

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

In re NorthWestern Energy's Application for an Advanced Metering Opt- Out Tariff	Docket 2022.06.067 August 2, 2022
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Procedural Order 7857

1. On June 9, 2022, NorthWestern Energy (“NorthWestern”) filed its Application for an Advanced Metering Opt-Out Tariff (“Application”). Montana Consumer Counsel petitioned for and was granted intervention.

2. The Montana Public Service Commission (“Commission”), through delegation to staff, hereby establishes this Procedural Order (“Order”), which is effective immediately and remains effective unless modified by the Commission or staff. Mont. Code Ann. § 69-3-103 (2021); Mont. Admin. R. 38.2.2702 (2022). Parties may seek reconsideration of this Order within ten (10) days of its service date. Mont. Admin. R. 38.2.4806.

Schedule

3. This docket will adhere to the following schedule:
- a. **September 2, 2022:** Final day for discovery to NorthWestern.
 - b. **September 16, 2022:** Final day for NorthWestern to respond to discovery.

- c. **October 7, 2022:** Final day for intervenor testimony.
- d. **October 14, 2022:** Final day for Commission to identify additional issues.
- e. **October 28, 2022:** Final day for discovery to intervenor.
- f. **November 11, 2022:** Final day for intervenor to respond to discovery.
- g. **December 2, 2022:** Final day for NorthWestern to file rebuttal testimony.
- h. **December 23, 2022:** Final day for discovery to NorthWestern related to rebuttal testimony.
- i. **January 6, 2023:** Final day for NorthWestern to respond to discovery related to rebuttal testimony.
- j. **January 13, 2023:** Final day for NorthWestern and intervenor to file pre-hearing memoranda, including identification of data responses to be admitted into the evidentiary record. Final day for stipulations and settlement agreements.
- k. **January 20, 2023:** Final day for NorthWestern and intervenor to object to data responses.
- l. **January 31, 2023:** Hearing commences and continues day-to-day, as necessary.

Service and Filing

4. Parties must electronically file all documents in this proceeding with the Commission and must adhere to the Commission's pleading requirements. Mont. Admin. R. 38.2.1201–1209. Parties must also serve a physical or electronic copy of each document in this proceeding on all parties. Mont. Admin.

R. 38.2.1205(2). Parties must file confidential information with the Commission and other parties by electronic file transfer, by physical copies as discussed in Mont. Admin. R. 38.2.5015(1), or other secure means. Mont. Admin. R. 38.2.5015(2). Please contact the Commission at (406) 444-6199 for questions on filing public or confidential documents.

5. After filing, documents will become publicly available on the Commission's website, unless they are confidential documents. Mont. Admin. R. 38.2.303(1). Documents that do not substantially comply with Commission rules or applicable statutes may be rejected. Mont. Admin. R. 38.2.315.

Investigation and Discovery

6. Data requests and the additional issues process are the primary, though not exclusive, methods of pre-hearing investigation in Commission proceedings and should be utilized in good faith. Mont. Admin. R. 38.2.3301(1).

7. The Commission may schedule a prehearing conference at any time prior to the hearing to facilitate settlement in whole or in part, simplification of the remaining issues through admissions of fact, and any other matters that may expedite the hearing. Mont. Admin. R(s). 38.2.2701, 38.2.2703, 38.2.3001.

8. Parties must respond or object to data requests within fourteen (14) calendar days of the service date of the data request. A party may submit a data request after a deadline established in this Order either by agreement of the parties or with approval of the Commission upon a showing of good cause.

9. If a data request seeks confidential information, the responding party must file a motion for a protective order as soon as practicable, but no later than the deadline to respond. Mont. Admin. Rs. 38.2.5001–38.2.5031.

10. Objections to data requests must be sufficiently specific for the Commission to adequately rule on the merits of the objection. Only objections based on discoverability will be considered; objections on admissibility will be overruled. The failure to object to a data request does not waive the right to subsequently object to the admission of the information during an evidentiary hearing.

11. If a party fails to adequately answer a data request or objects, the discovering party may file a motion to compel or to order sanctions within seven (7) calendar days. The motion must identify the relief requested. Response briefs are due within five (5) calendar days.

12. The Commission will resolve discovery disputes consistent with Mont. Admin. R. 38.2.3301(4). In response to a party's failure to meaningfully participate in discovery, the Commission may take any of the actions discussed in Mont. R. Civ. P. 37, including but not limited to compelling a response (Mont. R. Civ. P. 37(a)) or issuing sanctions (Mont. R. Civ. P. 37(b)(2)(A)(i)–(vi)). Objections to Commission data requests will be brought to the Commission for a decision. The Commission may establish a revised schedule as necessary after resolving each motion.

