

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

IN THE MATTER OF NorthWestern Energy's) REGULATORY DIVISION
Application for Approval of Avoided Cost Tariff)
Schedule QF-1) DOCKET NO. D2016.5.39

**UPDATED RESPONSES TO NORTHWESTERN ENERGY'S
DATA REQUESTS NWE-006 AND NWE-007 TO VOTE SOLAR, LLC**

NWE-006 Subject: Rejection of position

Identify by state and item, as shown in Mr. Beach's Exhibit RTB-1, the proceedings in which Mr. Beach's advocacy on behalf of solar energy or solar projects, was rejected, in whole or in part.

Response:

Vote Solar objects to NWE-006 on grounds that it is vague, ambiguous and unduly burdensome. First, NWE-006 is vague and ambiguous with respect to what it means for Mr. Beach's advocacy to be "rejected" in the context of the particular proceedings identified in RTB-1. To the extent this request calls for a legal analysis of the decisions associated with these proceedings, such a request is improper. See Kuiper v. Dist. Court of Eighth Judicial Dist. of State of Mont., 193 Mont. 452, 463, 632 P.2d 694, 700 (1981) (mental impressions, opinions, and conclusions concerning the litigation are protected under the work-product doctrine).

Second, NWE-006 calls for extensive research and compilation of information that is outside of the scope of discovery. RTB-1 identifies testimony prepared by Mr. Beach pertaining to solar energy and solar projects over the course of more than a decade. Neither Mr. Beach nor Vote Solar/Montana Environmental Information Center are in possession of final decisions in each proceeding, nor do they recollect or are they aware of the specific findings of the final decisions regarding particular issues to which Mr. Beach submitted testimony in every proceeding. It would be unduly burdensome to require Mr. Beach or Vote Solar to obtain final decisions in each docket and to research the outcome of Mr. Beach's advocacy on each issue involved in such proceedings. See La Chemise Lacoste v. Alligator Co., Inc., 60 F.R.D. 164 (D. Del. 1973) (Party must provide relevant facts readily available to it but it should not be required to enter into extensive independent research in order to acquire such information); Wright & Miller, 8B Fed. Prac. & Proc. Civ. § 2174 (3d ed.) ("A party should provide relevant facts reasonably available to it but should not be required to enter upon independent research in order to acquire information merely to answer interrogatories.").

In any event, RTB-1 identifies docket information for each proceeding, pursuant to which NWE may obtain the requested information through its own analysis of the proceedings and final decisions.

Updated Response (Dec. 1, 2016):

Pursuant to NorthWestern Energy's modification of NWE-006 in its motion to compel, and without waiving its objections, Vote Solar is producing on the accompanying CD-ROM commission orders for the proceedings involving solar projects identified in Mr. Beach's Exhibit RTB-1 in which Mr. Beach testified regarding utility avoided costs in the past three years. NorthWestern's counsel may review the final orders in those proceedings to ascertain whether, in counsel's view, Mr. Beach's advocacy was "rejected, in whole or in part."

The proceedings for which final orders are provided are:

EXPERT WITNESS TESTIMONY BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

1. Direct Testimony of R. Thomas Beach on behalf of the Idaho Conservation League (Case No. IPC-E-12-27—May 10, 2013)
 - *Costs and benefits of net energy metering in Idaho.*
2.
 - a. Direct Testimony of R. Thomas Beach on behalf of the **Idaho Conservation League and the Sierra Club** (Case Nos. IPC-E-15-01/AVU-4-15-01/PAC-E-15-03 — April 23, 2015)
 - b. Rebuttal Testimony of R. Thomas Beach on behalf of the **Idaho Conservation League and the Sierra Club** (Case Nos. IPC-E-15-01/AVU-4-15-01/PAC-E-15-03 — May 14, 2015)
 - *Issues concerning the term of PURPA contracts in Idaho.*

EXPERT WITNESS TESTIMONY BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

1. Direct Testimony of R. Thomas Beach on behalf of the **Sierra Club** (Docket No. 15-035-53—September 15, 2015)
 - *Issues concerning the term of PURPA contracts in Idaho.*

EXPERT WITNESS TESTIMONY BEFORE THE VERMONT PUBLIC SERVICE BOARD

1. Pre-filed Testimony of R. Thomas Beach and Patrick McGuire on Behalf of **Allco Renewable Energy Limited** (Docket No. 8010 — September 26, 2014)
 - *Avoided cost pricing issues in Vermont*

NWE-007 Subject: Retention Agreement

Provide a complete copy of the contract or similar agreement under which Mr. Beach was retained to provide testimony in this docket.

Response:

Vote Solar objects to NWE-007. Under Rule 26(b)(3) of the Montana Rules of Civil Procedure, “[o]rdinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent).” The only exception to this work-product privilege with respect to expert materials is as provided in Rule 26(b)(4), which allows for “[d]iscovery of facts known and opinions held by experts.” Because Mr. Beach’s expert agreement was prepared in anticipation of litigation and contains information other than “facts known and opinions held” by him, it is not subject to disclosure.

Updated Response (Dec. 1, 2016):

Mr. Beach’s expert agreement is provided on the attached CD-ROM.

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December, 2016, I served the foregoing by first-class mail, postage prepaid, and electronic mail on the following:

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A handwritten signature in blue ink, appearing to read "Jenny Harbine", written over a horizontal line.

Jenny Harbine