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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)
Revised Tariff No. QF-1, Qualifying Facility)
Power Purchase)
REGULATORY DIVISION
DOCKET NO. D2016.5.39

NorthWestern Energy's Post-Hearing Reply Brief

The Montana Public Service Commission (“Commission”) should not retain the current standard offer avoided cost rates simply to make profitable those projects that would otherwise be unprofitable. “Ultimately electric consumers have to pick up the tab through rates.” *In re Elec. Avoided Cost Rates*, Docket No. 84.10.64, Order No. 5091c, ¶ 22, *citing* 16 U.S.C. § 824a-3(b). NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern”) submitted the application initiating this docket to prevent a customer-based subsidy of Qualifying Facilities

(“QF”). The Commission should approve NorthWestern’s proposal to correct the standard rates offered to QFs.

I. INTRODUCTION

The Commission has not approved an update to NorthWestern’s standard offer avoided cost rates in over four years. *See In The Matter of NorthWestern Energy’s Application for Approval of Avoided Cost Tariff*, Docket No. D2012.1.3, Order No. 7199d. As the Commission previously determined in this docket, the rates in NorthWestern’s 2013 Electric Tariff Schedule No. QF-1 (“2013 Tariff”) exceed current avoided costs and are not just and reasonable. Order No. 7500, ¶ 38. The Montana Consumer Counsel (“MCC”) does not object to NorthWestern’s request to update these rates and agrees with NorthWestern’s use of PowerSimmTM production cost modeling software to calculate the avoided cost of energy. MCC Brief at. 2. The MCC also agrees with NorthWestern’s proposal to adopt a measure-and-pay approach based on exceedance parameters to calculate capacity payments. *Id.* The intervenors in this docket who participated in the hearing and have filed post-hearing briefs are the MCC, Vote Solar and Montana Environmental Information Center (“VS/MEIC”), and FLS Energy and Cypress Creek Renewables (“FLS/CCR”). Advocating for solar developers’ economic interests, not NorthWestern customers’ economic interests, VS/MEIC and FLS/CCR focus their efforts on convincing the Commission to retain the current standard rates. Their strategy includes criticizing NorthWestern’s (1) evaluation of solar as incapable of meeting time sensitive load-serving needs, (2) production cost modeling, and (3) natural gas price forecasting.

NorthWestern’s proposed rates are based on Commission-approved methodologies and calculated by experts in compliance with the Public Utility Regulatory Policies Act of 1978 (“PURPA”). NorthWestern’s avoided costs have decreased significantly since the Commission’s

approval of the 2013 Tariff due to changes in market price forecasts and in NorthWestern's acquisition of resources, including QFs, which results in modified portfolio needs. The Commission can and should decline to adopt VS/MEIC and FLS/CCR's inaccurate calculations and conclusions that are unsupported by the record.

II. ARGUMENT

The avoided cost standard rates shall (1) be just and reasonable to customers and in the public interest; and (2) not discriminate against QFs. 18 C.F.R. § 292.304. A just and reasonable rate is one that leaves customers economically indifferent to NorthWestern's purchase of QF power as compared to NorthWestern's least-cost alternative plan for purchasing energy and capacity or building new generating resources. *See In the Matter of the Petition of Crazy Mountain Wind, LLC to Set Contract Terms and Conditions for a Qualifying Small Power Production Facility*, Docket No. 2016.7.56, Order No. 7505b, ¶ 40. An avoided cost rate is not discriminatory simply because it does not advance the fiction that a QF resource is an absolute equivalent to all other available generation resources. Rather, Federal Energy Regulatory Commission ("FERC") regulations require state commissions to consider the following factors when determining avoided costs: dispatchability, reliability, contract terms, outage schedules, the usefulness of the energy and capacity supplied during system emergencies, and the value of the energy and capacity to the utility's system. *Rosebud Enterprises, Inc. v. Idaho Pub. Utilities Comm'n*, 917 P.2d 781, 789 (Idaho 1996), *citing* 18 C.F.R. § 292.304. These factors and the requirement that the rates be just and reasonable and in the public interest provide the Commission the basis to reject VS/MEIC's and FLS/CCR's repeated claims that lower avoided cost rates discriminate against QFs.

