

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

IN THE MATTER OF NorthWestern Energy's
Application for Interim and Final Approval of
Revised Tariff No. QF-1, Qualifying Facility
Power Purchase

REGULATORY DIVISION

Docket No. D2016.5.39

**COMMENTS OF VOTE SOLAR AND MONTANA ENVIRONMENTAL
INFORMATION CENTER ON NORTHWESTERN ENERGY'S MOTION FOR
EMERGENCY SUSPENSION OF THE QF-1 TARIFF**

Petitioners for intervention Vote Solar and Montana Environmental Information Center (“MEIC”) hereby submit comments regarding NorthWestern Energy’s motion for an “emergency” suspension of the QF-1 tariff for new solar qualifying facilities (“QFs”) greater than 100 kW and request for an interim rate reduction.¹ NorthWestern’s requests would undermine the Public Utility Regulatory Policies Act of 1978 (“PURPA”), 16 U.S.C. § 824a-3, and Montana law, Mont. Code Ann. § 69-3-601, et seq., by allowing the utility to avoid paying rates to QFs that this Commission has already determined to be just, reasonable, and in the public interest, and by chilling new investment in solar power generation in the state. Because NorthWestern’s requested emergency suspension and interim-rate reduction are not supported by an adequate evidentiary record, and because NorthWestern has failed to demonstrate any “emergency” that would harm its customers, NorthWestern’s requests for an immediate suspension of the QF-1 Tariff and interim rate reduction should be denied.

¹ Concurrent with their filing of these comments, Vote Solar and MEIC are filing a petition to intervene.

As an initial matter, the Montana Public Service Commission (“Commission”) should reject NorthWestern’s unsupported claim that it is “obvious that the current avoided cost rates in the QF-1 Tariff have created a solar gold rush which will be paid for by customers.” Pre-filed Direct Testimony of John D. Hines, JDH-12. To be sure, fair and reasonable rates for solar QF projects based on the full-spectrum of avoided costs as required by PURPA are essential to their development. However, the new opportunities being created for solar power generation in Montana are a result of rapidly declining costs of solar power plants driven by increasing demand for solar power across the country. Over the past five years the demand for solar in the United States has increased seven-fold with over 7,200 megawatts of solar installed in 2015. In that same period of time the average cost of solar projects has declined by more than 50% with the average installation costing less than \$3,000 per kilowatt. Currently, there are over 209,000 people employed in the more than 8,000 solar companies across the United States. It is this reduction in the cost of solar power that now enables it to compete with conventional sources of electricity to provide clean, reliable, and affordable power that will benefit NorthWestern’s electric customers. This is precisely what PURPA was designed to encourage. See FERC v. Mississippi, 456 U.S. 742, 751 (1982) (describing PURPA provisions designed to overcome impediments to the development of nontraditional generating facilities). While NorthWestern may view this solar boom as offsetting demand for some of its own recently acquired sources of generation, in fact, it is evidence that PURPA is working as the Commission intended when it adopted the QF-1 Tariff in 2013. This is not an “emergency”; it is a story of the successful application of the Commission’s policies.

While decreasing costs to build and operate solar power have made solar competitive with conventional energy sources including those owned by NorthWestern, this cannot justify

NorthWestern's sudden attempt to "move the goalposts" in a way that will chill or thwart new solar development in Montana. NorthWestern's drastic proposal to reduce by half the rates it pays to QFs must be properly vetted based on a complete evidentiary record, and interested parties must be given a full and fair opportunity to be heard before any changes are made to current QF rates. The Commission should reject NorthWestern's requests to suspend the QF-1 Tariff and reduce rates to QFs on an interim basis.

I. FACTUAL AND LEGAL BACKGROUND

In enacting PURPA, Congress intended to break electric utilities' monopoly on power markets by requiring utilities to purchase power from small-power producers, including producers of renewable power, and thereby "reduce the demand for traditional fossil fuels." FERC v. Mississippi, 456 U.S. at 750. Specifically, PURPA requires utilities to buy energy and capacity from qualifying facilities ("QFs") at prices that are just and reasonable to consumers, in the public interest, and reflect "the incremental cost to the electric utility of alternative electric energy," 16 U.S.C. § 824a-3. The Federal Energy Regulatory Commission ("FERC") adopted rules that define "incremental costs" as full "avoided costs" of electric energy or capacity or both, which but for the purchase from the QF, such utility would generate itself or purchase from another source. 18 C.F.R. §§ 292.101(6), 292.304.

