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

IN THE MATTER OF the Petition of Crazy) REGULATORY DIVISION
Mountain Wind, LLC for the Commission to Set)
Certain Terms and Conditions for a Qualifying) DOCKET NO. D2016.7.56
Small Power Production Facility Contract between)
NorthWestern Energy and Crazy Mountain Wind, LLC)

**NorthWestern Energy's Post-Hearing Brief and
Motion to Strike Exhibit CMW-3**

NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern”) hereby submits this *Post-Hearing Brief* (“Brief”) in the above-captioned docket. Based on the evidence admitted in this docket and the controlling law, the Montana Public Service Commission (“Commission”) should find that (1) Crazy Mountain Wind, LLC (“Crazy Mountain”) did not established a legally enforceable obligation (“LEO”) and (2) the proper avoided cost rate that is consistent with the Public Utility Regulatory Policies Act of 1978 (“PURPA”) is \$38.79¹ per megawatt hour (“MWh”). To set an avoided cost rate above what NorthWestern proposes is unlawful as NorthWestern will over compensate Crazy Mountain for the energy it plans to sell to

¹ See footnote 5 *infra* for why this rate is different than the rate set forth in NorthWestern’s testimony filed in September 2016.

NorthWestern to the detriment of NorthWestern's customers. Additionally, NorthWestern moves the Commission to strike from evidence Exhibit CMW-3 and admit into evidence Exhibit CMW-5 as the contract the parties agreed to submit to the Commission for approval.

In this Brief, NorthWestern does not again respond to Crazy Mountain's motion to strike portions of NorthWestern's testimony. During Crazy Mountain's closing statement, it again renewed its motion to strike. Tr., p. 259: 21-23. The Commission, however, had already denied its motion. Tr., p. 177: 7-11. The facts upon which Crazy Mountain relies in support of its renewed motion have not changed since the Commission first denied the motion. The Commission must again unequivocally reject Crazy Mountain's continued persistence to strike NorthWestern's testimony as it is not supported with facts or the law. *See* Tr., pp. 17: 2 – 27: 1 and 176: 14 – 177:6 as support for denial of the motion.

I. INTRODUCTION

Crazy Mountain is asking NorthWestern's customers to pay an extra \$73.1 million for energy. When it comes to qualify facility ("QF") matters, by law, this Commission is tasked with protection of utility customers. Customer indifference to the purchase of energy from a QF is imperative to compliance with PURPA. If customers pay more for QF energy than is required, customers are harmed. If the Commission approves a rate similar to the rate proposed by Crazy Mountain in this case, the result will be a mind-boggling Montana customer liability for Commission-mandated payments to a QF developer. Over the life of a 25-year contract, this amount could total millions of dollars. For example, if the rate is set at approximately \$50 per MWh as suggested by Crazy Mountain and the estimated production from Crazy Mountain is 261,000 hours per year, customers will pay \$326,250,000 for Crazy Mountain's energy. Under NorthWestern's proposal, customers will pay \$253,104,750 for that same energy. The

Commission must avoid this scenario at all cost. To set a rate that is approximately \$73.1 million higher than what NorthWestern would otherwise pay for energy results in substantial harm to customers lasting decades.

II. PROCEDURAL HISTORY

On July 20, 2016, Crazy Mountain filed a *Petition for an Order Setting Certain Terms and Conditions of a Contract between NorthWestern Energy and Crazy Mountain Wind LLC* (“Petition”) with the Commission. On July 21, 2016, the Commission issued a *Notice of Petition and Opportunity to Intervene* establishing August 22, 2016 as the date by which any interested person who is directly affected by the Petition must request intervention. By *Notice of Staff Action Granting Intervention*, issued on August 23, 2016, the Commission indicated that NorthWestern was “already a party to this docket” and granted intervention to the Montana Consumer Counsel (“MCC”).

Consistent with the Procedural Order issued in this docket, on September 22, 2016, NorthWestern filed testimony responding to the testimony that Crazy Mountain filed with its Petition, and provided its avoided cost calculation for the Crazy Mountain project. The MCC also filed testimony by the required deadline. The Commission issued a *Notice of Public Hearing* on October 18, 2016 setting the hearing in this matter to commence on November 9, 2016. As scheduled, the hearing commenced on November 9, 2016. NorthWestern submits this Brief in accordance with the briefing schedule established at the conclusion of the November 9 hearing.

III. ARGUMENT

In 1978, Congress passed PURPA. After the passage of PURPA, the Federal Energy Regulatory Commission (“FERC”) issued regulations that implemented the law. *See* 18 C.F.R. § 292. Notwithstanding the federal regulations, state regulatory authorities were given great

latitude to resolve PURPA disputes. *FERC v. Mississippi*, 456 U.S. 742, 751, 102 S.Ct. 2126, 2133 (1982). As such, in 1983, the Montana Legislature adopted statutes implementing PURPA and related FERC regulations, and the Commission thereafter adopted administrative rules governing PURPA matters.

FERC regulations set forth the criteria for establishing what rate a utility must pay a QF. *Id.* Specifically, 18 C.F.R. § 292.304(a) provides that “[r]ates for purchases shall: (i) [b]e just and reasonable to the electric consumer of the electric utility and in the public interest; and (ii) [n]ot discriminate against qualifying cogeneration and small power production facilities.” Additionally, if a QF establishes an LEO, it decides if the rate it is to be paid will be the utility’s avoided cost at the time the power is delivered or at the time the LEO was established. 18 C.F.R. § 292.304(d). If an LEO is not established, the rate paid to the QF must be the avoided cost of the utility based on current information. *Id.* PURPA requires an electric utility to purchase all energy and capacity a QF wants to sell it. However, FERC regulations unequivocally state that the value of such energy and/or capacity is zero if the energy and/or capacity sold to a utility is not needed to meet its total system load. 45 Fed. Reg. 12219 (Feb. 25, 1980) (“Order 69”).

As demonstrated below, Crazy Mountain has not established an LEO in this case. Given that fact, the Commission must set the avoided cost rate based on current information. NorthWestern calculated avoided costs based on current information. This calculation is based on a “method [that] most cleanly and clearly represents the costs that NorthWestern can avoid by purchasing energy and capacity from a QF project, including the Crazy Mountain project.” Exhibit NWE-1, p. 13. NorthWestern’s calculation provides a levelized rate for energy of \$38.46 per MWh.² Exhibit NWE-2, Exhibit __ (LPH-1), p. 1. This rate includes an adjustment for carbon

² This rate increased to \$39.17 per MWh given footnote 5 *infra*.

as Crazy Mountain agreed to convey all environmental attributes associated with its project to NorthWestern. Exhibit NWE-1, p. 21: 1-15. After making necessary adjustments, the total proposed avoided cost rate for the Crazy Mountain project is \$38.10 per MWh.³ Exhibit NWE-1, Exhibit__ (BJL-1), p. 1. Substantial evidence (and the law) supports this rate.

