

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

IN THE MATTER OF the Petition of) REGULATORY DIVISION
Greycliff Wind Prime, LLC for)
Declaratory Ruling that GreyCliff's)
Organizational Structure Satisfies) DOCKET NO. D2015.3.23
the Statutory Definition of a)
Community Renewable Energy Project)

DECLARATORY RULING

BACKGROUND

1. On March 12, 2015, Greycliff Wind Prime, LLC (Greycliff) filed a *Petition for Declaratory Ruling* (Petition) with the Montana Public Service Commission (Commission).

2. On March 16, 2015, the Commission issued a *Notice of Petition for Declaratory Ruling and Opportunity to Comment*. The Commission received *Comments* from Jeffrey Wagner and Diana's Great Idea, LLC. Greycliff filed a *Response to the Comments Regarding Greycliff's Requested Declaratory Ruling* on April 13, 2015.

3. Greycliff is planning construction of a wind project in Sweet Grass County, Montana. In its *Petition*, Greycliff presents a legal question pertaining to Section 69-3-2003(4)(a) of the Montana Code Annotated, which defines a "community renewable energy project" (CREP) in part as "an eligible renewable resource... in which local owners have a controlling interest." Pet. at p. 11 (Mar. 12, 2015). Greycliff also presents a legal question pertaining to Section 69-3-2003(11)(c), which defines "local owners" in part as "business entities organized under the laws of Montana" that "have less than \$50 million of gross revenue; have less than \$100 million of assets; and have at least 50% of the equity interests, income interests, and voting interests owned by Montana residents." *Id.* at p. 6.

4. On February 25, 2014, the Commission declared that "an eligible renewable resource does not qualify as a CREP unless 'local owners have a controlling interest' at the time of interconnection and at any point thereafter." Declaratory Rul., Dkt. D2014.1.7, ¶ 8 (Feb. 25, 2014).

5. On March 27, 2014, the Commission declared that "local owners" have a "controlling interest" in a project "only if they own, directly or indirectly, more than half of the equity, income and voting rights in the project." Declaratory Rul., Dkt. D2014.1.9, ¶ 17 (Mar. 27, 2014) ("there would have been no reason to insert the word 'interest'" into the definition of CREP if the Legislature had merely intended local owners to have "management control."). Because a "second member would have [had] the right to consent to major decisions, change project vendors, dissolve [the project], and remove the local owner under certain conditions, the Commission [was] not persuaded that the

local owner would have 'the power to direct the management or policies' – and thereby 'control' the project – by virtue of its limited management interest." *Id.* at ¶ 16.

6. Greycliff requests that the Commission issue a declaratory ruling finding that, "consistent with the organizational structure and definitions of income, equity, and voting interests, and the definition of controlling interest, set forth in [Greycliff's] Petition, the Project will be eligible for certification as a CREP." Pet. at p. 12.

7. Greycliff's organizational structure consists of Greycliff Wind, LLC (GWLLC), the purported "local owner" of the project. *Id.* at p. 9. Greycliff asserts that at least 50% of GWLLC will be owned by the Montana Wind Equity Fund, LLC (MWEF), a Montana limited liability company, and Montana Wind Resources (MWR). *Id.* Greycliff explains that MWEF "is specifically created as a vehicle for Montana residents to invest in Montana wind projects and is 100% owned and managed by Montana residents." *Id.* Greycliff states that MWR is 100% owned and managed by two Montana residents. *Id.* According to Greycliff, it is likely that "new Montana investors will be admitted and some existing Montana investors will withdraw." *Id.* The remaining minority ownership of GWLLC will be possessed by non-Montana members. *Id.* at p. 10. Sharing ownership of the project with GWLLC will be a non-Montana tax equity member, which will possess less than 50% ownership of Greycliff and will "absorb the federal production tax credit..." *Id.*; see also Ex. A.

8. According to Greycliff, a local owner will have "a controlling interest" in the project because the local owner "at all times" will possess "at least 50% of the equity, income, and voting interests" in the project. *Id.* at p. 9. Specifically, Greycliff asserts that "Montana residents will always have at least 50% of all capital accounts" in the project, "Montana residents will own at least 50% interest in the net cash flow" of the project, and finally that "Montana residents will have over 50% of the voting interests" in the project. *Id.*

9. Greycliff states that "equity interests" can be measured by comparing the capital accounts of members. *Id.* at p. 7.

10. Greycliff asserts that the Commission should interpret "income interests" to mean "the members' share of distributions of net cash flow from operations, after payment of expenses." *Id.* Greycliff clarifies that income interest should not refer to taxable income. *Id.* at 7-8.

11. Greycliff states that Montana residents will have 50% of the voting interests because all matters requiring a vote by members will be decided by a majority of members, except for certain acts "which require the consent of 100%" of the members. *Id.* at p. 9. Greycliff clarifies that the following acts will require the consent of 100% of its members:

- (i) any act requiring 100% approval under the Montana Limited Liability Company Act (§ 35-8-307(3), MCA); (ii) borrowing or loaning money; (iii) acquiring or constructing property other than the Project; (iv) granting liens on company property; (v) beginning or settling litigation; (vi) declaring bankruptcy; or (vii) amending or waiving legally binding agreements on the

company that were previously approved by the investor (the "100% Vote Decisions").

Id. at pp. 9-10.

CONCLUSIONS OF LAW

12. The Commission "shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision..." Mont. Code Ann. § 2-4-501. "A declaratory ruling or the refusal to issue such a ruling shall be subject to judicial review in the same manner as decisions or orders in contested cases." *Id.*; Admin. R. Mont. 1.3.229(2).

13. The Commission as adopted the Attorney General's Model Procedural Rules governing declaratory rulings. Admin. R. Mont. 38.2.101. "A party may seek a declaratory ruling from the agency when doubt exists as to how a statute or rule administered by an agency affects the party's legal rights." *Id.* at 1.3.226.

14. A "community renewable energy project" is, in relevant part, "an eligible renewable resource that is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 25 megawatts in total calculated nameplate capacity." Mont. Code Ann. § 69-3-2003(4)(a).

15. In order for "business entities" to qualify as "local owners," "at least 50% of the equity interests, income interests, and voting interests [must be] owned by Montana residents." *Id.* at § 69-3-2003(11)(c)(iii).

16. The Commission declines to issue the declaratory ruling sought by Greycliff because it is not persuaded that Greycliff's proposed corporate structure satisfies the requirement that "local owners" possess a "controlling interest" in a CREP pursuant to Section 69-3-2003 of the Montana Code Annotated.

DONE AND DATED this 18th day of May, 2015, by a vote of 4 to 1. Commissioner Kavulla dissenting.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

/s/BRAD JOHNSON
BRAD JOHNSON
Chairman

/s/TRAVIS KAVULLA
TRAVIS KAVULLA (DISSENTING)
Vice Chair

/s/ KIRK BUSHMAN
KIRK BUSHMAN
Commissioner

/s/ROGER KOOPMAN
ROGER KOOPMAN
Commissioner

/s/BOB LAKE
BOB LAKE
Commissioner

ATTEST:

Aleisha Solem
Commission Secretary

(SEAL)

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 28th day of May 2015, a true and correct copy of the foregoing was served by placing same in the U.S. mail, postage prepaid, addressed as follows:

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