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November 6, 2007

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**E-FILED**

Patricia Van Gerpen  
Executive Director  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

RE: **NORTHWESTERN/BBI TRANSACTION**  
Docket GE06-001  
Our file: 0230

Dear Patty:

Enclosed is a Petition to Terminate the FERC Agreement in the NorthWestern BBI docket, which please file.

I have sent a copy of the petition to Commission General Counsel John Smith with a copy of this letter.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosure  
cc/enc: John Smith  
Tom Knapp

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

IN THE MATTER OF THE MERGER	)	DOCKET GE06-001
BETWEEN NORTHWESTERN	)	
CORPORATION AND BBI GLACIER	)	<b>PETITION TO TERMINATE</b>
CORP., A SUBSIDIARY OF	)	<b>FERC AGREEMENT</b>
BABCOCK & BROWN	)	
INFRASTRUCTURE LIMITED	)	

NorthWestern Corporation ("NorthWestern") by its undersigned attorneys hereby petitions the South Dakota Public Utilities Commission ("Commission") to terminate the Federal Energy Regulatory Commission settlement agreement of October 9, 2006, ("FERC Agreement"), as follows:

1. In this docket NorthWestern asked for and received from the Commission a declaratory ruling regarding jurisdiction which the Commission entered on January 9, 2007. The Commission determined that it did not have jurisdiction to approve or deny the proposed merger between NorthWestern and Babcock & Brown Infrastructure Limited ("BBI"), based upon the statutes in effect as of the date of the Commission's decision.

2. NorthWestern, BBI and the Commission, identified as applicants, entered into a settlement agreement dated October 9, 2006, settling certain outstanding issues among the parties which were pending before FERC in Docket No. EC06-127-000, which involved FERC approval of the transaction. The FERC Agreement is filed in this docket. Paragraph 19 of the FERC agreement, in pertinent part, provides that "[a]fter the effective date of this agreement, in the event of a material change in circumstances . . . any

Applicant . . . may petition the SD PUC for . . . termination of this agreement . . . ."

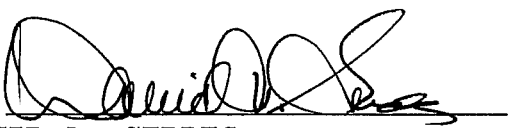
3. On July 24, 2007, NorthWestern received from BBI a letter, a copy of which is attached hereto as Exhibit A, terminating the proposed merger between BBI and NorthWestern ". . . in accordance with the terms of the Letter Agreement dated June 22, 2007 between BBI and NorthWestern, the Agreement and Plan of Merger dated as of April 25, 2006 . . . ." Termination of the proposed merger between BBI and NorthWestern constitutes a material change in circumstances under the FERC Agreement.

4. The FERC Agreement is based on the premise that the merger between BBI and NorthWestern would be consummated. BBI's letter of July 24, 2007, irrevocably terminated the proposed merger. Therefore, the FERC Agreement is without consideration, is mere surplusage and should be terminated as provided in paragraph 19 of that agreement.

WHEREFORE NorthWestern prays that the Commission terminate the FERC Agreement and order that its terms and conditions are now and have been since July 24, 2007, a nullity.

Dated this 6<sup>th</sup> day of November, 2007.


MAY, ADAM, GERDES & THOMPSON LLP

BY:   
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CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 6~~th~~ day of November, 2007, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at his last known address, to-wit:

John Smith  
General Counsel  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501



David A. Gerdes

**BABCOCK & BROWN  
INFRASTRUCTURE**

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Level 23 The Chifley Tower - 2 Chifley Square - Sydney NSW 2000 Australia  
T +61 2 9229 1600 - F +61 2 9235 3496 - www.bbinfrastructure.com



July 24, 2007

NorthWestern Corporation  
125 S. Dakota Avenue  
Sioux Falls, SD 57104

Attention: Michael Hanson, President and CEO

Dear Mr. Hanson:

This letter is to inform you that Babcock & Brown Infrastructure Limited ("BBI") and its subsidiaries BBI US Holdings Pty Ltd., BBI US Holdings II Corp and BBI Glacier Corp. (collectively with BBI, the "BBI Group") have irrevocably decided not to appeal the decision of the Montana Public Service Commission ("MPSC") denying our joint request for a rehearing and thereby refusing to consider the revised proposal we submitted to the MPSC with respect to the proposed acquisition of NorthWestern Corporation ("NorthWestern") by BBI. As a result, in accordance with the terms of the Letter Agreement dated June 22, 2007 between BBI and NorthWestern, the Agreement and Plan of Merger dated as of April 25, 2006 among the BBI Group and NorthWestern, as amended, is hereby terminated on the basis that the MPSC action constitutes a final and non appealable Restraint (as defined in the Merger Agreement). In accordance with the terms of our June 22, 2007 Letter Agreement, we request that you immediately return the Substitute Letter of Credit to BBI.

We are disappointed that despite our best efforts, we have been unable to find a way make the transaction between our companies work. We wish NorthWestern continued success in its future endeavors.

Yours sincerely,

Jeff Kendrew  
Acting Chief Executive Officer