

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) ORDER NO. 7436c

AMENDED PROCEDURAL ORDER

1. On August 20, 2015, Greycliff Wind Prime, LLC (“Greycliff”) filed a *Petition to Have Commission Set Contract Terms and Conditions Pursuant to M.C.A. § 69-3-603* (“Petition”) with the Montana Public Service Commission (“Commission”).

2. The Commission issued a *Notice of Petition and Intervention Deadline* on August 20, 2015. On September 4, 2015, Greycliff filed with the Commission a *Motion for Summary Judgment on the Legal Issue of Whether NorthWestern Energy has an Obligation to Negotiate in the Absence of All Source Competitive Solicitation Set Forth in ARM 38.5.1902(5)*. On September 9, 2015, the Commission granted intervention to the Montana Consumer Counsel (“MCC”) and NorthWestern Energy (“NorthWestern”). On September 10, 2015, the Commission issued *Procedural Order 7436*.

3. On September 18, 2015, Greycliff filed the *Prefiled Direct Testimony of Robert Stanton Walker*. After Greycliff’s *Motion for Summary Judgment* was fully briefed, the Commission held an oral argument on November 4, 2015. On January 15, 2016, the Commission issued *Order No. 7463b*. In *Order No. 7463b* the Commission denied Greycliff’s *Motion for Summary Judgment* and directed NorthWestern and Greycliff to negotiate for at least thirty days "in an effort to mutually agree to contract terms and conditions, including an avoided cost rate, beginning on the service date of this Order". *Order No. 7463b ¶ 23* (Jan. 15, 2016).

4. On January 16, 2016 and February 26, 2016, Greycliff requested additional time to conclude negotiations, which were granted by the Commission. On March 15, 2016, Greycliff filed a *Notice that Negotiations with NWE have concluded without Agreement and Request to*

Re-Establish Procedural Schedule.

5. The Commission, through delegation to staff, hereby establishes this Amended Procedural Order (Order) to be followed in this proceeding. This Order is effective immediately and remains effective unless modified by the Commission or staff. Nothing in this Order limits the right of the Commission or its staff to inspect the books, accounts, papers, records and memoranda of public utilities at any time. *Id.* at § 69-3-106. A party may seek reconsideration of this Order within ten (10) days of its service date. Mont. Admin. R. 38.2.4806 (2016).

Schedule

6. This Order sets the following procedural schedule for this Docket:
- (a) March 29, 2016: Final day for NorthWestern to update its response testimony.
 - (b) April 8, 2016: Final day for discovery to NorthWestern regarding its updated response testimony.
 - (c) April 20, 2016: Final day for NorthWestern to respond to discovery issued by April 8, 2016.
 - (d) April 27, 2016: Final day for the Commission to identify additional issues.
 - (e) April 29, 2016: Final day for Greycliff to file rebuttal testimony.
 - (f) May 11, 2016: Final day for discovery to Greycliff regarding its rebuttal testimony.
 - (g) May 18, 2016: Final day for Greycliff to respond to discovery issued by May 11, 2016.
 - (h) May 25, 2016: Final day for parties to file pre-hearing memoranda.
 - (i) May 31, 2016: Hearing commences and continues day to day as necessary.

Service and Filing

7. A party must serve a copy of every pleading, motion, brief, objection, data request or response, and other document it files in this proceeding on every other party. Upon filing a document with the Commission, the filing party must email a copy of the document to counsel of record. In order to file a document with the Commission, a party must: (1) Submit the document electronically (e-file) on the Commission's website at <http://psc.mt.gov> ("Account Login/Registration" under "Electronic Documents" tab); and (2) physically deliver or mail the original document to the Commission at 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. The Commission will not post an e-filed document to its website until it

receives the original from the filing party. Upon posting a Commission-generated document to the website, the Commission will e-mail the document to counsel of record. Service or filing by means of facsimile is prohibited. Service by mail does not extend a deadline.

Intervention

8. The deadline for intervention in this proceeding was September 3, 2015. An entity seeking late intervention must file a petition to intervene setting forth: (1) The general position that it intends to take; (2) a legally protectable interest directly affected by this proceeding; (3) whether late intervention would delay the proceeding or prejudice another party; and (4) good cause for not having filed a timely petition. Late intervention will become effective only upon action of the Commission.

Discovery

9. “The exchange of information among parties pursuant to data requests is the primary method of discovery in proceedings before the [C]ommission.” Mont. Admin. R. 38.2.3301(2). The Commission directs parties to use the following guidelines for data requests:

- (a) Assign a unique, consecutive number to each data request (e.g., MCC-001), regardless of the party to whom the request is directed (e.g., the Commission may direct PSC-001 through 008 to NWE, PSC-009 through 016 to MCC, and PSC-017 through 019 again to NWE).
- (b) At the beginning of each data request, consistently describe its subject in five words or less. In addition, a party may direct the request to a particular witness or include citations to exhibits or testimony.
- (c) For multi-part requests, use lower case letters (a-e) to denote up to five parts.
- (d) The following is an example of an acceptable data request:

PSC-006 RE: Purchased Gas Contracts
Witness Doe, JBD-4:13-15.

