

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

IN THE MATTER OF NorthWestern
Energy's Petition for a Waiver from
Compliance with the Community
Renewable Energy Project Purchase
Obligation for Calendar Year 2016

REGULATORY DIVISION

Docket No. D2017.8.65

IN THE MATTER OF NorthWestern
Energy's Consolidated Petition for a
Waiver from Compliance with the
Community Renewable Energy Project
Purchase Obligation for Calendar Year
2015 and for a Declaratory Ruling
regarding the Administrative Penalty
contained in Mont.
Code Ann. § 69-3-2004(10)

Docket No. D2016.4.33

**DIRECT TESTIMONY OF F. DIEGO RIVAS ON BEHALF OF MONTANA
ENVIRONMENTAL INFORMATION CENTER AND NW ENERGY
COALITION**

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F. DIEGO RIVAS

**ON BEHALF OF MONTANA ENVIRONMENTAL INFORMATION CENTER
AND NW ENERGY COALITION**

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1 **I. WITNESS INFORMATION**

2 **Q1. Please state your name and business address.**

3 A1. My name is F. Diego Rivas. My business address is 1101 8th Ave, Helena, Montana,
4 59601.

5
6 **Q2. Who is your current employer and what is your position?**

7 A2. I am currently a Senior Policy Associate with NW Energy Coalition, a nonprofit
8 dedicated to promoting an energy future that is clean, reliable, affordable, and equitable.
9 The Coalition is an alliance of about 100 environmental, civic, and human services
10 organizations, utilities, and businesses in Oregon, Washington, British Columbia, Idaho
11 and Montana. The Coalition promotes development of renewable resources and energy
12 conservation, consumer protection, and low-income energy assistance.

13
14 **Q3. Please describe your education and work experience.**

15 A3. I received a bachelor's in political science from the University of Georgia in 2003. I
16 joined the Coalition in January 2010 first as an Energy Efficiency Advocate, moving on
17 into a more expansive Montana policy role in 2011. In 2015, I also took over some
18 policy responsibilities in Idaho. A copy of my CV is attached as Exhibit FDR-1 to this
19 testimony.

20
21 **Q4. Have you previously testified on clean energy issues in any forum?**

22 A4. Yes. I have previously testified as a witness at the Idaho Public Utilities Commission. I
23 have also given public comment and testimony on numerous occasions at the Montana

1 Public Service Commission and the Montana Legislature regarding renewable energy
2 development, energy efficiency, and low-income issues as they pertain to energy
3 procurement and rate design.
4

5 **II. PURPOSE OF TESTIMONY**

6 **Q5. What is the purpose of your testimony?**

7 A5. My testimony focuses on two main topics: (1) whether NorthWestern Energy
8 (“NorthWestern”) took all reasonable steps to procure CREP eligible resources for
9 compliance years 2015 and 2016 and (2) the benefits of the low income energy assistance
10 program and how the penalty funds, if assessed, will serve ratepayers. My testimony
11 supports the conclusion that NorthWestern did not take all reasonable steps to procure
12 CREP eligible resources for compliance years 2015 and 2016 and should not be granted a
13 penalty waiver.
14

15 **III. NORTHWESTERN’S CREP COMPLIANCE IN PRIOR YEARS**

16 **Q6. Please describe the CREP requirement.**

17 A6. The Community Renewable Energy Projects provision of Montana’s Renewable
18 Portfolio Standard requires the state’s regulated utilities—namely NorthWestern and
19 Montana-Dakota Utilities—to include in their resource portfolios the electricity output
20 and renewable energy credits from renewable projects under 25 MW in size that are
21 locally owned.
22

1 For its share of this requirement, NorthWestern was required to procure roughly 44 MW
2 of CREP resources between 2012 and 2014, rising to roughly 65 MW in 2015 and each
3 year thereafter.¹
4

5 **Q7. Has NorthWestern previously complied with the CREP law?**

6 A7. No, NorthWestern has never achieved compliance with the statute. As evidenced by
7 Exhibit B JL-2, Docket No. D2017.8.65, NorthWestern has only procured roughly 25
8 MW of CREP resources. NorthWestern’s most recent CREP acquisition was the 2 MW
9 Flint Creek hydro project in 2013. Id. Since then, NorthWestern has not made any new
10 CREP acquisitions despite its continuing statutory obligation to do so.
11

12 **Q8. What consequences from the Commission has NorthWestern faced for its failure to**
13 **comply with the CREP requirement?**

14 A8. None. The statute allows for utilities that have “undertaken all reasonable steps to
15 procure” CREP eligible resources but are unable to do so for legitimate reasons that are
16 outside the control of the utility to seek a “short-term waiver” from compliance from the
17 Commission.² If granted, the waiver exempts the utility from compliance and waives the
18 penalty for noncompliance.³ NorthWestern has sought and been granted by the
19 Commission a waiver in compliance years 2012, 2013 and 2014. See Order 7177b,
20 Docket No. D2011.6.53 (June 13, 2012); Order 7334g, Docket No. D2013.10.77 (Dec.
21 17, 2014); Order 7416b, Docket No. D2015.3.27 (May 17, 2016). In this proceeding,

¹ See Mont. Code Ann. § 69-3-2004(3), (4).

