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

IN THE MATTER OF NorthWestern Energy's)
Application for Interim and Final Approval of) REGULATORY DIVISION
Revised Tariff No. QF-1,) DOCKET NO. D2016.5.39
Qualifying Facility Power Purchase)

**Comments of FLS Energy, Inc. in response to NorthWestern Energy's Motion for
Emergency Suspension of the QF-1 Tariff for New Solar Qualifying Facilities with
Nameplate Capacities Greater than 100 kW**

FLS Energy, Inc. ("FLS") respectfully submits these comments in response to the emergency motion of NorthWestern Energy ("NorthWestern") to suspend the effectiveness of its current QF-1 tariff with respect to solar qualifying facilities ("QFs") with a nameplate capacity over 100 kilowatts ("the Motion").

FLS is a solar project development company whose business is developing, building, owning, and operating utility-scale solar photovoltaic ("PV") generating facilities. In 2015, based on the current QF-1 tariff, FLS made a major strategic decision to develop and build solar facilities in Montana. FLS prepared a Montana business plan that envisioned the development of approximately 25 3-megawatt ("MW") AC solar facilities in the next several years. At present, FLS has 14 projects that are in an advanced stage of development. Interconnection requests were filed some time ago for all of these facilities; all of them except one have completed

NorthWestern's system impact study process and seven of them are through the facilities study process.

In February of 2016, FLS began negotiating in good faith with NorthWestern regarding a form power purchase agreement ("PPA"), under which FLS would contract to sell NorthWestern the energy, capacity, and environmental attributes generated by all of its Montana facilities. FLS and NorthWestern finally reached agreement on the terms of the PPA just last week. Throughout the negotiation process NorthWestern represented to FLS that it would not seek to avoid entering into PPAs with FLS under the current QF-1 tariff while that tariff was in effect. FLS did not realize that, as stated in the Motion, NorthWestern's Supply Department and Legal Department were not aware of the 14 specific FLS projects moving through the NorthWestern interconnection process. Since the filing of the Motion, FLS has provided detailed information concerning those projects to both the Supply Department and the Legal Department, and NorthWestern has agreed that, notwithstanding the specific references to FLS in the Motion, it will execute PPAs with FLS for those 14 projects (and other similarly situated projects under development by other parties) based on the current QF-1 tariff.

Based on this commitment by NorthWestern, FLS has agreed not to oppose NorthWestern's request for relief with respect to projects not yet in the interconnection process or not specifically identified to the Supply Department prior to the Commission's ruling on the Motion. As a result of this compromise, FLS will be able to develop its 14 most advanced projects in Montana, but will have to abandon others that it had hoped and planned to develop (in addition to several that have already been abandoned due to NorthWestern's proposed PPA terms regarding facility co-location, which FLS accepted in the further spirit of compromise). However, for the reasons discussed herein, FLS would strenuously oppose any attempt by NorthWestern to be excused from its obligation to enter into PPAs with FLS for those 14

advanced projects. Such relief, which would preclude the development of those projects and cause FLS to lose the approximately \$750,000 it has invested to date in the development of its Montana portfolio, would be unfair and unreasonable, would defeat FLS's reasonable investment-backed expectations, and would send a chilling message to companies like FLS that seek to invest tens of millions of dollars in the state of Montana.¹

FLS respectfully requests the opportunity to participate (telephonically if possible) in any hearing conducted by the Commission to consider the Motion.

I. BACKGROUND

A. FLS and its Business

FLS Energy is a full-service solar energy provider headquartered in Asheville, North Carolina. To date, FLS had developed and constructed almost 400 MW of utility-scale solar PV facilities, more than half of which FLS continues to own and operate, and it plans to place more than 150 MW of additional capacity in service in 2016. FLS sells the power generated by its facilities pursuant to long-term PPAs entered into with utilities like NorthWestern pursuant to the Public Utility Regulatory Policies Act ("PURPA").

