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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)	

**NorthWestern Energy's Opposition to WINData, LLC's
Application for Late Intervention**

On July 7, 2017, WINData, LLC ("WINData") filed an Application for General Intervention ("Application"). The Montana Public Service Commission ("Commission") set June 10, 2016, as the deadline for intervention in this docket. The Commission held a hearing in this matter on January 18-19, 2017. WINData made this filing more than a year after the intervention deadline and nearly six months after the hearing. NorthWestern objects to late intervention by WINData. The application is untimely, seeks to broaden the issues, and requests relief not available in this docket. The Commission should deny WINData's application for intervention.

I. INTRODUCTION

On May 3, 2016, NorthWestern Corporation, doing business as NorthWestern Energy (“NorthWestern”) filed an application in this docket for approval of standard tariff rates for small Qualifying Facilities (“QF”). On May 13, 2016, the Commission issued a Notice of Application and Intervention Deadline (“NAID”). The NAID provided, “Any interested person who is directly affected by NWE’s filing before the PSC and who wants to be a party to the docket must file a petition to intervene with the PSC **no later than June 10, 2016.**” (NAID, p. 1 (emphasis in original)). On June 17, 2016, the Commission granted intervention to New Colony Wind, LLC, the Montana Consumer Counsel, Vote Solar, the Montana Environmental Information Center, FLS Energy, Inc., and Cypress Creek Renewables, LLC, each of whom had petitioned to intervene prior to the deadline. On September 23, 2016, the Commission granted late intervention to Pacific Northwest Solar, LLC (“PNW”) finding “that good cause exist[ed]” to do so. PNW filed for late intervention on August 22, 2016, prior to the issuance of the Procedural Order, but its participation started months before. On May 18, 2016, it filed a notice of intent to participate; on June 9, 2016 it filed comments in response to NorthWestern’s Emergency Motion, and on June 17, 2016 it filed supplemental comments on that same topic. The Commission issued Procedural Order No. 7500a on September 2, 2016, and a Notice of Public Hearing on December 29, 2016. The Commission held a hearing on January 18-19, 2017. The parties filed post-hearing briefs on February 17, 2017 (initial brief); March 10 and 13, 2017 (intervenors’ response briefs), and March 24, 2017 (reply brief).

The only remaining activity in this docket is for the Commission to issue a final order. On June 22, 2017, the Commission held a work session to discuss this matter and provided direction to staff regarding a final order.

After the work session, on July 7, 2017, WINData filed the Application in which it stated “WINData, LLC applies for general intervention in this docket” and set forth its requested relief. WINData requested relief that is unrelated to, and cannot be granted in, this docket. The pleading does not request a Commission order granting intervention but instead requests the Commission to:

1. order NorthWestern to file a rate case for all its electricity assets by August 31, 2017 for purposes of ensuring application of a rate methodology consistent with that used for QFs; and either
2. reopen Commission Docket No. D2013.12.85 [the Hydros docket] to:
 - a. apply a DCF model using a five year forecast with some terminal value at the end of that five year period which may not be included in rates; and
 - b. set the rate for the Hydros based only on generation costs and not the purchase price of the asset; and
 - c. immediately reduce all rates for NorthWestern by the “Long 1” adjustment and delay the carbon onset adder until 2025 as applied to QFs; or
3. apply the same methodology to QFs as applied to NorthWestern’s most recently acquired asset, the Hydros, using long-term contracts, immediate carbon onset adders, and no Long 1 adjustment.

II. *WINData failed to show that it is entitled to intervention.*

Both the Commission’s administrative rules and the Procedural Order in this docket establish criteria that a party must meet to intervene in this docket. ARM 38.2.2405 provides, in part:

If it appears, after consideration, that the petition or motion discloses a substantial interest in the subject matter of the hearing, that participation of the petitioner will

be in the public interest, or that the granting of the petition would not unduly broaden the issues in the proceeding, the commission may grant the same, which may be done by order or oral ruling at the time of the hearing.

