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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF The Complaint By Oak Tree Energy, LLC Against NorthWestern Energy For Refusing To Enter Into A Purchase Power Agreement	**DOCKET NO. EL11-006** **OAK TREE ENERGY LLC'S ANSWER TO NWE'S APPLICATION FOR RECONSIDERATION**

OAK TREE ENERGY, LLC'S ANSWER TO NWE'S APPLICATION FOR RECONSIDERATION

I. INTRODUCTION

Oak Tree Energy, LLC (Oak Tree), by and through counsel and pursuant to ARSD 20:10:01:30.02 hereby submits this *Answer to NorthWestern Energy's Application for Reconsideration of Findings and Conclusions in Final Order Issued on February 21, 2013* filed March 20, 2013. Oak Tree would like to point out that NorthWestern Energy (NWE) has been fighting for almost two years to prevent Oak Tree's relatively small 19.5 MW project from being the first Qualifying Facility (QF) in South Dakota. Oak Tree has expended considerable resources in attempting to enforce its rights under the Public Utility Regulatory

Policies Act of 1978, 16 U.S.C. § 824a3 (PURPA). NWE knows that the current version of the production tax credit (PTC) requires Oak Tree to be under construction by the end of 2013. NWE also knows that delay is the enemy of Oak Tree's ability to utilize the PTC. The South Dakota Public Utilities Commission (Commission) should deny NWE's Application for Reconsideration as: (1) it is without merit and (2) it is based on arguments that could and should have been raised during the two evidentiary hearings in this case.

As will be discussed below in Section III.A., *infra*, motions for reconsideration are not to be used to reargue evidence that could have been raised during the pendency of a matter. Typically, the lack of new evidence or new legal argument is fatal to such a motion. And this principle is of added importance when one considers the length of this proceeding, the fact that there were two separate evidentiary hearings, and that every party had every conceivable opportunity to raise whatever legal argument and evidence it wished to raise during these hearings. Now, NWE would like a second or even a third bite at the apple by rearguing the Commission's holding that Oak Tree is entitled to a 20 percent capacity contribution and that Commission Staff Witness Brian Rounds erred by using a 2.25 percent load growth factor in his spreadsheet model calculating Oak Tree's avoided costs.

The Commission considered numerous evidentiary arguments, including those offered by Oak Tree expert J. Richard Lauckhart. Mr. Lauckhart noted that there was a range of possible avoided costs for NWE in the Additional Testimony he submitted on Oak Tree's behalf on November 21, 2012. *See* Oak Tree Exhibit 9, p. 15. Mr. Lauckhart noted in his testimony that he considered ten cases, utilizing resource acquisitions planned for by NWE in the relevant time period of February 25, 2011, and a variety of cases from both the Energy Information Administration's Annual Energy Outlook (EIA/AEO) 2010 forecasts or the 2011 EIA/AEO early release. Mr. Lauckhart prepared a table of those ten cases, which indicated a range of avoided costs for NWE between $56 per megawatt hour (MWH) and $ 89/MWH. *Id.* Mr. Lauckhart testified that he believed an average of those estimates was reasonable, and concluded that the average was approximately $69/MWH. *Id.* at p. 16.

After reviewing the Additional Testimony of NWE and Commission Staff, Mr. Lauckhart submitted prefiled responsive testimony on the proper calculation of avoided costs on November 28, 2012. *See* Oak Tree Exhibit 10. Mr. Lauckhart testified that NWE's new

approach to calculating avoided costs (which differed from its prior approach in its direct testimony), was seriously flawed. Mr. Lauckhart corrected what he perceived to be NWE's erroneous assumptions and produced an avoided cost calculation of $59/MWH for 20 years.

Mr. Lauckhart also made corrections to Commission Staff witness Brian Rounds' spreadsheet, which was submitted just prior to the second technical hearing in this matter. Using those corrections, Mr. Lauckhart developed a 20-year avoided cost for Oak Tree of $60.38/MWH, assuming the Oak Tree project commences production in 2013. If the Oak Tree project does not commence generation until 2014, Mr. Lauckhart's adjustments to Mr. Rounds' spreadsheet produced a 20-year avoided cost for Oak Tree of $62.08/MWH. In short, Mr. Lauckhart concluded that that these corrected avoided cost calculations by NWE and Staff produced avoided costs that fell within the range of Mr. Lauckhart's prior avoided cost calculations, albeit on the low side of the range.

