

Service Date: September 19, 2011

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

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) ORDER NO. 7177

PROCEDURAL ORDER

1. On June 30, 2011, NorthWestern Corporation d/b/a NorthWestern Energy (NorthWestern) filed a Petition for a Waiver from Full Compliance with the Community Renewable Energy Project Purchase Obligation. The Montana Public Service Commission (Commission) issued a Notice of Petition and Intervention Deadline on July 25, 2011, and granted intervention to the Montana Consumer Counsel and the Natural Resources Defense Council on August 16, 2011.

2. The Commission has jurisdiction over this matter pursuant to the Montana Renewable Power Production and Rural Economic Development Act. Mont. Code Ann. §§ 69-3-2005(7); 69-3-2004(3) (2009) (requiring public utilities to "purchase both the renewable energy credits and the electricity output from community renewable energy projects"). 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. *Id.* at § 2-4-102(4); *see also* Admin. R. Mont. § 38.5.8301(5) (2011).

3. The Commission, through delegation to staff, hereby establishes the Procedural Order (Order) to be followed in this proceeding. This Order is effective immediately and remains effective unless modified by the Commission or its staff. A party may apply for reconsideration of this Order within ten days of its service date. Nothing in this Order limits the right of the Commission or its staff to inspect the books, accounts, papers, records and memoranda of NorthWestern at any time. Mont. Code Ann. § 69-3-106.

Schedule

4. This Order sets the discovery schedule for this docket. Pre-filed testimony and discovery must be filed at the Commission and served on all parties by the following deadlines:
- a. September 30, 2011: Final day for written discovery to Petitioner.
 - b. October 14, 2011: Final day for Petitioner to respond to written discovery.
 - c. November 4, 2011: Final day for Intervenors' testimony.
 - d. November 21, 2011: Final day for discovery on Intervenors' testimony.
 - e. December 5, 2011: Final day for Intervenors' responses to discovery.
 - f. January 3, 2012: Final day for Petitioner's rebuttal testimony, if any, and Intervenors' response testimony, if any.
 - g. January 16, 2012: Final day for discovery on Petitioner's rebuttal testimony and Intervenors' response testimony.
 - h. January 30, 2012: Final day for responses to discovery on Petitioner's rebuttal testimony and Intervenors' response testimony.
5. The deadline for pre-hearing memoranda will be February 7, 2012, and the hearing will commence on February 15, 2012. The Commission will issue a notice of public hearing at least twenty days prior to the hearing.

Ex Parte Communication

6. As a contested case, *ex parte* communication is generally prohibited in this proceeding. Any communication between a Commissioner and a party or a party's representative about an issue of fact or law in this proceeding that another party has not had notice of and an opportunity to participate in is an *ex parte* communication. *Id.* at § 2-4-613.

Service and Filing

7. A party must serve a copy of every pleading, motion, brief, discovery request or response, and other document it files in this proceeding on every other party. In order to file a document with the Commission, a party must: (1) Submit the document electronically (e-file) on the Commission's website at <http://psc.mt.gov> ("Account Login/Registration" under "Electronic Documents" tab); and (2) physically deliver or mail the original document to the Commission at

1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. The Commission will not post an e-filed document to its website until it receives the original from the filing party. Service or filing by means of facsimile is prohibited. Service by mail does not extend a deadline.

Intervention

8. The deadline for intervention in this proceeding was August 12, 2011. An entity seeking late intervention must file a petition to intervene setting forth: (1) The general position that it intends to take; (2) a legally protectable interest directly affected by this proceeding; (3) whether late intervention would delay the proceeding or prejudice another party; and (4) good cause for not having filed a timely petition. Late intervention will become effective only upon action of the Commission.

Discovery

9. Data requests are the primary method of discovery in proceedings before the commission, but parties may employ techniques of prehearing discovery permitted in state civil actions. Admin. R. Mont. § 38.2.3301. The Commission directs the parties to prepare data requests according to the following guidelines:

- a. Assign a unique, consecutive number to each data request (e.g., MCC-001), regardless of the party to whom the request is directed (e.g., the Commission may direct PSC-001 through 008 to NorthWestern, PSC-009 through 016 to an intervenor, and PSC-017 through 019 again to NorthWestern).
- b. At the beginning of each data request, consistently describe its subject in five words or less. A party may direct the request to a particular witness or include citations to exhibits or testimony.
- c. For multi-part requests, use lower case letters (a-e) to denote up to five parts.
- d. The following are examples of acceptable data requests:

PSC-006 RE: Purchased Gas Contracts
Witness Doe, JBD-4:13-15.

