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

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)	

**NorthWestern Energy’s Motion to Vacate Deadlines in
Procedural Order No. 7436**

NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern”) moves the Montana Public Service Commission (“Commission”) for an order vacating the deadlines in Procedural Order No. 7436 (“Procedural Order”). Specifically, NorthWestern requests that all deadlines yet to occur in the Procedural Order be vacated; that said deadlines be reestablished only after Greycliff Wind Prime, LLC (“Greycliff”) files the information requested in discovery by NorthWestern; and that any revised deadlines be reset based on the amount of time between

when the information was due and when it is actually filed (“Motion”). NorthWestern provides the following support for its Motion.

Procedural Background

On August 17, 2015, Greycliff filed a *Petition to Have Commission Set Contract Terms and Conditions Pursuant to M.C.A. § 69-3-603* (“Petition”) with the Commission. On August 20, 2015, the Commission issued a *Notice of Petition and Intervention Deadline* establishing September 3, 2015 as the date by which any interested person who is directly affected by the Petition must request intervention. By Notice of Staff Action, intervention was granted to NorthWestern and the Montana Consumer Counsel (“MCC”).

On September 10, 2015, the Commission established a procedural schedule that provides relevant deadlines for the docket. Procedural Order, ¶ 4. Accordingly, October 16, 2015 was the deadline established by the Commission for Greycliff to file responses to any discovery served on it on October 2, 2015. Procedural Order, ¶ 9, further provides that if any discovery required a party to file a motion for protective order such motion must be filed no later than 10 business days from service of the discovery, or by October 12, 2015.

NorthWestern served discovery on Greycliff on October 2, 2015, including the following data request: NWE-013 - Please provide hourly production estimates for a minimum of one calendar year for the Greycliff project. Greycliff filed its answers to this discovery on October 16, 2015. Greycliff’s response to NWE-013 is as follows:

This information is being prepared and is in the hands of a third party provider. Greycliff believes the data is privileged and is the subject of a motion for protective order which will be submitted as soon as possible. Upon Commission action on the protective order, the information will be provided.

NorthWestern’s response testimony is due on October 30, 2015. The Commission is required to issue a decision in this matter by February 12, 2016.

Argument

Section 69-3-603 controls this matter. This statute provides in pertinent part that “the commission shall determine the rates and conditions of the contract.” § 69-3-603(2)(a), MCA. The Public Utility Regulatory Policies Act of 1978 (“PURPA”) requires an electric utility to purchase energy, at no more than the utility’s avoided costs, from cogeneration and small power producers if such entities have energy to sell to the utility. In order for the Commission to comply with Montana statute it must set the rate based on NorthWestern’s avoided cost. In order to accurately calculate the avoided cost, a significant input to the calculation is the hourly production information of the specific project. Thus, until NorthWestern is in receipt of the information¹ requested in Data Request NWE-013, NorthWestern is unable to accurately calculate the avoided cost rate for the Greycliff project. This calculation is necessary to support NorthWestern’s response testimony.

Based on the response to Data Request NWE-013, Greycliff believes the information requested is “privileged” and a motion for protective order will be filed with the Commission “as soon as possible.” Such motions were due on October 12, 2015. According to the Procedural Schedule, NorthWestern had 14 calendar days from receipt of the discovery responses to utilize this hourly production data and accurately compute avoided cost. As of today, NorthWestern has 10 calendar days until its response testimony is due and a motion has yet to be filed by Greycliff. Because of the processing time for such motions, NorthWestern will not have the information needed to accurately calculate the avoided cost by the time its testimony is due on October 30, 2015. With such a delay, the remaining deadlines in the Procedural Order will also likely need to be adjusted.

¹ Receipt of such information must be in “good order” meaning NorthWestern does not need to perform any manipulations or conversions in order to use the data. Since a third party is preparing the information, NorthWestern does not expect that this will be an issue.

NorthWestern recognizes that the Commission must decide this matter in 180 days from the date of the Petition. NorthWestern agrees to waive the 180-day deadline in this case so that the necessary information can be received and used to accurately calculate avoided costs. NorthWestern asserts that Greycliff has implicitly waived this deadline by: its failure to prepare this vital information prior to filing its Petition; its failure to have this information in its possession at the time of filing its Petition; its failure to at the very least possess the completed information by the deadline to respond to discovery; and its failure to comply with the Procedural Order by filing a timely motion for protective order. Regardless of whether this information was complete or in Greycliff's possession, a motion for protective order could and should have been filed by October 12, 2015 so that the processing of the motion could begin.

Given the foregoing, NorthWestern requests that the Commission vacate the remaining outstanding deadlines in the Procedural Order. Since it is unknown when Greycliff will have possession of such information or when a motion for protective order will be filed and acted upon by the Commission, it is necessary to reset the procedural deadlines only after the requested information has been filed with the Commission and received by NorthWestern.

NorthWestern's undersigned counsel has contacted counsel for both Greycliff and the MCC to inquire whether they would oppose this Motion. The MCC does not object to this Motion. Counsel for Greycliff does not agree to suspend the Procedural Order but did agree that NorthWestern's deadline to file response testimony on October 30 should be vacated and that such deadline would be reestablished after Greycliff files the requested information, and that the new deadline depends on when Greycliff files the information. If it takes Greycliff two weeks

from the original deadline of October 16, 2015, to file the requested information, NorthWestern's new deadline would be extended by two weeks.

RESPECTFULLY SUBMITTED this 20th day of October 2015.

NORTHWESTERN ENERGY

By:  _____

Sarah Norcott

John Alke

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of NorthWestern Energy's Motion to Vacate Deadlines in Procedural Order No. 7436 in Docket No. D2015.8.64 has been hand delivered to the Montana Public Service Commission and to the Montana Consumer Counsel this date. It has also been e-filed on the PSC website, emailed to counsel of record, and mailed to the remainder of the service list as follows:

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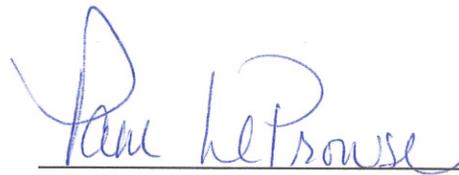
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Date: October 20, 2015



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