NorthWestern disputes Crazy Mountain’s baseless assertions that it established an LEO in July 2016. Furthermore, NorthWestern refutes Crazy Mountain’s position that the avoided energy cost rate for its project is equal to the avoided energy cost rate the Commission set earlier this year for a QF with a nameplate capacity of 25 megawatts. Finally, NorthWestern provides legal support for its motion to strike from evidence one of the contracts submitted by Crazy Mountain at the hearing.

A. Crazy Mountain failed to create an LEO in July 2016.

Crazy Mountain claims that it established an LEO on July 18, 2016 – the date it signed a power purchase agreement (“PPA”). *See* Response to Data Request PSC-010. In 2010, the Commission established a bright-line test to determine when a QF creates an LEO in Montana. In Order No. 6444e, ¶ 47, the Commission found that

[t]o establish an LEO, a QF must tender an executed power purchase agreement to the utility with a price term consistent with the utility’s avoided costs, with specified beginning and ending dates, and with sufficient guarantees to ensure performance during the term of the contract, and an executed interconnection agreement.

Crazy Mountain did not establish an LEO because Crazy Mountain did not meet the criteria set forth in the Commission’s bright-line test. Specifically, Crazy Mountain did not tender a signed contract to NorthWestern “with a price term consistent with [NorthWestern’s] avoided costs.” It also did not tender a contract containing “sufficient

³ This rate increased to \$38.79 per MWh given footnote 5 *infra*.

guarantees to ensure performance” or an executed interconnection agreement for a 78-megawatt project.

Discussing each of these failures in turn, Crazy Mountain’s rate is not consistent with NorthWestern’s avoided costs for this project. Avoided costs are defined as “the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.” 18 C.F.R. 292.101(b)(6).⁴ In this docket, Crazy Mountain proposes a price term of \$49.83 per MWh – a rate it claims is consistent with NorthWestern’s avoided costs. This rate, however, is neither the result of any independent analysis or calculations performed by Crazy Mountain of NorthWestern’s current portfolio needs, nor is it similar to the rate NorthWestern provided Crazy Mountain after conducting modeling for this specific project. Instead, Crazy Mountain wrongly asserts that “[t]he starting point in developing an avoided cost rate for Crazy Mountain is the Commission Staff’s analysis of Greycliff.” Exhibit CMW-2, p. 4: 4-5.

The Commission already rejected Crazy Mountain’s assertion that using another QF’s approved avoided cost rate establishes an LEO, and in fact, what Crazy Mountain did in this case is in direct contravention to what the Commission advised a QF should do if attempting to establish an LEO. In the Greycliff Wind Prime, LLC (“Greycliff”) docket filed with the Commission last year in Docket No. D2015.8.64, a 25-megawatt non-standard offer sized wind QF argued that it had established an LEO because it signed and tendered a contract to NorthWestern with the same rate that the Commission had recently

⁴ The Commission’s administrative rules adopt this definition by reference. ARM 38.5.1901(1).

approved for another similarly sized QF. Order No. 7436d, ¶¶ 27-28. The Commission ruled that Greycliff did not establish an LEO because “it is not apparent that Greycliff provided a ‘price term consistent with the utility’s avoided costs.’” *Id.*, ¶ 21. The Commission went on to hold that “[i]n attempting to estimate NorthWestern’s avoided cost, a QF should not merely rely on a recent Commission avoided cost determination.” *Id.*, ¶ 22 (emphasis added). Instead, the Commission found that a non-standard offer sized “QF[] should request that NorthWestern provide a project-specific avoided cost calculation.” *Id.*

NorthWestern provided Crazy Mountain with a project-specific avoided cost calculation in response to its initial request in December 2015 and each time Crazy Mountain changed the size of its project thereafter, including when Crazy Mountain increased the project’s size to 78 megawatts. *See* Response to Data Request PSC-013. Nevertheless, Crazy Mountain unilaterally rejected this calculation and instead signed a contract with a price term that the Commission approved in another docket for another QF. Allowing Crazy Mountain to set avoided cost rates that is likely to result in a QF binding the utility to pay rates greater than the utility’s avoided cost will result in customers paying more for QF power in violation of PURPA and is not in the public interest. Plus, the rate set in the Greycliff docket was based on market prices in all hours the QF delivers energy to NorthWestern. Order No. 7436d, ¶¶ 38 and 56. As discussed below, this approach to setting NorthWestern’s avoided cost rates is inappropriate and a violation of PURPA. Finally, an avoided cost rate for a 78-megawatt project will not be similar to an avoided cost rate for a 25-megawatt project given the estimated hourly production from the different size projects. The Commission must find that Crazy

Mountain's actions result in its failure to meet the first requirement of the bright-line test for establishment of an LEO – tendering a contract with a price term consistent with the utility's avoided costs.

Notwithstanding the fact that the Commission already rejected what Crazy Mountain argues, it is illogical that the rate it proposes would be consistent with NorthWestern's current avoided costs. For one, the Greycliff project is now part of NorthWestern's portfolio. On December 9, 2016, Greycliff and NorthWestern executed a contract requiring NorthWestern to purchase energy and capacity sold by Greycliff. Attached hereto as Appendix A is evidence of the executed contract between Greycliff and NorthWestern as well as page 8 of that contract. Crazy Mountain did not adjust its proposed rate to account for the fact that Greycliff is considered an unavoidable resource. *See* Response to Data Request NWE-020(b). It is irrational to argue that a rate based on other QFs' rates properly accounts for NorthWestern's current portfolio needs, especially when it fails to include the Greycliff contract, and is therefore consistent with NorthWestern's current avoided costs.

The next criteria Crazy Mountain failed to meet in order to establish an LEO is tendering a contract with sufficient guarantees of performance. Crazy Mountain signed a contract with liability and security terms consistent with a PPA for a 25-megawatt facility. Exhibit NWE-1, p. 27: 7-9. Specifically, Crazy Mountain signed a contract with a \$1 million default security term. Exhibit CMW-1 at Exhibit MHW 01, p. 19 of 40. Crazy Mountain is more than 3 times the size of a 25-megawatt facility. Mr. Bleau LaFave testified that NorthWestern requires more security for “[l]arger projects [because they] create more risk for NorthWestern's customers and NorthWestern's system.”

