

October 23, 2015

Mr. Will Rosquist
Interim Regulatory Division Chief
Montana Public Service Commission
1701 Prospect Avenue
PO Box 202601
Helena, MT 59620-2601

RE: Docket No. N2015.9.74 - Inquiry by the Montana Public Service Commission into its Implementation of the Public Utility Regulatory Policies Act of 1978

Dear Mr. Rosquist:

Enclosed for filing are an original and 10 copies of comments and responses prepared by NorthWestern Energy Corporation, d/b/a NorthWestern Energy ("NorthWestern") concerning issues raised and questions posed by the Montana Public Service Commission ("Commission") regarding its implementation of the Public Utility Regulatory Policies Act of 1978 ("PURPA").

Although the Commission has stylized this as a general inquiry into its implementation of PURPA, NorthWestern recognizes that it is the only utility impacted by this docket. No other utility in Montana, investor-owned or cooperative, currently purchases energy and capacity from any Montana Qualifying Facility ("QF"). NorthWestern currently has executed agreements with 32 QFs for 203.7 MW of nameplate capacity. NorthWestern appreciates the Commission's efforts to review and properly implement PURPA. We hope that the Commission will be mindful of its obligation to protect customers and resist overreaching by the Federal Energy Regulatory Commission. Mistakes of the past should not be repeated. When the Commission first implemented PURPA, it was too generous to QFs. NorthWestern's customers have paid, are paying, and will pay nearly \$700,000,000 in CTC-QF transition costs as a direct result of actions taken in the early implementation of PURPA. NorthWestern's shareholders are also shouldering a substantial burden of unrecoverable QF costs. NorthWestern recently signed contracts with two solar QFs at standard offer rates, rates that were set years ago by the Commission and which NorthWestern believes are a violation of PURPA and significantly more expensive. These costs are borne by customers. Customers will pay about \$1.1 million more over the life of these two contracts, totaling just 5 MW, than they would have had the Commission adopted standard offer rates that reflected staff's analysis in Docket No. D2014.1.5.

NorthWestern hopes that this inquiry will prevent further adverse impacts on its customers.

It is important to note that responses and associated analyses regarding certain of the questions posed by the Commission in this inquiry will be included in NorthWestern's proposals in its next

avoided cost QF-1 Tariff filing. For example, while each of the three methods for estimating avoided costs discussed by the Commission is reasonable, the Differential Revenue Requirements method is the most accurate and will be the basis for avoided costs in NorthWestern's upcoming QF-1 filing.

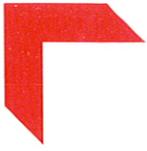
As emphasized in our attached response, inputs into the avoided cost model are likely to have a more substantial impact on avoided costs than the actual avoided cost calculation method utilized. A crucial factor is the impact of the market price forecast used. This is dramatically illustrated by an example presented in our comments. Using the same methodology for computing avoided costs approved in Docket No. D2012.1.3 and updating for current forward market prices indicates that the existing QF-1 tariff for wind QFs is currently 62% greater than it should be.

It is important that the Commission set separate rates for small solar, hydroelectric, wind and other eligible generation technologies. Each of these technologies generates electricity with differing annual capacity factors, differing intermittency, and differing contributions to capacity at time of system peak. The capacity value of various QF generation technologies as well as the associated integration requirements and costs will be addressed in NorthWestern's 2015 Electricity Supply Resource Procurement Plan.

Also, in NorthWestern's experience, each contract negotiation is different as are the terms and conditions requested by QF developers. Therefore, NorthWestern does not believe that the Commission should approve a full standard power purchase agreement.

Finally, the requirements for creation of a legally enforceable obligation ("LEO") should be stringent enough to ensure that a QF has made an actual unconditional commitment to deliver energy, capacity, or both. NorthWestern suggests that the Texas Public Utility Commission's rules regarding establishment of an LEO are appropriate. These rules provide that to establish an LEO a QF must demonstrate that it will deliver firm power within 90 days. A United States Court of Appeals has held that these rules are consistent with PURPA.

Three copies of this letter and documents herewith are being delivered to the Montana Consumer Counsel.



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The NorthWestern employee responsible for answering questions concerning this filing or for inquiries to the appropriate members of the Utility Staff is:

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Along with Joe Schwartzberger and Al Brogan, please add Pam LeProwse at NorthWestern's Butte office to the official service list in this docket to receive copies of all documents. NorthWestern also requests that all electronic correspondence related to this docket be sent to pamela.leprowse@northwestern.com.

