

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

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IN THE MATTER OF the Petition of ) REGULATORY DIVISION  
Greycliff Wind Prime, LLC to Set Contract )  
Terms and Conditions for a Qualifying ) DOCKET NO. D2015.8.64  
Small Power Production Facility )

**RESPONSE OF THE MONTANA CONSUMER COUNSEL  
TO GREYCLIFF WIND PRIME, LLC MOTION FOR SUMMARY JUDGMENT**

The Montana Consumer Counsel requests that Greycliff Wind Prime, LLC's (Greycliff) motion for Summary Judgment be denied as the request for a determination that the rates in Greycliff's proposal are consistent with PURPA and just and reasonable is premature.

**Discussion**

Greycliff's request for summary judgment sets out one of the questions presented as follows:

When NWE refused to negotiate with Greycliff, and if the Commission determines a LEO was created by NWE's refusal to negotiate, and the Commission determines the contract terms and conditions proposed by Greycliff in its offer to negotiate are consistent with PURPA and its implementing regulations, and are therefore just and reasonable, does NWE as a matter of law

have an obligation to accept those contract terms and conditions due to its refusal to negotiate? (Greycliff Brief p. 3).

Greycliff's request for relief, in contrast, does not contain a request that the Commission find that Greycliff's proposal is consistent with PURPA and just and reasonable. Greycliff Motion p. 11.

Greycliff's Petition to Set Terms and Conditions for Qualifying Small Power Production Facility Pursuant to MCA § 69-3-603 indicates that Greycliff requested NorthWestern Energy (NWE) to purchase the output from its 25 Megawatt (MW) project. Greycliff Petition p. 1, 7. Greycliff proposed a price term of a rate of \$53.85 levelized over a 20-year term, minus wind integration, for an effective rate of \$50.35. Petition p. 7 ¶ 10. Greycliff claims in its Petition that the rate proposed was based on the Commission's rate approved in Docket D2014.4.43 Order 7347a, issued April 10, 2015, setting the avoided cost for NWE at "\$53.99 per MW minus integration costs for an effective rate of \$50.49 levelized over a 20-year term." Greycliff Petition p. 9 ¶12.

The MCC submits that the Commission should not determine whether Greycliff's proposed rates are just and reasonable and consistent with PURPA as a matter of law prior to an opportunity for further inquiry into those rates and terms. Accordingly, it would be inappropriate at this juncture for the Commission to decide, on summary judgment, whether the rates proposed by Greycliff in its proposal to NWE are consistent with PURPA and just and reasonable absent a factual basis for such a determination. To make a determination about the rates Greycliff proposed, an evidentiary basis and record is required. Greycliff filed its Direct Testimony on September 18, 2015 and data requests

on that testimony are due October 1, 2015. Prior to a determination as a matter of fact that Greycliff's proposed rates are reasonable, it is premature to issue a ruling on summary judgment as to those rates.

**Conclusion**

Greycliff's request for relief does not set out a specific request that the Commission make a determination that the rates it proposed be found consistent with PURPA and just and reasonable. Greycliff Motion for Summary Judgment p. 11. Accordingly, the Commission should reject Greycliff's request at, least with respect to the rate that it proposed, as premature.

Respectfully submitted September 21, 2015.

  
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