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

IN THE MATTER OF the application of Petition from NorthWestern Energy for a Waiver from Full Compliance With the Community Renewable Energy Project Purchase Obligation	))))	REGULATORY DIVISION DOCKET NO. D2011.6.53

FACT SHEET

Background

The Montana Renewable Portfolio Standard (RPS) requires public utilities to "purchase both the renewable energy credits (RECs) and the electricity output from community renewable energy projects" (CREPs). § 69-3-2004(3)(b), MCA. The initial CREP obligation "is based on each public utility's retail sales of electrical energy in Montana in the calendar year 2011." *Id*. at § 69-3-2004(3)(c). The Public Service Commission (Commission) "has full power of supervision, regulation, and control of such public utilities" and "the authority to generally implement and enforce" the RPS. *Id.* at §§ 69-3-102; 69-3-2005(7).

A CREP is an “eligible renewable resource” no larger than 25 megawatts either owned by a public utility or controlled by “local owners.” *Id*. at § 69-3-2003(4), (11). An "eligible renewable resource" is "a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, and that produces electricity from any combination of wind, solar, geothermal," or certain sources of water power, methane gas, biomass, hydrogen, or compressed air storage. *Id*. at § 69-3-2003(10).

Beginning January 1, 2012, public utilities shall purchase both the renewable energy credits and the electricity output from CREPs that total at least 50 megawatts in nameplate capacity. *Id*. at § 69-3-2004(3)(b). The utilities shall proportionately allocate the required CREP purchase based on each utility’s retail sales of electrical energy in Montana in the calendar year 2011. *Id*. at § 69-3-2004(3)(c).

A public utility may petition the commission for a short-term waiver from full compliance with RPS:

> The petition must include documentation and evidence showing that the public utility has undertaken all reasonable steps to procure renewable energy credits sufficient to comply with the applicable portfolio standards and could not achieve full compliance due to one or more of the following:
>
> (a) the unavailability of sufficient renewable energy credits; . . .
>
> (b) full compliance would cause the public utility to exceed the cost caps; and
>
> (c) other documented reasons beyond the public utility's control.

ARM 38.5.8301(4) (citing cost cap in § 69-3-2007(1), MCA); *see also* § 69-3-2004(11), MCA.

On June 30, 2011, NorthWestern Energy (NWE) filed a Petition for a Waiver from Full Compliance with the CREP Purchase Requirement (Petition). Citing "circumstances beyond its control," NWE asserted that it undertook all reasonable steps to comply with the CREP requirement, but "that sufficient CREPs do not exist to enable NWE to achieve full compliance with the CREP Purchase Obligation, and the cost of any of the proposed CREPs, other than those acquired by NWE, would have exceeded the cost caps." Petition pp. 6-8 (citing § 69-3-2007, MCA).

After proportionately allocating the 50 MW requirement based on its retail sales of electrical energy in Montana in 2011, NWE is responsible for approximately 44 MW of the total requirement. Petition p. DEF-4. The Montana Consumer Counsel (MCC) and the Natural Resource Defense Council (NRDC) each moved to intervene in this proceeding. The Commission granted both requests.

Summary of Testimony

Testimony of David E. Fine of NorthWestern Energy:

David Fine, Director of Energy Supply Planning for NWE, said the purpose of his testimony was to show that conditions and circumstances beyond NWE's control will not allow the utility to meet the minimum CREP requirements on January 1, 2012.

Fine said that NWE is not organized or staffed as a developer of renewable projects and that the utility needs to rely on private sector developers to identify, evaluate, and develop projects to be considered by NWE in its portfolio. The utility obtained the services of Lands

Energy Consulting (Lands Energy) and DNV Renewables (DNV) to assist it in its solicitation and evaluation of CREP proposals.

NWE issued a Request for Proposals (RFP) in 2008 and a Request for Information (RFI) in 2009. As a result of the 2008 RFP, NWE acquired the RECs and the energy from the 13MW Turnbull hydro facility, which the Commission has since certified as a CREP. The RFI process in 2009 produced a pool of proposed projects, from which NWE selected four finalists for additional review and evaluation. After presentations from the four finalists, NWE selected two, Invenergy Wind Development (Invenergy) and Sagebrush Energy (Sagebrush), for more in-depth analysis and evaluation.

