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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 Response to
Greycliff Wind Prime’s Motion in Limine**

NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern”) provides this response to Greycliff Wind Prime, LLC’s (“Greycliff”) Motion in Limine to Exclude Use of PowerSimm Model (“Motion”).¹ The Montana Public Service Commission (“Commission”) must deny the Motion as it is procedurally deficient and has no basis in fact or law.

¹ A motion in limine is a pretrial procedural tool used to avoid potentially prejudicial testimony from being heard by a jury. Such motion is essentially a pretrial ruling on whether evidence is relevant and therefore admissible. *Kissock v. Butte Convalescent Center*, 1999 MT 322, ¶ 10, 297 Mont. 307, 992 P.2d 1271. Besides the fact that Commission proceedings are not before a jury, Greycliff’s Motion fails to argue that the PowerSimm modeling is irrelevant and therefore inadmissible testimony that would warrant its exclusion. Instead, Greycliff’s Motion is an equity argument,

INTRODUCTION

Greycliff, a proposed 26 megawatt wind facility located near Big Timber, Montana, which will cost an estimated \$40-50 million² to build, argues that it should have free access to the modeling software utilized by NorthWestern to support its avoided cost calculation in this case. Unlike Greycliff, NorthWestern did not randomly select a number as its avoided cost rate in this proceeding. Instead, NorthWestern performed sufficient analysis to support its calculation. Recognizing that the parties as well as the Commission would want to test the accuracy of that analysis, in response to data requests, NorthWestern provided all relevant inputs and outputs used to calculate the avoided costs and offered hosted access to the model from Ascend Analytics (“Ascend”) for those involved in this docket. Despite the information provided and the offer made, Greycliff nonetheless argues that it is entitled to free, non-discriminatory access to PowerSimm. NorthWestern cannot, nor should it have to, provide free, non-discriminatory access to Greycliff. The Commission must reject this request based on the arguments below.

ARGUMENT

I. GREYCLIFF’S MOTION IS NOT TIMELY.

Per Procedural Order No. 7436, prehearing motions such as the one involved in this instance must be filed “at the earliest possible time.” Greycliff’s Motion fails to comply with this requirement. NorthWestern filed its testimony and supporting analysis on the avoided cost calculations in this case on November 16, 2015. Greycliff filed this Motion 44 days later. Even if Greycliff needed NorthWestern’s responses to discovery before filing the motion, it still took Greycliff, in a docket controlled by a statutory 180-day deadline, 21 days to file the motion.

i.e., it is unfair to allow NorthWestern to use a model that others have to pay to use, and probably, more appropriately, should have been labeled a Motion to Strike. No matter the name of the filing, NorthWestern refutes the reasons Greycliff asserts warrant the Commission granting its request.

² This estimate is based on what NorthWestern knows similar projects are expected to cost to build.

Greycliff has not provided any explanation to support why its filing was not made “at the earliest possible time.” For this reason, the Commission should reject the Motion.

II. NORTHWESTERN HAS NOT REFUSED TO PROVIDE ACCESS TO POWERSIMM.

Greycliff’s Motion makes baseless, conclusory assertions about NorthWestern’s actions in this case. These assertions, however, are contradicted by what has actually transpired. Greycliff claims that NorthWestern’s “continued reliance on a ‘black box’ to calculate avoided costs while objecting to providing the data either used as inputs or outputs from the model” – as it allegedly did in the *Greenfield Wind, LLC* docket, Docket No. D2014.4.43 – is “an effort to disadvantage other parties in this proceeding.” Motion, p. 2. First, NorthWestern’s filing in this case very clearly details how it calculated the proposed avoided cost rate for the Greycliff project. The Prefiled Response Testimonies of Bleau J. LaFave and Luke P. Hansen are transparent and detailed regarding this calculation. *See* Exhibit__(BJL-1) and Exhibit__(LPH-1) attached to the respective testimonies.

Second, with one exception which as discussed below is not relevant, NorthWestern did not object to providing the input and output data used to calculate its avoided costs in this case. In response to Data Request PSC-012b, NorthWestern provided electronically, as requested, all inputs to the PowerSimm modeling used to calculate the Greycliff avoided costs. Additionally, in response to Data Request PSC-012d, NorthWestern provided electronically, as requested, all outputs from the PowerSimm modeling performed to calculate the Greycliff avoided costs. Given the information provided by NorthWestern, Greycliff cannot rationally claim that NorthWestern’s calculation is a “black box” and that it objected to producing the backup data used to support its calculation. Contrary to this claim, NorthWestern provided the requested information to Greycliff. Greycliff can analyze in detail NorthWestern’s modeling inputs and

outputs, and therefore, NorthWestern's proposed avoided cost rate is not a "black box" calculation.

In addition to the information provided in response to discovery and in light of prior criticisms from the Commission, NorthWestern worked with Ascend to develop an offer that would allow access to a hosted session of the PowerSimm model by Ascend. *See* Response to Data Request GWP-010e. As part of that hosted session, Ascend will provide participants with

the ability to view relevant input configurations for the avoided cost study through PowerSimm user interface used to generate the results including market forward curves, generation asset characteristics, wind generation history, weather, etc. The output results will include variables generated from the avoided cost study. The output data from the avoided cost study will likely have already been delivered to the independent party, but can be verified via the PowerCube to better understand the software mechanics.

Attachment to Data Request GWP-010e. This offer was open to all parties and the Commission staff. The cost associated with this hosted session by Ascend is \$3,000.

