

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

IN THE MATTER OF THE REQUEST FOR A)	DECLARATORY RULING
DECLARATORY RULING BY)	REGARDING QUALIFYING
NORTHWESTERN CORPORATION DBA)	FACILITY POWER PURCHASE
NORTHWESTERN ENERGY REGARDING)	AND SALE AGREEMENT
APPROVING A QUALIFYING FACILITY)	
POWER PURCHASE AND SALE AGREEMENT)	EL13-025

On July 15, 2013, NorthWestern Corporation d/b/a NorthWestern Energy (NorthWestern) filed a Petition for Declaratory Ruling (Petition) pursuant to ARSD 20:10:01:34 with the South Dakota Public Utilities Commission (Commission) requesting the Commission to issue a declaratory ruling that the price, terms, and conditions of the Power Purchase and Sale Agreement (PPA) between NorthWestern and B & H Wind, LLC (B & H Wind) comply with the Public Utility Regulatory Policies Act of 1978, as amended (PURPA) and that costs NorthWestern will incur pursuant to the PPA are prudent, efficient, and economical and are reasonable and necessary. NorthWestern requested that a ruling be issued as soon as possible so B & H Wind will be able to commence construction in a timely manner.

On July 18, 2013, the Commission electronically transmitted notice of the Petition and the intervention deadline of August 2, 2013, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. No petitions to intervene or comments were filed. On July 24, 2013, counsel for B & H Wind filed a Notice of Appearance. On August 8, 2013, the Commission's staff (Staff) filed a Staff Memorandum setting forth Staff's analysis and recommendations.

At its regular meeting on August 13, 2013, the Commission considered this matter. After considering the Petition, including the Exhibits thereto, Staff's Memorandum, oral argument and comments from NorthWestern, B & H Wind, and Staff, and the parties' answers and discussion in response to extensive questioning, the Commission voted unanimously to rule that the PPA does comply with PURPA because it was negotiated between the parties based on their good faith determination of avoided cost, but to decline to rule on the issue of whether the rates in the PPA meet the prudence and just and reasonable standards for retail rate purposes as set forth in SDCL 49-34A-8 and 49-34A-8.4 because, as the Commission held in Docket EL11-007, the Legislature has only given the Commission jurisdiction to determine these matters in a retail rate proceeding, including a proceeding under SDCL 49-34A-25.

In making this decision, the Commission concluded that pursuant to SDCL Chapter 49-34A, particularly 49-34A-93, SDCL 1-26-15, ARSD 20:10:01:34, 16 U.S.C. Chapter 12, § 824a-3, and 18 C.F.R. Part 292, affords the Commission with jurisdiction to determine that a PPA was entered into based on a thorough analysis and modeling of avoided cost data with the intent to comply with PURPA and that such analysis appears, based on the documents filed, to reach a reasonable approximation of avoided cost, which is all that is possible. However, the statutory scheme enacted by the Legislature, in particular SDCL 49-34A-8 and 49-34A-8.4 and the other ratemaking statutes and rules, does not provide the Commission with the authority to issue a declaratory ruling on reasonableness, prudence, and cost-effectiveness, which under the statutes are made in connection with a rate filing.

It is therefore

ORDERED, that the PPA between NorthWestern and B & H Wind complies with PURPA because it was negotiated between the parties based on their thorough and good faith analysis and determination of avoided cost and negotiation of other necessary and proper terms and conditions. It is further

ORDERED, that under the current statutory scheme, the Commission is not able to render a declaratory ruling on whether costs incurred by a utility are prudently incurred and just and reasonable except in a retail rate proceeding.

Dated at Pierre, South Dakota, this 15th day of August, 2013.

<p>CERTIFICATE OF SERVICE</p> <p>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, electronically.</p> <p>By: <u>Joy Lashley</u></p> <p>Date: <u>8.16.13</u></p> <p>(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Chris Nelson
CHRIS NELSON, Commissioner

Kristie Fiegen
KRISTIE FIEGEN, Commissioner