² Id. § 2004 (11).

³ Id.

1 NorthWestern seeks a waiver for compliance years 2015 (Docket No. D.2016.4.33) and
2 2016 (Docket No. D.2017.8.65).

3
4 **IV. REASONABLE STEPS FOR COMPLIANCE YEAR 2015**

5 **Q9. Please describe NorthWestern’s request for proposals and evaluation process for the**
6 **2015 compliance year?**

7 A9. According to the testimony of Mr. LaFave, “NorthWestern issued another CREP RFP on
8 June 13, 2014 and invited proposals for both PPAs and Build-Transfer projects.
9 Proposals were due July 14, 2014, and 12 developers submitted 15 proposals.
10 NorthWestern narrowed the four finalists to the two most viable projects and then signed
11 PPAs on February 2, 2015 with Greycliff for a 20-MW project and with New Colony
12 Wind, LLC for a 25-MW project.” B JL-13 (D2016.4.33).

13
14 **Q10. In your opinion, did NorthWestern take all reasonable steps with regard to the**
15 **waiver request for compliance year 2015 in Docket No. D2016.4.33?**

16 A10. No.

17
18 **Q11. Please explain your conclusion.**

19 A11. NorthWestern’s application for a waiver for the 2015 compliance year combined with
20 NorthWestern’s past efforts to procure CREP compliant resources demonstrate that
21 NorthWestern did not take all reasonable steps for the 2015 compliance year. This is
22 particularly demonstrated through NorthWestern’s decision to sign PPAs with two
23 projects, Greycliff and New Colony, totaling 45 MW, after conducting an RFP in June of

1 2014, and its rejection of other more viable proposals. Notably, neither PPA ultimately
2 resulted in NorthWestern’s acquisition of CREP resources. Although these PPAs
3 demonstrate that NorthWestern took some steps to comply with the CREP requirement, a
4 closer examination of NorthWestern’s efforts demonstrates that NorthWestern did not
5 take “all reasonable steps” to satisfy its CREP obligation.
6

7 **Q12. In your opinion, what was unreasonable about NorthWestern’s decision to sign a**
8 **PPA with Greycliff?**

9 A12. NorthWestern acted unreasonably in selecting Greycliff as a CREP resource for at least
10 two reasons.
11

12 First, NorthWestern’s decision to sign a PPA with Greycliff for the 2015 compliance year
13 was not reasonable when NorthWestern was aware that the Commission had recently
14 determined that Greycliff did not satisfy the local ownership requirement for its signed
15 PPA for the 2014 compliance year, see Declaratory Ruling, Docket No. D2014.1.9 (Mar.
16 31, 2014). Outside of a “high-level review,” NWE Response to PSC-005(a),
17 NorthWestern did not investigate whether Greycliff’s ownership structure in 2015 would
18 make it CREP eligible, see id. at PSC-005(a), (b). Instead, NorthWestern relied on
19 Greycliff’s representation of a “new approach” to its ownership structure, see NWE
20 Response to PSC-006, and signed a PPA with Greycliff. When Greycliff subsequently
21 requested a declaratory ruling from the Commission that Greycliff qualified as a CREP
22 under the statutory definition, the Commission once again found that Greycliff did not
23 satisfy the statutory definition and denied the request. See Declaratory Ruling, Docket

1 No. D2015.3.23 (May 28, 2015). Because NorthWestern did not undertake appropriate
2 diligence to ensure satisfaction of the local-ownership requirement before signing a PPA
3 with Greycliff, it unreasonably dismissed bids from other projects that may have been
4 eligible to satisfy NorthWestern 's CREP requirement.

5
6 Second, NorthWestern 's selection of the Greycliff proposal for the 2015 compliance
7 year was unreasonable because, as this Commission previously noted, NorthWestern
8 moved forward with the Greycliff PPA without "adequately address[ing] the possibility
9 and impact of delaying full CREP compliance to 2016 to obtain lower total costs." Final
10 Order 7395d ¶ 27, Docket No. D2015.2.18 (May 27, 2015). Specifically, "NorthWestern
11 failed to make a compelling case that Greycliff is a cost-effective CREP resource relative
12 to at least one other 2014 RFP finalist," specifically the Tiger Butte build-transfer
13 proposal by Invenergy. Id. ¶¶ 24, 27–32. As discussed in more detail below, in a failed,
14 unreasonable effort to comply with the CREP requirement in 2015, NorthWestern left
15 more cost-effective resources on the table that could have helped satisfy its requirement
16 in 2016.

17
18 **Q13. In your opinion, was it reasonable for NorthWestern to rely on Greycliff's**
19 **representation of a "new approach" to its ownership structure?**

20 A13. No.

1 **Q14. Please explain your conclusion.**

2 A14. As the entity with the obligation to secure CREP compliant resources, it was
3 unreasonable for NorthWestern to enter a PPA with Greycliff based only on Greycliff's
4 representations about a "new approach" without detailed review by the utility or its
5 consultant to ensure that Greycliff would satisfy this local ownership requirement.

