

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Qualifying Facilities Rates & Requirements Implementation Issues Under the Public Utility Regulatory Policies Act of 1978	Docket Nos. RM19-15-000 & AD16-16-000
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COMMENTS OF TWO DOT WIND, LLC

I. Summary.

In its Notice of Proposed Rulemaking,¹ the Federal Energy Regulatory Commission (FERC or Commission) proposes to destroy economic development in rural areas like Montana. Two Dot Wind, LLC, concurs with Commissioner Glick that rather than killing competition, FERC should be “focusing on expanding opportunities for genuine competition.”² In proposing these rules, the Commission is abandoning free market principles, picking winners and losers, and elevating the interests of the incumbent monopolies over the competitive market and the economic needs of the most rural citizens in the country. Instead of promoting the Public Utility Regulatory Policy Act’s (PURPA) goals for competition, FERC’s proposed rules will “effectively gut” PURPA³ and eviscerate policies the Commission has pursued for four decades, with rural areas being hardest hit.

FERC cites recent developments to argue that PURPA is no longer needed but none of

¹ Notice of Proposed Rulemaking, *Qualifying Facility Rates and Requirements Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, FERC Docket No. RM19-15-000 *et al.* (Sept. 19, 2019) (NOPR).

² Statement of Commissioner Richard Glick, *dissenting in part from NOPR*, at ¶ 26.

³ Statement of Commissioner Richard Glick, *dissenting in part from NOPR*, at ¶ 1.

these justify the proposed rulemaking. Two of the primary arguments FERC advances are: (1) that state and federal incentives promote renewable generation; and (2) the development of competition in the electric industry. Two Dot Wind presents these comments to show that these developments – if they exist at all – do not justify FERC’s rejection of the pro-competition principles of PURPA.

Two Dot Wind has reviewed and agrees with and incorporates the comments of The Northwest Coalition.⁴ In addition, Two Dot does not waive and explicitly preserves the arguments of other parties on process grounds.

II. Two Dot Wind, LLC.

Two Dot Wind, LLC, is a Montana developer of small QF wind projects. Two Dot Wind presently has an ownership interest in several QF wind projects, including: Martinsdale Colony (750 kw); Sheep Valley (455 kw); and Two Dot Wind Broadview East (1600 kw), which together have a total capacity of 2805 kw. Two Dot Wind has had an interest in other QF projects that were not economical and are no longer in operation.⁵ Two Dot Wind is considering further projects to develop as markets make them feasible. Two Dot Wind’s existing QF wind projects are located in the monopoly utility NorthWestern Energy’s (NorthWestern) service territory and are interconnected to NorthWestern’s transmission system.

III. Communications.

Please direct all correspondence and communications in this matter to:

Monica J. Tranel, Esq.

⁴ Comments of Northwest Coalition, filed in this NOPR Docket December 3, 2019.

⁵ Two Dot Wind projects *see* Two Dot Wind, LLC, Docket No. QF03-36-000 (filed December 4, 2002)(Sheep Valley); Livingston Wind Farm, LLC, Docket No. QF03-127-000 (filed August 5, 2003); Martinsdale Colony, LLC, Docket No. QF04-87-000 (filed February 16, 2004); Martinsdale Colony South, LLC, Docket No. QF04-157-000 (filed September 5, 2004); Moe Wind Farm, LLC, Docket No. QF05-140-000 (filed June 17, 2005).

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IV. Montana Specific Events And Background.

In 1981, the Montana Legislature adopted PURPA (often referred to as Montana's mini-PURPA) through statutory provisions directing the Commission to implement the law by setting rates and terms for QF sales, and the Commission oversees its implementation.⁶ The Montana Supreme Court clarified, "PURPA requires large utilities to purchase energy from smaller qualifying facilities at rates that allow the small facilities to become and remain viable suppliers of electricity."⁷ Montana's mini-PURPA codified in Title 69, chapter 3, part 6, authorizes QFs to contract for the sale of electricity either at a negotiated rate or at a rate set by the Montana Commission.

Section 69-3-601(3)(a) of the Montana statute defines a qualifying small power production facility as a facility that produces electricity by the use of wind, has a power production capacity of no greater than 80 megawatts and is owned by a person not primarily engaged in the generation of electricity from other than such small facility. Section 69-3-603(2) requires the Commission to set the rates and terms for the contract when the QF and the utility cannot agree to a contract or price. "Long-term contracts for the purchase of electricity by the utility from a qualifying small power production facility must be encouraged in order to enhance the economic feasibility of qualifying small power production facilities."⁸

⁶ See §§ 69-3-601 to 69-3-604, MCA (Montana's mini-PURPA); also *Colstrip Energy Ltd. P'ship v. Nw. Corp.*, 360 Mont. 298 ¶ 7, 253 P.3d 870, 2011 MT 99 (Mont. 2011).

⁷ *Whitehall Wind, LLC v. Mont. Pub. Serv. Comm'n.*, 2010 MT 2, ¶ 2, 355 Mont. 15, ¶ 2, 223 P.3d 907, 908-09 (*Whitehall Wind I*); also Sections 69-3-602(2) and 69-3-604(4), MCA.

⁸ Section 69-3-604(2), MCA.

In Montana today, facilities under 3 MW are entitled to standard rate contracts as these projects do not have the resources to negotiate independent contracts with NorthWestern.⁹ Montana's cap for generators qualifying for off-the-shelf standard rates has varied between 3 and 10 MW, and has varied in its application to different resources like hydro, wind, and solar.¹⁰

NorthWestern files its application to establish rates for these small generators every two years, and then files compliance tariffs that are regularly updated.¹¹ Before Montana's deregulation efforts in the late 1990s, QF rates were set based on the costs of coal-fired generation.¹² In 2010, Colstrip Unit 4 served as the proxy for costs that NorthWestern could avoid with purchases from QF sources.¹³

In 2013, the Montana Commission proposed reducing the cap for these standard rate contracts to 100 kilowatts.¹⁴ Small generators pushed back, and the Montana Commission ended up capping the size for the very small generators who could access the standard rate tariff at 3 MW. As required by rule, NorthWestern filed its biennial QF application in January of 2014, but failed to provide sufficient information to support the proposed rates. The Commission denied

⁹ ARM 38.5.1901(j); ARM 38.5.1902(5); see also Docket D2016.5.39, Final Order 7500c ¶ 1 available at https://dataportal.mt.gov/t/DOAPSC/views/EDDISearch_15650306559830/PSCEDDISearch?iframeSizedToWindow=true&:embed=y&:showAppBanner=false&:display_count=no&:showVizHome=no&:origin=viz_share_link (last visited December 2, 2019).

¹⁰ <https://leg.mt.gov/content/Bills/Primers/Energy/Utility%20Planning.pdf>; <https://psc.mt.gov/Portals/125/Documents/news/pr/2017PR/PSC%20Solar%20FactSheet.pdf>; Administrative Rule of Montana 38.5.1902(5), implementing history and amendments, available at <http://www.mtrules.org/gateway/ShowNoticeFile.asp?TID=5212> (last visited December 2, 2019).

¹¹ See Docket No. D2008.12.146, NorthWestern's Application for Avoided Cost Tariff for QF1 rates, available at https://dataportal.mt.gov/t/DOAPSC/views/EDDISearch_15650306559830/PSCEDDISearch?iframeSizedToWindow=true&:embed=y&:showAppBanner=false&:display_count=no&:showVizHome=no&:origin=viz_share_link (last visited December 2, 2019).

¹² See Order No. 7338b ¶ 6 in PSC Docket No. D2014.1.5, May 4, 2015, available at https://dataportal.mt.gov/t/DOAPSC/views/EDDISearch_15650306559830/PSCEDDISearch?iframeSizedToWindow=true&:embed=y&:showAppBanner=false&:display_count=no&:showVizHome=no&:origin=viz_share_link (last visited December 2, 2019).

¹³ *Id.*, Order 7338b ¶ 6.

¹⁴ Administrative Rule of Montana 38.5.1902(5), implementing history and amendments, available at <http://www.mtrules.org/gateway/ShowNoticeFile.asp?TID=5212> (last visited December 2, 2019).

the Application.¹⁵ The next time NorthWestern filed an application to set QF1 rates was in 2016. That proceeding resulted in Commission Orders that drastically shortened contract lengths and implemented discriminatory pricing. Those Orders were reversed by the Montana District Court for the Eighth Judicial District of Montana in April of 2019.¹⁶ They are pending before the Montana Supreme Court.¹⁷

After the evidentiary hearing was held in the 2016 small QF docket, at a work session to determine what the appropriate rate should be, one Commissioner, unknowingly speaking while his video microphone was on and being recorded, made the following statements:¹⁸

Commissioner Lake:	Well it's a five-year contract. [...]
Staff:	It's essentially a five-year rate but, yeah, which is, I mean, it's going to probably kill QF development entirely ...
Commissioner Lake:	Well, actually the ten year might do it if the price doesn't. And honestly at this low price, um, I can't imagine anyone gonna get into it.
Staff:	No, no one ...
Commissioner Lake:	So it becomes a totally moot point because just dropping the rate that much probably took care of the whole thing.
Staff:	Well it did except for one issue. Which is the other, the ancillary amendment which is holding NorthWestern to the same standard...
Commissioner Lake:	We're, we're still live.

