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7

8 IN THE SUPREME COURT OF THE STATE OF MONTANA  
9 SUPREME COURT CAUSE NO. DA 20-0313

JAMES T. & ELIZABETH GRUBA and LEO G. & JEANNE R. BARSANTI, Petitioners/Appellants,	)	<b>APPELLANTS’ AMENDED AFFIDAVIT SUPPORTING OBJECTION TO MOTION TO STRIKE TRANSCRIPT &amp; MOTION TO CORRECT RECORD, ETC.</b>
vs.	)	
MONTANA PUBLIC SERVICE COMMISSION, Respondent/Appellee.	)	
and	)	
NORTHWESTERN ENERGY. Respondent/Appellee.	)	
	)	
	)	
	)	

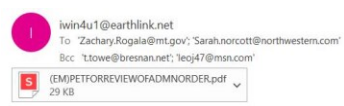
10  
11 I, Russell L. Doty, swear under penalty of perjury that the following facts  
12 are true and correct to the best of my knowledge:

13 1) I am the attorney licensed to practice law in Montana who represents  
14 Appellants pro bono in this case to reduce street lighting overcharges.


15 2) In a January 27, 2020 email reproduced in the footnote,<sup>1</sup> I was the first  
16 attorney in this appeal to request to confer to reduce the record and transcript.





17 3) Instead of supplying the required administrative record to the district

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iwin4u1@earthlink.net  
To: 'Zachary.Rogala@mt.gov'; Sarah.norcott@northwestern.com'  
Bcc: 't.towe@bresnan.net'; 'leej47@msn.com'

 [EM]PETFORREVIEWOFADMINORDER.pdf  
29 KB

 Reply  Reply All  Forward 

Mon 1/27/2020 9:53 AM

Here is confirmation of the filing of our appeal in the general rate case. The Judge is Mike Menahan and the number is ADV 2020-103.  
We should confer soon about limiting the record and transcript.  
Cordially,  
Russ Doty  
1 406-696-2842

1 court as required pursuant to § 2-4-702(4), MSA; without allowing sufficient time  
2 to confer to reduce that record as requested by me, and, without suggesting how  
3 the record might be limited in response to my email, the PSC sent a January 30,  
4 2020, email telling me: “First, regarding AR, can you make a list of documents you  
5 would like included? That way we can see if a stipulated AR is possible.” Then the  
6 PSC gave me until February 5<sup>th</sup> to dismiss the appeal or they would seek dismissal.

7 4) I responded on February 4, 2020, seeking the court reporter’s contact  
8 information so I could get transcript material to shorten the record. The Reporters’  
9 contact information was finally provided four months later via a June 4, 2020,  
10 email from the PSC paralegal. Without conferring further concerning the record or  
11 providing the court reporter’s timely contact information, the PSC and NWE filed  
12 the February 13, 2020, motion to dismiss (Doc. Seq. 3).

13 5) The District Court granted that motion March 12, 2020 (Doc. Seq. 8).

14 6) Appellant’s Attorney requested the PSC to agree to include specific  
15 pages from the transcript in the record and to include specific documents.

16 7) Despite requests to consider sending relevant documents from its  
17 administrative record to this Court, the PSC has declined to do so or to respond to  
18 invitations to agree to such documents or suggest how Appellants’ Request to  
19 Correct the record should be changed. Appellants’ Attorney’s request to arrive at  
20 some agreement was rebuffed again by the PSC as recently as August 17, 2020.

1           8) Proposed documents (Doc. Seq. 23, 27, & 32-96) to correct the record  
2 were obtained from documents posted online at the PSC website at the links in  
3 Original Appendix 2 submitted with the Affidavit in Support of the motions in this  
4 case. Doc. Seq. 21, 22, 24-26 & 28-31 documents were either referenced in the  
5 transcript, offers of proof, or tariff and documents of Appellee NWE, or the City of  
6 Billings. So, to the extent that they already are part of the publicly available record,  
7 or tariffs, or documents that should have been posted online during the D2018.2.12  
8 proceeding, no privacy issues prevent their being part of this Court's record.

