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MONTANA EIGHTH JUDICIAL DISTRICT COURT
CASCADE COUNTY

VOTE SOLAR, MONTANA ENVIRONMENTAL INFORMATION CENTER, and CYPRESS CREEK RENEWABLES, LLC Plaintiffs, v. THE MONTANA DEPARTMENT OF PUBLIC SERVICE REGULATION, MONTANA PUBLIC SERVICE COMMISSION, and NORTHWESTERN CORPORATION d/b/a NORTHWESTERN ENERGY, Defendants.	Case No. Judge: Hon. **PETITION FOR JUDICIAL REVIEW**

INTRODUCTION

1. This case challenges the Montana Public Service Commission's (the "Commission") July 21, 2017 Order and November 24, 2017 Order on Reconsideration that together drastically and unreasonably slashed the rates that will be paid by NorthWestern Energy ("NorthWestern") to small renewable energy developers and reduced the duration of the contracts for the sale of energy from these small developers to NorthWestern. See Final Order No. 7500c, In the Matter of NorthWestern Energy's Application for Interim and Final Approval of Revised Tariff No. QF-1, Qualifying Facility Power Purchase, Dkt. No. D2016.5.39 (July 21, 2017) [hereinafter "Initial Order"] (attached as Exhibit 1); Order on Reconsideration No. 7500d, In the Matter of NorthWestern Energy's Application for Interim and Final Approval of Revised Tariff No. QF-1, Qualifying Facility Power Purchase, Dkt. No. D2016.5.39 (Nov. 24, 2017) [hereinafter "Order on Reconsideration"] (attached as Exhibit 2).

2. Federal and state law requires the Commission to establish standard rates and contract lengths for independent energy projects with a generating capacity of three megawatts or less. In the challenged decision, the Commission slashed standard rates for small solar development projects by more than half—from approximately $66 per megawatt hour to approximately $31 per megawatt hour. At the same time, the Commission reduced maximum contract lengths for the sale of renewable energy to NorthWestern from 25 to 15 years, which together with the reduced standard rate will severely limit the ability of developers to finance renewable energy projects.

3. The Commission's decision is a death knell for small solar development in Montana at a time when demand for renewable energy is growing, the cost of producing

renewable energy is at an all-time low, and NorthWestern has claimed a significant need for electric capacity that solar and wind developers are well-positioned to supply.

4. Because the Commission's decision is arbitrary, unreasonable, and unlawful, it should be set aside.

JURISDICTION AND VENUE

5. This action is brought pursuant to Montana law governing small power production facilities, Mont. Code Ann. §§ 69-3-601 et seq., and the Montana Administrative Procedure Act, Mont. Code Ann. §§ 2-4-101 et seq. This Court has jurisdiction over plaintiffs' claims pursuant to Mont. Code Ann. § 3-5-302(1)(b) (providing state district court jurisdiction over all civil matters); Mont. Code Ann. § 2-4-702 (providing for judicial review of contested cases); and Mont. Code Ann. § 69-3-402 (providing for judicial review of Commission decisions). Because this action is brought pursuant to Mont. Code Ann. § 69-3-402, it "shall have precedence over any civil cause of a different nature" pending before this court.

6. Plaintiffs exhausted their administrative remedies by seeking reconsideration of the Commission's decision consistent with the Commission's regulations. See Mont. Code Ann. § 2-4-702(1)(a) (providing for judicial review of contested cases after exhaustion of available administrative remedies); Admin. R. Mont. 38.2.4806 (Commission regulation on reconsideration). The challenged decision is final and subject to district court review. See Admin. R. Mont. 38.2.4806(6) ("A commission order is final for purposes of appeal upon the entry of a ruling on a motion for reconsideration ….").

7. Venue is proper in this District under Mont. Code Ann. § 25-2-126 because the Commission's decision will have "operative effect" in Cascade County, where numerous projects subject to the challenged decision are proposed or sited. See State Consumer Counsel v.

Mont. Dep't of Pub. Serv. Regulation, 181 Mont. 225, 229–30, 593 P.2d 34, 37 (1979) (holding that the cause of action arose in the county where the Commission's decision would have its "operative effect"); see also Mont.-Dakota Utils. Co. v. Pub. Serv. Comm'n of Mont., 111 Mont. 78, 107 P.2d 533, 534 (1940) ("It is not the mere making of the order, but the place where it is put in operation, that determines where the cause of action arose. Operation of the order is what is alleged will injure plaintiff."), overruled on other grounds by Lunt v. Div. of Workmen's Comp., Dep't of Labor & Indus. of State, 167 Mont. 251, 537 P.2d 1080 (1975).