13. Parties must submit other prehearing motions as early as possible in the proceeding, though no later than the prehearing memorandum deadline. Response briefs are due within seven (7) calendar days. Reply briefs are not permitted. The Commission will resolve prehearing motions consistent with applicable statutes, regulations, and Montana Rules of Evidence.

14. Parties may request, or the Commission may schedule, oral argument before ruling on any pre-hearing motion. Mont. Admin. R. 38.2.4502. Parties may seek reconsideration of any pre-hearing Commission decision within ten days after service of the decision, excluding decisions which grant a motion for a protective order. Mont. Admin. R. 38.2.4806(7). Parties

can seek immediate judicial review of any Commission decision as permitted by Mont. Code Ann. § 2-4-701.

15. The Commission may require parties to consider issues not adequately addressed in the proceeding either prior to an evidentiary hearing through the additional issues process (Mont. Admin. R. 38.2.3301(3)), during the evidentiary hearing (Mont. Code Ann. § 69-2-102; Mont. R. Evid. 614), or after an evidentiary hearing through the post-hearing exhibit process (Mont. Admin. R. 38.2.4206). Mont. Code Ann. §§ 69-2-102, 69-12-204.

16. To efficiently administer this docket, the Commission delegates authority to staff attorney Laura Vachowski to act as examiner for the limited purpose of resolving discovery disputes (including objections to data requests and motions to compel), and motions for protective orders. Mont. Code Ann. §§ 69-2-101, 69-3-103; *see also* Mont. Admin. Rs. 38.2.306; 38.2.1501.

Hearing

17. The Montana Rules of Evidence govern the evidentiary hearing for this proceeding. Mont. Code Ann. § 2-4-612(2).

18. Unless the parties agree to file jointly, each must file a prehearing memorandum that includes the following: (1) contested issues; (2) uncontested issues; (3) witnesses that it intends to call; (4) exhibits and data requests and responses it intends to introduce into the evidentiary record, and the issue to which the document relates; and (5) any special accommodations it seeks regarding witness sequence or scheduling.

19. If any party objects to the admission of any document identified in the prehearing memoranda, the party must submit a prehearing objection memorandum that identifies each document they object to and states the grounds for each objection. *See In re Mont. Pub. Serv. Comm'n Solicitation of Comments Regarding Decision Making*, Dkt. 90.7.44, Notice of Comm'n Action 2–3 (Dec. 31, 1992).

20. Parties failing to adhere to the prehearing memorandum and objection procedures will be required to establish foundation for each piece of evidence, pursuant to the Montana Rules of Evidence, unless otherwise agreed-to by the parties.

21. Parties must make each person that authored a document available for cross-examination unless otherwise excused by the Commission. A witness need not recite pre-filed testimony before counsel moves to admit the testimony into the record.

22. When a party seeks to examine a witness based on a document not previously filed in this proceeding, it must provide copies of the document to each party, unless it shows good cause why copies are unavailable.

23. The Commission has the discretion to introduce and admit evidence not adequately addressed by parties. Mont. Code Ann. § 69-2-201.

24. The Commission will provide opportunities for public comment at the hearing.

Commission Decision

25. At the request of a party on its own accord, the Commission may order post-hearing briefs at the close of the hearing. Mont. Admin. R. 38.2.4502. Unless otherwise ordered, the applicant has 20 days from receipt of the hearing transcript to file an opening brief, intervenors have 20 days to file a response brief, and the applicant has 10 days to file a reply brief. Mont. Admin. R. 38.2.4503(1). The Commission may request proposed findings of fact and conclusions of law. Mont. Admin. R. 38.2.4501.

26. Parties have ten days to seek reconsideration of any final Commission decision. Mont. Admin. R. 38.2.4806(1). A decision is final for purposes of judicial review after service of an

Order on Reconsideration, or when a motion for reconsideration is deemed denied pursuant to Mont. Admin. R. 38.2.4806. A motion for reconsideration is required to exhaust both administrative remedies and issues under Mont. Code Ann. § 2-4-702(1)(a)–(b), except when a party applies for an injunction or stay of a Commission decision. Mont. Admin. R. 38.2.4806(8).

DONE and DATED August 1, 2022, by the Montana Public Service Commission.

JAMES BROWN, President
BRAD JOHNSON, Vice President
TONY O'DONNELL, Commissioner
RANDALL PINOCCI, Commissioner
JENNIFER FIELDER, Commissioner

CERTIFICATE OF SERVICE

I certify that on the 2nd day of August, 2022, a true and accurate copy of the foregoing document was served by email to the following:

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For Applicant NorthWestern Energy

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EMAIL LIST(S):
Notification of NorthWestern Energy Filings
Commission Orders

By: /s/ Tarin Slayton
Tarin Slayton
Montana Public Service Commission