9           9) If Appellees are allowed to proceed without the relevant administrative  
10 record, Appellees' Motion to Dismiss tactic will have delayed resolution of the  
11 legal portions of this appeal that will not require a remand, by at least another year  
12 added to the 9 to 11-year history of this and prior street light litigation.

13           10) Appellant's obligation under § 2-4-702(4), MSA would be to pay costs  
14 incurred by the PSC providing the electronic record only if Appellant unreasonably  
15 refused to limit the record. Having received needed transcript references, I have  
16 now been able to limit the record substantially and we can supply the needed  
17 documents electronically if the court agrees to correct the record. So, the PSC has  
18 no reason to further reject the Appellant's proposed limitation of the record—it  
19 means no extra work for the PSC.

20           11) Appellants live in street lighting districts in Billings and pay less than

1 \$200 a year in taxes for street light service from Appellee NorthWestern Energy  
 2 who bills the city of Billings for streetlight service. The city in turn bills appellants  
 3 for street lights in their areas.

4 12) **Transcript cost:** Appellants cannot afford to pay for transcripts or legal  
 5 services to seek fair treatment concerning street light service. As Appellants’ pro  
 6 bono attorney, I am retired from the full-time practice of law and have limited  
 7 retirement resources with which to defray transcripts and other litigation costs.

8 13) Nevertheless, I paid \$774 for a copy of the partial Docket D2018.2.12  
 9 transcript (347 pages) of the (approximately 2,541 pages of) to be filed in the  
 10 record before this Court that the PSC was required to file by § 2-4-702(4), MSA.

11 14) The court reporter then filed the transcript with the Supreme Court  
 12 without levying an additional charge.

A	B	C	D	E
	Cost per page per MSA 3-5-604	Lesofski Contract	Federal Court Maximum 14- day transcript*	Federal Court Maximum 30- day transcript*
	7/1/21-6/30/23	1/15/2020		
1 original for govt. agencies	\$ 2.20	\$4.25**	\$ 4.25	\$ 3.65
2 original for non-govt. parties	\$ 2.70		\$ 4.25	3.65
3 original expedited transcript	\$ 4.35	<\$6.50		
4 original daily transcript	\$ 5.45		\$ 6.05	
5 copy of original	\$ 0.50	\$ 2.25	\$ 0.90	\$ 0.90
6 additional copies of original	\$ 0.25	\$ 2.25	\$ 0.60	\$ 0.60
* From Montana Court Reporters Assoc. <a href="http://www.mtcra.com/about/page-rates/">http://www.mtcra.com/about/page-rates/</a>		** 14-day rate		

13  
 14 15) Transcripts in state District Court are governed by § 3-5-604, MSA, and  
 15 as appears in the chart above, the column B statutory cost is far less than that  
 16 charged under the Lesofski contract (column C).

1 16) As indicated in the chart above, electronic and paper originals of the  
2 approximately 2,541 pages of the May 2019 transcript were purchased by  
3 the PSC at a (Row 1, Col. C) cost of \$4.25/page plus \$300/day and  
4 expenses. That cost exceeds the (Row 1, Col. B) \$2.20/page cost now  
5 charged Montana governments for transcript originals in state District Court  
6 proceedings allowed by § 3-5-604, MSA. It equals the (Row 1, Col. D)  
7 \$4.25 original page 14-day cost allowed under Federal Court Rules.