6
7 Moreover, the record indicates that NorthWestern should have been on notice that
8 Greycliff's proposal warranted investigation into Greycliff's new ownership structure. In
9 Lands Energy's August 13, 2014, CREP RFP Screening Results and Recommendation
10 memorandum, Lands Energy noted with regard to Greycliff, i.e. Project 4, compare Ex.
11 SEL-3, at 6-7, with Ex. SEL-4, at 2-3 (D2016.4.33), that "CREP eligibility requires sale
12 of equity to Montana residents," Ex. SEL-3, at 3 (D2016.4.33), indicating that, as
13 presented in its RFP response, Greycliff's CREP eligibility was dependent on such sale of
14 equity.

15
16 Yet, when Greycliff was short-listed, Lands Energy did not conduct further review of
17 Greycliff's ownership structure. Instead, as NorthWestern witness Lewis explains,
18 additional analysis of the projects included "a detailed review of the project generation
19 and projected Operation and Maintenance cost data by DNV GL, detailed cost modeling
20 of the proposals by NorthWestern's financial analysts, and continued investigation into
21 the transmission impacts and cost implications resulting from the various projects." SEL-
22 7 (D2016.4.33). Noticeably absent is further investigation into local ownership
23 requirement, which is curious considering Greycliff had recently been denied CREP

1 status. See Declaratory Order, Docket No. D2017.1.9 (Mar. 31, 2014). Instead, Lands
2 Energy’s final memorandum concluded that it “ha[d] no available evidence to refute
3 project developer attestations ... [that] [t]he two PPA projects, Greycliff and New
4 Colony, will (if selected) receive certification from the MPSC as qualified CREP
5 resources.” Ex. SEL-4, at 7-8 (D2016.4.33).

6
7 **Q15. In your opinion, is it the utility’s responsibility to ensure proposed projects meet**
8 **CREP ownership requirements?**

9 A15. Absolutely, and it’s not just my opinion. The Commission has signaled it is the utility’s
10 responsibility as well. In response to PSC-005, NorthWestern states, “[a]t the outset, it
11 must be noted that it is not NorthWestern’s responsibility to ensure that projects
12 submitted to it by developers meet the CREP ownership status.” NWE Response to PSC-
13 005(b). However, in the order on NorthWestern’s 2014 compliance year waiver request,
14 the Commission states that:

15 NorthWestern relies on individual projects to take full
16 responsibility for the certification as CREPs. ... NorthWestern
17 does very little itself to ensure that a project is indeed a CREP
18 before entering into a PPA. ... Such reliance on parties that are not
19 NorthWestern, and which do not have obligations to procure
20 CREPs under the law, may be contributing to NorthWestern’s
21 failure to meet its CREP obligation.

22
23 Order 7416b ¶ 18, D2015.3.27 (May 17, 2016) (citations omitted).

24
25 Looked at another way, if NorthWestern were to issue an RFP for a capacity resource
26 providing electricity during heavy load hours, NorthWestern would certainly make every
27 effort to ensure that responding projects did indeed provide electricity during those hours.

1 NorthWestern would not rely solely on the bidders guarantee to ensure the project fit
2 their need.

3
4 Similarly, and perhaps even more so given that CREPs are required by law,
5 NorthWestern should take responsibility to ensure CREP projects meet the ownership
6 requirement and satisfy their own statutory obligation.

7
8 **Q16. In your opinion, did NorthWestern’s decision to sign a PPA with New Colony suffer**
9 **similar flaws?**

10 A16. Yes. Similar to Greycliff, it was unreasonable for NorthWestern to sign a PPA with New
11 Colony and to dismiss the other shortlisted projects without investigating whether New
12 Colony satisfied the local ownership requirement. Again, the record does not
13 demonstrate that NorthWestern sought to confirm New Colony’s compliance with the
14 local-ownership requirement, despite the Commission’s Declaratory Ruling in Docket
15 No. D2014.1.9, which effectively put NorthWestern on notice of the Commission’s
16 interpretation of the local-ownership requirement and the fact that the Commission would
17 thoroughly vet proposals to ensure compliance with the statutory definition of local
18 ownership. By not investigating New Colony’s ownership structure to ensure compliance
19 with the statute, NorthWestern took a gamble that did not pay off.

20
21 **Q17. In your opinion, was it reasonable for NorthWestern to enter PPAs with Greycliff**
22 **and New Colony instead of pursuing the other shortlisted proposals?**

23 A17. No.

1 **Q18. Please explain your conclusion.**

2 A18. In my opinion, the record does not demonstrate that Greycliff and New Colony were the
3 most viable shortlisted projects.