By requiring utilities to pay rates to QFs based on the utility's avoided costs, PURPA ensures ratepayer indifference to the source of the power they purchase. See 16 U.S.C. § 824a-3(d). This principle reflects an acknowledgment that electricity customers may be harmed by either overpayment or underpayment to QFs, both of which yield overall higher rates on customers' utilities bill. Utilities that do not pay their full avoided costs to QFs discourage development of alternative power sources, including renewables, that may be overall less costly

for consumers than utility-owned resources. In addition, underpayment to QFs would undermine consumer benefits under PURPA that extend beyond rate savings. As FERC explained decades ago, “ratepayers and the nation as a whole will benefit from the decreased reliance on scarce fossil fuels, such as oil and gas, and the more efficient use of energy.” FERC, Final Rule, Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978, 45 Fed. Reg. 12,214, 12,222 (Feb. 15, 1980). This objective is thwarted if NorthWestern is not required to pay its full avoided costs to QFs.

The Commission’s rules implementing PURPA provide that long-term contracts between utilities and QFs no larger than three megawatts “may be accomplished according to standard tariffed rates,” Admin. R. Mont. 38.5.1902(1), (5), the so-called “QF-1 Tariff.” In establishing standard rates, the Commission projects the marginal cost of the utility’s next required unit of electrical generating capacity and energy, on the basis of a utility’s planned future acquisitions. The Commission has approved NorthWestern’s use of two standard QF-1 rate options: one that reflects avoided costs based on NorthWestern’s identification of the least-cost, least-risk facility in its most recent resource procurement plan, and a second option that offers indexed rates that reflect hourly market prices and does not provide assurance of a long-term fixed rate. Docket No. D2014.1.5, Order 7338b, ¶¶ 18, 32 (Apr. 14, 2014).

The Commission most recently approved modified QF-1 rates for NorthWestern in 2013. Those Option 1 rates were based on NorthWestern’s estimated avoided costs as determined “by blending projected near-term market prices and the expected cost of owning and operating a natural gas combined cycle combustion turbine (“CCCT”). *Id.*, ¶ 18. The Commission found these rates to be just and reasonable, in the public interest and not discriminatory. Docket No. D2012.1.3, Order 7199d, ¶ 87 (Dec. 7, 2012).

On January 22, 2014, NorthWestern filed an application to reduce its QF-1 Tariff rate. The Commission denied NorthWestern's application based on NorthWestern's failure to support its avoided-cost assumptions "with a comprehensive, long-term resource planning analysis," and additional "methodological flaw[s]." Order 7338b, ¶¶ 19-20. Accordingly, the Commission determined it lacked sufficient basis to change the QF-1 rates approved in 2013. *Id.* ¶¶ 20, 23.

On May 3, 2016, NorthWestern again filed its application to reduce the QF-1 Tariff, commencing this docket. NorthWestern's proposed rates include an approximately 48% reduction in rates applicable to solar projects smaller than 3 MW. Prefiled Direct Testimony of John. B. Bushnell, at JBB-4. NorthWestern's application further requested that the reduction take effect immediately, on an interim basis. Application, at 2. On May 17, 2016, NorthWestern filed a Motion for an "Emergency Suspension" for new solar QFs larger than 100 kW, on grounds that such a suspension allegedly is necessary to prevent harm to NorthWestern's customers due to excessive rates NorthWestern would otherwise be required to pay for such projects. NWE Motion for Emergency Suspension, at 11-12. The Commission subsequently established a June 6, 2016 deadline for interested parties to submit comments related to NorthWestern's motion.

II. NORTHWESTERN'S REQUESTS FOR AN EMERGENCY SUSPENSION AND INTERIM RATE REDUCTION SHOULD BE DENIED

The Commission should deny NorthWestern's requests for an "emergency suspension" of the QF-1 Tariff and an interim rate reduction pending the Commission's final resolution of this matter. Granting NorthWestern's requests would be inconsistent with PURPA, Montana law, and the Commission's rules and established procedures. Further, NorthWestern has failed to demonstrate any "emergency" requiring this Commission's immediate action to protect NorthWestern's customers.

