



DOCKET NO. D2016.4.33

Before the Public Service Commission
of the State of Montana

**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 § 69-3-2004(10), MCA**

December 2016

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

IN THE MATTER OF the Petition of)	
NorthWestern Energy for a Short-Term)	
Waiver under § 69-3-2004(11), MCA,)	
)	REGULATORY DIVISION
And)	
)	
IN THE MATTER OF the Petition of)	DOCKET NO. D2016.4.33
NorthWestern Energy for a Declaratory Ruling)	
on the Applicability of the Penalty Provision in)	
§ 69-3-2004(10), MCA)	

**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 § 69-3-2004(10), MCA**

NorthWestern Corporation, d/b/a NorthWestern Energy ("NorthWestern"), petitions the Montana Public Service Commission ("Commission") for a short-term waiver under the

provisions of § 69-3-2004(11), MCA, and for a declaratory ruling under § 2-4-501, MCA.

The two petitions, separately stated below, relate to the acquisition of power and any associated Renewable Energy Credits (“RECs”) from Community Renewable Energy Projects (“CREPs”), both of which are defined terms under Montana’s Renewable Power Production and Rural Development Act, §§ 69-3-2001, MCA, *et seq* (the “Act”).

NorthWestern’s Petition for a Short-Term Waiver is supported by the Prefiled Direct Testimonies of Mr. Bleau LaFave and Mr. Steve Lewis. Its Petition for a Declaratory Ruling raises a legal question regarding the provisions of the Act under which NorthWestern seeks a short-term waiver.

PETITION FOR SHORT-TERM WAIVER UNDER § 69-3-2004(11), MCA

Pursuant to the provisions of § 69-3-2004(11), MCA, and the Commission’s administrative rule ARM 38.5.8301(4), NorthWestern respectfully shows as follows:

1. NorthWestern is a public utility subject to the provisions of the Act.
2. The Act imposes upon NorthWestern the obligation to acquire a specified amount of renewable energy, or RECs, every year, statutorily specified as a percentage of its retail customer load. For the year 2015 the statutorily specified percentage of renewable energy or RECs was 15%.
3. For its 2015 obligation, NorthWestern acquired significantly more than the statutorily specified amount of renewable energy or RECs. 2014 retail sales were 6,005,906 megawatt-hours (“MWh”), 15% of which is 900,886 MWh or RECs. NorthWestern acquired 770,045 RECs in 2015 and had 535,543 additional RECs as a carryover from 2014.

The resulting 1,305,588 of creditable 2014 RECs represents almost 22% of NorthWestern's annual retail sales.¹

4. The Act also requires NorthWestern to attempt to acquire cost effective renewable power, and whatever RECs are associated with that power, from what the Act defines as a CREP. CREPs are defined as eligible renewable energy resources with a generating capacity of 25 megawatts ("MW") or less owned by "local owners" as defined in the Act.² A utility may also build and own a CREP. Under the Act, NorthWestern was to have had 44 MW of CREP power in the years 2012-2014, and was to have had 65.4 MW of CREP power in 2015 and beyond.

5. In an effort to secure electric power from CREPs, NorthWestern, pursuant to statute and the administrative rules of the Commission, issued several competitive solicitations for CREP power ("CREP RFPs"). Although the solicitations have led to successful contracts for the purchase of CREP power, the cumulative generating capacity associated with those contracts did not equal 44 MW in 2012-2014, or 65.4 MW in 2015.

6. The Commission determined that NorthWestern's inability to acquire 44 MW of CREP power in 2012, 2013, and 2014 was due to legitimate documented reasons beyond its control and waived the requirement that NorthWestern acquire 44 MW of power from CREPs in those years.

7. NorthWestern undertook all reasonable steps to procure 65.4 MW of CREP power in 2015, but could not achieve full compliance due to legitimate documented reasons beyond its control.

¹ All data from Attachment 5, RPS Compliance Filing, Docket No. N2016.1.3.

² A hydroelectric CREP can be up to 10, 15, or 25 MW, depending on type. § 69-3-2003(10)(d), MCA.

8. NorthWestern is entitled to a short-term waiver, for compliance year 2015, of the requirement that it procure 65.4 MW of CREP power.

PETITION FOR DECLARATORY RULING

Pursuant to the provisions of § 2-4-501, MCA, the Commission's administrative rule, ARM 38.2.101, and the incorporated Attorney General's Model Procedural Rules, ARM 1.3.226 through 1.3.229, NorthWestern respectfully petitions the Commission for a declaratory ruling as follows:

1. For purposes of this proceeding, the address of NorthWestern is:

NorthWestern Energy
Attn: Mr. Pat Corcoran, Vice-President, Regulatory Affairs
11 E. Park
Butte, MT 59701

-and-

NorthWestern Energy
Attn: Mr. John Alke
208 N. Montana, Suite 205
Helena, MT, 59601

-and-

NorthWestern Energy
Attn: Mr. Al Brogan
208 N. Montana, Suite 205
Helena, MT, 59601

2. The facts upon which NorthWestern bases its request for a declaratory ruling are as follows:

- a. NorthWestern is a public utility subject to the provisions of the Act.
- b. The Act imposes upon NorthWestern the obligation to acquire a specified amount of renewable energy, or RECs, every year, statutorily specified as a

percentage of its retail customer load. For the year 2015 the statutorily specified percentage of renewable energy or RECs was 15%.