FLS builds its own solar facilities and also provides engineering, procurement, and construction ("EPC") solutions for clients with projects ranging in size from distributed generation commercial systems to utility-scale solar farms. FLS's development team takes projects from conception to commissioning and offers complete in-house system design, engineering, construction, financing and turnkey project development. FLS differs from many other solar development companies whose business consists of engaging in speculative early-

¹ In light of the agreement reached by FLS and NorthWestern concerning the Motion and the 14 FLS projects, FLS does not see a need to dispute factual allegations and legal arguments made by NorthWestern in the Motion, not all of which FLS agrees with. In particular, FLS does not agree that the development and operation of its proposed projects will have an adverse impact on NorthWestern ratepayers.

stage development and then selling their projects to other companies before construction begins. Unlike those developers, FLS is in the business of actually *building* solar projects, as well as owning and operating them once they achieve commercial operation.

B. FLS's Investment in Montana

After developing solar projects exclusively in its home state of North Carolina, FLS spent much of 2014 and 2015 examining several markets around the United States in an effort to determine where expansion might make the most sense. That strategic planning process resulted in FLS selecting Montana as its top priority new market. That decision was based on this Commission's implementation of PURPA, the current QF-1 tariff, and FLS's belief that Montana offers a relatively stable and predictable regulatory structure that we believed could be relied on to initiate the extended project-development cycle.

Having made the decision to invest in Montana, in the summer of 2015 FLS began actively developing solar projects in the state that would qualify for the current QF-1 tariff (*i.e.*, facilities with a nameplate capacity of 3 MW AC or less). Because it is important to us to conduct business in person when possible, we have made the investment to have a presence on the ground in Montana. It would be inconsistent with our company's culture to make many halfhearted expansion efforts in multiple states just to see which ones might pan out. Committing to Montana meant deploying substantial resources in the state and incurring significant opportunity costs, in that we could not simultaneously initiate comparable efforts in other states.

Over the past year, FLS personnel have spent nearly 2,000 working hours developing projects in Montana and the company has invested approximately \$750,000 in this effort. We have traversed the state, meeting with landowners, utility representatives, county and state leadership, and many other Montanans. It has been a very positive experience and has laid the

foundation for an overall investment in Montana on our part of approximately \$100 million over the next 18 months. The construction phase of each of FLS's 14 projects is expected to last from two to four months, and will result in the creation of about 40 local jobs per project during that time. FLS expects to spend approximately \$850,000 in local labor costs and \$125,000 in local per diem spending for each project in the state.²

C. FLS's PPA Negotiations with NorthWestern

FLS first requested a draft PPA for QF-1 standard offer projects from NorthWestern in October 2015, around the time it filed its initial interconnection requests. FLS and NorthWestern have been negotiating in earnest on the terms of PPAs for FLS's Montana projects since February of this year. While FLS believes NorthWestern has negotiated in good faith, it has taken a tough negotiating stance on a number of terms and conditions, with the result that it has taken more than three months for the parties to come to terms on a model PPA for FLS projects in Montana.

During these negotiations, NorthWestern has repeatedly assured FLS that the utility would not seek to avoid entering into PPAs with FLS prior to the Commission's ruling on NorthWestern's expected and now-pending petition to revise its avoided cost rates. FLS's understanding was that the Commission was unlikely to rule on the petition before late summer 2016. Had FLS known or suspected that NorthWestern would ask the Commission for the kind of interim relief it now seeks, FLS would have pressed for immediate execution of PPAs.

When NorthWestern filed its Motion, FLS and NorthWestern had already reached agreement on a form PPA. The only outstanding issue was FLS's request that NorthWestern extend to it certain additional terms that FLS learned had been made available to other QFs.

² FLS is also exploring the possibility of acquiring from other developers projects that qualify for the QF-1 tariff, in which case such projects would be built, owned, and operated by FLS.

Since the filing of the Motion, FLS and NorthWestern have reached a mutually agreeable resolution of all PPA terms, and the PPAs for the 14 FLS projects are in the process of being finalized and executed by the parties.