If there are any questions in this regard, please contact Joe Schwartzberger at (406) 497-3362.

NorthWestern looks forward to further examination of these very important issues in the forthcoming roundtable discussions in this docket.

Sincerely,

John Hines
Vice President – Energy Supply

Enclosures

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

IN THE MATTER OF Inquiry by the) REGULATORY DIVISION
Montana Public Service Commission into)
its Implementation of the Public Utility) DOCKET NO. N2015.9.74
Regulatory Policies Act of 1978)

**NORTHWESTERN ENERGY’S COMMENTS IN THE MATTER OF THE MONTANA
PUBLIC SERVICE COMMISSION’S INVESTIGATION INTO ITS
IMPLEMENTATION OF THE PUBLIC UTILITY REGULATORY POLICIES ACT of
1978 (“PURPA”)**

Pursuant to the Montana Public Service Commission’s (“MPSC” or “Commission”) Notice of Inquiry and Opportunity to Comment dated September 24, 2015, NorthWestern Energy (“NorthWestern” or “NWE”) respectfully submits the following comments.

1. Methods for estimating avoided costs

The August 2015 Commission Staff Memo describes three methods for estimating avoided costs that were identified by the Edison Electric Institute (“EEI”) as being “used by states to implement PURPA”: the “proxy” method, the “component/peaker” method, and the “differential revenue requirements” approach. All three of these methods are capable of producing reasonable estimates of avoided costs to establish qualifying facility (“QF”) rates. However, the differential revenue requirements approach is likely to be the most accurate, and the proxy method is likely to be the least accurate.

While the methods for estimating avoided costs are important, the more crucial factor is the impact of the market price forecasts (both gas and electric) used. For example, NorthWestern’s current QF-1 rates were calculated using the blended market-combined cycle method approved in Docket No. D2012.1.3. The annual average QF-1 wind rate is \$54.39/MWh. At this rate, a 3-MW wind QF with a 37% annual capacity factor would receive \$13,221,665 over the life of a 25-year contract. The forward market price strips upon which this calculation was based were those available on June 6, 2013, and they were escalated using 2013 Energy Information Administration (“EIA”) escalation, per Commission Order No. 7199d.

Using the same methodology approved in Docket No. D2012.1.3, with actual average prices for calendar years 2013 and 2014, but updating forward market prices to those available on July 6, 2015 and escalating based on the 2015 EIA escalation, the annual average QF-1 wind rate would be \$33.51/MWh. At the rate resulting from this computation, a 3-MW wind QF with a 37% annual capacity factor would receive \$8,145,946 over the life of a 25-year contract.

This difference in energy market prices between 2013 and 2015 means that a 3-MW wind QF project signing a QF-1 contract today would be overpaid by \$5,075,719 (or 62%), over the life of the contract, when compared to an avoided cost calculation using a current market price forecast.

Questions for stakeholders:

- a. What methods are reasonable for the Commission to use to estimate NWE's long-term avoided costs and set rates for small and large QFs? Why are those methods preferred?**

The following is a discussion of each of the three methods listed in the Commission Staff Memo:

Differential Revenue Requirements: This method is the most accurate for determining a utility's avoided costs. Production costing models reflect planned utility operations and resource performance and therefore model avoided costs more accurately than the other two methodologies discussed in the Commission's prologue to this question.

One of the more attractive features of the differential revenue requirements method is that it calculates the combined value of avoided energy and capacity, as well as accounting for the cost of firming QF resources that have intermittent production. However, the method is more complex and not as simple as a spreadsheet-based model such as the proxy method.

Component/Peaker Method: This method uses the utility's production simulation model to estimate avoided energy costs using marginal generation costs for the system. Avoided capacity payments are based upon the cost of a combustion turbine, according to a QF resource's ability to contribute to capacity at peak. NorthWestern does not have any experience with this method.

Proxy Method: The blended market-combined cycle gas plant approach adopted by the Commission in Order No. 7108e in Docket No. D2010.7.77 is a variant of the proxy method, as defined by EEI. The proxy method was a reasonable approach for estimating NorthWestern's avoided costs, as evidenced by the lack of intervenor testimony opposing the methodology in Docket Nos. D2012.1.3 and D2014.1.5. However, with the acquisition, and increased implementation, of PowerSimm™, NorthWestern is moving away from this method. Additionally, notwithstanding the due process concerns previously identified by NorthWestern, the Commission highlighted potential concerns with the blended market-combined cycle method (Order No. 7338b).