PARTIES

8. Plaintiff Vote Solar is a non-profit grassroots organization working to foster economic opportunity, promote energy independence, and fight climate change by making solar a mainstream energy resource across the United States. Founded in 2002, Vote Solar engages at the state, local, and federal levels to remove regulatory barriers and implement the key policies needed to expand solar energy generation. Vote Solar has more than 70,000 members throughout the United States, including members and supporters in NorthWestern's Montana service territory. Vote Solar and its members have an interest in promoting clean energy, including the availability of renewable power for use in Montana, and preventing impairment of the development and availability of renewable energy across the country.

9. Plaintiff Montana Environmental Information Center ("MEIC") is a non-profit environmental advocacy organization founded in 1973 by Montanans concerned with protecting and restoring Montana's natural environment. MEIC plays an active role in promoting Montana clean energy projects and policies, including advocating for the expansion of responsible, renewable energy and energy efficiency and supporting policies that insulate energy consumers from fuel price risk. At the state level, MEIC leads the effort to pass policies that help expand

clean, affordable, reliable, and efficient energy solutions for Montana. MEIC has approximately 5,000 members and supporters, many of whom are in NorthWestern's Montana service territory and seek increased access to affordable renewable energy.

10. Vote Solar, MEIC, their staff, and their members and supporters (collectively "Vote Solar") who are residential electric customers in NorthWestern Energy's service territory have direct and substantial interests in the challenged decision because the substantially reduced contract length and significant rate decrease for small solar developers in Montana may impact their electricity rates and diminish opportunities for expanding their use of clean energy from wind and solar resources. Vote Solar's interests are further demonstrated through their commitment to the development of clean energy resources, particularly solar resources, in the State of Montana.

11. The legal violations alleged in this complaint cause direct injury to Vote Solar and its members' interests in their electricity rates and the expansion of their use of clean energy because the challenged decision will negatively impact the development of clean energy resources in the state. Specifically, the contract-length reduction and rate decrease are likely to affect opportunities for future renewable energy development in Montana and the availability of renewable power for use by NorthWestern's Montana customers. These are actual and concrete injuries to Vote Solar caused by the Commission's failure to comply with state and federal laws that would be redressed by the relief requested in this complaint. Vote Solar has exhausted its administrative remedies and thus has no other adequate remedy at law.

12. Plaintiff Cypress Creek Renewables, LLC ("Cypress Creek"), a Delaware limited liability company, is a solar energy developer that, through and together with its corporate affiliates and subsidiaries, develops solar-powered power production facilities across the United

States. Cypress Creek has been actively involved in efforts to develop solar energy projects in Montana for the past several years. Cypress Creek's development affiliates include more than a dozen entities each of which seeks (i) to develop a discrete solar facility in Montana that meets the definition of and has registered with the Federal Energy Regulatory Commission ("FERC") as a "qualifying facility" under the federal Public Utilities Regulatory Policies Act ("PURPA"), and (ii) to sell the electrical output of such facility to NorthWestern, which under PURPA is obligated to purchase such output at its "avoided costs," as discussed below.

13. Plaintiff Cypress Creek has a direct and substantial interest in the challenged decision because the substantially reduced contract length and significant rate decrease ordered by the Commission impacts the ability of Cypress Creek to finance and develop its planned small solar energy projects in Montana. As a result, the challenged decision will have a severe adverse effect on Cypress Creek's development activities in Montana and, absent judicial relief, will prevent Cypress Creek from constructing any additional solar projects in the state. Cypress Creek has exhausted its administrative remedies and thus has no other adequate remedy at law with respect to the issues raised by this Petition.

14. Consisting of five elected Commissioners from throughout the state, Defendant Montana Public Service Commission is a state administrative agency that supervises and regulates aspects of the operations of public utilities, common carriers, railroads, and other regulated industries. The Commission is responsible for setting avoided cost rates for the purchase of energy from qualifying facilities by public utilities.

15. Defendant Department of Public Service Regulation is an administrative agency of the State of Montana created pursuant to Mont. Code Ann. § 2-15-2601. The Commission is the elected head of the Department.

16. Defendant NorthWestern Corporation is a Delaware corporation doing business as NorthWestern Energy in the State of Montana as the state's largest public utility. As a public utility in Montana, NorthWestern is subject to the jurisdiction of the Montana Public Service Commission. NorthWestern is named as a defendant pursuant to Mont. Code Ann. § 69-3-402(1) because it is an interested party.

STATUTORY AND REGULATORY BACKGROUND

I. THE PUBLIC UTILITIES REGULATORY POLICIES ACT

17. Montana's law governing utility purchases of energy from small power production facilities, Mont. Code Ann. §§ 69-3-601 et seq., implements a federal law known as PURPA, which is designed to promote independent generation of renewable energy. Whitehall Wind, LLC v. Montana Pub. Serv. Comm'n, 2015 MT 119, ¶ 2, 379 Mont. 119, 120 347 P.3d 1273, 1274; see also 16 U.S.C. § 824a-3(f) (providing for state implementation of PURPA).