Please provide the origination and expiration date for each contract.

PSC-007 RE: Bypass
Witness Roe, FAR-14:11-26.

- a. What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

10. A party may object to written discovery within seven calendar days from service by filing an objection with the Commission and serving it on all parties. The Commission may schedule oral argument before ruling on an objection. The Commission will consider a party that does not object within seven days to have accepted the discovery request. If a party objects based on privilege, it must file a privilege log with sufficient information for the Commission to determine whether the privilege applies. If a party objects based on confidentiality, it must file a motion for a protective order within seven calendar days from service of the discovery request.

11. If a discovery response fails to answer the request, the discovering party may move within seven calendar days after service of the response for an order compelling an answer. The motion, which the party must file with the Commission and serve on all parties, must identify the relief requested. The Commission may schedule oral argument before ruling on a motion to compel, and will set a new response deadline if it grants the motion.

12. In response to a party's failure to answer written discovery, the Commission may: (1) Refuse to allow it to support or oppose related claims; (2) prohibit it from introducing related evidence; (3) strike pleadings, testimony, or parts thereof; (4) stay the proceeding until the request is satisfied; or (5) dismiss the proceeding, or parts thereof.

13. A party may submit written discovery after a deadline established in this Order either by agreement of the parties or with approval of the Commission upon a showing of good cause that addresses why the discovering party missed the deadline.

Pre-hearing Motions, Conferences and Memoranda

14. A party must make a pre-hearing motion, including a motion to strike pre-filed testimony, at the earliest possible time. A responding party must file and serve its response brief within seven calendar days of service of the motion. If the movant wishes to reply, it must file and serve its reply brief within five calendar days of service of the response brief. Upon the

request of a party, the Commission may allow oral argument on a pre-hearing motion.

15. The Commission may schedule a pre-hearing conference at any time prior to the hearing to discuss the feasibility of settlement in whole or in part, simplification of the remaining issues through admissions of fact, and any other matters that may expedite the hearing.

16. Unless the parties agree to file jointly, each party must file and serve a pre-hearing memorandum listing the following information regarding the hearing: (1) Uncontested issues; (2) contested issues; (3) witnesses it intends to call; (4) exhibits and discovery it intends to introduce; and (5) any special accommodations it seeks regarding witness sequence or scheduling. If a party intends to introduce a discovery response, it must identify the number of the request, the responding witness, and the issue addressed.

Hearing

17. The Montana Rules of Evidence in effect at the time of the hearing will govern the hearing. Because each party is entitled to reasonable notice of what issues will be addressed at the hearing, the Commission may not allow a party to raise an issue at a hearing unless it is reasonably related to an issue previously identified in the proceeding.

18. Prior to the hearing, the parties must arrange with the court reporter and presiding officer to consistently mark all proposed exhibits and pre-filed testimony for reference.

19. A party must make each person that authored a discovery response available for cross-examination at the hearing unless the Commission approves an agreement among the parties to waive cross-examination and allow admission of the evidence without the author. A witness need not recite pre-filed testimony before counsel moves to admit the testimony into the record (as an exhibit not otherwise in the transcript).

20. When a party seeks to cross-examine a witness based on a document not previously filed in this proceeding, it must make copies of the document available to each Commissioner, party, and staff, unless it shows good cause why copies are not available. A party moving to admit discovery into the record must provide a copy for the court reporter.

21. At the discretion of the Commission, members of the public may comment on the proceeding at the hearing.

Open Meetings

22. All Commission meetings are open to the public except as provided by law. The Commission issues notice of routine business meetings and work sessions through a weekly agenda service list. In order to receive notice of the weekly agenda, which may relate to this proceeding, a party must request to be added to the weekly agenda service list.

DONE AND DATED this 16th day of September 2011 by delegation to Commission staff as an Order of the Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

TRAVIS KAVULLA, Chairman
GAIL GUTSCHE, Vice Chair
W. A. (BILL) GALLAGHER, Commissioner
BRAD MOLNAR, Commissioner
JOHN VINCENT, Commissioner