Exhibit NWE-1, p. 27: 12-15. As he testified, “Levelized contract pricing creates even more customer risk on the front end. If the QF does not deliver in the back half of the contract, customers will have prepaid for a benefit they never receive.” *Id.*, p. 27: 17-19. Crazy Mountain desires a levelized rate. Exhibit CMW-1 at Exhibit MHW 01, p. 15 of 40. As such, a \$1 million default security term is not a sufficient guarantee of performance for Crazy Mountain and potentially puts NorthWestern’s customers at risk. Instead, a \$40 per kilowatt default security will provide sufficient guarantees of performance as it increases the amount of money projects must set aside to mitigate risk to NorthWestern’s customers as a project size increases. Several QF contracts executed by NorthWestern, including the recently executed Greycliff contract, provide for a default security term set at \$40 per kilowatt. *See* the response to Data Request PSC-032a. Thus, in this case, an approximately \$3 million default security term is a sufficient guarantee of performance. Crazy Mountain apparently recognized this fact by agreeing to increase the default security to approximately \$3 million in the negotiated contract with NorthWestern. *See* Exhibit CMW-5, p. 18. Crazy Mountain’s claim that it established an LEO with a default security term of only \$1 million for a 78-megawatt project is entirely undercut because the contract did not contain sufficient guarantees of performance. Thus, Crazy Mountain has failed to meet another requirement of the Commission’s bright-line test for establishment of an LEO.

Finally, Crazy Mountain did not establish an LEO in July 2016 because it does not have a signed interconnection agreement for the current project sized at 78 megawatts. Crazy Mountain admits that it does not have a signed interconnection

agreement for a 78-megawatt project. At the hearing, Mr. Martin Wilde, on behalf of Crazy Mountain, testified as follows:

Q. (By Ms. Norcott) Mr. Wilde, do you have a signed interconnection agreement for a 78 megawatt project that is interconnecting to the Lower Duck Creek Substation that's operated by Park Electric Cooperative?

A. No, not yet, but we're well on our way to that.

Tr., pp. 57: 23 – 58: 4.

Crazy Mountain attempts to establish an LEO with a signed interconnection agreement for a 25-megawatt project. This attempt fails for several reasons. Besides the fact that the current project is more than 3 times larger than the prior project, the 25-megawatt interconnection agreement that Crazy Mountain signed in July 2016 specifies interconnection directly to NorthWestern's transmission system at NorthWestern's 50kV transmission line between Livingston and Big Timber, Montana. *See* Exhibit NWE-5, p. 6: 1-4. The current 78-megawatt Crazy Mountain project will interconnect with Park Electric Cooperative's transmission system in Sweet Grass County, Montana. *Id.*, p. 7: 6-11. These locational and size differences result in substantially different projects. A signed interconnection agreement for one project does not establish an LEO for a substantially different project.

Based on the Commission's reasoning for requiring a signed interconnection agreement, it does not make sense that when the Commission established the bright-line test for creation of an LEO, it would have permitted a QF to tender a signed interconnection agreement for one project and thereby establish an LEO for a different project. Rather, the Commission's reasoning for requiring a signed interconnection demonstrates that it clearly expected a QF to submit a signed interconnection agreement

for the specific project for which it was attempting to establish an LEO. Specifically, the Commission reasoned that:

Interconnection expenses may be so high as to derail an otherwise feasible project. Only by acknowledging and agreeing to an interconnection agreement can a QF demonstrate that it is prepared to proceed despite any interconnection obstacles. Further, an interconnection agreement requires that a QF have sufficiently defined its project and made adequate progress that the project would be more than a mere speculative, paper proposal.

Order No. 6444e, ¶ 47. Given the Commission’s reasoning for why a signed interconnection agreement is important criteria for establishment of an LEO, Crazy Mountain cannot establish an LEO for a 78-megawatt project with a signed interconnection agreement for a 25-megawatt project interconnecting at a different location and with a different utility. Crazy Mountain has not “sufficiently defined its project” or “made adequate progress that the project would be more than a mere speculative, paper proposal.” Crazy Mountain failed to “demonstrate that it is prepared to proceed despite any interconnection obstacles” since it has not signed an interconnection agreement for the current project. *Id.* As such, Crazy Mountain has not met the final requirement for establishment of an LEO – tendering a signed interconnection agreement for the current project.

Since Crazy Mountain did not meet three of the four requirements to establish an LEO, the Commission must reject Crazy Mountain’s argument that it established an LEO and instead calculate an avoided cost rate for the project based on the most current information available.

B. A proper avoided cost calculation must consider NorthWestern’s current portfolio needs.

In layman’s terms, an avoided cost rate is supposed to be equal to the rate/price a utility pays to either generate the power it needs to serve customers or purchase that power from another source. If the utility does not need the power, it would not generate or purchase it. *See Pennsylvania Electric Co. v. Pennsylvania Public Utility Commission*, 677 A.2d 831, 835 (Pa. 1996) (“PURPA *requires* utilities to make purchases from QFs when a **need** exists that QFs can fulfill.”) (Italics in original; bold added). In such a “no need” situation, this means that the utility’s avoided cost is zero. As discussed above, FERC recognized these “no need” situations permitted that the value of a QF’s energy in those situations is zero. Thus, there is a direct correlation between a utility’s power needs and its avoided cost.

Unlike Crazy Mountain, NorthWestern calculated an avoided cost rate for the 78-megawatt project that properly considers its energy supply needs and is based on current information. As testified to by Mr. Bleau LaFave, “Today, the value of the energy provided from any QF project is a function of the market price forecasts, NorthWestern’s generation portfolio, and NorthWestern’s customer load.” Exhibit NWE-1, p. 5: 9-11. As such, NorthWestern used PowerSimm to model the effects a new QF project has on its energy supply portfolio. Mr. Luke Hansen testified that “[t]he unit level simulation [performed in PowerSimm] allows NorthWestern to model the effect that changes have on its energy supply portfolio and allows for detailed analysis of potential additional resources to the portfolio.” Exhibit NWE-2, p. 4: 11-14. NorthWestern’s calculation properly considers all generation resources currently in its portfolio.⁵ *Id.*, p. 8, Table 1.

