



DOCKET NOS. D2016.4.33/D2017.8.65

Before the Public Service Commission
of the State of Montana

**Petitions for Waivers from Compliance
with the Community Renewable Energy
Project Purchase Obligation
for Calendar Years 2015 and 2016**

REBUTTAL TESTIMONY

February 2018

1 Department of Public Service Regulation
2 Montana Public Service Commission
3 Docket Nos. D2016.4.33 and D2017.8.65
4 Petition for CREP Waiver
5 NorthWestern Energy
6

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8
9 **PREFILED REBUTTAL TESTIMONY**

10 **OF BLEAU J. LAFAVE**

11 **ON BEHALF OF NORTHWESTERN ENERGY**

12
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1 **Witness Information**

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

3 **A.** My name is Bleau J. LaFave, my business address is 3010 West 69th
4 Street, Sioux Falls, South Dakota, 57108.

5
6 **Q. By whom are you employed and in what capacity?**

7 **A.** I am employed by NorthWestern Energy (“NorthWestern”) as Director
8 Long-Term Resources.

9
10 **Q. Are you the same Bleau J. LaFave who submitted prefiled direct**
11 **testimonies in these consolidated dockets?**

12 **A.** Yes, I am.

13
14 **Purpose of Testimony**

15 **Q. What is the purpose of your testimony in this filing?**

16 **A.** The purpose of my testimony is to rebut the testimonies of Brian Fadie
17 and F. Diego Rivas filed on behalf of the Montana Environmental
18 Information Center and the Northwest Energy Coalition (collectively
19 referred to as “Intervenors”). In particular, I challenge the Intervenors’
20 assertions that NorthWestern did not take all reasonable steps to fulfill its
21 Community Renewable Energy Project (“CREP”) obligations for 2015 and
22 2016 and that the cost-effectiveness test NorthWestern used to assess
23 the cost competitiveness of CREP bids is not appropriate.

1 Reasonable Steps for 2015 CREP Compliance

2 **Q. Intervenors suggest that NorthWestern should have thoroughly**
3 **investigated the ownership of Greycliff Wind Prime, LLC (“Greycliff”)**
4 **and New Colony Wind, LLC (“New Colony”) prior to signing**
5 **contracts with the two entities. Do you agree?**

6 **A.** No. This would not have been a reasonable step for several reasons.
7 First, both projects were held in Limited Liability Companies (“LLC”). The
8 ownership status of an LLC created for a single purpose, like a wind
9 facility, is very fluid. Each developer has the right, but also the need, to
10 make adjustments as each project is developed and financed. Any review
11 of a specific project by NorthWestern would be only a snapshot in time
12 that the developer could change in the future. As has been discussed
13 many times with the Montana Public Service Commission (“Commission”),
14 NorthWestern’s experience is that developers shop their contracts to
15 various financial partners after they execute an agreement with
16 NorthWestern. As such, the project’s final ownership structure is unknown
17 until the developer has secured its financial partners for the project.

18
19 Because of the fluidity of LLCs and NorthWestern’s experiences with
20 developers and shopping their projects, NorthWestern believes it is
21 reasonable to require the project developers themselves to seek the
22 necessary authorization from the Commission to ensure compliance with
23 the CREP ownership requirement. In fact, developers are in the best

1 position to describe the ownership status of their projects to the
2 Commission and are the only entities that can attest to such ownership
3 status.

4
5 Second, as this Commission has seen in prior ownership dockets it has
6 decided, this issue is not black and white. Because of this inherent grey
7 area, NorthWestern reviews proposed ownership structures to determine if
8 on their face they do not appear to contradict the law or prior Commission
9 decisions. If a proposal passes this review, NorthWestern believes it is
10 reasonable to require the developer to confirm its ownership status
11 qualifies under the law as a CREP for the reasons noted above --
12 especially because the developer alone knows the facts and how they
13 may change in the future.

14
15 In this case, both Greycliff and New Colony passed this initial screening.
16 Additionally, both project developers assured NorthWestern that they had
17 contacted the Commission staff and had confidence that their ownership
18 structures would be approved. Also, NorthWestern's contracts with both
19 Greycliff and New Colony included a condition that allowed for termination
20 of the contract if they could not meet the ownership requirement. Since
21 they would lose their contracts if they did not meet this requirement, they
22 were highly incented to create viable ownership structures.

