November 3, 2026

MEMORANDUM

From: Amanda Webster, Chief Legal Counsel for the Montana Public Service Commission and Department of Public Service Regulation

Re: Procedures to Finalize Order 7968t in Dkt. 2024.05.053 (NorthWestern Rate Case)

FACTUAL BACKGROUND

On November 18 and 19, 2025, the Commission convened in public session to consider final action in Docket 2024.05.053.[1] The Commission's meeting was publicly noticed "[t]o consider a final decision in NorthWestern's combined electric and natural gas rate case."[2]

There was no draft Final Order included with work session materials for the business meetings on November 18 and 19. A staff memorandum was part of the Commission's work session materials, along with copies of the parties' settlement agreements and post-hearing briefs. The memorandum outlined Department of Public Service Regulation staff ("staff") recommendations on issues in the case.[3]

Commissioner Bukacek's motion to "REMOVE from the rate base the disallowance of 16 million dollars for [the Yellowstone County Generating Station ("YCGS")] construction change orders" failed by a 2-to-3 vote, with Commissioners Welborn, Pinocci, and Molnar dissenting.[4]

Toward the end of the meeting, the Commission unanimously authorized "Commission Leadership to review and approve the Final Order in time for the December 24, 2025, statutory deadline."[5]

In all, the Commission passed 13 substantive motions; one motion failed; and three motions made by Commissioner Molnar were ruled to be out of order by the chair of the meeting, Vice President Fielder.[6]

On Friday, December 19, 2025, staff emailed all five Commissioners (who were blind closed copied) a draft Final Order that staff intended to reflect the Commission decisions made on November 18 and 19.[7]

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[1] Minutes for the Week of Nov. 17, 2025, at 104–06.
[2] Agenda No. 2025.11.18.
[3] *See* Redacted Staff Memo (Nov. 14, 2025).
[4] Minutes for the Week of Nov. 17, 2025, at 106.
[5] Minutes for the Week of Nov. 17, 2025, at 106. Under the Montana Administrative Procedure Act, the Commission's deadline for issuing a final written decision was Wednesday, December 24, 2025. *See* Order 7968t ¶ 11; Mont. Code Ann. § 2-4-623(1)(a). "Commission Leadership" is defined in the Commission's IPM, Administration Policy 2.9.3.3 as the President and Vice President.
[6] *See* Minutes for the Week of Nov. 17, 2025, at 104-06.
[7] Email from Brooke Umsted, MSPC Rate Analyst (Dec. 19, 2025, 10:27 AM).

Later that morning, Commissioner Molnar replied to all Commissioners and key staff objecting to staff finalizing the written order.[8] He indicated the basis for his objection was that that three of his motions on November 19, 2025 were deemed "out of order" by the meeting chair because they exceeded the scope of allowable action in the docket.[9]

On Tuesday, December 23, 2025, staff emailed all five Commissioners (who were blind closed copied) an updated and redlined version of Final Order 7968t that staff intended to reflect the Commission decisions made on November 18 and 19.[10]

Commissioner Molnar replied to President Welborn, copying key staff, indicating that at no point was it clear that on November 18 and 19, 2025 that the Commission was voting on a final written decision for the rate case.[11]

On the morning of December 23, Commissioner Pinocci sent an email to President Welborn and staff expressing his belief that "'leadership' wanted to use [his] vote to pass the rate increase using [Commissioner Pinocci] as [leadership's] unwitting accomplice.[12] Commissioner Pinocci expressed disappointment that the Commission—himself included—voted to approve all four settlement agreements in the case.[13] He asserted that Commission leadership was "censuring those that might disagree with them' and affirmed that he remained "a 'no' vote."[14]

On December 24, 2025, at 11:32 am, President Welborn sent an email asking staff to "edit [signature block] language in accordance with law, and our IPM, and if applicable, please honor email directives in signature block."[15] Thereafter, additional emails were sent between leadership and staff discussing how to appropriately recognize Commission votes in the signature block.

