FCRM below and urges the Commission to adopt the proposed FCRM, with NorthWestern's proposed adjustments and no reduction to NorthWestern's ROE.

A. Decoupling is a Well-Established Regulatory Mechanism that Has Been Implemented in Over 30 States.

Setting the stage for its arguments against decoupling, the MCC suggests that the Commission should not adopt decoupling because it is a component of utility regulation in only a "small minority of other states" and that "interest seems to be slowing..."¹ However, this is plainly inaccurate. The Montana Energy and Telecommunications Interim Committee ("ETIC") Staff Report dated January 2016 reported that "[i]n 2011 a form of decoupling had been adopted for at least 1 electric or natural gas utility in 30 states and was under consideration in another 12 states."² Regulatory Research Associates, an arm of Standard and Poor's ("S&P"), concluded that, "some form of decoupling is in place in the vast majority of the jurisdictions." Ex. NWE-

¹See MCC Brief, p. 3, where it states that (only a "small minority of other states" operate under a decoupling mechanism and that "only 36 investor-owned utilities, a little less than 25%, in only 17 states, operate under a decoupling mechanism." The MCC's statistic is based on an Energy Information Administration Form 861. See EIA Form 861 Instructions; however, this data only reflects a subset of utilities that have instituted decoupling. It does not reflect the number of states that have instituted decoupling for natural gas utilities or for non-investor-owned electric utilities.

²"Measuring Montana's Experiences with Decoupling," Ms. Sonja Nowakowski, Energy and Telecommunications Interim Committee Staff (January 2016). Ms. Nowakowski's statistics were based on the 2011 Regulatory Assistance Project's Report, "Revenue Regulation and Decoupling: A Guide to Theory and Application." The Regulatory Assistance Project's 2016 Report in its Preface confirms these statistics.

10; p. 9:11-14.³ The HRC/NRDC’s prefiled direct testimony recites that “106 gas and electric utilities are now decoupled, spanning 32 states” and identifies new states or utilities that have recently adopted decoupling, such as New Hampshire (2018), and Dayton Power & Light (2018). Ex. HRC-1 at 32-33. Far from being a mechanism used in a small and shrinking number of states, decoupling is a widely used mechanism in a majority of states, and its use is expanding.

B. Decoupling Helps Protect Customers.

The MCC suggests that decoupling departs from precepts that provide important customer protections. MCC Brief, p. 3. However, to the contrary, the FCRM helps *reduce* risks for customers. The largest risk addressed by the FCRM is weather. Currently, customers bear the risk that their utility bills will be higher if a winter is colder or a summer is hotter than normal. This past winter in Montana is an excellent example, as energy prices skyrocketed and electric usage increased in the face of extremely cold weather.⁴ The high energy prices and increased usage impacted customer bills. However, had an FCRM been in place, the ultimate impact on customers would have been blunted. This is because under the FCRM, customers would have been refunded revenues NorthWestern recovered in excess of its fixed Transmission and Distribution (“T&D”) and generation costs due to increased usage through subsequent bill adjustments. This is the critical point: All other things being equal, with the FCRM, NorthWestern’s customers would have *benefited* by subsequently receiving a rebate on their bills. The MCC’s expert witness, David Dismukes, agreed with this in response to questions by

³ In addition, Mr. McKenzie testified that “Such ‘decoupling’ mechanisms have become increasingly prevalent in light of policy goals encouraging energy efficiency and conservation.”

⁴ During this past winter, on-peak prices at mid-C averaged \$61.52 per megawatt hour (“MWh”). However, during the extreme cold in February and March, on-peak day ahead prices skyrocketed to almost \$220/MWh (\$218.65) in February and \$900/MWh (\$890.56) in March. This price jump resulted in an increase in market purchases of over \$25 million in those two months alone.

HRC/NRDC attorney Chuck Magraw:

Q. And you're anticipating my next question. So it's accurate to say then that in this winter, since they were selling a lot of -- NorthWestern was selling a lot of electricity, more than was used to set base rates, that they'd be earning in excess of their revenue requirement.

A. I don't know that. I mean, you're looking at one factor. There could be several other factors that are offsetting some of those increases in revenues.

Q. Assume all else is equal.

A. If everything else is equal, then yes.

Q. So NorthWestern -- in other words, NorthWestern was recovering more in the way of their fixed costs than in -- than if the whether [sic] had been normal, again, assuming all else equal?

A. Correct.

Q. Under the proposed pilot that my -- the proposed fixed-cost recovery mechanism that my clients have proposed in this docket, based on this year's weather -- this winter's weather -- and, again, assuming all else equal, all else being equal -- the FCRM adjustment would be negative; wouldn't it? Meaning that customers would receive a rebate on their bills in a subsequent time period; isn't that correct?

A. Holding everything else constant, yes.

Tr. pp. 2183:25 – 2184:24.

Other hearing testimony demonstrated that the FCRM does not shift risk to customers. Diego Rivas, on behalf of NWECA, testified under cross-examination that "I don't believe there is a shift of risk to ratepayers, no." Tr. p. 1724:24-25. And, the HRC/NRDC testified regarding the customer benefits of decoupling. Ex. HRC-1, pp. 29-32. Given this record, it is indisputable that decoupling does not reduce customer benefits, and, in fact, it does the opposite: It helps protect customers.

The MCC also argues that the FCRM would undermine consumer protections, primarily the matching principle. MCC Brief, pp. 5-7. This is an old, tired argument that should be

discarded, and the fact that the MCC's authorities in support of this argument are from 1984, 1989, and 2000 underscore the antiquity of the MCC's position. In addition, by focusing solely on the matching principle and seeking to preserve it, the MCC fails to acknowledge that the matching principle is not rigidly followed. As HRC/NRDC witness Amanda Levin's prefiled direct testimony established, this Commission violated the matching principle through its adoption of the PCCAM and ran afoul of it when it approved return of NorthWestern's tax benefits from the Tax Cuts and Jobs Act to customers. Ex. HRC-1, pp. 27-28. What is important is Ms. Levin's conclusion that regulatory mechanisms should be adopted in order to align customer and utility interests, and the FCRM does that. The electric industry has changed fundamentally, and regulatory mechanisms must adapt.

The MCC's argument confuses revenue requirement and revenue collection. The FCRM does not abandon test period rate making.⁵ In test period rate making, a revenue requirement is determined based on test period expenses; the revenue requirement is allocated to rate classes, and individual rates are designed to collect class revenues based on test period billing statistics. The FCRM does not change the revenue requirement nor does it change the portion of the revenue requirement allocated to either the residential class or the GS-1, secondary non-demand class, which are the classes to which the FCRM would apply. Neither does the FCRM change the rates designed to collect the allocated revenue requirement. The FCRM merely specifies the level of fixed costs that will be recovered from customers in these two classes, based on the number of customers for delivery services and equal to the approved fixed cost revenue requirement for generation assets.

⁵ The MCC seeks to diminish the persuasiveness of Ms. Levin's testimony by stating that she has no experience in constructing a revenue requirement analysis. MCC Brief, p. 5. However, Ms. Levin's detailed decoupling proposal demonstrates a comprehensive understanding of these issues.

C. The FCRM Facilitates Rather Than Weakens Efficiency Incentives.

The MCC claims that the FCRM would weaken operational efficiency incentives. MCC Brief, pp. 7-9.⁶ The MCC argues that decoupling blunts a utility's normal cost efficiency motivations and insulates NorthWestern from sales losses. *Id.*, p. 9.

These concerns are incorrect because with or without the FCRM, NorthWestern will not earn its authorized return if NorthWestern is inefficient and costs per customer increase. But, it will increase its earnings if it is efficient and reduces its costs. Moreover, the FCRM *increases* rather than *decreases* a utility's incentive to be efficient. With the FCRM, NorthWestern cannot increase its profits through increased sales as a result of a fierce winter or especially hot summer. If the FCRM is in place, NorthWestern must maintain its efficiency or else it will not earn its authorized return. As the NRDC/HRC testified, "... operational efficiency is the only way NorthWestern Energy can boost its profits." Ex. HRC-1, p. 29. The argument that somehow the FCRM reduces the incentive to be efficient is simply meritless.⁷

D. The Reasons to Adopt Decoupling Have Been Established and the Pilot Should Be Implemented.

Starting on page 10 through 14, the MCC asserts "it is undeniable that revenue decoupling undermines longstanding consumer protections" and suggests that this requires a "compelling justification" to try the FCRM. MCC Brief, p. 10. The MCC argues that because NorthWestern already engages in significant energy efficiency measures, there is no need to

⁶ The MCC quotes a 1988 observation of Alfred Kahn for the proposition that public utility commissions ought not to even try to adjust rate levels. MCC Brief, pp. 7-8.

⁷ It is also worth pointing out that NorthWestern is exceedingly efficient. NorthWestern's per customer operating expenses are among the lowest in the region. *See* Ex. NWE-6, pp. 22-23 (showing, for example, NorthWestern's expense for O/M & A/G expense per customer is 26.4% below the regional utility average). The number of employees per 1,000 customers is 20.1% under the regional utility average. *Id.* at 24. Yet, NorthWestern's electric residential rate at the time of this case's filing is 16% below the national average. *Id.* at 25.

justify decoupling.

In response, as explained above, it is clear that the FCRM does not “undermine long-standing consumer protections.” Rather, it helps mitigate risk for customers. In addition, Ms. Levin recommended that during the FCRM pilot annual adjustments be limited to 3% of the bill for the average customer by class and that NorthWestern track and report regularly to the Commission during the FCRM pilot regarding its performance against a number of system reliability and customer service metrics. Ex. HRC-1, p. 20. NorthWestern agreed. Ex. NWE-48, p. 26. Given that the premise of the statement is false, the conclusion is also false.

