

**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 Waiver from  
the Community Renewable Energy  
Project Purchase Obligation for 2015 and  
for a Declaratory Ruling Regarding the  
Administrative Penalty

REGULATORY DIVISION

Docket No. D2016.4.33

**INTERESTED PARTY COMMENTS ON NORTHWESTERN ENERGY'S  
PETITION**

**I. Introduction**

Renewable Northwest appreciates the opportunity to comment on the *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* (“Petition”) filed by NorthWestern Energy (“NorthWestern”) in Docket No. D2016.4.33.

Renewable Northwest is a nonprofit advocacy organization with members that include wind, solar, and energy storage developers, as well as associated businesses. We work closely with renewable energy developers, policymakers, and governmental agencies on developing and implementing renewable energy policies.

Renewable Northwest would like to acknowledge the frustration that the Commission has expressed in connection with implementing the Community Renewable Energy Project (“CREP”) provision of the Montana Renewable Power Production and Rural Economic Development Act. We sympathize with the Commission’s frustration with certain CREP requirements that can be viewed as working at odds with producing viable projects. Our own view of the CREP provision, while complicated, nonetheless differs from the Commission’s view. At the same time, we share with the Commission a deep respect for the law and for the policies enacted by our elected officials.

We are also aware that the Commission has expressed frustration by the lack of participation from affected stakeholders in previous CREP proceedings. As the Commission is aware, many CREP developer stakeholders are particularly concerned about intervening in CREP proceedings for fear of upsetting their ultimate and only customer, NorthWestern. Meanwhile, public interest stakeholders often have insufficient resources to take part in lengthy, time-intensive, and potentially costly proceedings, particularly given the additional requirements associated with participating in contested case proceedings. This is especially true when our primary interest in the proceeding is not accountability for failure to meet the CREP obligation in

any given year; rather, our primary interest is the broader issue of how to ensure success in fulfilling the intent of the CREP provision.

Regardless of whether the Commission decides to approve or deny the CREP waiver request at issue in this proceeding, in our view, such a decision in itself is not likely to clear a path forward for compliance with the CREP provision. For this reason, Renewable Northwest respectfully suggests that the Commission embark on an investigation or workshop—at a time fitting the Commission’s already significant workload—regarding potential strategies to comply with the CREP provision. In our view, such an approach is the most promising near-term action the Commission could take to help realize the policy intent of the CREP provision.

Besides this overarching suggestion to separate the policy debate surrounding CREPs from a contested case proceeding focused on a narrower compliance determination, Renewable Northwest would like to offer the following suggestions and observations as the Commission contemplates NorthWestern’s application for a waiver from compliance with its CREP obligation.

## **II. “All reasonable steps” is a high bar that may get higher every year**

Montana law provides that a public utility may receive a short-term waiver from full compliance with the CREP provision only if the utility has demonstrated that it has undertaken “all reasonable steps” to procure such projects (or associated renewable energy credits).<sup>1</sup> In previous CREP waiver dockets, Commissioners have commented on the ambiguity and the high bar that the “all reasonable steps” language sets for the utility’s burden of proof. Regardless of how the Commission views the burden of proof, it seems likely that the standard for meeting it would increase over time as the utility learns from its own efforts to procure CREPs.

To this end, we would expect each iteration of a CREP Request for Proposals (“RFP”) to build upon lessons learned from past attempts at acquiring CREPs, as well as from market experience outside of CREPs. For instance, as a utility becomes aware that the local owners definition for CREPs is a common stumbling block for achieving compliance, the utility should take additional steps to examine utility-owned CREP resources in its next attempt to acquire CREPs. Similarly, since a specific category of eligible local owner (as defined in statute) has been unable to achieve local owner certification by the Commission, it may be reasonable for the utility when soliciting CREPs to perform additional outreach to the six other categories of individuals and entities defined in statute as local owners. The same expectation of increasing awareness and efforts could apply to the resources that a utility contemplates could meet the CREP requirement, taking into account both the utility’s knowledge of developments within the context of previous CREP RFPs and the utility’s knowledge of market changes outside of its previous CREP RFP experiences.

## **III. The cost cap provision is not clear**

The cost cap provision of the Montana Renewable Power Production and Rural Economic Development Act states in 69-3-2007(1) that “the total cost of electricity from that

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<sup>1</sup> MCA § 69-3-2004(11)(a)

eligible resource, including the associated cost of ancillary services necessary to manage the transmission grid and firm the resource, is less than or equal to bids for the equivalent quantity of power over the equivalent contract term from other electricity suppliers.” The requirement that the “cost of electricity from *that* eligible resource” is meant to compare to “the equivalent *quantity* of power over the equivalent contract term” seems to imply that CREP projects need not compete against larger project alternatives. The language seems to suggest that CREP projects may be required to compete across resource types (renewable versus fossils for instance) but not in scale with other resources. In other words, there should not be a need to prove that a 25 megawatt solar farm is equal to or less than the cost of a 250 megawatt coal plant.

#### **IV. Energy storage is a CREP eligible resource**

Energy storage in the form of batteries, compressed air, pumped hydro, and flywheels, seems to meet the definition of CREP eligible resources in the Montana Renewable Power Production and Rural Economic Development Act, so long as the energy storage technology is paired with a new or existing renewable resource. This consideration is important for several reasons. First, all RFPs for CREP resources should allow energy storage technologies to participate. Second, energy storage opens up unique and diversified revenue streams and utility benefits not available to other CREP-eligible energy resources. These other revenue streams and utility benefits could include ancillary services, reliability benefits, deferred transmission or distribution investments, and energy arbitrage, to name a few. Third, NorthWestern has recently represented that it has near-term and large energy capacity needs that energy storage solutions could potentially help to meet.

#### **V. The administrative penalty issue has already been decided**

Finally, we encourage the Commission to not revisit the denial of the declaratory ruling previously sought by NorthWestern in Docket D2015.3.27 regarding the administrative penalty. Given that the Commission already decided the administrative penalty issue, it seems unnecessary for the Commission to revisit its decision in this docket.

#### **VI. Conclusion**

Renewable Northwest again thanks the Commission for this opportunity to comment and hopes that the Commission finds these comments useful. At this time, our main interest in participating in CREP proceedings is finding a pathway forward to realize the intent of the CREP provision. We hope to have the opportunity to discuss and explore pathways for CREP compliance with the Commission, NorthWestern, and interested stakeholders in the near future.

Respectfully submitted,

*/s/ Jeff Fox*  
Montana Policy Manager