¹⁵ *Id.*, Docket No. 2014.1.5, Order 7338b ¶¶ 36 - 37.

¹⁶ *Vote Solar v. Montana PSC et al.*, Cause No. BDV 17-0776, on appeal to Montana Supreme Court available at <https://appecm.mt.gov/PerceptiveJUDSupremeCourt/#!toCaseResults> (last visited December 1, 2019).

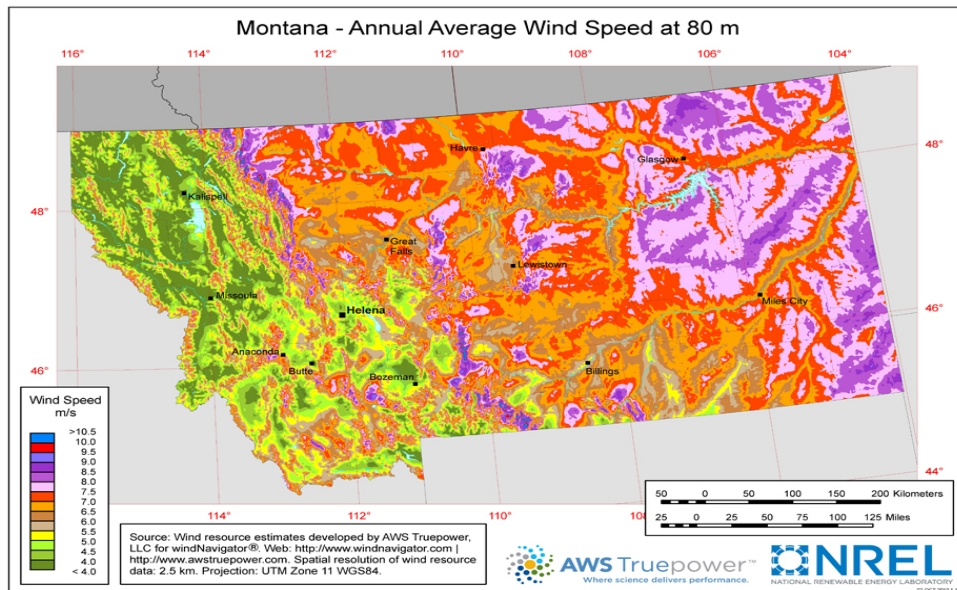
¹⁷ *Vote Solar v. Montana Public Service Commission*, Docket No. DA 19-0223, available at <https://appecm.mt.gov/PerceptiveJUDSupremeCourt/#!toCaseResults> (last visited December 3, 2019), and *MTSUN v. PSC et al*, DA 19-0363, available at <https://appecm.mt.gov/PerceptiveJUDSupremeCourt/#!toCaseResults> (last visited December 3, 2019).

¹⁸ See <https://www.youtube.com/watch?v=Q1YO2sXa8wU> Commission video (last visited December 2, 2019); http://billingsgazette.com/news/government-and-politics/hot-mic-records-troubling-conversation-about-solar-regulations/article_8499a49d-e281-5dd7-aae7-aeccefa0394e.html (last visited December 2, 2019); and <http://ypradio.org/post/hot-mic-throws-shade-montana-solar-interview-billings-gazette-reporter-tom-lutey#stream/0>. See also electronic recording of June 22, 2017 work session (last visited December 2, 2019).

Staff: Yeah, but our, I think our mics are off so we're ok.

Staff: But anyway, they're not going to be able to hear.

Montana ranks 5th in the nation for onshore wind potential but is 24th for installed energy production capacity.



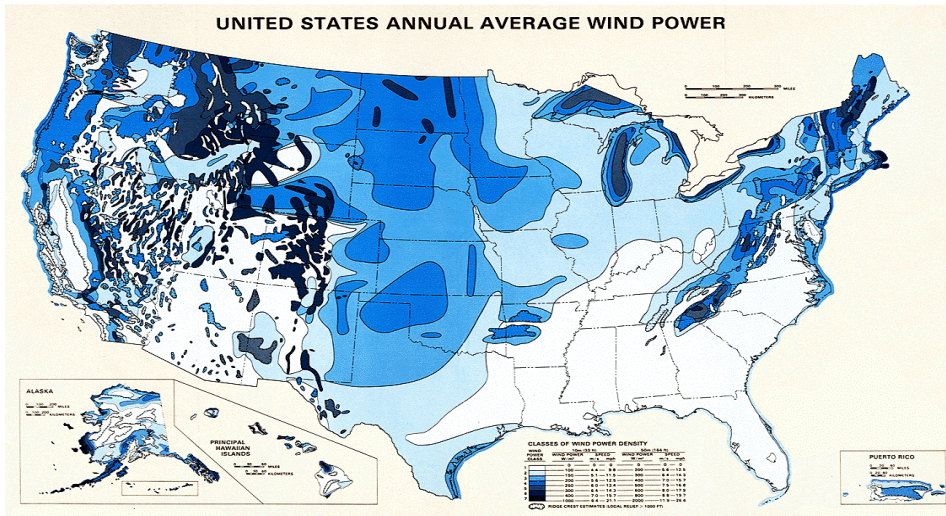
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Citing NREL, Montana State University researchers concluded:

Montana ranks 24th in the nation for installed wind energy production capacity, with 720MW. According to the National Renewable Energy Laboratory, Montana is ranked 5th for estimated potential onshore wind power.²⁰

¹⁹ <https://windexchange.energy.gov/maps-data/71> (last visited November 29, 2019).

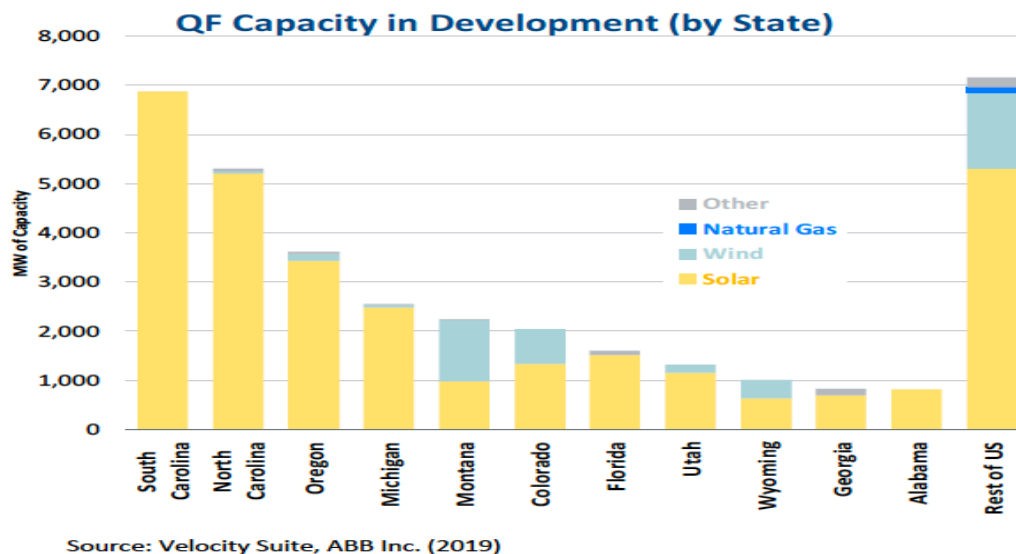
²⁰ <http://www.montana.edu/wind/documents/Montana%20Wind%20Status%20Report.pdf> citing <https://www.nrel.gov/docs/fy12osti/51946.pdf> (last visited November 29, 2019).