Fine said that NWE eventually discontinued the negotiations with Invenergy and Sagebrush due to issues that caused NWE to question the ability of the projects to meet NWE's objectives. When negotiations with Sagebrush ended, NWE re-engaged discussions with one of the other finalists, Compass Wind Projects (Compass). These discussions led to an asset purchase agreement between Compass and NWE for the 40MW Spion Kop project to be constructed in Judith Basin County and to be owned by NWE through a build-and-transfer arrangement.

Fine said that CREP needs were not NWE's only focus with regard to renewable resources and that the utility must also meet renewable portfolio standards.

Fine testified that NWE has undertaken all reasonable steps to meet CREP requirements. The utility began planning for the acquisition of CREP resources well in advance of the 2012 compliance date and obtained 30% (13MW) of its 2012-2014 CREP obligation through its power purchase agreement with Turnbull Hydro. Fine asserted that circumstances beyond NWE's control prevented NWE from acquiring projects that could have achieved commercial operation prior to January 2012.

According to Fine, NWE does not know when its CREP obligations will be met. One of its three current QF projects, the 9.6-MW Gordon Butte project, includes a guaranteed commercial operation date of October 31, 2011, and is likely to be eligible as a CREP resource. Other QF projects are seeking contracts with NWE, but the utility don't know if the projects will result in contracts with the utility or if they will qualify as CREP resources.

Fine said that when NWE's 2011 resource procurement plan is filed in December 2011, the utility will have more definitive information about the status of its CREP obligation.

Testimony of Steven E. Lewis of Land Energy Consulting:

Steven E. Lewis, a principal of Lands Energy, outlined the reasonable steps that he thinks should be taken by a utility to meet its RPS and CREP obligations: 1) complete procurement plans that include provisions for the acquisition of RPS and CREP resources; 2) issue broad solicitations for CREP resources; 3) review qualifying facility resources for their eligibility for CREP status; and 4) maintain contact with developers without compromising ongoing discussions for resource procurement. Lewis said NWE had taken those steps.

Lewis said the 2008 CREP RFP produced six proposals, from which two finalists were chosen, Ciboria Wind and Turnbull Hydro. Ciboria was dropped because the project lender backed out, and Turnbull eventually became a 13 MW CREP for NWE.

Lewis described statutory changes in CREP requirements made in 2009 and the subsequent RFI issued by NWE. The RFI yielded 40 responses, of which three finalists, Invenergy, Sagebrush, and Compass Wind, would qualify as CREPs if owned by NWE. Lewis said that NWE managed the process intending to ultimately contract with two projects, both of which could have fit within the 25-MW limit set for CREPs.

Lewis concluded that NWE took all reasonable actions to procure CREPs, but NWE's efforts did not result in the necessary amount of CREPs to meet the statutory requirement.

Testimony of Larry Nordell of the Montana Consumer Counsel:

Nordell testified that NWE's upsizing of the Spion Kop wind farm from 25 MW to 40 MW represents a better economic deal for the utility and its customers, but this upsizing took Spion Kop out of CREP eligibility (by exceeding 25MW in capacity).

Nordell placed the CREP requirement in the context of NWE's overall procurement of resources. He cited the CREP requirement as one of several constraints on the utility's obligation to obtain and provide energy reliably, efficiently, and at minimum cost. Nordell observed that NWE made a good decision on Spion Kop and otherwise made a good faith effort to meet the CREP requirement.

Nordell said that NWE's compliance with the CREP requirement through a 25MW Spion Kop facility would violate the cost cap provision of the RPS statute because energy from the 40MW-sized Spion Kop can be obtained at a lower unit cost.

Nordell recommended that the Commission grant NWE's requested waiver.