- b. What methods should the Commission refrain from using to estimate NWE's long-term avoided costs and set rates for small and large QFs. Why should those methods be avoided?**

All three methods discussed above will produce reasonable estimates of avoided costs. However, no method should be accepted because it is simple and no method should be rejected because it is difficult to understand. The most accurate method available to the utility should be used to develop avoided costs.

- c. Does NWE's acquisition of the PPLM hydroelectric resources affect which methods are best suited for estimating NWE's avoided costs? If so, how?**

Yes. The acquisition of the PPLM hydroelectric resources has changed the type and timing of resources that NorthWestern needs to acquire to serve its customers in the future. These changes should be reflected in NorthWestern's avoided costs. The differential revenue requirements method will capture the full effect of the hydro acquisition on NorthWestern's avoided costs, as well as integration costs.

- d. Is NWE's PowerSimm planning model suitable for applying differential revenue requirements and component/peaker methods? What, if any, concerns would you have with using PowerSimm to estimate avoided costs using these methods?**

Yes. PowerSimm utilizes an hourly dispatch simulation engine to more accurately capture portfolio and individual resource performance across a range of defined conditions. This type of simulation captures the complexities of operation and the inter-relationships between resources in the supply portfolio. Less rigorous modeling approaches can only produce more generalized results. However, like most production costing models, PowerSimm runs one stochastic model at a time. Therefore, producing multiple runs based on numerous variable inputs would take several days.

- e. If PowerSimm is suitable for applying differential revenue requirements and component/peaker methods, does the model need to make use of optimal capacity expansion planning capabilities in order to reasonably calculate applicable costs? Why or why not?**

No. The capacity portion of avoided cost can be estimated without optimal capacity expansion capabilities. The capacity portion of avoided cost can be estimated by looking at the capacity contribution of a QF resource and the timing of resource additions in the preferred portfolio in the resource plan. If the capacity contribution of the QF resource is large enough to defer or displace a planned resource addition (or additions), the planned resource would be deferred or

displaced in the change-case production cost modeling run and the QF resource would be credited with the value of that change in the calculation of the differential revenue requirement.

2. Standard rate design

Questions for stakeholders:

- a. Should the Commission set separate standard rates for small solar, hydroelectric, and/or other eligible generating technologies that reflect the specific generating characteristics of those technologies? Why or why not?**

Yes. The Federal Energy Regulatory Commission (“FERC”) recognizes that some resources, like wind, provide no capacity value except possibly when aggregated with similar geographically dispersed resources. The Commission should set separate rates for small solar, hydroelectric, wind, and other eligible generation technologies. Each of these technologies generates electricity with differing annual capacity factors, differing intermittency, and differing contributions to capacity at time of system peak (capacity value). Capacity value should be calculated as an avoided cost only to the extent it demonstrates the ability to deliver capacity (at time of system peak) with the same degree of reliability as the resource being deferred or displaced.

- b. What contract length is sufficient to enable a viable QF project to obtain financing?**

The answer to this question probably varies, depending upon the QF developer and the degree of leverage that the developer intends to use.

- c. Does a 25 year standard rate contract length impose undue forecast risk on consumers? If so, why?**

Yes. The longer the standard offer contract, the more likely it is that forecast energy prices will depart from actual energy prices.

NorthWestern’s history with QF contracts shows that they (in total) have been a very expensive way to procure electricity. The long-term nature of QF contracts, as interpreted by the MPSC, places inordinate asymmetric risk on customers. When energy markets are low, energy price forecasts are relatively low, and the resulting estimates of avoided costs are also low. During such times, NorthWestern has experienced very little interest from developers seeking QF contracts. However, when energy prices are high, energy price forecasts are higher, and the resulting estimates of avoided cost are also high. During these times, NorthWestern has

experienced greater interest from developers seeking QF contracts. Because of the asymmetric risk, the prices paid for QF resources are, as a whole, much higher than the cost of other resources in NorthWestern's portfolio. In 2014, QF resources produced 936,779 MWh of electricity at an average cost of \$82.56/MWh (does not include stranded cost settlement or any allocation of DGGs fixed costs to wind QFs).

d. Comment on the reasonableness of shortening the maximum contract length in NWE's standard QF tariff schedules.