⁵ Greycliff was not included in NorthWestern’s portfolio when NorthWestern performed the Crazy Mountain calculation since NorthWestern did not have a signed contract with Greycliff at that time. Exhibit NWE-2, p. 16: 11-17. As noted above, Greycliff and NorthWestern have now signed a contract, and as such, Greycliff is now part of NorthWestern’s portfolio. As noted in the response to Data Request MCC-010b, Crazy Mountain’s avoided cost

Also, since Crazy Mountain has not established an LEO as shown above, NorthWestern used then-current market price forecasts from the Intercontinental Exchange (“ICE”) for electricity and natural gas to derive the avoided cost rate for Crazy Mountain. *Id.*, p. 9: 1-3. Montana law provides that avoided costs must be based on current information. *Whitehall Wind, LLC v. Montana Public Service Commission*, 2010 MT 2, ¶ 21, 355 Mont. 15, 223 P.3d 907 (citing *Independent Energy Producers Ass’n v. California Public Utils. Comm’n*, 36 F.3d 848, 851-852 (9th Cir. 1994)) (“[R]ates for purchases from qualifying facilities must be reasonable and based on *current* avoided least cost resource data.”) (Emphasis added.). NorthWestern’s avoided cost rate also, appropriately, discounts Mid-Columbia (“Mid-C”) prices to reflect the fact that “NorthWestern has historically been able to procure energy in Montana at a discount, or negative basis, to the Mid-C price.” Exhibit NWE-2, p. 11: 7-9. NorthWestern produced evidence that provides for support of this adjustment. *Id.*, pp. 11:4 – 12:21; *see also* Response to Data Request CMW-029a.⁶ No party actively contested NorthWestern’s adjustment to Mid-C prices. *See, e.g.*, Exhibit CMW-2, p. 5: 2-4. Overall, NorthWestern’s calculation presented at the time it filed testimony resulted in an avoided cost rate for energy of \$38.46 per MWh if environmental attributes are conveyed to

calculation should be re-calculated “in order to calculate a proper avoided cost rate for Crazy Mountain.” If all other assumptions and inputs remain the same as those used in the original calculation with the exception of adding Greycliff to NorthWestern’s portfolio and reflecting the lower estimated production levels received from Crazy Mountain less than a week prior to the hearing, Crazy Mountain’s avoided cost rate for energy with carbon, but before adjustments for capacity and regulation costs is \$39.17 per MWh. *See* Appendix B, p. 2, attached hereto. After making the necessary adjustments discussed below, Crazy Mountain’s overall avoided cost rate is \$38.79 per MWh with carbon and \$24.85 per MWh without carbon. *See* Appendix C, attached hereto.

⁶ Crazy Mountain objected to the introduction of this Data Request. Tr., p. 33: 8-12. The Commission reserved ruling on this until cross-examination after Crazy Mountain indicated that its objection may be cured by cross. Tr., p. 34: 11-16. Crazy Mountain’s basis for its objection was the same reasoning provided for its motion in limine/strike. Tr., p. 34: 7-11. The Commission denied Crazy Mountain’s motion in limine/strike. Tr., pp. 17: 2 – 27: 1 and 176: 14 – 177:6. Crazy Mountain did not raise its objection again after cross-examination.

NorthWestern and \$25.25 per MWh if they are not conveyed. Exhibit NWE-2, Exhibit__ (LPH-1), p. 1. Now, given the changes noted in footnote 5 *supra*,⁷ the avoided cost for energy is \$39.17 per MWh if environmental attributes are conveyed to NorthWestern and \$25.23 per MWh if they are not conveyed. *See* Appendix B.

Because NorthWestern properly considers its current portfolio needs when calculating an avoided cost rate for a QF, there will be hours when NorthWestern does not need energy to serve its customer load. To account for these situations, NorthWestern appropriately proposes to value the QF's energy depending on when the QF plans to deliver that energy to NorthWestern. This results in three different scenarios for the valuing of Crazy Mountain's energy. First, if NorthWestern needs energy to serve customer load, NorthWestern valued Crazy Mountain's energy at the market purchase price. Next, if NorthWestern does not need energy to serve customer load, but there are dispatchable resources that can be backed down in order to allow the QF's energy to serve customers, NorthWestern valued Crazy Mountain's energy at the variable price of the highest cost dispatchable resource. Finally, if NorthWestern does not need energy to serve customer load and all dispatchable resources are backed down to minimum levels and all contracts are supplying energy under "must-take" provisions, NorthWestern valued Crazy Mountain's energy at zero. In this last situation, there is nothing to avoid from the purchasing of the QF's energy, and providing the QF a rate equal to zero in those hours is appropriate under PURPA. Put differently, NorthWestern is not avoiding any costs in the last scenario as it would not be purchasing energy in the market and all generation resources are backed down to minimum levels. In this case, over the contract term, there are 3,315 hours (106,607 MWh) when

⁷ After re-running the model with the new estimated production received from Crazy Mountain less a week before the hearing and reviewing the results of said modeling, NorthWestern questions whether the estimated production is accurate. It appears that the new estimated production substantially changes the timing of the production; resulting in Crazy Mountain producing energy in more hours when energy prices are high and NorthWestern needs energy.

NorthWestern valued Crazy Mountain’s energy at zero. *See* NorthWestern’s Hearing Provide Request No. 2 filed with the Commission on November 21, 2016. In all other hours, NorthWestern valued Crazy Mountain’s energy at either the market purchase price or the variable costs of the highest economically dispatched generation resource in NorthWestern’s portfolio.

FERC’s regulations implementing PURPA set forth a two-prong test for establishing proper avoided cost rates: (1) rates paid to QFs must be just and reasonable to the utility’s customers to ensure customer indifference; and (2) when setting QF rates, QFs are not to be discriminated against. 18 C.F.R. §292.304(a). The valuation methodology described above, which NorthWestern proposed in this case, is consistent with this two-prong test. First, it is currently the best way to ensure that customers of NorthWestern remain indifferent⁸ to the purchase of power from Crazy Mountain because it looks at each hour the QF proposes to deliver energy to NorthWestern to determine what NorthWestern’s portfolio situation is in that hour, and thus, what value should be assigned to energy provided in that hour.⁹ Second, NorthWestern’s proposed evaluation method in this case is the same method NorthWestern is using to evaluate

⁸ Mr. Stamatson, on behalf of the MCC, testified that he thinks “you could probably come up with [an alternative pricing method in the long position], but it would be probably be overly complex.” Tr., p. 245: 10-11.

⁹ As stated by Mr. LaFave in response to Data Request PSC-030, which asked NorthWestern if it would support an avoided cost rate that values QF energy at all hours at a market rate,

NorthWestern is willing to consider valid calculations of avoided cost for NorthWestern’s customers so long as such calculations ensure customers are indifferent in accordance with PURPA. Calculating an avoided cost rate that makes NorthWestern’s customers the broker or guarantor for a QF project results in customers assuming market risk for QF developers. ... Given the foregoing, NorthWestern is unable to agree to what the question proposes as such situation is not lawful under PURPA.

The MCC witness Mr. Stamatson also weighed in on this issue – testifying that providing value to QFs in hours when energy is not needed is not appropriate; testifying NorthWestern’s calculation “prevents a utility [from] acting as a power marketer on behalf of a QF, and the consumers bearing the risk of those actions.” Tr., pp. 244: 8 – 245: 4. For those reasons noted above as well as discussed in the section below on why market prices in all hours is inappropriate, NorthWestern strongly encourages the Commission to reject setting Crazy Mountain’s avoided cost rate similar to how it did in the Greycliff docket.

its own resources or potential third-party non-QF PPAs. *See* Responses to Data Request PSC-037c and MCC-009.