Greycliff balks at this reasonable price arguing that it is entitled to free access to the model. Motion, p. 6. Like other qualifying facilities ("QF") in past proceedings, Greycliff makes the argument that it is essentially the little guy on the block without a lot of resources just trying to make a project happen, and given that fact, utility customers should pay for its lack of sufficient resources to determine if its project is viable. Contrary to Greycliff's claims, one can surmise that an entity willing to spend \$40-50 million to build a project is a most certainly a sophisticated party. As such, Greycliff cannot logically claim that it is entitled to free access, or that a \$3,000 fee to gain access is excessive or onerous.³ NorthWestern and its customers should not have to pay to help a QF determine if its project is viable. Neither the law nor the facts of this case support Greycliff's claim for free access.

³ Greycliff has presumably spent substantial capital to date in excess of \$3,000 for preliminary studies necessary for the project.

Additionally, Greycliff fails to mention in its Motion that the Commission did not provide Greenfield free access to PowerSimm in Docket No. D2014.4.43. Although NorthWestern disagreed with part of the decision on that issue, the Commission “directed Greenfield to pay up to \$10,000 of the actual costs of the additional model runs” that it had requested from NorthWestern in that case. *See* Notice of Commission Action issued on October 20, 2014 in Docket No. D2014.4.43. Similar to Greenfield, the Commission should not grant Greycliff free access to PowerSimm as it has requested.

A. The Oregon Public Utilities Commission’s decision is not binding and is distinguishable from the facts of this case.

Greycliff provides no binding legal authority to support its Motion. Instead, it cites a decision from the Oregon Public Utilities Commission (“OPUC”) involving a telecommunications docket from 2003. Motion, p. 2. In addition to not being binding legal authority, the facts of the *Qwest* case are distinguishable from the facts of this case. In *In the Matter of Qwest Corporation*, Docket UM 1025, Qwest requested to change the default rates for the unbundled network elements that it was required to offer to competitive local exchange carriers, like AT&T/WorldCom. *See* Order 03-533, p. 2, attached to Greycliff’s Motion. Qwest and AT&T both filed proposed cost models with the OPUC to “estimate the type and cost of telecommunications facilities required to serve Oregon customers.” *Id.* During discovery, Qwest requested the inputs used in AT&T/WorldCom’s cost model. *Id.*, p. 3. AT&T/WorldCom refused to provide the inputs. *Id.* Qwest argued that AT&T/WorldCom’s refusal to provide information used to develop necessary inputs to a cost model was a violation of applicable discovery rules. *Id.* AT&T/WorldCom argued that it was not in possession of the information and therefore did not have to produce the information in discovery because it had hired a third party entity to develop the information. *Id.*, pp. 3-4. That matter was a discovery dispute.

Unlike in the *Qwest* case, this matter does not involve a discovery dispute. NorthWestern is not refusing to provide relevant inputs and outputs used in the modeling. *See*, pp. 3-4, *supra*. NorthWestern did object to one of Greycliff's data requests that sought hourly information for twenty-five years for all the generation resources considered in the model. *See* NorthWestern Energy's Objections to Data Requests filed on December 7, 2015. NorthWestern argues that this request is overly burdensome in light of the voluminous nature of the response because it results in production of data points in excess of 100 million. *Id.*, pp. 2-3. The hearing examiner assigned to this case has yet to rule on this objection.⁴ This objection, however, does not negate the fact that NorthWestern has provided all relevant data inputs and outputs. NorthWestern did not consider the hourly production for all generation resources for twenty-five years in its calculation of the avoided cost. Instead, NorthWestern exported the stochastically modeled monthly simulation results and used these outputs for the calculation of the avoided cost rate. NorthWestern provided the monthly information in response to discovery. Thus, the parties and the Commission staff have the necessary information needed to test the veracity of NorthWestern's proposal.

Furthermore, in the *Qwest* matter, Qwest claimed that it would have to spend approximately \$100,000 after receiving AT&T/WorldCom's estimated cost⁵ for access to the input data. *See* Order 03-533, p. 4. As discussed above, the cost for the hosted session with Ascend is \$3,000. For these reasons, the Commission should not apply the holding from the *Qwest* case to this matter because NorthWestern is not attempting to "prevent discovery of

⁴ In a separate filing made the same day as this Response, NorthWestern replies to Greycliff's Response to NorthWestern's Objections, and NorthWestern expects a ruling on its objections very soon.

⁵ AT&T/WorldCom offered to provide access to the input data if Qwest paid "\$5,000 for the 'set-up,' and \$4,000 per day thereafter." Order 03-533, p. 4.

relevant information central to the outcome of this proceeding[,]” and the offered hosted session is at a reasonable fee. See Order 03-533, p. 9.

CONCLUSION

There is no factual or legal basis to grant Greycliff’s Motion. NorthWestern has not refused to provide relevant information to Greycliff or the Commission. An entity willing to spend \$40-50 million to build a facility should not be given free access to PowerSimm. The \$3,000 fee for a hosted session of PowerSimm is reasonable. Utility customers should not have to pay access fees for a QF that disagrees with an electric utility’s avoided cost calculation. For the reasons discussed above, NorthWestern requests that the Commission deny Greycliff’s Motion.

RESPECTFULLY SUBMITTED this 19th day of January 2016.

NORTHWESTERN ENERGY

By:  _____

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CERTIFICATE OF SERVICE

I hereby certify that NorthWestern Energy's Response to Greycliff Wind Prime's Motion in Limine 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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