The MCC links the FCRM to energy efficiency and argues that it is not needed for that purpose and that NorthWestern is acquiring sufficient Demand Side Management (“DSM”) resources. MCC Brief, pp. 11-14. The MCC ignores the testimony of NWECA witness, Mr. Rivas, to the contrary. He testified at the hearing that decoupling “send[s] the appropriate signals to the utility to acquire more energy efficiency” and that it “removes the disincentive to acquire more energy efficiency.” Tr. pp. 1725:17-18 and 1728:5-6. However, while HRC/NRDC, NWECA, and DEQ all advocate for the FCRM to support increased DSM, DSM is not the only reason that HRC/NRDC offered to support the FCRM. In her testimony, Ms. Levin provided several alternative rationales for the need to “break the link between a utility’s sales and financial health.” Ex. HRC-1, pp. 4:19-10:2. Ms. Levin’s additional justifications for the FCRM include the rapid changes in the electricity sector; the weakened correlation between energy use and economic productivity; customers’ desire for customer-centric services, control, and choices; and support for distributed generation. *Id.* The FCRM does not directly enable all of these, but it is a necessary and important first step along the way. Ex. HRC-1, p. 4:4-5.

The MCC argues that the FCRM’s mechanics are skewed against ratepayers. MCC

Brief, pp. 14-16. The MCC bases its argument on a one-sided analysis. MCC looks only at the potential impact of sales declines between rate reviews, asserting that the FCRM “would protect the utility against sales declines between rate cases, no matter the cause.” MCC Brief, p. 14. The MCC specifically calls out price-induced sales losses, economic downturns, and weather. *Id.* The MCC fails to consider that the FCRM would take from the utility any gains for sales increases between rate reviews due to economic booms, weather, and increased customer usage. Under the FCRM, NorthWestern would not reap the benefits of increased sales due to anything other than increased customer counts. Rather, increased sales would be returned to customers. The Commission should not reject the FCRM based on a one-sided, incomplete analysis of the impacts of the FCRM. The Commission should adopt the FCRM because it moderates risk for both customers and NorthWestern.

E. NorthWestern’s ROE Should Not Be Adjusted Downward if the Commission Adopts the FCRM Pilot.

The MCC maintains that the FCRM would require adjusting NorthWestern’s ROE below the already low return agreed to in the Revenue Requirement Stipulation. MCC Brief, p. 16. NorthWestern opposes any adjustment of its rate of return below 9.65%. Tr. p. 1635 (Joe Schwartzenberger testifying that NorthWestern supports implementation of the proposed FCRM pilot if there is no reduction to ROE); Tr. pp. 107:10-20 and 307:1-3 (Brian Bird explaining that NorthWestern does not support any reduction). The MCC offers theoretical arguments that NorthWestern’s risk will be reduced and customers will be paying for risks that the utility no longer has. MCC Brief, pp. 17-18.

However, the stipulated ROE is already below the reasonable range of 9.80% to 11.0% identified by Adrien McKenzie, based on a proxy group that includes many utilities that operate with revenue decoupling. Ex. NWE-10, p. 9:22-23. Mr. McKenzie pointed to other public

utility commissions that specifically did not reduce a utility's ROE when approving regulatory mechanisms, such as the proposed FCRM, because the impact of such mechanics is already accounted for through the use of a proxy group. Ex. NWE-11, p. 117:1-26. And, there is no empirical evidence in this docket that the FCRM will reduce NorthWestern's cost of equity investment.

Critically, a reduction in NorthWestern's ROE will negatively contribute to the rating agencies' perception of NorthWestern's business risk. Commission decisions are the single most important driver of credit ratings and capital costs to invest in our system. NorthWestern's credit ratings by S&P's Global Ratings are already in the bottom third of the 35 Edison Electric Institute-regulated electric utilities rated by S&P. Ex. NWE-6, p. 28. Based on Moody's industry report dated June 18, 2018, NorthWestern is in the bottom 10% of the 102 operating companies they rate. Any credit rating downgrade would exacerbate NorthWestern's situation. *Id.* at p. 29. Rating agencies continue to express concern about potential negative regulatory outcomes. *Id.* at pp. 29-46. Simply put, if NorthWestern's credit ratings are downgraded, there will be an effect on NorthWestern's cost of capital, which would negatively impact NorthWestern's customers. *Id.* at pp. 40-46; Ex. NWE-8, pp. 6-7; Tr. pp. 322-324. As Mr. Bird testified at the hearing:

The only thing that's still pending, I would say Fitch has us on a negative outlook....

So it's very important we maintain our ratings with the rating agencies and I think that they have us unstable, but I think as you see in my testimony and referenced by one of the intervenors, that particularly for Moody's it's important that we have a positive outcome on this rate case in order to maintain that stable outlook.

Tr. p. 324:2-3 and 16-22.

Moreover, it is extremely powerful that the HRC – which seeks to alleviate poverty and

advocates for the establishment of rates that do not impose disproportionate burdens on Montana's low income citizens⁸ – *opposed* any reduction in NorthWestern's ROE if the FCRM is adopted. As HRC/NRDC stated, "HRC and NRDC do not believe that the Commission should avail itself of this opportunity [to reduce the Revenue Requirement Stipulation ROE by 25 basis points]. The better course is to approve the mechanism and then assess, using real numbers, the effect of the mechanism on NorthWestern's actual capital costs." HRC/NRDC Brief, p. 6. The NWEC agreed as Mr. Rivas testified definitively at the hearing that "we don't believe an ROE adjustment is warranted for a pilot project, correct." Tr. p. 1721:9-10. If, after the pilot program concludes, the Commission determines that the FCRM should continue, the Commission can review the appropriate, if any, adjustment to ROE with a well-established record and not mere speculation.

F. The Commission Well Understands Decoupling and Should Adopt the FCRM Pilot.

The MCC suggests that the Commission may want to defer adoption of a decoupling mechanism because HRC/NRDC did not present their decoupling proposal until February 12, 2019. MCC Brief, p. 4, footnote 1. This suggestion should be rejected. The parties had ample opportunity to ask data requests regarding the decoupling proposal, the opportunity to file cross-intervenor testimony addressing the FCRM proposal (as the MCC did) and the opportunity to pose questions to the parties during the May hearing. There has been sufficient time for parties to understand, criticize, and brief the proposal. And, if the decoupling proposal is not instituted now, it may be years before it can once again be considered.

Moreover, the Commission is very familiar with decoupling as the Commission has

⁸ See HRC/NRDC Petition to Intervene.

considered and learned about decoupling for years.⁹ Most recently, in 2016, the Commission held a roundtable on decoupling. The Montana Legislature, in 2017, passed Senate Joint Resolution 31, directing the Commission to further investigate decoupling. Then, in 2018, the ETIC held a hearing on the pros and cons of utility decoupling, and participants included the Commission, the MCC, NorthWestern, and Montana-Dakota Utilities.

In summary, the parties and the Commission have long discussed decoupling, and there has been plenty of opportunity in this docket to propound data requests, submit testimony, and cross-examine the key witnesses regarding the FCRM's mechanics. Moreover, no one doubts that customer preferences and concerns are changing and that NorthWestern must change with them. NorthWestern desires to offer additional services and options to meet these changing customer preferences and concerns and has always supported strong energy efficiency programs. The FCRM would facilitate NorthWestern meeting these customer interests.

III. The Reconnect and Customer Service Charges Align Costs to the Cost Causers.

A. The MCC's Position on the After-Hours Reconnection Fee Fails to Consider That All Customers Are Paying for the Decisions of a Few Customers, Which Misaligns Costs.

Instead of responding to NorthWestern's arguments in its Opening Brief on this issue, the MCC in its brief advances a new argument that the Commission should not approve the reconnection fee because it "would simply increase profits" to NorthWestern, and the Revenue Requirement Stipulation "already provides an opportunity to earn a reasonable return." MCC Response Brief, pp. 29-30. This position misses the point as to why NorthWestern has asked the Commission to approve this fee. It will simply offset the cost of the reconnections that are

⁹ See "Measuring Montana's Experiences With Decoupling," (Sonja Nowakowski, Energy and Telecommunications Interim Committee staff, January 2016), pp. 2-4, outlining Montana's consideration of decoupling.

included in NorthWestern's rates and paid by all other customers. As stated in NorthWestern's Opening Brief, the "fee is based on the cost of sending a qualified journeyman to reconnect the service." Ex. NWE-4, p. 18. Furthermore, Bobbi Schroepel 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.

Again, NorthWestern provides customers with every opportunity to reconnect service during normal business hours. Ex. NWE-4, p. 18. 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. This fee simply aligns costs to the cost causer. The MCC does not contest the evidence that such a fee is customary in the industry nor that the fee better aligns costs to the cost causer. Moving costs to the cost causer is an important regulatory goal. See Bonbright, James C., *Principles of Public Utility Rates*, p. 429 (2d ed. 1988). Thus, the Commission should approve the after-hours reconnection fee of \$150 as proposed by NorthWestern as it aligns costs with the cost causer.

B. The Record Supports an Increase to Customer Charges for All Customer Classes.

NorthWestern's proposal to increase monthly customer charges is based on the embedded cost of service study. The parties who oppose these increases are unable to justify why the Commission should not apply the results of this study. Instead, the HRC/NRDC, making the unprincipled argument akin to "the squeaky wheel gets the grease," assert that well-off customers are not complaining about subsidizing low-volume, low-income customers. HRC/NRDC Brief, p. 9. Equally unprincipled, the NWEAC argues against the accepted regulatory construct of applying expert judgment to develop a fair proposal. NWEAC Brief, V.