8 17) Other copies of the transcript were purchased by the Montana  
9 Consumer Counsel (a government agency), NorthWestern Energy (a  
10 regulated public utility) and at least two other participants in the rate case  
11 (namely, Vote Solar and the Large Consumer Group) at what Lesofski  
12 Reporting indicated in an email to Appellants' Attorney to be \$2.25/page  
13 (Row 5 or 6, Col. C). That copy cost exceeds the \$0.25 - \$0.50 maximum  
14 (Rows 5 & 6, Col. B) transcript copy cost allowed in state courts, and the  
15 \$0.60 - \$0.90 maximum (Rows 5 & 6, Col. D) transcript copy cost allowed  
16 in federal courts. Thus, the public pays the bill to the PSC, the Consumer  
17 Counsel and perhaps another government agency, and to NWE because it  
18 can charge transcript costs to its customers as an allowed expense.

19 18) As of the date of this affidavit, the PSC has not provided the invoice  
20 sought via emails on July 10, 2020, and three times on July 13, 2020, by

1 Appellants' attorney. Thus, in violation of § 2-6-1006(2), MSA, the PSC has  
2 not released a relevant public record indicating what the PSC paid in total  
3 for the D2018.2.12 transcription service.

4 19) Since the reporter's firm likely grossed more than \$12 a transcript page  
5 from everyone involved in the proceeding, the reporting contract should  
6 facilitate public access to know about the proceedings, and not restrict it.

7 20) I did not request a transcript during the motion to dismiss the appeal  
8 because of cost and because my brief could cite to an electronic link to  
9 factual documentation needed to demonstrate requests to reconsider various  
10 matters. However, that link does not work now. Additionally, in lieu of a  
11 costly transcript, I provided a different link to the video of portions of the  
12 hearing. That link seems to have changed too. So, a transcript is necessary.

13 21) We hope this Court treats the record from the PSC as it ought to have  
14 been provided to the District Court after being reduced to relevant transcript  
15 pages and relevant documents. I have spent much time reducing the record  
16 size in a way that reflects relevant documents for the parties in this appeal.

17 22) Several documents indicate the huge cost of intervening (e.g. Doc. Seq.  
18 68 through 70)—relevant to our motion that the transcript ought to be public.

19 23) The written transcript copy was available for public viewing in the  
20 PSC's Helena office if a person was able access it in Helena. However,

1 Grubas and Barsantis live in Billings and their *pro bono* attorney lives in  
2 Greeley, Colorado. So, it was not practical for them to spend days in Helena  
3 reviewing the transcript so its page references could be included in briefs as  
4 required by court procedure. By itself that situation denies fundamental due  
5 process and equal protection rights.

6 24) An electronic copy of partial transcript was paid for by appellants' pro  
7 bono attorney. Then pursuant to Appellants' obligation under M. R. App. P.,  
8 Rule 8(3)(a) & (c) Appellant requested relevant portions of the PSC  
9 proceeding be transmitted to the Supreme Court (Doc. Seq. 20). That was  
10 accomplished by the Lesofski Court Reporting on July 16, 2020.

11 25) Assuming Grubas and Barsantis prevail in their appeal, Appellants'  
12 transcript costs would be assessed against the PSC and NorthWestern. Since  
13 that cost funnels through to tax and ratepayers, the public would end out  
14 reimbursing yet again for what the PSC, Consumer Counsel and  
15 NorthWestern tax and ratepayers have repeatedly paid for.

16 26) Several documents that should be included in the record concern  
17 motions to strike or reconsider (e.g. Doc. Seq. 44-46, 49, 53-55, 57, 59, 60,  
18 62-66, 72, 83, 93). They show attempts to exhaust administrative remedies.

19 27) Other documents relate to various orders (e.g. Doc. Seq. 23, 27, 43, 48,  
20 52, 58, 72, 83, 94-96) involved in ruling on our reconsideration motions.

1 They also are documents relevant to the many motions to exhaust  
2 administrative remedies at issue on appeal.

3 28) Still other documents relate to testimony and exhibits mentioned in the  
4 transcript (e.g. Doc. Seq. 21-40, 71, 44, 46 &74-81).