18. Congress enacted PURPA in 1978 in response to a nationwide energy crisis. See FERC v. Mississippi, 456 U.S. 742, 745, 750 n.12 (1982). In passing PURPA, Congress sought to reduce American reliance on fossil fuels by encouraging diversification of energy resources. Id. at 750–51; Indep. Energy Producers Ass'n Inc. v. Cal. Public Utils. Comm'n, 36 F.3d 848, 850 (9th Cir. 1994). To that end, PURPA encourages the development of small power production facilities by requiring utilities to pay a fair rate to small power production facilities, including renewable energy facilities such as wind and solar. See FERC v. Mississippi, 456 U.S. at 745, 750–51; Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978, Order No. 69, 45 Fed. Reg. 12,214, 12,215 (Feb. 25, 1980) [hereinafter Order No. 69].

19. Prior to the passage of PURPA, small renewable generating facilities faced key obstacles that inhibited their sale of electricity to utilities. First, the development of small renewable generating facilities was impaired by the absence of any utility obligation to purchase electric output from small renewable developers at an appropriate rate. See Order No. 69, 45 Fed. Reg. at 12,215. Second, even when utilities did purchase this electric output, utilities often engaged in discriminatory pricing that inhibited the development of small renewable generating facilities. Id. Congress specifically designed PURPA to overcome these obstacles to the development of small renewable generating facilities. FERC v. Mississippi, 456 U.S. at 750–51; see also Order No. 69, 45 Fed. Reg. at 12,215 ("Sections 201 and 210 of PURPA are designed to remove these obstacles."); see also Whitehall Wind, LLC v. Montana Pub. Serv. Comm'n, 2010 MT 2, ¶ 7, 355 Mont. 15, 16–17, 223 P.3d 907, 908–09 ("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.").

20. Section 210 of PURPA embodies the statute's goal of advancing renewable energy from small power producers by requiring utilities to purchase electric energy from cogeneration and small power production facilities known as "qualifying facilities" at rates that are "just and reasonable" to the utility's customers, are "in the public interest," and do "not discriminate" against qualifying facilities. 16 U.S.C. § 824a-3(a), (b). To meet these standards, rates for purchase of electricity must reflect "the incremental cost to the electric utility of alternative electric energy," id. § 824a-3(b), & (d), otherwise known as "avoided costs," 18 C.F.R. § 292.101(b)(6), Admin. R. Mont. 38.5.1901(2)(a) (defining "avoided costs"). In other words, utilities must pay a rate for electricity from qualifying facilities that reflects the costs the utility would otherwise incur to itself develop generation capacity and/or produce or purchase

energy. This avoided cost standard is designed to ensure that ratepayers remain "indifferent as to whether the utility used more traditional sources of power or the newly encouraged alternatives" under PURPA. S. Cal. Edison, San Diego Gas & Elec., 71 FERC ¶ 61,269, at 62,080, 1995 WL 327268, at *8 (1995).

21. Recognizing that burdensome negotiations between small power producers and statewide utilities could discourage the development of renewable energy, particularly from smaller projects, PURPA requires state utility commissions to establish standard offer rates for purchases from certain qualifying facilities. See 18 C.F.R. §§ 292.204(a), 292.304(c) (requiring states to set standard rates for qualifying facilities of 100 kilowatts or less and allowing states to set standard rates for qualifying facilities of up to 80 megawatts in design capacity, which is the maximum power production capability of a facility); Order No. 69, 45 Fed. Reg. at 12,223 (stating that "the transaction costs" associated with individualized rates for small facilities "would likely render the program uneconomic").

22. The Commission's establishment of standard offer rates for qualifying facilities in Montana are at issue in the challenged decision. Admin. R. Mont. 38.5.1901(j) (defining "standard rates"). Under Montana rules, qualifying facilities with a design "capacity not greater than 3 megawatts [are] … eligible for standard offer rates" that are based on calculation of a utility's avoided costs. See id.; id. 38.5.1902(5). Qualifying facilities with maximum production capability greater than three megawatts are not subject to the challenged decision and must negotiate avoided cost rates through a contract with the utility or, if negotiation is unsuccessful, petition the Commission to set the rates and conditions of the contract. Mont. Code Ann. § 69-3-603; Admin R. Mont. 38.5.1902(5).

23. In setting standard offer rates under PURPA, the Commission is required to "determine the rates and conditions of the contract for the sale of electricity by a [qualifying facility]" according to certain criteria, including that "[l]ong-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." Mont. Code Ann. § 69-3-604(2). The Commission must also consider "[t]he terms of any contract or other legally enforceable obligation, including the duration of the obligation." 18 C.F.R. § 292.304(e)(2)(iii); see also Admin. R. Mont. 38.5.1901(1) (adopting and incorporating by reference federal regulations implementing PURPA).