Finally, the MCC rejects the results of the embedded cost of service study as somehow contrary to efficiency and conservation. MCC Brief, p. 25. These parties' criticisms of NorthWestern's proposal are contrary to the fundamental principle that the utility's revenue requirement should be distributed fairly among the beneficiaries of the service. These criticisms also ignore the fact that, even with an increase, NorthWestern's customer charges are significantly lower than most other customer charges across the country. Tr. p. 1242:1-4. The Commission should reject the parties' criticisms and modestly move toward rates that more accurately reflect cost of service with no customer harm.

IV. The Commission Should Approve NorthWestern's Net Metering Proposal as It Moves Towards Elimination of an Unfair Hidden Tax.

VS/MREA spend nearly 50 pages attacking NorthWestern's proposal to create a new customer class and rate design for future net metering customers. With a few exceptions, VS/MREA fail to respond directly to arguments in NorthWestern's Opening Brief, but instead parrot their pre-filed testimonies and advocacy at the hearing. To that end, VS/MREA make very complex and technical arguments (e.g., cost of service), but also very trivial ones (e.g., use of the word "mandatory" in Ahmad Faruqui's testimony when talking about demand charges) in their brief. None of their arguments, however, provide the Commission with justification to reject NorthWestern's net metering proposal.

Surprisingly, the DEQ aligns itself with VS/MREA on this issue. Despite filing no testimony on this issue and not raising it at hearing through its own witness or cross-examination of other witnesses, DEQ now proposes for the first time in its Post-Hearing Brief that the Commission should reject NorthWestern's net metering proposal.¹⁰ DEQ's last minute attempt

¹⁰ Legislative intent was embodied in Senate Bill ("SB") 7 passed by both houses of the Legislature in 2017 and vetoed by the Governor on April 14, 2017. SB 7 simply prohibited cross subsidies in net

to weigh in on this issue relies on and mimics VS/MREA's advocacy and evidence and should be ignored. NorthWestern does not separately respond to DEQ's Post-Hearing Brief.

A. There is Substantial, Reliable Evidence Supporting NorthWestern's Proposal to Create a New Customer Class for Future Net Metering Customers.

Five independent, qualified experts in this case presented substantial evidence to the Commission that justifies creation of a new customer class for future residential net metering customers. First, Eugene Shlatz and Tim Stanton, from Navigant Consulting, Inc. ("Navigant"), prepared a cost/benefit study of net metering ("NEM Study") as required by law. The NEM Study found that "non-net metering customers significantly subsidize net metering customers" Ex. NWE-47, pp. 17-18. Then, Paul Normand from Management Applications Consulting, Inc. ("MAC") conducted both an embedded cost of service ("ECOS") study and a marginal cost of service ("MCOS") study (collectively referred to as "COS studies"). MAC's analyses found that net metering customers are not paying their cost of service. Ex. NWE-37, p. 17. Next, Dr. Faruqi from the Brattle Group ("Brattle") presented analysis that net metering customers on NorthWestern's system have significantly different load profiles than customers who do not net meter. Ex. NWE-38, p. 12. Finally, Dr. Dismukes from Acadian Consulting Group, on behalf of the MCC, similarly concluded that net metering customers are "unique" in energy consumption decisions which in turn likely impacts their load profiles and thus, justifies creation of a new class. Tr. pp. 2211:12–2212:5.

metering. It is precisely those subsidies that the DEQ seeks to perpetuate in its last-minute advocacy in this case. If DEQ or the Administration wishes to fund a particular program, it should include that program in its own budget, not hide it in NorthWestern residential customers' bills. DEQ had the opportunity to help develop policies that are both sustainable and fair to non-participating customers and chose not to do so. By arguing to perpetuate a cross subsidy between residential customers, the DEQ and the Administration are hindering the development of viable distributed energy models where they would make sense.

Arguing against this substantial, credible evidence, VS/MREA assert that NorthWestern's analyses are flawed and that the Commission should rely on VS/MREA's analysis to conclude that a net metering customer class is not justified. Specifically, they claim that NorthWestern's NEM Study failed to follow the Commission's directives; that it incorrectly concludes that the costs of net metering exceed the benefits; that NorthWestern's COS studies related to net metering were incorrectly conducted; and that differences in load shapes are not a justification upon which the Commission should rely to support creation of a new customer class and to do so would be discriminatory. VS/MREA Response Brief, pp. 5-31 and 43-46. VS/MREA urge the Commission to rely instead on the testimony of their two witnesses who allegedly "correctly conducted" "more accurate" analysis to deny NorthWestern's proposal to create a new class. *Id.*, pp. 3 and 28.

The Commission should reject this advocacy. NorthWestern's proposal, as supported by the MCC, clearly shows that action must be taken to correct the current hidden tax and there is substantial evidence to justify that action. NorthWestern's studies and analyses of the current net metering situation result in reasonable conclusions that are supported by the evidence. The following table shows that VS/MREA have derived values substantially higher than those derived by Navigant in each benefit category, while all values are lower in each cost category.¹¹

¹¹ For example, VS/MREA irrationally estimate that net metering enables NorthWestern to avoid between \$0.095/kWh and \$0.0108/kWh in system losses. NorthWestern's combined T&D loss factor is 7.32%. *See* Ex. NWE-16, p. 28, Table following line 14. Considering that loss factor, VS/MREA's estimate to avoided system loss costs are exorbitant. 7.32% of VS/MREA's highest estimate of the value of avoided energy costs, \$0.0593/kWh, is only \$0.0043/kWh or 40% of VS/MREA's estimated losses. Said another way, VS/MREA assert that NorthWestern can save 2.5 times the cost of its system losses. VS/MREA's estimate of avoided system losses costs are exorbitant.

Adoption Scenario	Navigant			VS/MREA			
	Low	Medium	High	Current	Low	Medium	High
Value Stream	\$/kWh						
Avoided Energy Costs	\$0.032	\$0.031	\$0.030	\$0.0495	\$0.0593	\$0.0580	\$0.0573
Avoided Capacity Costs	\$0.005	\$0.005	\$0.005	\$0.0346	\$0.0380	\$0.0375	\$0.0372
Avoided T&D Capacity Costs	\$0.003	\$0.003	\$0.002	\$0.0505	\$0.0554	\$0.0547	\$0.0542
Avoided System Losses	\$0.003	\$0.002	\$0.002	\$0.0095	\$0.0108	\$0.0106	\$0.0106
Avoided Carbon Cost	Included	Included	Included	\$0.0070	\$0.0070	\$0.0070	\$0.0070
Avoided RPS Compliance	\$0.000	\$0.000	\$0.000				
Avoided Environmental Comp	\$0.006	\$0.005	\$0.005				
Market Price Suppression	\$0.000	\$0.000	\$0.000				
Avoided Risk	\$0.000	\$0.000	\$0.000				
Avoided Grid Support Serv'cs	\$0.000	\$0.000	\$0.000				
Avoided Outage Costs	\$0.000	\$0.000	\$0.000				
Non-Energy Benefits	\$0.000	\$0.000	\$0.000				
Other Benefits	NA	NA	NA	\$0.008	\$0.008	\$0.008	\$0.008
Reduced Revenues	-\$0.146	-\$0.144	-\$0.144	-\$0.1155	-\$0.1183	-\$0.1198	-\$0.1194
Administrative Costs	-\$0.003	-\$0.003	-\$0.003	\$0.000	\$0.000	\$0.000	\$0.000
Interconnection Costs	\$0.000	\$0.000	\$0.000				
Integration Costs	\$0.000	\$0.000	\$0.000				
Net Value	-\$0.100	-\$0.101	-\$0.102	\$0.0364	\$0.0530	\$0.0488	\$0.0477

As shown, VS/MREA's results are illogical. Instead, as detailed below, NorthWestern's consultants – Navigant, MAC, and Brattle – all conducted appropriate analysis with reasonable, logical results.

- i. *VS/MREA's calculation of avoided energy inaccurately applies the proxy method, which results in higher costs. Whereas Navigant's use of the PowerSimm™ modeling more appropriately calculates avoided energy costs.*

As discussed in NorthWestern's Opening Brief, the PowerSimm model is a better tool than the QF-1 methodology as it can "capture the impacts of various levels of solar penetration, i.e., low, medium, and high." NorthWestern's Opening Brief, pp. 20-21 (citing Ex. NWE-49, p. 13). VS/MREA do not dispute this fact. Instead, they criticize NorthWestern's use of PowerSimm by arguing that it is an opaque model that is essentially a black box calculation lacking transparency. VS/MREA Response Brief, pp. 7-8. They support this position by citing to a recent district court decision. *Id.*, p. 7 (Judge Manley's decision related to the MTSun, LLC project). These arguments are wrong for several reasons.

First, the district court’s decision is not binding or controlling precedent on the Commission as it relates to this issue and is on appeal to the Montana Supreme Court. Second, and more importantly, the Commission has already rejected this argument multiple in Qualifying Facility (“QF”) contested case dockets. For example, Greycliff Wind Prime, LLC (“Greycliff”) raised this issue in Docket No. D2015.8.64. *See* Greycliff’s Motion in *Limine* filed on December 30, 2015. The Commission rejected it. *See* Final Order No. 7436d, ¶ 10. Another QF, Crazy Mountain Wind, LLC (“Crazy”), raised this same issue. *See* Crazy’s Motion in *Limine* filed in Docket No. D2016.7.56 on November 7, 2016. Again, the Commission rejected it. *See* Final Order No. 7505b, ¶¶ 21-24. Finally, in a more recent QF contested case docket involving Caithness Beaver Creek, LLC (“CBC”), the Commission again rejected arguments about PowerSimm lacking transparency. *See* Docket No. D2018.8.52, Final Order No. 7628b, ¶¶ 12 (regarding CBC testimony that PowerSimm lacks transparency) and 37 (accepting NorthWestern’s July 19, 2018 calculation of avoided energy that relied on PowerSimm).