- a. What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

10. A party may file an objection to a data request within five (5) calendar days from service or by the deadline to respond, whichever is earlier. Objections must be sufficiently specific for the Commission to adequately rule on whether to sustain or object. The responding party need not object if an answer has been provided to a discovery request. If the requesting party finds the response inadequate, they may file a motion to compel. *See infra* ¶ 12. Only objections based on discoverability will be considered; objections on admissibility will be overruled. The failure to object to a data request does not waive the right to subsequently object to the admissibility of the information provided in response. If a party objects based on privilege, it must file a privilege log by the deadline to respond with enough information for the Commission to determine whether the privilege applies. The Commission may schedule oral argument before ruling on an objection.

11. If a data request seeks trade secret information, a motion for a protective order must be filed within five (5) calendar days from service of the data request.

12. If a response to a data request fails to answer the request, the discovering party may move within five (5) calendar days after service of the response for an order compelling an answer. The motion, which the party must file with the Commission and serve on all parties, must identify the relief requested. The Commission may schedule oral argument before ruling on a motion to compel, and will set a new response deadline if it grants the motion.

13. In response to a party's failure to answer a data request, the Commission may: (1) Refuse to allow it to support or oppose related claims; (2) prohibit it from introducing related evidence; (3) strike pleadings, testimony, or parts thereof; (4) stay the proceeding until the request is satisfied; or (5) dismiss the proceeding, or parts thereof.

14. In order to promote the efficiency of the administrative process, staff attorney Laura Farkas will act as examiner for the limited purpose of disposing of discovery disputes (including objections to data requests and motions to compel) and motions for protective order in this proceeding. Mont. Code Ann. §§ 69-2-101, 69-3-103; *see also* Admin. Mont. R. 38.2.306, 38.2.1501. "Any party may apply for reconsideration in respect to any matter determined" in a Commission order or decision, including the examiner's written decision. Mont. Admin. R. 38.2.4806.

Pre-hearing Motions, Conferences and Memoranda

15. A party must make a pre-hearing motion, including a motion to strike pre-filed testimony, at the earliest possible time. A responding party must file and serve its response brief within seven (7) calendar days of service of the motion. If the movant wishes to reply, it must file and serve its reply brief within five (5) calendar days of service of the response brief. Upon the request of a party, the Commission may allow oral argument on a pre-hearing motion.

16. The Commission may schedule a pre-hearing conference at any time prior to the hearing to discuss the feasibility of settlement in whole or in part, simplification of the remaining issues through admissions of fact, and any other matters that may expedite the hearing.

17. Unless the parties agree to file jointly, each party must file and serve a pre-hearing memorandum listing the following information regarding the hearing: (1) Contested issues; (2) uncontested issues; (3) witnesses that it intends to call; (4) exhibits and responses to data requests that it intends to introduce; (5) any special accommodations sought regarding witness sequence or scheduling. Each party's pre-hearing memorandum must also list any responses to data requests that the parties have collectively agreed to introduce. Whenever a party moves for the admission of a response to a data request, it must identify the number of the request.

Hearing

18. The hearing will be conducted as a contested case proceeding pursuant to the Montana Administrative Procedures Act. *See e.g.* Mont. Code Ann. § 2-4-612. Because each party is entitled to reasonable notice of what issues will be addressed at the hearing, the Commission may not allow a party to raise an issue at a hearing unless it is reasonably related to an issue previously identified in the proceeding.

19. Prior to the hearing, the parties must arrange with the court reporter and Commission staff to consistently mark all proposed exhibits, responses to data requests, and pre-filed testimony for reference.

20. A party must make each person that authored a data request response available for cross-examination at the hearing unless the Commission approves an agreement among the parties to waive cross-examination. A witness need not recite pre-filed testimony before counsel moves to admit the testimony into the record.

21. When a party seeks to cross-examine a witness based on a document not previously filed in this proceeding, it must make copies of the document available to each Commissioner, party, and staff member, unless it shows good cause why copies are not available. A party seeking to introduce a document not previously filed in this proceeding must also provide a copy of the document to the court reporter.

22. At the discretion of the Commission, members of the public may comment on the proceeding at the hearing.

DONE AND DATED this 23rd day of March, 2016, by delegation to Commission staff as an Order of the Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

BRAD JOHNSON, Chairman
TRAVIS KAVULLA, Vice Chairman
KIRK BUSHMAN, Commissioner
ROGER KOOPMAN, Commissioner
BOB LAKE, Commissioner