In granting the Commission the authority to set price, terms, and conditions for long-term contracts for QFs, the Montana Legislature directed the Commission to consider the availability and reliability of the electricity produced. § 69-3-604, MCA. The ability to require long-term contracts is the only authority the Legislature gave the Commission regarding the promotion of QF development. The Commission does not have authority, from either PURPA or the Legislature, to enhance the economic feasibility of QFs by overstating the value of solar or any other QF project on NorthWestern's system.

A. NorthWestern's Proposed Capacity Payments Value Solar Fairly.

Capacity payments to QFs are based on two factors – the levelized capacity cost of the unit the QF is assumed to displace and the QF's capacity contribution during high load hours. Exhibit MCC-1, p. 5: 9-11. As required by the Commission, NorthWestern proposed standard rates based on its 2015 Electricity Supply Resource Procurement Plan ("2015 Plan"). ARM 38.5.1902(5); 1905. NorthWestern calculated the avoided cost of capacity by using the fixed costs of the least cost capacity resource identified in the 2015 Plan, an Aeroderivative Combustion Turbine ("Aero") unit. Exhibit NWE-16, p. 17: 3-6. Using the average weighted cost of capital from the 2015 Plan, NorthWestern levelized the net present value of the annual stream of fixed costs for an AERO unit built in 2018. *Id.* at 10-11.

For the capacity contribution, NorthWestern proposes a measure-and-pay approach based on a measured capacity contribution during peak load hours. Exhibit NWE-4, p. 4: 13-15. This approach is fair to all parties and is no different than setting an energy price and paying the QF for energy that is actually delivered. As stated by the MCC, the measure-and-pay approach eliminates the Commission's need to estimate capacity contributions and set a default capacity value. Exhibit MCC-1, p. 10: 3-7. Since the Aero unit can only be avoided to the extent a QF

delivers energy on a reliable basis during peak load hours, under NorthWestern's measure-and-pay approach, the QF's capacity contribution is equal to the level of production that the QF exceeds 85% of the time during the highest 10% of Heavy Load hours during January, February, July, August, and December.

Peak load drives NorthWestern's need for capacity resources. NorthWestern is a winter peaking utility that experiences bimodal seasonal peaks, and intermittent renewable resources, like solar, do not address NorthWestern's need for capacity resources. Exhibit NWE-16, p. 5: 1-2; 2015 Plan at 12-1. Cloud movement can change solar production from maximum output to zero production in a matter of seconds. Also, during winter, NorthWestern's peak occurs after the sun has set. Solar resources do provide some capacity during NorthWestern's summer peak; however, since this peak occurs late in the day, solar contribution is only a small percentage of its installed capacity. 2015 Plan, p. 9-10. Additionally, if NorthWestern adds resources to meet winter peak loads, those same resources are available to meet summer peak loads, further diminishing the value of solar.

In the future, cost reductions and technological improvements may lower the cost of solar. Until that occurs, solar developers require an inflated avoided cost to subsidize their projects. In order to enhance their position, VS/MEIC suggest that NorthWestern is a summer peaking utility by pointing out that peak-hour demand within NorthWestern's Balancing Area ("BA") is highest in summer. VS/MEIC Brief at 24. VS/MEIC's use of the BA in support of their argument implies that the Commission should consider the peak loads of rural electric cooperatives and retail choice customers on the transmission system when determining avoided cost. By definition, avoided costs are based on serving retail load, not the cost of providing transmission service to the rural electric cooperatives and retail choice customers in the

transmission balancing area. Exhibit NWE-16, p. 6: 1-9. VS/MEIC also attempt to portray the Commission's comments on the 2015 Plan as support of their argument that NorthWestern is a summer peaking utility. The Commission's comments did not suggest that NorthWestern should look at anything other than retail load in determining avoided cost. Rather, the comments were directed at NorthWestern's capacity planning and whether NorthWestern should measure resource adequacy by the retail load's position relative to the region's peak demand. Not only are the Commission's comments on the 2015 Plan not part of the record in this docket, but they do not provide any support for VS/MEIC's suggestion that NorthWestern is a summer peaking utility.