23

1 It is not reasonable to place this onus on NorthWestern. NorthWestern
2 surmises that if it were to reject a project because the ownership status
3 was not black or white and in NorthWestern’s judgment did not qualify
4 under the law, a party in a waiver docket or the Commission could then
5 claim that NorthWestern wrongly rejected a project that the Commission
6 would have certified. NorthWestern’s obligation under the law is to
7 procure CREP resources. It is not NorthWestern’s obligation to ensure
8 that projects qualify as CREPs; that is the developers’ job.

9

10 **Q. Intervenors also suggest that NorthWestern should have selected**
11 **the other two project finalists from the 2014 CREP Request for**
12 **Proposals (“RFP”) process, the Tiger Butte Wind Energy Center**
13 **(“Tiger Butte”) and the Judith Gap II Wind Energy Center (“Judith**
14 **Gap II”), over Greycliff and New Colony. Do you agree with this**
15 **suggestion?**

16 **A.** No. It was not reasonable to select either Tiger Butte or Judith Gap II,
17 both of which were submitted by Invenergy Wind Development, LLC
18 (“Invenergy”). Based on the scoring of the proposals, the Greycliff project
19 was the best, followed by Tiger Butte, then Judith Gap II, and finally, New
20 Colony. Recognizing that it needed more than one project to meet its
21 CREP obligation, NorthWestern started negotiations with the top two
22 finalists, Greycliff and Tiger Butte. NorthWestern then started negotiating
23 with Invenergy for either Tiger Butte or Judith Gap II as timing and other

1 concerns with the Tiger Butte project increased. These negotiations
2 continued for some time; however, they terminated in late October 2014
3 because Invenergy was unable to maintain its bid price for either project
4 due to possible completion date delays and the expiration of the
5 Production Tax Credits (“PTC”). If the projects were not completed by
6 December 31, 2015, their costs increased drastically due to the potential
7 loss of the PTCs. Invenergy was not willing to risk the price uncertainty
8 and so negotiations terminated. Additionally, NorthWestern began to
9 actively negotiate with New Colony after negotiations with Invenergy were
10 terminated.

11

12 **Q. Finally, intervenors suggest that NorthWestern should have**
13 **considered projects that would not be operational by the end of the**
14 **2015 compliance year. Did NorthWestern consider any project**
15 **proposals that would have been commercially operational after**
16 **2015?**

17 **A.** Yes. However, NorthWestern sought viable projects that were sufficiently
18 developed and, more importantly, cost effective. As it relates to the 2014
19 CREP RFP, those projects that had commercial operation dates beyond
20 2015 either failed to meet these important standards or, as discussed in
21 my previous answer, the developers decided to remove their projects from
22 consideration due to risk uncertainty.

23

1 **Q. Do you believe it is unreasonable for NorthWestern to require**
2 **Commission pre-approval of a Build-Transfer (“B-T”) CREP**
3 **proposal?**

4 **A.** At this point, no. NorthWestern is unwilling to saddle its customers with
5 paying for a long-term asset in an unsettled area of the regulatory world.
6 NorthWestern believes that there is too much uncertainty regarding what
7 this Commission believes is or is not reasonable risk for customers as it
8 relates to CREP resources. Even if a B-T proposal would help satisfy
9 NorthWestern’s CREP obligations, NorthWestern must still make a
10 showing that it was the least-cost resource and compliant with statutes
11 and regulations to justify its inclusion in rate base. These are pending
12 issues, which require certainty for NorthWestern, but more importantly for
13 customers.

14

15 **Reasonable Steps for 2016 CREP Compliance**

16 **Q. Again, for compliance year 2016, intervenors suggest that**
17 **NorthWestern inappropriately rejected projects from the 2015 CREP**
18 **RFP because they could not be online by the end of 2016. Did**
19 **NorthWestern reject any projects simply because they could not be**
20 **completed by the target year deadline?**

21 **A.** No. The primary goal of the RFP process is to help NorthWestern fulfill its
22 CREP requirement with cost-effective resources according to the statute.
23 Projects that are early in their development have many unanswered cost

1 questions. These projects do not provide as much certainty as more well-
2 developed projects that they can help NorthWestern meet its goals.
3 Nevertheless, under-developed projects have the ability to bid into future
4 RFPs once they are further along.

