

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

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IN THE MATTER OF NorthWestern Energy's)	REGULATORY DIVISION
Petition for a Short-Term Waiver from Full)	
Compliance with the Community Renewable)	DOCKET NO. D2011.6.53
Energy Project Purchase Requirement)	

DIRECT TESTIMONY OF
LARRY NORDELL
ON BEHALF OF THE MONTANA CONSUMER COUNSEL

November 4, 2011

1 **Q. PLEASE STATE YOUR NAME AND QUALIFICATIONS.**

2 **A.** My name is Larry Nordell. I am an economist with the Montana Consumer Counsel. I
3 have worked for the Consumer Counsel since 2002. From 1976 through 2002 I worked
4 as an economist for the Department of Natural Resources and Conservation and, after
5 reorganization of several state agencies, for the Department of Environmental Quality.
6 Prior to working for the State of Montana I taught economics at the University of New
7 Hampshire (1972-76) and at the State University of New York at Stony Brook (1968-72).
8 I hold a doctorate in economics from the University of California at Berkeley (1967) and
9 spent a post-doctoral year at the London School of Economics (1967-68).

10

11 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

12 **A.** Yes, I have testified before this Commission on numerous occasions.

13

14 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS DOCKET?**

15 **A.** I will testify in support of Northwestern Energy's (NWE's) request for a short-term
16 waiver from full compliance with the Community Renewable Energy Project (CREP)
17 purchase requirement.

18

19 **Q. PLEASE DESCRIBE THE CREP REQUIREMENT.**

20 **A.** Jurisdictional utilities are required to acquire Community Renewable Energy Projects
21 with a total capacity of 50 MW, beginning in 2012; Northwestern estimates its
22 proportional share based upon retail energy sales to be 44 MW. Beginning in 2015 the
23 statewide requirement goes up to 75 MW; Northwestern's share will be based on retail
24 sales in 2014. As originally written in 2005 legislation, CREPs could be no more than 5
25 MW in size, had to be connected on the utility side of the meter, and had to have a
26 controlling interest held by local owners (defined as Montana residents, small business,

1 non-profits, tribal councils, political subdivisions or local governments, or Montana-
2 based cooperatives other than cooperative utilities.) The 2009 amendments raised the
3 maximum size of a CREP to 25 MW and allowed ownership by a public utility.

4
5 **Q. HOW DID NORTHWESTERN ENERGY PROCEED TO TRY TO MEET ITS**
6 **REQUIREMENT?**

7 **A.** As described in the testimony of Dave Fine and Steve Lewis, NWE issued an RFP
8 for CREP resources in 2008, and another RFI in 2009. NWE began negotiations with
9 several of the projects that submitted bids, including Turnbull Hydro, and after the 2009
10 amendments and a declaratory ruling by the Commission that Turnbull qualifies as a
11 CREP; a long-term power purchase agreement was signed for a 13 MW facility. NWE
12 also began negotiations with several parties who submitted bids in the 2009 RFI,
13 resulting in a decision to pursue discussions with Compass Wind for the Spion Kop wind
14 project. Those discussions resulted in efforts to optimize the size and cost of the project,
15 resulting in a change from a proposed 25 MW project to the current level of 40 MW,
16 which does not meet the requirement for a CREP. NWE, according to the testimony of
17 Dave Fine and Steve Lewis, is continuing to negotiate with one or more QFs that could
18 meet the definition of CREPs but whose development schedule is uncertain. That leaves
19 NWE in its current position of requesting a partial waiver from the requirements and
20 penalties in Section 69-3-2004, MCA.

21
22 **Q. WHAT IS YOUR VIEW OF THE CREP REQUIREMENT AND ITS IMPACT ON**
23 **NWE'S RESPONSIBILITIES?**

24 **A.** NWE faces a number of requirements affecting its resource procurement, that are not
25 always in synch. It must acquire sufficient resources to meet the needs of its customers
26 reliably and efficiently, and it must make every effort to do so at minimum cost. It is
27 constrained in this requirement by environmental and other laws. In particular, the RPS
28 standard requires that a specific percentage of its total energy sales must come from

1 renewable resources, and the CREP requirement that a minimum amount of the capacity
2 of its renewable resources must come from CREP resources. A cost cap applies to the
3 impact of these renewable requirements on NWE's efforts to minimize costs; the cap for
4 NWE in 69-3-2007 states that NWE

