

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Request for a Declaratory Ruling Approving a QF Power Purchase Agreement	EL13-____  Petition for Declaratory Ruling
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Pursuant to ARSD 20:10:01:34, NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern”) petitions the Commission to issue a declaratory ruling that the price, terms, and conditions of the Power Purchase and Sale Agreement (“PPA”) between B & H Wind, LLC, as Seller (“B & H”) and NorthWestern as Buyer (attached as confidential Exhibit 2) comply with the Public Utility Regulatory Policies Act of 1978, as amended (“PURPA”) and that costs NorthWestern will incur pursuant to the PPA are prudent, efficient, and economical and are reasonable and necessary. NorthWestern requests a ruling be issued as soon as possible, so B & H may commence construction in a timely manner.

In support of its petition, NorthWestern Energy submits the following information required by ARSD 20:10:01:34.

**1. Statutes in question**

This matter involves both federal and state statutes. The federal statute at issue is 16 U.S.C. § 824a-3. In pertinent part, 16 U.S.C. § 824a-3 provides:

(a) Cogeneration and small power production rules

Not later than 1 year after November 9, 1978, the Commission shall prescribe, and from time to time thereafter revise, such rules as it determines necessary to encourage cogeneration and small power production, and to encourage geothermal small power production facilities of not more than 80 megawatts capacity, which rules require electric utilities to offer to -

...

- (2) purchase electric energy from such facilities.

Such rules shall be prescribed, after consultation with representatives of Federal and State regulatory agencies having ratemaking authority for electric utilities, and after public notice and a reasonable opportunity for interested persons (including State and Federal agencies) to submit oral as well as written data, views, and arguments. Such rules shall include provisions respecting minimum reliability of qualifying cogeneration facilities and qualifying small power production facilities (including reliability of such facilities during emergencies) and rules respecting reliability of electric energy service to be available to such facilities from electric utilities during emergencies. Such rules may not authorize a qualifying cogeneration facility or qualifying small power production facility to make any sale for purposes other than resale.

- (b) Rates for purchases by electric utilities

The rules prescribed under subsection (a) of this section shall insure that, in requiring any electric utility to offer to purchase electric energy from any qualifying cogeneration facility or qualifying small power production facility, the rates for such purchase—

- (1) shall be just and reasonable to the electric consumers of the electric utility and in the public interest, and
- (2) shall not discriminate against qualifying cogenerators or qualifying small power producers.

No such rule prescribed under subsection (a) of this section shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy.

...

- (c) “Incremental cost of alternative electric energy” defined

For purposes of this section, the term “incremental cost of alternative electric energy” means, with respect to electric energy purchased from a qualifying cogenerator or qualifying small power producer, the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source. . . .

The South Dakota statute at issue is SDCL § 49-34A-8.4. SDCL § 49-34A-8.4 provides:

**Burden on public utility to establish criteria for determination of rates.** The burden is on the public utility to establish that the underlying costs of any rates, charges, or automatic adjustment charges filed under this chapter are prudent, efficient, and economical and are reasonable and necessary to provide service to the public utility's customers in this state.

**2. Facts and circumstances which give rise to the issue to be answered by the Commission**

Under normal regulatory circumstances, a utility exercises its business judgment to acquire resources to meet its public service obligations. Once a utility acquires resources, the utility is required to show that its decision and judgment were prudent and that the costs incurred were reasonable and necessary. However, PURPA supplants a utility's business judgment. PURPA requires NorthWestern to purchase energy and capacity from Qualifying Facilities ("QFs") at its avoided cost without regard to reasonableness or necessity.

The Affidavit of Bleau J. LaFave ("*LaFave Aff.*"), attached as Exhibit 1, describes NorthWestern's portfolio and establishes that NorthWestern, but for the PURPA requirement, would not, at this time, be agreeing to a long-term purchase of capacity and energy from an intermittent resource; describes NorthWestern's negotiations with B & H; describes how NorthWestern estimated its avoided costs for capacity and energy for the 2014 to 2034 period; provides the estimated avoided costs for energy and capacity, both on annual and levelized bases; and generally describes the PPA, highlighting specific provisions that allocate risk and protect NorthWestern's customers. The *LaFave Aff.* demonstrates that the price, terms, and conditions of the PPA are consistent with PURPA and that NorthWestern took reasonable steps, subject to the limitations of PURPA, to protect NorthWestern's customers.

NorthWestern and B & H entered into a PPA on June 28, 2013, under which NorthWestern will purchase the energy and capacity from a 41 MW wind generator QF that B & H will build. *LaFave Aff.*, ¶ 10. NorthWestern will pay B & H an amount that NorthWestern estimates is equal to its avoided cost. *LaFave Aff.*, ¶¶ 8-10. The PPA contains provisions that protect NorthWestern's customers including, but not limited to a guaranteed commercial operation date, curtailment rights, required Commission approval, annual net energy delivery requirements, a mechanical availability guaranty, allocation of future variable energy ancillary services costs directly attributable to the generator, B & H provided forecasting, and adequate security provisions. *LaFave Aff.*, ¶ 11.

### **3. Analysis**

As with all power purchase arrangements, NorthWestern intends to collect the costs associated with the PPA in its Fuel Adjustment Clause. The underlying costs included in the Fuel Adjustment Clause must be prudent, reasonable, and necessary. SDCL § 49-34A-8.4.

16 U.S.C § 824a-3 requires NorthWestern to purchase the energy and capacity from QFs. NorthWestern may not refuse to purchase such energy and capacity based on its business judgement. NorthWestern must pay its avoided costs but may not be required to pay more than its avoided cost. The PPA establishes a price that reflects NorthWestern's best estimate of the costs that it can avoid by purchasing the output from the QF.

Although NorthWestern would not purchase additional intermittent resources based on its current load resources, because NorthWestern must purchase the output of a QF as required by PURPA, it is prudent for NorthWestern to purchase the Project's output under the PPA. Through its negotiations with B & H, NorthWestern has taken reasonable and necessary steps to protect its customers from unforeseen possibilities associated with the PPA. Taken as a whole, as

demonstrated by the *LaFave Aff.*, NorthWestern's costs incurred under the PPA will be prudent, efficient, economical, and reasonable and necessary to provide service to NorthWestern's customers in South Dakota.

**4. Specific declaratory ruling requested**

NorthWestern Energy respectfully requests that the Commission issue a declaratory ruling that the price, terms, and conditions of the PPA comply with PURPA and the costs NorthWestern will incur pursuant to the PPA are prudent, efficient, and economical and are reasonable and necessary.

Dated at Sioux Falls, South Dakota, this 15<sup>th</sup> day of July 2013.

Respectfully submitted,

**NorthWestern Corporation d/b/a  
NorthWestern Energy**



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