24. Standard offer rates set by the Commission must also account for both the "aggregate value of energy and capacity from qualifying facilities on the electric utility's system" and "the shorter lead times available with additions of capacity from qualifying facilities." 18 C.F.R. § 292.304(e)(2)(vi), (vii).

25. Although standard offer rates must accurately reflect the utility's avoided costs, they do not require a "minute-by-minute evaluation of costs" to account for inevitable fluctuations in energy prices. Order No. 69, 45 Fed. Reg. at 12,224. As FERC, the federal agency tasked with implementing PURPA, has explained, "in the long run, 'overestimations' and 'underestimations' of avoided costs will balance out" over the course of the long-term contracts between qualifying facilities and electric utilities. Id. Moreover, allowing for standard rates over a single long-term contract ensures "that a qualifying facility which has obtained the certainty of an arrangement is not deprived of the benefits of its commitment as a result of changed circumstances." Id.

26. In essence, the economic design of PURPA seeks to simulate the outcome of a free and open market by encouraging development of qualifying facilities that offer generation at a cost equal to the incremental cost to the utility of building its own generation or procuring power from other sources. PURPA generation purchased at the avoided cost price is reasonable for the consumer because it is no more expensive than if the monopoly utility generates power itself or purchases it from another source.

II. THE COMMISSION'S AVOIDED COST RATEMAKING PROCEDURES

27. This case arises from the Commission's process for setting standard offer rates for certain qualifying facilities. Commission rules require a utility to submit bi-annual updates to its avoided cost information, based on the costs for any planned new resources identified in the utility's resource procurement plan, to allow the Commission to establish standard offer rates for qualifying facilities. Admin. R. Mont. 38.5.1905(1).

28. Before the Commission may approve any change in the avoided cost rate, it must first publish notice of the proposed change, announce a hearing on the proposed change, and inform interested persons how to petition the Commission to intervene as parties to the hearing. Mont. Code Ann. § 69-3-303.

III. COURT REVIEW OF COMMISSION RATEMAKING DECISIONS

29. The Commission's ratemaking decision may be challenged within 30 days of the final order in the district court of the proper county. Mont. Code Ann. § 69-3-402(1). If the Commission's order is found to be "unlawful or unreasonable" it can be vacated or set aside by the court. Id.

30. Because the Commission is an administrative agency in the State of Montana, it is subject to the Montana Administrative Procedure Act ("MAPA"). Under MAPA, the court "may

reverse or modify [the Commission's] decision if substantial rights of the appellant have been prejudiced" because, among other things, the agency's decision violates constitutional or statutory provisions, exceeds its statutory authority, is based on unlawful procedure, is affected by other error of law, is "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record," or is arbitrary or capricious. Mont. Code Ann. § 2-4-704.

31. Under MAPA, an agency action is arbitrary if the agency fails to consider relevant factors, including the standards and purposes of the statutes the agency administers. Clark Fork Coal. v. Mont. Dep't of Envtl. Quality, 2008 MT 407, ¶ 21, 347 Mont. 197, 202–03, 197 P.3d 482, 487; see also Am. Paper Inst., Inc. v. Am. Elec. Power Serv. Corp., 461 U.S. 402, 413 (1983) (relevant factors include the purposes of PURPA). Moreover, courts should not "automatically defer to the agency 'without carefully reviewing the record and satisfying themselves that the agency has made a reasoned decision.'" Clark Fork Coal., ¶ 21 (quoting Friends of the Wild Swan v. DNRC, 2000 MT 209, ¶ 28, 301 Mont. 1, 7, 6 P.3d 972, 976–77).

FACTUAL BACKGROUND

I. SOLAR ENERGY DEVELOPMENT IN MONTANA

32. Montana faces an unprecedented opportunity to diversify its energy supply with clean, solar-generated electricity. Over the past decade, the demand for solar energy in the United States has sky rocketed. More than 14,700 megawatts of solar energy were installed in the United States in 2016, nearly doubling the amount installed in 2015. In that same period of time, the average cost of solar projects has declined dramatically. Utility-scale solar power now in many cases is as affordable, or more affordable, than conventional, fossil-fueled electric generating sources.

33. Consistent with these trends, Montana was poised to experience substantial growth in solar development prior to the Commission's actions in this proceeding. In May 2016, NorthWestern stated that it had nearly two dozen requests for power-purchase agreements from developers of small solar energy projects with a capacity of three megawatts or less.

34. Solar energy could contribute tremendous benefits to NorthWestern and its electricity customers. NorthWestern Energy has reported a shortage of capacity to meet its peak customer demand, which increasingly occurs in summer months, when solar energy production is greatest. Additionally, while solar energy is a significant summer-peaking resource, its production characteristics complement local wind resources, which are most productive in winter months.