5
6 **Q. Mr. Rivas states that NorthWestern dismissed Proposals #1 and #2**
7 **from the 2015 CREP RFP process because they could not be online**
8 **by the end of 2016. Is this accurate?**

9 **A.** No. Again, although the focus of the RFP was to enable NorthWestern to
10 achieve CREP compliance within a certain time frame, neither of these
11 projects were viable regardless of their expected completion dates.
12 Proposal #1, a solar project, was more expensive than the wind proposals
13 that responded to the RFP. Proposal #2, with a projected online date in
14 2019, was way too early in its development process to determine if it was
15 a cost-effective resource, but it will be able to respond to future RFPs
16 closer to its online date if NorthWestern still needs CREP resources by
17 then.

18
19 **Q. Intervenors also suggest that NorthWestern should have considered**
20 **acquiring existing projects, such as Qualifying Facilities (“QF”), to**
21 **satisfy its 2016 CREP obligation. Did any projects with existing QF**
22 **contracts respond to the 2015 CREP RFP?**

23 **A.** No.

1 **Q. Has an existing QF ever responded to a CREP RFP?**

2 **A.** Yes. A QF submitted a proposal in response to the 2014 RFP. The bid
3 price and required upgrades, however, were not cost effective nor did it
4 provide value as compared to the existing QF contract.

5
6 **Q. What does NorthWestern think of Mr. Rivas' suggestion that it
7 should just buy out other small QF projects to meet its CREP
8 obligation?**

9 **A.** NorthWestern would pursue this potential avenue, if the QF presented the
10 opportunity and the purchase resulted in an economic benefit for
11 customers. In most cases, bilateral discussions for the sale of a resource
12 are at the discretion of the QF owner; NorthWestern has no control over
13 the QF owners.

14

15 **Cost-Effectiveness Test**

16 **Q. Mr. Fadie asserts that the statute containing the cost cap provision
17 requires NorthWestern to compare CREP resources submitted in
18 response to an RFP with other CREP resources submitted in
19 response to the same RFP. Do you agree with this interpretation?**

20 **A.** First, I want to preface my response by pointing out that this issue involves
21 a legal interpretation of a statute. But, from my particular layperson's
22 reading of the statute, I disagree with Mr. Fadie's interpretation. If Mr.
23 Fadie's interpretation of the cost cap provision were correct, the cost cap

1 provision would be pointless because NorthWestern would always be
2 obligated to take electricity from a CREP resource. There would always
3 be a project that submitted a bid with a cost less than or equal to the other
4 projects submitted in response to an RFP.

5

6 **Q. In your prefiled direct testimony in Docket No. D2017.8.65, did you**
7 **testify that a reason for not selecting any of the CREP resources that**
8 **responded to the 2016 RFP was because smaller-sized resources are**
9 **not competitive with larger-sized resources?**

10 **A.** No, that was not the point of my testimony. Instead, I was noting the
11 benefit of economies of scale larger resources enjoy and how that would
12 influence the market viability of smaller resources. Nevertheless,
13 NorthWestern's cost-effectiveness calculation is based on the specific
14 resource's effect on customers. If the resource NorthWestern is
15 evaluating increases costs to customers as compared to the existing
16 portfolio, it is not a cost-effective resource. If more than one resource is
17 cost effective, then NorthWestern would select the resource or resources
18 that provide the best value to customers. This process is similar to an
19 avoided cost calculation or other asset evaluations NorthWestern
20 performs when deciding whether to enter into power purchase agreements
21 or acquire owned assets.