A. The Commission is Not Authorized to Reduce or Suspend NorthWestern's QF-1 Rates on an Interim Basis.

The Commission should reject NorthWestern's requests to immediately suspend or reduce QF-1 Tariff rates because the Commission lacks both the authority and the requisite evidentiary record for doing so. For these reasons, "the Commission has never granted interim rates in a QF-1 standard rate docket." Docket No. D2014.1.5, Order 7338a, ¶ 8 (Sept. 14, 2014) (citing Docket Nos. D2012.1.3, D2010.7.77, & D2008.12.146). NorthWestern's latest request offers no reason to deviate from the Commission's established practice or governing legal authority.

The Commission is required to base its determination of standard rates under PURPA on a complete evidentiary record developed by the parties, not on unilateral testimony by the utility. See Order 7338a, ¶¶ 16-17 (describing rules governing standard rate-setting and contested cases). "The standard rate for purchases from a qualifying facility shall be that rate calculated on the basis of avoided costs to the utility which is determined by the commission to be appropriate for the particular utility after consideration, to the extent practicable, of the avoided cost data submitted to the commission by the utility and other interested persons." Admin. R. Mont. 38.5.1905. The Commission establishes rates in contested cases, in which all parties must be permitted "to respond and present evidence and argument on all issues involved," and "to conduct cross-examinations required for a full and true disclosure of facts." Mont. Code Ann. § 2-4-612.

To date, only NorthWestern has had the opportunity to submit evidence and testimony in this docket. No party has had an opportunity to submit data requests or conduct witness cross-examination to verify or critique the assumptions upon which NorthWestern's application relies. While parties affected by NorthWestern's QF rates are always entitled to such scrutiny, id., the

importance of a thorough evidentiary record is particularly apparent here. NorthWestern emphasizes lower natural gas prices as the primary reason for the proposed change, see “Notice of Application for Interim Rate Adjustment, at 1 (“The last Commission-approved avoided costs rates were established when the forecasted market prices of natural gas and electricity were much higher than today”); but in fact, NorthWestern’s proposed rates are based on a number of changed assumptions other than fuel costs and electricity price forecasts. For example, NorthWestern proposes to replace existing rate options with two new options—one for QFs that transfer environmental attributes for the life of the contract, and one for QFs that do not. Direct Testimony of John B. Bushnell, JBB-3–4. NorthWestern further presents a new methodology for estimating the capacity contribution of solar resources. See id. JBB-5–6. And NorthWestern’s avoided cost calculations are based on an Internal Combustion Engine (“ICE”) as the utility’s preferred least-cost, least-risk resource, rather than a CCCT, which has formed the basis for QF rates since 2011. See id. JBB-9. Until these assumptions are scrutinized over the course of this proceeding, it would be premature to adopt NorthWestern’s proposed changes to standard rates.

Moreover, the Commission’s authority to approve on an interim basis the rates that NorthWestern charges to its customers does not extend to rates NorthWestern pays to QFs. Under Montana law pertaining to utility ratemaking procedures, “[t]he commission may, in its discretion, temporarily approve increases or decreases pending a hearing or final decision.” Mont. Code Ann. § 69-3-304. Commission rules require that “[a]ny application for an interim grant of authority to increase utility rates must be filed in conjunction with a permanent rate case proceeding,” i.e., a proceeding related to rates a utility charges to its customers. Admin. R. Mont. 38-5-502. If the Commission grants the interim rate change and its final decision is to disapprove rates requested by the utility, the Commission is authorized to order a rebate or

surcharge “to all consumers based on the final decision.” Mont. Code Ann. § 69-3-304 (emphasis added). While there is no dispute that these statutory and regulatory provisions authorize interim changes to the rates a utility charges its customers, nothing in the language or context of these provisions suggests a similar authority to temporarily adjust rates that the utility pays to small power producers before final resolution of an application based on a complete evidentiary record.

