

**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 APPLICATION</b>
<b>NORTHWESTERN ENERGY FOR )</b>	<b>FOR RECONSIDERATION</b>
<b>REFUSING TO ENTER INTO A )</b>	
<b>PURCHASE POWER AGREEMENT )</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 alleged that the Project is a Qualifying Facility (QF) under the Public Utility Regulatory Policies Act of 1978 (PURPA) and that NWE refused to enter into a power purchase 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 Weekly Filings electronic listserv. No petitions for intervention were filed.

On May 24, 2011, NWE filed its Answer to the Complaint. Following extensive discovery, motions, and pre-filed testimony, a formal evidentiary hearing was held as scheduled on March 21-22, 2012. On May 15, 2012, the Commission issued an Interim Order setting forth certain intermediate rulings and directing the parties to file additional pre-filed testimony and rebuttal testimony in conformity with the Interim Order. On October 11, 2012, the Commission issued an Order Granting in Part and Denying in Part Motion for Partial Reconsideration and Application for Reconsideration regarding the Commission's intermediate rulings in the Interim Order, and on December 5-6, 2012, the Commission held a second evidentiary hearing to address the issues as set forth in the Interim Order as modified by the Reconsideration Order. Following briefing and argument, the Commission took the matter up for decision at an ad hoc meeting on January 22, 2013, and on February 21, 2013, issued a Final Decision and Order; Notice of Entry (Decision). A detailed procedural history of the case is set forth in the Decision and in the Amended Final Decision and Order; Notice of Entry issued this date.

On March 21, 2013, NWE filed NorthWestern Energy's Application for Reconsideration of Findings and Conclusions in Final Order Issued on February 21, 2013 (Application for Reconsideration). On April 15, 2013, Oak Tree filed Oak Tree Energy, LLC's Answer to NWE's Application for Reconsideration. The Application for Reconsideration requested reconsideration of the Decision's Findings of Fact 23, 30, and 31 and Conclusions of Law 7 and 8. On April 11, 2013, the Commission's Staff (Staff) filed Staff's Response to Northwestern Energy's Application for Reconsideration of Findings and Conclusions in Final Order issued on February 21, 2013.

At its regular meeting on April 23, 2013, the Commission considered the Application for Reconsideration. Commissioner Nelson submitted to the Commission, and provided to all persons present in person and via email attachment to those participating telephonically, an untitled spreadsheet handout depicting his load shape calculations. Following questions and discussion, the Commission voted unanimously to reconsider the Decision regarding use of levelized avoided cost without inclusion of a discount factor, but to defer final action on the appropriate resolution of the issue until the next meeting. The Commission voted unanimously

to deny reconsideration of its Decision with respect to use of a 20% capacity factor in calculating avoided cost. A majority of the Commission, with Commissioner Hanson dissenting, voted to reconsider the Decision with respect to whether escalation of avoided capacity costs should commence prior to 2015, but took no substantive action on the proper capacity escalation commencement date. The Commission voted unanimously to reconsider the Decision's use of a 2.25% load growth factor in the avoided cost calculation model, but to defer decision on the issue until its next meeting. On April 29, 2013, Staff filed a letter and exhibits regarding model inputs and load shape adjustment (Staff Model). On May 6, 2013, Oak Tree filed Oak Tree Energy, LLC's Request for Levelized Rate Option.

On May 7, 2013, the Commission considered the issues remaining following the actions taken at its April 23, 2013, meeting. Commissioner Nelson submitted to the Commission, and provided copies to all persons present and via email attachment to those participating telephonically, spreadsheet and graph handouts entitled "Nelson Avoided Cost Summary on Reconsideration May 7, 2013 - Peak and Load Growth" (Nelson Proposal). The first issue for decision was the appropriate date for commencement of escalation of avoided capacity cost. Commissioner Nelson moved that avoided capacity costs remain at \$36/kW-yr for 2013 and 2014 and then begin escalating at 5.84% per year. The Commission voted unanimously in favor of the motion.

The Commission then considered the issue of whether the 2.25% per annum load growth factor employed in the manner utilized to calculate the avoided energy costs over time approved in the Decision is the appropriate load growth factor and methodology for use in calculating avoided energy cost, and if not, what the appropriate load growth factor and calculation methodology should be. After an explanation of the model methodology he employed and the reasons underlying it, Commissioner Nelson moved that the methodology utilized to calculate load growth in the calculation of avoided energy costs approved by the Commission in the Decision be changed to the methodology for calculating energy and peak growth utilizing a load growth of 2.25%/yr and a peak growth of 1%/yr in the manner employed in the Nelson Proposal to calculate avoided energy costs over the 20-year contract period. After discussion, Commissioner Fiegen made a substitute motion to approve the Staff Model and its methodology for computing a 1% peak and 2.25% energy growth load shape as depicted on the lower spreadsheet on Exhibit A to the Staff Model. After discussion, a majority of the Commission voted in favor of the substitute motion, with Commissioner Nelson dissenting.