Shortening the contract length would mitigate forecast risk to NorthWestern's consumers.

e. To what extent should the length of a standard rate QF contract reflect the economic life of alternative resources NWE is planning to acquire?

The determination of avoided costs does reflect the economic life of alternative resources to the extent that the capital costs of those resources are included in the model at a rate that recovers the up-front costs of those resources over their depreciable lives.

f. Should standard rates reflect avoided costs levelized for the length of the contract? Why or why not?

NorthWestern has traditionally negotiated fully levelized QF contracts. NorthWestern has some QF contracts (inherited from Montana Power) with built-in price escalation; those contracts have not matched the cost of market purchases or other available resources over time.

g. Montana law requires the Commission to encourage long-term contracts for purchases of electricity by utilities from QFs. Mont. Code Ann. § 69-3-604(2). How should the Commission interpret or define "long-term"?

This question implies that Mont. Code Ann § 69-3-604(2) imposes obligations beyond those imposed by PURPA. Any such implication is false for two reasons. First, purchases of electricity by utilities for resale are wholesale transactions. Except for transactions pursuant to PURPA, wholesale transactions are FERC jurisdictional. A state may not regulate wholesale transactions. Second, all of Mont. Code Ann. Title 69, Chapter 3, Part 6 is temporary and repealed on the occurrence of a contingency—the effective date of the repeal of 16 U.S.C. § 824a-3. The legislature could not have intended to impose additional obligations beyond PURPA and then provided that repeal of PURPA would eliminate them.

NorthWestern operates and plans over time horizons of varying length. Transactional timeframes for power purchases in the market are considerably shorter than the time horizons

considered for long-term resource acquisition. Term market purchases have never exceeded ten years and are more commonly measured in maximum terms of single digit years. The PPL 7-year purchase power agreement is an example of a long-term purchase power agreement. QF power is more analogous to a market purchase in that the QF contract does not grant the utility any control over the resource or its output.

h. Should standard rates include performance standards and automatic rate adjustments for failure to meet the standards? Provide any specific recommendations you have for such standards and rate adjustments.

NorthWestern has been applying standard industry performance requirements to its QF contracts. The inclusion of these contract requirements means that QF projects are treated the same as other electricity suppliers.

i. Should the Commission approve a full standard power purchase agreement? Why or why not?

No. In NorthWestern's experience, each contract negotiation is different as are the terms and conditions requested by QF developers.

3. Market price forecasting methods

NorthWestern filed its first Resource Procurement Plan ("Plan") in January 2004. The 2004 Plan used forecasts from the Northwest Power and Conservation Council ("NWPCC") for electricity and natural gas. For the 2005 Plan, NorthWestern used long-term price forecasts from Cambridge Energy Research Associates ("CERA"). The CERA natural gas price forecast was also adopted for use in NorthWestern's natural gas procurement plans.

Beginning with the 2007 Plan, NorthWestern stopped using the CERA forecast because CERA added non-disclosure language that would have prohibited sharing the forecasts with the Commission and Commission Staff. At that time, NorthWestern considered using forecasts developed by the NWPCC for use in its 5th Power Plan. However, the forecasts from the 5th Power Plan were out of date and not reflective of then-current market conditions. Instead, NorthWestern contracted with Lands Energy Consulting ("Lands Energy") to develop market price projections for electricity and natural gas. That forecast methodology, which NorthWestern continued to use until recently, is based upon forward market prices for the near term and then escalated using the Consumer Price Index ("CPI") escalation for the long term. The Commission has provided a number of comments on the Lands Energy forward market price projection method:

- Commission comments on the 2011 Plan requested that NorthWestern consider alternative long-term price forecasts, citing NWPCC and EIA forecasts as examples.
- In Docket No. D2010.7.77, the Commission rejected NorthWestern’s natural gas price forecast and required NorthWestern to use the 2011 EIA Annual Energy Outlook (“AEO”) reference natural gas price forecast to develop avoided costs.
- In Docket No. D2012.1.3, the Commission accepted the forward market price component of NorthWestern’s natural gas price forecast (with adjustments for transportation), but rejected the CPI escalation, instead requiring that NorthWestern use the 2012 EIA AEO reference natural gas price forecast escalation.
- Most recently, Commission comments on the 2013 Plan criticized NorthWestern’s continued use of its “in-house” forecasting method, cautioning the utility against ignoring the Commission’s previous findings and comments.