22

1 **Q. Why do you believe that such an evaluation is consistent with the**
2 **cost cap provision?**

3 **A.** As discussed in my prefiled direct testimony, NorthWestern is not required
4 to purchase electricity from a CREP if its total cost would be greater than
5 the total cost of acquiring a similar amount of power from another
6 resource. As I noted above, you cannot simply compare a potential CREP
7 resource to other potential CREP resources that responded to the same
8 RFP as there will always be a project with the lowest-priced bid. In light of
9 that fact, I believe that NorthWestern's evaluation process for cost
10 effectiveness is reasonable because it demonstrates the risks and costs
11 that a CREP resource would have on NorthWestern's customers. In my
12 mind, this is the point of the cost cap provisions – the Montana Legislature
13 mandated that utilities must purchase renewable resources, including
14 CREPs, but placed a limit on this requirement – the price ultimately paid
15 by customers.

16

17 **Q. Intervenors testify that CREPs are different from QFs and thus a QF-**
18 **type evaluation is not appropriate. What is your response to this**
19 **testimony?**

20 **A.** I disagree. Yes, the Commission previously stated that comparing the
21 cost of a CREP resource to the QF-1 rate is not appropriate because a
22 CREP is not eligible for those rates. See Order No. 7395d, ¶ 33 in Docket
23 No. D2015.2.18. The Commission was also not persuaded that

1 comparing a CREP price to a negotiated QF rate is appropriate. See
2 Order No. 7395d, ¶ 34.

3
4 But in that same order, the Commission made it clear that it certainly is
5 appropriate to evaluate potential CREP resources in a manner similar to
6 how QF resources are evaluated by stating, “When making resource
7 acquisition decisions, CREP or otherwise...NorthWestern must analyze
8 long-term total portfolio costs and risks. That fundamental requirement is
9 clear in statutes requiring NorthWestern to pursue the lowest total cost of
10 service when managing its resource portfolio and acquiring new
11 resources.” See Order No. 7395d, ¶ 30. In this case, NorthWestern used
12 portfolio modeling precisely as the Commission intended: to determine
13 what risks and costs are associated with potential CREPs. As shown,
14 NorthWestern’s use of PowerSimm™ modeling to evaluate potential
15 CREPs is the most consistent with statutes and administrative rules.

16

17 **Q. Intervenors criticize NorthWestern’s use of PowerSimm to calculate**
18 **the portfolio value of CREP projects because “the process used to**
19 **create it is unknown.” Do you agree?**

20 **A.** No. NorthWestern has been using PowerSimm to determine its portfolio
21 value for more than five years. Given the plethora of QF contested
22 dockets that have come before the Commission in recent years, the
23 Commission and its staff are very familiar with how PowerSimm works.

1 The Commission has rejected arguments that PowerSimm is a “black box”
2 that is not transparent. NorthWestern has been very open and
3 transparent in explaining how PowerSimm works and providing the inputs
4 and outputs of the modeling.

5

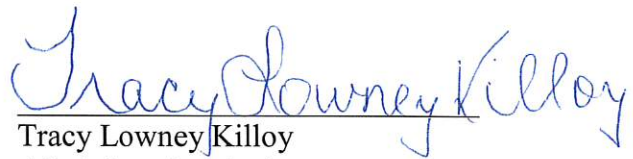
6 **Q. Does this complete your rebuttal testimony?**

7 **A. Yes, it does.**

CERTIFICATE OF SERVICE

I hereby certify that NorthWestern Energy's Rebuttal Testimony in Consolidated Docket Nos. D2016.4.33/D2017.8.65 has been hand delivered to the Montana Public Service Commission (MPSC) and the Montana Consumer Counsel this date. It has also been e-filed on the MPSC's website, emailed to counsel of record, and mailed by First Class Mail to the remainder of the Service List.

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Tracy Lowney Killoy
Administrative Assistant
Regulatory Affairs

Will Rosquist, Administrator
MT Public Service Commission
Box 202601
Helena, MT 59620-2601

Robert Nelson
Montana Consumer Counsel
111 N. Last Chance Gulch Suite 1B
P.O. Box 201703
Helena, MT 59620-1703

Jenny K Harbine
Aurora R. Janke
Earthjustice
313 East Main St.
Bozeman MT 59715

Sarah Norcott
NorthWestern Energy
208 N Montana Ave Suite 205
Helena MT 59601