

PUBLIC SERVICE COMMISSION STATE OF MONTANA

Bill Gallagher, Chairman
Bob Lake, Vice Chairman
Kirk Bushman, Commissioner
Travis Kavulla, Commissioner
Roger Koopman, Commissioner



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March 20, 2013

Richard Olpadwala
Lincoln Renewable Energy
Director, Western Region Development
401 N. Michigan Ave., Suite 501
Chicago IL 60611

Dear Mr. Olpadwala:

At its business meeting yesterday, the Montana Public Service Commission declined to accept your recently filed *Request For Injunction and Hearing on Fairfield Wind, LLC*. The Commission's refusal to accept and docket your filing was based on the following deficiencies in the filing itself: (1) the filing contained no citations to authority for the relief requested or in support of Commission jurisdiction over the subject matter; (2) if it was a complaint, it did not identify any violations of any Commission rule, order or tariff; (3) it failed generally to state a cause of action; and (4) it was not filed by an attorney as required. The merits of the filing were not considered.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,

Kate Whitney
Regulatory Division Administrator
Montana Public Service Commission
406-444-3056
kwhitney@mt.gov



March 7, 2013

Kate Whitney
Administrator
State of Montana
Public Service Commission
1701 Prospect Ave
P.O. Box 202601
Helena, MT 59620-2601

Via E-Mail

Subject: Request for Preliminary Injunction and Hearing on Fairfield Wind, LLC

Dear Kate:

Please accept this written request by Fairfield Wind, LLC submitted by Lincoln Renewable Energy ("LRE") to the Montana Public Service Commission ("MPSC") to obtain an immediate preliminary injunction and hearing regarding Fairfield Wind, a proposed 10 MW wind farm located in Fairfield, Montana (the "Project") being developed by LRE. The Project has a Power Purchase Agreement (PPA) with Northwestern Energy ("NWE") and anticipates an April 2014 commercial operations date. We are currently unable to move forward with the financing and construction of the Project due to uncertainty around the Wind Integration Tariff (WI-1) and NWE has refused to make commercially reasonable efforts to negotiate a contractual solution that would allow us to move forward with the Project. As such, due to the Project's interconnection schedule which is determined by NWE's interconnection group, NWE's position on our PPA almost certainly assures the PPA will be economically worthless by May 2013 as the NWE provided interconnection schedule at that time will no longer allow us to meet the PPA's required Commercial Operations Date ("COD") of June 29th, 2014. A summary of the relevant facts can be found below:

- On March 21st, 2012, Fairfield Wind, LLC executed a QF-1 PPA with NWE for the 10 MW Fairfield Wind Project located in Fairfield, Montana. The Guaranteed COD in the PPA is December 31st, 2012 but the PPA allows the COD to be delayed up to 180 days before NWE has the right to Terminate. Delay Damages accrue at \$1,000 per day and will be drawn from the \$180,000 Letter of Credit the Project posted for this purpose.
- The PPA includes a provision requiring the project to either self-supply Wind Integration services or allow NWE to charge for these services according to NWE's Electric Tariff Schedule No. WI-1. At the time the PPA was executed NWE's WI-1 tariff rate was \$2.35/KW/month and noted that "this rate shall be updated every calendar year".

- In January 2013 NWE's Schedule No. WI-1 was updated to allow certain qualifying generators the option to select a fixed Wind Integration rate for a term of up to 25-years.
- On February 5th and 7th, LRE made two requests via email asking NWE to confirm the Project's election of the fixed Wind Integration charge (Option 2(c)) per the current lawful WI-1. NWE would not acknowledge that the project could elect this rate. LRE then informed NWE that to meet the Project's development schedule and contractual requirements per the PPA that some certainty was required regarding the Wind Integration charges, and, if a firm amount could not be provided requested that NWE provide a firm cost range or at least a method of calculation that could be used to determine the cost range, in order to give comfort to the Project's financing sources. Finalizing these financing sources was and is time critical as the backing of these sources is required to make the significant deposits required for interconnection, turbine supply, and engineering and construction agreements. NWE was informed repeatedly that the Project could not be financed without a level of certainty on Wind Integration charges.
- In addition, NWE was repeatedly informed that the uncertainty around the Wind Integration charges was forcing the Project to delay interconnection milestone deposits to NWE's interconnection and transmission group which is responsible for the construction of the Project's interconnection facilities. At this point, each day of delay pushes back NWE's interconnection construction schedule and will cause the Project to pay additional Delay Damages under the PPA. If NWE delays providing certainty on Wind Integration charges until May 15, 2013 at that time the interconnection schedule will no longer match that required by the PPA and the Project schedule will point to almost certain Default under the PPA. In this case the Project will be forced to pay the full \$180,000 in Delay Damages and Northwestern will have a right to Terminate the PPA.
- As the Project cannot move forward because of the uncertainty around the Wind Integration rate and through no fault of LRE, and delays may likely result in Default under the PPA, LRE has made repeated verbal and email request of NWE to amend the PPA to extend the Commercial Operations Date, or, if NWE prefers, to cancel the PPA and return the \$180,000 LC to LRE. NWE has declined these requests.
- As a final note demonstrating NWE's unwillingness to find a commercially viable solution, LRE has located a potential provider of Wind Integration services that would allow the Project to self-supply Wind Integration. To determine if this will be economically viable LRE needs NWE's Wind Integration requirements. LRE has made three written requests to NWE for these requirements and received no response.

At this time LRE would like the MPSC to intervene and require NWE to negotiate a commercially acceptable solution to this situation for both parties. As noted above, such solutions could include:

- NWE acknowledges the Project can elect the 20-year Wind Integration rate in the current 2013 WI-1 tariff.
- NWE provides the Project with a fixed Wind Integration rate or a commercially reasonable price range for possible Wind Integration charges.
- NWE amends the PPA to extend the commercial operations date by 6 months allowing the Project to hold-off on financing and supply agreements until certainty is provided on the WI-1 rate.
- NWE terminates the PPA and returns the Project's \$180,000 LC as the uncertainty around the Wind Integration rate will not allow LRE to finance the Project.

LRE would appreciate a reply to our request as soon as practicably possible given the time constraints the Project is under.

Regards,



Rishad Olpadwala
Director, Western Region Development
Lincoln Renewable Energy, LLC
On behalf of Fairfield Wind, LLC
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