Both VS/MEIC and FLS/CCR are critical of NorthWestern's determination of capacity contribution based on the generation value that the QF exceeds 85% of the time. Although the 85% exceedance level represents a reasonable level of reliability, the record indicates that the Southwest Power Pool ("SPP") applies a 60% exceedance level to the highest 3% of peak load hours for the peak month. NorthWestern did not initially propose using the SPP method, but it is not opposed to applying this method to NorthWestern's measure-and-pay proposal. Tr. p. 323: 6-10. NorthWestern does oppose the intervenors' improper application of this method as a means of enhancing solar's capacity contribution. The Commission should recognize that this methodology is currently required in NorthWestern's South Dakota service territory, which operates within the footprint of the SPP. NorthWestern is a member of the SPP in South Dakota and has obtained SPP's Net Planning Capability calculation tool. Exhibit NWE-16, p. 11: 18-22. As a result, through communication with SPP, NorthWestern has developed an understanding of SPP's methodology and a certain level of expertise in applying that methodology. The record

does not support the Commission adopting the opinion of intervenors who are not members of the SPP and are not qualified to opine on SPP methods.

Rather than accepting NorthWestern's measure-and-pay proposal, which fairly awards resources for the capacity they actually contribute, the VS/MEIC advocate for a method of aggregate capacity instead of individual capacity. Tr. p. 173: 4-11. The aggregate system capacity contribution ("ASCC") metric in the Northwest Power and Conservation Council's Seventh Power Plan is a method for determining the capacity contribution of intermittent resources. The primary assumption is that production from intermittent resources can be used to offset hydroelectric production on the Columbia River systems. The stored water can then be used to increase the system capacity during periods of peak load. Tr. p. 386: 14-15, *See* response to Data Request PSC-056. This storage method is not applicable to NorthWestern's system. With a few exceptions, NorthWestern's hydroelectric system is primarily a run-of-river system with little or no water storage and subject to seasonal flows. 2015 Plan, p. 8-5. However, even if the opportunity for hydro storage did exist, the resulting capacity is a result of a change in hydro operations, not an increase in solar production. Due to the run-of-river nature of NorthWestern's hydroelectric system, the record does not support the Commission's adoption of the ASCC method.

B. *NorthWestern's Use of PowerSimm Did Not Cause a Decrease in Avoided Costs.*

As part of their strategy to retain the current avoided costs, VS/MEIC and FLS/CCR blame NorthWestern's transition from calculating avoided cost with a blended market-combined cycle method to use of production cost modeling as the reason for the decrease in avoided costs. The Commission, using the blended market-combined cycle method, has already determined that the current standard rates applicable to solar projects exceed NorthWestern's current avoided

costs. Order No. 7500, ¶ 35. Consequently, VS/MEIC's and FLS/CCR's assertion that a calculation of avoided costs with the blended market-combined cycle method, instead of PowerSimm, results in the same rates as the 2013 Tariff is not credible. Natural gas and electricity price forecasts are the single largest determinants of avoided cost. Exhibit NWE-4, p. 8: 20-21. Because electricity and natural gas forecasts have declined significantly since 2013, even if NorthWestern calculated the avoided costs using the blended market-combined cycle method instead of PowerSimm, avoided cost rates would decline by over 35%. *Id.*, p. 8: 14-18. In this docket, using the Energy Information Administration's nominal natural gas escalation rate, NorthWestern projects the levelized price of natural gas to be \$3.58 per dekatherm ("Dkt"). This is \$2.96 per Dkt lower than the forecast price \$6.54 per Dkt used to establish the current QF-1 rates. With large decreases in market price forecasts as well as changes in NorthWestern's resource portfolio since 2013, any calculation that results in no change to the standard rates is manifestly flawed. As NorthWestern obtains more owned and contract generation in its portfolio, avoided costs go down, because NorthWestern does not purchase as much energy from a volatile market. Under the 2013 Tariff rates, customers would provide millions in subsidies to a three-megawatt solar project over the 25-year life of a contract. Exhibit NWE-4, p. 6: 10-11.