Furthermore, a consultant hired by the Commission found the PowerSimm model to be “a reasonable tool for evaluating the costs and benefits” of NorthWestern’s acquisition of the hydroelectric facilities. *See* Evergreen Economics Final Assessment in Docket No. D2013.12.85, p. 1 (Mar. 27, 2014). Under the law, the Commission is bound to follow its precedent unless it can articulate sufficient grounds justifying a different decision. *Atchison, Topeka & Santa Fe Railroad Co. v. Wichita Board of Trade*, 412 U.S. 800, 93 S.Ct. 2367 (1973). In this case, the Commission lacks any grounds to reverse course and now find that use of PowerSimm is inappropriate because it lacks transparency. The Commission must continue to reject these attacks.

And even though the Commission’s minimum filing requirements for the NEM Study required use of the QF-1 proxy methodology for purposes of calculating avoided energy costs associated with net metering, the Commission should recognize that this requirement is incompatible with its directive requiring NorthWestern to “study a range of plausible adoption rates” of solar customer-generation. *See* Docket No. D2017.6.49, Notice of Commission Action, p. 3. As John Bushnell testified, the QF-1 methodology cannot “produce results which measure the system impacts of adding various amounts of NEM generation on NorthWestern’s system.” Ex. NWE-49, p. 13. Additionally, VS/MREA are wrong when they state that the method NorthWestern used in this case to calculate avoided energy costs with the PowerSimm model is not a Commission-approved methodology. Both Mr. Bushnell and Michael Babineaux testify that NorthWestern followed the Commission-approved methodology for calculating avoided energy costs when using the PowerSimm model. *Id.* (citing to Final Order No. 7628b in Docket No. D2018.8.52); *see also* Ex. NWE-50, p. 3.

Finally, use of PowerSimm in this case is more appropriate because it does not rely on a proxy resource. As testified to by Mr. Bushnell, the QF-1 methodology is dependent on the addition of a Combined Cycle Combustion Turbine (“CCCT”) in a future year. Ex. NWE-49, p. 4. The timing of adding a CCCT was based on NorthWestern’s 2015 Electricity Supply Resource Procurement Plan (“Plan”). *Id.* In NorthWestern’s 2019 Plan, a CCCT is no longer identified as a resource to be added to NorthWestern’s portfolio. *Id.*, pp. 6-7. This means that “it is no longer appropriate to use a CCCT to develop avoided energy costs.” *Id.*, p. 8. PowerSimm more appropriately calculates avoided energy costs since it takes into consideration various solar penetration levels and is not reliant on a “proxy” resource. The Commission should accept NorthWestern’s proposed avoided energy cost calculation presented in the NEM Study.

If the Commission disagrees with NorthWestern's arguments about the use of PowerSimm in this case and instead relies on the QF-1 methodology (even though it assumes a static resource portfolio with a proxy that is no longer applicable), the Commission should use NorthWestern's calculations as detailed in Mr. Bushnell's Exhibit __ (JBB-1). As Mr. Bushnell explains, VS/MREA's analysis is "much higher than the [then-] current QF-1 Tariff rate for solar PV." Ex. NWE-49, p. 8. VS/MREA calculate avoided energy costs ranging from \$49.50/MWh to \$59.30/MWh. Ex. VS/MREA-1, p. 59. Mr. Bushnell concluded that Briana Kobor's calculation was "about 42% more" compared to "using the current Commission-accepted QF-1 Methodology." *Id.*, p. 9.

When one compares VS/MREA's calculation to the most recently approved QF avoided cost rate, it is clear that VS/MREA's estimates of avoided energy costs are excessive. No recent calculation of avoided cost of energy has approached \$50.00/MWh on a levelized basis. On August 12, 2019, the Commission issued Order No. 7661c finding that a reasonable determination of NorthWestern's avoided cost of energy on an around-the-clock basis is \$24.38/MWh for a 15-year term. *See* Docket Nos. D2019.2.8 and D2019.2.9, Order No. 7661c, ¶ 49. Adding 10 years to that calculation will not double the value. In light of the substantial evidence, the Commission should conclude that VS/MREA's calculation of avoided energy costs is highly skewed in favor of higher cost estimates for use in its cost/benefit analysis and should reject it as unreasonable and an incorrect application of the QF-1 Methodology.

ii. VS/MREA's proposal improperly attempts to apply another utility's Effective Load Carrying Capability to NorthWestern, which in turn derives unreasonable avoided capacity costs.

VS/MREA urge the Commission to use the avoided capacity costs derived by Ms. Kobor for purposes of the avoided capacity costs. VS/MREA Response Brief, p. 15. These values

improperly rely on a method that is not appropriate for NorthWestern. Specifically, Ms. Kobor’s calculation of avoided capacity costs applies the “Capacity Factor Method” to the marginal costs identified in NorthWestern’s MCOS study. Ex. VS/MREA-1, p. 72. The “Capacity Factor Method” is taken from a paper written by Milligan and Parsons regarding Effective Load Carrying Capability (“ELCC”), which “evaluated the robustness of three different methods to approximate the ELCC.” *Id.*, p. 71. Mr. Bushnell testifies that this method is not appropriate. Ex. NWE-49, p. 14. He further testifies that it is more than 20 years old and based on “synthetic wind production generated from a Colorado air quality monitoring site located ‘several hundred miles’ from the utility load data” that mismatches loads with wind production. *Id.*, pp. 14-15. He also notes that the utility in the research paper is a summer peaking wholesale power cooperative while NorthWestern’s “absolute peak loads occur in winter.” *Id.*, p. 15.

Mr. Stanton, from Navigant, also agreed that it would be unreasonable to apply another utility’s ELCC to NorthWestern. Tr. p. 1541:7-9. Mr. Stanton supported this conclusion by testifying that “[d]ifferent states have different systems. . . . But one thing that happens is that the ELCC is very sensitive to when the system peaks and that can certainly change from state to state.” Tr. p. 1541:10-16. For these reasons, the Commission should reject VS/MREA’s calculation of avoided capacity costs and accept NorthWestern’s calculation.

iii. VS/MREA improperly equate NorthWestern’s MCOS study with the National Economic Research Associates regression analysis for purposes of calculating avoided T&D capacity costs.

VS/MREA argue that the Commission should reject Navigant’s calculation of avoided T&D capacity costs because it did not use detailed or accurate marginal cost information or the National Economic Research Associates (“NERA”) method. VS/MREA Response Brief, p. 11. VS/MREA recommend that the Commission adopt their values because they claimed to have

used the NERA method. *Id.*, p. 16. However, VS/MREA did not apply the NERA method, but instead they used information from “the Company’s marginal cost of service study that were based on **analyses similar to the NERA method.**” *Id.* (Emphasis added). To support their recommendation, they cite to testimony from Dr. Dismukes. *Id.*, p. 17. Upon review of the cited testimony from Dr. Dismukes, his testimony concerned the purpose of a MCOS study, not the NERA method or its use for purposes of calculating avoided T&D capacity costs. Tr. p. 2200:13-23.

As Mr. Normand testified, utilities use COS studies to determine the spread of the revenue requirement among the various customer classes, not to “plan for their reliability and their ability to serve the needs of their customers.” *Id.*, p. 1269:8-22. Furthermore, Dr. Dismukes noted that MAC’s MCOS study is not exactly like NERA regression analysis. *Id.*, p. 2200:2-7. Thus, VS/MREA’s reliance on MAC’s MCOS is not synonymous with the NERA method. Additionally, inconsistent with the Commission’s directive in Docket No. D2017.6.49, VS/MREA’s analysis failed to account for location specific attributes. Ex. NWE-42, p. 12.

Furthermore, contrary to VS/MREA’s claim, Navigant did use detailed T&D information that was appropriately forward-looking. Tr. pp. 1505:3–1506:1; *see also* Ex. NWE-42, p. 9. Specifically, Navigant relied on detailed distribution substation information for the distribution avoided costs and NorthWestern’s proposed transmission capacity projects as provided for in NorthWestern’s Transmission Plan for transmission avoided costs. Ex. NWE-41, pp. 15 and 17. Avoided costs are based on the future – in this case, costs that net metering solar generation could help NorthWestern avoid. Navigant’s analysis was appropriately forward-looking. VS/MREA’s analysis, however, used historical information to try and predict the future. Ex.

NWE-42, p. 9. For all these reasons, the Commission should find that NorthWestern's calculation of avoided T&D capacity costs as set forth in the NEM Study are more appropriate.

- iv. VS/MREA's argument to include uncompensated value of net metering generation in lost revenues calculation is inconsistent with the law and the Commission's directive in Docket No. D2017.6.49.*

VS/MREA assert that NorthWestern did not properly account for uncompensated generation when calculating the lost revenues cost category and that this "must be picked up in a benefit-cost analysis." VS/MREA Response Brief, p. 20. The Commission describes lost revenues in the minimum filing requirements as "[l]ost utility revenue associated with reduced sales due to net metering." Notice of Commission Action issued on August 9, 2017, Docket No. D2017.6.49, p. 6. Montana law states that after one year if a net metering customer has any remaining credited generation on their bills the credits are zeroed out. § 69-8-603(4), MCA. As a result of this law, NorthWestern loses revenues from net metering due to reduced sales for each one-year period. Therefore, it is an appropriate limitation to exclude uncompensated generation in the calculation of lost revenues.