4
5 NorthWestern has not provided a reasonable basis for its decision to exclude the other
6 shortlisted projects proposed by Invenergy: Judith Gap II and Tiger Butte. The testimony
7 of NorthWestern witness Lewis states only that “Northwestern ultimately determined that
8 the PPA proposals submitted by Greycliff and New Colony were the top choices.” SEL-
9 8 (D2016.4.33). Similarly, NorthWestern witness LaFave testified that “NorthWestern
10 narrowed the four finalists to the two most viable projects.” BJL-13 (D2016.4.33).

11 However, nothing in the record demonstrates why Greycliff and New Colony wind were
12 the most viable projects as compared to at least one other shortlisted project—the Tiger
13 Butte proposal from Invenergy, which had the lowest 25-year price with wind integration,
14 see Ex. SEL-4, at 7 (D2016.4.33).

15
16 Notably, exhibit SEL-3 shows that Greycliff, or Project 4, was indeed the *seventh* most
17 viable project in the Lands Energy CREP RFP Screening Results and Recommendation
18 Memorandum. See Ex. SEL-3, at 2-4 (D2016.4.33). This memorandum assigned
19 Greycliff a viability score of 66.9, which is well behind the top score of 91.9 for project
20 5, Judith Gap II, as well as Invenergy’s Tiger Butte proposal, scoring 78.8. See id.;
21 compare id., with Ex. SEL-4, at 2-5 (D2016.4.33). Given Greycliff’s low viability score,
22 it is hard to understand why Greycliff was ultimately shortlisted and deemed one of the
23 two most viable projects. Similarly, of the shortlisted projects, New Colony was one of

1 the most expensive projects, nearly \$11/MWh more expensive than the Tiger Butte
2 project with wind integration costs included. See Ex. SEL-4, at 7 (D2016.4.33). Yet,
3 NorthWestern decided to exclude the less expensive Tiger Butte project without
4 explaining why it opted to pursue a more expensive project.

5
6 What Judith Gap II and Tiger Butte have in common is that they are both build-transfer
7 bids, whereby NorthWestern would purchase the project and become the owner, as
8 allowed by the 2009 CREP amendments, as opposed to projects, like Greycliff and New
9 Colony, that were submitted as PPA or build-transfer bids. For Greycliff and New
10 Colony, NorthWestern chose to accept the bid and sign a PPA and not pursue these
11 projects as build-transfer projects.

12
13 It appears that NorthWestern summarily rejected the two shortlisted build-transfer bids
14 and chose only to pursue PPAs, as evidenced by the fact that the company chose the
15 likely-to-fail Greycliff PPA over the higher-rated and cheaper Tiger Butte build-transfer
16 project. Lands Energy recognized the viability of the build-transfer projects in its
17 Screening Results Memorandum, stating that

18 [t]he shortlist included two B-T Agreement proposals from
19 Invenergy (Tiger Butte and Judith Gap II) plus two PPA proposals
20 (Greycliff and New Colony) in the short-list. The two build-
21 transfer projects had some of the highest viability scores of all
22 project proposals submitted, with the Judith Gap II proposal
23 scoring higher than either PPA project proposal on the short-list.

24 Ex. SEL-4, at 2.

25

1 Moreover, the selection of Greycliff over Tiger Butte on a purely factual basis is dubious
2 at best. Consider that Tiger Butte ranked third in viability scoring of projects that fit the
3 RFP process, see Ex. SEL-3, at 2-3; see also supra, FDR-10, and both turbine options
4 were the cheapest of the four shortlisted projects, see Ex. SEL-4, at 7. The viability of
5 Tiger Butte contrasts significantly with Greycliff, which was seventh in viability scoring
6 and nearly \$6/MWh more expensive than Tiger Butte, including integration costs. See
7 Ex. SEL-3, at 2-3; see also supra, FDR-10.

8
9 **Q19. In your opinion, what other steps could NorthWestern have taken to attempt to**
10 **comply with the CREP requirement for the 2015 compliance year?**

11 A19. Based on the results of viability scoring and pricing, it would have been reasonable for
12 NorthWestern to have pursued or further considered a build-transfer contract with Tiger
13 Butte. For example, NorthWestern could have taken the reasonable step of continuing
14 negotiations with Tiger Butte, perhaps even signing a contract contingent on need should
15 the Greycliff project not be certified as a locally owned resource, or, after the Greycliff
16 and New Colony projects failed, reinstating negotiations with Tiger Butte.

17
18 In addition, in its analysis of the proposals, it would have been reasonable for
19 NorthWestern to have assigned a value to the risk of CREP non-compliance for projects
20 such as Greycliff and New Colony that were less likely to meet CREP eligibility
21 requirements. As LaFave's testimony acknowledges, the 2009 amendment to the CREPs
22 statute to allow utilities to own CREP projects, including build-transfer projects, was

1 designed to make the CREP requirement more workable by eliminating the local-
2 ownership requirement for utility owned CREPs. See B JL-8-9 (D2016.4.33).

3
4 Although it is possible that build-transfer projects may come with more risk for
5 NorthWestern, any assessment of risk from a build-transfer project should also factor in
6 the premium value of non-compliance with state law. Such consideration should include
7 the penalty payment, should the lower viability, higher priced PPAs not come to fruition,
8 the increased risk that PPA projects will not ultimately qualify as CREPs, and the cost to
9 ratepayers of forgoing cheaper energy from a build-transfer project for a more-expensive,
10 but potentially less risky PPA.