For example, NorthWestern recently evaluated whether to upgrade two of the turbines at the Ryan Dam. NorthWestern used the PowerSimm model to determine if the price paid for the upgrades would result in just and reasonable rates to utility customers. Pertinent to the discussion in this case is how NorthWestern valued the energy provided by the upgrades. NorthWestern valued the output at the market purchase price when energy was needed to serve customers. This is exactly how NorthWestern valued Crazy Mountain's energy when it was short. Also, in hours when NorthWestern was long and did not need energy to serve customers, NorthWestern valued the upgrades at the variable costs of the highest economically dispatched generating resource. Again, this is how NorthWestern valued Crazy Mountain's energy when it is long and there were generation resources that NorthWestern could operate as the marginal resource to serve load.

The only difference in valuation methods is how NorthWestern evaluates its own resources or other non-QF PPAs in the last scenario when it is long and all resources have been backed down to minimum take levels. In this last scenario, FERC Order 69 acknowledged there may be times when a QF's energy can be valued at zero and such valuation is consistent with PURPA. Specifically, it provides that PURPA allows a QF to sell power to the utility that the utility does not need, but the rate paid to the QF "should only include payment for energy or capacity which the utility can use to meet its total system load." 45 Fed. Reg. 12219 (Feb. 25, 1980). Essentially, FERC recognized in Order 69 that there may be situations where the first prong (customer indifference) of the two-prong test may be more important or outweigh the second prong (QF non-discrimination). The Washington Utilities and Transportation Commission ("WUTC") similarly recognized this point and FERC's Order 69 statement

concerning a zero dollar value. In *Washington Utilities and Transportation Commission v. Washington Water Power Co.*, 56 PUR 4th 615, 623 (1983), the WUTC held that “PURPA was enacted during a time of energy deficit, when projections anticipated future deficits. Avoided costs must be carefully scrutinized during a time of energy surplus to ensure that PURPA requirements do not unnecessarily burden ratepayers.” *See also In re Order Instituting Rulemaking to Promote Policy, Program Coordination, Integration in Elec. Utility Resource Planning*, 2007 WL 2872674, *72 (Cal.P.U.C. September 20, 2007) (California Public Utilities Commission discussing relevant FERC Order 69, specifically finding that “FERC has therefore recognized that we must balance the PURPA mandate that utilities purchase energy and capacity from QFs with the overarching requirement that electric utilities may only charge just and reasonable rates for the power they supply to their customers.”).

Both the Idaho Public Utilities Commission (“IPUC”) and the Oregon Public Utilities Commission (“OPUC”) adopted a methodology for calculating QF avoided cost rates that value a QF’s energy at zero during certain hours. First in Idaho, Case No. GNR-E-11-03, Idaho Power Company (“IPC”) advocated for avoided cost calculations that valued a QF’s energy at zero depending on IPC’s portfolio situation in that hour. *See* Direct Testimony of Karl Bokenkamp, pp. 14-23, attached hereto as Appendix D. In December 2012, the IPUC, in Order No. 32697, approved IPC’s proposed method for calculating avoided costs, reasoning as follows:

The Commission finds Idaho Power’s proposed modifications to the IRP Methodology reasonable. We agree that the Company’s revisions properly focus the determination of avoided costs on incremental costs, not solely on the value of potential market sales. The result, we find, is a more accurate avoided cost. Moreover, we find that the modified methodology comports with the definition of avoided cost contained in FERC regulations. Therefore, we direct Idaho Power, Avista and Rocky Mountain Power to utilize displaceable incremental costs in calculating avoided cost rates under the IRP methodology.

See Order No. 32697, p. 21, attached as Appendix E. Similarly, in 2016, the OPUC authorized IPC to use the same methodology authorized by the IPUC for calculating non-standard avoided cost rates for IPC. See *In the Matter of Public Utility Commission of Oregon, Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610 (May 13, 2016), pp. 22-23, attached hereto as Appendix F.

In summary, NorthWestern's valuation of Crazy Mountain's energy satisfies both prongs of FERC's two-prong test for establishment of avoided cost rates – customers are held indifferent and a QF's energy is not being valued differently than other resources including NorthWestern's own resources. Given these facts, the Commission should find that NorthWestern's calculation of avoided cost rates in this case is the appropriate calculation, results in rates that are consistent with PURPA, and thus, is lawful.

C. The MCC agrees with NorthWestern's calculation of avoided costs.

The party in this docket tasked with protecting customers agrees with how NorthWestern calculated the avoided cost rates for the Crazy Mountain project. At the hearing, Mr. Jamie Stamatson, on behalf of the MCC, testified that:

- Q. (By Ms. Norcott) Do you agree that when NorthWestern is long, and it does not need energy to meet total system load, and there is a thermal resource that can be economically dispatched, that the costs being avoided from purchasing the QF energy is the variable costs of the thermal resource?
- A. I do agree.
- Q. And do you agree that when NorthWestern is long, and does not need energy to meet total system load, and all other resources are at minimum levels, everything is turned down, there is nothing to be avoided, and the value of the QF's energy should be zero?
- A. Yes. If everything is backed off to minimum take standards or reliability must run criteria, **then it should be zero.**

Tr., p. 243: 2-17 (emphasis added). The only other party in this docket is the QF, Crazy Mountain, and it failed to present any facts negating NorthWestern's position that in certain hours, it is not avoiding any costs and the proper value for the QF's energy is zero. Additionally, to date, Crazy Mountain has not presented any legal arguments countering NorthWestern's interpretation of FERC Order 69.¹⁰ Given that the party, who is constitutionally tasked with representing utility customers agrees with how NorthWestern calculated its avoided cost rate in this case, the Commission should approve the rate proposed by NorthWestern.

