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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, Qualifying Facility	)	DOCKET NO. D2016.5.39
Power Purchase	)	

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**NorthWestern Energy's Opposition to Pacific Northwest Solar, LLC's  
Motion for Relief from Order No. 7500**

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The Montana Public Service Commission ("Commission") should deny Pacific Northwest Solar, LLC's ("PNS") motion and affirm its decision in Order No. 7500. Reversing Order No. 7500 as PNS requests would result in PNS's speculative projects being funded at the expense of NorthWestern Corporation d/b/a NorthWestern Energy's ("NorthWestern") customers.

## I. INTRODUCTION

The Commission granted NorthWestern's motion for an emergency suspension of Schedule No. QF-1 ("QF-1 Rates") applicable to new solar facilities greater than 100 kilowatts because contracts with solar Qualifying Facilities ("QF") at those rates would harm customers. Order No. 7500, ¶¶ 18 and 37. NorthWestern proposed that, in implementing the suspension, the Commission exempt those projects for which the parties had negotiated a purchase power agreement ("PPA") that was ready for execution. *Id.* at ¶ 45. The Commission rejected NorthWestern's proposal and only exempted those solar projects that had submitted a signed PPA and an executed interconnection agreement to NorthWestern on or before June 16, 2016. *Id.* at ¶¶ 46-47. In short, in order to protect customers from overpaying for QF output, the Commission only allowed those solar projects that had established a legally enforceable obligation ("LEO") to proceed at the QF-1 Rates. The Commission memorialized this decision in Order No. 7500 and affirmed that its requirements for establishing an LEO, as stated in Order No. 6444e, are a reasonable standard. *Id.*

After the Commission issued Order No. 7500, PNS, a solar developer headquartered in Portland, Oregon, intervened in this docket. PNS, however, did not actively participate in the proceedings in this docket, including the January 2017 hearing or post-hearing briefing. Instead, PNS asked a Montana state district court to force NorthWestern's customers to pay rates that the Commission already determined are not in the public interest. *See* Order No. 7500 at ¶ 38. PNS's complaint was removed to federal district court and subsequently stayed until September 2017. *See* Order staying the proceeding attached as Exhibit A. Three days after the federal judge stayed that proceeding, PNS drafted the motion at issue here. In its motion, PNS now argues that the Commission did not intend to suspend the QF-1 Rates for solar projects that have

negotiated PPAs in place. PNS also concludes that it is entitled to relief from Order No. 7500 for 21 of its projects on the basis that the Commission's standard for establishing an LEO violates the Public Utility Regulatory Policies Act of 1978 ("PURPA").<sup>1</sup> NorthWestern opposes PNS's motion, since it seeks a reversal of Order No. 7500 to allow PNS to take advantage of unjust rates of \$0.09273 per kilowatt-hour On-Peak and \$0.05314 per kilowatt-hour Off-Peak, with no evidentiary or legal support. *See* NWE-16, p. 19 Table. 4.

## **II. ARGUMENT**

PNS makes two arguments to the Commission that, if successful, would result in a reversal of Order No. 7500 and application of the QF-1 Rates to PNS's projects. First, PNS argues that the Commission never intended to suspend the QF-1 Rates for projects with negotiated PPAs. Second, PNS argues that the Commission's LEO standard violates PURPA. Since PNS provides no reasonable basis for these conclusions, a Commission reversal of Order No. 7500 would be arbitrary and capricious. *See Silva v. City of Columbia Falls*, 258 Mont. 329, 335, 852 P.2d 671, 675 (1993) (finding that the arbitrary and capricious standard means unreasonable, based on the existing record).