The Commission has now sat through two full evidentiary hearings on these matters including a consideration of a range of avoided cost forecasts. Forecasts are inherently flawed in that they require a prediction of the future. No forecast, and no avoided cost projection, will ever be perfect. However, the Commission's final order in EL11-006 made a considered and reasoned decision when it ordered avoided cost calculation for Oak Tree of $53.31/MWH if production begins in 2013 and $55.34/MWH if production begins in 2014. The Commission considered a considerable range of evidence and argument from all parties and the Commission adopted a reasonable avoided cost for Oak Tree over a 20-year term, and that was all the Commission was required to do. There is no necessary formula for creating an avoided cost calculation. No avoided cost determination is ever perfect. The question is, was the Commission's determination reasonable and does it comport with the evidence in the proceeding? From Oak Tree's perspective, the answer is "yes" on both counts. Perhaps a test of that reasonableness is that the avoided cost for Oak Tree is lower than the price paid by NWE for the similar Titan project, and less than what NWE is proposing to pay for power from the modified Big Stone Coal Plant. There is no need for the Commission to reconsider its final order in EL11-006.

II. EXECUTIVE SUMMARY

Motions for reconsideration are not to be used for rearguing evidence and legal

positions that could have been raised during the pendency of the hearing. Typically, a failure to offer good reasons for failing to raise the evidence or argument during the trial is construed as fatal to a motion for reconsideration. *See e.g., Magnus Elecs., Inc. v. Masco Corp. of Ind.*, 871 F.2d 626, 629 (7th Cir.1989). Failing to present new information not previously considered by the court is "a controlling factor against granting relief." *Sanders v. Clemco Indus.*, 862 F.2d 161, 170 (8th Cir.1988).[1]

NWE's argument that the Commission's "levelized" avoided cost calculations do not include a discount factor is misplaced and a failure to use a discount factor is not error on the Commission's part. There is nothing in PURPA or FERC's regulations that prohibits the Commission from using a simple arithmetic mean to average the stream of avoided cost payments over time. There is nothing requiring the use of discount rates or the use of net present value figures in PURPA or anywhere else. Oak Tree does not know what the Commission intended, but it appears that perhaps the Commission intended that Oak Tree receive the avoided costs it calculated after considering all the voluminous evidence in this Docket. The Commission does not need to reconsider the use of a simple average of the stream of avoided cost payments because there is nothing in PURPA or FERC's regulations that prohibit the use of a simple average. This is one way to accomplish a levelized payment schedule and there is nothing remotely improper about levelizing payments in this fashion. Also, NWE had every opportunity at hearing to question Mr. Rounds regarding the manner in which he levelized payments and did not do so.

NWE's arguments on the capacity contribution for Oak Tree are based on new evidence not previously included in the record. There is no witness to sponsor this testimony, and it has not been subject to discovery or cross-examination. It is, therefore, not part of the evidentiary record in EL11-006 and may not be relied upon by the Commission. Even if the Commission could rely on this information, an 8 percent capacity contribution is plainly unreasonable based on the record regarding the historical capacity contributions of Titan (20

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[1] These are federal cases construing the standards for reconsideration, post judgment, in light of Fed. R. Civ. P. 59 and 60. Because the policy considerations for the Commission in encouraging a party to bring its evidence and arguments to bear during a hearing and prior to final order rather than collaterally attacking the order through reconsideration are similar to those facing a district court judge following a final order, Oak Tree believes the rationale of these cases is applicable to motions for reconsideration of Commission orders. Without such a rule encouraging finality, there would be theoretically no end to the rehashing by parties of evidence and arguments in complex Commission cases, such as in the *Oak Tree* case.

percent in 2010, 30 percent in 2011, and 14.5 percent in 2012). In addition, the Midwest Independent System Operation (MISO) studies from the region that Oak Tree will be operating within indicates a much higher capacity contribution (15 percent) and even an average of the *entire* MISO footprint was not 8 percent – it was 12.9 percent. Finally, the 2008 MRO study relied upon by Mr. Lauckhart indicates it was based on actual data from actual wind farms in the MRO footprint, and this is what Mr. Lauckhart relied upon. Although Mr. Lauckhart stood ready to fully respond to where he obtained the 20 percent capacity contribution number from the Midwest Reliability Organization (MRO), NWE never asked Mr. Lauckhart for the document or questioned him about it at hearing. NWE could and probably should have introduced the documents at hearing that it now attempts to introduce through reconsideration. This is not "new" evidence – according to NWE it has existed since prior to February 25, 2011. Since NWE could have raised these arguments during the pendency of this matter, its motion for reconsideration should be denied.

