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DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Montana Public Service Commission's Review of Rates to Recover NorthWestern Energy's Electricity Supply Costs	REGULATORY DIVISION **DOCKET NO. D2017.5.39**

COMMENTS OF WINDATA, LLC

WINData, LLC [WINData] submits these comments in response to the Montana Public Service Commission's [Commission] Notice of Commission Action, dated July 7, 2017 [NCA]. The Commission invites comment on whether to require NorthWestern to submit information that conforms to the requirements contained in Mont. Admin. R. 38.5.101 through 38.5.195 by September 30, 2017. The Commission specifically invites comment on whether to exempt or add certain pieces of information; and whether this information is required at all [NCA para. 19-20].

I. General Comments

The Commission should require NorthWestern to submit information that conforms to the requirements contained in Montana Administrative Rule of Procedure

38.5.101 through 38.5.195 by September 30, 2017. Alternatively, the Commission must enter an Order effective immediately that will apply the Long 1 and carbon delay reductions to NorthWestern's assets in the same way it has applied this methodology to QFs; or applying the same methodology to QFs that it used to set NorthWestern's rates in the Hydros docket.

In response to the Commission's NCA, NorthWestern submitted its July 14, 2017 filing proposing a "Power Costs and Credits Adjustment Mechanism" ("PCCAM"). This proposal would implement an annual forward looking cost recovery mechanism for certain categories of base costs as identified by NorthWestern. The proposal adopts current fixed cost of service rates for NorthWestern's generation assets, Colstrip Unit No. 4 (CU4), the Dave Gates Generating Station (DGGS), Spion Kop Wind Generation Project (Spion Kop), and the Hydro Generation Assets (Hydros). NorthWestern Transmittal Letter to Filing, p. 2-3. These fixed costs are proposed to remain the same until an order is issued in "NorthWestern's 2018 electric general rate filing." Transmittal Letter to Filing, p. 3.

NorthWestern specifically identifies "costs to purchase power from Qualifying Facilities" as one of the components that will make up the proposed Base Power Costs and Credits "Base PCC." Transmittal Letter to Filing p. 1, Markovich Testimony pp. 8-11. The Filing proposes Base PCC Rates as well as overall supply rates to recover the Base Power Costs and Credits, which include payments to Qualifying Facilities. Transmittal Letter to Filing p. 1-2, Markovich Testimony pp. 8-10. The Base PCC and associated base rates will remain in effect until reset by a Commission Order in an electric general rate filing. Schwarzenberger Testimony p. 4:12-15.

NorthWestern's proposal segregates the rate methodology used to determine the costs of power for its own assets from that used determine the rate for acquiring QF power. NorthWestern proposes continuing to use the cost of service to set rates for its own assets by using the current rates in place, but setting rates for QFs by using hypothetical Power Costs and Credits. Testimony of Crystal Lail p. 5:4-12; Exhibit JS-2. NorthWestern proposes to have the Base PCC and associated base rates proposed in this docket remain in effect until the final order in a general rate case. The impact of this will be that production from QFs will be compensated at a lower rate than NorthWestern's own generation, using a different methodology in the immediate term, while NorthWestern's own generation is compensated using fixed rates set over the past ten years. See Exhibit JS-2. NorthWestern's proposed approach would create discrimination by using a segregated rate structure. NorthWestern's proposed Base PCC for its own generation assets is an average electricity supply rate of $66.065 per megawatt hour. Schwarzenberger Testimony p. 8:7-11. Exhibit JS-2 p. 3 of 6 Line 42. In stark contrast, the Commission allows compensation for production from QFs at approximately half that requested by NorthWestern in this docket.[1]

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[1] See *Crazy Mountain Wind, LLC*, Docket No. D2016.7.56, Order No. 7505c, issued April 18, 2017 available at http://www.psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/D2016756Order7505c.pdf; *In The Matter of Revised Tariff No. QF-1*, Docket No. D2016.5.39, June 22, 2017 work session, (Final Order pending).