Montana State University researchers further report:

The American Wind Energy Association states that “the latest data from the DOE finds that wind energy could provide 89.8% of Montana’s electricity by 2020 and increase to 403.5% by 2030. The wind energy produced in Montana alone would power the equivalent of 6.4 million average American homes by 2030.”²¹

Montana has significant QF wind energy in development, more than almost the entire rest of the country combined:

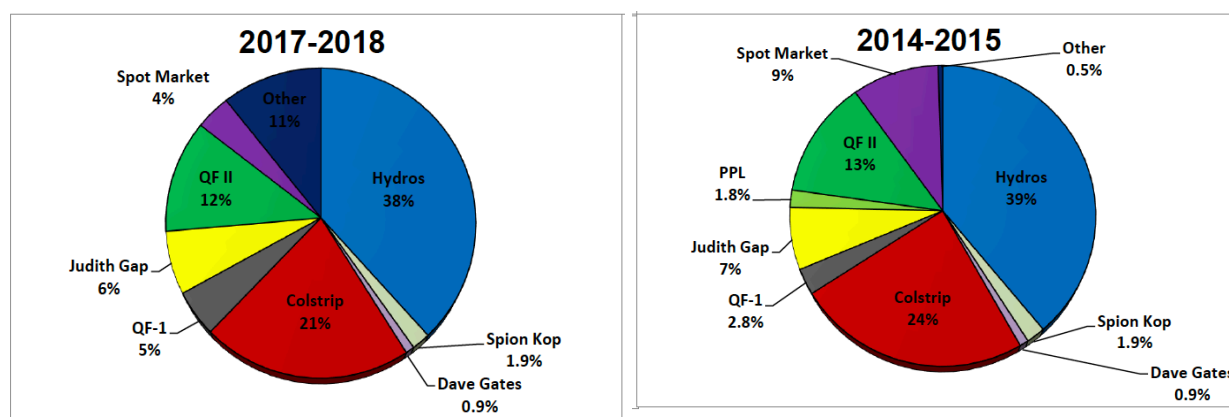


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²¹ <http://www.montana.edu/wind/windinmontana.html> (last visited November 29, 2019).

²² https://brattlefiles.blob.core.windows.net/files/17081_purpa_resurgence_and_avoided_costs.pdf (last visited November 29, 2019).

Despite this robust development potential, in the past ten years NorthWestern has executed just four PPAs for QF projects outside the standard rate offer.²³ Two of those PPAs were only executed after a lengthy process before the Montana Commission,²⁴ and the other two were executed to influence the Montana Commission's QF rates downward and to shorten the contract lengths being offered.²⁵ Only one of those four PPAs has resulted in an operating project.²⁶ While Montana has some of the best wind resources in the world, and the incumbent monopoly has identified a need for more generation, QF resources have grown from 2.8% to 5% of NorthWestern's supply portfolio, with large QFs growing a mere 1%.²⁷



The few PURPA projects that have fought to the finish line – and gotten built – are

²³ See Exhibit TDW 001, NorthWestern response to Data Request in Docket No. D2019.02.09, attached.

²⁴ Montana Commission Docket No. D2016.7.56, *In the Matter of the Petition of Crazy Mountain Wind*, available at https://dataportal.mt.gov/t/DOAPSC/views/EDDISearch_15650306559830/PSCEDDISearch?iframeSizedToWindow=true&embed=y&showAppBanner=false&display_count=no&showVizHome=no&origin=viz_share_link (last visited December 1, 2019); and also Montana Commission Docket No. D2017.6.45, *In the Matter of the Petition of New Colony Wind*, available at https://dataportal.mt.gov/t/DOAPSC/views/EDDISearch_15650306559830/PSCEDDISearch?iframeSizedToWindow=true&embed=y&showAppBanner=false&display_count=no&showVizHome=no&origin=viz_share_link (last visited December 1, 2019).

²⁵ See Exhibit TWD 002, p. 40:5 – 42:14, excerpts from Transcript of Hearing in Docket No. D2019.02.09.

²⁶ Exh. TDW 001, NorthWestern response to Data Request in Docket No. D2019.02.09, line 22.

²⁷ Response of Montana Consumer Counsel to Data Request in Docket No. D2019.02.09 before the Montana Public Service Commission, available at https://dataportal.mt.gov/t/DOAPSC/views/EDDISearch_15650306559830/PSCEDDISearch?iframeSizedToWindow=true&embed=y&showAppBanner=false&display_count=no&showVizHome=no&origin=viz_share_link (last visited December 2, 2019).

tremendous economic benefits to rural counties.²⁸ Montana's rural counties sought and received the ability to grant up to 75% tax abatement to entice these projects to be built in their jurisdictions.²⁹

In spite of these economic opportunities, the incumbent utilities and the Montana Commission have resisted applying PURPA equitably.³⁰ This Commission's NOPR is more like an after-the-fact justification for recalcitrant states than a forward-looking protection of economic opportunities and competitive markets. It should not be adopted.

V. The NOPR relies on incorrect assumptions regarding incentives and competition.

A. Montana programs do not incentivize development of renewable resources.

1. Competitive solicitations have not worked in Montana.

Competitive solicitations in Montana have not created a path for QF development. As former Montana Commissioner Travis Kavulla noted in discussing a proposed rule change relating to Montana QFs:

“This proposed rule is predicated on the notion that competitive solicitations are a superior method to arrive at true market prices than an administratively established standard rate. This is true, but it comes with a significant caveat. In order for the objective of market access for QFs to really mean anything, it should not be enough merely to invoke the words ‘competitive solicitation’; rather, that solicitation process must be credible, transparent, and even-handed to all comers. There is still much work to be done in Montana in this respect.”³¹

²⁸ See <http://www.montana.edu/wind/documents/Montana%20Wind%20Status%20Report.pdf> (last visited December 1, 2019).

²⁹ Title 15 chapters 6, 24, 31 and 32 explicitly encourage the development of wind energy and authorize counties to grant tax abatements for the explicit purpose of being able to attract wind development to Montana. See, Section 15-32-401 MCA. See <http://deq.mt.gov/Energy/taxincentrenew> (last visited December 1, 2019).

³⁰ *Vote Solar et al v. MPSC et al*, Cause No. BDV-17-0776; Supreme Court No. DA 19-0223.

³¹ *Qualifying Facilities in Montana: A Snapshot of QF Contracts and Policy* (September 2017), Sonja Nowakowski and Trevor Graff, available at <https://leg.mt.gov/content/Committees/Interim/2017-2018/Energy-and-Telecommunications/Meetings/Sept-2017/Exhibits/QF-Introduction-Tab%208.pdf> (last visited November 30, 2019), citing Commissioner Travis Kavulla, correspondence to ETIC dated Aug. 27, 2013.

In a 2014 Order, FERC declared that the Montana rule requiring QFs to win a competitive solicitation in order to be eligible to sell their output under long-term contracts violated PURPA.³² FERC also found that the Montana Commission's rule requiring QFs to participate in a competitive bidding process in order to be paid for capacity failed to adequately compensate QFs.³³ FERC stated that "requiring a QF to win a competitive solicitation as a condition to obtaining a long-term contract imposes an unreasonable obstacle to obtaining a legally enforceable obligation particularly where, as here, such competitive solicitations are not regularly held."³⁴ In December 2015, the Montana Commission repealed its rule requiring that larger QFs be selected in a competitive solicitation to obtain a long-term contract.³⁵ The NOPR's suggestion that competitive bidding can replace PURPA is not supported by the factual record in Montana.

2. RPS and CREP standards have not been enforced in Montana.

In 2005 the Montana Legislature adopted renewable resource standards, requiring investor-owned utilities to meet an energy requirement of 15% of yearly retail sales from eligible renewable resources, and for an additional capacity requirement under purchases from state renewable energy projects (CREP) for a total of 75 MWs.³⁶

NorthWestern has never been in compliance with the CREP requirements, and

³² *Hydrodynamics, Inc.*, 146 FERC 61, 193, United States of America Federal Energy Regulatory Commission, March 20, 2014.

³³ *Qualifying Facilities in Montana: A Snapshot of QF Contracts and Policy* (September 2017), Sonja Nowakowski and Trevor Graff, available at <https://leg.mt.gov/content/Committees/Interim/2017-2018/Energy-and-Telecommunications/Meetings/Sept-2017/Exhibits/QF-Introduction-Tab%208.pdf> (last visited November 30, 2019), citing 146 FERC 61, 193, United States of America Federal Energy Regulatory Commission, March 20, 2014.

³⁴ *Hydrodynamics, Inc.*, 146 FERC 61, 193, ¶ 32.

³⁵ <https://leg.mt.gov/content/Committees/Interim/2017-2018/Energy-and-Telecommunications/Meetings/Sept-2017/Exhibits/QF-Introduction-Tab%208.pdf> (last visited December 1, 2019).

³⁶ NorthWestern 2019 Procurement Plan, p. 4-26, available at <https://www.northwesternenergy.com/our-company/regulatory-environment/2019-electricity-supply-resource-procurement-plan> (last visited November 28, 2019); Mont. Code Ann. §69-3-2001 et seq. available at https://leg.mt.gov/bills/mca_toc/69_3_20.htm (last visited November 30, 2019).

compliance with the RPS standards has been through REC transactions.³⁷

The CREP law requires Northwestern to buy 65 megawatts (MW) of power from alternative projects which meet the law's standards. Those standards include being under 25 MW and either having 50% or more local ownership, or being owned by the utility. The CREP law went into effect in 2012, and NorthWestern has never met its full requirement.³⁸

In August of 2019 the Montana Eighth Judicial District, Cascade County, found the Montana Commission's repeated waivers of NorthWestern's statutory obligation to be arbitrary and capricious. That Court found:

The Commission's factual finding that "North Western took all reasonable steps to procure CREP resources in 2015 and 2016, yet documented factors beyond its control prevented North Western from achieving full compliance" was arbitrary and clearly erroneous in light of the administrative record.³⁹

An appeal to the Montana Supreme Court has been filed.