Third, NWE is arguing that its load forecast should be reduced to the peak load number of 1 percent per year instead of the historical 2.25 percent average load growth figure NWE used in its load growth study for this proceeding. However, then-Chairman Nelson specifically asked both Staff and NWE about whether the 1 percent peak load requirement or the 2.25 percent historical load average was the appropriate measure of load growth. As will be discussed below, both Mr. Green and Mr. Rounds appeared to answer that 2.25 percent was the appropriate load growth number to use in calculating avoided costs utilizing the hybrid methodology. NWE now appears to want to change the numbers it created in an effort to reduce the avoided cost to be paid to Oak Tree. There is no reason for the Commission to reconsider this issue.

III. ANSWER

A. The Standard for Reconsideration of Commission Action

There is a dearth of authority in South Dakota for what constitutes the appropriate test for whether a motion for reconsideration is proper under ARSD 20:10:01:30.01. However, the federal courts have developed a test for motions for reconsideration under Fed. R. Civ. P. 59 (construing motions for reconsideration as motions to alter or amend) or Fed. R.Civ. P. 60

(construing motions for reconsiderations as motions for relief from judgment). This test serves the public policy goals of requiring parties to bring forward their best evidence and legal argument prior to the district court's final order or judgment. By reason and logic, there is no good reason these public policy considerations would not apply to motions for reconsideration brought pursuant to ARSD. 20:10:01:30.01.

Federal courts view motions for reconsideration as limited mechanisms: "Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence." *Hagerman v. Yukon Energy Corp.*, 839 F.2d 407, 414 (8th Cir.1988) (quotations and citations omitted). Motions for reconsideration are not to be used to "introduce new evidence that could have been adduced during pendency" of the motion at issue. *Id.* "A motion to reconsider is frivolous if it contains no new evidence or arguments of law explaining why the [judge] should change an original order." *Magnus Elecs., Inc. v. Masco Corp. of Ind.*, 871 F.2d 626, 629 (7th Cir.1989). Failing to present new information not previously considered by the court is "a controlling factor against granting relief." *Sanders v. Clemco Indus.*, 862 F.2d 161, 170 (8th Cir.1988).

Here, NWE has not raised new evidence it could not have raised at hearing, nor has it offered new legal argument in its motion for reconsideration. NWE has not carried its burden under its motion for reconsideration on the issue of whether Oak Tree witness Lauckhart properly calculated the capacity contribution to NWE's peak requirements at 20 percent. NWE knew of Mr. Lauckhart's testimony on this score since December of 2011, as NWE's motion for reconsideration admits. NWE could have argued that Mr. Lauckhart's calculation was inconsistent with MRO's actual determinations[2] during either of the prior evidentiary hearings in this case and failed to do so. The failure to raise new evidence, which could not have been introduced into the record during the pendency of this case prior to the Commission's final order, is fatal to NWE's motion for reconsideration on the 20 percent capacity contribution issue.

NWE also fails the test with respect to the issue of whether Commission Staff Witness Brian Rounds' spreadsheet model implementing the hybrid methodology improperly applied a

[2] As discussed below in Section III.C., below, Mr. Lauckhart's testimony was supported by substantial evidence in the record itself.

2.25 percent average load growth rate to his avoided cost calculation spreadsheet. Mr. Rounds had originally utilized a 1 percent peak load growth calculation, but conceded that he had been mistaken. Thus, NWE simply is rearguing the Commission's decision because it did not like the result. This is not a proper basis for a motion for reconsideration. NWE's motion for reconsideration on this issue must also be denied.

B. There is No Requirement In PURPA that the Commission Utilize a Discount Rate in Order to Calculate NWE's Avoided Costs.