II. COMMENTS ON NORTHWESTERN'S MOTION

As stated above, since NorthWestern filed the Motion, FLS and NorthWestern have finalized PPA terms and NorthWestern has agreed to execute a conforming PPA for each of FLS's 14 projects in the NorthWestern interconnection process and identified to the NorthWestern Supply Department (assuming that the projects otherwise qualify for the current QF-1 tariff). FLS expects these PPAs to be executed in the near future. Based on this agreement, FLS has represented to NorthWestern that: (i) it will not seek additional standard-offer PPAs under the current QF-1 rate schedule (except to the extent FLS may acquire additional projects from other developers already in receipt of, or negotiating, PPAs for those projects with NorthWestern); and (ii) it will not oppose the Motion as it relates to such additional projects.³

If, however, NorthWestern *were* to seek and obtain relief from its obligation to enter into those currently-pending PPAs, the effects on FLS and its Montana efforts would be devastating. If the Commission were to release NorthWestern from its legal obligation to enter into the pending contracts with FLS at Commission-approved rates, FLS will be forced to abandon all of its solar projects and planned investment in Montana.⁴ As stated in the Motion, the new avoided cost rates for which NorthWestern seeks Commission approval are substantially lower than the current QF-1 rates. FLS's proposed projects are simply not financially viable with the

³ Although FLS does not oppose the Motion as it pertains to QFs which have not filed interconnection requests or have not begun negotiating PPAs with NorthWestern, FLS does not concede that NorthWestern is entitled to the relief requested in the Motion, or that PURPA allows the Commission to grant such relief.

⁴ Because of the loss of economies of scale in construction and operations, FLS would also be forced to abandon its planned purchase of several projects that already have executed PPAs with NorthWestern.

dramatically lower revenue stream resulting from NorthWestern's newly proposed avoided cost rates for solar. Thus, the effect of the Commission granting NorthWestern's motion in its entirety, including with respect to FLS's 14 advanced projects, would be to cause FLS to lose the approximately \$750,000 it has invested in developing projects under the current tariff. It would also mean that very little utility-scale solar capacity will be developed in Montana and that the state will lose the benefit of the almost \$100 million FLS proposes to invest here. On the other hand, maintaining NorthWestern's legal obligation under PURPA to enter into PPAs already under negotiation with NorthWestern would preserve FLS's investment-backed expectations and provide substantial benefits to Montana and to NorthWestern and its ratepayers.

III. CONCLUSION

FLS is pleased that it has been able to negotiate a compromise resolution with NorthWestern that allows FLS's 14 advanced projects to go forward under the current QF-1 tariff while not requiring NorthWestern to enter into additional PPAs with FLS under that tariff. This is a reasonable outcome that, consistent with PURPA, strikes an appropriate balance between QF development and ratepayer considerations; that protects FLS's reasonable investment-backed expectations; and that signals that Montana and this Commission value a fair and predictable regulatory environment with respect to energy development. It will allow FLS to make a substantial investment in economic development in the state, will provide considerable benefits to local governments, and will provide Montana with an additional long-term supply of clean, renewable energy. On the other hand, if the relief (if any) granted by the Commission in response to the Motion is not tailored to exclude projects in the interconnection queue with PPAs already under negotiation, all of these benefits will be lost and FLS will be severely and unfairly

prejudiced. We respectfully urge the Commission not to countenance such an undesirable and unfair outcome.

Respectfully submitted, this 6th day of June 2016.



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Comments of FLS Energy, Inc. in response to NorthWestern Energy's Motion for Emergency Suspension of the QF-1 Tariff for New Solar Qualifying Facilities with Nameplate Capacities Greater than 100 kW** in Docket No. 02016.5.39 have been: (1) transmitted by overnight mail to the Montana Public Service Commission; (2) electronically filed with the Commission via the PSC's website at <http://psc.mt.gov>; and (3) sent by first-class United States mail to the following recipients:

Montana Consumer Counsel
111 N Last Chance Gulch, Suite 1B
Helena, MT 59601

Northwestern Energy Company
208 North Montana Avenue, Suite 205
Helena, MT 59601

A courtesy copy has also been transmitted by electronic mail to the Commission staff.

Date: June 6, 2016