11
12 **Q20. In your opinion, was there anything else unreasonable about NorthWestern's 2014**
13 **RFP process?**

14 A20. Yes.

15
16 **Q21. Please explain.**

17 A21. NorthWestern took an unreasonable approach with respect to the timing of projects by
18 declining to pursue competitive projects that would not be operational within the 2015
19 compliance year even though those projects may have helped NorthWestern to achieve
20 compliance in the future. There are several flaws with this approach:

21
22 First, in the 2014 RFP, NorthWestern was not transparent about its self-imposed
23 requirement that projects come on-line within the 2015 compliance year. Notably, the

1 June 2014 RFP did not include a firm target commercial operating date and instead stated
2 only that each proposal should “clearly describe the anticipated commercial operation
3 date....” See Ex. SEL-2, at 17 (D2016.4.33).

4
5 Second, despite this lack of transparency about timing, Lands Energy repeatedly cited the
6 potential inability of a project to be commercially operational in 2015 as a negative for
7 the project. For example, for Judith Gap, Lands Energy explained that “[a]lthough any
8 B-T project will have difficulty meeting a December 15, 2015 on-line schedule due to
9 [NorthWestern’s] intent to seek MPSC advanced approval of a B-T agreement, Judith
10 Gap could potentially meet the deadline ...” Ex. SEL-4, at 3 (D2016.4.33). For Tiger
11 Butte, Lands Energy expressed that “[w]aiting for MPSC approval of an advanced
12 approval filing by [NorthWestern] would make December 31, 2015 commercial
13 operation difficult to achieve.” Id.

14
15 Under the law, NorthWestern is obligated to acquire roughly 65 MW of CREP eligible
16 resources but it currently has only 25 MW, see B JL-5-6 (D2016.4.33)—less than half of
17 the amount NorthWestern is obligated to acquire. If NorthWestern fails to meet this
18 obligation one year, it must still meet its obligation for future years. As a result, even if
19 commercial operation for Tiger Butte were to begin sometime during the 2016
20 compliance year, it would have been prudent for NorthWestern to acquire the resource in
21 order to make progress toward compliance with the CREP requirement in 2016. This is
22 especially true considering that Tiger Butte was the most cost-effective resource of the
23 shortlisted projects. While such an approach may not have assisted with CREP

1 compliance in 2015, it would help to demonstrate that NorthWestern took reasonable
2 steps to achieve compliance. Further, as discussed below, not having done so,
3 NorthWestern cannot demonstrate that it took all reasonable steps to comply with the
4 CREP requirement in 2016.

5
6 Absent these steps, NorthWestern's request for a compliance and penalty waiver for the
7 2015 compliance year should be denied.

8
9 **V. REASONABLE STEPS FOR COMPLIANCE YEAR 2016**

10 **Q22. Please describe NorthWestern's request for proposals and evaluation process for the**
11 **2016 compliance year?**

12 A22. NorthWestern conducted two RFPs in order to satisfy CREP requirements for the 2016
13 compliance year. In the first RFP, dated July 1, 2015, NorthWestern initially eliminated
14 six of the twelve proposals. After further evaluation, Lands Energy recommended that all
15 remaining six projects be shortlisted. NorthWestern then determined, through modeling,
16 that none of the remaining six projects were cost-effective. NorthWestern issued a
17 second RFP in May of 2016.

18
19 **Q23. In your opinion, did NorthWestern take all reasonable steps with regard to the**
20 **waiver request for compliance year 2016 in docket D2017.8.65?**

21 A23. No.
22
23

1 **Q24. Please explain your conclusion.**

2 A24. In my opinion, NorthWestern acted unreasonably both in the steps it took and did not
3 take.

4 First, NorthWestern failed to take the reasonable step of accepting resources from the
5 2014 RFP that could have helped satisfy compliance in 2016. As explained above,
6 because NorthWestern could have proceeded with the Tiger Butte project from the 2014
7 RFP process to make progress toward compliance in the 2016 compliance year,
8 NorthWestern did not take all reasonable steps when it chose not to pursue that project.
9 Significantly, in the 2015 RFP process, Tiger Butte was once again among the shortlisted
10 projects. See Ex. SEL-4, at 1-2 (D2017.8.65). Had NorthWestern taken the reasonable
11 step of acquiring this resource in the 2014 RFP (or at least not rejecting the resource on
12 timeliness grounds), the utility would have been better positioned to satisfy the CREP
13 requirement in 2016.

