MONTANA PUBLIC SERVICE COMMISSION UPDATE TO THE ENERGY & TELECOMMUNICATIONS INTERIM COMMITTEE STATUS OF LITIGATION

January 18, 2024
President James Brown

1. *Noland v. State of Montana, et al.*, Cause No. DV -15-2022-0001308-CR (Montana Eleventh Judicial District Court)

- This case concerns the constitutionality of the statutory system of motor carrier regulation as it applies to garbage haulers. Plaintiff alleges that the statute and Commission precedent governing the issuance of certificates of public convenience and necessity unconstitutionally interferes with the plaintiff's ability to start a garbage hauling business.
- The Montana Department of Justice is representing the State, including the Commission, in this case, which was filed on November 15, 2022.
- The parties have briefed cross-motions for summary judgment. An oral argument on summary judgment was held on January 8, 2024.
- A pretrial conference is scheduled for January 31, 2024.

2. *Held v. State of Montana*, Cause No. CDV 2020-307 (Montana First Judicial District Court)

- The Montana Department of Justice is representing the State, including the Commission, in this case, which was filed on March 13, 2020.
- This case concerns the constitutionality of the state energy policy at Mont. Code Ann. § 90-4-1001 (now repealed) and the Montana Environmental Policy Act at Mont. Code Ann. § 75-1-201, however, the Commission is not involved in the implementation of Mont. Code Ann. § 75-1-201.
- After the 2023 Montana Legislature repealed Mont. Code Ann. § 90-4-1001 (effective March 16, 2023), the Court granted the State's motion to dismiss claims based on that statute.
- No witnesses from the Commission or Department of Public Service Regulation were called during the trial in June 2023. The District Court's order recognized that the Commission is exempt from MEPA.

3. *Caithness Beaver Creek LLC v. Mont. Dep't of Public Serv. Reg.*, Cause No. ADV-2022-764 (Montana Supreme Court)

- This case is a petition for judicial review of the Commission's decision in an administrative contested case.
- The case arises from the petition of a qualifying facility ("QF") developer asking the Commission to set the terms and conditions of power purchase agreements ("PPAs") between the developer's QFs and NorthWestern Energy.
- The developer asked the Court to modify or reverse the Commission's decision on the purchase price and other terms of the power purchase agreement.
- On July 17, 2023, the District Court issued its Judicial Review Petition Order, which largely affirmed the Commission's decision, but remanded the case to the Commission to address an evidentiary issue.
- The QF developer appealed to the Montana Supreme Court, and the Commission cross-appealed.
- In December 2023, the developer announced that it would give up its QF status, sell all of its energy and capacity to Puget Sound Energy, and withdraw its petition for the Commission to set terms and conditions of PPAs with NorthWestern. As a result, the developer and the Commission jointly dismissed the appeal.

4. *Jawbone Holdings LLC v. Mont. Dep't of Public Serv. Reg.*, Cause No. DDV-2022-161 (Montana First Judicial District Court)

- Filed on February 25, 2022, this case is a petition for judicial review of the Commission's decision in an administrative contested case.
- The case arises from the petition of a qualifying facility ("QF") developer asking the Commission to set the terms and conditions of a power purchase agreement between the developer's QF and NorthWestern Energy.
- The developer has asked the Court to modify or reverse the Commission's decision on the price of energy and other terms of the power purchase agreement.
- This case involves a variety of issues, including:
    - The assigned avoided cost of energy in hours when NorthWestern has more energy than it needs to serve load;
    - The weight of the evidence supporting NorthWestern's market price forecast;
    - The weight of the evidence supporting the use of four years of market forwards in the calculation of avoided costs;
    - The use of NorthWestern's proposed market basis differentials;
    - The Commission's authority to allocate network upgrade costs between QFs and utilities;
    - The assignment of network upgrade costs to the QF; and

    - Questions about whether a QF can deliver firm energy to a utility with only non-firm transmission rights.
- Oral arguments were presented to the District Court on September 29, 2022.
- Following a motion from the developer to disqualify the judge who heard oral arguments, a new judge assumed jurisdiction on November 1, 2022.
- The case is fully briefed, argued, and awaiting a decision.

5. *Montana Environmental Information Center v. Mont Dep't of Public Serv. Reg., et al.*, Cause No. DA 22-0436 (Montana Supreme Court)

- Originally filed in the Montana Eighth Judicial District Court in 2018, this case is a petition for judicial review of the Commission's decision in an administrative contested case.
- The case arises from the Commission's decision to grant a waiver to NorthWestern Energy concerning certain community renewable energy project ("CREP") standards, which were repealed by the Montana Legislature in 2021.
- When the CREP standards were repealed, the case was pending on appeal before the Montana Supreme Court. Without reaching the merits, the Montana Supreme Court remanded the case to the District Court to consider whether the repeal of the statute mooted the litigation.
- After briefing from the parties, the District Court concluded that the repeal did not moot the case and ordered NorthWestern to pay an administrative penalty for noncompliance with the former CREP standards.
- NorthWestern and the Commission appealed that decision and renewed the merits of the prior appeal, which the Montana Supreme Court has not yet decided.
- The Montana Supreme Court is now considering whether the case is mooted by the repeal of the relevant statutes, and if not, whether the District Court correctly reversed the Commission's original decision and imposed statutory penalties against NorthWestern Energy.
- All issues are now fully briefed and classified for a decision from a panel of five Justices of the Montana Supreme Court.