Summary of Discovery Process

MCC asked NWE to provide details (prime mover, diurnal pattern of power delivery, capacity, and price of power) for Turnbull Hydro, Ciboria Wind, and Invenergy. NWE responded with data for Turnbull and Ciboria, but noted that Invenergy had filed a motion for protective order with the Commission for details about its proposal. The motion was granted by the Commission, and when NWE subsequently responded to MCC's request, detailed information, such as unit power prices and project capacity factors, had been redacted from the response material.

MCC requested the benchmark price of alternative resources that was used by NWE to calculate a cutoff price for bid resources, and MCC further asked what alternate resources NWE used as a base for calculating the benchmark price. NWE responded that the prices in the proposals were compared to the QF-1 rates proposed by NWE in Commission Docket No. D2008.12.146. NWE noted that the QF-1 prices were not used as a cut-off price, but as a factor in the decision process. NWE provided a table showing how each of the proposed projects in the 2008 RFP compared with the QF-1 price for each project's resource classification (wind, hydro, biomass, *et al*).

MCC asked NWE to provide the current embedded cost of network transmission service for delivery of CREP resources and the current transmission capacity for generation and load services available for use in delivering new resources to native load customers. NWE responded that the electric transmission embedded cost of service is $48,432,851 (from Docket D2009.9.129), yielding a rate of $8.42/MWh (using 2008 test year loads). As for current transmission capacity, the utility system's ability to deliver new resources to native load depends on the location and size of new projects, other resources, and network transmission in the area.

MCC asked for the cost of network transmission service for incremental resources to serve native load after the existing capacity is used up. NWE replied that such cost is dependent on the cost of transmission enhancement necessary to maintain system reliability.

The Commission asked NWE to provide documentation of unsolicited inquiries from renewable developers and to explain how responses were made to the inquiries. NWE provided a listing of unsolicited inquiries (see Attachment A, "Unsolicited Renewable Project Inquiries to

NorthWestern Energy"). NWE said that it responded to inquiries and provided answers to developer questions while attempting to understand the proposed project.

The Commission requested the nameplate capacities of existing or potential CREP resources and an estimated timeline of any future CREP procurement that will help the utility meet its CREP obligation. NWE responded that Turnbull Hydro is an existing CREP resource with a capacity of 13 MW. The utility anticipated that Gordon Butte (9.6 MW) would qualify as a CREP, and that it is investigating whether the Fairfield Wind project (9.5 MW) will qualify. The Flint Creek hydro project (2 MW), if developed, may also qualify as a CREP.

The Commission asked NWE to provide documentation of any analysis utilized by the utility to compare the costs of two 20-MW CREP projects to the cost of one 40-MW non-CREP project. NWE responded that it had not performed such an analysis.

The Commission asked NWE to explain why the utility contends it is not a renewable project developer. NWE replied evaluation of wind projects requires a number of highly specialized skill sets, most of which are outside of the areas of expertise of the NWE staff.

The Commission asked for the proposals submitted in response to the 2008 RFP and the 2009 RFI, including nameplate capacities, capacity factors, and prices per MWh. NWE provided copies of the proposals in a 1600-page document, which may be viewed at http://psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/D2011-6-53_IN_20111014_RDR.pdf.

The Commission asked NWE to explain what conditions changed to cause the utility to discontinue negotiations with Invenergy and Sagebrush. NWE responded that the Big Otter project (Invenergy) was determined to have environmental risks and uncertainties that NWE was not willing to assume, while the Sagebrush projects had "avian issues and/or local opposition."

The Commission asked NWE to explain whether the 50 MW limit on qualifying facilities (QFs) accepting the standard rate will affect whether the QF projects would lead to contracts with NWE. NWE replied that it has notified developers that it will not contract for additional wind QFs that would cause it to exceed the terms of the QF-1 tariff.

The Commission asked NWE to explain in detail the circumstances beyond the utility's control that the company cited in its testimony as justification for the CREP waiver. NWE replied that the circumstances "include project site-specific conditions such as environmental conditions, developer actions, and changes to projects otherwise outside of NWE's direct control."