NWE argues that the Commission erred because it used a "simple average of each series rather than the net present value. " *NWE Application for Reconsideration*, p. 3. NWE argues that "[b]y failing to levelize the streams on a net present value basis, the Commission has adopted a rate that ignores the time value of money, requires NorthWestern's customers to provide an interest-free loan to Oak Tree, and violates PURPA's requirement of customer indifference." *Id.* NWE's argument is without merit.

First, there is nothing in PURPA or FERC's regulations which require the use of a discount rate. The Commission utilized a rate in the lower end of the possible avoided costs for NWE and averaged them, but that does not mean it was an error to do so, or that ratepayers are subsidizing Oak Tree. If, as Oak Tree suspects, Oak Tree will be paid something less than NWE's *actual* avoided costs over the duration of its contract with NWE, Oak Tree may actually be subsidizing NWE's ratepayers. Ultimately, the creation of an avoided cost is necessarily a predictive exercise, and is predicated on a number of assumptions and estimates of future events. There is no certainty or magic in any of these numbers. There is simply no way to tell at present who is being subsidized, or whether the practice of using an arithmetic mean of the revenue streams is subsidizing Oak Tree or NWE's ratepayers.

Second, NWE argues that FERC Order 69 precludes the use of simple averages in the avoided cost rate, but FERC Order 69 only states: "So long as the total payment over the duration of the contract term does not exceed the estimated avoided costs, nothing in these rules would prohibit a State regulatory authority or a non-regulated electric utility from approving such an arrangement." 45 Fed. Reg. 12,214, 12,224. There is nothing in this passage that indicates that the use of an arithmetic mean over time to produce a levelized rate

is improper. Nor is there any authority anywhere that prohibits a simple arithmetic averaging of avoided cost payments over time. Since the Commission did not violate PURPA, and since there is nothing improper about levelizing payments utilizing an average of annual avoided cost payments, the Commission does not need to reconsider this decision.

Finally, NWE had every opportunity to contest the manner in which Commission Staff witness Mr. Rounds levelized the payments in his model. NWE did not do so. NWE is simply attempting to re-litigate something it had every opportunity to litigate at hearing. NWE has no justification for making a belated collateral attack on the Commission's Order. The Commission should decline NWE's invitation to reconsider the manner in which rates were levelized by the Commission.

C. The Commission Properly Decided that Oak Tree's Capacity Contribution was 20 Percent

NWE argues that Oak Tree witness Mr. Lauckhart misstated the MRO's capacity contribution percentage for wind energy projects, and has done so since the inception of this case. *NWE Application for Reconsideration*, p. 5. NWE argues: "There is no credible evidence that the MRO accredited wind facilities at 20% of their rated capacity on February 25, 2011; in fact, beginning in 2010, MRO credited wind facilities with 8% of their rated capacity for summer and 20% of their rated capacity for winter." *Id.* NWE bases this conclusion on an MRO Long Term Reliability Assessment and Summer Assessment, which it appended to its Application for Reconsideration as Attachment 1. NWE also based this on the North American Reliability Council's (NERC) 2010 Long-Term Reliability Assessment, which NWE appends to its Motion as Attachment 2.

First, it should be noted that both these documents were available to NWE during the pendency of this case, and thus their use in a motion for reconsideration is inappropriate as discussed above in Section III.A., *supra.* But they are not presently part of the evidentiary record in this case, despite the fact they were undeniably available to NWE during the pendency of this proceeding. For this reason alone, NWE's Application for Reconsideration should be denied.

Second, Mr. Lauckhart based his conclusion that wind projects in the MRO footprint would receive a 20 percent capacity credit on a 2008 MRO document entitled "Midwest

Reliability Organization Model Building Manual Addendum - Wind Generation." Although Oak Tree is not attempting to introduce this document at this late date into the record, it is attaching this document as Attachment 1 to this brief for the purposes of this reconsideration motion only. MRO based this 20 percent capacity contribution on historical wind data. *See* Attachment 1, p. 8.[3]

Third, Mr. Lauckhart also based his 20 percent capacity contribution for Oak Tree on the capacity contribution that NWE calculated for Titan in the first two years: "It would be simpler if you could just say and my recommendation is I think 20 percent is reasonable average to expect for this plant over the life of it. Why don't we just say 20 percent? I mean, Titan got 20 percent the first year, 33 percent the second year. You can't say that 20 percent is unreasonable based on what we know about Titan." EL11-006 Dec. 2012 Hr'g Tr. 46:22, 47:4.

