

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

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

On April 28, 2011, Oak Tree Energy, LLC (Oak Tree) filed a complaint 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" under PURPA and that NWE refuses to enter into a purchase power agreement. 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 20, 2011, NWE filed its Answer to the Complaint. On June 17, 2011, the Commission issued a Scheduling Order. On September 7, 2011, Oak Tree filed a Motion to Compel. On October 20, 2011, the Commission issued an Amended Scheduling Order. On November 14, 2011, the Commission issued an Order Granting in Part Motion to Compel. On December 13, 2011, Oak Tree filed its written direct testimony. On January 13, 2012, NWE filed its written direct testimony. On January 27, 2012, Staff filed its written testimony. On February 7, 2012, the parties stipulated to an amended filing schedule. On February 8, 2012, Oak Tree filed its Second Motion to Compel (Motion) and on February 9, 2012, Oak Tree filed a Motion to Expedite Hearing. At its ad hoc meeting on February 13, 2012, the Commission granted Oak Tree's Motion to Expedite, setting the Motion on for consideration at its regular meeting on February 14, 2012. On February 14, 2012, NWE filed NorthWestern Energy's Resistance to Oak Tree Energy, LLC's Second Motion to Compel. On February 16, 2012, the Commission issued an Order Granting in Part Second Motion to Compel and Protective Order.

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.

A hearing will be held on this matter beginning at 9:00 A.M. CST on March 21-22, 2012, in Room 413 of the State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota. On the first day, the parties shall appear one-half hour prior to the hearing for the marking of exhibits.

The issues at the hearing, if not decided prior to the hearing on the motion of a party or the Commission, will be:

1. Whether, and in what amounts, NWE should be required, pursuant to 16 U.S.C. § 824a-3 and 18 C.F.R. §§ 292.303 and 292.304, to pay Oak Tree over the life of the Project for electricity made available to NWE from the project? The determination of this issue will require consideration of the avoided cost issues presented by 18 C.F.R. § 292.304, including, but not limited to, both avoided energy costs and avoided capacity costs.
2. Whether Oak Tree is currently bound by a legally enforceable obligation, and if so, when that legally enforceable obligation commenced and what impact that has on the avoided cost calculation.

3. Whether additional relief should be granted to Oak Tree as necessary for Oak Tree to obtain a power purchase agreement with NWE for electricity produced from the Project on terms that are consistent with the requirements of PURPA and the SDPUC PURPA Order and are as consistent as possible with the respective positions of the parties and with the interests of NWE's rate payers and the public interest.

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 presented at the hearing. 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 28 day of February, 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:	<u>Jerry Feigen</u>
Date:	<u>2-28-12</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Chris Nelson

CHRIS NELSON, Chairman

Kristie Feigen

KRISTIE FIEGEN, Commissioner

Gary Hanson

GARY HANSON, Commissioner