D. To value a QF's energy at market prices in all hours violates PURPA.

As has been already discussed, PURPA requires QFs to be paid for energy and capacity sold to an electric utility, but at no more than the utility's avoided costs. Any rate in excess of avoided costs violates PURPA as it violates the principle of customer neutrality embodied in PURPA. In *American Paper Institute, Inc. v. American Electric Power Service Corporation*, 461 U.S. 402, 103 S. Ct. 1921 (1983), the United States Supreme Court upheld "the full-avoided-cost rule" promulgated by FERC. The Supreme Court further held that the full avoided cost was "the maximum rate" that a commission may prescribe. *Id.*, at p. 413. Thus, electric utilities are required to pay "a rate equal to or less than a utility's avoided cost." *Petition of Atlantic City Electric Company*, 708 A.2d 775, 777 (N.J. Super. Ct. App. Div. 1998); *see also, West Penn Power Co. v. Pennsylvania Public Utility Commission*, 623 A.2d 383 (Pa. Commw. Ct. 1993). A state commission's failure "to ensure that a rate does not exceed a utility's avoided cost is a failure to comply with a regulation implementing the PURPA." *New York State Electric & Gas Corporation v. FERC*, 117 F.3d 1473, 1476, 326 U.S. App. D.C. 123, 126 (D.C. Cir. 1997); *see*

¹⁰ Crazy Mountain's attorney in this docket gave a closing argument at the hearing. At no point during her closing argument did Ms. Tranel mention FERC Order 69 or NorthWestern's valuation of Crazy Mountain's avoided costs. Instead, Crazy Mountain decided to focus on how its calculation is the correct calculation. As shown above, this calculation is improper and must be rejected by the Commission.

also *State of North Carolina ex rel. Utilities Commission v. North Carolina Power*, 450 S.E.2d 896, 900 (N.C. 1994) (“states cannot impose purchase rates in excess of avoided costs.”).

In this case, if the Commission were to base Crazy Mountain’s avoided cost rate on a market price in all hours, Crazy Mountain would be paid more for its power than NorthWestern’s avoided costs since NorthWestern is not avoiding market purchases in all hours. NorthWestern is not in the market buying energy during all hours. Mr. LaFave testified, “NorthWestern no longer solely relies on the market for its energy supply needs.” Exhibit NWE-1, p. 7: 11-12. Instead, except in certain limited hours, NorthWestern has sufficient energy to serve customer load. *Id.*, p. 7: 12-20. NorthWestern’s supply portfolio in effect protects customers from times of high market prices. Exhibit NWE-1, p. 8: 4-6. Thus, forcing NorthWestern to pay Crazy Mountain the market price in all hours would place unnecessary and unwarranted risk on NorthWestern’s customers, and customers would not remain indifferent to the purchase of power from the QF. NorthWestern has spent years building a supply portfolio that protects customers from variable market prices. Paying the market price to Crazy Mountain would unnecessarily re-expose customers to the vagaries of the market for 25 years. Furthermore, Mr. LaFave testified that using PowerSimm to conduct sensitivity analysis may be a possibility, however, he believed “you still are putting customers at risk in those long positions, when they currently aren’t” Tr., p. 164: 17-25. Since PURPA does not require NorthWestern to pay a QF for power not needed to meet total system load, then the Commission, for the protection of customers, should not set Crazy Mountain’s rates based on market prices for all hours.

E. The combined cycle combustion turbine methodology is not an appropriate methodology for setting non-standard offer sized QF avoided cost rates.

Crazy Mountain attempts to justify its proposed avoided cost rate by suggesting that it is appropriate since it is similar to a rate NorthWestern calculated using the combined cycle

combustion turbine (“CCCT”) methodology in response to a data request from the Commission. Tr., pp. 258: 21 – 259: 1; *see also* Exhibit CMW-2, pp. 9: 2 – 11: 10. The Commission must reject this legally unjustifiable argument. First, the Commission has only approved the CCCT methodology for purposes of setting avoided cost rates for standard-offer sized QFs. Exhibit NWE-3, p. 15: 14-17. Second, unlike the use of a production cost model, use of a CCCT methodology results in rates that do not accurately capture the utility’s avoided costs. With the CCCT methodology, the avoided cost rate remains the same no matter how many QFs sign a contract. Each QF that signs a contract will impact NorthWestern’s avoided costs.

By way of an example, consider a hypothetical in which the Commission established an avoided cost rate of \$40 per MWh using the CCCT methodology. Under that methodology, QF-A wants a contract with NorthWestern and is a 25-megawatt wind project. It signs a contract in January of the given year at the \$40 per MWh rate. Then in March of that same year, QF-B also wants a contract with NorthWestern but QF-B is an 80-megawatt wind facility. It also signs a contract at the \$40 per MWh rate. Finally, in August, QF-C, a 40-megawatt wind facility, wants a contract with NorthWestern. Even though QF-A and QF-B are now part of NorthWestern’s portfolio because they have signed contracts, QF-C can still sign a contract at the \$40 per MWh rate. This rate, however, fails to accurately capture NorthWestern’s current portfolio when QF-C signs a contract because the portfolio now includes an additional 105 megawatts of wind power. These additional megawatts of wind power will continue to reduce the number of hours NorthWestern needs energy to serve customer load thereby reducing NorthWestern’s avoided costs. Tr., pp. 162: 18 – 163: 7. The consequence is that the proper avoided cost rate for QF-C should be less than the rate set for QF-B, and the avoided cost rate for QF-B should be less than the avoided cost rate set for QF-A. Mr. Bushnell highlighted this example in his testimony at

hearing, “[T]he criteria is avoided cost, and what’s being avoided at the time the resource is added. And so I think if you adopt a methodology for large QF’s [sic] that doesn’t take into account system impacts, you’ve created a problem in that the gate is open.” Tr., p. 227: 6-12.

The MCC also agrees with NorthWestern’s argument that the CCCT methodology should not be used to set rates for non-standard offer sized QFs. Specifically, Mr. Stamatson testified,

Q. (By Commissioner Koopman) And do you embrace NorthWestern’s, and specifically Mr. Bushnell’s, belief that the production cost model, the PowerSimm production cost model, really is a better way to go with these large QF’s [sic] than the blended market CCCT approach? Would you agree with that?

A. I do agree with that, because it shows the contribution these QF’s [sic] have, you know, individual hours and the loads the utility has, . . . And in the future, as you keep adding more and more variable resources, or any resources onto NorthWestern’s system, that will affect the cost, too.

Tr., p. 250: 2-19.

Unlike the CCCT methodology, the PowerSimm modeling that NorthWestern conducted in this case is the proper way in which to calculate rates for non-standard offer sized QFs because it reflects the impact each QF will have on NorthWestern’s energy supply portfolio. NorthWestern’s proposal ensures that the rate established will comply with PURPA’s requirement of customer indifference. Given the foregoing, the Commission must reject Crazy Mountain’s effort to justify using another QF’s Commission-ordered avoided costs as its avoided cost rate simply because it is similar to an avoided cost rate calculated using the CCCT methodology. As demonstrated by the evidence in this docket, the CCCT methodology fails to meet the first prong of PURPA because it does not achieve customer indifference.

F. The Commission must adjust the avoided cost rate of energy to reflect other pertinent costs in order to ensure compliance with PURPA.