The MCC supports NorthWestern's use of PowerSimm as improving the accuracy of standard rates and reducing the risk of customers overpaying for QF power. MCC Brief at 3. PowerSimm's stochastic simulation can improve the accuracy of estimated future costs and provide a more complete picture of the range of possible outcomes. 2013 Plan, page 6-14. PowerSimm's benefits include its ability to account for the dynamic nature of the market and NorthWestern's loads and resource portfolio.¹ Exhibit NWE-18, p. 4: 17-20.

¹ Although not documented in the record of this docket, Commission Staff is aware that many other utilities use the PowerSimm production cost model including Duke Energy, AEP, TVA, PSE, PSEG, Dayton Power and Light,

C. NorthWestern's Adjustment to Avoided Cost When it is Long on Supply is Not Discriminatory Against QFs.

PowerSimm's accounting for the changes in market, load, and resources enables NorthWestern to adjust avoided costs when its loads "are fully supplied from NorthWestern's owned or contracted resources and when the market price is higher than those dispatch costs." *In Re Crazy Mountain Wind, LLC*, Order No. 7505b, ¶ 77. Both the Commission and the MCC approve of this adjustment, since the addition of the QF's output onto the "system partially offsets the output of the Company's highest cost marginal generating unit, and the variable cost of that unit is the cost the Company is avoiding." Exhibit MCC-1, p. 8: 1-15; *Id.* VS/MEIC ask the Commission to reverse its support for this adjustment on the basis that customers would remain indifferent if NorthWestern compensates QFs at market price. As the MCC noted, the market price is not NorthWestern's avoided cost in this situation, since it is less expensive for NorthWestern to run its own generation units than it is to procure energy on the market. Exhibit MCC-1, p. 8: 6-8. Avoided costs are the incremental costs of energy and capacity, but for the purchase from a QF, the utility would generate itself or purchase from another source. ARM 38.5.1901(2) (a). If NorthWestern compensates the QFs at market price when NorthWestern does not need energy to serve load and has available resources for economic dispatch, customers will be paying the QF a price greater than avoided cost. The Commission is prohibited from establishing a rate that "exceeds the incremental cost to the electric utility of alternative electric energy." 16 U.S.C. § 824a-3(b); *Swecker v. Midland Power Co-op.*, 807 F.3d 883, 884 (8th Cir. 2015), cert. denied, 136 S. Ct. 990 (2016). Nothing in PURPA or FERC's rules provide for a rate that exceeds the incremental cost to the electric utility of alternative electric energy. 16

Indianapolis Power and Light, Hawaii Electric Companies, Turlock Irrigation District, City of Redding, City of Riverside, SCPPA, Source Power and Gas, AES, NRG, and Riverstone.

U.S.C.A. § 824a-3. Notably, NorthWestern's payment of market prices to QFs does nothing to further PURPA's goal of reducing utilities' use of fossil fuels; it simply provides a subsidy to QFs at the expense of NorthWestern's customers.²

D. NorthWestern's Mid-C Adjustment is Appropriate.

FLS/CCR present arguments regarding NorthWestern's Mid-Columbia wholesale electricity market ("Mid-C") price adjustment that, if adopted by the Commission, would result in rates that exceed NorthWestern's avoided cost. These intervenors suggest that the Commission should not approve NorthWestern's adjustment for Mid-C prices for costs associated with transmission tariffs and line losses. In response to Data Request PSC-024c, NorthWestern provided a complete rationale and workpapers for the Mid-C adjustment, reflecting empirical, not hypothetical, data of actual transactions.

