

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

**IN THE MATTER OF THE COMPLAINT BY OAK )  
TREE ENERGY LLC AGAINST )  
NORTHWESTERN ENERGY FOR REFUSING )  
TO ENTER INTO A PURCHASE POWER )  
AGREEMENT )**

**ORDER GRANTING IN PART  
SECOND MOTION TO COMPEL  
AND PROTECTIVE ORDER**

**EL11-006**

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. Oak Tree alleges that the project is a "Qualified Facility" under PURPA and that NWE refuses to enter into a purchase power agreement. 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.

The Commission considered the Motion at its regular meeting on February 14, 2012. After oral argument, extensive questioning by the Commission, and discussions with the parties on the issues, the Commission voted unanimously to grant the Motion in part and deny in part as follows: (i) NWE shall produce all Lands Energy documents in its possession responsive to Interrogatory No. 12 and Request for Production No. 30, but shall not be required to produce any such documents that are not in its possession; (ii) NWE shall produce all reports, studies, and analyses in its possession responsive to Request for Production No. 40(a) and (b), but shall not be required to produce any emails, correspondence, other miscellaneous communications, or work papers concerning these documents or the subject matter thereof; (iii) any documents produced pursuant to this Order marked as Confidential in accordance with the Protective Order shall be entitled to protection as confidential documents in accordance with the terms of this Order, any confidentiality or nondisclosure agreement of the parties, SDCL 15-6-26(c), and ARSD 20:10:01:39 through 44, until the Commission or Court shall otherwise order; and (iv) except to the extent that response or production is required of NWE by this Order, the Motion is denied. The Commission next considered the question of schedule modification to accommodate the additional discovery. In response to inquiry by Commission Counsel, the parties agreed that this would best be handled by a pre-hearing conference with Commission Counsel, and the Commission took no action on this item.

It is therefore

ORDERED, that Oak Tree's Second Motion to Compel is granted in part and denied in part; and it is further

ORDERED, that NWE shall produce all Lands Energy documents in its possession responsive to Interrogatory No. 12 and Request for Production No. 30(b), but shall not be required to produce any such documents that are not in its possession; and it is further

ORDERED, that NWE shall produce all reports, studies, and analyses in its possession responsive to Request for Production No. 40(a) and (b), but shall not be required to produce any emails, correspondence, other miscellaneous communications, or work papers concerning these documents or the subject matter thereof; and it is further

ORDERED, that except to the extent that response or production is required of NWE by this Order, Oak Tree's Second Motion to Compel is denied; and it is further

ORDERED, that Oak Tree shall treat Confidential Information provided to it by NWE pursuant to this Order as confidential information subject to the Commission's rules regarding confidential information, the terms and conditions of any confidentiality or nondisclosure agreement between the parties, and to the following additional protective provisions:

1. All Confidential Information disclosed by NWE pursuant to this Order shall be treated as confidential information pursuant to ARSD 20:10:01:39 through 20:10:01:44, except that access to and use of such information by Oak Tree for purposes of preparation for the proceedings in this matter and use in the proceedings shall be permitted subject to the provisions of this Protective Order.
2. All information produced by NWE pursuant to this Order shall be provided to the attorney(s) of record for Oak Tree in this proceeding, who shall be responsible (i) for limiting disclosure only to such third party experts and persons within Oak Tree who have a bona fide need to review such information for purposes of preparing for the proceedings in this case ("Authorized Recipients") and (ii) for the use, return and destruction of the disclosed information as provided by this Protective Order. Oak Tree shall limit its Authorized Recipients to the minimum number of persons necessary to analyze the information and prepare for and present its evidence in this proceeding.
3. Documents disclosed by NWE pursuant to this Order for which NWE seeks confidential treatment shall be stamped or sealed as "Confidential" (Confidential Information). Before any disclosure of Confidential Information shall occur to an Oak Tree Authorized Recipient, Oak Tree's attorney of record shall assure himself that the Authorized Recipient to whom the Confidential Information is to be disclosed has read and understands this Protective Order, has agreed to abide by its terms, and understands that unauthorized disclosure or use of the Confidential Information is prohibited.
4. The Commission shall treat Confidential Information produced pursuant to this Order as confidential information subject to ARSD 20:10:01:39 through 20:10:01:44, provided that such confidential information is marked as confidential. The Commission shall conduct all hearings involving Confidential Information in camera with only Commission employees, the parties' attorneys and the Authorized Recipients present during the portion of the hearing in which such information is offered or discussed. Any person other than Commission employees or the Authorized Recipients who desires to have access to confidential information shall comply with the procedures of ARSD 20:10:01:42 and 20:10:01:43.
5. Persons obtaining access to Confidential Information under this Order shall use the information only in the conduct or settlement of this proceeding and any judicial proceeding arising therefrom, and shall not use such information for any purpose unrelated to this proceeding, including unrelated business, governmental or commercial purposes. Persons obtaining access to Confidential Information under the terms of this Order may disclose, describe, or discuss the Confidential Information in any pleading filed in this proceeding, provided that such pleading is stamped

confidential and filed under seal, and provided that a separate public version is filed in which all Confidential Information is redacted.

6. If a court or another administrative agency subpoenas or orders production of the Confidential Information, Oak Tree shall promptly notify NWE of the pendency of such subpoena or order.

7. Nothing in this Order shall prevent or otherwise restrict Oak Tree's counsel from rendering advice to their client regarding this proceeding and, in the course thereof, making professional analysis and use of the Confidential Information, provided, that in rendering such advice and otherwise communicating with such client, counsel shall not make disclosure of any confidential fact or assertion except to the Authorized Recipients and only in accordance with the procedures set forth in this Protective Order.

8. The provisions of this order shall not terminate at the conclusion of this proceeding.

9. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of the Confidential Information. Parties shall not duplicate any stamped Confidential Information except working copies, for filing at the Commission under seal, and for admission as confidential exhibits.

10. The parties, their Authorized Recipients and their other employees, agents, consultants and representatives shall be subject to a standard of good faith in their disclosure, receipt, custody and use of the Confidential Information.

11. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), Oak Tree's attorney(s) shall return all copies of Confidential Information and all analyses or other compilations which contain any of the Confidential Information in their possession to NWE's attorneys, or destroy all such Confidential Information and certify, under penalty of perjury, that such destruction has occurred. In the case of analyses or compilations containing Confidential Information, all Confidential Information set forth in such document shall be redacted if the document is to be retained and a copy of the redacted version shall be served on the disclosing party(ies) at least ten (10) days before disclosure of the redacted version is made to anyone other than the Authorized Recipients.

Dated at Pierre, South Dakota, this 16 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: [Signature]

Date: 2-16-12

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

[Signature]

CHRIS NELSON, Chairman

[Signature]

KRISTIE FIEGEN, Commissioner

[Signature]

GARY HANSON, Commissioner