Not only does the Commission lack authority to enact interim rate changes, it lacks authority to suspend the QF-1 Tariff on an “emergency” basis. NorthWestern is obligated to purchase power from QFs. 18 C.F.R. § 292.303(a) (Each electric utility shall purchase ... any energy and capacity which is made available from a qualifying facility.”) (emphasis added). As FERC has explained,

[A] QF has the option to commit itself to sell all or part of its electric output to an electric utility. While this may be done through a contract, if the electric utility refuses to sign a contract, the QF may seek state regulatory authority assistance to enforce the PURPA-imposed obligation on the electric utility to purchase from the QF, and a non-contractual, but still legally enforceable, obligation will be created pursuant to the state’s implementation of PURPA.

JD Wind 1, LLC, 129 FERC ¶ 61,148, at P 25 (2009). NorthWestern cannot deprive QFs of their right to a “PURPA-imposed obligation on the electric utility to purchase from the QF.” Id. Nor can it seek to circumvent that obligation by declaring a non-existent emergency. Therefore, it’s inappropriate petition to suspend the QF-1 Tariff should be denied.

Furthermore, QFs smaller than 3 MW are entitled to sell their power to NorthWestern at established rates. “If a qualifying small power production facility is eligible to sell electricity to a utility pursuant to a rate schedule approved by the commission, neither the qualifying small power production facility nor the utility may petition the commission ... to authorize a rate or

term different from that in the rate schedule.” Mont. Code Ann. § 69-3-603(3)(a). Unless and until the Commission approves NorthWestern’s application for a final QF-1 Tariff Change on a going-forward basis, NorthWestern is obligated to enter into agreements with QFs based on current rates. NorthWestern’s requests to suspend and reduce these rates should be denied as inconsistent with these authorities.

B. NorthWestern Has Failed to Demonstrate an “Emergency” to Support its Requested Suspension of the QF-1 Tariff Applicable to Solar Facilities

NorthWestern’s requests for emergency and interim relief also should be denied because NorthWestern has failed to demonstrate that immediate changes to the QF-1 Tariff are necessary to protect NorthWestern’s customers. First, accepting NorthWestern’s argument would require the Commission to accept at face value NorthWestern’s new calculation of avoided costs, which is based not only on electricity price forecasts, but on a host of additional assumptions and methodological changes. See supra, p. 7. Because NorthWestern’s new assumptions and methodology for computing avoided costs have not yet been scrutinized and affirmed, it cannot be determined whether enacting interim rates would benefit, rather than harm, consumers. As described above, while consumers may be affected by a utility’s overpayment to QFs, they also are harmed by underpayment, in that such underpayment would discourage or prevent development of non-utility owned resources that could produce power at costs lower than the costs for utility-generated power. See supra, p. 3-4.

Second, NorthWestern’s claim that the “sky is falling” based on a flood of new solar QF projects is not supported. Far from providing evidence of an “emergency,” NorthWestern’s application demonstrates that, even under the existing QF-1 Tariff, there is a lengthy and complicated process to bringing projects online and very few have successfully completed that process. NorthWestern describes two separate steps to development of a QF on NorthWestern’s

system: interconnection to the system, and negotiating and executing power purchase agreements (“PPAs”). NWE Motion for Emergency Suspension, at 3; see also In the Matter of the Petition of Whitehall Wind, LLC, for of Rate Determination, Docket No. D2002.8.100, Order 6444E, ¶ 47 (May 18, 2010) (QF development requires executed PPA and interconnection agreement). Only five solar QF PPAs have been executed, Bushnell Affidavit, ¶ 6, and only six 3MW solar facilities have made it through the interconnection process, Pre-filed Direct Testimony of Autumn M. Mueller, at AMM-7–8.

NorthWestern’s claim that suddenly it will be required to sign PPAs and interconnection agreements for solar QFs representing hundreds of megawatts before the Commission reaches final resolution on NorthWestern’s application is based solely on speculation. With respect to PPAs, NorthWestern’s evidence amounts to a claim that it “has been approached by developers that represent an undetermined number of 3-MW solar PV projects.” Bushnell Affidavit, ¶ 6. With respect to interconnection, NorthWestern’s motion highlights that 43 solar QFs have active requests for interconnection. NWE Motion for Emergency Suspension, at 4. However, testimony reveals that a large number of such requests typically are withdrawn. Pre-filed Direct Testimony of Autumn M. Mueller, at AMM-7–8 (40 of the 89 interconnection requests for 3 MW solar facilities in the past 18 months have been withdrawn). Regardless of the reason for

delays in the interconnection queue, NorthWestern offers no support for its apparent belief that all or most of the current interconnection requests will make it through the end of the process.²