The Public Utility Regulatory Policies Act of 1978 (PURPA) requires "large utilities to purchase energy from smaller qualifying facilities at rates that allow the small facilities to become and remain viable suppliers of electricity." *Whitehall Wind, LLC v. Mont. Pub. Serv. Comm'n.*, 2010 MT 2, ¶ 2, 355 Mont. 15, ¶ 2, 223 P.3d 907, 908-09 (*Whitehall Wind I*). Montana has implemented PURPA through statutory provisions directing the Commission to implement the law by setting rates and terms for QF sales. *See* M.C.A. Sections 69-3-601 to 69-3-604. In enacting PURPA, Congress recognized that utilities are "reluctant" to purchase from independent QFs. *Mississippi*, 456 U.S. at 750. Investor-owned utilities like NorthWestern have an economic disincentive to purchase any energy from independent suppliers (QF or otherwise) because doing so passes up an opportunity to rate base and earn a profit on that increment of capacity.

This power imbalance is legislatively protected by one of the most critical requirements of PURPA, the guarantee of non-discriminatory rates for QFs. *See* 16 U.S.C. § 824a-3(b)(2) (rates for purchases from QFs "shall not discriminate against qualifying cogenerators or qualifying small power producers"). FERC embedded the same requirement in its regulations, *see* 18 C.F.R. § 292.304(a), which this Commission has itself adopted.

NorthWestern's witnesses testify that QF power costs are outside its control, justifying exclusion of QF purchased power costs from any cost sharing mechanism. Lail Testimony p. 6:12-19. This is belied by the terms and conditions set by the Commission and heavily argued by NorthWestern, as well as those contractually set by NorthWestern in Power Purchase Agreements, which allow NorthWestern the ability to curtail production from the QF without compensation. The notion of compensating NorthWestern differently for perceived risk related to QF production ignores at least two key facts: first, the QF is only paid for production that it generates, protecting ratepayers from the very situation that benefits NorthWestern, which is payment for an unused asset; and second, the contractual agreements that NorthWestern enters into (PPAs) guarantee payment to NorthWestern of liquidated damages in the event the QF does not perform as obligated under the contract. NorthWestern's ratepayers do not receive these same protections from NorthWestern. If the Commission entertains NorthWestern's request to provide additional protection to NorthWestern through this tracking process for incorporating QF production into its portfolio, then the Commission should provide a concomitant mechanism of assurance to QFs that on the front end, NorthWestern will be obligated to negotiate in good faith to execute PPAs with up front, transparent information and in a timely manner.

NorthWestern testified that approximately 40% of its retail load requirements are supplied by contracted resources and market purchases. Lail Testimony p. 8:8-9. This estimate should be viewed considering the adjustments made by the Commission in response to NorthWestern's forecasted hours when its owned or contracted assets are sufficient to meet its customers' needs in setting compensation for QF purchases. Whether the information the Commission relied on in setting Long 1 adjustments for QFs, and the inclusion of a risk factor adjustment based on actual market prices diverging from projected prices, is consistent with the testimony provided in this docket must be analyzed further to ensure that the Commission has not discriminated against QFs in violation of PURPA and Montana law. In addition, the Commission must either nullify the Long 1 adjustment as it has currently applied it to QFs, or apply it immediately in this docket to all NorthWestern's generation assets. To do otherwise is to implement a *de facto* discriminatory rate structure by the time delay inherent in imposing this adjustment on QFs without simultaneously applying it to NorthWestern. The same holds true for adjustments related to a carbon adder, which should be applied equally to QFs and to NorthWestern's own generation.

