

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

IN THE MATTER OF THE COMPLAINT BY OAK)	ORDER GRANTING IN PART
TREE ENERGY LLC AGAINST)	MOTION TO COMPEL
NORTHWESTERN ENERGY FOR REFUSING TO)	
ENTER INTO A PURCHASE POWER)	EL11-006
AGREEMENT	

On April 28, 2011, Oak Tree Energy, LLC (Oak Tree or Complainant) filed a Complaint with the South Dakota Public Utilities Commission (Commission) against NorthWestern Corporation d/b/a NorthWestern Energy (NWE). The Complaint alleges that a dispute exists between Complainant and NWE over the terms of a power purchase agreement (PPA) sought by Oak Tree for the purchase by NWE of Oak Tree's output from its Oak Tree Project (Project), a proposed 19.5 MW nameplate capacity wind generation facility to be located in Clark County that is a Qualified Facility under the Public Utility Regulatory Policy Act of 1978, 16 U.S.C. § 824a-n (PURPA). The Complaint requests that the Commission exercise its jurisdiction to resolve the dispute between the Complainant and NWE, determine NWE's avoided costs over the 20 year life of the Project that it must pay Oak Tree under PURPA for electricity generated from the Project, and grant Oak Tree such other relief as is necessary for Oak Tree to obtain a PPA with NWE for electricity produced from the Project on terms consistent with the requirements of PURPA and the Commission's 1982 Order in Docket F-3365.

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 September 7, 2011, Oak Tree filed a Motion to Compel. On October 13, 2011, Oak Tree filed a Supplemental Brief to Motion to Compel. On October 26, 2011, Northwestern Energy's filed a Brief in Opposition to Oak Tree's Motion to Compel. On November 1, 2011 Oak Tree filed a Reply in Support of Its Motion to Compel (Reply).

In its Motion, Oak Tree requested Commission action with respect to five of its discovery requests to NWE. In its Reply, Oak Tree limited its request for Commission action to item numbers 3, 4, and 5, involving, respectively: Interrogatory No. 10 and Request for Production No. 22 requesting that NWE identify with particularity its avoided cost for its South Dakota utility over a 5, 10, and 20 year period; and Requests for Production Nos. 23 and 24 with respect to production of NWE's Titan Wind Project PPA.

At its regular meeting on November 8, 2011, the Commission considered the Motion as limited by the Reply. Oak Tree and NWE represented that they had reached agreement as to disclosure by NWE of the Titan Wind Project PPA, and Oak Tree stated that it was not necessary for the Commission to rule on its request regarding Requests for Production Nos. 23 and 24 at this time. The Commission accordingly took no action on this item.

After oral argument from the parties and extensive discussion in response to Commissioner questions, Commissioner Hanson moved to grant the Motion in part by requiring NWE to provide the avoided cost data requested by Oak Tree in Interrogatory No. 10 and Request for Production No. 22 for the 5 year and 10 year periods, including effecting service of the response no later than 15 days prior to Oak Tree's deadline under the Amend Procedural Schedule for its pre-filed direct testimony, but to deny the request for the 20 year period. Commissioner Nelson moved to amend the motion to add the 20 year period to the requirement

as requested by Oak Tree. The motion to amend failed, with Commissioner Nelson voting in favor. The Commission then voted unanimously in favor of the original motion. As part of the discussion on this matter, NWE stated that it understood that if its in-house personnel or outside experts did in fact perform an analysis and develop avoided cost data for the 20 year period in preparation for its pre-filed testimony or otherwise, the company had an obligation to make a timely supplementary discovery response to Oak Tree regarding such additional information, and the Commission stressed the importance of doing so in a timely fashion to enable Oak Tree to prepare its rebuttal testimony and for hearing.

It is therefore

ORDERED, that Oak Tree's Motion to Compel is granted in part, and NWE shall provide its avoided cost data as requested by Oak Tree in Interrogatory No. 10 and Request for Production No. 22 for the 5 year and 10 year periods no later than 15 days prior to Oak Tree's deadline under the Amend Procedural Schedule for its pre-filed direct testimony; and it is further ordered

ORDERED, that Oak Tree's Motion to Compel is denied with respect to the 20 year period with the understand that such denial does not relieve NorthWestern of its obligation to supplement its discovery responses appropriately.

Dated at Pierre, South Dakota, this 14th day of November, 2011.

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><i>Joy Davis</i></u>
Date:	<u>Nov. 14, 2011</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Gary Hanson

GARY HANSON, Chairman

Chris Nelson

CHRIS NELSON, Commissioner

Kristie Fiegen
KRISTIE FIEGEN, Commissioner