### **A. *The Commission Did Not Exempt Projects With Negotiated PPAs From Order No. 7500.***

The Commission's Findings of Fact and Conclusion of Law in Order No. 7500 do not support PNS's assertion that projects with negotiated PPAs may proceed utilizing the QF-1 Rates. First, the Commission rejected NorthWestern's proposal to exempt parties with a negotiated PPA from the suspension of the QF-1 Rates. Order No. 7500, ¶¶ 45-46. Thus, the Commission explicitly rejected the exact argument that PNS now asserts in its motion. The

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<sup>1</sup> PNS's motion is similar to FLS Energy, Inc.'s and Cypress Creek Renewables, LLC's February 2017 joint motion seeking an exemption from Order No. 7500.

Commission applied the rate suspension to projects with negotiated PPAs in order to prevent irreparable harm to customers from QF payments based on rates that exceed avoided cost. *Id.* at ¶ 46. In particular, the Commission’s goal was to balance the need to mitigate harm to customers while acknowledging the commitments made by QFs with LEOs. Consequently, even if solar developers like PNS had negotiated contracts, the rate suspension applied since the rates in the contracts were unjust and unreasonable and the developers did not have LEOs. *Id.* at ¶¶ 45-47.

PNS characterizes its conclusion that Order No. 7500 does not apply to its four negotiated PPAs as “very basic contract law.” PNS Motion, p. 9. This characterization fails to recognize the Commission’s authority to implement PURPA and NorthWestern’s obligations under PURPA. Specifically, this characterization fails to recognize that under PURPA’s regulatory scheme, the rates that a utility pays for QF output must be just and reasonable to consumers and in the public interest. 16 U.S.C.A. § 824a-3; 18 C.F.R. § 292.304. The Commission correctly determined in Order No. 7500 that since the QF-1 Rates are unjust and unreasonable, NorthWestern is not obligated to pay for QF output at those rates, unless the solar developer had established an LEO on or before June 16, 2016. Order No. 7500, ¶ 38. The Commission confirmed that the requirements for establishing an LEO that the Commission delineated in Order No. 6444e are a reasonable standard. *Id.* at ¶ 47.

**B. *Pacific Northwest Solar Does Not Have a Legally Enforceable Obligation.***

The Commission noted that the record failed to show that certain solar QFs that did not meet the existing LEO standard had “made sufficient commitments to deliver energy and capacity to warrant excluding them from the effect of the suspension.” *Id.* at ¶ 45. The Commission, as PNS argues that it should, “look[s] to the QF Developer’s commitments.” PNS

Motion, p. 11. An essential component of this commitment is the QF developer's willingness to agree to an interconnection agreement. The interconnection agreement is significant because, unlike a PPA, it requires the QF to make a financial commitment in advance in the form of interconnection costs. As stated by the Commission,

Only by acknowledging and agreeing to an interconnection agreement can a QF demonstrate that it is prepared to proceed despite any interconnection obstacles. Further, an interconnection agreement requires that a QF have sufficiently defined its project and made adequate progress that the project would be more than a mere speculative, paper proposal.

Order No. 6444e, ¶ 47.

PNS's actions in this docket inadvertently confirm the Commission's wisdom in requiring an interconnection agreement to establish an LEO. As the hearing record shows, subsequent to the Commission's issuance of Order No. 7500, PNS withdrew 17 of 21 requests for interconnection. Exhibit NWE-8, pp. 7-9. Essentially, PNS gave up on pursuing interconnection with NorthWestern on these projects and is only willing to commit to interconnection if it is guaranteed rates that provide economic success for its projects. PNS did not withdraw the interconnection requests for the other four projects for which it asserts there exist executed PPAs which guarantee the unjust QF-1 Rates. This behavior does not meet the standard of having an "absolute, unconditional commitment to deliver energy, capacity, or energy and capacity at a future date." Order No. 6444e, ¶ 45.

Nevertheless, PNS argues that that the Commission's standard for an LEO is inconsistent with PURPA, since QF developers "must have some semblance of certainty in moving forward with development of renewable resources." PNS Motion, p. 9. The certainty that QF developers are provided under PURPA is that a utility is required to purchase QF output at a rate consistent with the utility's avoided cost. PURPA does not provide QF developers with economic certainty

of project success. The congressional purpose in limiting the price paid to QFs was to ensure that PURPA did not become a utility-funded welfare program for QFs from the pockets of electric consumers. *Greensboro Lumber Co. v. Georgia Power Co.*, 643 F. Supp. 1345, 1369 (N.D. Ga. 1986) (11th Cir. 1988).

