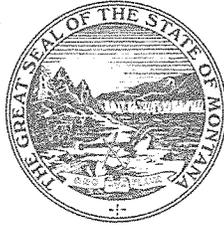


# Montana Public Service Commission



March 13, 2018

Brad Johnson - Chairman  
Travis Kavulla - Vice Chairman  
Roger Koopman - Commissioner  
Bob Lake - Commissioner  
Tony O'Donnell - Commissioner

The Honorable Fred Upton  
Chairman Subcommittee on Energy  
House Energy and Commerce Committee  
2183 Rayburn House Office Building  
Washington, DC 20515

RE: H.R. 4476, the "PURPA Modernization Act"

Dear Chairman Upton:

The members of the Montana Public Service Commission ("PSC" or "Commission") write today to express our unanimous support for H.R. 4476, the "PURPA Modernization Act of 2017" sponsored by Rep. Tim Walberg. As a utility commission that has experienced significant PURPA-related activity in the last five years, we've witnessed firsthand how PURPA's flawed approach to administrative pricing and mandatory purchase obligation harms consumers, while increasing regulatory transaction costs.

The portion of this legislation that is of greatest importance to the Commission can be found in Section 4 of the bill. Subsection 4(B) would remove PURPA's mandatory purchase obligation in states that require competitive procurement for the selection of new utility resources. The current process, required by FERC's interpretation of PURPA, has led to administrative forecasting of avoided cost for the purpose of setting rates for Qualifying Facilities ("QFs"). This manner of establishing avoided cost, though required by FERC, undermines the competitive purpose that was the original intent of PURPA, because it relies not on rival bidders vying against one another for least cost, but instead revolves around a state commission guessing what future costs might be.

In Montana, this has resulted in locking consumers into long-term rates that are often substantially above market. Attachment A shows the Montana PSC's administrative-forecast avoided cost for wind and solar compared to Mid-Columbia wholesale electricity prices. Today, Montana customers are paying nearly three times market for electricity produced by QFs. This forecast risk was at the heart of the PSC's recent decision to reduce the contract length available to QF resources from 25 to 15 years.<sup>1</sup> However, reducing contract length is a blunt instrument.

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<sup>1</sup> In the Matter of NorthWestern Energy's Application for Interim and Final Approval of Revised Tariff No. QF-1, Qualifying Facility Power Purchase, Dkt. D2016.5.39, Order 7500d (Oct. 5, 2017) available online at: <http://www.psc.mt.gov/Docs/ElectronicDocuments/DocketList.asp> (Accessed March 1, 2018).

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Competitive procurement would advantage both developers and ratepayers by ensuring that utilities pay the true value of the energy produced by QFs.

Complying with PURPA also removes the attention of state commissions like the PSC from more important work. Calculating a rate for a QF requires a lengthy contested case process, involving hundreds of hours of analysis on the part of both the Commission and interested parties. For example, one recent proceeding to establish a standard offer rate for small-scale QFs spanned 15 months, encompassed 118 filings, with a record of 3,527 pages. Today, PSC regulatory staff spend approximately 25 percent of its time on PURPA related matters. H.R. 4476 would significantly reduce the regulatory costs associated with PURPA implementation by allowing utilities and QFs to engage in real price discovery through competition among suppliers, rather than rely on a lengthy administrative process to set rates.

The PSC also appreciates provisions contained in Subsection 4(A), which suspend PURPA's mandatory purchase obligation in those instances where demand for electricity is flat or declining, and a utility has access to sufficient supply resources to meet customer needs. The PSC has expressed deep skepticism at plans by the state's largest utility, NorthWestern Energy, to acquire additional generating capacity, citing a western market for electricity that is extremely oversupplied. Until this situation of oversupply changes and market prices recover, it simply may not be economical to build new power plants in Montana, whether wind, solar, or gas. Suspending PURPA's mandatory purchase obligation in this instance would protect Montana consumers from paying for power plants they simply don't need.

It's worth noting that, although the majority of Montana falls outside the territory of an RTO or ISO, this may soon change as the state's largest utility, NorthWestern Energy, continues to explore organized markets. Additionally, Montana-Dakota Utilities, the other major electric utility within the PSC's jurisdiction, currently participates in MISO. To that end, the Commission fully supports the provisions contained in Section 3 of the legislation, which would modernize the non-discriminatory access provisions of PURPA. The Commission agrees that a 2.5 MW threshold is more in line with the realities of modern power generation and is a better match for competitive markets who all have size thresholds below 2.5 MW.

Finally, we support efforts by the sponsor to curb gamesmanship of the FERC "one-mile-rule." FERC's determination that a bright-line of one mile's distance qualifies projects as separate QFs, preempting states from investigating alleged examples of abuse. The PSC has witnessed numerous instances in which a developer has strategically broken apart projects in order to avail themselves of a more favorable standard offer rate for small QFs, or to bypass a utility's competitive procurement process for larger resources.<sup>2</sup> As it stands today, the one-mile rule

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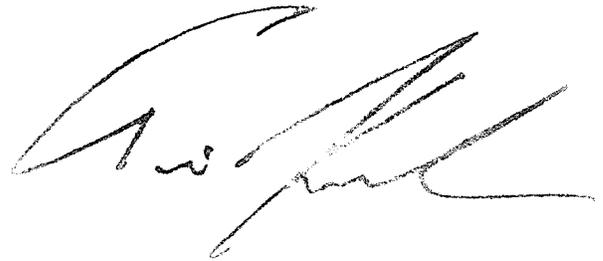
<sup>2</sup> In the Matter of the Petition of Kenfield Wind Park I, LLC and KWP-LC7 LLC to Set Terms and Conditions for Qualifying Small Power Production Facility, Dkt. D2010.2.18, Order 7068b (June 23, 2010) available online at: <http://www.psc.mt.gov/Docs/ElectronicDocuments/DocketList.asp> (Accessed March 1, 2018)

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creates a perverse incentive for projects to forgo economies of scale in order to qualify themselves as individual QFs and evade other regulations. This legislation corrects the problem by authorizing FERC to investigate instances of alleged abuse.

In closing, we commend the Committee for turning its attention to PURPA reform amidst all the other issues that are before you. Though it may not attract the same level of attention as other topics in Washington, reforming the now 40-year-old Public Utilities Regulatory Policy Act is an essential step to reduce regulatory transaction costs and protect Montana consumers. Please let us know if there is any way that the Montana Commission can aid your efforts as you consider this important piece of legislation.

Respectfully,



Enclosures

cc: Honorable Representative Bobby Rush  
Honorable Representative Greg Gianforte  
Honorable Senator Steve Daines  
Honorable Senator Jon Tester

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In the Matter of the Petition of NorthWestern Energy for a Declaratory Ruling on the Availability of Schedule QF-1 Rates to 71 Ranch, LP, Oversight Resources, LLC and DA Wind Investors, Dkt D2017.6.56, Order 7574 (November 16, 2017) available online at: <http://www.psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/D2017656OrderDenyPJR.pdf> (Accessed March 1, 2018)

# Attachment A:

Montana PSC's administrative-forecast avoided cost for NorthWestern Energy (in black solid line and dotted line, for wind and solar respectively) compared to actual prices of the Mid-Columbia wholesale electricity price (2017).