35. Further, solar resources can be built more rapidly and in smaller increments than larger fossil-fueled resources. Because of these characteristics, solar energy development can match more closely the utility's future load growth and capacity needs, with fewer shortages or surpluses of capacity that can be detrimental to ratepayers. And in the case of NorthWestern, which has identified immediate capacity needs, solar energy development can more quickly rectify resource deficiencies that expose its ratepayers to the inherent risk of volatile market prices for power.

36. Locking in long-term rates for affordable solar energy at current low prices also provides a significant hedge against market volatility. The cost of natural-gas-fired generation is heavily dependent on future natural gas prices. Not only are NorthWestern's customers at risk of paying high fuel costs for utility-owned fossil-fueled plants if natural gas prices spike, customers pay the fixed capital costs of such utility-owned resources whether they are producing power or not, including when those resources are out of service for repairs or because they cannot be

operated economically. By contrast, for independently owned solar energy projects selling electric power to NorthWestern—such as the small solar energy facilities that qualify for standard offer rates—ratepayers pay only for the power that is actually produced. In addition, ratepayers bear no risk of paying for construction cost-overruns of qualifying facilities, as they do with utility-owned projects.

37. Solar energy development also yields significant local economic benefits. The construction of each additional 100 megawatts of solar energy generation in Montana would likely result in an investment of hundreds of millions of dollars in the state, including by generating short-term and permanent employment and local tax revenue.

38. Notwithstanding these benefits of solar energy development and the ability of renewable electric capacity to meet NorthWestern's claimed need for new generating resources, on information and belief, NorthWestern has not made any new commitments to purchase solar qualifying facility power since the Commission suspended the pre-existing standard rate on June 16, 2016.

II. NORTHWESTERN'S APPLICATION TO REDUCE STANDARD RATES

39. Prior to the challenged decision, the Commission last modified standard rates for small (three megawatts or less) qualifying facilities in 2012, finding such rates just and reasonable, in the public interest, and not discriminatory. Order No. 7199d, In the Matter of NorthWestern's Application for Approval of Avoided Cost Tariff for New Qualifying Facilities, Dkt. No. D2012.1.3 (Dec. 7, 2012). Consistent with its prior practice, the Commission established these standard rates based on a 25-year contract length.

40. In January 2014, NorthWestern unsuccessfully sought to alter the 2012 standard rates. See Order 7338b, In the Matter of NorthWestern Energy's Application for Qualifying

Facility Tariff Adjustment, Dkt. No. D2014.1.5 (May 4, 2015). After a full contested case proceeding, the Commission rejected NorthWestern's requested rate change based on the utility's failure to support its avoided-cost assumptions "with a comprehensive, long-term resource planning analysis," and its use of a potentially flawed method for calculating avoided costs. Id. ¶¶ 19–21. Accordingly, the Commission determined it lacked a sufficient basis to change the standard rates approved in 2012.

41. On May 3, 2016, NorthWestern filed its next bi-annual avoided cost application with the Commission, proposing drastic reductions in standard offer rates for NorthWestern's purchases from solar, wind, and non-wind qualifying facilities. See NorthWestern Energy's Application for Interim & Final Approval of Revised Tariff Schedule No. QF-1, In the Matter of NorthWestern Energy's Application for Interim and Final Approval of Revised Tariff No. QF-1, Qualifying Facility Power Purchase, Dkt. No. D2016.5.39 (May 3, 2016) [hereinafter "2016 Rate Application"]. For solar qualifying facilities, NorthWestern's 2016 Rate Application proposed a standard rate that would be as little as roughly half the current rate—reducing it from an average price of roughly $66 per megawatt hour to between $34 and $44 per megawatt hour. While proposing dramatically reduced payments for solar electricity, NorthWestern's application maintained the 25-year maximum contract duration previously implemented by the Commission. This 2016 Rate Application initiated the proceeding underlying the challenged decision.

42. Vote Solar and Cypress Creek intervened in the proceeding on or before the June 10, 2016 intervention deadline set by the Commission. The Montana Consumer Council and New Colony Wind, LLC also intervened in the proceeding.

43. As parties to the proceeding, Vote Solar and Cypress Creek engaged in discovery, submitted expert testimony, participated in the hearing held by the Commission, and submitted post-hearing briefing.