Abrogating important protections of PURPA on the false notion that state channels exist to ensure development of renewable resources would be fatal to economic opportunities in Montana.

B. There is no competitive market in Montana and the NOPR discriminates against QF development.

1. Fixed price contracts are required for financing.

PURPA and Montana law require the Commission to set a long-term, *fixed* price for

³⁷ NorthWestern 2019 Procurement Plan, p. 4-26 to 4-27, available at <https://www.northwesternenergy.com/our-company/regulatory-environment/2019-electricity-supply-resource-procurement-plan> (last visited November 28, 2019).

³⁸ <http://psc.mt.gov/About-Us/News/psc-certifies-new-community-renewable-energy-project> (last visited November 28, 2019).

³⁹ Cause No. DDV-18-0640, Order Reversing Commission, p. 14, available at <https://meic.org/wp-content/uploads/2019/08/19-08-01-ORDER-Reversing-MT-PSC-Final-Order-7578B.pdf> (last visited November 28, 2019).

output from QF resources.⁴⁰ The price may not lawfully contain re-openers.⁴¹ PURPA bars price re-openers for a good reason.⁴² Independent non-monopoly generators need price certainty in order to reasonably forecast the revenue of the project and raise financing for the project. Unlike NorthWestern, QF projects are not “guaranteed a rate of return on [their] activities generally or on the activities vis-a-vis the sale of power to the utility and [their] risk in proceeding forward in the . . . small power production enterprise is not guaranteed to be recoverable.”⁴³

The “as available” rate is a short-term rate that does not permit a QF or its investors to take advantage of long-term financing as would be the case with forecast avoided cost pricing. Since the adoption of PURPA, the Commission has repeatedly evinced the concern that QFs be able to lock in long-term rates so as to be able to evaluate the financial viability of a project.⁴⁴ In *J.D. Wind I* (2010), the Commission stated unequivocally that it was concerned about the ability of an investor to determine the long-term return on its investment:

The Commission’s regulations, from the beginning, have given QFs the option of choosing to have rates calculated at the time the obligation is incurred. The intention of the Commission was to enable a QF “to establish a fixed contract price for its energy and capacity at the outset of its obligation.”⁴⁵

The Commission recognized that:

[I]n order to be able to evaluate the financial feasibility of a cogeneration or small power production facility, an investor needs to be able to estimate, with reasonable certainty, the expected return on a potential investment before construction of a facility.⁴⁶

⁴⁰ See 18 C.F.R. § 292.304(b)(5), (d)(2)(ii); *Am. Paper Institute, Inc.*, 461 U.S. at 414 (internal quotation omitted); *Small Power Prod. and Cogeneration Facilities; Regulations Implementing Sec. 210 of the Pub. Util. Reg. Pol. Act of 1978*, Order No. 69, 45 Fed. Reg. 12,214, 12,224 (Feb. 25, 1980); *Windham Solar, LLC*, 157 FERC ¶ 61,134, PP 5-8 (Nov. 22, 2016).

⁴¹ See 18 C.F.R. § 292.304(b)(5), (d)(2).

⁴² See *Windham Solar, LLC*, 157 FERC ¶ 61,134 at paragraph 8; also § 69-3-604(2), MCA.

⁴³ *Am. Paper Institute, Inc. v. Am. Elec. Power Service Corp.*, 461 U.S. 402 at 414 (1983).

⁴⁴ *JD Wind I, LLC*, 130 FERC ¶ 61,127, at ¶ 23 (February 19, 2010) Docket EL09-7701 (Order Denying Requests for Rehearing, Reconsideration or Clarification).

⁴⁵ *JD Wind I, LLC*, 130 FERC ¶ 61,127, at ¶ 23.

⁴⁶ *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, FERC Stats. & Regs. ¶ 30,128 at 30,868 (1980), order on reh'g, Order No. 69-A, FERC Stats. & Regs. ¶ 30,160 (1980), aff'd in part and vacated in part, *American Electric Power Service Corp. v. FERC*, 675 F.2d 1226 (D.C. Cir. 1982), rev'd in part, *American Paper Institute, Inc. v. American*

The proposal in the NOPR puts QFs in an untenable Catch 22: Financing depends on the existence of an enforceable obligation for the QF to sell its output but the proposed rule would make that enforceable obligation dependent on the existence of a commitment to financing.

2. QFs must be able to unilaterally claim a LEO.

The new rules would compel QFs to have a commitment to financing in place before a legally enforceable obligation (LEO) is created. This is unworkable for several reasons, not least of which, it unlawfully compels the Montana Legislature to amend its statutes.

Practically, the NOPR fails to recognize the reality that no QF claim to a LEO in Montana has been honored, either by the incumbent utility, or by the Commission. In fact, the Montana process has been so harmful to QFs that it has been rejected by this Commission,⁴⁷ the Montana Supreme Court,⁴⁸ and the United States District Court for the District of Montana.⁴⁹ In *FLS Energy*, this Commission found:

“when a state limits the methods through which a legally enforceable obligation may be created to only a fully-executed contract, the state’s limitation is inconsistent with PURPA, and our regulations implementing PURPA.” The Montana Commission’s requiring a signed interconnection agreement is no different than requiring a utility-signed contract, and equally impermissible.⁵⁰

As noted by the U.S. District Court for the District of Montana in *Bear Gulch*, reviewing the Montana Commission’s LEO rules and rejecting them as a violation of PURPA, these

Electric Power Service Corp., 461 U.S. 402 (1983) (Order No. 69).

⁴⁷ *Hydrodynamics, Inc.*, 146 FERC 61, 193, ¶ 32; *FLS Energy, Inc.*, 157 FERC 61, 211.

⁴⁸ *Whitehall Wind, LLC v. Mont. Pub. Serv. Comm’n*, 2010 MT 2, ¶ 2, 355 Mont. 15, ¶ 2, 223 P.3d 907, 908-09 (*Whitehall Wind I*); *Whitehall Wind, LLC v. Mont. Pub. Serv. Comm’n*, 2015 MT 119 ¶ 3, 379 Mont. 119, 347 P.3d 1273 (Mont. 2015) (*Whitehall Wind II*).

⁴⁹ *Bear Gulch Solar, LLC v. Mont. Pub. Serv. Comm’n* (D. Mont., 2018), citing *Winding Creek Solar LLC v. Peevey*, 293 F.Supp.3d 980, 994 (N.D. Cal. 2017).

⁵⁰ *FLS Energy, Inc.*, 157 FERC 61, 211, ¶ 26, citing and quoting *Cedar Creek*, 137 FERC ¶ 61,006 at ¶ 5, available at <https://www.ferc.gov/whats-new/comm-meet/2016/121516/E-7.pdf> (last visited December 1, 2019).

renewable energy projects “answered our nation's call for new energy at a clearly agreed and effective compensation only to find ultimately, after expending hundreds of thousands of dollars in performance, that the agreed upon payment had been cut in half.”⁵¹ It was wrong for the Montana Commission to abruptly change course 180 degrees and eviscerate PURPA, and it is wrong for this Commission to do so through the proposed NOPR.

C. The NOPR incorrectly assumes states will provide opportunities in place of PURPA

This Commission’s suggestion that it can transfer its mandate to promote economic development and competition to hostile state commissions whose members attend Red Pill conferences wearing their commission badges spells certain death for rural areas to gain some economic freedom and independence.⁵² The Montana Commissioners have openly and publicly expressed their disdain for PURPA, and their unwillingness to abide by its mandate, even while open cases are before them for decision:

Commissioner Koopman: “Whether CO2 emissions are, in net effect, a climactic calamity or an earth-greening benefit is an unsettled question. That scientific debate is just warming up (even while the earth, in recent years, has not.)”⁵³

Commissioner Lake (unknowingly speaking while the video microphone was on and being recorded):

(Staff member to Commissioner Lake): “[the shortened contract length] ... is going to kill development entirely.”

⁵¹ *Bear Gulch Solar, LLC v. Mont. Pub. Serv. Comm’n*, 356 F. Supp.3d 1041 (D. Mont. 2018).

⁵² See https://missoulian.com/opinion/editorial/demand-better-from-montana-public-service-commission/article_d308a2a4-eebb-5ecc-b467-6d09050454dc.html?utm_medium=social&utm_source=facebook_Missoulian&fbclid=IwAR2WTyRZrhIOjRvhQfnPaFJAdPmNGXPR_D_5Pp__cEv7_HiKDYmuKhshWdQ and also see <https://montanafreepress.org/2019/11/22/presenting-at-red-pill-expo-montana-utility-commissioner-urges-attendees-to-take-their-ideas-mainstream/> (last visited December 1, 2019).

⁵³ April 2, 2019, District Court Order, Attachment C, Koopman article, <https://appecm.mt.gov/PerceptiveJUDDocket/#!toCaseResults> (last visited December 2, 2019).