While NorthWestern focuses exclusively on alleged harm to its customers in the absence of an emergency suspension or interim rate reduction, it ignores the harm such action would cause to would-be solar developers. QFs seek financing arrangements based on the rates they expect to be paid. In the event of a temporary rate reduction, solar developers may face underpayment for their projects that would make their projects infeasible. It is not surprising that rates are a material term of PPAs and QFs are entitled to know those rates when they enter into an obligation. For this reason, there is no merit in NorthWestern's suggestion that "the interests of potential QFs would be fully protected during the period the interim rates are in effect, as the rates would be subject to adjustment back to the rate effective date, with interest." Notice of Application for Interim Rate Adjustment, at 2. In the event of a suspension of the QF-1 Tariff, solar developers will be unable to obtain the benefit of a legally enforceable obligation to which they are entitled under PURPA, and it may cause them to lose their project financing altogether. Supra, p. 8.

In sum, not only are NorthWestern's requested suspension and interim rate reduction unnecessary to prevent harm to consumers, they should be rejected because they would harm QFs that PURPA is designed to encourage, which may ultimately harm consumers.

² If there is urgency to the utility's request for a rate reduction, it is by NorthWestern's own making. Rather than making a new application following the Commission's denial of its 2014 request for a QF-1 rate reduction, NorthWestern Energy chose to appeal that decision to Montana district court, which affirmed the Commission's action. See NorthWestern Corp., d/b/a NorthWestern Energy v. Mont. Dep't of Pub. Serv. Reg., Mont. Pub. Serv. Comm'n, No. ADV-2015-459, Order on Petition for Judicial Review (1st Jud. Dist. Mar. 3, 2016). Small power producers are not required to wait until NorthWestern files a legally compliant and adequately supported application before making power available for purchase based on currently applicable rates.

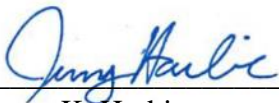
C. Maintaining Existing Standard Rates is Consistent with PURPA and Montana Law

Regardless of whether the Commission decides to modify the QF-1 Tariff after considering the full evidentiary record created by the parties, maintaining the existing standard rates until that final determination is proper. As the Commission has recognized, NorthWestern's avoided costs necessarily change over time. See Docket No. D2014.1.5, Order 7338a, ¶ 15 (Sept. 14, 2014); Docket No. D2014.1.5, Order 7338b, ¶¶ 31, 33 (Apr. 14, 2014). However, the predictable fluctuations in avoided costs do not require perpetual, real-time changes to standard rates offered to QFs. Instead, the Commission has established procedures for the utility to formally request and support changes to the standard rates it pays to QFs. Admin. R. Mont. 38.5.1905. Between these formal proceedings, the standard rates that the Commission previously deemed appropriate continue to apply. "To maintain existing standard rates pending a final decision [regarding an application for rate adjustments] is not a violation of PURPA." Order 7338a, ¶ 15.³

III. CONCLUSION

For the foregoing reasons, Vote Solar and MEIC urge the Commission to protect consumers and QF's and deny NorthWestern's requests to suspend the QF-1 Tariff and temporarily reduce rates.

Respectfully submitted on this 6th day of June, 2016,



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³ Indeed, if NorthWestern's computation of avoided costs increased between its formal applications, it is difficult to imagine that NorthWestern would argue for a suspension of the QF-1 Tariff or interim rate increases to ensure that QFs are adequately compensated.

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*On behalf of Petitioners Vote Solar and
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CERTIFICATE OF SERVICE

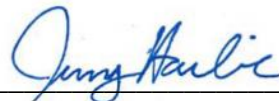
I hereby certify that on the 6th day of June, 2016, I served the foregoing COMMENTS OF VOTE SOLAR AND MONTANA ENVIRONMENTAL INFORMATION CENTER ON NORTHWESTERN ENERGY'S MOTION FOR EMERGENCY SUSPENSION OF THE QF-1 TARIFF by first-class mail, postage prepaid, on the following:

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