These comments caused NorthWestern to re-evaluate and revise its in-house forecasting method. In early 2015, NorthWestern stopped using the CPI escalation rate and started using the EIA AEO reference natural gas price forecast escalation rate. As with the previous in-house method, this new method will be used for the resource plan, for estimating avoided costs, and for other activities within the utility requiring a natural gas price forecast.

Questions for stakeholders:

- a. Is the Commission’s current practice of blending forward market price information and EIA’s long-term reference case forecasts reasonable? If not, what changes do you recommend and why?**

Yes, it is reasonable. It is a methodology that is transparent and easily updated to reflect current market conditions.

- b. Should the Commission consider a range of possible future prices (as opposed to a single price forecast) when estimating avoided costs and setting rates? If so, what sources should the Commission look to for alternative price forecasts and how should the Commission treat the multiple forecasts in the rate setting process (e.g., should they be averaged or weighted)?**

No, it should not. The method described in part a above is reasonable for the reason given in response to part a above. Other price forecasts, like the NWPCC forecast, are not updated regularly and do not reflect current market conditions. Additionally, the stochastic method used in production costing models drives prices across a range of price futures.

- c. **Since forward market prices can change, sometimes significantly, over short periods of time, would an average of recent forward price information be preferable as a starting point for developing a price forecast than a “snap-shot” taken at a particular point in time? Why or why not?**

This could be an option that the Commission may wish to consider, but it is not necessary since the natural gas market no longer exhibits the same volatility that existed prior to the widespread implementation of fracking technology.

- d. **Is the Commission’s current approach to accounting for estimates of the incremental costs of CO₂ emissions in long-term standard rates for small QFs reasonable? If not, why and how should the approach be modified?**

Yes, it is reasonable. The Commission should continue the current practice of leaving all environmental attributes with the QF developer. The current QF-1 Tariff does not include any avoided cost value for environmental attribute. Under the current QF-1 Tariff, if a QF produces environmental benefits it may either: 1) sell those environmental attributes to a third party, 2) negotiate a separate payment for the environmental attributes with NorthWestern, or 3) give the environmental attributes to NorthWestern and be compensated later when a carbon or some other environmental penalty is assessed. With the current uncertainties surrounding EPA’s implementation of the Clean Power Plan, there is a great deal of ambiguity regarding the future value, if any, of environmental attributes. To include those values in a standard offer QF contract would mean that: 1) these values can be reasonably estimated at this point in time, and 2) these values can be reasonably estimated for (up to) 25 years into the future; neither is true.

- e. **Should NWE receive all or a portion of the renewable energy credits produced by a QF if the purchase rate includes the incremental cost of CO₂ emissions?**

Yes, NorthWestern should receive all environmental attributes from the QF project, including the renewable energy credits.

- f. **Is a forecast of regional (e.g., Mid-Columbia) market prices, alone, a reasonable basis for standard avoided cost rates? Why or why not?**

No, it is not a reasonable basis. First, wholesale electricity prices in Montana traditionally trade at a discount to Mid-C prices when energy is purchased on NorthWestern’s system. Second, an hourly production cost model will set avoided cost at Mid-C (discounted) only when NorthWestern is using the wholesale market to meet its electricity needs for that hour. Third, use

of such a forecast would effectively compel NorthWestern to act as a power marketer for QFs, and there is no requirement in PURPA to do so.

4. Resource capacity values

Questions for stakeholders:

- a. Is the current practice of setting standard rates for wind QFs based on an assumed five percent capacity value reasonable? If not, why?**

No, it is not reasonable. The current five percent is based upon the “best-guess” of the Resource Adequacy Committee of the NWPCC. Since then, NWPCC staff has indicated that five percent is probably too high. NorthWestern will address the capacity contribution of wind in its next avoided cost filing, which will be based upon the 2015 Plan.

- b. Can the Commission set reasonable standard rates without calculating technology-specific capacity values using estimation methods such as effective load carrying capability or exceedance? If so, how? Are there reputable sources of estimates of average capacity values for various generating technologies that, although not specific to NWE’s system, could be used for setting standard rates? If so, please identify such sources.**

Yes, the Commission has done so in the past absent such studies. Reasonable estimates may exist, but are probably not directly applicable to NorthWestern. NorthWestern’s next avoided cost filing, which will be based upon the 2015 Plan, will include technology-specific capacity values.