NorthWestern’s proposed avoided cost rate in this case includes several adjustments to the firm energy rate in order to ensure customers remain indifferent to the purchase of power

from Crazy Mountain. Specifically, NorthWestern reduced the firm energy rate to account for wind integration costs, including spinning and supplemental reserves. NorthWestern also increased the firm energy rate to provide a capacity value for this project. Crazy Mountain proposes a different regulation rate and capacity value adjustment. Neither of Crazy Mountain's proposed adjustments are appropriate or supported with legal authority or evidence.

a. The Commission must reject Crazy Mountain's proposal to set the wind integration rate at \$0.06 per MWh.

In order to ensure that NorthWestern's transmission system is properly balanced, there are costs associated with balancing intermittent resources. Because NorthWestern will incur these costs on behalf of Crazy Mountain, they must be deducted from the avoided cost rate. First, "spinning and non-spinning reserves are calculated using NorthWestern's current transmission system tariff rate escalated by 2% per year providing a 25-year levelized estimated rate of \$0.87 and \$0.58 per MWh, for non-spinning and spinning reserves respectively."¹¹ Exhibit NWE-1, p. 15: 12-15. Crazy Mountain proposed the same rate as NorthWestern for non-spinning reserves. Exhibit CMW-2, p. 9. As for the spinning reserve rate, Crazy Mountain proposes a \$0.66 per MWh rate. *Id.* Crazy Mountain, however, did not adequately justify this rate with evidence this rate. Since NorthWestern's proposed rates are based on a currently approved tariff, there is no room to argue that the rate should be something else as NorthWestern has an obligation to comply with its tariff schedules and approved rates.

Next, NorthWestern determined that the Dave Gates Generating Station would provide the wind integration for this project. Exhibit NWE-1, p. 15: 18-19. Applying an 11.8% regulation percentage to the nameplate capacity of Crazy Mountain results in a regulation rate of \$0.39 per

¹¹ These amounts increased as a result of the lower estimated production provided by Crazy Mountain prior to the hearing. *See* Appendix C.

MWh.¹² See Exhibit NWE-1, p. 16. Crazy Mountain proposes a regulation rate of \$0.06 per MWh. Exhibit CMW-2, p. 9. Crazy Mountain claims to have used NorthWestern's spreadsheets to derive this rate. Tr., p. 102: 12-16. Reviewing Crazy Mountain's spreadsheets indicates that it has manipulated the Mid-C prices resulting in an artificially high revenue and ignores the basis differential (Mid-C pricing discount discussed above). These changes are not sufficiently supported with evidence by Crazy Mountain to justify using the Mid-C prices included in Crazy Mountain's calculation. Instead, NorthWestern's calculation of the regulation rate uses the same Mid-C prices used to derive the avoided cost energy rate discussed above.

b. Using another utility's loss of load study to set the value for wind facilities in NorthWestern's service territory is not correct.

Originally, NorthWestern proposed to adjust Crazy Mountain's avoided cost rate by \$1.49 per MWh¹³ to account for the capacity contribution Crazy Mountain will provide to NorthWestern. Exhibit NWE-1, Exhibit ___(BJL-1), p. 1. NorthWestern supported this calculation with testimony from Mr. Bushnell. As explained by Mr. Bushnell, the capacity value adjustment was based on "the least cost capacity resource identified in NorthWestern's 2015 Electricity Supply Resource Procurement Plan ("2015 Plan")." Exhibit NWE-3, p. 4: 21-22. The least cost capacity resource from the 2015 Plan is an aeroderivative combustion turbine. *Id.*, p. 5: 1-2. NorthWestern proposes that Crazy Mountain's capacity contribution rate be based on a "measure and pay" concept. *Id.*, p. 5: 21-22. The MCC also supported NorthWestern's proposal on this issue. Tr., p. 245: 12-17.

Crazy Mountain proposes an absurdly high capacity contribution of \$6.06 per MWh for its project. Exhibit CMW-2, p. 9. Crazy Mountain suggests that this rate is appropriate because

¹² This rate also increased due to the lower estimated production provided by Crazy Mountain. See Appendix C.

¹³ As shown in Appendix C, this amount increased to \$1.76 per MWh due to the changes noted in footnote 5 *supra*.

NorthWestern has not conducted a loss of load probability (“LOLP”) study and so the Commission should use the LOLP study for another utility, PacifiCorp. *Id.*, p. 7: 10-12. Crazy Mountain asserts that PacifiCorp’s East balancing area authority (“BAA”) is the appropriate comparison area because it “includes a small section of southern Montana.” *Id.*, p. 7: 12. According to PacifiCorp’s study, wind in the East BAA has a 14.5% capacity contribution. *Id.*, p. 7: 5. Crazy Mountain’s proposal fails to note that PacifiCorp does not have any wind in Montana. Instead, the majority of PacifiCorp’s wind facilities are located in Southeast Wyoming where, according to the National Renewable Energy Laboratory, the highest average wind speeds in the nation occur. Exhibit NWE-3, p. 13: 1-5. These characteristics provide sufficient reason for the Commission to reject Crazy Mountain’s proposal to apply a 14.5% capacity contribution to its project. NorthWestern is the only party that provided a logical proposal for calculating Crazy Mountain’s contribution to capacity that is supported by evidence. For these reasons, the Commission should accept NorthWestern’s proposal to implement a “measure and pay” concept for setting the capacity contribution for Crazy Mountain according to one of the two options identified by NorthWestern. It should be noted that if the Commission adopts a “measure and pay” concept, the \$1.76 per MWh capacity value proposed by NorthWestern should not be included in an overall avoided cost rate since that figure will change with time.

G. Contract Matters – Motion to Strike Exhibit CMW-3.

NorthWestern moves the Commission to strike from evidence Exhibit CMW-3 and admit into evidence Exhibit CMW-5. During the hearing, Exhibit CMW-3 was admitted in the record subject to NorthWestern’s verification as to the contract terms. Tr., pp. 47: 24 – 48: 1. As was demonstrated at the hearing and as described below, Exhibit CMW-3 is not the contract the parties agreed to. Instead, Exhibit CMW-5 is the contract that the parties agreed to sign once the

Commission determined a price term, and thus, it is the contract that should be admitted into evidence. As a result, and for the additional reasoning provided below, NorthWestern requests that the Commission move into evidence Exhibit CMW-5 and order the parties to sign that contract, subject to minor clean-up corrections, after the conclusion of this docket.