The basis adjustment from Mid-C is used to estimate the price differential between Mid-C and Montana. NorthWestern has historically been able to procure energy in Montana at a discount, or negative basis, to the Mid-C price. If the energy generated in state is sold out of state, it must be "wheeled" or transmitted out of state, with an associated cost for the transmission. Energy generated in Montana typically crosses two transmission systems - NorthWestern's and Bonneville Power Administration's ("BPA") - in order to get to the Mid-C market. Parties with generation in Montana are incented to sell at a discount to the Mid-C price because their alternative is to pay the full transmission costs to get that power to market. These market dynamics have typically led to transactions in Montana at a negative basis to the Mid-C price. NorthWestern's experience indicates that a basis adjustment of $-\$3.00/\text{MWh}$ is representative of the market for around-the-clock purchases in the intermediate term. The 30% factor used in the calculation was chosen to result in a basis for NorthWestern purchases of approximately $-\$3.00$ in the recent years.

We used a higher factor (45%) for the sales discount to Mid-C. This is because NorthWestern is typically selling in low demand hours, so the likelihood of finding purchasers with load in Montana is reduced. In these times, NorthWestern either has to discount the sales price further to sell in Montana, or purchase transmission to deliver power off system. Purchasing transmission from Montana to Mid-C would cost approximately $\$10/\text{MWh}$ at current prices, so the

² NorthWestern maintains that when economic generation is greater than load and the market price is less than the variable cost of the avoidable resource, the QF avoided cost energy rate is zero. Nevertheless, as stated in its Initial Brief, NorthWestern will seek a ruling from the FERC, when a quorum is available, regarding this issue.

45% factor results in a basis of approximately -\$4.50.

Tr. p. 386: 14-15. Despite this thorough explanation, FLS/CCR argue that the Commission should adopt an adjustment based on historical market purchase and sale activity. As the Commission already stated in this docket, the use of historic prices is inconsistent with all of the other forecasts comprised in an avoided cost calculation. “The use of historic prices is problematic because FERC’s rules implementing PURPA define avoided costs in terms of a utility’s incremental costs. A forward-looking calculation ... would be more reasonable.” Order No. 7500, ¶ 33. Additionally, the Commission’s rejection of NorthWestern’s Mid-C adjustment would be arbitrarily inconsistent with past Commission orders and the assumptions in NorthWestern’s 2013 and 2015 resource plans. *See In the Matter of the Petition of Greycliff Wind Prime, LLC to Set Contract Terms and Conditions of a Qualifying Small Power Production Facility*, Docket No. D2015.8.64, Order No. 7436d, ¶ 35; *In the Matter of Crazy Mountain Wind, LLC*, Order No. 7505b, ¶ 46.

E. NorthWestern’s Natural Gas Price Forecasts Are the Most Current Forecasts Presented in this Docket.

Both at the hearing and in their post-hearing brief, VS/MEIC accuse NorthWestern of selectively identifying natural gas price forecasts that reflect low commodity prices. Tr. 348: 4-21; VS/MEIC Brief at 13. VS/MEIC suggest that NorthWestern failed to update its calculation based on November 17 prices prior to filing testimony on December 12. *Id.* NorthWestern’s practice is to select a date closest to the due date for NorthWestern’s testimony that allows adequate time for NorthWestern to run the model and prepare the corresponding testimony. There is no evidence or standard on which the Commission can determine how much time is “adequate.” Both NorthWestern’s modeling and testimony preparation are functions of

NorthWestern's day-to-day business operations and are dependent upon individual employees' schedules. While it is acceptable for VS/MEIC to argue that the November 17 prices should be updated with more current information, the Commission should not entertain unfounded accusations of NorthWestern's bad faith, especially when NorthWestern provided the November 17 prices as an update in rebuttal testimony in an attempt to provide the most current information. See Exhibit NWE-17, p. 9: 5-9.

NorthWestern and VS/MEIC also disagree on whether to escalate the forward price curve after two or after three years. NorthWestern determined that the escalation should take place after three years, when liquidity is insufficient to support the extension of forward price quote information. VS/MEIC determined that the escalation should take place after two years when there is more liquidity in the market. Tr. p. 177: 3-5. At the hearing, NorthWestern showed that the three-year prices are actual market prices. Nevertheless, VS/MEIC maintained their position that the forward price of three years is inaccurate, even though they are the actual prices and transactions were completed at these prices. Tr. pp. 225: 15-25; 226: 1-14; Exhibit NWE-15. The Commission should accept NorthWestern's method escalating the forward price curve after three years.