Ultimately, Commission leadership authorized staff to issue Order 7968t, which was publicly published on the Commission's online docket portal, REDDI, on December 24 at 4:38 p.m.[16]

The "Order" section of published Order 7968t lists 13 motions approved by the Commission on November 18 and 19, 2025, listing the vote tally that approved each motion.[17] Motions that did not pass by a majority vote are not included.[18]

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[8] Email from Bradley Molnar, Mont. Pub. Serv. Comm'nr (Dec. 19, 2025), 11:54 AM).
[9] *Id.*; Minutes for the Week of Nov. 17, 2025, at 106, ¶¶ (160)–(162).
[10] Email from Brooke Umsted, MSPC Rate Analyst (Dec. 23, 2025, 3:40 PM).
[11] Email from Bradley Molnar, Mont. Pub. Serv. Comm'nr (Dec. 23. 2025, 9:28 AM).
[12] Email From Randall Pinocci, PSC Commissioner (Dec. 23, 2025, 5:44 AM).
[13] *See id.*; Minutes for the Week of Nov. 17, 2025, at 104–06, ¶¶ (146)–(148), (155) (recording Commission approval of Settlement Agreements).
[14] Email From Randall Pinocci, PSC Commissioner (Dec. 23, 2025, 5:44 AM).
[15] Email from Jeffrey Welborn, Commission President (Dec. 24, 2025, 11:32 AM).
[16] *See* Email from Alana Lake, DPSR Executive Director (Dec. 24, 2025, 2:04 PM) (confirming President Welborn's approval); Email from Alana Lake (Dec. 24, 2025, 2:28 PM) (confirming signature block language); Email from Alana Lake (Dec. 24, 2025, 3:14 PM) (explaining final decision regarding signature block language to all Commissioners).
[17] Order 7968t, at 103–104, ¶¶ (1)–(13).
[18] *See id.*

The "Signature Block" section of published Order 7968t lists all five Commissioners who participated in decision making as follows:

> JEFF WELBORN, President
> JENNIFER FIELDER, Vice President
> RANDALL PINOCCI, Commissioner
> Dr. ANNIE BUKACEK, Commissioner (abstaining in part)
> BRAD MOLNAR, Commissioner (dissenting in part)[19]

On December 2, 2025, the Commission unanimously approved the Commission minutes for the week of November 17, 2025, which included a tally of all Commission votes made on November 18 and 19, 2025.[20]

APPLICABLE COMMISSION POLICY

Under the Commission's Internal Policy Manual ("IPM"), Delegation of Authority Policy:

> When the Commission votes on a matter without a draft order, notice, or other document reflecting the Commission's decision, the Commission's written decision is subject to the following additional notice and review.
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> 2.9.1. Staff responsible for preparing the document reflecting the Commission's decision shall send an email to Commissioners with the document, in its final form, as an attachment, at least two business days before the document is issued. The email shall include:
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> > 2.9.1.1. The date on which the action described in the document was approved by the Commission.
> >
> > 2.9.1.2. A brief summary of the action approved.
> >
> > 2.9.1.3. A statement indicating that a Commissioner may respond to the email to indicate that Commissioner's belief that the document, as drafted, does not accurately reflect the intent of the Commission as expressed when the action was taken.
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> 2.9.2. If a Commissioner believes that the document, as drafted, does not accurately reflect the intent of the Commission, that Commissioner must respond to the staff email in writing, so indicating his/her stance. Staff shall then work with individual Commissioners to revise the document to accurately reflect the action taken by the Commission.
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> 2.9.3. If a Commissioner does not respond within two business days to the email described above from staff, that Commissioner's silence shall be interpreted as

[19] Order 7968t, at 104–05.
[20] PSC Minutes for the Week of December 01, 202, at 1

his/her assent to the document, as drafted, and the Commission Secretary shall sign the document electronically on behalf of each such Commissioner.

2.9.4. Commissioners may not use this policy to offer revisions to the document other than those that necessarily clarify or correct inconsistencies between the document, as drafted, and the action taken by the Commission. Such revisions are encouraged, and commissioners and staff should endeavor to work cooperatively to ensure drafting of the document is done in a manner that is acceptable to each commissioner, with the understanding that the Commission is comprised of five individuals and that drafting specific language acceptable to each individual Commissioner may not be possible.

2.9.5. In cases of contradicting input from Commissioners, deference shall be given to the Commissioner who made the motion and voted in favor of it, and the other Commissioners who voted in favor of the motion, respectively.[21]

IPM Delegation of Authority Policy 2.10.1 states:

> "If the Commission has voted on a matter, the vote will be indicated in the signature block. Any Commissioner who does not participate in a vote will be omitted from the electronic signatures. The reason for the omission (e.g., excused, absent, or abstaining) will be stated with the vote."

IPM Delegation of Authority Policy 2.10.2 states:

> "Any Commissioner who casts a dissenting vote will be noted as dissenting in the signature block, unless the Commissioner writes a separate dissenting opinion."