- v. MAC's ECOS study contains reasonable results concerning net metering customers, which results show they are not paying their full cost of service.*

VS/MREA assert that MAC's ECOS is unreasonable and should not be relied upon because it (1) conflates inflows and outflows of electricity when allocating costs; (2) did not weather-normalize net metering customers' usage; (3) used inaccurate data; and (4) failed to use the non-coincident peak ("NCP") for the residential class as a whole. VS/MREA Response Brief, pp. 24-28. These arguments fail to present the entire picture and conveniently ignore evidence that refutes them. MAC's ECOS, based on available data, was properly used to allocate costs to cost causers. Whereas, VS/MREA's cost of service analysis "assum[es] negatives for coincident peak in the three summer months and then somehow she increased the

revenues for net metering customers by a little over [§]520,000.” Tr. p. 1271:11-14. With these adjustments, as Mr. Normand noted, “any class would look good.” *Id.*, p. 1271:15-16.

VS/MREA’s position that MAC’s ECOS is incorrect because it used net load instead of treating inflows (gross demand) and outflows (gross solar generation) separately is wrong. Even if it was appropriate to allocate costs based on inflows and outflows, NorthWestern does not have this data. Tr. p. 1289:13-21. Net metering customers only have one meter; net information is all that is available. *Id.* It was not a fatal flaw for MAC to use net loads of the net metering class when allocating costs. Inflows and outflows relate to customers’ energy usage. Most costs are fixed and not driven by energy usage. *Id.*, p. 1268:10-24. Instead, T&D costs are driven by demand. *Id.* Thus, because T&D costs should be allocated based on demand, it is irrelevant that MAC used net loads instead of separate inflows and outflows.

Next, VS/MREA argue that the Commission should reject MAC’s ECOS because it failed to weather-normalize net metering customers’ loads. VS/MREA Response Brief, pp. 24-25. NorthWestern does not dispute that those loads were not weather-normalized. Tr. pp. 1194:18–1195:5. However, even if those loads had been weather-normalized the impact would have been minimal in this case. As noted in the VS/MREA Response Brief, Ms. Kobor testifies that for the 2017 test year, temperatures were 0.6% colder than the 10-year mean. Ex. VS/MREA-1, p. 25. NorthWestern’s witness, Joseph Janhunnen, confirms this figure. Ex. NWE-29, p. 5. This is a less than 1% difference. If applied in this case, the negative 1.06% return currently earned from net metering customers would be minimally reduced. *See* Statement L, p. 237, column n, line 7.

Conveniently, VS/MREA fail to recognize that if loads must be weather-normalized, so must kilowatt-hour sales and related revenues. If revenues were also weather-normalized,¹² they would have been reduced to reflect normal weather. *See, e.g.,* Ex. NWE-29, Exhibit __ (JSJ-1) p. 2, line 1 compared to p. 3, line 1 (exhibit reflecting lower revenues for residential class when weather normalized). VS/MREA is only adjusting one side of MAC’s analysis and thus, is improperly allocating costs.

VS/MREA also claim that MAC used “inaccurate data” to conduct its ECOS because it did not use the load sample data for net metering customers. VS/MREA Response Brief, p. 25. This claim mischaracterizes the data MAC used. MAC did not use inaccurate data nor did it use the wrong data. MAC simply used the best available data source that met the needs of its analysis. As explained in NorthWestern’s Opening Brief, MAC had good reason to use different data than NorthWestern’s other consultants. *See* NorthWestern’s Opening Brief, pp. 26-27. VS/MREA’s response to this explanation and description of MAC’s analysis was that it was “convoluted.” VS/MREA Response Brief, p. 25. This is not true; the basic explanation was simple. Again, different consultants using different data to perform different analyses is not an issue that should call into question the results of MAC’s analysis. Tr. p. 1187:13-17; p. 1640:10-15. MAC’s analysis focused on the class cost allocation for the class as a whole. This focus on allocation meant that MAC needed more data than a sample of residential net metering customers could provide as MAC was performing “calculations consistent to involve coincident peak and non-coincident peak” for the entire class. Tr. p. 1272:4-6. As such, the National

¹² MAC was consistent and did not weather-normalize loads or the associated revenues for the net metering customers. *See* files ACS-004 TY2017 Billing Determinants Normalized 082218, line 254, Columns G and I (less Two Dot revenues) and ACS-004 TY2017 Billing Determinants 082218, line 219, Columns G and I, provided in response to Fourth Update to Data Request PSC-001a regarding Statements L and M.

Renewable Energy Laboratory data used by Navigant had the appropriate load shapes for the analysis MAC needed. Therefore, the Commission should recognize that MAC relied upon the appropriate data for its analysis needs and reject VS/MREA's attempt to discredit MAC's analysis.

Finally, VS/MREA argues that MAC's analysis is flawed because MAC did not use the residential class NCP, but instead used the net metering class NCP. VS/MREA Response Brief, pp. 26-28. The fallacy in this argument is that it fails to recognize that net metering customers are very different from the rest of the residential class as they have different consumption characteristics – “almost 50 percent greater usage customers than residential.” Tr. p. 1272:4-20. Furthermore, as testified to by Mr. Normand, distribution costs are driven by peak demands on NorthWestern's distribution system. Ex. NWE-37, p. 24. NCP demands “most accurately reflect th[e] loads ... and to the extent to which each class is incrementally responsible for the costs of the distribution system capacity costs.” *Id.* Thus, since net metering customers are different from the rest of the residential class, MAC appropriately used their specific NCP.¹³

This treatment of the net metering customers was consistent with MAC's treatment of other subgroups within classes. For example, in the General Service (“GS”) Primary class, four subclasses were identified. *See* Statement L, p. 444, lines 14-17. Three of these subclasses – GS Primary Non-demand Non Choice, GS Primary Demand Non Choice, and GS Primary Demand Net Meter – had peak demands in the month of August, but the fourth – GS Primary Demand Choice – had an NCP in June. *Id.* As such, MAC allocated costs to the GS Primary Demand

¹³ During the hearing, staff also questioned Mr. Normand on this issue. Staff stated that it disagreed with Mr. Normand that the net metering class could have a peak demand in June finding that “strange.” Tr. p. 1220:16-21. As Mr. Normand testified, it is not strange. *Id.*, p. 1219:14-19. He concluded the “the process was good” and that the results were correct “because [he] checked and double-checked the calculation” and the results look “consistent.” *Id.*, p. 1219:3 and pp. 1272:21 – 1273:4.

Choice subclass based on an NCP in June, not August. This is appropriate because these different groups “impose demands on distribution facilities that vary.” Ex. NWE-37, p. 24.

VS/MREA also cite to a decision from the Arizona Corporation Commission to support their position that the entire residential class NCP must be used to allocate costs to the net metering customers. VS/MREA Response Brief, p. 27. The Commission should disregard this decision for two reasons: It is not binding on this Commission and Arizona is very different than Montana. Load in Arizona is summer peaking whereas NorthWestern’s load in Montana is primarily winter peaking. Ex. NWE-49, p. 15. Since these two jurisdictions have different peaking characteristics, this Commission should not be inclined to follow Arizona as precedent.

vi. Brattle’s load shape analysis appropriately validates that net metering customers are different.

As discussed in NorthWestern’s Opening Brief, Brattle’s analysis of net metering customers on NorthWestern’s system confirmed that they use and rely on NorthWestern’s system differently than customers without net metering systems. See NorthWestern’s Opening Brief, p. 24 (citing Ex. NWE-38, pp. 16-17). Specifically, net metering customers use less energy than non-net metering customers. *Id.* Furthermore, and most importantly, almost all of the net metering customers send energy they produce back onto NorthWestern’s system. *Id.* VS/MREA agree with NorthWestern that net metering customers are different for this reason. VS/MREA Response Brief, p. 4. Mr. Normand described these customers’ loads as “ducks, meaning the curve and the shape of the curve basically doesn’t look anything like any customer.” Tr. p. 1272:14-16. In an attempt to refute this clear distinction, VS/MREA argue that the Commission should ignore this evidence for two reasons: the law and their claim that Brattle’s load shape analysis is wrong. VS/MREA Response Brief, pp. 43-46. Their arguments are incorrect.

VS/MREA rely on § 69-8-611(1), MCA to support their position that the Commission is prohibited from basing its decision to create a new customer class for future net metering customers on the grounds that they have different load shapes than other residential customers.¹⁴

VS/MREA Response Brief, p. 43. Section 69-8-611(1), MCA, provides that,

After a study is completed in accordance with 69-8-610 and subject to subsections (2) and (4) of this section, if the commission finds that customer-generators should be served under a separate classification of service as part of a public utility's general rate case, it shall establish appropriate classifications and rates based on the commission's findings relative to:

- (a) the utility system benefits of the net metering resource; and
- (b) the cost to provide service to customer-generators.

Basic grammar rules refute VS/MREA's interpretation of this statute. The law does not specify the grounds upon which the Commission must rely if it believes a new customer class should be created. Instead, the law provides that if the Commission finds that net metering customers should be served under a separate classification of service, it must set the appropriate classifications and rates on the benefits of such net metering systems and the cost to serve them. Put differently, the Legislature intended the Commission to use the benefits of and costs of service to set the appropriate type of classifications and rates, not to establish them in the first place.

Even if the Commission disagrees with the above argument, nothing in the statute limits the Commission from relying on information in addition to the NEM Study and COS studies. The statute does not include the word "only". It does not read, "it shall establish appropriate classifications and rates based only on the commission's findings relative to:" VS/MREA have unlawfully read "only" into the statute. *See infra* citing § 1-2-102, MCA. VS/MREA's

¹⁴ Throughout VS/MREA's Response Brief, they cite to HB 219 as the authority instead of citing to the codified statute. Since the statute is the more appropriate cite, NorthWestern will refer to it in lieu of HB 219.

interpretation of the law incorrectly places inappropriate restrictions on the Commission's authority. As such, the Commission is not confined to relying only on the NEM Study and COS studies. Thus, it is lawful for the Commission to rely on other grounds including load shape analysis that demonstrates that net metering customers are markedly different from other residential customers.