44. Vote Solar's expert, Tom Beach, submitted testimony justifying an avoided cost rate for solar qualifying facilities of between $60 and $73 per megawatt hour. This calculation reflected the Commission's historical practice of compensating non-carbon emitting facilities for avoided costs associated with projected future regulation of such carbon emissions. Mr. Beach's calculation also relied on widely accepted methodologies for compensating solar energy resources for their contribution to a utility system's overall capacity to meet peak demands, in this case, a value that reflected robust solar energy production during many of the hours in which NorthWestern's customer demand is high (NorthWestern's "on-peak period"). Mr. Beach's calculations were based on a 25-year contract length, consistent with the existing standard offer contract terms and NorthWestern's 2016 Rate Application. In his testimony, Mr. Beach noted that NorthWestern currently has a significant need for generation resources because it has a substantial capacity deficit. As Mr. Beach explained, "[b]y any standard measure of resource adequacy in the utility industry, NorthWestern needs to add generation capacity in order to provide adequate resources to meet its customers' long-term needs." Pre-filed Direct Testimony of R. Thomas Beach on Behalf of Vote Solar and MEIC, at 8, <u>In the Matter of NorthWestern Energy's Application for Interim and Final Approval of Revised Tariff No. QF-1, Qualifying Facility Power Purchase</u>, Dkt. No. D2016.5.39 (Oct. 14, 2016).

45. Cypress Creek's expert, Roger Schiffman, submitted testimony highlighting a number of deficiencies in NorthWestern's avoided cost methodology, including its lack of transparency, its undervaluing of avoidable resource costs in certain situations, and its energy-

price forecasting approach. Mr. Schiffman further testified that NorthWestern's proposed payments for capacity "substantially understat[ed] this value for solar resources." Pre-filed Direct Testimony of Roger Schiffman on Behalf of FLS Energy and Cypress Creek Renewables, at 19, In the Matter of NorthWestern Energy's Application for Interim and Final Approval of Revised Tariff No. QF-1, Qualifying Facility Power Purchase, Dkt. No. D2016.5.39 (Oct. 14, 2016).

46. On October 26, 2017, more than five months after NorthWestern filed its application and over four months after the deadline to intervene, the Commission requested additional issue testimony on two topics: (1) maximum contract length and (2) performance standards for qualifying facilities. With respect to maximum contract length, the Commission requested testimony on the following questions:

> a. Does the current 25-year maximum contract length in Schedule QF-1 impose undue forecast risk on customers? If so, why?
>
> b. Would a maximum contract length shorter than 25 years be reasonable? If so, what would be a reasonable alternative maximum contract length and why?
>
> c. Would it be reasonable to limit the time period in a long-term contract during which fixed rates are paid, with market index-based payments thereafter? If so, why or why not?
>
> d. What maximum contract lengths are available in other states?

Notice of Additional Issues, In the Matter of NorthWestern Energy's Application for Interim and Final Approval of Revised Tariff No. QF-1, Qualifying Facility Power Purchase, Dkt. No. D2016.5.39 (Oct. 26, 2016).

47. The Commission's request did not solicit input from nonparties or provide notice of any new opportunity to allow stakeholders interested in this new issue to intervene.

48. In response to the Commission's Notice of Additional Issues, Vote Solar submitted testimony from Tom Beach stating that the Commission should maintain its 25-year term for contracts. As Mr. Beach explained, other states recently addressed this issue and chose to maintain the availability of long-term contracts for small qualifying facilities to avoid chilling renewable energy development. Mr. Beach testified that long-term contracts are essential to allow qualifying facilities to obtain necessary financing for their projects. Moreover, as Mr. Beach explained, long-term contracts do not present an additional risk to ratepayers and, in fact, may shield ratepayers by hedging against future volatility in fossil fuel prices.

49. Cypress Creek also submitted additional issue testimony on the importance of adequate contract lengths for purposes of securing project financing. Specifically, Cypress Creek witness Patrick McConnell explained that institutional lenders are generally unwilling to take the pricing risk of financing a project beyond the term of a fixed-price contract. Because the entire costs of the project must generally be paid during the term of the contract, projects with shorter contracts do not make economic sense.

50. The Commission held a two-day hearing in January 2017. Following the hearing all parties submitted post-hearing briefs.

51. On June 22, 2017, the Commission held a work session on NorthWestern's 2016 Rate Application. At that work session, the Commission voted to adopt a 10-year maximum contract length for qualifying facilities, with a mandatory rate adjustment after five years. In an effort to comply with PURPA's prohibition on discriminatory treatment of qualifying facilities, the Commission voted to apply similar restrictions on contract lengths or cost-recovery periods for new resources acquired by NorthWestern. The Commission also voted to adopt standard

rates for qualifying facilities that were even lower than those proposed by NorthWestern and that reduced previous rates by more than half.

52. During a break in the work session, a member of the Commission staff was recorded saying that the Commission's contract-length decision is "going to probably kill [qualifying facility] development entirely." In response, Commissioner Lake agreed, "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." Commissioner Lake, at 6:10, Commission Work Session 1358, In the Matter of NorthWestern Energy's Application for Interim and Final Approval of Revised Tariff No. QF-1, Qualifying Facility Power Purchase, Dkt. No. D2016.5.39 (June 22, 2017). On July 21, 2017, the Commission issued Final Order 7500c adopting the decision it made at its June 22, 2017 work session.