ANALYSIS

The process for the Commission to consider a final decision in this case—without a draft final order as part of Commission work session materials—was consistent with the Commission's standard operating procedures. Often, staff prepares a draft Final Order for the Commission to consider when it makes its final decision. However, depending on the docket and complexity of the issues, preparing a draft order is not the most efficient option. Preparing a memorandum is preferable when the Commission's ultimate decision is uncertain. That way, staff does not spend extra time drafting a decision that is ultimately rejected by the Commission.

The Commission occasionally appoints certain Commissioners to finalize documents on behalf of the Commission. This is squarely within the Commission's broad authority to manage its proceedings.[22] Commissioners appointed to finalize a draft document on behalf of the whole Commission cannot change any decision or vote made by the Commission.

The "Order" section of published Final Order 7968t reflects all motions approved by the Commission on November 18 and 19, 2025, listing the vote that approved each successful

[21] Commission IPM, Delegation of Authority Policy 2.9–2.9.5.
[22] *See generally*, Mont. Code Ann. § 69-1-110 (Conduct of Commission Business).

motion.[23] This is a departure from how decisions are typically listed in Commission Orders. But this was also a unique circumstance in which the Commission's Order consisted of 13 separate decisions.

The signatures in Final Order 7968t are listed as they are because Commissioner Bukacek abstained from voting on some of the 13 decisions; Commissioner Molnar voted "no" on some of the 13 decisions; and Commissioner Pinocci did not vote "no" on any of the 13 approved decisions.

Because Commissioner Bukacek's motion to allow $16M recovery for YCGS construction change orders failed 2-3, that motion was not reflected in the Commission's final written Order 7968t.[24]

Commissioner Pinocci's December 23 "dissent" email is insufficient to change any vote he made on November 18 and 19, 2025. Commission deliberation and votes on matters of substantial public interest may only be made at a duly noticed public meeting.[25] Commissioner Pinocci's email is also unclear as to what he wanted to vote "no" on; it is unclear whether he intended to dissent to the final draft of Order 7968t, to all 13 decisions that he previously voted to approve, or to only some of the 13 decisions.

If an individual Commissioner wanted to change a vote cast on November 18 or 19, 2025, they would have needed to work through the PSC President to request a work session before the Commission's deadline for issuing a written decision on December 24.[26] Under the Commission's IPM, specific procedures must be followed to request a work session.[27]

I am not aware of any documentation that a Commissioner appropriately moved for the Commission, as a whole, to reconsider the public votes made on November 18 or 19. Though, I am aware of claims from the media that Commissioner Molnar tried to request a work session at some point between November 19 and December 24, I have not seen any evidence to support this. Work session requests must be submitted to the Commission's "Agenda" folder on the office shared drive. There is no work session request to reconsider the decision in Docket 2024.05.053 in the Agenda folders for the work sessions scheduled for the weeks of 11/25, 12/02, 12/09, or 12/16. The Commission meetings for the weeks of 12/22 and 12/29 were cancelled.

No Commission vote was taken in Docket 2024.05.053 in December 2025. The Commission's votes at the meetings on November 18 and 19 were the final votes reflected in the Commission's final decision.

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[23] *Compare* Minutes for the Week of Nov. 17, 2025, at 104–06, ¶¶ (146)–(151), (153)–(159), *with* Order 7968t, at 103–104, ¶¶ (1)–(13); *see* Order 7968t, at 103–104, ¶¶ (1)–(13); *see* Video of November 18th, 2025 MT PSC Business Meeting Work Session 2, https://www.youtube.com/watch?v=0ODLbkMqj6g; Video of November 19th, 2025 MT PSC Business Meeting, https://www.youtube.com/watch?v=7960TkFVSQA.

[24] *In re NorthWestern's 2024 Rate Case*, Dkt. 2024.05.053, Order 7968t, at 102–04.

[25] *See* Mont. Code Ann. §§ 2-3-103(1)(c), 2-3-111(1); IPM Commission Proceedings Policy 2.2.1; 2.3.6.6.

[26] *See* IPM Commission Proceedings Policy 2.3.3.3; IPM Administration Policy 2.13.1.2.

[27] *See* IPM Commission Proceedings Policy 2.3.3.2.

Finally, note that the Commission is planning an upcoming business meeting for the Commission to reconsider its final decision in this case. The Commission will have an opportunity to change the decisions made on November 18 and 19, 2025.