14
15 Second, in the 2015 RFP process, NorthWestern unreasonably required proposals to be
16 commercially operational “no later than December 31, 2016,” Ex. SEL-2, at 1
17 (D2017.8.65), and excluded certain projects that did not meet this deadline, see Ex. SEL-
18 3, at 1. Specifically, Exhibit SEL-3 shows that Proposals 1 and 2—both solar
19 proposals—were eliminated for failure to meet the December 31, 2016 commercially
20 operational requirement. Given NorthWestern’s ongoing need for CREPs, it was
21 unreasonable for NorthWestern to establish a hard deadline of December 31, 2016. See
22 Concurring Opinion of Comm’r Travis Kavulla, at 12-13, Order 7177b, D2011.6.53 (“[i]f
23 one accepts NorthWestern’s own argument about the long planning timeline necessitated

1 by the process of bringing a generation plant online ... then steps that were not taken
2 after March 2011 ... necessarily bear on a finding pertinent to 2013 and 2014 ...”).

3
4 Third, and relatedly, given that it can take nine months for pre-approval for a build-
5 transfer project, it was unreasonable for NorthWestern to both establish a hard deadline
6 of December 31, 2016 and issue the RFP in July of 2015, rather than, say, six months
7 earlier. As Commissioner Kavulla has previously stated “[i]t would be logically
8 inconsistent to make a finding on only one year with respect to a step that is inherently a
9 multi-year process...” *Id.* at 13 (emphasis added).

10
11 **Q25. Did NorthWestern exclude projects from the 2015 RFP for failure to meet the 2016**
12 **deadline?**

13 A25. Yes.

14
15 **Q26. Was that the end of the process for the 2016 compliance year?**

16 A26. No. NorthWestern issued a subsequent RFP in May 2016, but ultimately concluded that
17 “none of these four shortlisted proposals could have been commercially operational by
18 end of the calendar year 2016,” SEL-10 (D2017.8.65), despite the fact that the RFP itself
19 requested projects that would be commercially operational “prior to the end of 2017” and
20 further stated that projects with later CODs will be accepted and considered,” Ex. SEL-6,
21 at 4 (D2017.8.65).

1 **Q27. In your opinion, was NorthWestern’s May 2016 RFP a “reasonable step” toward**
2 **compliance with the CREP requirement?**

3 A27. No. NorthWestern’s May 2016 RFP does not appear to have been designed to achieve
4 compliance with the CREP requirement in compliance year 2016. It was unreasonable
5 for NorthWestern to believe that any project that responded to this RFP, PPA or build-
6 transfer, would have been commercially operational seven months after the issuance of
7 the RFP, particularly when the RFP stated that projects outside of that time frame would
8 be considered.

9
10 NorthWestern’s only justification for rejecting proposals received pursuant to the May
11 2016 RFP was that none of the shortlisted proposals could meet the 2016 timeline. See
12 SEL-10 (D2017.8.65) (“Four proposals were named to the 2016 CREP RFP short list.
13 However, none of these four shortlisted proposals could have been commercially
14 operational by end of the calendar year 2016.”). But as noted above, NorthWestern has
15 an ongoing obligation to secure CREPs and could have continued to pursue viable
16 projects for purposes of 2017 compliance.

17
18 **Q28. Are there other reasonable steps NorthWestern failed to take for the 2016**
19 **compliance year?**

20 A28. Yes. Most notably, NorthWestern could have taken steps to acquire already existing
21 CREP-eligible resources, which Commissioner Kavulla has previously recognized may
22 be a reasonable step. See Concurring Opinion of Comm’r Travis Kavulla, at 15, Order
23 7177b, Docket No. D2016.53 (June 13, 2012) (“NorthWestern did not show that it had

1 taken steps to acquire or consider acquiring a QF that held a power purchase agreement,
2 but then sold it to another third party, indicating on that company's part a willingness to
3 engage in transactions of a kind that would have allowed NorthWestern potentially to
4 acquire a CREP-sized project.”).

5
6 While several CREP-sized projects have changed hands over the last several years,
7 NorthWestern provides no indication that it has pursued ownership of these projects.
8 Indeed, three, 3 MW solar projects were sold in the fourth quarter of 2016: Helena -
9 Green Meadow, Reedpoint and Hardin. Each was sold by Cypress Creek/FLS Solar to
10 Enerparc.

11
12 In addition, three CREP sized wind projects have been sold since 2012, the same period
13 of time that NorthWestern has been obligated to acquire CREPs:

- 14 • Two Dot Wind Farm – 9.72 MW, sold in November 2012⁴
- 15 • Fairfield Wind Farm – 10 MW, sold in December 2015⁵
- 16 • Greenfield Wind Farm – 25 MW, sold in November 2016⁶.