- c. Should QFs, whether or not they are eligible for standard rates, be required to contractually commit to provide a quantity of capacity in order to receive a capacity payment, with penalties or rate reductions if delivered capacity falls short? How could the Commission align such a requirement with FERC rules requiring consideration of the aggregate value of QF capacity? See 18 C.F.R. § 292.304(e).**

FERC is at odds with itself on this issue. On one hand, FERC indicates that aggregate capacity values for intermittent resources must be considered, and on the other it indicates that a QF must provide assurances that capacity will be available at time of system peak. From a system operations’ point of view, a contractual commitment including penalty provisions would be preferred for larger QFs.

In either case, capacity value should be calculated as an avoided cost only to the extent it

demonstrates the ability to deliver capacity (at time of system peak) with the same degree of reliability as the resource being deferred or displaced.

d. Can the Commission set reasonable QF rates absent technology-specific information regarding integration requirements and costs? If so, how?

No. Reasonable estimates may exist for other utilities, but they will not be applicable to NorthWestern. NorthWestern's 2015 Plan will calculate technology-specific integration requirements and costs.

e. Are there reputable sources of estimates of the average integration requirements for various generating technologies that could be used for setting standard rates? If so, please identify such sources.

NorthWestern's 2015 Plan will calculate technology-specific integration requirements and costs.

5. Requirements for creating a "legally enforceable obligation"

Questions for stakeholders:

a. Are the Commission's requirements for creating a LEO reasonable? If not, identify and explain any needed changes.

No, the current requirements are not reasonable. The Commission established the current requirements in Docket No. D2002.8.100, Order No. 6444e (June 4, 2010) ("Order 6444e"). The Commission states, "To establish an LEO, a QF must tender an executed power purchase agreement to the utility with a price term consistent with the utility's avoided costs, with specified beginning and ending dates, and with sufficient guarantees to ensure performance during the term of the contract, and an executed interconnections agreement." *Id.*, ¶ 47. While the current requirements appeared reasonable at the time they were adopted, subsequent experience has shown that they do not serve the purpose of an LEO and do not actually require a QF to bind itself to deliver energy or capacity.

The concept of an LEO is not found in PURPA. FERC created the concept when it adopted rules implementing PURPA in 1980. In adopting the rules, FERC described the LEO concept by stating, "Use of the term 'legally enforceable obligation' is intended to prevent a utility from circumventing the requirement that provides capacity credit for an eligible qualifying facility merely by refusing to enter into a contract with the qualifying facility." 45 Fed. Reg. 12224 (February 25, 1980). Recently, QFs have asserted that they had an LEO even though the utility was not attempting to circumvent the requirement to pay for capacity. NorthWestern identified

36 petitions for enforcement of PURPA that had been filed between January 1, 2000 and October 29, 2015. Of these, QFs filed 35. Surprisingly, only seven of the petitions were filed in the first 10 years of the period, and 28 of the 35 QF petitions were filed in the last five years. QFs have begun using assertion of an LEO in a way never contemplated by FERC when it enacted the PURPA rules.

As the Commission stated, “the touchstone of an LEO is an absolute unconditional commitment to deliver energy, capacity, or energy and capacity at a future date.” Order 6444e, ¶ 45.

Unfortunately, NorthWestern’s experience with QFs that have asserted creation of an LEO demonstrates that the Commission’s current requirements do not require such a commitment. One QF developer who asserted that it had created an LEO described the development process as follows:

A site is chosen that is a good combination of wind resource, land availability, transmission, market access, permit-ability and build-ability. Land owners are approached and land leases are secured. Met towers are installed to gather site data and facilitate wind resource analysis. Transmission interconnection studies are initiated and completed. PPA discussions are initiated, and a PPA is secured. **The Project is then shopped to potential financiers, partners or buyers on the strength of its assets, i.e. PPA, generator interconnection agreement (“GIA”), permits, wind resource and project economics.**

Docket No. D2014.4.43, Prefiled Direct Testimony of Martin H. Wilde, MWH-3:23-MWH-4:7 (emphasis added). In other words, the purported commitment by the developer was not unconditional; it was conditioned upon finding investors and financiers.

In another situation a developer asserted that it had incurred an LEO, but admitted that it had not asked NorthWestern to calculate its avoided cost. Docket No. D2015.8.64, Greycliff Wind, LLC’s response to Data Request NWE-005. Although the Commission’s current requirements state that a QF must tender a PPA with a price term reflective of the utility’s avoided cost, QFs do not make a reasonable effort to determine the utility’s avoided cost before asserting the creation of an LEO.

