

ANN HILL  
NorthWestern Energy  
208 N. Montana Ave., Suite 205  
Helena, Montana 59601  
Tel. (406) 444-8110  
ann.hill@northwestern.com

AL BROGAN  
NorthWestern Energy  
208 N. Montana Ave., Suite 205  
Helena, Montana 59601  
Tel. (406) 443-8903  
al.brogan@northwestern.com

Attorneys for NorthWestern Energy

Ryan R. Shaffer  
Meyer, Shaffer, and Stephans, PLLP  
305 S. Fourth St. East, Suite 101  
Missoula, MT 59801  
Tel. (406) 543-6929  
ryan@mss-lawfirm.com

Ryan N. Meyer  
ElGuindy Meyer & Koegel, LLP  
2990 Lava Ridge Court, Ste. 205  
Roseville, CA 95661  
Tel. (916) 778-3310  
rmeyer@emklawyers.com

Attorneys for Pacific Northwest Solar, LLC

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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**JOINT MOTION FOR RECONSIDERATION AND BRIEF IN SUPPORT  
ON BEHALF OF  
PACIFIC NORTHWEST SOLAR, LLC AND NORTHWESTERN ENERGY**

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Pacific Northwest Solar, LLC (“PNWS”) and NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern”), pursuant to ARM 38.2.4806, jointly move for the Montana Public Service Commission’s (“Commission”) limited reconsideration of Order No. 7500c issued July 21, 2017. Specifically, PNWS and NorthWestern ask the Commission to reconsider its decision to deny PNWS’s Motion for Relief from Order No. 7500 with regards to the Benton, Bootlegger, Choteau, and Manta solar projects (“the Four Projects.”) *See* Order No. 7500c, ¶ 133.

## **I. INTRODUCTION**

In June 2016, the Commission temporarily suspended the availability of NorthWestern’s standard Schedule QF-1 rates (“QF-1 Rates”) for solar Qualifying Facilities (“QFs”) larger than 100 kilowatts. The Commission memorialized this suspension in Order No. 7500 in this docket. In April 2017, PNWS filed a Motion for Relief from Order No. 7500 (“PNWS’s Motion”), seeking a Commission order finding that the Four Projects (and 17 other projects) were eligible for the suspended QF-1 Rates. NorthWestern initially opposed PNWS’s Motion, arguing that the Commission had already decided not to exempt negotiated, but unexecuted, purchase power agreements (“PPA”) from the suspension of the QF-1 Rates. *See* Order No. 7500, ¶¶ 45-46. On July 19, 2017, PNWS and NorthWestern filed a motion for rehearing asking the Commission to reopen the proceeding to consider additional evidence regarding the Four Projects. On July 21, 2017, the Commission issued Order No. 7500c in this docket explicitly denying PNWS’s Motion and effectively denying the joint motion for rehearing. The Commission should reconsider its denial of PNWS’s Motion and recognize that since NorthWestern had executed the PPAs for the Four Projects and had relayed that consent to PNWS, Order No. 7500 does not apply to those PPAs.

## II. THE COMMISSION SHOULD RECOGNIZE THAT NORTHWESTERN EXECUTED THE FOUR PPAS

When the Commission suspended the availability of the QF-1 Rates, it ordered that a QF that had not submitted to NorthWestern a signed PPA and a signed Small Generator Interconnection Agreement as of June 16, 2016 could not proceed with its project at the QF-1 Rates. Order No. 7500, ¶ 63. The Commission made this determination after considering “whether some solar QFs eligible for QF-1 tariff rates have made sufficient commitments to deliver energy and capacity to warrant excluding them from the effect of the suspension, despite not having fully executed contracts with NorthWestern...” Order No. 7500, ¶ 45 (emphasis added). The Commission did not define the term “fully executed” but used that term in contrast to a “negotiated contract.”<sup>1</sup> Consequently, the Commission did not consider whether PPAs that were signed by both parties, and for which NorthWestern relayed consent, had a sufficient commitment to warrant excluding them from the effect of the suspension. PNWS’s Motion gave the Commission the opportunity to consider that unique situation. Nevertheless, in Order No. 7500c, the Commission again declined to consider that unique situation, instead lumping the Four Projects in with the FLS Energy, Inc. and Cypress Creek Renewables, LLC (“FLS/CCR”) projects. *See* Order No. 7500c, ¶ 133.

