

Service Date: September 2, 2016

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 Interim and Final Approval of )  
Revised Tariff No. QF-1, Qualifying Facility ) DOCKET NO. D2016.5.39  
Power Purchase ) ORDER NO. 7500a

**PROCEDURAL ORDER**

1. On May 3, 2016, NorthWestern Corporation, doing business as NorthWestern Energy ("NorthWestern") filed an Application for Approval of Avoided Cost Tariff Schedule QF-1 ("Application") with the Montana Public Service Commission ("Commission"). NorthWestern requests that the Commission approve its new QF-1 tariff on both an interim and final basis. The proposed avoided cost rates would apply to Qualifying Facilities (QFs) with a nameplate capacity of three megawatts or less on May 3, 2016. "Standard rates" for purchases from QFs are based on NorthWestern's "avoided costs," computed annually, reviewed by the Commission, made available to the public, and "applicable to all contracts with qualifying facilities which do not choose to negotiate a different rate." Mont. Admin. R. 38.5.1901(2)(j) (2016). In its Application, NorthWestern proposes to decrease standard rates.
2. On May 13, 2016, the Commission issued a Notice of Application and Intervention Deadline, setting an intervention deadline of June 10, 2016. On May 17, 2016, NorthWestern filed a Motion for Emergency Suspension of the QF-1 Tariff for New Solar Qualifying Facilities with Nameplate Capacities Greater than 100 kW, as well as the supporting affidavit of John B. Bushnell. On May 24, 2016, the Commission issued a Notice of Emergency Motion and Opportunity to Comment and Request Hearing ("Notice"). The Notice advised that "[u]pon its own motion or upon request by an interested party, the PSC may hold a hearing on June 9, 2016 at 2:00 p.m. at the PSC's business offices." The Commission issued a Notice of Staff Action Setting Hearing which confirmed that a hearing would be held. On June 6, 2016, the Commission received written comments on NorthWestern's Motion from the Montana Consumer Counsel, FLS Energy (FLS), Vote Solar and Montana Environmental Information

Center (MEIC), Cypress Creek Renewables (“Cypress”), and Pacific Northwest Solar. On June 8, 2016, the Commission received written comments from the Montana Department of Environmental Quality. On June 9, 2016, the Commission held a hearing in this matter.

3. On June 16, 2016, the Commission issued a Notice of Commission Action granting NorthWestern's motion and suspending its obligation under QF-1 tariff option 1(a) standard rates for solar projects greater than 100 kW pending the issuance of a final order. On July 25, 2016, the Commission issued Order No. 7500 temporarily suspending the availability of Schedule QF-1 rates for solar QFs larger than 100 kW. On August 4, 2016, the MEIC filed a Motion for Reconsideration of Order No. 7500. FLS and Cypress also filed a Motion for Reconsideration on August 8, 2016. On August 25, 2016, the Commission issued a Notice of Staff Action denying the motions for reconsideration.

4. The Commission, through delegation to staff, hereby establishes the Procedural Order to be followed in this proceeding. This Order is effective immediately and remains effective unless modified by the Commission or staff. A party may seek reconsideration of this Procedural Order within ten (10) days of its service date. Mont. Admin. R. 38.2.4806 (2016).

#### Schedule

5. This Order sets the following procedural schedule for this Docket:
- (a) September 9, 2016: Final day for initial data requests to NorthWestern related to its Application.
  - (b) September 30, 2016: Final day for NorthWestern to respond to data requests.
  - (c) October 14, 2016: Final day for intervenor testimony.
  - (d) October 26, 2016: Final day for the Commission to identify additional issues, if any.\*
  - (e) October 28, 2016: Final day for data requests to intervenors.
  - (f) November 14, 2016: Final day for intervenors to respond to data requests.
  - (g) December 12, 2016: Final day for NorthWestern to file rebuttal testimony and intervenors to file cross-intervenor response testimony.
  - (h) December 21, 2016: Final day for data requests to NorthWestern and intervenors related to rebuttal and cross-intervenor response testimony.
  - (i) January 11, 2017: Final day for NorthWestern and intervenors to respond to data requests related to rebuttal and cross-intervenor response testimony.
  - (j) January 16, 2017: Final day for NorthWestern and intervenors to file pre-hearing memoranda.

- (k) January 18, 2017: Hearing commences and continues from day-to-day as necessary.

\*If the Commission identified additional issues it will issue a modified procedural order and schedule, likely changing deadlines (e) through (j).

#### Service and Filing

6. A party must serve a copy of every pleading, motion, brief, objection, data request or response, and other document it files in this proceeding on every other party. Upon e-filing a document with the Commission, the filing party must email a copy of the document to counsel of record. In order to file a document with the Commission, a party must: (1) Submit the document electronically (e-file) on the Commission's website at <http://psc.mt.gov> ("Account Login/Registration" under "Electronic Documents" tab); and (2) physically deliver or mail the original document to the Commission at 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. The Commission will not post an e-filed document to its website until it receives the original from the filing party. Service or filing by means of facsimile is prohibited. Service by mail does not extend a deadline.

#### Intervention

7. The deadline for intervention in this proceeding was June 10, 2016. 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. Late intervention will become effective only upon action of the Commission.

#### Discovery

8. "The exchange of information among parties pursuant to data requests is the primary method of discovery in proceedings before the [C]ommission." Mont. Admin. R. 38.2.3301(2). The Commission directs parties to use the following guidelines for data requests:

(a) Assign a unique, consecutive number to each data request (e.g., MCC-001), regardless of the party to whom the request is directed (e.g., the Commission may direct PSC-001 through 008 to NorthWestern, PSC-009 through 016 to the MCC, and PSC-017 through 019 again to NorthWestern).