(Commissioner Lake, in response): “ ... actually, the ten year might do it if the price doesn't. And honestly, at this low price, I can 't imagine anyone gonna get into it. [J]ust dropping the rate that much probably took care of the whole thing.”⁵⁴

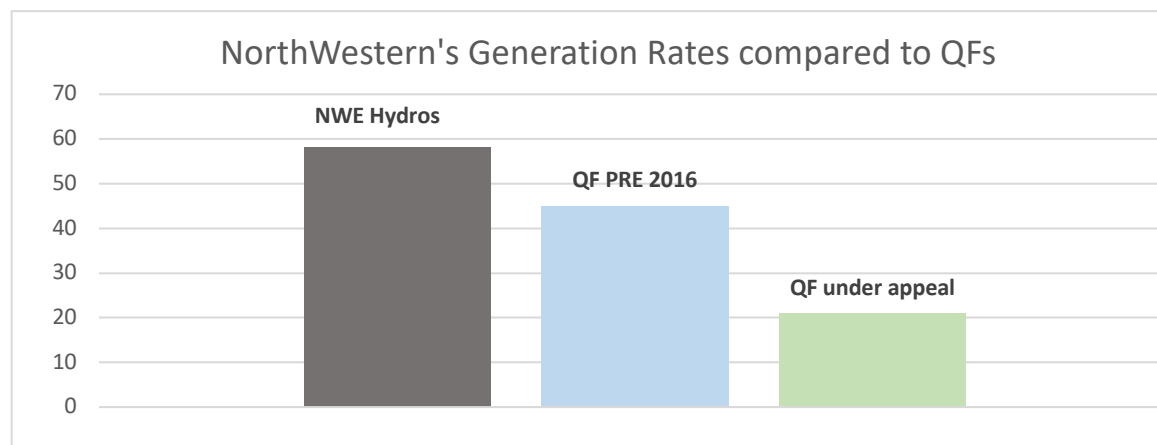
Commissioner Pinocci (On the record in a hearing to set rates for wind projects near Columbus and Rapelje):

“Compare a wind turbine to a coal turbine or a hydroelectric turbine. Some problems I've seen with wind turbines is they'll throw a blade a quarter mile away from the turbine. The brakes fail. We've got an out-of-control turbine, which will hit a certain speed where it just falls apart, start on fire. The chemicals with the oil in the gear box, you know, pollute the air. The dependability of coal and hydroelectric far exceed that of a wind turbine.”⁵⁵

Commissioner Johnson (publishing in the Billings Gazette in December of 2017 while PURPA projects were pending before the Commission for decision):

“Corporate solar developers use this law as a guaranteed source of income for obtaining loans to finance projects, cherry picking the states with the highest government-assured rate to do business in.”⁵⁶

Montana has a great wind resource that enables wind QFs to commit to sell their electric output to NorthWestern at very reasonable prices. The Montana Commission has consistently set the avoided cost rates for QFs at levels substantially below the cost of NorthWestern’s own generation, a trend that has grown precipitously worse since November 2016:



⁵⁴ April 2, 2019, District Court Order p. 3, citing June 22, 2017 Commission Work Session.

⁵⁵ TDW Exhibit 002, Transcript of Hearing excerpt, June 12, 2019, Docket No. D2019.2.9, *In re Grizzly Wind and Black Bear Wind*, p. 72:17 – 73:1.

⁵⁶ April 2, 2019, District Court Order, Attachment E, Johnson article, <https://appecm.mt.gov/PerceptiveJUDDocket/#!toCaseResults> (last visited December 2, 2019).

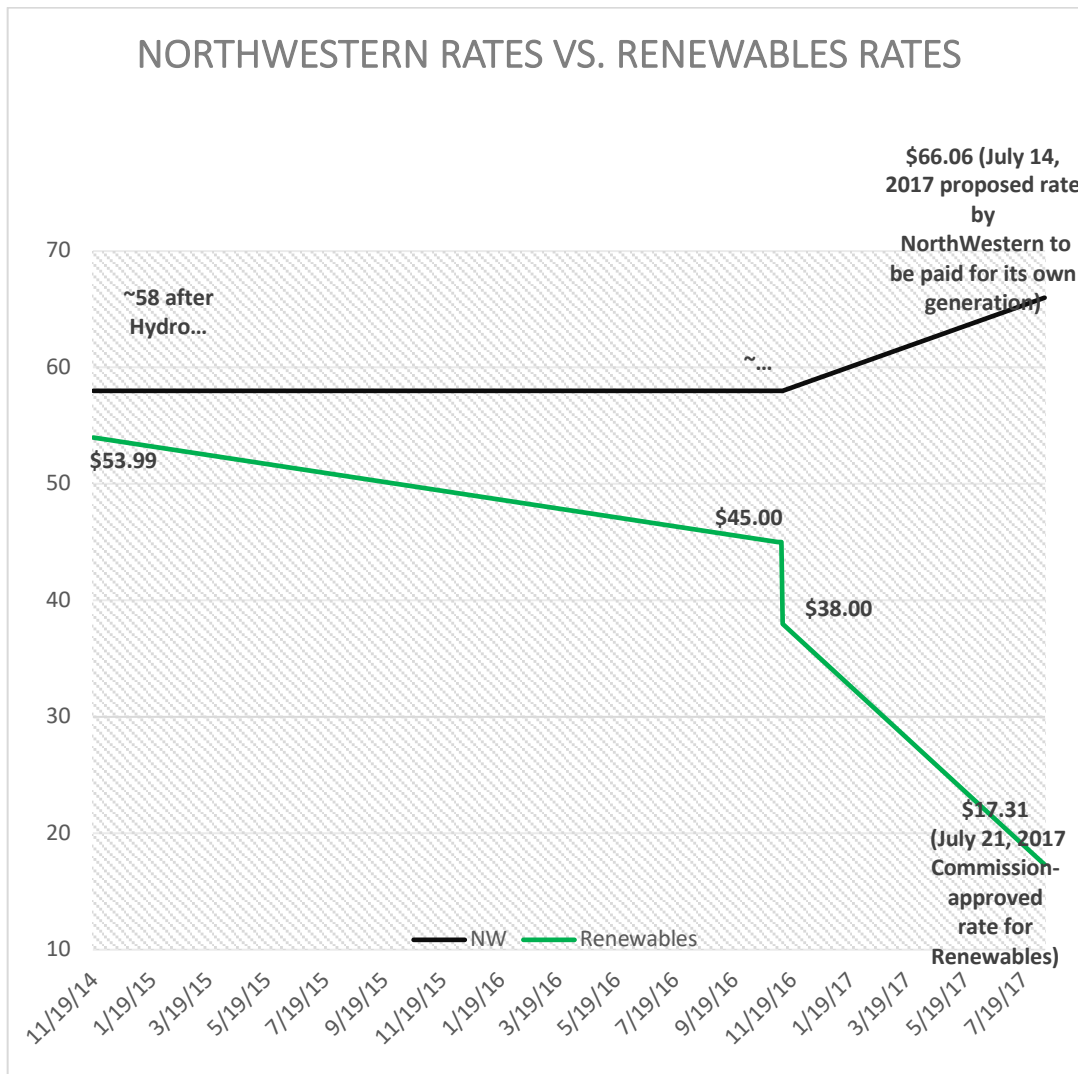
Meanwhile NorthWestern received higher and higher rates from the Commission, including a \$6.5 million rate increase in November of 2019.⁵⁷ Also in November of 2019 NorthWestern requested a \$28 million rate increase, \$7 million of which is attributable to replacement power for outages at its Colstrip plant due to air quality emission violations.⁵⁸

This flies in the face of federal and state mandates to *enhance* the economic feasibility of qualifying small power production facilities. The graph below shows the price per megawatt hour that the Commission has approved for NorthWestern (the top, black line) versus the amounts approved for renewable resources (the bottom, green line) since November 2014:⁵⁹

⁵⁷ See NorthWestern filing in Commission Docket No. 2018.02.12, https://dataportal.mt.gov/t/DOAPSC/views/EDDISearch_15650306559830/PSCEDDISearch?iframeSizedToWindow=true&:embed=y&:showAppBanner=false&:display_count=no&:showVizHome=no&:origin=viz_share_link (last visited December 2, 2019); Commission Docket No. D2017.5.39, Prefiled Direct Testimony of Joe Schwarzenberger, pp. 8:7-12, available at <http://www.psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/D2017-5-39IN17071450898TE.PDF>.

⁵⁸ See Testimony of Kevin Markovich in Montana Commission Docket No. 2019.09.058, p. 8:10 - 9:2, available at https://dataportal.mt.gov/t/DOAPSC/views/EDDISearch_15650306559830/PSCEDDISearch?iframeSizedToWindow=true&:embed=y&:showAppBanner=false&:display_count=no&:showVizHome=no&:origin=viz_share_link (last visited November 28, 2019).

