

Service Date: September 25, 2013

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

IN THE MATTER OF the Complaint of)	REGULATORY DIVISION
James T. and Elizabeth A. Gruba,)	
Leo G. and Jeanne R. Barsanti, and)	DOCKET NO. D2010.2.14
Michael W. and Frances E. Paterson)	
on Behalf of Themselves and Others)	ORDER NO. 7084f
Similarly Situated,)	
)	
Complainants,)	
)	
v.)	
)	
NorthWestern Energy)	
)	
Respondent.)	

ORDER

Introduction

1. In February 2010, Complainants' predecessors filed with the Public Service Commission (Commission) an original Complaint against NorthWestern Energy (NWE) challenging certain aspects of the operation of street lighting districts in Billings, in particular, and Montana in general, including the ownership charge contained within the electric lighting tariff and the absence of light emitting diode (LED) luminaires on street lights. The Commission dismissed the original Complaint, and Complainants' predecessors filed for judicial review in the Thirteenth Judicial District Court, Yellowstone County. The district court affirmed the Commission's dismissal, and Complainants' predecessors appealed to the Montana Supreme Court. The Montana Supreme Court affirmed the Commission's dismissal and remanded the matter back to the Commission to consider a subsequently filed amended complaint. Now before the Commission for its consideration is Complainants' Second Amended Complaint.

2. On April 24, 2013, the Commission, through delegation to staff, issued Procedural Order No. 7084e, directing the parties to brief the following issues identified by Commission staff that relate to Complainants' Second Amended Complaint:

- a. On what basis do Michael and Frances Paterson have standing as complainants in this matter in light of the Montana Supreme Court decision *Williamson v. NWE*, 2012 MT 32?
 - b. Commission staff has concluded that a complaint may be filed pursuant to Mont. Code Ann. § 69-3-321 but that Mont. Code Ann. §§ 69-3-301 and -304 and ARM 38.5.8218 do not serve as a basis on which a complaint may be based. If you disagree with staff's conclusion, briefly explain how Mont. Code Ann. § 69-3-301 and -304 and ARM 38.5.8218 can serve as a basis for Complainants' claims in the Second Amended Complaint?
 - c. Based on what authority can the Commission order a refund of previously collected "ownership charges" that were collected pursuant to PSC-approved electric lighting tariff? (See paragraph J on page 4 of the Second Amended Complaint.) Cite the specific legal authority and briefly explain.
 - d. Pursuant to what authority can the Commission order NorthWestern Energy to use a specific type of equipment, such as LED technology, in street lighting districts? Briefly explain.
 - e. Pursuant to what authority can the Commission require NorthWestern to develop a technology-specific charge within the electric lighting tariff, as contemplated in L on page 5 of the Second Amended Complaint? Briefly explain.
 - f. Pursuant to what authority can the Commission order NorthWestern Energy to amend contracts referred to in paragraph G on page 4 of the Second Amended Complaint? Briefly explain.
 - g. Pursuant to what authority can the Commission consider and decide on the constitutionality of a statute? Briefly explain.
3. Subsequent to the issuance of Order No. 7084e, Complainants filed a Motion to Reconsider Procedural Order No. 7084e & Request for an Order to Show Cause.
 4. NWE filed a response in opposition to the motion.
 5. The parties fully briefed the issues listed above, and the Commission now issues the following findings and order.

Findings of Fact

6. Michael and Frances Paterson are not residents of a street lighting district. Amended Complaint, p. 8, ¶ 13.

7. The Amended Complaint is a poorly organized and confusing, 46-page document that addresses a variety of subjects including global warming, energy independence, LED lighting technology, the ownership charge in the NWE street lighting tariff, roadway safety, and the continued bleaching of the Great Barrier Reef in Australia. See generally, Amended Complaint.

8. Notwithstanding the convoluted Amended Complaint, the Commission finds that Complainants have plainly stated one claim: the allegation that the ownership charge of NWE's street lighting tariff is unreasonable or unjustly discriminatory. Amended Complaint, p. 9. The Commission finds that it is not the duty of Commissioners or staff to ferret out claims that may be lurking, but not plainly stated, within the four corners of the Second Amended Complaint.¹

9. The words and meaning of Mont. Code Ann. §§ 69-3-301 and -304 and Admin. R. Mont. 38.5.8218 are clear and unambiguous, and the Commission finds that those provisions do not serve as a basis on which a complaint before the Commission may be based.

10. The remaining issues on which the Commission ordered and received legal briefing relate to the remedies requested by Complainants in their Second Amended Complaint, and therefore, the Commission need not decide these issues unless and until the Commission makes a finding in favor of Complainants. The arguments put forth by the parties, therefore, are taken under advisement.

Conclusions of Law

11. The Commission has jurisdiction over this matter pursuant to Mont. Code Ann. §§ 69-1-102, 69-2-101, 69-3-102, 69-3-106, 69-3-321.

12. The Commission has the authority and the discretion "to make such investigation as it may deem necessary upon a complaint made against any public utility..." Mont. Code Ann. § 69-3-321.

¹ "We will not manufacture arguments for an appellant, and a bare assertion does not preserve a claim, particularly when, as here, a host of other issues are presented for review. As the Seventh Circuit...stated aptly: 'judges are not like pigs, hunting for truffles buried in briefs.'" *Greenwood v. FAA*, 28 F.3d 971, 977, (9th Cir. 1994) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir 1991) (per curiam)).

13. The Public Service Commission has the authority and discretion to limit the inquiry in this matter to Complainants' claim alleging the ownership charge of NWE's street lighting tariff is unreasonable or unjustly discriminatory. Mont. Code Ann. § 69-3-321.

14. Michael and Frances Patterson lack standing as Complainants because they are not residents of a street lighting district and therefore are not directly affected by the ownership charge of the street lighting tariff at issue. Mont. Code Ann. § 69-3-321; *Williamson v. NWE*, 2012 MT 32, 364 Mont. 128, 272 P.3d 71.

15. "Constitutional questions are properly decided by a judicial body, not an administrative official, under the constitutional principle of separation of powers. Art. III, Section 1, 1972 Mont. Const." *Jarussi v. Board of Trustees* (1983), 204 Mont. 131, 135, 664 P.2d 316, 318.

Order

For the foregoing reasons, the Commission orders the following:

16. Michael and Frances Paterson are dismissed as Complainants in this matter.

17. The claim alleging the ownership charge of the NWE street lighting tariff is unreasonable or unjustly discriminatory is the sole claim which will proceed in this matter.

18. Commission staff is directed to make an investigation in the ownership charge claim, including issuing a notice of the complaint and establishing an intervention deadline, as contemplated by Admin. R. Mont. 38.2.2401.

19. The claim that Mont. Code Ann. § 69-3-321 is unconstitutional is dismissed.

20. Any and all other claims asserted or alleged in the Amended Complaint that do not relate to the ownership charge claim are dismissed.

21. Complainants' Motion to Reconsider Procedural Order No. 7084e and Request for an Order to Show Cause as well as any other pending motion not yet ruled upon are deemed denied.

DONE AND DATED this 17th day of September 2013 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

W. A. GALLAGHER, Chairman

BOB LAKE, Vice Chairman

KIRK BUSHMAN, Commissioner

TRAVIS KAVULLA, Commissioner

ROGER KOOPMAN, Commissioner

ATTEST:

Aleisha Solem
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.