Procedural Order 7500a, ¶ 7 provides:

An entity seeking late intervention must file a petition to intervene setting forth: (1) The general position that it intends to take; (2) a legally protectable interest directly affected by this proceeding; (3) whether late intervention would delay the proceeding or prejudice another party; and (4) good cause for not having filed a timely petition.

WINData filed a late Application that did not show (1) that it had a substantial interest in the subject matter of the hearing or a legally protectable interest directly affected by this docket; (2) that granting its Application would not prejudice another party; and (3) good cause for not having filed a timely petition.

A. WINData’s Application is late.

ARM 38.2.2403 provides that a petition to intervene “shall be filed no later than the intervention deadline established in a procedural order, if one is entered.” The NAID and Procedural Order established and confirmed the intervention deadline of June 10, 2016.¹

WINData filed its Application late, on July 7, 2017, more than a year after the intervention deadline.

No intervention is permitted after a hearing. Any intervenor has the same rights and responsibilities as all other parties to the proceeding.² Intervention may be granted before or at a hearing.³ The Commission held the hearing in this proceeding on January 18 – 19, 2017.

WINData did not participate in the hearing.⁴ After the hearing and the post-hearing briefing, the

¹ “The deadline for intervention in this proceeding was June 10, 2016.” Order No. 7500a, ¶ 7.

² ARM 38.2.2405.

³ *Id.* “Petitions and motions to intervene not already allowed shall be considered first at all hearings, or may be acted upon prior to hearing.”

⁴ As the Commission indicated to New Colony Wind LLC, to whom it denied intervention, in Docket No. D2015.2.18, Order No. 7395b, WINData could have sent a representative to the hearing to offer public comment.

parties have no rights or responsibilities, other than the right to seek rehearing, reconsideration, or judicial review. An entity, such as WINData, that does not participate in the proceedings should not be able to challenge the result.

B. WINData has not shown that it has a legally protectable interest directly affected by this proceeding.

This proceeding concerns rates for QFs with a nameplate capacity of 3 megawatts (“MW”) or less.⁵ WINData has neither alleged, nor shown, that it is seeking to develop any QF with a nameplate capacity of 3 MW or less. WINData asserted that it was involved in and developed ten projects in Montana over the past two decades, but did not provide any information about the projects other than Greenfield Wind, Greycliff Wind Prime (not one of the ten listed projects), and Crazy Mountain Wind. Each project’s nameplate capacity is greater than 3 MW. NorthWestern is a counterparty with a fourth project, Fairfield Wind, that is also larger than 3 MW. NorthWestern searched the Federal Energy Regulatory Commission’s e-library for a Form 556 for each of the other listed projects and found the information reflected in the table below.

Project	Information Found	Size
Blackfeet 1	None	
Prospect Wind	Form 556 filed January 30, 2007 by David Healow	10 MW
Front Range Wind	Form 556 filed August 16, 2011 by WINData to be in operation by 12/31/12 – Not built	1.6 MW
Hopley Creek Wind	None	
Hay Creek Wind	None	

⁵ NAID, p. 1; Notice of Public Hearing, p. 1 (December 29, 2016).

Coyote Wind	Form 556 (amendment) filed June 17, 2013 by WINData	80 MW
WD Wind	none	

To NorthWestern’s knowledge, WINData never has successfully developed a QF with a nameplate capacity of 3 MW or less.

C. The granting of WINData’s Application would broaden the issues in the proceeding and prejudice NorthWestern.

WINData requests relief that is a collateral attack on Order No. 7323k in Docket No. D2013.12.85 and Order No. 7476a in Docket No. D2016.1.8. In Order No. 7323k, the Commission granted NorthWestern’s Application to acquire the hydroelectric assets of PPL Montana. In Order No. 7467a, the Commission updated the revenue requirement for NorthWestern’s hydroelectric assets to account for post-closing adjustments and the transfer of the Kerr facility to the Confederated Salish and Kootenai Tribes. WINData requests that the Commission require “NorthWestern to file a rate case for all its electricity assets by August 31, 2017,... and either [r]eopen Docket No. D2013.12.85”⁶ to lower Commission-approved rates or apply a different methodology to all QFs.