53. Vote Solar filed a motion for reconsideration on July 31, 2017, arguing that reconsideration was warranted because, among other things, the Commission unlawfully and unreasonably (1) adopted a 10-year contract length based on an insufficient record to demonstrate that such a contract term was sufficient to encourage the development of qualifying facilities; (2) adopted a shortened contract term without proper notice to interested parties; (3) adopted avoided cost rates that failed to compensate qualifying facilities for avoided carbon costs; (4) significantly undervalued total avoided costs based on the unreasonable assumption that NorthWestern does not require new generating resources until 2025; (5) significantly undervalued the contribution of solar resources to meeting NorthWestern's capacity needs; and (6) failed to account for shortened contract lengths in calculating avoided costs.

54. Cypress Creek also filed a motion for reconsideration adopting Vote Solar's arguments and providing additional arguments against the drastic reduction in contract length. Among other things, Cypress Creek observed "that shortening [the qualifying facility] contract duration to ten years will deprive [qualifying facilities] of reasonable opportunities to attract capital, will compromise the economic feasibility of [qualifying facilities] in Montana, and will discourage [qualifying facilities] from entering into long-term contracts," in violation of PURPA and Montana law. Joint Mot. of FLS Energy, Inc. and Cypress Creek Renewables, LLC for Reconsideration of Order 7500c, at 8, In the Matter of NorthWestern Energy's Application for Interim and Final Approval of Revised Tariff No. QF-1, Qualifying Facility Power Purchase, Dkt. No. D2016.5.39 (July 31, 2017).

55. NorthWestern also filed a motion for reconsideration of the Commission's application of the 10-year term to NorthWestern's cost-recovery for its resource acquisitions.

III. PRE-DECISIONAL STATEMENTS BY COMMISSIONERS

56. Although the Commission did not formally make a final decision in this docket until its November 24, 2017 Order on Reconsideration, throughout the proceeding, individual commissioners foreshadowed the outcome through numerous editorials in the press about key issues and parties to the proceeding.

57. At the very outset of the proceeding, before all parties had submitted testimony, Commission Chair Johnson authored an August 4, 2016 guest opinion in the Billings Gazette that stated that "[s]ome corporate solar developers operating in Montana … appear[] content with throwing ratepayers under the bus to boost their own profits" and characterized solar advocates as "environmental activists." Brad Johnson, Opinion, Montana PSC Sides with Consumers on Solar Pricing, Billings Gazette, Aug. 4, 2016, http://billingsgazette.com/

news/opinion/guest/guest-opinion-montana-psc-sides-with-consumers-on-solar-pricing/article_907808ae-f5eb-5ba6-9501-a92eef5e4bb5.html (attached as Exhibit 3).

58. Later, Commissioner Koopman wrote a July 2017 guest opinion in the Billings Gazette, Missoulian, and Great Falls Tribune stating that one party to the case, the Montana Consumer Counsel, "has been arguing for years that long-term (up to 25 year) fixed-rate contracts are unworkable, and place consumers at great risk. The commission has agreed in principle, but hadn't yet found a good solution" before issuing its initial decision in the proceeding. Roger Koopman, Guest Column, Ratepayers Have Constant, Effective Advocate in Montana Consumer Counsel, Missoulian, July 7, 2017, http://missoulian.com/opinion/columnists /ratepayers-have-constant-effective-advocate-in-montana-consumer-counsel/article_ff2e1e17-14ab-565e-8d96-b7966c933ab7.html (attached as Exhibit 4).

59. Shortly after the Commission issued its initial decision, Commissioner O'Donnell authored a guest opinion in the Great Falls Tribune, the Montana Standard, Helena Independent Record, Missoulian, and the Billings Gazette touting the Commission's decision to drastically reduce contract rates, which was still subject to reconsideration, stating that there is "no truth whatsoever" to the claim that the Commission's decision to drastically reduce contract length would "'kill' wind and solar development in the state." Tony O'Donnell, Opinion, Montana's Clean Energy Future Should Not Be Financed on the Backs of Ratepayers, Great Falls Tribune, July 27, 2017, http://www.greatfallstribune.com/story/opinion/2017/07/27/montanas-clean-energy-future-should-not-financed-backs-ratepayers/517727001/ (attached as Exhibit 5).

