

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 )

**POST-HEARING MEMORANDUM  
OF THE MONTANA CONSUMER COUNSEL**

The Montana Consumer Counsel (MCC) participated in this proceeding to ensure that the interests of NorthWestern Energy's (NWE or NorthWestern) customers would remain a central consideration as the Montana Public Service Commission (PSC or Commission) reaches a resolution of this case. Deliberations in this matter, coming on the heels of the Commission's recent action in Docket No. D2016.5.39 in response to NWE's request to temporarily suspend the QF-1 tariff for solar facilities greater than 100 kW, are an important opportunity for the PSC to implement the governing principle of customer neutrality or customer indifference as it relates to the Public Utility Regulatory Policies Act (PURPA). The recent roundtable in Docket No. N2015.9.74 and the extensive comments submitted to the Commission in that proceeding, provide an excellent background

for reform discussions. From the MCC's perspective, it is essential that customers be no worse off from the PSC's administration of PURPA.

Several points are particularly important for this proceeding.

First, parties must have access to NWE's production cost modeling information in order to assess NWE's advocacy and formulate their own positions.

Second, avoided costs must reflect current market information.

Beyond these points, the MCC urges the Commission to continue to pursue the many policy issues raised by participants in the recent roundtable on PURPA implementation. MCC will re-visit a number of its positions expressed in that proceeding in order to re-emphasize potential reforms that would advance customer indifference.

### **1. Access to Power Cost Modeling**

NorthWestern and Greycliff Wind Prime, LLC (Greycliff) engaged in a discovery dispute regarding Greycliff's right to access NorthWestern's production cost modeling software (PowerSimm). That system, like NorthWestern's other regulatory costs, is funded by ratepayers. While MCC appreciates that NWE seeks to minimize those costs, it believes that it is an important principle that parties to regulatory proceedings have access to a regulated company's information in order to evaluate its use in analyses and resulting recommendations and, if necessary, to contest the information in a manner that creates a balanced evidentiary record.

Greycliff's Motion in Limine, filed December 30, 2015, argued that the Petitioner had been denied sufficient access to the model to ensure a full understanding of the inputs and assumptions that governed its output. The Motion sought to preclude the presentation by NWE of information from the model because of those asserted limitations. The Motion was denied by the Commission on April 5, 2016.

While Greycliff apparently was able to proceed in this case without prejudice to its rights, MCC believes it would be helpful if the Commission would clarify that parties seeking discovery on proprietary models are entitled to full disclosure of the inputs used in modeling and the nature of the calculations performed by the models. The term "black box" is often used in Commission proceedings to depict the absence of transparency that exists when information is lacking about how a program or process treats information, and accordingly how a particular result was arrived at.

MCC submits that the Commission should clarify as a matter of policy and fairness that discovery on computer models is appropriate. When ratepayers are funding a regulated company's costs, such as those paid to a modeling consultant, it is appropriate that the minimal incremental costs of discovery, which will also be paid by customers, be permitted.

## **2. Avoided Costs Must Reflect Current Market Information**

Greycliff's Petition contends that a Legally Enforceable Obligation was formed when it submitted a contract-like document to NorthWestern including avoided cost price information from the earlier Greenfield proceeding, Docket No. D2014.4.43. NorthWestern contends that the earlier avoided cost information was legally insufficient because it was stale, and that position was supported in the testimony of MCC economist Jaime Stamatson, who argued that current avoided cost and wind integration rates were essential if customers were to be held harmless. He emphasized that NorthWestern's most recent planning information indicated a need for dispatchable peak power, something the Greycliff wind project cannot provide.

It is obvious that the last avoided cost numbers published by NorthWestern are stale. The Company's most recently-approved QF-1 Tariff is a product of Docket No. D2012.1.3. It incorporates natural gas and electric price forecasts from June 2013 and it reflects NorthWestern's current and forecasted resource needs from its 2011 Electricity Supply Resource Procurement Plan. The 2015 NorthWestern resource planning cycle is now underway. This Plan incorporates information regarding NWE's work to integrate its purchase of hydroelectric facilities into its system.

NorthWestern's current and future resource needs are much different than what was reflected in its 2011 Plan. Any analysis of avoided costs used in ratemaking needs to reflect the most recently available information.

MCC appreciate the difficulty that Qualifying Facilities (QFs) face in a regulatory environment in which current avoided costs have not been readily available. However, the fact that the regulatory system requires improvement does not justify saddling customers with outdated and excessive costs.

The Commission is left to determine the measure of avoided costs that is most consistent with its historical analyses. MCC believes that the appropriate costs may not currently be found in the record of this proceeding due to limitations in the analyses offered by the parties. A differential revenue requirement analysis, based on assumptions that the Commission determines appropriate and consistent with prior practices, may be necessary as part of a compliance filing.

### **3. Possible Reforms**

The Commission has recently invited a public dialogue regarding its implementation of PURPA in Docket No. N2015.9.74. The numerous comments filed in that case provide a useful beginning point for potential reforms. MCC encourages the Commission to re-examine those comments, particularly those submitted on October 23, 2015, and to consider changes to the avoided cost process in Montana.

Among the points MCC urges the Commission to consider are the following:

- shortening the term of standard rate contracts to allow “true-ups” of avoided cost that will reduce the risk that customers pay excessive prices.
- ensuring that any value assigned to QFs for capacity is consistent with the nature of the characteristics of the output actually delivered to NorthWestern.

#### **4. Conclusion**

MCC cannot help but note the significant resources that the Commission and parties have spent on QF issues in recent years. Re-visiting policies first adopted decades ago is an excellent idea and has the potential to reduce adverse rate impacts on customers, as well as the time and resources parties must devote to QF issues.

MCC will continue to participate in this effort and looks forward to seeing the improvements the Commission will ultimately put in place.

Respectfully submitted June 24, 2016.



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