- (b) At the beginning of each data request, consistently describe its subject in five words or less. In addition, a party may direct the request to a particular witness or include citations to exhibits or testimony.
- (c) For multi-part requests, use lower case letters (a-e) to denote up to five parts.
- (d) The following is an example of an acceptable data request:

PSC-006 RE: Purchased Gas Contracts  
Witness Doe, JBD-4:13-15.

- a. What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

9. Parties must respond to data requests within fourteen (14) calendar days of the service date of the data request or by the deadline to respond, whichever is earlier.

10. A party may file an objection to a data request by the deadline to respond. Objections must be sufficiently specific for the Commission to adequately rule on whether to sustain or object. The responding party need not object if an answer has been provided to a discovery request. If the requesting party finds the response inadequate, they may file a motion to compel. *See infra* ¶ 13. Only objections based on discoverability will be considered; objections on admissibility will be overruled. The failure to object to a data request does not waive the right to subsequently object to the admissibility of the information provided in response. If a party objects based on privilege, it must file a privilege log by the deadline to respond with enough information for the Commission to determine whether the privilege applies. The Commission may schedule oral argument before ruling on an objection.

11. If a data request asks for protected information, the responding party must file a motion for a protective order as soon as practicable, but no later than the deadline to respond to the data request.

12. A party may submit a data request after a deadline established in this Order either by agreement of the parties or with approval of the Commission upon a showing of good cause that addresses why the discovering party missed the deadline.

13. If a response to a data request fails to answer the request, the discovering party may move within fourteen (14) calendar days after service of the response for an order compelling an answer. The motion, which the party must file with the Commission and serve on all parties, must identify the relief requested. The responding party may file a brief in opposition

within fourteen (14) days of service of the motion to compel. The Commission may schedule oral argument before ruling on a motion to compel, and will set a new response deadline if it grants the motion.

14. In response to a party's failure to answer a data request, the Commission may: (1) refuse to allow it to support or oppose related claims; (2) prohibit it from introducing related evidence; (3) strike pleadings, testimony, or parts thereof; (4) stay the proceeding until the request is satisfied; or (5) dismiss the proceeding, or parts thereof.

15. In order to promote the efficiency of the administrative process, staff attorney Jeremiah Langston will act as examiner for the limited purpose of disposing of discovery disputes (including objections to data requests and motions to compel) and motions for protective order in this proceeding. Mont. Code Ann. §§ 69-2-101, 69-3-103; *see also* Admin. Mont. R. Mont. 38.2.306, 38.2.1501. "Any party may apply for reconsideration in respect to any matter determined" in a Commission order or decision, including the examiner's final written decision. Mont. Admin. R. 38.2.4806.

#### Pre-hearing Motions, Conferences and Memoranda

16. A party must make a pre-hearing motion, including a motion to strike pre-filed testimony, at the earliest possible time. A responding party must file and serve its response brief within seven (7) calendar days of service of the motion. If the movant wishes to reply, it must file and serve its reply brief within five (5) calendar days of service of the response brief. Upon the request of a party, the Commission may allow oral argument on a pre-hearing motion.

17. The Commission may schedule a pre-hearing conference at any time prior to the hearing to discuss the feasibility of settlement in whole or in part, simplification of the remaining issues through admissions of fact, and any other matters that may expedite the hearing.

18. Unless the parties agree to file jointly, each party must file and serve a pre-hearing memorandum listing the following information regarding the hearing: (1) Contested issues; (2) uncontested issues; (3) witnesses that it intends to call; (4) exhibits and responses to data requests that it intends to introduce (other than responses to data requests related to additional issues response testimony); (5) any special accommodations sought regarding witness sequence or scheduling. Each party's pre-hearing memorandum must also list any responses to data requests that the parties have collectively agreed to introduce. Whenever a party moves for

the admission of a response to a data request, it must identify the number of the request.

### Hearing

19. The Montana Rules of Evidence in effect at the time of the hearing will govern the hearing. *See* Mont. Code Ann. § 2-4-612(2). Because each party is entitled to reasonable notice of what issues will be addressed at the hearing, the Commission may not allow a party to raise an issue at a hearing unless it is reasonably related to an issue previously identified in the proceeding.

20. Prior to the hearing, the parties must arrange with the court reporter and Commission staff to consistently mark all proposed exhibits, responses to data requests, and pre-filed testimony for reference.

21. A party must make each person that authored a data request response available for cross-examination at the hearing unless the Commission approves an agreement among the parties to waive cross-examination. A witness need not recite pre-filed testimony before counsel moves to admit the testimony into the record.

22. When a party seeks to examine a witness based on a document not previously filed in this proceeding, it must make copies of the document available to each Commissioner, party, and staff member, unless it shows good cause why copies are not available. A party seeking to introduce a document not previously filed in this proceeding must also provide a copy of the document to the court reporter.

23. At the discretion of the Commission, members of the public may comment on the proceeding at the hearing.

DONE AND DATED this 2<sup>nd</sup> day of September, 2016, by delegation to Commission staff as an Order of the Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

BRAD JOHNSON, Chairman  
TRAVIS KAVULLA, Vice Chairman  
KIRK BUSHMAN, Commissioner  
ROGER KOOPMAN, Commissioner  
BOB LAKE, Commissioner