Next, VS/MREA attack Brattle's load shape analysis by arguing that it "looks only at averages of the customer-generator subgroup compared to the average of the residential class as a whole." VS/MREA Response Brief, p. 44. To make this point, VS/MREA witness Madeline Yozwiak compares average sampled net metering customers' loads to the range of all sampled residential customers' loads. Ex. VS/MREA-2, p. 8. Dr. Faruqui aptly refuted this attack testifying that Ms. Yozwiak's analysis takes an average and compares it to the extreme bounds or outliers. Ex. NWE-39, p. 5. Essentially, Ms. Yozwiak is comparing apples with oranges, resulting in unreasonable conclusions. *Id.* As shown in Dr. Faruqui's rebuttal testimony, based on Ms. Yozwiak's position, the Commission should not have created a separate class for Small Commercial and Industrial ("C&I") customers as the average loads for Small C&I customers fall within the variability for the residential class as a whole. *Id.*, p. 6. Even though Dr. Faruqui agrees with Ms. Yozwiak that dispersion or the range of values should be reviewed, more important than the range is the median. Tr. p. 1347:7-9. Hence, Brattle's analysis focused on the median or average of the load shapes in order to paint an accurate picture of the load profiles of these two groups of customers. As Dr. Faruqui testified, "We have to look at the aggregation of all NEM customers versus the aggregation of all non-NEM customers in order to draw a value conclusion." Tr. p. 1455:2-4.

VS/MREA further claim that the Commission should not rely on Brattle's load shape analysis because to do so would be discriminatory as "NorthWestern fails to identify an objective standard for when a load shape is sufficiently different to justify a separate class." VS/MREA Response Brief, p. 45. This argument suggests that NorthWestern should have developed an objective standard that applies to all situations whereby a load shape analysis is being used to justify a new class. Given that rate making is a fluid process, a one-size-fits-all standard does not make sense. This would be analogous to "looking at one dimension of what is a three-dimensional queue." Tr. p. 1454:22-23.

There is substantial, objective load shape evidence in this case that justifies a separate class. First, Dr. Faruqi testified that net metering customers at times have negative net loads. Tr. p. 1310:13-24. When asked by Commissioner Koopman if he was comfortable with the load shape analysis, he testified, "I am. We have looked at that data for at least three utilities ... and there is no surprise there. It is as expected, they generate a lot of power during certain hours. They produce more than they're consuming so they have negative load, net load." *Id.*, p. 1432:10-23. This fact – negative load – denotes an objective difference between net metering customers and non-net metering customers. Second, there are approximately 280,000 residential non-net metering customers that have load shapes different than net metering customers. *Id.*, pp. 1462:23–1463:5. Put differently, more than 94% of NorthWestern's residential non-net metering customers have load shapes different than NorthWestern's average net metering customers. This is very clear, objective evidence that the load shapes for net metering customers are sufficiently different than the load shapes of non-net metering customers. These differences along with the NEM Study and COS studies are sufficient grounds for creation of a separate class for future net metering customers.

B. A Demand Charge Reduces the Hidden Tax Presently Being Imposed on Non-Net Metering Customers.

As shown above, there currently exists an inequity within NorthWestern’s residential class between those who choose not to install a net metering system or do not have the funds to do so with those who do. As noted in NorthWestern’s Opening Brief (p. 17), this inequity stems from the current rate design. Specifically, 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 based on customers’ usage. Customers who self-generate through a net metering system will likely require less energy from NorthWestern and are credited for excess generation produced by their systems at the full retail rate, and thus, will under-pay for the investments NorthWestern has 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. Ex. NWE-38, p. 10. In this case, NorthWestern proposed a three-part rate including a demand charge – a charge based on each customer’s highest draw of energy in a given month – as the solution to this problem. Ex. NWE-38, p. 7.

VS/MREA criticize NorthWestern’s proposed demand charge claiming it is “inequitable, unfair, and unnecessary.” VS/MREA Response Brief, p. 33. They claim that demand charges are not appropriate; are uncommon for residential customers; fail to allow customers to manage their energy usage; are not better than the two-part rate; are discriminatory; and reduce the payback for those who have installed solar thereby harming the solar industry in Montana. *Id.*, pp. 33-41. NorthWestern presented evidence that refutes these claims. A three-part rate including a demand charge is the right solution to the problem. The MCC supports a demand charge. Customers can and will understand it. The Commission’s directive is to protect all customers, not any specific industry.

i. A three-part rate that includes a demand charge is not a novel rate design.

VS/MREA clearly take umbrage with NorthWestern's proposed demand charge arguing ad nauseam over semantics and the use of the word "mandatory" in an exhibit attached to Dr. Faruqui's testimony. VS/MREA Response Brief, pp. 35-37. Dr. Faruqui testified at hearing about his list of utilities stating that, "Several utilities have a mandatory demand charge. Some of them have constraints and caveats." Tr. p. 1461:20-21. The point of the list was to show that over 60 utilities have demand charges for residential customers. *Id.* Thus, whether mandatory or voluntary, more than 61 utilities¹⁵ across the United States have adopted a demand charge for residential customers. Dr. Faruqui's testimony equates this recent trend to a revolution. *Id.*, p. 1459:17-21 ("It's a very large number compared to what the number was just a decade ago, let alone what it was two decades ago. ... It's the beginning of a revolution, one could say, in rate design.").

In discussing this issue with Commissioner Koopman, Dr. Faruqui noted that a demand charge is new for residential customers as compared to other customer classes, but he further testified that "even that's changing as I present in my testimony." Tr. p. 1418:6-7. One of the biggest changes in the last several years occurred in Kansas. VS/MREA attempt to discount what happened in Kansas by saying it's an "outlier". VS/MREA Response Brief, p. 33. Instead of looking negatively at the situation, one could argue that the Kansas Corporation Commission ("KCC") was innovative by realizing that there was an issue that needed a reasonable solution. And that reasonable solution was a three-part rate for net metering customers.

¹⁵ At hearing, Dr. Faruqui added Flathead Electric Cooperative ("FEC") to his list of utilities with a demand charge for residential customers. In their brief, VS/MREA try to discredit this fact by pointing out the low rate for FEC customers. VS/MREA Response Brief, p. 37. The specific rate is irrelevant. The fact remains that another utility in the United States and one in Montana has adopted a mandatory rate design that includes a demand charge for the residential class.

It bears repeating that the KCC was presented with similar evidence as presented in this case. Based on that evidence, it 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.

See KCC Final Order, ¶ 22, Docket No. 16-GIME-403-GIE (provided in response to Data Request VS/MREA-183d). Again, the courts in Kansas agreed with the KCC's decision noting 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, p. 14. Like the KCC, this Commission can take an innovative approach to modernizing rate design by adopting a demand charge for the net metering customers.

ii. NorthWestern's proposed three-part rate including a demand charge is the best available option.

VS/MREA further claim that NorthWestern's proposed demand charge is inappropriate because it does not collect costs associated with the demand that an individual customer places on the system. VS/MREA Response Brief, pp. 38-40. VS/MREA miss the point with this literal argument. This, however, does not make NorthWestern's proposed charge arbitrary. The demand charge is designed to recover delivery costs incurred to serve customers. Right now,

[a] customer turns on the switch and the bulb lights up or the air conditioner turns on, two things were needed for that power to get to the customer. The first was for the energy to be produced at a power plant. ... The energy that's coming through would not get to the customer without the power plant existing to begin with, without the transmission towers and the substations and the circuits and the feeders existing.

Tr. p. 1416:3-15; Ex. NWE-38, p. 62 ("The demand charge is set to recover the remainder of the target revenues, which primarily includes transmission and distribution costs, as well as a small

portion of customer costs.”). If the term “demand” is confusing, the Commission could rename the charge. But, this rate mechanism helps alleviate the problem.

During the hearing, there was discussion about time-of-use (“TOU”) rates as a possible solution to the net metering hidden tax. Both Dr. Faruqui and Ms. Kobor see advantages to TOU rates for rate design purposes. Tr. p. 1424:17-22; Ex. VS/MREA-1, p. 140. Nevertheless, in this case, there is no evidence that supports a TOU rate. The Legislature gave the Commission the authority to fix this issue now, and if the Commission finds that justification exists to create a new customer class, then it needs to adopt an appropriate rate design. At present, that rate design includes a demand charge.

In their response brief, VS/MREA propose for the first time that instead of approving a three-part rate design the Commission should instead adjust the rate that customers are credited when they “sell” energy back to NorthWestern. They claim this is consistent with the law. VS/MREA Response Brief, p. 31 (citing to §§ 69-8-603 and -611(3), MCA). Before addressing the substantive problems with this proposal, NorthWestern needs to clarify the law. With the passage of HB 219, there are two versions of § 69-8-603, MCA – one is “temporary” while the other is classified as “effective on occurrence of contingency.” According to HB 219, Section 13, the second (effective on occurrence of contingency) does not become effective until the Commission issues an order finding that net metering customers should be served in a separate class and it provides for an exception to the calculation of net energy. This exception, § 69-8-611(3), MCA, states that the Commission in an electric rate review can set separate rates for a net metering customer’s production and consumption. Thus, unless and until the Commission approves a new class for future net metering customers, the first (temporary) § 69-8-603, MCA, remains the law.

With that clarification, it should be noted that no party in this case presented this option to the Commission for consideration. Even though VS/MREA first raised this option in their brief, they do not propose a rate that the Commission should set for a net metering customer's production. As such, given the evidence in this case and the lack of analysis on this issue, it is unclear if simply revising the production rate received by net metering customers would alleviate the cross-subsidy issue. This situation exists because net metering customers use less energy and are credited at the full retail rate for excess energy generated by their systems and the current rate design is set to recover a revenue requirement relying on historic costs and normalized usage. As Dr. Faruqui testified, "their impact on the grid is not proportional to their consumption." Tr. p. 1454:15-17. In order to make this option work, the credited production rate must be set to ensure NorthWestern recovers the costs it incurs to serve net metering customers. There is no analysis in this case as to what that rate would or should be. For these reasons, the Commission should reject VS/MREA's recommendation and find that the demand charge is the appropriate rate design.

iii. The evidence supports the fact that customers will know how to respond to demand charges and manage their energy loads accordingly.