The requirements for creation of an LEO should be stringent enough to ensure that a QF has made an actual unconditional commitment to deliver energy, capacity, or both. NorthWestern suggests that the Texas Public Utility Commission’s rules regarding establishment of an LEO are appropriate. These rules provide that to establish an LEO a QF must demonstrate that it will deliver firm power within 90 days. A United States Court of Appeals has held that these rules are consistent with PURPA.

b. Do a QF’s rights to bilaterally negotiate and create a LEO weaken, or render ineffective, the competitive bidding rule? Why or why not?

This compound question conflates an assumed “right to bilaterally negotiate” with a “right to create an LEO. NorthWestern responds to each part of the question separately.

The Commission’s administrative rules are contradictory regarding any right to negotiate. ARM 38.5.1902(5) provides in part:

A long-term contract for purchases and sales of energy and capacity between a utility and a qualifying facility greater than 3 MW in size shall be contingent upon selection of the qualifying facility by a utility through an all-source competitive solicitation conducted in accordance with the provisions of ARM 38.5.2001 through 38.5.2012. Between competitive solicitations, purchases, and sales of energy and capacity between a utility and a qualifying facility greater than 3 MW in size shall be accomplished in accordance with negotiation of a short-term written contract.

This rule provides that the only negotiations outside of selection in a competitive solicitation are for a short-term contract. However, ARM 38.5.1903(2)(b) provides:

Except as provided in ARM 38.5.1903(1), each utility shall purchase any energy and capacity made available by a qualifying facility: . . .

(b) If the qualifying facility agrees, at a rate which is a negotiated term of the contract between the utility and the facility and not to exceed avoided cost to the utility. However, the utility shall offer long-term contracts with qualifying facilities which permit a rate higher than avoided costs in the early years of the contract and a lower rate in the latter years.

ARM 38.5.1903 was adopted in 1981 and has never been amended; ARM 38.5.1902 was adopted in 1981 and amended in 1992, 2007, and 2013. NorthWestern believes that the more recent and more specific rule controls over the older and more general rule. Therefore, NorthWestern believes that the Commission’s administrative rules preclude it from negotiating a long-term contract with a QF that is not eligible for the standard offer rate. NorthWestern also believes that the rule does not preclude settlement negotiations when a docket is before the Commission.

Pursuant to 18 C.F.R. § 292.304(d), a QF may create an LEO. The Commission determines the criteria for and scope of an LEO. *See Whitehall Wind, LLC v. Montana Public Service Com’n*, 2015 MT 119, ¶ 10, 379 Mont. 119, 347 P.3d 1273. This right may weaken or render ineffective the competitive bidding rule if the Commission establishes inappropriate criteria for establishing an LEO. If the Commission allows QFs to create long-term LEOs without participating in a competitive solicitation or if the Commission administratively sets rates to be paid to QFs at levels that are higher than those that result from competitive solicitations, then the Commission’s actions weaken and render ineffective its competitive solicitation rule.

- c. Should the Commission consider repealing the competitive solicitation rule? Why or why not?**

This question is moot. The Commission has already decided to consider repealing the competitive solicitation rule. It submitted Montana Administrative Register (“MAR”) Notice 38-5-232 (“Notice”), which was published in the MAR on September 24, 2015. NorthWestern will respond to the Commission’s Notice at the public hearing to be held on November 3 and/or in written comments to be provided prior to 5:00 p.m., November 6, 2015.

- d. If a utility has issued a competitive solicitation for energy or capacity that is open to QFs, would it be reasonable for LEO determinations made after issuance of the solicitation to assume that the solicited resources will be added to the utility’s resource portfolio as a result of the solicitation process? Why or why not?**

See the answer to part c, above. However, a QF should not be allowed to short-cut the competitive solicitation process, should that occur.

- e. If you answered “yes” to part (d), discuss the implications of that assumption for estimating avoided costs.**

See the answer to part c, above.

CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of NorthWestern Energy's Comments in the Matter of the Montana Public Service Commission's Investigation into its Implementation of the Public Utility Regulatory Policies Act of 1978 ("PURPA") in Docket No. N2015.9.74 have been hand delivered to the Montana Public Service Commission with three copies to the Montana Consumer Counsel this date. It has also been e-filed on the PSC website.

Date: October 23, 2015



Pam LeProwse
Administrative Assistant
Regulatory Affairs