



The Policy Institute

“PSC Flirts with Dangerous Precedent in Revisiting Final Order”

By Ken Toole, President
April 14, 2011

The Policy Institute blends authoritative research and hands-on political engagement to create public policy based on economic justice, fair taxation, corporate accountability and environmental responsibility.

NorthWestern Energy, Montana Consumer Council and the Natural Resources Defense Council are appealing the Public Service Commission's final decision in NorthWestern Energy's last rate case. Appeals of PSC decisions are not unusual, but the change in the PSC following the last election has added a new wrinkle which may cause real harm Montana consumers.

Some members of the newly elected Republican Commission want to revisit this case, which was filed two years ago and concluded last December. First, Commissioner Brad Molnar said he wanted to open an "investigation" into the earlier proceeding. When he didn't muster a majority vote for that fairly novel concept, the new chairman of the commission tried to direct staff attorneys not to defend the commission's order in court.

Two years' proceedings

First, a little background information. After two years of proceedings, the commission issued a final order which is now being appealed to District Court by three of the original seven participants in the case. The driving issue behind two of the three appeals is that the commission reduced the "return on equity" allowed for NorthWestern Energy from 10.25 percent to 10 percent. NorthWestern estimates that this will cost them \$1.3 million. Obviously, this is money they would like to be able to collect from consumers.

There is almost always a lot of money at stake in PSC rate cases. So parties often take PSC decisions to court to see if they can get a better deal. In the normal course of events, the commission defends its order and the courts decide who wins. But in this case the new commission is trying to reopen the case. Never mind that the new commissioners were not at the hearings, did not have a chance to ask questions and have not read the all of the testimony or analyzed all of the exhibits presented in the case. Still, they have decided they don't like it.

Consumer-friendly order

Apparently some members of the new commission don't like the inverted block rate design which requires the very largest users of electricity to pay more. Inverted block rates as adopted by the PSC reduce rates for the vast majority of consumers. The truth of the matter is that this order is very consumer-friendly. It reduced NorthWestern's profit and adopted a rate design that saves most customers money. It should be defended by the commission both on its merits and to protect the historic precedent of the commission defending its own orders.

In trying to revisit completed cases, the new commission is flirting with a dangerous precedent. Imagine that every two years every new commission sets about opening previous decisions it doesn't like (or thinks it doesn't like based on things they have heard in the street). The result is that no one can be confident that decisions of the commission are "final". The financial institutions which provide money to utilities like stability and predictability. If they are not confident in the actions of the PSC they may not invest in Montana or they may charge more because the investment is risky. And of course that money comes out of consumers' pockets.

If the courts send the rate case order back for further consideration, the commission can look at it then. If the court does not send the order back, NorthWestern Energy will file another rate case in 2012 and the new commission can look at it then. In the meantime, the new commission has plenty of work to do without going on fishing expeditions trying to reopen old cases.