The Commission developed Montana's standard for an LEO only after thoroughly considering other jurisdictions' implementation of LEO standards and litigation surrounding those standards. Order No. 6444e, ¶ 46. There is no evidence upon which the Commission can base a reversal of its application of this standard. The Commission is under no obligation to adopt FERC's recent analysis regarding Montana's LEO standard. *See FLS Energy, Inc.*, 157 F.E.R.C. ¶ 61211 (2016). The states, not FERC, have the authority to determine, under that state's law, when a legally enforceable obligation is created. *Whitehall Wind, LLC v. Montana Pub. Serv. Comm'n*, 2015 MT 119, 122, 347 P.3d 1273, 1275, *citing Metro. Edison Co.*, 72 F.E.R.C. ¶ 61,015 (1995).

### **III. CONCLUSION**

Order No. 7500 successfully mitigated customer harm while recognizing existing obligations. The Commission cannot now, over nine months later, with no additional evidence, reverse its conclusion that certain solar QF developers were not sufficiently obligated to warrant excluding them from the effect of Order No. 7500. The Commission should deny the motion and explicitly recognize that NorthWestern cannot enter in to any contract that includes unjust rates that exceed the incremental cost of alternative electric energy.

Respectfully submitted this 13th day of April, 2017.

NORTHWESTERN ENERGY

A handwritten signature in blue ink that reads "Ann Hill". The signature is written in a cursive style with a large initial "A".

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Ann Hill

Attorney for NorthWestern Energy

**FILED**

**MAR 28 2017**

Clerk, U.S. District Court  
District Of Montana  
Helena

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA**

**HELENA DIVISION**

PACIFIC NORTHWEST SOLAR,  
LLC,

Plaintiff,

vs.

NORTHWESTERN CORPORATION,  
A DELAWARE CORPORATION  
DBA NORTHWESTERN ENERGY,

Defendant.

No. CV-16-114-H-SEH

**ORDER**

A hearing on Defendant's Unopposed Motion to Stay Proceedings was held on March 28, 2017. Based upon the record made in open court,

**ORDERED:**

1. On or before March 31, 2017, Defendant shall file an amended preliminary pretrial statement including the "city and state of current residence of each individual known or believed to have information that may be used in

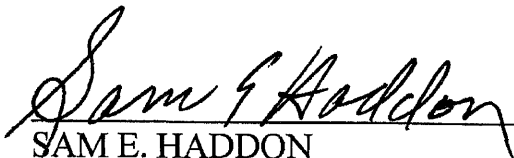


proving or denying any party's claims or defenses"<sup>1</sup> and addressing the matters listed in Fed. R. Civ. P. 26(a)(1)(A)(ii).<sup>2</sup>

2. Defendant's Unopposed Motion to Stay Proceedings<sup>3</sup> is GRANTED in part and DENIED in part.

3. All proceedings in this case are stayed up to and including September 29, 2017, unless ordered otherwise by the Court.

DATED this 28<sup>th</sup> day of March, 2017.

  
SAM E. HADDON  
United States District Judge

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<sup>1</sup> L.R. 16.2(b)(1)(J).

<sup>2</sup> See Doc. 26.

<sup>3</sup> Doc. 27.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of NorthWestern Energy's Opposition to Pacific Northwest Solar, LLC's Motion for Relief from Order No. 7500 in Docket No. D2016.5.39, the QF-1 Avoided Cost Rate Filing, has been hand-delivered to the Montana Public Service Commission and the Montana Consumer Counsel this date. It has also been e-filed on the Commission website, emailed to counsel of record, and sent via First Class mail to the remainder of the attached service list.

Date: April 13, 2017



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