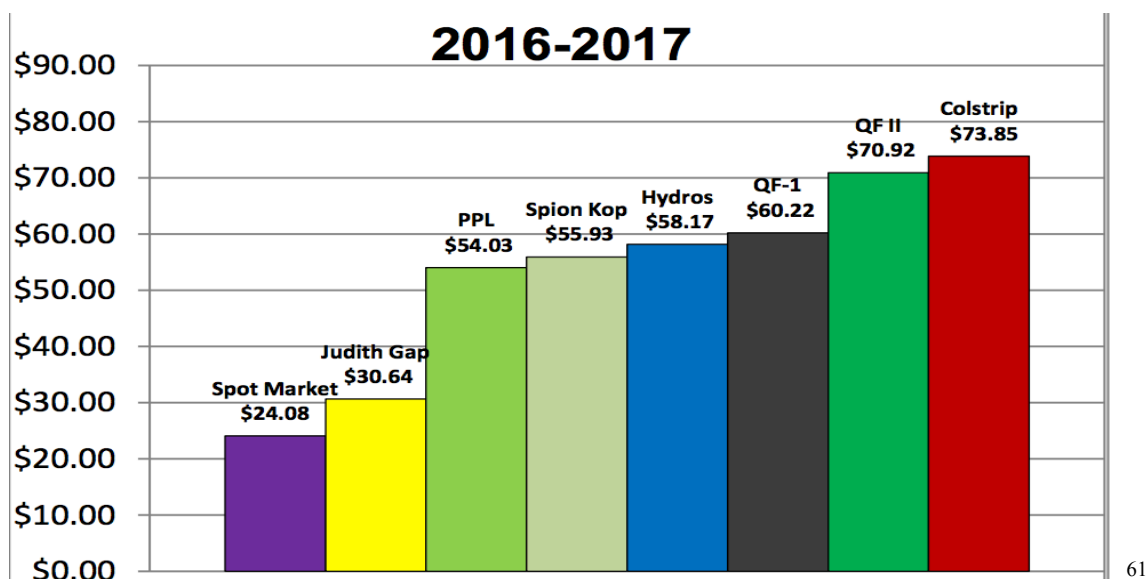
⁵⁹ The data reflected in the chart is from the following Commission dockets: D2013.12.85, Final Order 7323k (Hydro acquisition), and NorthWestern annual supply tracker filings in D2016.7.52, Exhibit JSJ-8 17-18 page 3 of 9 showing total supply rate of 65.405, filed on May 31, 2017, also Commission Order No. 7494 in Docket No. D2015.7.52 (NorthWestern 2015-2016 Electric Supply Tracker, proposed residential supply rate of 67.523 adopted on interim basis), average of \$58 is used in the chart as a conservative estimate; in D2017.5.39 NorthWestern's proposed Base PCC for its own generation assets is an average electricity supply rate of \$66.065 MWh. Schwarzenberger Testimony p. 8:7-11. Exhibit JS-2 p. 3 of 6 Line 42. QF rates at \$ 53.99 MWh in Final Order No. 7347a, D2014.4.43 (Greenfield - wind) and \$45.49 in Final Order No. 7436d in D2015.8.64 (Greycliff – wind) pre-election; \$45.19 MWh is PSC expert staff recommendation at the time of the election, see Exhibit 2, (December 19, 2016 Staff Memo), which the Commission rejected post-election and set an all-hours rate at only \$37.80 MWh in D2016.7.56 post-election (Crazy Mountain Wind), D2016.7.56, Final Order No. 7505b and 7505c. In Final Order 7535a in D2016.12.103 (solar - MTSUN) the Commission approved an average rate of \$17.31 for the QF rate.



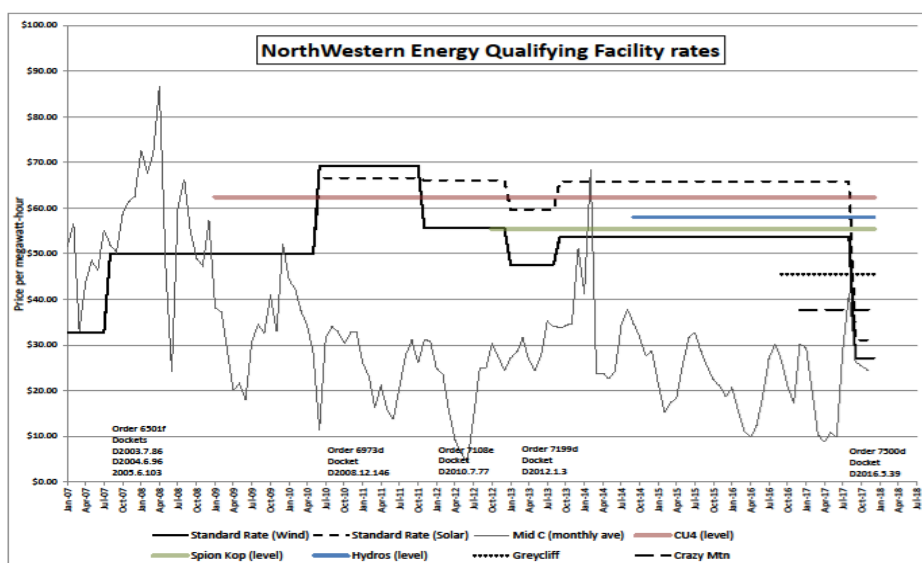
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⁶⁰ Montana Eighth Judicial District Court, Cause No. DV 2017- 181, Exhibit 1.

In comparison, NorthWestern's own resources receive high prices:



The Montana Commission's chart showed the differential in resource pricing:



⁶¹ Response of Montana Consumer Counsel to Data Request in Docket No. D2019.02.09 before the Montana Public Service Commission, available at https://dataportal.mt.gov/t/DOAPSC/views/EDDISearch_15650306559830/PSCEDDISearch?iframeSizedToWindow=true&%3Aembed=y&%3AshowAppBanner=false&%3Adisplay_count=no&%3AshowVizHome=no&%3Aorigi n=viz_share_link (last visited December 2, 2019).

⁶² Available at <http://psc.mt.gov/Portals/125/Documents/news/pr/2017PR/PSC%20Solar%20FactSheet.pdf> (last visited December 1, 2019).

NorthWestern's acquisition of its own generation assets were pre-approved by the Commission at above-market rates.⁶³ NorthWestern's customers pay the highest electricity rates in the state as a result of the preferential rates the Commission has set.⁶⁴

NorthWestern's most recent acquisition of a major non-QF generation resources was justified entirely on the value of those resources' output at forecasted wholesale market prices without any discounts.⁶⁵ Those facilities were known as the PPL Hydroelectric facilities, or the PPL Hydros. NorthWestern successfully convinced the Montana Commission, over the objection of the Montana Consumer Counsel, that a forecasted wholesale market price was a valid benchmark to use in order to approximate the value of those non-QF generation resources and develop the price paid by NorthWestern to acquire those plants.⁶⁶

In light of this background, it is troubling to think that FERC wishes to relinquish its oversight of enforcement of PURPA and leave the most rural states without any options to develop the economic potential of their renewable resources.

VI. This is not the time to double down on fossil fuel.

Embedded in the NOPR is the idea that the need that gave rise to its birth – gaining independence from fossil fuel – has somehow become *less* urgent today than it was forty years ago. The opposite is true. The problems that gave rise to PURPA in the late 1970s have become more powerful today than they were 40 years ago. While some oil and gas companies knew about the issues related to climate from fossil fuel development even before PURPA became

⁶³ See fn. 61, *supra*.

⁶⁴ See

<http://psc.mt.gov/Portals/125/Documents/Energy/pdf/2019%20Gas%20and%20Electric%20Rate%20Summary.pdf> (last visited November 30, 2019).

⁶⁵ See *In the Matter of the Application of North Western Energy for Hydro Assets Purchase*, MPSC Docket No. 02013.12.85, Order No. 7323k (Sept. 26, 2013).

⁶⁶ Order No. 7323k, *id.* at ¶¶ 79-80.

law,⁶⁷ and chose to keep that information secret, today, it is not secret, and it must be addressed to avoid climate chaos.⁶⁸

Scientists agree that the outlook for our climate is bleak and requires immediate and aggressive action to move to zero emissions as fast as possible.⁶⁹ In issuing the NOPR, the Commission rejects the energy transition that is well underway, taking America from being a world leader in development of renewable resources to yesterday's fossil fuels.



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Even if the Commission's NOPR were *not* going to kill off economic opportunities and competition in rural areas in Montana – which Two Dot does not concede – it is on the wrong side of history. The goals of PURPA remain an imperative –indeed, those goals are both a moral imperative as well as a market opportunity. This Commission should not stand on the side of contributing to climate change when it is at a time and a place to do so much more.