NorthWestern's motion to strike Exhibit CMW-3 is supported by the following: Prior to the start of the hearing, Crazy Mountain and NorthWestern engaged in negotiations of all outstanding contract terms including the price. The parties were unable to agree to a price, but were successful in resolving all non-price related terms, including terms regarding curtailment. *See* NorthWestern's Prehearing Memorandum, p. 2. NorthWestern confirmed this agreement with Crazy Mountain on November 8, 2016. *See* Appendix G, which is a true and correct copy of an email from Jon Oostra, NorthWestern Corporate Counsel, to Monica Tranel, attorney for Crazy Mountain. Prior to the start of the hearing on November 9, the undersigned asked Ms. Tranel if she had received Mr. Oostra's email from November 8 and if we had an agreement that all non-price terms were uncontested. *See* Appendix H, Affidavit of Sarah Norcott. Ms. Tranel agreed that only price was contested. *Id.*

After the hearing commenced, Ms. Tranel presented Crazy Mountain's first witness, Mr. Wilde with a contract identified as Exhibit CMW-3. During Ms. Tranel's questioning of Mr. Wilde, Mr. Wilde responded when asked what Exhibit CMW-3 is, "It's a Power Purchase Agreement that we believe will be agreeable to NorthWestern Energy, with the place for price left blank." Tr., p. 43: 8-16. Crazy Mountain then moved for Exhibit CMW-3 to be admitted into evidence. *Id.*, p. 43: 20-21. NorthWestern asked for more time to review the contract to ensure it was the contract that was agreed to by the parties. However, before the Commission was given a chance to respond to that request, Crazy Mountain indicated that it would "lay some more

foundation” for the exhibit. *Id.*, pp. 43: 22 – 44: 2. During questioning from counsel, not once did Crazy Mountain indicate that Exhibit CMW-3 was a different contract than the one the parties agreed to execute prior to the hearing. It was only after NorthWestern’s witness, Mr. LaFave, was questioned by Crazy Mountain about the exhibit that it became clear that Exhibit CMW-3 was not the contract that the parties had agreed to.

This is demonstrated by the following hearing testimony:

Q. (By Ms. Tranel) So do you have this morning’s PPA Exhibit 3 in front of you?

A. I do not.

Q. (Provides document)

A. Thank you.

Q. Mr. LaFave, **NorthWestern and Crazy Mountain have agreed to the terms and conditions as to this PPA**, have they not?

Tr., p. 126: 3-10 (Emphasis added). Mr. LaFave testified that the parties had agreed to contract terms but that Exhibit CMW-3 was not the correct contract. Ms. Tranel subsequently presented Mr. LaFave with a new contract labeled Exhibit CMW-5, and acknowledged in her questioning that the parties reached an agreement on contract terms and conditions the previous week. Tr., p. 127: 6-10. Exhibit CMW-5 is a correct copy of the contract containing the terms and conditions that NorthWestern agreed to execute after substantial negotiations with Crazy Mountain. Tr., pp. 127: 6 – 128: 22. The only difference between Exhibit CMW-3 and Exhibit CMW-5 is the definition of uncompensated curtailment.¹⁴

¹⁴ In Crazy Mountain’s closing argument, Ms. Tranel stated that the definition for uncompensated curtailment in Exhibit CMW-3 is consistent with the Commission’s decision in the Greycliff docket concerning NorthWestern’s motion for reconsideration. Tr., p. 258: 13-16. This statement is factually incorrect. In Order No. 7436e, ¶ 31, the Commission recognized that the parties in that docket would need to re-define both compensated and uncompensated curtailment. As is shown in Appendix A, Greycliff and NorthWestern agreed to the following definition for uncompensated curtailment:

Given the above facts, NorthWestern moves the Commission to exclude Exhibit CMW-3 from evidence as it is not the contract that the parties agreed to execute prior to the hearing, and in its place, admit Exhibit CMW-5 into evidence. NorthWestern further requests that the Commission order the parties to execute Exhibit CMW-5 after the price term issue is resolved and a non-appealable final order has been issued. As indicated by Mr. LaFave at the hearing, NorthWestern is willing to execute Exhibit CMW-5. Tr., p. 128: 15-22. Crazy Mountain presumably should find Exhibit CMW-5 agreeable as it previously had agreed to execute it.

Exhibit CMW-5 was a negotiation meaning that there was give and take by both parties on certain issues to get a deal done. If the Commission is unwilling to grant NorthWestern's motion to strike and order the parties to sign Exhibit CMW-5, NorthWestern respectfully requests that the Commission order the parties to renegotiate outstanding contract terms and conditions, including the timing of construction, Annual Net Energy Amount ("ANEA") figures, and curtailment, and that if the parties are unable to agree, any outstanding issues should be raised with the Commission in a subsequent filing. Given the nature of Crazy Mountain's actions in this docket as they relate to the contract terms and conditions, this is a fair approach to resolving these matters.

IV. CONCLUSION

"Uncompensated Curtailment" means a curtailment of Energy that could have been produced and delivered by the Facility arising out of or resulting from: (i) a request of the Transmission Provider or Transmission Authority under the GIA or its applicable tariff; (ii) an Emergency Condition or event of Force Majeure of the Facility or the NorthWestern System; (iii) an order of a Governmental Agency or Transmission Authority for any reason, provided that such order is not the result of any negligence, intentional act, or other mis-, mal- or nonfeasance on the part of NorthWestern; or (iv) any congestion restriction imposed upon the delivery of Energy by the Transmission Provider prior to completion of Network Upgrades required to obtain Network Integration Transmission Service in accordance with Section 6.3 of this Agreement.

The above is not consistent with the definition inserted by Crazy Mountain in Exhibit CMW-3, which it claims is consistent with the Greycliff docket.

Based on the foregoing, the Commission must reject Crazy Mountain's advocacy in this case. As shown by the evidence in this docket, to find in favor of Crazy Mountain's proposed avoided cost rate would result in customers paying approximately \$73.1 million more for energy. This is a clear violation of PURPA. NorthWestern respectfully requests that the Commission find in favor of NorthWestern and its proposed avoided cost calculations for the reasons set forth above as well as grant NorthWestern's motion to strike Exhibit CMW-3.

Respectfully submitted this 12th day of December, 2016.

NORTHWESTERN ENERGY

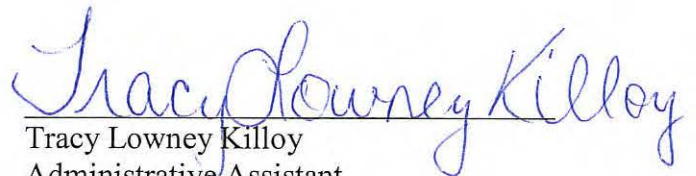
By:  _____
Sarah Norcott

Attorney for NorthWestern Energy

CERTIFICATE OF SERVICE

I hereby certify that a copy of NorthWestern Energy's Post-Hearing Brief and Motion to Strike Exhibit CMW-3, with Appendices A through H on CD, in Docket No. D2016.7.56, the Crazy Mountain Wind LLC Petition docket, has been hand delivered to the Montana Public Service Commission and to the Montana Consumer Counsel this date. It has also been e-filed on the PSC website, emailed to counsel of record and mailed via first class to the service list.

Date: December 12, 2016



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