

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

IN THE MATTER OF the Complaint) UTILITY DIVISION
of Whitehall Wind, LLC Against)
NorthWestern Energy for Failure to Submit) DOCKET NO. D2007.11.131
Annual Avoided Cost Rate Information)
) ORDER NO. 6902b

ORDER ON MOTION TO COMPEL

Procedural Background

1. On November 8, 2007, Whitehall Wind, LLC (WHW) filed a Complaint Regarding NorthWestern Energy’s Failure to Comply with Federal and State Requirements for Publishing Avoided Cost Information (Complaint). On December 5, 2007, the Public Service Commission (Commission) issued Notice of Complaint to NorthWestern Energy (NWE).

2. On August 11, 2009, the PSC issued Final Order No. 6902a finding that NWE failed to file the data required by 18 C.F.R. § 292.302(b) and ARM 38.5.1901 for 2002, 2004, 2006, and 2008 (see Order 6902a, p. 10, ¶ 31-32). The PSC directed NWE to file the required information within 60 days. NWE submitted compliance information on October 9, 2009, and revised work papers on October 14, 2009 (collectively Compliance Filing).

3. On October 16, 2009, WHW filed a Motion to Compel asserting that the form in which NWE presented the data did not meet the requirements of 18 C.F.R. § 292.302 and that the supporting documentation was deficient or non-existent (Motion). On November 5, 2009, NWE filed its Response to [the Motion] (Response). NWE asserted that the Motion was improper, that its Compliance Filing complied with Order 6902a, and that there is no basis for a demand for further verification and documentation. On November 10, 2009, WHW filed a Reply Brief in Support of [the Motion] (Reply). WHW asserted that its Motion is the simplest procedure “to demand proper enforcement of the federal rule.” Reply at 2.

Discussion and Findings

4. In its Motion, WHW asserted (1) that NWE has not submitted estimated costs data in the blocks required by 18 C.F.R. § 292.302(b)(1). Motion at 2-3. 18 C.F.R. § 292.302(b)(1) provides, in part:

The estimated avoided cost on the electric utility's system, solely with respect to the energy component, for various levels of purchases from qualifying facilities. Such levels of purchases shall be stated in blocks of not more than 100 megawatts for systems with peak demand of 1000 megawatts or more, and in blocks equivalent to not more than 10 percent of the system peak demand for systems of less than 1000 megawatts.

5. The Commission finds that NWE failed to provide estimated avoided costs for various levels of purchases from qualifying facilities in the required block sizes. NWE failed to identify its system peak demand so that the sizes of the required blocks could be determined.

6. In its Motion, WHW asserted, "with respect to capacity purchases, NWE's submission refuses to announce any capacity retirements as required by 18 [C.F.R.] § 292.302(b)(2)." Motion at 4. In its transmittal letter accompanying the Compliance Filing, NWE stated, "Please note that NWE's Resource Procurement Plans ("RPP") do not include capacity retirements as contemplated by 18 C.F.R. § 292.302. Consequently, such information is not included in the avoided cost computations."

7. 18 C.F.R. § 292.302(b)(2), in describing the information to be provided to the Commission, provides, "The electric utility's plan for the addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding 10 years."

8. NWE did not provide any analysis or justification for its interpretation that it need provide information only for capacity retirements included in its RPPs. WHW asserted that "NWE presumably purchases capacity and has contracts that include capacity payments and the like, and some idea of when those contracts will terminate." Indeed, NWE's submission indicated that two contracts, apparently for firm energy, would expire during 2007.

9. The Commission finds that NWE, without justification, failed to identify its plan for capacity retirements, whether units or contracts, for each of the succeeding ten years in each year of its Compliance Filing.

10. WHW asserts that NWE failed to report the 2004 planned capacity additions in the manner required by the federal rule. Motion at 4-5.

11. 18 C.F.R. § 292.302(b)(3) requires an electric utility to provide “The estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases on the basis of dollars per kilowatt, and the associated energy costs of each unit expressed in cents per kilowatt hour. These costs shall be expressed in terms of individual generating units and of individual planned firm purchases.” NWE stated:

The 2004 capacity costs are based on the January 2004 RPP, Portfolio Number 15. This Portfolio has two capacity units, Basin Creek at 48 MWs and a 260 MW combined cycle combustion turbine. The weighted average cost of the two units is \$89 / kW year with an in-service date of 2008.

12. The Commission finds that combining the two resources into a single weighted average cost fails to comply with 18 C.F.R. § 292.302(3).

13. WHW argued that NWE’s submission lacked documentation sufficient to verify and confirm the accuracy and veracity of the information provided and that NWE’s calculations of avoided cost were opaque. Motion at 5-6. The Commission finds no administrative rule that requires NWE to provide more information than it did. The Commission closely examines NWE’s avoided costs in biennial contested-case dockets in which the Commission sets the standard-offer tariff rates for small qualifying facilities.

Conclusions of Law

1. Any finding of fact that should properly be considered a conclusion of law to preserve the integrity of this order is adopted and incorporated as such.

2. The Commission supervises, regulates, and controls public utilities pursuant to Title 69, Chapter 3, MCA. § 69-3-102, MCA.

3. NorthWestern Energy is a public utility subject to the jurisdiction of the Commission. § 69-3-101, MCA.

4. The Commission implements and enforces FERC’s PURPA rules to encourage qualifying facilities. 16 U.S.C. § 824a-3(f)(1).

5. NorthWestern Energy is a public utility subject to FERC’s PURPA rules regarding filing of system cost data from which avoided costs may be determined. 18 C.F.R. § 292.302(a).

Order

IT IS HEREBY ORDERED:

1. The Commission GRANTS Whitehall Wind, LLC's Motion to Compel NorthWestern Corporation d/b/a NorthWestern Energy to submit estimated avoided cost information for 2002, 2004, 2006, and 2008 in levels and blocks as required by 18 C.F.R. § 292.302(b)(1);
2. The Commission GRANTS Whitehall Wind, LLC's Motion to Compel NorthWestern Corporation d/b/a NorthWestern Energy to submit information for 2002, 2004, 2006, and 2008 identifying the utility's plan for capacity retirements for each year during the succeeding 10 years as required by 18 C.F.R. § 292.302(b)(2);
3. The Commission GRANTS Whitehall Wind, LLC's Motion to Compel NorthWestern Corporation d/b/a NorthWestern Energy to provide the estimated capacity costs for the planned resources identified in the 2004 information expressed in terms of individual generating units as required by 18 C.F.R. § 292.302(3);
4. The Commission directs NorthWestern Corporation d/b/a/ NorthWestern Energy to file the required information within 30 calendar days of the Service Date of this Order; and
5. The Commission DENIES all other requests for relief made by Whitehall Wind, LLC.
6. The Commission directs NorthWestern Corporation d/b/a/ NorthWestern Energy to reflect the approach to complying with 18 C.F.R § 292.302 represented by this Order in subsequent compliance filings.

DONE AND DATED this 9th day of February 2010 by a vote of 4 to 1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chair

KEN TOOLE, Vice Chair

GAIL GUTSCHE, Commissioner

BRAD MOLNAR, Commissioner (Voting to Dissent)

JOHN VINCENT, Commissioner

ATTEST:

Verna Stewart
Commission Secretary

(SEAL)

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