

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

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| IN THE MATTER OF THE COMPLAINT) | PROCEDURAL ORDER; ORDER |
| BY OAK TREE ENERGY LLC AGAINST) | FOR AND NOTICE OF HEARING |
| NORTHWESTERN ENERGY FOR) | |
| REFUSING TO ENTER INTO A) | EL11-006 |
| PURCHASE POWER AGREEMENT) | |

On April 28, 2011, Oak Tree Energy, LLC (Oak Tree) filed a Complaint (Complaint) with the South Dakota Public Utilities Commission (Commission) against NorthWestern Corporation d/b/a NorthWestern Energy (NWE). The dispute involves a proposed wind generation project located in Clark County, South Dakota (Project). Oak Tree alleges that the Project is a "Qualified Facility" (QF) under PURPA and that NWE refuses to enter into a power purchase agreement. The Commission has jurisdiction in this matter pursuant to 16 U.S.C. Chapter 12, § 824a-3, 18 C.F.R. Part 292 and SDCL Chapters 1-26, 49-13, and 49-34A, including 49-34A-93. On May 5, 2011, the Commission electronically transmitted notice of the filing and the intervention deadline of May 20, 2011, to interested persons on the Commission's PUC Filings electronic notice list. No petitions for intervention were filed. On May 15, 2012, the Commission issued an Interim Order, and on October 11, 2012, the Commission issued an Order Granting in Part and Denying in Part Motion for Partial Reconsideration and Application for Reconsideration (Reconsideration Order). Through an email exchange between Commission Staff and parties, the parties have agreed to the following procedural schedule for the filing of additional testimony and hearing to address the issues outstanding following the Interim Order as modified by the Reconsideration Order.

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| November 21, 2012 | All parties initial testimony filed and served |
| November 28, 2012 | All parties responsive testimony filed and served |
| December 5, 2012 | Hearing commencing at 9:00 a.m. CST in Rm. 413, Capitol Building with exhibit marking at 8:30 a.m. |
| December 6, 2012 | Hearing continues if necessary at 8:00 a.m. in Rm. 413, Capitol Building (or at such time as shall be scheduled at the hearing on Dec. 5) |

The issues to be addressed at the hearing as set forth in the Interim Order as modified by the Reconsideration Order are:

1. The proper application of the hybrid method with no inclusion of carbon costs.
2. The proper natural gas input(s) to use in the hybrid method based on market conditions and projections as of February 25, 2011, the date on which a legally enforceable obligation was created.
3. The proper electric market rates that the parties may deem warranted reflecting market conditions and projections as of February 25, 2011.

4. The proper capacity contribution and resulting capacity credits to be included in the avoided cost and added into the hybrid method under the Titan I method.
5. NWE's avoided cost levelized over a 20 year period.

The hearing will be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights may be forfeited if not exercised at the hearing. If a party or its representative fails to appear at the time and place set for the hearing, the Final Decision may be based solely on the testimony and evidence admitted during the hearing, or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was admitted at the hearing and at the previous hearing in this matter. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision. As a result of the hearing, the Commission may either grant or deny the relief requested by Oak Tree. The Commission's Final Decision may be appealed to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that a hearing shall be held at the time and place specified above on the issues set forth above except as modified between now and the hearing date by order of the Commission or stipulation of the parties.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 15th day of October, 2012.

| CERTIFICATE OF SERVICE | |
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| The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon. | |
| By: | <u>Joy Bruny</u> |
| Date: | <u>10-15-12</u> |
| (OFFICIAL SEAL) | |

BY ORDER OF THE COMMISSION:

Chris Nelson

CHRIS NELSON, Chairman

Kristie Fiegen

KRISTIE FIEGEN, Commissioner

Gary Hanson

GARY HANSON, Commissioner