c. In 2015, NorthWestern acquired significantly more than the statutorily specified amount of renewable energy or RECs. 2014 retail sales were 6,005,906 MWh, 15% of which is 900,886 MWh or RECs. NorthWestern acquired 770,045 RECs in 2015 and had 535,543 additional RECs as a carryover from 2014. The resulting 1,305,588 of creditable 2015 RECs represents almost 22% of NorthWestern's annual retail sales.³

d. The Act also requires NorthWestern to attempt to acquire cost effective renewable power, and whatever RECs are associated with that power, from what the Act defines as a CREP. CREPs are defined as eligible renewable energy resources with a generating capacity of 25 MW or less owned by "local owners" as defined in the Act.⁴ A utility may also build and own a CREP. Under the Act, NorthWestern was to have had 44 MW of CREP power in the years 2012-2014, was to have had 65.4 MW of CREP power under contract in 2015 and beyond.

e. In an effort to secure electric power from CREPs, NorthWestern, pursuant to statute and the administrative rules of the Commission, has issued several CREP RFPs. Although those solicitations have led to successful contracts for the purchase of cost effective CREP power, the cumulative generating capacity associated with those contracts did not equal 44 MW in 2012-2014, or 65.4 MW in 2015.

f. The Commission determined that NorthWestern's inability to acquire 44 MW of CREP power in 2012, 2013, and 2014 was due to legitimate reasons beyond the control of NorthWestern and waived the requirement for each year that NorthWestern

³ See Note 1, Supra.

⁴ See Note 2, Supra.

acquire 44 MW of power from CREPs. NorthWestern has requested a similar waiver for 2015.

g. The Act provides an administrative penalty of \$10 for each REC that a utility fails to procure for a given compliance year. § 69-3-2004(10), MCA.

NorthWestern has acquired all the RECs needed to comply with the Act in 2015.

h. The Act clearly and unambiguously specifies that the renewable energy standard to which the administrative penalty applies “must be calculated on a delivered energy basis after accounting for line losses.” § 69-3-2004(5)(b), MCA.

i. The Act clearly and unambiguously specifies that the administrative penalty provided in § 69-3-2004(10), MCA, applies to a failure by a public utility to acquire sufficient RECs, not to a failure to acquire renewable energy from a particular provider or group of providers. “[I]f a public utility...is unable to meet the standards established in subsections (2) through (4)...that public utility...shall pay an administrative penalty...of \$10 for each megawatt hour of renewable energy credits that the public utility...failed to procure.” (emphasis added). NorthWestern did not fail to procure the requisite amount of RECs in 2015. It acquired more than the 15% specified in the Act for 2015.

3. The statutory provision as to which Petitioner requests a declaratory ruling is § 69-3-2004(10), MCA, a provision of the Act which provides, in pertinent part: “an administrative penalty, assessed by the commission, of \$10 for each megawatt hour of renewable energy credits that the public utility...failed to procure.”

4. The question presented for declaratory ruling by the Commission is whether the referenced administrative penalty can be applied to a utility that has acquired all of the

RECs required by the Act, but has been unable to contract for the statutorily specified generating capacity from CREPs.

5. NorthWestern contends that:

a. Montana law specifies that the renewable energy standard to which the administrative penalty applies “must be calculated on a delivered energy basis after accounting for line losses.” § 69-3-2004(5)(b), MCA. There is no delivered energy standard associated with CREPs under the Act.

b. Montana law specifies that the administrative penalty applies to a failure by a public utility to acquire sufficient RECs, not to a failure to acquire renewable energy from a particular provider or group of providers. “[I]f a public utility...is unable to meet the standards established in subsections (2) through (4)...that public utility...shall pay an administrative penalty...of \$10 for each megawatt hour of renewable energy credits that the public utility...failed to procure.” (emphasis added). NorthWestern did not fail to procure the requisite amount of RECs in 2015. It acquired more than the 15% specified in the Act for 2015.

c. The plain language and structure of the Act is that the administrative penalty provided in § 69-3-2004(10), MCA, applies only to a public utility’s failure to acquire sufficient RECs to meet the delivered energy standard specified in the Act.

6. NorthWestern requests a declaratory ruling from the Commission that the administrative penalty contained in § 69-3-2004(10), MCA, has no application to NorthWestern for the year 2015, or for any subsequent year in which it acquires sufficient RECs to comply with the delivered energy standard specified in the Act.

7. NorthWestern knows of no other parties similarly situated or affected by the penalty provision in § 69-3-2004(10), MCA.

NorthWestern requests the following relief from the Commission:

1. A declaratory ruling that the administrative penalty contained in § 69-3-2004(10), MCA, has no application to NorthWestern for the year 2015, or for any subsequent year in which it acquires sufficient RECs to comply with the delivered energy standard specified in the Act.
2. A waiver of the requirement that NorthWestern procure 65.4 MW of CREP power and the associated RECs in 2015.
3. A waiver of any penalties claimed to be associated with NorthWestern's inability to have 65.4 MW of CREP power in 2015, should the Commission decline to issue the declaratory ruling requested by NorthWestern.

RESPECTFULLY SUBMITTED this 20th day of December, 2016.

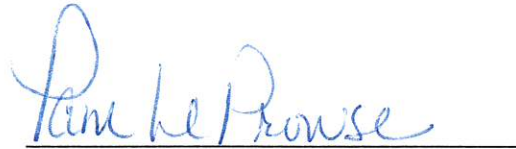
NORTHWESTERN ENERGY

By: John Alke
John Alke
Attorney for NorthWestern Energy

CERTIFICATE OF SERVICE

I hereby certify that an original and ten (10) copies 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 § 69-3-2004(10), MCA, in Docket No. D2016.4.33, will be hand delivered to the Montana Public Service Commission (MPSC), and e-filed on the MPSC's website. Three (3) copies will also be hand delivered to the Montana Consumer Counsel.

Date: December 20, 2016



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