In its Opening Brief, NorthWestern explained that customers are savvy enough to understand demand charges. *See* NorthWestern's Opening Brief, p. 29. VS/MREA argue that it is not about understanding a demand charge but "what to do about the charge." VS/MREA Response Brief, p. 34. VS/MREA take the position that residential customers will not know how to adjust their energy use with a mandatory demand charge as there is "no actionable price signal." *Id.*, (citing to Ms. Kobor's direct testimony). Ms. Kobor then relies on Ms. Yozwiak's testimony to support this position. Ex. VS/MREA-1, p. 135. Ms. Yozwiak's testimony states that there is empirical evidence from a survey conducted by Arizona Public Service ("APS")

supporting VS/MREA's position.¹⁶ Ex. VS/MREA-2, p. 25. VS/MREA misrepresent the survey's results. The survey actually contradicts VS/MREA's position. According to the APS survey, half of the surveyed customers did not find a demand charge to be difficult to manage. *Id.*, Exhibit MY-6, p. 2 (slide 5). Specifically, 25% agreed that "it's easy to control demand" while 15% said it was "relatively easy" and 10% said it was neither difficult nor easy. *Id.* In fact, only 23% said it was difficult. *Id.*

Additionally, this testimony and advocacy from VS/MREA has been rejected in another jurisdiction. Vote Solar and Sierra Club presented this same argument in Kansas including the same testimony from Ms. Yozwiak about the APS study and how it showed that demand charges are difficult to understand. *See* response to Data Request VS-MREA-183d, Attachment (KCC Order Approving Non-unanimous Stipulation and Agreement), ¶ 60. The KCC found "no merit" in their position and instead agreed with Dr. Faruqui and the utility, Westar, that demand charges are not difficult to understand and that customers will be able to manage their energy costs. *Id.* The KCC specifically noted that the APS survey contradicts Ms. Yozwiak's own testimony in that "more than two-thirds of customers enrolled in APS's three-part rate knew their rate had a demand charge **and knew how to manage their energy costs.**" *Id.* (Emphasis added).

As noted in NorthWestern's Opening Brief, customers can strive to minimize their monthly demand charge by timing the use of their major electric appliances. This concept is also in line with the results from the APS survey where almost 60% said that they manage their demand charge by avoiding simultaneous use of major appliances. Ex. VS/MREA-2, Exhibit MY-6, p. 2 (slide 6). When asked about this concept at hearing, Ms. Kobor tried to deflect the

¹⁶ Interestingly, VS/MREA use the APS survey to support their position, but then try to discount it by saying that it is irrelevant because the rate is voluntary and was also specifically targeted at certain customers. VS/MREA Response Brief, p. 34.

point by saying she could not control certain events, which means you may be required to run several appliances at one time. Nevertheless, she agreed “that it’s theoretically possible to manage your peak demand.” Tr. p. 1931:1-14. Interestingly, this concept – managing your electricity use by controlling your peak load with “smart” appliances – illustrates how TOU rates are beneficial to customers. Tr. pp. 1425:15-1426:2. Since VS/MREA advocate for TOU rates as the preferred alternative, then they must acknowledge and accept that customers have the ability to understand and respond to actionable price signals for demand management.

As noted in NorthWestern’s testimony, NorthWestern will engage in customer education to inform future net metering customers about how to manage this charge and reduce their bills accordingly. Ex. NWE-5, pp. 14-15. Specifically, NorthWestern “intend[s] to develop ‘fact sheets’ that will assist both solar installers and customers. These fact sheets will address many things surrounding private generation, including how billing works, the credit process, and the demand charge component of the rate structure.” *Id.*, p. 14. NorthWestern is confident that it will be able to work with its customers to help them understand a demand charge and how the pricing works. *Id.*, pp. 14-15. VS/MREA agree that customer education is “essential.” Tr. p. 1853:13-15. The Commission should similarly conclude that with education residential customers will be able to manage and respond to a three-part rate that includes a demand charge.

iv. The Commission’s job is to do what is best for the utility and its customers, not a particular industry.

VS/MREA claim that NorthWestern’s proposed rate design will negatively impact customers who choose to install solar on their homes both through higher bills and longer pay-back periods on their investments in solar. VS/MREA Response Brief, pp. 41-43. This argument is in line with VS/MREA’s mission to make solar power more accessible and more affordable through state level advocacy supported by almost \$6.5 million in donations in 2018.

Tr. pp. 1862:18-1864:22. VS/MREA’s argument, however, fails to acknowledge that right now these customers are benefiting at the expense of other customers. It is not within the Commission’s statutory mandate to ensure a private industry continues to thrive in Montana. Instead, the Commission was created “to supervise and regulate the operations of public utilities.” § 69-1-102, MCA. To that end, the Commission is tasked with ensuring rates charged to utility customers are reasonable and just. § 69-3-201, MCA. The Montana Legislature is the entity that sets policy directives that may benefit certain industries. In 2017, the Legislature did this with the adoption of HB 219, which made a clear policy statement for Montana – net metering is important in Montana, but not at any cost.

That being said, NorthWestern wants to partner with customers to provide them with the service they want but only when doing so is “sustainable and fair to other customers.” Ex. NWE-2, p. 8. The evidence in this case shows that it is “not sustainable or fair” to continue the current situation. Under the current rate structure, the hidden tax equates, on average, to approximately \$400 a year for each net metering customer on NorthWestern’s system. Tr. p. 1453:1-5. This totals approximately \$800,000 per year in costs (approx. 2,000 net metering customers multiplied by \$400) that net metering customers are imposing on other residential customers.

NorthWestern acknowledges that its proposal in this case will have some impact on customers who choose to install solar in the future through the extension of the payback period. *See* Tr. p. 1453:12-19 (extending payback period for those who install solar from 17 years under the current scenario to 22 years under NorthWestern’s proposal). NorthWestern’s calculation of the payback period, however, is not static. The payback period will decrease if the costs of solar panels continue to fall. *Id.*, p. 1414:1-17 (Dr. Faruqui’s testimony noting that industry is “seeing

a steady decline in the cost” to install solar). This impact on the solar industry does not outweigh the fact that a majority of residential customers (approx. 300,000 residential customers, including those customers who are low income) are paying for the minority of customers who have the ability to install solar.¹⁷ The Commission cannot ignore this evidence simply because there may be an impact on private industry. The Commission does not regulate the private solar industry and must do what is best for the utility and customers.

C. VS/MREA Incorrectly Interpret the Law Concerning Grandfathering.

VS/MREA request that the Commission grandfather existing net metering customers if it approves a new customer class by setting the grandfathering deadline as 60 days after issuance of the final order. VS/MREA Brief, pp. 46-47. VS/MREA claim that such a request is consistent with the law. *Id.* They claim that the statute provides “on or **after** the date on which the commission adopts a final order implementing the new classifications” and that this language in turn means that a grandfathering deadline after the issuance of the final order is permissible. *Id.* (emphasis in original). Such a claim is inaccurate. VS/MREA omit important words from the statute in their interpretation. This omission violates standard rules of statutory construction. *See* § 1-2-101, MCA (“the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted.”). The relevant portion of the net metering grandfathering statute in its entirety reads as follows:

¹⁷ Also, evidence in this case shows that “lower income customers have been less likely to install rooftop solar PV than higher income customers” citing to three independent studies supporting this conclusion. Ex. NWE-38, pp. 22-23. VS/MREA argue that it is not “only rich people” who install solar and more middle-income families are installing solar. VS/MREA Response Brief, p. 43 (citing Andrew Valainis’ prefiled direct testimony). Unlike NorthWestern, VS/MREA have not provided empirical evidence to support this position. *See* Ex. VS/MREA-4, p. 4 (Mr. Valainis’ testimony that he based his opinion on “discussions with installers.”).

Except as provided in subsection (2), if the commission approves new classifications of service for customer-generators in accordance with 69-8-611, the new classifications apply only to customer-generators interconnecting net metering systems on or after the date on which the commission adopts a final order implementing the new classifications.

§ 69-8-612(1), MCA (emphasis added).

The Legislature clearly provided that if the Commission establishes a new class, it would only apply to net metering customers who interconnect on or after the issuance of the final order. Put differently, only customers who have interconnected their systems to NorthWestern at the time the final order is issued are grandfathered, and any customer who interconnects on or after the date of issuance of the order is part of the new class. This statute does not allow, as requested by VS/MREA, for a grandfathering deadline that is after issuance of a final order. Per the law, the grandfathering deadline is the date the Commission's final order is issued.

The section of the statute that does require some interpretation concerns the word "interconnecting." As Mr. Schwartzberger testified, NorthWestern "recommends that qualifying status [for purposes of interconnecting a net metering system] be achieved on the date on which the local or municipal electric code official(s) with jurisdiction documents their approval on the form(s) normally used by the local inspecting authority." Ex. NWE- 48, p. 15. Mr. Schwartzberger further testified that "NorthWestern requires such documentation prior to installing a net meter" and it is a document necessary to interconnect a system, which places more control with customers. *Id.*

VS/MREA claim that such conditions are "outside of customers' control" because by the time a system receives the local or municipal electric code approval customers have already "commit[ted] time and money." VS/MREA Response Brief, p. 47. For these reasons, they urge the Commission to adopt their proposal to set a grandfathering deadline 60 days after the final

order issues. *Id.* Potential net metering customers have been aware of the possible creation of a new class since passage of HB 219 in May of 2017. At that time, the Legislature signaled to Montanans that the Commission has authority to decide whether a new customer class is warranted for customers who net meter and that if the Commission exercises that authority, customers who interconnect a system after issuance of a final order are part of that new class. *See* §§ 69-8-611 and -612, MCA. To that end, last September, NorthWestern filed an electric rate review with the Commission, which, per the law, required it to include the NEM Study. In that filing, NorthWestern proposed that the Commission create a new class. Thus, residential customers have been aware of the potential for a new class for well over two years and especially for the last eleven months. If customers decided to commit time and money to install a net metering system since then, they should have factored into their decision that they may be part of a new class due to the law. NorthWestern's proposal is consistent with and is a reasonable interpretation of the law.