VII. Conclusion.

The Commission's proposed rule changes are illegal because they go beyond the

⁶⁷ See <https://www.scientificamerican.com/article/exxon-knew-about-climate-change-almost-40-years-ago/> (last visited December 1, 2019); see also <https://xenetwork.org/ets/episodes/episode-109-big-oils-climate-denial-machine/> (last visited December 2, 2019), citing Neela Banerjee, Lisa Song and David Hasemyer, "[Exxon: The Road Not Taken](#)," Inside Climate News, September 16, 2015. [9-part series].

⁶⁸ See <https://www.nytimes.com/2019/11/26/climate/greenhouse-gas-emissions-carbon.html> (last visited December 1, 2019).

⁶⁹ <https://www.ipcc.ch> (last visited December 1, 2019).

⁷⁰ Photograph of Stillwater wind project, Montana, November 2018; <https://www.kuow.org/stories/pair-of-puget-sound-energy-coal-plants-set-to-close> (last visited December 2, 2019).

Commission's mandate as an administrative agency to implement – and not make – the law.

The proposed rulemaking undermines pricing otherwise available to prospective QFs in Montana, to the point of compromising their economic viability. These QFs would be materially harmed if the rulemaking is adopted.

Finally, the tremendous economic potential that renewable resources in Montana can bring to rural areas, as well as the competition these QFs would bring to incumbent monopolies, will be lost forever if the Commission were to adopt the rules proposed in this proceeding.

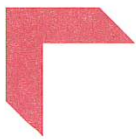
Dated: December 3, 2019

Respectfully Submitted

/s/ Monica J. Tranel

Monica J. Tranel, Esq.
Tranel Law Firm, P.C.
202 W. Spruce Street
Missoula, Montana 59802
Phone: (406) 926-2662
Email: mtranel@tranelfirm.com

Attorneys for Two Dot Wind, LLC



May 3, 2019

Mr. Will Rosquist
Administrator, Regulatory Division
Montana Public Service Commission
1701 Prospect Ave.
P. O. Box 202601
Helena MT 59620-2601

RE: Docket No. D2019.2.8 – Grizzly Wind, LLC
GW Set 4 (009-028)

Dear Mr. Rosquist:

Enclosed for filing are NorthWestern Energy's responses to GW Set 4 Data Requests (009-028) in Docket No. D2019.2.8.

These data responses have been hand delivered to the Montana Public Service Commission and the Montana Consumer Counsel and emailed to counsel of record. They have also been mailed to the remainder of the service list and e-filed on the PSC website.

If you have any questions, please call Joe Schwartzenberger at (406) 497-3362.

Sincerely,

Tracy Lowney Killoy
Administrative Assistant
Regulatory Affairs

enclosure

NorthWestern Energy
Docket No. D2019.2.8
Grizzly Wind, LLC Petition

Grizzly Wind (GW)
Set 4 (009-028)

Data Requests received April 19, 2019

GW-009 Re: BLJ-12 to BLJ-16
 Witnesses: Bleau LaFave

Please provide all PPAs executed between NWE and a QF in the past ten years.

- a. Please identify which projects are currently in operation, and what the remaining life span is of the PPA under which the QF is operating, if applicable.
- b. If there have been executed PPAs for projects that have not been built, please identify those projects and explain why the project was not built.

RESPONSE:

- a. See Attachment.
- b. QFs with executed contracts but not yet built over the last 10 years included New Colony Wind, Crazy Mountain, Stillwater Wind, Deer Creek Solar, Ragen Ranch Solar, and Fox Solar. New Colony, Deer Creek Solar, Ragen Ranch Solar, and Fox Solar are the contracts that have been terminated. The other projects are either under construction or still evaluating if they desire to construct. Contracts are terminated for a number of reasons. Each developer has their own project evaluation.

GW-1

**NWE
Montana Renewable Generation**

Count	Facility	Plant kW	Class	Dated	COD	Expiration	Term Yr	Built	Operating
1	Gerard Ohs (Pony Generating Station)	400	QF	10-Dec-2010	28-Dec-1989	10-Dec-2020	10	Yes	Yes
2	Gordon Butte Wind LLC	9,600	QF	21-Mar-2011	4-Jan-2012	21-Mar-2036	25	Yes	Yes
3	Musselshell Wind Project LLC	10,000	QF	24-Mar-2011	5-Jan-2013	24-Mar-2036	25	Yes	Yes
4	Musselshell Wind Project Two LLC	10,000	QF	24-Mar-2011	5-Jan-2013	24-Mar-2036	25	Yes	Yes
5	Flint Creek Hydroelectric LLC	2,000	QF	16-Jan-2012	14-Mar-2013	16-Jan-2037	25	Yes	Yes
6	Lower South Fork LLC	455	QF	16-Jan-2012	14-Aug-2012	16-Jan-2037	25	Yes	Yes
7	Fairfield Wind LLC (Greenbacker)	10,000	QF	22-Mar-2012	16-May-2014	31-Dec-2033	20	Yes	Yes
8	Cycle Horseshoe Bend Wind LLC	9,000	QF	30-Apr-2014	1-Feb-2006	31-Aug-2025	12	Yes	Yes
9	Wisconsin Creek LTD LC	550	QF	1-Jul-2014	28-Dec-1989	1-Aug-2019	5	Yes	Yes
10	Donald Fred Jenni (Hanover Hydro)	240	QF	1-Jul-2014	1-Aug-1988	30-Jun-2034	20	Yes	Yes
11	Greenfield Wind LLC	25,000	QF	19-Nov-2014	31-Oct-2016	1-Nov-2041	25	Yes	Yes
12	Green Meadow Solar LLC	3,000	QF	5-Oct-2015	31-Mar-2017	1-Apr-2042	25	Yes	Yes
13	River Bend Solar LLC	2,000	QF	5-Oct-2015	29-Mar-2017	1-Apr-2042	25	Yes	Yes
14	South Mills Solar 1 LLC	3,000	QF	18-Nov-2015	31-Mar-2017	1-Apr-2042	25	Yes	Yes
15	Deer Creek Solar 1, LLC	3,000	QF	18-Nov-2015	31-Dec-2016	1-Jan-2042	25	Terminated ²	No
16	Ragen Ranch Solar 1, LLC	3,000	QF	18-Nov-2015	31-Dec-2016	1-Jan-2042	25	Terminated ²	No
17	Black Eagle Solar LLC	3,000	QF	14-Jun-2016	28-Sep-2017	1-Oct-2042	25	Yes	Yes
18	Great Divide Solar LLC	3,000	QF	14-Jun-2016	29-Sep-2017	1-Oct-2042	25	Yes	Yes
19	Maple Solar LLC	3,000	QF	14-Jun-2016	29-Sep-2017	1-Oct-2042	25	Yes	Yes
20	Fox Solar, LLC	3,000	QF	14-Jun-2016	30-Jun-2017	1-Jul-2042	25	Terminated ²	No
21	Big Timber Wind LLC	25,000	QF	9-Dec-2016	1-Mar-2018	1-Apr-2043	25	Yes	Yes
22	Stillwater Wind LLC	80,000	QF	16-Dec-2016	27-Oct-2018	1-Nov-2043	25	Yes	Yes
23	Two Dot Wind Broadview East LLC	1,600	QF	10-Apr-2017	16-Oct-2018	1-Nov-2043	25	Yes	Yes
24	New Colony Wind, LLC	23,100	QF	23-May-2017	NA	NA	25	Terminated ²	No
25	Crazy Mountain Wind LLC	79,500	QF	18-Aug-2017	Est 31-Dec-2019	Est 1/1/2045	25	Stalled ¹	No
26	South Peak Wind LLC	80,000	QF	13-Mar-2018	Est 1-Dec-2018	Est 1-Jan-2035	15	Under Constr.	No
27	71 Ranch LP	2,700	QF	26-Jul-2018	22-Dec-2018	1-Jan-2044	25	Yes	Yes
28	DA Wind Investors LLC	2,700	QF	26-Jul-2018	29-Dec-2018	1-Jan-2044	25	Yes	Yes
29	Oversight Resources LLC	2,700	QF	26-Jul-2018	30-Dec-2018	1-Jan-2044	25	Yes	Yes

In The Matter Of:
Before the Public Service Commission
In the Matter of Grizzly Wind and Black Bear Wind

Transcript of Proceedings
Vol. 2
June 12, 2019

Lesofski Court Reporting & Video Conferencing
7 West Sixth Avenue, Suite 2C
Helena, MT 59601
406-443-2010
info@helenacr.com

Min-U-Script® with Word Index

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the)
Petitions of Grizzly Wind,)
LLC and Black Bear Wind,) CONSOLIDATED
LLC for the Commission to) DOCKET NOS.
set certain Terms and) D2019.2.8 and
Conditions of Contracts) D2019.2.9
between NorthWestern Energy)
and Grizzly Wind, LLC, and)
Black Bear Wind, LLC)
)

TRANSCRIPT OF PROCEEDINGS
DAY 2

On the 12th day of June, 2019, beginning at
9:00 a.m., the following proceedings were heard at the
Office of the Public Service Commission, 1701 Prospect
Avenue, Helena, Montana, before Holly E. Fox, Court
Reporter and Notary Public.

