

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

<b>IN THE MATTER OF THE COMPLAINT</b>	)	<b>ORDER GRANTING IN PART AND</b>
<b>BY OAK TREE ENERGY LLC AGAINST</b>	)	<b>DENYING IN PART MOTION FOR</b>
<b>NORTHWESTERN ENERGY FOR</b>	)	<b>PARTIAL RECONSIDERATION AND</b>
<b>REFUSING TO ENTER INTO A</b>	)	<b>APPLICATION FOR</b>
<b>PURCHASE POWER AGREEMENT</b>	)	<b>RECONSIDERATION</b>
	)	
	)	
	)	<b>EL11-006</b>

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.

Following extensive discovery, motions, and pre-filed testimony, a formal evidentiary hearing was held as scheduled on March 21-22, 2012. On May 2, 2012, after consideration of the parties' post-hearing briefs, oral argument, and responses to a proposal for agreed resolution of the matter by Chairman Nelson, the Commission voted unanimously to make certain intermediate rulings in the case, and on May 15, 2012, issued an Interim Order on such rulings directing the parties to file additional pre-filed testimony and rebuttal testimony in conformity with the Interim Order on or before June 6 and June 13, 2012, respectively, and setting the matter for additional hearing on June, 19, 2012.

On May 29, 2012, Oak Tree filed Oak Tree Energy, LLC's Motion for Partial Reconsideration of Interim Order. On May 31, 2012, the Commission issued an Order Cancelling Procedural Schedule and Hearing. On June 14, 2012, NWE filed NorthWestern Energy's Application for Reconsideration of Findings and Conclusions in Interim Order Issued on May 15, 2012. On June 18, 2012, NWE filed NorthWestern Energy's Answer in Opposition to Oak Tree Energy, LLC's Motion for Partial Reconsideration of Interim Order, and Staff filed Commission Staff's Answer to Oak Tree's Motion for Partial Reconsideration of Interim Order. On July 5, 2012, Oak Tree filed Oak Tree Energy, LLC's Answer to NorthWestern Energy's Application for Reconsideration of Findings and Conclusions in Interim Order Issued on May 15, 2012. On July 10, 2012, Oak Tree filed Oak Tree Energy, LLC's Combined Reply in Support of Its Motion for Partial Reconsideration of Interim Order.

At an ad hoc meeting on October 2, 2012, the Commission heard oral argument from all parties on Oak Tree's and NWE's respective requests for reconsideration of the Commission's Interim Order. The Commission deferred action until its regular meeting on October 9, 2012, at which the Commission again considered this matter. The Commission voted unanimously to deny Oak Tree's Motion for Partial Reconsideration with respect to the use of the hybrid method to determine avoided cost, to grant Oak Tree's Motion for Partial Reconsideration with respect to the use of current market conditions and projections in determining proper natural gas inputs and proper electric market rates, and to deny NWE's Application for Reconsideration with respect to interim Finding and Conclusion 4 regarding Oak Tree's creation of a legally enforceable obligation (LEO) as of February 25, 2011. The Commission voted by majority, with

Commissioner Fiegen dissenting, to grant NWE's Application for Reconsideration with respect to interim Findings and Conclusions 2 and 3 on the grounds that carbon cost forecasts were too speculative as of the LEO date and remain so at this time to justify their inclusion as inputs into the avoided cost determination and that carbon costs should therefore have a value of zero and to deny Oak Tree's Motion for Partial Reconsideration with respect to the use of the Land's Energy carbon emissions costs on the grounds that the issue has become moot as result of the granting of NWE's request to disallow the inclusion of carbon costs. Following these actions, the Commission directed the parties to engage in discussions with Commission Counsel and administrative staff regarding the scheduling of additional proceedings and hearing in the docket.

It is therefore

ORDERED, that Oak Tree's Motion for Partial Reconsideration with respect to the use of the hybrid method to determine avoided cost is denied. It is further

ORDERED, that Oak Tree's Motion for Partial Reconsideration with respect to the use of current market conditions and projections in determining proper natural gas inputs and proper electric market rates is granted and that such analyses and inputs shall be as of February 25, 2011, the date of Oak Tree's creation of a legally enforceable obligation. It is further

ORDERED, that NWE's Application for Reconsideration with respect to interim Finding and Conclusion 4 regarding Oak Tree's creation of a legally enforceable obligation as of February 25, 2011 is denied. It is further

ORDERED, that NWE's Application for Reconsideration with respect to interim Findings and Conclusions 2 and 3 regarding inclusion of forecast carbon costs in the avoided cost determination is granted on the grounds that such forecasts were too speculative as of the date of creation of a legally enforceable obligation and remain so at this time to justify their inclusion as avoided cost inputs, that carbon costs should therefore have a value of zero, and that Oak Tree's Motion for Partial Reconsideration with respect to the use of the Land's Energy carbon emissions costs is denied on the grounds that the issue has become moot as result of the granting of NWE's request to disallow the inclusion of carbon costs.

Dated at Pierre, South Dakota, this 11<sup>th</sup> day of October, 2012.

**CERTIFICATE OF SERVICE**

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: *JM Seuring*

Date: 10-11-12

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

*Chris Nelson*  
CHRIS NELSON, Chairman

*Kristie Fiegen*  
KRISTIE FIEGEN, Commissioner  
dissenting in part

*Gary Hanson*  
GARY HANSON, Commissioner