This docket does not involve any rates that NorthWestern charges its customers, only the rates that it pays to QFs with a nameplate capacity of 3 MW or less. By seeking to require a rate case or to lower established rates, WINData is seeking to broaden the issues. If NorthWestern must devote resources to defend against, or comply with, if granted, WINData’s requested relief, then NorthWestern will be prejudiced because it would spend money and allocate resources

⁶ Application, pp. 10-11.

beyond what has been required to complete the parties' participation in the docket.⁷ WINData's request for the Commission to reconsider past decisions regarding the generation assets owned by NorthWestern not only broadens the issues in this proceeding, but raises issues that are completely unrelated to the Public Utility Regulatory Policies Act and outside the scope of this docket. Thus, the Commission may not approve WINData's request for general intervention.

D. WINData has not demonstrated good cause for failure to timely intervene.

A petition for general intervention must be filed by the deadline established in the procedural order, unless a showing of good cause is made. In making a showing of good cause, parties usually either provide a reason for their failure to timely intervene or claim that new issues exist.⁸

The Commission has found that a developer who sought late intervention in a docket regarding approval of another, potentially similarly situated developer's power purchase agreement did not show good cause by asserting that its project would be subject to a later docket that was substantially similar.⁹ In that docket, the Commission noted that New Colony sought intervention after all substantial deadlines in the docket had passed and intended to do

⁷ Cf. *Holm-Sutherland Co. Inc. v. Town of Shelby*, 1999 MT 150, 295 Mont. 65, 982 P.2d 1053 (where party changed litigation tactics in case, the other party, who had incurred expense litigating under complaint was prejudiced by attempt to change); and *Vann Ness Townhouses v Mar Industries Corp*, 862 F.2d 754 (9th Cir. 1988) (party prejudiced by opposing party's actions inconsistent with later actions).

⁸ See *In re Michigan Consol. Gas Co. for Sale of Excess Gas*, 2010 WL 199571, (Mich. Ct. App. Jan. 21, 2010); *In the Matter of Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Case No. 2016-00162, Kentucky Public Service Commission (Aug. 17, 2016).

⁹ *In the Matter of NorthWestern Energy's Application for Approval of a Purchase Power Agreement*, Docket No. D2015.2.18, Order No. 7395b (April 10, 2015) (order denying New Colony Wind, LLC's petition for late intervention).

something not provided for in the Procedural Order.¹⁰ WINData's Application is even more egregious because it was filed not only after all substantial deadlines, but also after the hearing.

Furthermore, WINData did not provide any reason for why it waited for over a year to seek intervention in this docket. Instead, WINData argues that "Commissioner Lake and the Commission's hostility toward QF projects" is good cause for allowing a late intervention. WINData's characterization of the conversation it viewed as a third-party is not a new issue rising to the level of good cause. Additionally, WINData fails to assert how its intervention would address this "new information." Instead, WINData simply asks the Commission to use this "new information" as a reason to reconsider past, unrelated decisions regarding the generation assets owned by NorthWestern.

IV. CONCLUSION

WINData's Application is late; it fails show a legally protectable interest related to the issues in the proceeding; it seeks to broaden the issues and would prejudice NorthWestern; and it lacks a showing of good cause for its lateness. The Commission should deny WINData's request for intervention as untimely.

Respectfully submitted this 18th day of July, 2017.

NORTHWESTERN ENERGY



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¹⁰ *Id.*, ¶ 9.

CERTIFICATE OF SERVICE

I hereby certify that a copy of NorthWestern Energy's Opposition to WINData, LLC's Application for Late Intervention 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 PSC website, emailed to counsel of record, and sent via First Class Mail to the attached service list.

Date: July 18, 2017


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