5 " ...is not obligated to take electricity from an eligible renewable resource unless
6 the eligible renewable resource has demonstrated through a competitive bidding
7 process that the total cost of electricity from that eligible resource, including the
8 associated cost of ancillary services necessary to manage the transmission grid
9 and firm the resource, is less than or equal to bids for the equivalent quantity of
10 power over the equivalent contract term from other electricity suppliers."
11

12 **Q. WHAT DO THESE CONFLICTING REQUIREMENTS IMPLY FOR NWE'S**
13 **POSSIBLE FAILURE TO MEET THE CREP REQUIREMENT FOR 2012 AND**
14 **ITS REQUEST FOR A WAIVER?**

15 **A.** It appears that NWE has made a good faith effort to comply with the CREP requirements,
16 and that a failure to meet the requirements for January 1, 2012 is largely due to the
17 limited responses to the RFI, the failure of two apparently attractive bids to survive
18 scrutiny, and the decision to raise the size of the proposed Spion Kop project from 25
19 MW to 40 MW. It would make no sense for NWE to be punished for this decision.
20 Raising the size beyond the CREP limit was done in the interest of optimizing the project
21 and reducing unit costs, as well as meeting the overall requirements of the RPS. Further,
22 the waiver provisions in ARM 38.5.8301(4)(c) contemplate the current situation in which
23 full compliance would cause the utility to incur excessive costs and violate the cost caps.
24

25 **Q. PLEASE EXPLAIN WHY COMPLIANCE WOULD CAUSE NWE TO VIOLATE**
26 **THE COST CAPS.**

27 **A.** The cost cap language quoted above compares the cost of a CREP with the cost of power
28 from bids for the equivalent quantity of power over the equivalent contract term from
29 other suppliers. This ensures that the CREP is cost effective in comparison with
30 available alternatives. Spion Kop sized at 25 MW to be CREP-compliant is not cost-

1 effective in comparison with Spion Kop optimally sized at 40 MW. Full compliance with
2 the CREP requirements at this time would thus cause NWE to violate the cost cap by
3 buying and owning a CREP resource that produced power at a higher cost than an
4 available alternative.

5
6 **Q. WHAT ARE THE PENALTIES FOR FAILURE TO MEET THE CREP**
7 **REQUIREMENT?**

8 **A.** The penalty language in 69-3-2004(10), MCA, reads as follows:

9 [Except as provided in the waiver section] “if a public utility or competitive
10 electricity supplier is unable to meet the standards established in subsections (2)
11 through (4) in any compliance year, that public utility or competitive electricity
12 supplier shall pay an administrative penalty, assessed by the commission, of \$10
13 for each megawatt hour of renewable energy credits that the public utility or
14 competitive electricity supplier failed to procure. A public utility may not recover
15 this penalty in electricity rates. Money generated from these penalties must be
16 deposited in the universal low-income energy assistance fund established in 69-8-
17 412(1)(a).”

18 This language is unambiguous as it applies to a failure to meet the RPS standard which
19 governs how much energy must be acquired from renewable sources. However it is
20 ambiguous as it applies to a failure to meet the CREP requirements as they are couched in
21 terms of capacity rather than energy. A CREP resource could provide anywhere from
22 zero energy if it were out of service, up to a 100 percent capacity factor, while still
23 meeting the requirements for compliance. There is no clear answer to what is the
24 appropriate level of penalty.

25
26 **Q. PLEASE SUMMARIZE YOUR RECOMMENDATION TO THE COMMISSION.**

27 **A.** I believe NWE has shown that it made a good faith effort, and has undertaken all
28 reasonable steps, as required by 38.5.8301(4), to procure resources to meet the CREP
29 requirements. Its failure is due not to any inaction on its part but rather to the paucity of
30 attractive offers and to NWE’s efforts to meet other requirements of law and regulation,

1 that is, to satisfy the RPS standard and to meet the needs of its customers reliably at
2 minimum cost. The resource which would have allowed it to meet the CREP
3 requirement, Spion Kop at 25 MW, would cause it to violate the cost cap compared with
4 the resource it now proposes, Spion Kop at 40 MW. No public interest would be served
5 by punishing NWE in this case. I recommend that the Commission grant the requested
6 waiver.

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8 **Q. DOES THIS COMPLETE YOUR TESTIMONY?**

9 **A.** Yes, it does.

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