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

In the Matter of the Petition of)	
NorthWestern Energy for a Waiver from)	
Full Compliance with the Community)	REGULATORY DIVISION
Renewable Energy Project Purchase)	
Obligation of the Renewable Portfolio)	DOCKET NO. D2011.6.53
Standard)	
)	

**NorthWestern Energy’s Motion for and Brief in Support
of Partial Reconsideration of Order No. 7177b**

Pursuant to the ARM 38.2.4806, NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern” or “NWE”) submits this *Motion for Partial Reconsideration of Order No. 7177b* (“*Motion*”) in the above-captioned Docket. Specifically, NorthWestern moves the Montana Public Service Commission (“Commission”) to reconsider and reverse Conclusions of Law at ¶ 45—“NorthWestern failed to demonstrate that CREPs are not available. *Supra* ¶¶ 14-15, 17, 23 & 26-27.” (“*Conclusion # 45*”) and at ¶ 48—“By failing to issue a competitive solicitation in 2011, NorthWestern failed to take a reasonable step with respect to compliance years 2013 and 2014. *Supra* ¶¶ 30, 43.” (“*Conclusion # 48*”). NorthWestern is not seeking

reconsideration or reversal of the part of the Order that denied its *Petition for a Waiver from Full Compliance with the Community Renewable Energy Project Purchase Obligation of the Renewable Portfolio Standard (“Petition”)* for compliance years 2013 and 2014.

I. INTRODUCTION

On June 30, 2011, NorthWestern filed its *Petition*. The Montana Consumer Counsel supported the *Petition*; the Natural Resources Defense Council (“NRDC”) supported a waiver for 2012 but opposed it for 2013 and 2014. On June 13, 2012, 17 days less than a year after NorthWestern filed the *Petition*, the Commission issued Order No. 7177b.

II. ARGUMENT

Neither *Conclusion # 45* nor *Conclusion # 48* is supported by authority or by reasoned opinion; both reference and rely on findings of fact that are not based exclusively on the evidence or matters officially noticed.

The Commission determined that this is a contested case. *See* Order No. 7177, ¶ 2 (September 19, 2011) (“As ‘a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing,’ this is a contested case pursuant to the Montana Administrative Procedures Act.”). In contested cases findings of fact must be based exclusively on the evidence and matters officially noticed and conclusions of law must be supported by authority or by a reasoned opinion. § 2-4-623, MCA (2011).

A. The Evidence Establishes that there are no Community Renewable Energy Projects (“CREPs”) Available from which NorthWestern can Currently Purchase Energy and Renewable Energy Credits (“RECs”).

Conclusion # 45 merely makes a statement. It does not cite to any authority or make any reasoned argument but simply cites to six findings of fact (14, 15, 27, 23, 26, and 27). None of the cited findings of fact supports *Conclusion # 45*. Findings of fact 14 and 15 discuss the 2008 Request for Proposals and the Turnbull Hydro, LLC facility. The Turnbull Hydro, LLC facility is under contract with NorthWestern and is already a CREP resource for the electricity portfolio.

Finding of fact 17 states, “The 2009 RFI produced 40 proposals, of which 19 identified themselves as CREPs.” This finding does not support a conclusion that CREPs are available for two reasons. First, the evidence in the docket demonstrated that the self-identified CREPs would not qualify as CREPs under Montana statute as it existed after March 25, 2011 when the revised definition of “local owner” became effective. *See Response to Data Request PSC-003(a)*, admitted to evidentiary record. *Transcript 7:12-19*. Second, no evidence supports a conclusion that any of the proposals referenced in finding of fact 17 is actually available or cost-effective. Each of the proposals was only potentially available in 2011. To the extent that the Commission is finding any of these 2009 Request for Information (“RFI”) proposals is currently available, such a finding is not based exclusively on the evidence in the proceeding.

Finding of fact 23 discusses the Gordon Butte Wind, LLC project, a qualifying facility (“QF”). NorthWestern was required to acquire the output of Gordon Butte Wind, LLC outside of the normal resource acquisition process because it is a QF. QFs are not necessarily CREPs; it is a serendipitous circumstance when a QF happens to be a CREP. Like Turnbull Hydro, LLC, Gordon Butte Wind, LLC is under contract with NorthWestern and is not an available new CREP.

Findings of fact 26 and 27 discuss working with developers of potential QFs to determine CREP eligibility, entering into contracts with two small hydro QFs whose developers have

represented that they will qualify as CREPs, and other negotiations. These findings do not establish that there are any CREPs currently available from which NorthWestern could purchase energy and RECs.

None of the cited findings of fact supports *Conclusion # 45*. The uncontroverted evidence is the testimony of David E. Fine that CREPs are not available. The contrary conclusion reached by the Commission in *Conclusion # 45* is not supported by any relevant finding, authority, or reasoned opinion. Therefore, the Commission should reconsider and reverse *Conclusion # 45*.

B. Initiating a Competitive Solicitation Process in 2011 was not a Reasonable Step.

To be eligible for a short-term waiver of the CREP purchase obligation, NorthWestern must show that it “has undertaken all **reasonable** steps to procure” energy and RECs from CREPs. § 69-3-2004(11), MCA (2011). *Conclusion # 48* rests on the premise that issuing a competitive solicitation in 2011 was a reasonable step to acquire CREPs for 2013 and 2014. This premise is false.

The statute does not define “reasonable.” The Commission has not provided any guidance as to the meaning of “reasonable.” Rather, the Commission seems to focus on “all” to the exclusion of “reasonable” in evaluating the *Petition*.