The Commission next considered the issue of whether the Commission should approve the use of non-levelized, annual avoided cost values instead of levelized avoided cost values, approve the inclusion of a discount factor in its levelized avoided cost calculation, or approve the non-discounted levelized approach as employed in the model used to calculate the levelized avoided costs approved in the Decision. Commissioner Fiegen moved to approve levelized avoided costs calculated as approved in the previous motion with the application of a 7.86% discount factor as set forth on the lower spreadsheet set forth on Exhibit B to the Staff Model. After discussion, a majority of the Commission voted in favor of the motion, with Commissioner Nelson dissenting.

In response to a question from Commission Counsel regarding a potential ambiguity with respect to the Commission's action on the appropriate date for commencement of escalation of avoided capacity costs as year 2015, Commissioner Fiegen moved to reconsider the action taken and further moved as a substitute motion that the \$36/kW-yr avoided capacity cost be maintained through the end of 2015, with the commencement of escalation for avoided capacity cost to begin after 2015 by applying the escalation factor of 5.84%/yr to the 2015 value, with the

escalated avoided capacity cost to take effect on January 1, 2016, and with annual escalation to continue thereafter for the remainder of the 20-year contract term as set forth in the Staff Model. The Commission voted unanimously in favor of the motion.

It is therefore

ORDERED, that the Application for Reconsideration with respect to Finding of Fact 23 and Conclusion of Law 7 regarding use of a 20% capacity factor in calculating avoided cost is denied. It is further

ORDERED, that the Application for Reconsideration of Finding of Fact 30 and related input Findings of Fact is granted and the methodology utilized to calculate load growth in the calculation of avoided energy costs approved by the Commission in Finding of Fact 26 shall be amended to reflect the methodology for computing a 1% peak and 2.25% energy growth load shape described in the Staff Model and depicted on the lower spreadsheet on Exhibit A to the Staff Model, which distributes the annual energy growth across NWE's load shape, as it changes in response to the greater growth rate in energy than peak, by spreading the energy growth across the forecast blocks as a function of each block's growth room to the total growth room of all blocks. It is further

ORDERED, that as an input incorporated by Finding of Fact 30, Finding of Fact 27 shall be amended to reflect that the proper avoided capacity costs are the \$36 per kilowatt year avoided capacity cost value presented by NWE through the end-of-year 2015 termination date of NWE's capacity contract upon which this capacity value is based, and then escalating by 5.84 percent on January 1, 2016, and at the beginning of each year thereafter for the remainder of the 20-year QF contract term. It is further

ORDERED, that the Application for Reconsideration of Finding of Fact 31 and Conclusion of Law 8 regarding the use of levelized avoided costs is granted and such Finding and Conclusion shall be amended to require that the levelized cost calculation incorporate a 7.86% per annum present-value discount factor. It is further

ORDERED, that Findings of Fact 26, 27, and 31 and Conclusion of Law 8 shall be amended to read as follows and that an Amended Final Decision and Order; Notice of Entry shall be issued together with this Order with such amended findings and conclusion replacing the findings and conclusions in the Decision:

26. The Commission finds that the appropriate peak growth rate and energy load growth rate forecasts for the next 20 years are the 1 percent per year peak and 2.25 percent per year energy growth rates offered by NWE. Ex NWE 10, p. 2. The Commission further finds that the appropriate method for distributing the annual energy growth across NWE's load shape as it changes in response to the greater growth rate in energy than peak is to spread the energy growth across the forecast blocks as a function of each block's growth room to the total growth room of all blocks.

27. The Commission finds that the proper avoided capacity costs are the \$36 per kilowatt year avoided capacity cost value presented by NWE through the end-of-year 2015 termination date of NWE's capacity contract upon which this capacity value is based, and then escalating by 5.84 percent on January 1, 2016, and at the beginning of each year thereafter for the remainder of the 20-year QF contract term. TR2 211; Ex NWE 14.

31. The Commission finds that levelized avoided cost values, discounted by a 7.86% present-value discount factor, are the appropriate values to use because they will produce a stable price that will better enable Oak Tree to finance the Project. The Commission accordingly finds that NWE's avoided cost for the Oak Tree Project is \$49.24/MWh if production begins in 2013 and \$51.23/MWh if production begins in 2014 as set forth on the "Levelized" columns of Amended Exhibit A.

8. Levelized avoided cost values, discounted by a 7.86% present-value discount factor, are the appropriate values to use because they will produce a stable price that will better enable Oak Tree to finance the Project. NWE's avoided cost for the Oak Tree Project is \$49.24/MWh if production begins in 2013 and \$51.23/MWh if production begins in 2014 as set forth on the "Levelized" columns of Amended Exhibit A.

Dated at Pierre, South Dakota, this 17<sup>th</sup> day of May, 2013.

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>[Signature]</u>
Date:	<u>05.17.13</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

[Signature]  
GARY HANSON, Chairman  
dissenting in part

[Signature]  
CHRIS NELSON, Commissioner  
dissenting in part

[Signature]  
KRISTIE FIEGEN, Commissioner