V. The Record Does Not Support the Commission Departing from Its Past Position Regarding Conservation Investment.

As NorthWestern pointed out in its Opening Brief, Montana law encourages utility investment in conservation by including conservation investment in rate base, just as NorthWestern has proposed in this docket. *See* § 69-3-712, MCA. The Commission's orders have historically been consistent with that law. "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). "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). Both the MCC and the Large Customer Group ("LCG") criticize including conservation in rate base, but do not

provide the Commission with justification for not complying with the statute and following its own orders.

For example, the LCG argues that capitalizing DSM will cause an intergenerational inequity concern. LCG Brief, p. 19. But intergenerational inequity exists if NorthWestern includes these expenses in a tracking mechanism, since current customers will pay for the benefits that long-lived DSM resources will provide to future customers. The MCC argues that capitalizing DSM could result in higher DSM costs. MCC Brief, p. 19. The MCC's narrow and short-term view is contrary to both the legislative finding and the Commission's rule finding that, "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 (emphasis added). In addition, the MCC and LCG's recommendations to track DSM expenses do not address the fact that DSM reduces NorthWestern's ability to recover the fixed costs of T&D, an undesirable effect that the Commission acknowledges in its rules. *See* ARM 38.5.8218.¹⁸

Due to the changes in NorthWestern's supply portfolio and electric tracker over the past ten years, the Commission can now implement legislative policy, consistent with its own rules, to ensure that pricing and incentives are aligned. No party has provided the Commission with a reason to do otherwise.

VI. A Jurisdictional Cost of Service Study is Not Warranted or Justified.

In its brief, the MCC continues to advocate that the Commission should order NorthWestern to conduct a full jurisdictional cost of service study. MCC Response Brief, pp. 25-28. It claims that such a study is justified because it will "assist the Commission and the

¹⁸ Under-recovery of generation fixed costs is also a legitimate concern, although the rule does not directly speak to those costs as the result of Montana's history regarding deregulation.

parties in evaluating the costs that NorthWestern incurs to serve customers in the respective jurisdictions.” *Id.*, p. 28. Before refuting this advocacy, it should be noted that the MCC does not contest NorthWestern’s argument that in this case the prior practice must continue. As noted in NorthWestern’s Opening Brief, the record evidence in this case supports approval by the Commission of the continued use of the transmission revenue credit methodology. There is no evidence supporting use of another methodology in this case.

Turning now to the MCC’s request for a jurisdictional cost of service study, it appears that the MCC’s desire for this proposal stems from a concern that retail customers are inappropriately covering the costs associated with wholesale customers. MCC Response Brief, p. 26 (argument that the current methodology makes retail customers responsible for costs not covered by the wholesale customers). The MCC fails to point to any evidence in the record that supports its recommendation for NorthWestern to conduct a study. Instead, it speculates that an issue exists warranting such a study. In fact, the MCC’s own witness testified that the current methodology should, in theory, resolve any jurisdictional cost issues. Tr. p. 2174:7-12. The MCC does not dispute this testimony in its brief.

Additionally, the MCC fails to respond to NorthWestern’s argument that 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 the Federal Energy Regulatory Commission (“FERC”) for transmission service. Again, the MCC’s witness acknowledged this fact at hearing. Tr. p. 2173:8-12. Finally, the MCC’s witness admitted at hearing that if such a study is conducted, it could result in higher costs to the retail customers. *Id.*, p. 2174:11-18. Therefore, since there is no evidence that an issue exists with the current

methodology and the MCC has failed to provide more than conjecture and speculation that a jurisdictional cost of service study is warranted, the Commission should not order such a study.

VII. Malmstrom’s Request for a Declaratory Ruling Does Not Comply with Commission Rules.

Since dual supply is not allowed under Montana law, NorthWestern has asserted in this docket that it cannot implement the Federal Executive Agencies’ (“FEA”) tariff proposal for Malmstrom Air Force Base (“Malmstrom”) to receive supply from both NorthWestern and the Western Area Power Administration (“WAPA”). Ex. NWE-57. In order to resolve this legal question, the FEA ask the Commission to issue a declaratory ruling finding that Montana law does not prohibit its tariff proposal and require NorthWestern to reach an agreement with the FEA. FEA Brief, p. 2. Because the requirements in the Commission’s rules for a declaratory ruling have not been satisfied, the Commission is unable to grant the FEA’s request for a declaratory ruling. NorthWestern agrees with the MCC that a stand-alone proceeding will likely be necessary to address the FEA’s request. *See* MCC Brief, p. 28.

As the Commission’s rules explain, the purpose of a declaratory ruling is to address how a statute or rule affects the party’s legal rights. ARM 1.3.226. So that the Commission has a sufficient basis for its ruling and so that it can adequately consider the ultimate effect of its ruling, the Commission requires the requesting party to file a petition that contains facts and assertions of law. ARM 1.3.227. The Commission must also provide official notice of the declaratory ruling proceeding. *Id.* These requirements for a declaratory ruling have not been satisfied in this docket. There has been no notice that the Commission is considering a declaratory ruling, and the facts and law upon which the Commission can base a declaratory ruling have not been sufficiently presented.

Since the FEA did not request the relief of a declaratory ruling until they filed their post-hearing brief, the Commission has not provided notice of this issue. Other WAPA preference customers, such as the state universities, may wish to have an opportunity to comment on the issues before the Commission makes a ruling. In addition, since the LCG presented a new legal issue in its post-hearing brief that Malmstrom only seeks to engage in self-generation, rather than dual supply, the scope of the declaratory ruling expands beyond WAPA preference customers. LCG Brief, p. 23. There could be a wide range of parties who may wish to comment on the issue of self-generation before the Commission makes a ruling.

The Commission does not have sufficient facts upon which to base a declaratory ruling and cannot adequately consider the ultimate effect of such a ruling. For example, there are no facts in the record defining the distinction between dual supply and self-generation. The record does not contain the facts around why Malmstrom is not a choice customer. *See* Tr. p. 1100:10-11. It is not clear what happens to the allocation of federal hydropower if it does not go to Malmstrom. *See* Tr. p. 1105:13-25. The record does not show whether Montana State University began receiving an allocation of federal hydropower before or after the Legislature implemented the Reintegration Act. *See* Tr. p. 1156:21-25. There is no factual evidence in the record regarding the University of Montana's history of an allocation, even though the FEA assert that opportunities for other preference customers are limited. FEA Brief, p. 6.

Finally, the assertions of law have not been clearly presented to the Commission. In fact, the FEA and LCG did not present their assertions of law until the post-hearing briefing when other parties will not even have the opportunity to respond. The FEA assert that because federal law preempts state law, Montana's prohibition against dual supply does not apply to Malmstrom. The FEA raised a new issue of whether the Commission, in setting rates for WAPA power, is

indirectly regulating a federal agency and hindering federal goals without congressional consent. FEA Brief, p. 14. The LCG raised a new claim that Malmstrom only seeks to engage in self-generation, rather than dual supply. The LCG's only support for this argument is a reference to the term "remote self-supply" in the context of determining FERC jurisdiction. LCG Brief, p. 23. Notably, the LCG inadvertently undermines the FEA's federal preemption argument by asserting that the Commission has authority under Montana statute to determine whether Malmstrom's access to federal hydropower is a permissible form of self-supply. LCG Brief, p. 24.

NorthWestern disagrees with both the FEA and the LCG because Malmstrom receiving supply from a non-NorthWestern entity undermines the purpose of the Reintegration Act "that NorthWestern become a vertically-integrated utility, with customer choice being eliminated in order to achieve that end." *City of Great Falls v. Montana Dep't of Pub. Serv. Regulation*, 2011 MT 144, ¶ 4, 361 Mont. 69, 254 P.3d 595. The record and procedures in this docket do not support the Commission's issuance of a declaratory ruling. Without a declaratory ruling resolving the disputed legal issue, the Commission has no basis to approve the FEA's proposed tariff or order the parties to negotiate an agreement. The Commission is left with no alternative at this time, but to deny FEA's request for a special tariff, a declaratory ruling, and forced negotiation.

CONCLUSION

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

- three stipulations (Revenue Requirement, Green Tariff, and DSM);
- inclusion of Two Dot Wind 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 Dave Gates Generating Station construction costs;
- relief from the obligation to make annual Spion Kop Wind reporting filings; and
- other tariff rule changes.

The record also supports the Commission approving the FCRM pilot proposal, without an adjustment to ROE.

Respectfully submitted this 28th day of August 2019.

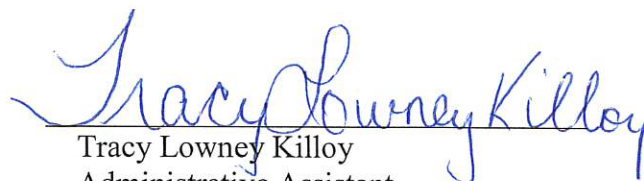
NORTHWESTERN ENERGY

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CERTIFICATE OF SERVICE

I hereby certify that 1 original and 10 3-hole-punched copies of NorthWestern Energy's Reply 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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