5 29) Some documents relate to purely legal issues for this Court to decide  
6 that will not require a remand, including but not limited to Doc. Seq. 84-85  
7 related to whether the Billings and other “listening hearings” deny due  
8 process which was Issue 4 on appeal in the District Court.

9 30) I made efforts to seek agreement on including these documents in the  
10 record at the District Court and Supreme Court level. And I made efforts to  
11 seek agreement on the transcript at the Supreme Court level. The appellees  
12 can elaborate on their efforts if they consider my efforts to be inadequate.

13 31) No documents presented in or created during the administrative hearing  
14 were provided to the District Court by the PSC or NorthWestern Energy.

15 32) The transcript is needed to demonstrate times reconsideration of various  
16 issues raised by appellants was requested in the proceedings and denied.

17 33) The following Supreme Court e-filing service screen print indicates the  
18 filed transcript is “confidential.” No other electronic copy of the transcript  
19 pages is available for public viewing at the PSC or in the District Court.



**E-Filing Service Summary**

CASE INFORMATION ▾

<b>Court</b>	Montana Supreme Court	<b>Case Type</b>	Civil
<b>Case Number</b>	DA 20-0313	<b>Short Title</b>	Gruba v. PSC
<b>Filed Date</b>	Tue Jun 09 00:00:00 MDT 2020	<b>Status</b>	Pre-Briefing

FILING INFORMATION ▾

<b>Filing Number</b>	455297	<b>Filing Type</b>	Record - Transcript Filed
<b>Request Emergency Filing</b>		<b>E-Filed By</b>	Lisa Lesofski
<b>Filed on Behalf of</b>	Barsanti, Leo G. (Appellant) Barsanti, Jeanne R. (Appellant)		

DOCUMENTS

Name	Request Confidential
Record - Transcript Filed	

1

2 34) I am attempting to use the Montana e-pass file transfer service and  
3 court e-filing service to send the files I propose to be included in the record.

4 A list of those documents is Original Appendix 2 or Amended Appendix 2.

5 35) Amended Appendix 2 has a summary of documents listing doc. seq. 21  
6 through 96. In addition, the second part of that document lists links to where  
7 all those documents were obtained from the PSC website. To make the links  
8 work, one must copy the link into a browser URL line and open the file that  
9 appears in a popup at the bottom right side of the computer screen.

10 36) Appellants have prepared and transmitted to this Court, the limited  
11 record, mostly from the PSC website or documents that ought to have been  
12 posted on that site. Appellants' took care to include relevant documents from  
13 the PSC and NorthWestern. If they wish to further add to those documents,  
14 Appellant's will have no objection to administrative record documents.

15 /S/ Russell L. Doty Dated: August 25, 2020  
16 Russell L. Doty, Attorney for Appellants  
17 4957 W 6th St, Greeley, CO 80637  
18 Email: [iwin4u1@earthlink.net](mailto:iwin4u1@earthlink.net)

1 CERTIFICATE OF SERVICE

2 I, Russell L. Doty, certify that on the date I signed it, a true and accurate copy of  
3 the foregoing Appellants' Affidavit Supporting **Response and Objection to**  
4 **Motion & Additional Motion to Correct Record** was served upon each attorney  
5 of record for the parties listed below or the court reporter by e-filing it with:

Attorneys for Appellee PSC Zachary Rogala, Email: <a href="mailto:Zachary.Rogala@mt.gov">Zachary.Rogala@mt.gov</a> , Justin Kraske, Email: <a href="mailto:jkraske@mt.gov">jkraske@mt.gov</a> , Ashley D. Morigeau, Email: <a href="mailto:ashley.morigeau@mt.gov">ashley.morigeau@mt.gov</a>
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Sarah Norcott, Esq., Attorney for NorthWestern Energy 208 N Montana Ave., Suite 205, Helena, MT, 59601 Email: <a href="mailto:sarah.norcott@northwestern.com">sarah.norcott@northwestern.com</a>
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6 /s/ Russell L. Doty