17
18
19
⁴ <https://www.edf-re.com/project/two-dot-wind-farm/>

⁵ <https://www.prnewswire.com/news-releases/greenbacker-renewable-energy-company-llc-acquires-a-10-megawatt-operating-wind-generation-facility-in-montana-300189837.html>

⁶ <https://www.businesswire.com/news/home/20161108006147/en/Greenbacker-Renewable-Energy-Company-LLC-Acquires-25>

1 **VI. ADMINISTRATIVE PENALTY – LOW INCOME – VALUE TO**
2 **NORTHWESTERN CUSTOMERS**

3 **Q29. What is the penalty for non-compliance with the CREP provision?**

4 A29. The CREP provision of the Renewable Portfolio Standard states that if a utility fails to
5 meet the provision in any compliance year, then the utility “shall pay an administrative
6 penalty, assessed by the commission, of \$10 for each megawatt hour of renewable energy
7 credits that the public utility ... failed to procure.”⁷

8

9 **Q30. Where do the penalty dollars go?**

10 A30. The statute states that, “[m]oney generated from these penalties must be deposited in the
11 universal low-income energy assistance fund established in 69-8-412(1)(b).”⁸

12

13 **Q31. Is there an existing universal low-income energy assistance fund?**

14 A31. Yes, the Department of Health and Human Services administers the fund. The
15 Department pools monies collected from the universal systems benefit charge with
16 federal dollars and distributes those funds through the various Human Resource Councils.
17 These funds are used to fund both low-income bill assistance and low-income
18 weatherization.

19

20

21

⁷ Mont. Code Ann. § 69-3-2004(10).

⁸ Id.

1 **Q32. In your opinion, what benefits does low-income energy assistance provide?**

2 A32. The benefits are two-fold. First are the obvious benefits to low-income households,
3 which are multiple. Low-income bill assistance helps households avoid the tradeoff
4 between energy and other basic necessities. Low-income weatherization leads to a lower
5 energy burden, meaning households are less likely to need bill assistance. It is also
6 important to keep in mind that energy burdens tend to be much higher for low-income
7 households than moderate and high-income households. A 2016 report by the American
8 Council for an Energy Efficient Economy (ACEEE) states:

9 that the overwhelming majority of single-family and multifamily
10 low-income households (those with income at or below 80% of
11 area median income), minority households, low-income
12 households residing in multifamily buildings, and renting
13 households experienced higher energy burdens than the average in
14 the same city. For example, the median US energy burden across
15 all cities in our sample was 3.5%. The median low-income
16 household's energy burden was more than twice as high at 7.2%
17 and three times greater than higher income households (2.3%).⁹

18 This does not mean that low-income households use more energy, but means solely that
19 energy costs are a higher percentage of income for low-income households.

20
21 Weatherization also reduces a family's (low-income or otherwise) exposure to rate
22 increases. Furthermore, there has been a renewed focus by the U.S. Department of

⁹ Drehobl, Ariel and Lauren Ross, [Lifting the High Energy Burden in America's Largest Cities: How Energy Efficiency Can Improve Low Income and Underserved Communities](http://aceee.org/sites/default/files/publications/researchreports/u1602.pdf), at 3-4, American Council for an Energy Efficient Economy (April 2016) (available at <http://aceee.org/sites/default/files/publications/researchreports/u1602.pdf>).

1 Energy on weatherization's impact on health and safety, leading to benefits such as
2 decreased rates of asthma, exposure to carbon monoxide, and lead poisoning.¹⁰

3
4 The second benefit is to other customers and the system at large. Exhibit FDR-1 is a
5 chart detailing various benefits to utilities, non-participating ratepayers, and communities.

6 The most direct impacts to non-participating customers from weatherization include
7 lower rates in the future due to reduced need for new investments in generation,
8 transmission, and/or distribution. Arrearages, or non-payments, are also significantly
9 reduced by both bill assistance and weatherization,¹¹ which are generally included as a
10 cost to the utility and paid for by all customers in rates.

11
12 **Q33. Would penalties assessed against NorthWestern for CREP non-compliance affect**
13 **customer rates for electricity?**

14 A33. No. The CREP statute specifically states that a utility may not pass assessed penalties on
15 to customers. Shareholders will be held responsible for NorthWestern's failure to
16 comply with the law.

17
18 **Q34. Does this complete your testimony?**

19 A34. Yes, it does.

¹⁰ U.S. Dep't of Energy, Weatherization Plus Health (available at <http://www.humanresourcecouncil.org/images/energy/energy-conservation/WxPlusHealthFactSheetSpring2013.pdf>).

¹¹ Baatz, Brendon, Everyone Benefits: Practices and Recommendations for Utility System Benefits of Energy Efficiency, at 30-32, Report U1505, American Council for an Energy-Efficient Economy (June 2015) (available at <http://aceee.org/sites/default/files/publications/researchreports/u1505.pdf>).

Exhibit FDR-1

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Education

University of Georgia, Athens, GA
School of Public and International Affairs
Bachelor of Arts, Political Science, May 2003

Professional Experience

NW Energy Coalition, 811 1st Ave, Suite 305, Seattle, WA 98104

Senior Policy Associate 2010-present

- Provide support and advocacy with regard to energy policy as the sole Coalition staff member in Montana
- Advocate for a clean and affordable energy future in the states of Montana and Idaho, as a part of the Northwest region
- Continued focus on energy efficiency procurement at NorthWestern Energy and western Montana rural electric cooperatives, including analysis on program design, incentive levels, conservation potential assessments and evaluation, measurement and verification (EM&V)
- Provide policy support on energy efficiency and renewable energy issues at the state legislature, Public Service Commission, Northwest Power and Conservation Council and other governmental bodies, using the Coalition's region-wide policy expertise in order to advance sound energy policy in Montana
- Work with Coalition members and allies – including environmental organizations, low-income groups, renewable energy developers, utilities, businesses, agricultural groups and labor – to advance strategic clean energy policies