When referring to actions to be performed by a party, reasonable means “fit and appropriate to the end in view.” *Black’s Law Dictionary* 1265 (6th ed. 1990). It would not have been fit and appropriate for NorthWestern to issue a competitive solicitation in 2011 for many reasons.

First, the needs of operating the public utility business required that NorthWestern’s resources be allocated to other tasks. NorthWestern had just concluded a competitive solicitation

that had taken approximately 20 months and needed to prepare and file an application for approval of the resulting transaction for which it needed a final decision from the Commission within approximately 11 months. Based on prior experience, NorthWestern knew that processing the application for approval would require significant resources and time from its employees and consultant, the same individuals who would have been involved in a competitive solicitation.

Second, as a result of the 2009 RFI, NorthWestern learned that it would not meet the CREP purchase obligation for 2012. NorthWestern needed to respond by seeking a waiver. Although the administrative rules are not clear, NorthWestern needed to guard against the possible interpretation of ARM 38.5.8301(8), that a waiver for 2012 needed to be filed no later than June 30, 2011. This required the immediate efforts of the same individuals who would have been involved in a competitive solicitation.

Third, NorthWestern personnel were engaged in intensive negotiations with potential QFs as developers sought contracts that would enable them to qualify for a higher standard offer rate than was proposed in a pending docket (D2010.7.77) and to complete construction before the expiration of federal production tax credits in 2012. These negotiations resulted in contracts for approximately 50 MW of additional wind QFs.

Fourth, NorthWestern personnel were engaged in the analysis for and preparation of a biennial electricity resource procurement plan. The Commission's administrative rules required that the plan be filed by December 15, 2011. NorthWestern's employees were working on the plan without the benefit of the Commission's comments on the prior electricity resource procurement plan. This activity involved some of the same individuals who would have been involved in issuing and evaluating a competitive solicitation.

Fifth, NorthWestern personnel needed to devote time to preparing and processing its annual electric supply tracker and natural gas supply tracker. Although this is a regular activity, it requires significant time and coordination of NorthWestern employees. The timing of this filing is mandated by the Commission.

Sixth, contrary to the implications of finding of fact 30, based on the record in this docket, NorthWestern realized that it would be unlikely for a competitive solicitation issued in 2011 to result in resources being available in 2013 or 2014. The experience with the 2009 RFI demonstrated that it would require at least 39 months to go from initiating planning for a competitive solicitation to having a project, other than a QF for which a competitive solicitation was not needed, producing energy and RECs. NorthWestern actually issued the 2009 RFI on August 17, 2009. Twenty months later, on April 8, 2011, NorthWestern and Spion Kop Wind, LLC had an execution version of the contract. Nearly two months were required to prepare an application to be filed with the Commission. Nearly nine months elapsed before the Commission ruled on the application. Approximately eight to nine months are needed to construct the facility and bring it to commercial operation. This totals 39-40 months and does not include the time necessary to prepare a competitive solicitation prior to issuance.

NorthWestern's judgment that a 2011 competitive solicitation would not result in resources being available in 2013 and 2014 was also supported by its knowledge that the federal production tax credits for wind resources were scheduled to expire on December 31, 2012.

Seventh, NorthWestern did not have the ability to execute new contracts for wind CREPs after signing the Spion Kop contract and the new wind QF contracts because its capacity to integrate wind into the supply portfolio had been exhausted.

No party asserted that NorthWestern had not taken all reasonable steps. Even NRDC which opposed granting a waiver for 2013 and 2014 merely stated, "there is more than sufficient time for NWE to comply with the statute for 2013 and 2014." *NRDC Opening Br.* at 2. For all of these reasons, it would not have been fit, appropriate, or reasonable for NorthWestern to issue a competitive solicitation in 2011. The Commission's order does not contain any reasoning or authority to the contrary.

The conclusion reached by the Commission in *Conclusion # 48* is not supported by any relevant finding, authority, or reasoned opinion. *Conclusion # 48* lacks any fair, just, or suitable interpretation of "reasonable." Therefore, the Commission should reconsider and reverse *Conclusion # 48*.

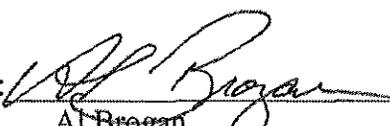
III. CONCLUSION

Section 2-4-623(3), MCA (2011), establishes the requirements for a conclusion of law. *Conclusion # 45* and *Conclusion # 48* are not supported by authority, reasoned opinion, or relevant evidence in the record.

For these reasons, the Commission should grant NorthWestern's motion for reconsideration and reversal of *Conclusion # 45* and *Conclusion # 48*.

RESPECTFULLY SUBMITTED this 25th day of June 2012.

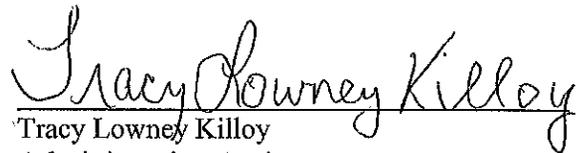
NorthWestern Energy

By: 
Al Brogan
Attorney for NorthWestern Energy

CERTIFICATE OF SERVICE

I hereby certify that a copy of NorthWestern Energy's ("NWE") Motion for and Brief in Support of Partial Reconsideration of Order No. 7177b in Docket No. D2011.6.53 has been hand delivered to the Montana Public Service Commission (PSC) and has been e-filed electronically on the PSC website. A hard copy has been mailed to the attached service list on this date by first class mail.

Date: June 25, 2012

A handwritten signature in black ink that reads "Tracy Lowney Killoy". The signature is written in a cursive style with a horizontal line underneath the name.

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