

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

|   |   |                               |
|---|---|-------------------------------|
| In the Matter of the Commission, on its | ) | Rule and Regulation No. 192   |
| own motion, seeking to amend Title 291, | ) |                               |
| Chapter 1, Rules of Commission          | ) |                               |
| Procedure, to update the chapter in its | ) | <b>COMMENTS ON SECOND SET</b> |
| entirety.                               | ) | <b>OF PROPOSED RULES</b>      |
|   | ) |                               |
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|   | ) |                               |

NorthWestern Corporation d/b/a NorthWestern Energy (“**NorthWestern**”) by and through its attorneys of record, hereby respectfully submits these comments to the Nebraska Public Service Commission (“**Commission**”) in response to the Commission’s February 3, 2015, *Order Releasing Second Set of Proposed Rules and Seeking Comment* (“**Second Set of Proposed Rules**”).

**Introduction**

On September 30, 2014, the Commission, in its Order, released a revised set of rules or procedure (“**Proposed Rules**”) in the above-captioned matter with the goal of comporting with the Nebraska Model Rules of Agency Procedure. In the September 30, 2014 Order, the Commission also sought comments on the Proposed Rules. NorthWestern and other parties submitted comments in response to the September 30, 2014 Order which addressed the Proposed Rules. On February 3, 2015, the Commission entered another Order releasing the Second Set of Proposed Rules. NorthWestern appreciates the changes made in the Second Set of Proposed Rules addressing some of the concerns it raised.

**Comments**

NorthWestern remains concerned that the Second Set of Proposed Rules are internally inconsistent in the deadlines they appear to establish for filing of Protests and Interventions. **Rule 004.03A** states that a Petition for Formal Intervention must be submitted *at least five days before the Hearing*. **Rule 004.09**, however, allows for informal

disposition (commonly referred to in current practice as “modified procedure”) of contested cases if not opposed by Protest or Formal Intervention *within 30 days of the date notice of the application is published*. These two deadlines cannot be reconciled. They are inconsistent. Under current rule 014.02, a Protest must be filed within 30 days from the date of publication of notice of the application. Petitions for Formal Intervention must be filed during the same period, according to current rule 015.01B. Petitions for Informal Intervention, on the other hand, may be filed later. See current Rule 015.02A.

Again, the current rules as they pertain to the filing of Protests and Interventions create an orderly process for administering contested cases before the Commission. The Second Set of Proposed Rules, due to their inconsistency and inapplicability to the types of matters commonly before the Commission, are impracticable. See NEB. REV. STAT. § 84-909.01. For instance, in a proceeding on an Application for motor carrier authority, it would be impracticable, if not a denial of due process, to allow a competing carrier to become a party to the proceeding *just 6 days prior to the Hearing*, as would be allowed under Proposed **Rule 004.02A**. The timing of such filing would not allow for proper discovery or preparation for the hearing by the Applicant who in all likelihood has a substantial business interest awaiting Commission consideration.

In summary, the Second Set of Proposed Rules relating to Protests and Interventions would mark a dramatic departure from current practices that lend to the efficient and orderly administration of matters before the Commission.

### **Workshop Recommended**

In conclusion, NorthWestern urges the Commission to conduct a workshop to consider other input on the Second Set of Proposed Rules and reserves the right to comment on other specific rules at that time and in the future.

**Dated:** March 13, 2015

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