The Mitchell Group/Environmental Defense Fund, 2 N. Last Chance Gulch, Helena, MT 59601

Organizer 2005-2009

- Managed day-to-day operations of climate change campaign in Montana for Environmental Defense Fund
- Researched impacts of climate change on the state of Montana for public dissemination
- Worked with Congressional delegation on policy language for climate change legislation in Congress

Previous Utility Commission Intervention

Idaho Public Utilities Commission, Intermountain Gas General Rate Case, Docket INT-G-16-02

- Provided direct pre-filed testimony regarding energy efficiency, rate design, and low-income weatherization/bill assistance.

Related Experience

Electricity Technical Advisory Committee, NorthWestern Energy

Member, 2010-present

- Provide advice and feedback on NorthWestern Energy's Resource Procurement Plan, including demand-side management/energy efficiency issues, renewable energy, and other procurement issues.

Energy Efficiency Advisory Group, Idaho Power Co.

Member, 2015-present

- Provide advice and feedback on Idaho Power's energy efficiency programs, including program design, incentive levels, marketing, and evaluation, measurement and verification (EM&V).

Clean Power Plan Advisory Council

Member, 2016

- Appointed by Governor to provide guidance to the Department of Environmental Quality on Montana's compliance with the Clean Power Plan.

Cross-cutting Issues Technical Working Group, Climate Chance Advisory Committee

Member, 2006-2007

- Assisted in developing recommendations for the full Climate Change Advisory Committee on issues including inventorying and reporting of Montana's greenhouse emissions, reduction targets, offsets, and education and outreach.

Exhibit FDR-2

Lifting the High Energy Burden in America's Largest Cities:

How Energy Efficiency Can Improve Low Income and Underserved Communities

Ariel Dreihobl and Lauren Ross



TABLE 7. Energy efficiency benefits for low-income households, utilities, and communities

Benefit recipient	Energy efficiency outcome	Resulting benefit
Low-income program participants	Lower monthly utility bills	Lower household energy burden and greater disposable income
		Reduced stress and fewer trade-offs between energy and other necessities
		Reduced exposure to risk from utility rate increases
	Improvements in the efficiency of the housing stock	Improved health and safety and greater household comfort
		Increased property value, more reliable equipment, and lower maintenance costs
		Greater satisfaction with the building/unit and improved household and neighborhood stability
Utilities and ratepayers	Demand-side management (both gas and electric)	Avoided excess costs of increased generation, capacity, and transmission investments
		Contribution toward compliance with energy efficiency portfolio standards and other environmental legislation
	Cost savings to utilities and ratepayers	Reduced arrearages and cost of shutoffs, which lowers utility operating costs
		Improved customer service
Communities	Lower electric and gas demand	Reduced environmental pollutants and improved public health
	Lower monthly utility bills due to avoided utility costs	More money spent in the local economy due to greater household disposable income, with higher local multiplier effect
		Poverty alleviation and increased standard of living
	Improvements in the efficiency of the housing stock	Local job creation through weatherization programs and energy efficiency providers and trade allies
		Improved quality of life
		Increased property values and preservation of housing stock

price increases and variable seasons. In 2014, residential electricity prices rose to the highest level in six years, with average electric price increasing by 3.1% annually between 2008 and 2014 (EIA 2015). By improving household efficiency, individuals and communities can be more resilient in times of price increases.

Utilities operate energy efficiency programs because of the benefits that accrue not only to customers but also to the utility system. Investing in low-income energy efficiency can mean avoiding the excess costs of increased energy generation, capacity, and transmission due to reduced demand. The reduction in energy production due to efficiency also reduces environmental pollutants, which helps utilities comply with environmental legislation that limits emissions (Baatz 2015; Brockway, Kallay, and Malone 2014). Energy

By improving household efficiency, individuals and communities can be more resilient in times of price increases.

efficiency investments in low-income communities also reduce the risk of arrearages and the costs of shutoffs for families who have difficulty paying their bills. By lowering these costs, utilities can reduce overall tariffs and charges for their entire ratepayer base.

Although not all low-income customers have the opportunity to participate in their utility's energy efficiency programs, research shows that energy efficiency benefits

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of January, 2018, I caused the foregoing to be hand delivered to:

Justin Kraske
Chief Counsel/Administrator
Public Service Commission
1701 Prospect Ave.
Helena, MT 59620-2601

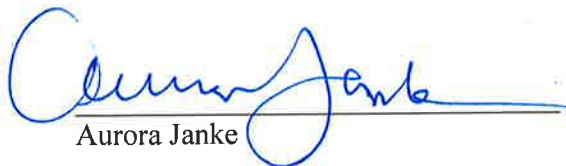
I further certify that on the same day, I served the foregoing by first-class mail, postage prepaid, on the following:

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