Additionally, Mr. Lauckhart based his judgment on the MISO's assessment of the average capacity contribution of the geographic subregion where Oak Tree is located. EL11-006, Dec. 2012 Hr'g Tr. 64:23-25. This MISO assessment concluded that the subregion that included Oak Tree would have roughly a 15 percent capacity contribution to meeting utility peak requirements. Although this MISO assessment was not available as of February 25, 2011, it reinforced Mr. Lauckhart's conclusion that 20 percent was a reasonable figure.

Finally, there is reason to doubt the MRO 8 percent capacity contribution calculation. As mentioned previously, the MRO 2008 study used historical data to conclude that variable generation contributes 20 percent during the summer months, and 35 percent in the winter months. NWE's MRO document, which is the draft minutes of a meeting, provides no reasoned explanation for a departure to 8 percent in the summer or 20 percent in the other months. Additionally, since the MRO 2010 document appears to be a draft document, there is no evidence it was approved by MRO or available to Oak Tree or any party prior to February 25, 2011.

Regardless, this is evidence that NWE had every opportunity to provide *during the hearing*. NWE argues that its' "representatives' testimony focused primarily on MISO

[3] The table indicates that it is 20 percent for summer months, but 35 percent for the spring, fall, and winter months.

methods, they also testified as to MRO-MAPP determinations." *NWE Application for Reconsideration*, p. 6. However, NWE provides no citation to the record of the hearings in this matter regarding that testimony. During the December 2012 hearing, there was no obvious discussion by NWE's witnesses regarding these issues. Other than statements by Mr. Lauckhart regarding MRO, and some statements regarding Mr. Rounds' spreadsheet model, there is no discussion by NWE of MRO or MAPP capacity contribution determinations in the December 2012 hearing transcript in this case.

Ultimately, the Commission's determination of a 20 percent capacity contribution was not an unreasonable decision. The 20 percent figure is consistent with historical analysis done by MRO that was clearly available to all parties *prior to February 25, 2011*, and is consistent with what is known about Titan and the MISO subregion in which Oak Tree will operate.

There is no reason for the Commission to reconsider the 20 percent capacity contribution issue. Oak Tree did not agree with the use of NWE's $36/KW-year capacity cost calculation levelized to $54.54/kw-year over 20 years, but Oak Tree was willing to accept that capacity cost because, overall, the Commission's order was reasonable. And the final order in this docket does adopt a reasonable avoided cost and it is within the range of avoided costs that the Commission considered. If NWE wished to challenge Mr. Lauckhart's assertion that MRO was using a 20 percent capacity contribution for wind projects in the MRO footprint, NWE should have raised that argument during either of the evidentiary hearings in this case or at some point prior to the final order. Mr. Lauckhart's position was consistent throughout this case, and NWE is simply attempting to take another bite at the capacity payment apple. NWE should not be permitted at this late stage of this proceeding to launch such a collateral attack on this portion of the final order in the form of a motion for reconsideration. NWE's motion for reconsideration should be denied.

D. The Commission Properly Used a 2.25 Load Growth Rate In the Hybrid Model To Determine Oak Tree's Avoided Cost

As stated previously, although NWE argues now that a 2.25 percent average load growth rate was improperly applied to its load calculations and that the Commission should instead have utilized a 1 percent peak growth rate, it is plain that these issues were addressed at hearing and NWE is merely rearguing its case in its Application for Reconsideration.

NWE offers no new evidence or new legal authority or even a new legal argument as to why the Commission erred. Instead, NWE essentially argues that it disagrees with the Commission's use of 2.25 percent. The source of this disagreement is rather strange since the following colloquy took place between then-Chairman Nelson and NWE witness Green during the December 2012 hearing:

> CHAIRMAN NELSON: Mr. Green, in your November 21testimony, bottom of page 2, where we're talking about load growth, you indicate that the historical load growth, 2.25 percent -- and that's what you are projecting for the next 20 years; correct?
>
> THE WITNESS: That's correct.
>
> CHAIRMAN NELSON: Have you reviewed the exhibit attached to Mr. Rounds' November 21 testimony, Exhibit BPR 3 in which he talks about projected load growth?
>
> THE WITNESS: I have looked at it, but I don't recall the specifics on that.
>
> CHAIRMAN NELSON: Well, let me just ask the question if you've looked at it. He's projecting a load growth of .89 percent in the first I think 10 years and then shifting to I think .78 percent. Can you explain to me why your projection is more accurate than what Mr. Rounds is projecting?
>
> THE WITNESS: Other than the fact that that's what it's been doing the last 10 years, I have no proof of anything. His number almost appears to be the level of escalation we would expect for our peak annual demand, which really only reflects year-to-year growth of our weather sensitive load and not the base load on our customer system. About 35 to 40 percent of our summer load is weather sensitive. We don't get a hot summer, we don't see that peak load. And so that peak number doesn't grow nearly as fast as the energy growth does. Energy side, of course, reflects refrigerators and those kinds of things. Won't depend on ambient temperature for operation. That's the only thing I can think of that might explain that.

EL11-006, Dec. 2012 Hr'g Tr. 91:9-92:15.

In other words, it appeared to then-Chairman Nelson that NWE believed its historical 2.25 percent average load growth was the proper factor to use in escalating NWE's projected

load growth.   In order to confirm that 2.25 percent was the proper escalator, Chairman Nelson then questioned Commission Staff witness Rounds on the same subject matter:

> CHAIRMAN NELSON: Let's talk about your projected load growth of 89 percent. NorthWestern's talking about load growth at 2.25 percent. Significant difference there. Why do you disagree with NorthWestern's own projection?
>
> THE WITNESS: Actually I don't think that we do disagree because there's two different types of load growth we're talking about. We're talking about growth in energy demand and growth in peak demand. And their biennial plan seems to assume a growth of around 1 percent in peak. And he's talking about energy demand growth of 2 and a quarter percent. I don't speculate as to what -- well, I guess my model ties it to the peak demand growth, but I guess I'm admitting that that is an error with the model.

EL11-006, Dec. 2012 Hr'g Tr. 311:22 - 312:10.

This is the only place in the transcript from the December 2012 hearing where the merits of using a 2.25 energy load growth versus a 1 percent peak load growth was discussed. Then-Chairman Nelson first asked NWE witness Green about why the numbers differed between NWE and staff in load growth factors, and Green explained that 2.25 percent was for energy growth.   NWE was in fact advocating utilizing 2.25 percent load growth escalator during the December hearing, or so it would appear from the transcript. Mr. Rounds was asked the same question by then-Chairman Nelson, and Mr. Rounds appeared to indicate that he thought his failure to use energy demand load growth as opposed to peak demand load growth was an error in his model. Thus, then-Chairman Nelson had every reason to believe he was on very safe ground using 2.25 percent as the energy load growth escalator based both on Mr. Green's testimony and on Mr. Rounds' testimony. There was no other testimony or discussion of this issue of energy growth versus peak growth at the hearing.

NWE now belatedly argues that a 1 percent escalator should have been used instead of

2.25 percent. There was no such argument during the hearing, and there is no new evidence or legal argument that supports NWE's contentions. The evidence over proper load growth escalators was fully litigated, and NWE simply does not like the outcome. That is not a proper basis for a motion for reconsideration. The Commission should reject NWE's Application for Reconsideration on the 2.25 load growth escalator issue.

IV. CONCLUSION

Oak Tree does not believe that NWE's Application for Reconsideration has merit. The Commission did not err by using a simple arithmetic average of the avoided cost annual payments in their table. There is nothing in the law that requires the use of a discount rate. The 20 percent capacity contribution is well founded in the record, and NWE's arguments about what MRO did or might have done are arguments that NWE should have raised at hearing. A motion for reconsideration is not a mechanism for rehashing arguments based on evidence that was available during the pendency of the hearing. NWE simply failed to raise this argument before now, and there is no reason for the Commission to reward NWE for making a collateral attack on its order well after the close of the evidentiary record. The Commission's use of 2.25 percent load growth escalator is well founded on evidence raised at the hearing. NWE did not even argue against this position at hearing. Then-Chairman Nelson raised it for purposes of doing his own avoided cost calculations, and he reasonably believed that both NWE and Commission Staff believed 2.25 percent was the appropriate load growth escalator. NWE's Application for Reconsideration is without merit.

Respectfully submitted this 5th day of April, 2013.

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