The Commission asked NWE if the utility had considered a partnership with Ciboria Wind (a finalist in the 2008 RFP process) after Ciboria's lender backed out (see testimony of Steven Lewis, p. SEL-10). Lewis replied that he was not aware of any such consideration. He said that prior to April 16, 2009, NWE could not have an ownership interest in a CREP and that Ciboria broke off contact with NWE prior to that date.

Attachment A

TABLE 1

D2011.6.53
Data Request PSC-001(a)
Attachment
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Unsolicited Renewable Project Inquiries to NorthWestern Energy
Contacts after January 1, 2008

Facility / Project/ Develop	**kW**	**Technology**	**Facility/Project/ Developer**	**kW**	**Technology**
Liberty 2 (Wheeling)	10,000	Wind	Hertzler	5,000	Biomass
Cut Bank	10,000	Wind	Fairfield	10,000	Wind
Element 1	10,000	Wind	Greenfield Wind	10,000	Wind
Element 2	10,000	Wind	Fergus 1	10,000	Wind
GeoThermal	1,000	Hydro	Fergus 2	10,000	Wind
Tailrace	500	Hydro	Spion Kop	10,000	Wind
Little Judith	3,000	Wind	Compass	10,000	Wind
Great Falls	10,000	Wind	Elias	1,000	Solar
O'Connor	10,000	Wind	Davey	1,000	Hydro
Feldman	NK*	Wind	Coombs	50,000	Wind
Pruit	NK	NK	Schaeffer	25,000	Co-Gen
Brown	NK	NK	National	20,000	Wind
Allen	NK	NK	Knable	2,000	Wind
Spenser	NK	NK	Duvall	NK	NK
Campbell	NK	Solar	Larsen	NK	Wind
Muzzin	5,000	Hydro	Greer	NK	Wind
Muzzin	5,000	Hydro	Copeland (WindKraft Nord)	10,000	Wind
Quader	NK	NK	Perry	1,000	Hydro
McDonald	NK	NK	Riley	10,000	Wind
Decossard (Two Dot Wind Farm)	9,700	Wind	Exelon	30,000	Wind
Goldhahn	1,890	Wind	Garman	125	Hydro
Kind	300	Wind	Schunke	5,000	Solar
Wells	3,000	Wind	Gesicki	3,000	Biomass

Dutton	10,000	Wind	Easterwood	300
State	NK	Hydro	Big Sky	NK
Gresham	180	Wind	Starkel	6,000
Casterline	NK	NK	Gedney	9,000
Weck	NK	Wind	Motta	5,000
Schubarth	NK	Wind	Ellis	10,000
Frederick	NK	Solar	Towner	10,000
Brown	NK	Wind	Judith Gap II Wind Energy LLC	10,000
Goodvoice	NK	Wind	Judith Gap II Wind Energy LLC	10,000
Grove	NK	Wind	Big Otter Wind Energy LLC	10,000
Ziska	NK	Hydro	Big Otter II Wind Energy LLC	10,000
Stevenson	150	Hydro	Rocker Muni Waste Gas	5,000
Talley	80	Hydro	Shavers	2,000
Palagi	5,000	Wind	EcoTech	NK
Rader	NK	Wind	Brashiers	1,000
Mersen	NK	Hydro	Midwest Energy	100,000
Durrett	16	Hydro	volkswind	200,000
Wurz	225	Biomass	Obert	NK
Fechter	1,500	Wind	Davey	60,000
Yellowstone	300	Hydro	Shapiro	NK
CTWall	20,000	Biomass	Berezay	NK
Avi	6,000	Solar	Chafin	100,000
Nelson	5,000	Solar	Olson	NK
Nickels	NK	Hydro	Big Sky	NK
Gerhart	NK	Wind/Solar	Standa	50,000
OakTree	NK	Wind	RENO	NK
Montana	3,000	Hydro	Symbiotics	5,000
Anderson	NK	Wind/Solar	Agrisystems	NK
Wagner (Volkswind Musselshell)	9,200	Wind	Exergy	NK
Wagner (Volkswind Musselshell 2)	9,200	Wind	Enerfin	80,000

* NK - Not Known