A P P E A R A N C E S

PUBLIC SERVICE COMMISSION:

BRAD JOHNSON, Chairman
BOB LAKE, Vice Chairman
TONY O'DONNELL, Commissioner
ROGER KOOPMAN, Commissioner
RANDALL PINOCCI, Commissioner
LUKE CASEY, legal counsel
JEREMIAH LANGSTON, legal counsel

APPEARING ON BEHALF OF GRIZZLY WIND, LLC:

MONICA TRANEL
Attorney at Law
Tranel Law Firm, PC
202 Spruce Street
Missoula, Montana 59802
mtranel@tranelfirm.com

APPEARING ON BEHALF OF NORTHWESTERN ENERGY:

AL BROGAN
Corporate Counsel
NorthWestern Energy
208 North Montana, Suite 205
Helena, Montana 59601
al.brogan@northwestern.com

APPEARING ON BEHALF OF THE MONTANA CONSUMER
COUNSEL:

JASON BROWN
Legal Counsel
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P.O. Box 201703
Helena, Montana 59620-1703
jbrown4@mt.gov

A P P E A R A N C E S, continued

APPEARING ON BEHALF OF STILLWATER COUNTY:

NANCY ROHDE
Stillwater County Attorney
P.O. Box 179
Columbus, Montana 59019
nrohde@stillwatercountymt.gov

1 A Correct.

2 Q And you say at Lines 3 to 4 that the -- the right
3 way to do it is to use the previous quarter and the current
4 quarter to get the -- to get the right number or curve; is
5 that right?

6 A Correct.

7 Q Okay. So would you agree that as we sit here
8 today in June, that the correct two periods for calculation
9 of the Grizzly and Black Bear Wind should be the second
10 quarter of this year, the current period, and then the
11 previous quarter, which is January?

12 A If -- you know, obviously, based on timing, the
13 quarter results are never available until -- you know, we
14 have to go through the first -- 15 first working days -- or
15 working days or business days in order to get 15 forecast
16 days, so you're well into April before you're able to do
17 that second quarter calculation. But if the calculation
18 for a project is subject to, let's say June, they don't
19 have a legal -- there's nothing -- we could rerun the
20 model. It just from a timing perspective there was no way
21 to get that second quarter into the calculation.

22 Q Okay. But as we sit here today, and before the
23 commission decides in August, as a matter of principle you
24 would agree that that would be the correct approach?

25 A If there is -- yes, if they deem that they don't

1 have any rights to any costs prior to that, yes.

2 Q I'd like to direct you to your answer to Grizzly
3 Wind 68B, Data Request 68B. Are you there?

4 A Yes.

5 Q Okay. Mr. LaFave, you say in your response to
6 this that NorthWestern was able to negotiate two PPAs in
7 less than 180 days; isn't that right?

8 A Just for clarification, we were able to negotiate
9 two PPAs -- I'm sorry. Yes, that's correct.

10 Q Okay. Thank you. And one of those was
11 Stillwater Wind; right?

12 A Yes.

13 Q Okay. And you negotiated that in December of
14 2015; didn't you?

15 A Correct.

16 Q Okay. And you actually signed it on December
17 16th of 2016; didn't you?

18 A That's correct.

19 Q And would you agree with me that the work session
20 to adopt the rate proposed in Crazy Mountain Wind was for
21 the following week, December 19th?

22 A Subject to check, yes.

23 Q I'm handing you a copy of the commission's
24 published work session record for that week.

25 Do you see that the work session, which was

1 published on December 14th, for the workweek of December
2 19th of 2016 was for Crazy Mountain Wind?

3 Do you see that?

4 A I do.

5 Q Okay. And you signed the Stillwater Wind PPA at
6 37 and change during that period of time; didn't you?

7 A That is correct.

8 Q Okay. And then you asked the commission to delay
9 the work session on Crazy Mountain Wind for consideration
10 of that PPA; didn't you?

11 A That, I don't know.

12 Q I'm going to hand you Section 4.4 of the
13 Stillwater PPA.

14 Isn't it true that you included a clause in the
15 Stillwater PPA that allowed you to go to the commission for
16 approval by December 27th of 2016?

17 A That is correct.

18 Q Thank you. And you signed the South Peak PPA on
19 March 13th; didn't you?

20 A Correct.

21 Q Okay. And are you aware of the fact that the
22 commission's decision on a 15-year contract term had been
23 challenged in court three months before that?

24 A Correct.

25 Q Okay. And are you aware of the fact the Montana

1 commission, in that challenge, asked to introduce the South
2 Peak PPA as evidence that a 15-year contract was
3 acceptable?

4 A I'm not aware of that.

5 Q Okay. I'm going to hand you the Montana Public
6 Service Commission's request to augment the record in the
7 district court case for inclusion of the South Peak PPA.

8 Do you have that in front of you?

9 A I do.

10 Q Okay. So in June, three months after the South
11 Peak PPA was signed, the commission asked to include that
12 PPA as evidence before the court of a 15-year contract;
13 isn't that right?

14 A It appears to be, yes.

15 Q Okay. And as this case is pending, just before
16 you gave us the avoided cost calculation on May 21, you
17 executed a PPA with Meadowlark; isn't that true?

18 A Yes.

19 Q Thank you. Mr. LaFave, let's turn to dashboard
20 access, and I'd like you to look at your response to
21 Grizzly Wind 54, and let me know when you have that in
22 front of you, please.

23 A I have it.

24 Q In your answer to that data request you said you
25 didn't see that Grizzly Wind and Black Bear had asked for

1 dashboard access; isn't that true?

2 A That is correct. As we were going through it, we
3 actually had to cull immediately following this particular
4 response several communications through December and
5 through January, but we did not see that request on that
6 written document that was emailed.

7 Q I'm going to ask you to look at Exhibit GW13, if
8 you will, and that's actually in the books. And let me
9 know when you're at 13, please.

10 A I am at 13.

11 Q Okay. And if you go to the -- it's a four-page
12 exhibit. It's printed front and back. And so if you go to
13 Page 3, right below the 3 -- and then there's A through
14 F -- that next sentence says:

15 Please provide us dashboard access to PowerSimm;
16 doesn't it?

17 A Yes, it does.

18 Q And access to PowerSimm hasn't been granted; has
19 it?

20 A I believe it has, but you can talk to Mr. Dorris.

21 Q Okay. I'm going to hand you --

22 A I apologize. Dr. Dorris.

23 Q -- an email that we'll mark as Grizzly Wind
24 Exhibit 104.

25 Mr. LaFave, isn't it true that last night, after

1 exceed that of a wind turbine. Would you agree?

2 A Based on history, I would absolutely agree. I
3 mean, coal resources have been proven. They've been around
4 for a long time. The natural gas resources have been
5 proven. They've been around for a long time. The wind
6 resources are fairly new. Even in the realm of what we're
7 dealing with, most of the maintenance data starts in the
8 early 2000s and really ramps up, you know, within the last
9 10 years or less as far as understanding how long these
10 things will last.

11 Now, I do believe the reliability and the design
12 of these systems are getting better, and I do believe that
13 they are -- they are projecting the life of these assets to
14 be even longer than they initially thought. But there's
15 really no history to support that like you have with coal,
16 like you have with natural gas where those plants have been
17 in service for a long time.

18 Q We see wind turbines turning off and on depending
19 on the wind. Last winter in February it was off for an
20 extended time where we had to go to the open market and buy
21 electricity up to prices, I've heard, of \$900 a megawatt.

22 When we try to balance the power when the turbine
23 shuts off, we may have to fire up a diesel engine or a
24 natural gas turbine. This must lead to added expense
25 dealing with winter months. Would you agree?

1 A I don't know if - it will be added expense to
2 customers. I don't know if it's directly added expense to
3 the wind turbine themselves. Although, with the example
4 that you're using in early March here where it did get so
5 cold, obviously wind turbines typically have cutouts
6 usually somewhere minus 10 or a little bit colder, and they
7 shut them off because they can't lubricate them well enough
8 to keep them going. And anytime you have something that's
9 subject to that temperature that they do, then, shut off,
10 you can have maintenance issues, although I think they do
11 the best they can to prevent any long-term effects.

12 Q I should have been more clear with my question.

13 When we look at wind turbine power opposed to
14 coal or hydroelectric -- something that's constant -- truly
15 when we have to back it up and fire up a diesel engine,
16 that's an expensive source of electricity.

17 A That is correct.

18 Q And, also, it can be real expensive to the
19 ratepayer. If a wind turbine is down because of the cold
20 weather and we have to buy it on the open market, the
21 ratepayer is paying more for that.

22 Would you agree that what we have to pay or
23 should pay in avoided cost for turbine electricity isn't
24 quite as good a deal for the ratepayer as constant,
25 consistent power?