The Commission should require NorthWestern to file information in the manner set out in Administrative Rules of Montana 38.5.101 through 38.5.195. See *Qwest v. Department of Public Service Regulation*, 174 P.3d 496 ¶ 37, 2007 MT 350 ¶ 37, 340 Mont. 309 ¶ 37. Absent a full and complete analysis of NorthWestern's costs and revenue requirements that requires the information attainable through these Administrative Rules, the Commission cannot lawfully use a methodology other than the one it used in the last major acquisition of resources, the Hydro assets, to determine NorthWestern's avoided costs for determining compensation to QFs. WINData requests the Commission eliminate reductions to QFs that it has implemented for QFs only, and not for NorthWestern, unless and until these reductions are in fact applied to NorthWestern. The Commission indicated that the availability of any tracker mechanism for NWE should be contingent upon NWE filing a comprehensive electric supply revenue requirements case that contains a proposal for a longer-term cost tracker by September 30, 2017. July 7, 2017 NCA p. 1. The Commission should stand by that statement and eliminate any cost recovery for NorthWestern until the Commission can take a comprehensive look at NorthWestern's supply revenue requirements.

Regardless of the process the Commission elects in this docket, the Commission must immediately apply the Long 1 and carbon delay reductions to NorthWestern's assets in the same way it has applied this methodology to QFs. The Commission agreed to implement a true-up approach in its Interim Order 7549 ¶¶ 16–18 (Jun. 27, 2017) where it agreed with MCC's comments to implement policy changes effective immediately subject to a true-up in a later final order. See July 7, 2017 NCA p. 3-4, quoting Interim Order 7549 ¶¶ 16–18 (Jun. 27, 2017). The same approach should be adopted with respect to implementation of the carbon and Long 1 adjustments imposed on QFs by the Commission: NorthWestern should be required to reduce its rates by immediately suspending the calculation of any carbon adder and by imposing the Long 1 adjustment applied to QFs. In the event these reductions are not included in a final rate methodology adopted through a contested case proceeding then the change in methodology can be captured in a true-up effectuated in a final decision. The methodology used to develop rates for NorthWestern's assets must be applied to determine the avoided cost rate for compensation to QFs, and the delayed carbon adder and Long 1 reduction must be immediately removed from QF calculations if they remain available to NorthWestern, or imposed on NorthWestern's rates if they remain imposed on QFs calculated rates.

Given the scope of information that is to be addressed, WINData reserves the option to comment further as discovery and testimony proceed in this docket.

II. Specific Issues

The Commission specifically invites comment on whether to exempt or add certain pieces of information; and whether this information is required at all [NCA para. 19-20]. WINData reserves the right to comment further on these specific issues, pending a contested case schedule and the opportunity to analyze further the filing submitted by NorthWestern on July 14, 2017. At this time, WINData has not determined the level of response appropriate or necessary with respect to the extent of information that should be filed; however, the Commission should require NorthWestern to file information in the manner set out in Administrative Rules of Montana 38.5.101 through 38.5.195. See *Qwest v. Department of Public Service Regulation*, 174 P.3d 496 ¶ 37, 2007 MT 350 ¶ 37, 340 Mont. 309 ¶ 37. WINData reserves the right to develop its position further as this docket continues and in response to information submitted in this proceeding. WINData has not determined what level of involvement is appropriate at this time and requests the right to participate as WINData deems appropriate.

III. Summary

Until such time as the Commission issues a final ruling after a complete rate analysis, and to comply with federal and state law, WINData requests the Commission enter an immediate interim order effective, within thirty days, applying the same methodology to QFs as applied to NorthWestern's most recently acquired asset (the Hydros) to set QF rates; or, alternatively, adjusting NorthWestern's rates downward effective immediately to reflect the Long 1 adjustment, delayed onset of the carbon adder, and short term contracts, in the same way the Commission has applied these adjustments to QFs. An immediate interim order implementing one of these two options is the only mechanism that will meaningfully effectuate the equity the Commission is required to implement to comply with federal and state law. Absent an interim order, effective within thirty days, the Commission is discriminating against QFs and renewable energy in Montana and guaranteeing the monopoly utility rates nearly double those the Commission has put in place for QFs. Continuance of a segregated rate structure violates federal and state law, raising due process, equal protection and other legal issues.

Dated: July 21, 2017

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CERTIFICATE OF SERVICE

I certify that on the 21st day of July 2017, a true and accurate copy of the foregoing was electronically filed with the Montana Public Service Commission and duly served upon the parties listed below by depositing the same, postage prepaid, in the Unites States mail to:

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