Under the Public Utility Regulatory Policies Act, a utility may be obligated to purchase the energy and capacity from a QF not only through a legally enforceable obligation but also through a consensual contract. *See* ARM 38.5.1903(2). Prior to the Commission’s June 16, 2016 work session, NorthWestern had executed PPAs for the Four Projects and had so informed PNWS. Since these PPAs include elements of contract, the Commission should

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<sup>1</sup> NorthWestern interpreted a fully executed contract as one where each party had delivered a signed version to the other party. *See* § 28-2-906, MCA.

recognize the commitments of the parties and authorize PNWS and NorthWestern to move forward on those executed PPAs. *See* § 28-2-102, MCA; § 28-2-502, MCA.

The Commission should issue an order granting PNWS' request for relief from Order No. 7500 for the Four Projects so that these projects may proceed at the old QF-1 Rates. Because NorthWestern executed these PPAs and communicated that it had done so to PNWS, these PPAs are in their own category and are distinguishable from FLS/CCR projects as well as other PNWS projects. On June 16, 2016, there were no other similar PPAs impacted by Order No. 7500. The limited nature of the exclusion is consistent with the Commission's goal in Order No. 7500 to balance the need to mitigate harm to customers while acknowledging the commitments made by QFs. *See* Order No. 7500, ¶ 46.

### III. CONCLUSION


The Commission should recognize that since NorthWestern had executed the PPAs for the Four Projects and had relayed that consent to PNWS, Order No. 7500 does not apply to those PPAs and NorthWestern is authorized to proceed with these agreements at the QF-1 Rates in effect on or before June 16, 2016.

Respectfully submitted this 31<sup>st</sup> day of July, 2017.

PACIFIC NORTHWEST SOLAR, LLC

/s Ryan Shaffer  
Ryan N. Meyer  
Ryan R. Shaffer  
Attorneys for Pacific Northwest Solar, LLC

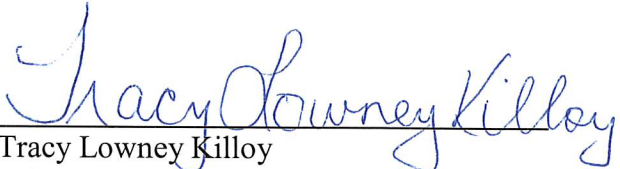
NORTHWESTERN ENERGY

  
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Ann B. Hill  
Al Brogan  
Attorneys for NorthWestern Energy

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of Joint Motion for Reconsideration and Brief in Support on Behalf of Pacific Northwest Solar, LLC and NorthWestern Energy 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 31, 2017

  
Tracy Lowney Killoy  
Administrative Assistant  
Regulatory Affairs

**Docket Service List**  
**Docket No. D2016.5.39**

**Will Rosquist**  
**Public Service Commission**  
**1701 Prospect Ave**  
**Helena MT 59620-2601**

**Jason Brown**  
**Montana Consumer Counsel**  
**PO Box 201703**  
**Helena MT 59620-1703**

**John Alke**  
**NorthWestern Energy**  
**208 N Montana Ave Suite 205**  
**Helena MT 59601**

**Tracy Lowney Killoy**  
**NorthWestern Energy**  
**11 E Park Street**  
**Butte MT 59701**

**Joe Schwartzenberger**  
**NorthWestern Energy**  
**11 E Park Street**  
**Butte MT 59701**

**Jenny K Harbine**  
**Aurora R. Janke**  
**Earthjustice**  
**313 East Main St.**  
**Bozeman MT 59715**

**DarAnne Dunning**  
**Luxan & Murfitt, PLLP**  
**P O Box 1144**  
**Helena MT 59624**

**Al Brogan**  
**NorthWestern Energy**  
**208 N Montana Ave Suite 205**  
**Helena MT 59601**

**Eric Christensen**  
**Cairncross Hempelmann**  
**524 Second Ave, Suite 500**  
**Seattle WA 98104**

**Mike J Uda**  
**Uda Law Firm, P.C.**  
**7 West Sixth Avenue**  
**Power Block West, Suite 4H**  
**Helena MT 59601**

**Ryan N. Meyer**  
**ElGuindy, Meyer & Koegel, PLLP**  
**2990 Lava Ridge Court, Suite 205**  
**Roseville CA 95661**

**Ryan R. Shaffer**  
**Meyer, Shaffer & Stepan, PLLP**  
**305 S. Fourth St. Suite 101**  
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**Ann Hill**  
**NorthWestern Energy**  
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