F. *The Commission Properly Identified Contract Length as an Additional Issue.*

VS/MEIC and FLS/CCR assert that the Commission's consideration of contract length in this docket would violate constitutional principles regarding notice, since the Commission did not issue the Notice of Additional Issues until after the deadline for intervention had passed. The Commission implemented the additional issues procedure to eliminate the potential due process problem that arose when issues were not adequately identified. *In the Matter of the Montana Public Service Commission's Solicitation of Comments and Suggestions Regarding its Decision*

Making Process, Docket No. 90.7.44. The procedure requires the Commission to identify all issues to be decided in the case by a certain time, but not before all parties have submitted their first round of testimony. Additional issues are those issues that are not raised by the parties in their testimony, but which the Commission deems to be important. In their briefs, VS/MEIC and FLS/CCR collaterally attack the Commission's additional issues procedure without recognizing that its purpose was to address due process concerns. The Commission should reject this attack.

VS/MEIC and FLS/CCR also argue that the Commission should not address contract length in this proceeding because the record does not provide a sufficient basis for the Commission's determination. The record does contain testimony on which the Commission could base a decision. NorthWestern, the MCC, VS/MEIC, and FLS/CCR all filed additional issues testimony. The parties litigated the contract length issue extensively at the hearing. Tr. pp. 50, 81-82, 100-101, 104, 145-148, 151-152, 166-167, 194-196, 201-203, 222-223, 248-251, 282-286, 293-294, and 297. VS/MEIC submitted an analysis that concluded that fixed-price long-term contracts give QFs the stable revenue they need for financing but also transfer the risk from the QF to the utility. Exhibit VS-7, IEE article, p. 9. The Commission has record evidence in this docket upon which it may base a decision that balances the QFs' need for stable revenue and the utility's reluctance to increase risk for customers.

G. *The Commission Did Not Identify Montana's LEO Standard as an Issue in this Docket.*

VS/MEIC's argument that contract length is not an issue in this docket is incongruous with its argument that the definition of a legally enforceable obligation ("LEO") is an issue before the Commission. The Commission noticed the issue of contract length but did not notice the LEO issue. Due to the nature of the standard offer tariff, the definition of an LEO is not at issue in this docket.

On February 10, 2017, FLS/CCR filed a motion in this docket seeking relief from Order No. 7500. FLS/CCR's arguments in that motion are based on their application of the LEO standard. NorthWestern filed a response to the motion within ten days after service of the motion, as required by the Commission's rules. *See* ARM 38.2.1208. Shortly thereafter, FLS/CCR filed a reply to NorthWestern's opposition. VS/MEIC did not respond to FLS/CCR's motion or NorthWestern's opposition to the motion. The Commission should disregard VS/MEIC's attempt in its post-hearing brief to provide additional support to FLS/CCR's motion or criticism of NorthWestern's opposition. At a minimum, the Commission would violate its own procedural rules by basing a decision regarding FLS/CCR's motion on VS/MEIC's argument presented in its post-hearing brief.

III. CONCLUSION

The Commission should adopt NorthWestern's proposed standard offer rates. NorthWestern calculated these rates with Commission-approved accurate and robust methodologies that reflect the current market. The evidence presented by both NorthWestern and the MCC requires the Commission to reject the solar developers' attempts to force customers to subsidize their projects.

Respectfully submitted this 24th day of March 2017.

NORTHWESTERN ENERGY

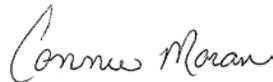


Ann Hill
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of NorthWestern Energy's Post-Hearing Reply Brief in Docket No. D2016.5.39, the QF-1 Avoided Cost Rate Filing, has been hand delivered to the Montana Public Service Commission and Montana Consumer Counsel this date. It has also been e-filed with the Montana Public Service Commission and emailed to counsel of record. It has also been served upon the following persons by postage prepaid via first class mail as follows:

DATED this 24th day of March 2017.



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