60. Further, while motions for reconsideration were pending before the Commission, Commissioner Koopman authored a guest opinion published in the Bozeman Daily Chronicle and the Helena Independent Record stating his belief that if renewable contracts of less than 25

years "cannot attract financing" it "would only be because these projects are too risky in the first place …." Roger Koopman, Guest Column, Do We Really Want Solar Energy at Any Cost?, Bozeman Daily Chronicle, August 2, 2017, https://www.bozemandailychronicle.com /opinions/guest_columnists/do-we-really-want-solar-energy-at-any-cost/article_4a50b00e-e4e0-504d-887f-e8e250b21e41.html (attached as Exhibit 6). Commissioner Koopman also praised an earlier Commission decision in this proceeding that suspended standard rates for certain qualifying facilities at a time when "[o]ut-of-state developers were perched at Montana's borders, ready to rush in and take advantage of these inflated rates, reaping windfall profits at consumers' expense." Id.

61. These public statements on the merits of and parties to the proceeding pending before the Commission demonstrate the apparent pre-judgment of critical issues by individual commissioners before the parties had completed their presentation of evidence and argument. As described below, the evidence did not support the Commission's pre-determined outcome.

IV. THE CHALLENGED DECISION

62. On October 5, 2017, the Commission held a public work session on the motions for reconsideration, and, on November 24, 2017 the Commission issued its Order on Reconsideration. Despite Vote Solar and Cypress Creek's arguments, the Commission retained its decision to reduce the maximum contract length from 25 years, though it did increase the maximum term established in its Initial Order only from ten to 15 years. The Commission did not alter its initial decision to set an avoided cost rate that significantly undervalues both the total costs avoided by solar energy and the capacity contribution value of solar.

A. The Commission's Decision on Contract Length

63. While reducing maximum contract lengths for the purchase of electricity from qualifying facilities to 15 years, the Commission did not satisfy its obligation to ensure that such contracts were sufficiently "long-term" to "enhance the economic feasibility" of qualifying facilities as required by state law, Mont. Code Ann. § 69-3-604(2), or make any findings regarding the combined impact of the Commission's decisions to dramatically reduce the standard rate for qualifying facility power and shorten contract lengths. Indeed, the Commission did not solicit testimony on either of these issues.

64. As a state agency, the Commission must support its decisions with substantial record evidence. See Mont. Code Ann. § 2-4-704(2)(a)(v). However, during the Commission's October 5, 2017 work session, three of the five Commissioners acknowledged that the evidentiary record on this point was "weak." Commissioner Koopman, at 1:00:52, Commission Work Session 1131, In the Matter of NorthWestern Energy's Application for Interim and Final Approval of Revised Tariff No. QF-1, Qualifying Facility Power Purchase, Dkt. No. D2016.5.39 (Oct. 5, 2017); see also id., Commissioner Kavulla, at 1:09:24 (relaying concern from Commissioner O'Donnell that "the evidentiary record in this proceeding on contract length was frustrating to him"); id., Commissioner Kavulla, at 1:09:41 ("[D]espite of noticing it [contract length] as an additional issue and trying to engage in a real investigation of this, I don't think, frankly, but for a couple of, a bit of, testimony from parties and other jurisdictions findings on this, I don't think actually there's much of an evidentiary record."). As the Commission acknowledged in its Order on Reconsideration, neither NorthWestern nor the Montana Consumer Counsel ("MCC") offered testimony regarding the impact of shortened contracts on the ability of qualifying facilities to obtain financing.

65. In responding to arguments that the Commission should refrain from changing qualifying facility contract lengths in light of this record, Commissioner Koopman stated:

> The argument that there was no proof given that it wouldn't affect financing is a weak argument. There was not good evidence either way. I wish, you know, I wish that there was more evidence on the record… And so the Commission unfortunately has a weak evidentiary record to go with in this area. … Sure it [a 10-year contract length] may affect financing. It may affect the, you know, the interest rate. It may not. We don't know.

Commissioner Koopman, at 1:00:20, Commission Work Session 1131, In the Matter of NorthWestern Energy's Application for Interim and Final Approval of Revised Tariff No. QF-1, Qualifying Facility Power Purchase, Dkt. No. D2016.5.39 (Oct. 5, 2017).

66. The viability of any particular contract length for purchases from a qualifying facility depends on the price at which the output of the facility will be purchased under the contract. Where the purchase price is lower, decreasing annual revenues, developers need longer contract lengths to obtain financing for energy development projects. The Commission totally failed to consider this relationship between contract length and contract price.

67. Despite the absence of evidence showing that 15-year contracts under the present rate would be sufficient for projects to secure financing, the Commission concluded that "record evidence supports setting a 15-year maximum contract length." Order on Reconsideration ¶ 30.

B. The Commission's Decision on Avoided Cost Rates

68. In addition to its decision to reduce maximum contract lengths for purchases of electric power from qualifying facilities, the Commission cut by more than half the standard offer rate for such purchases. Among other things, the rate established by the Commission: (1) eliminated compensation to qualifying facilities for avoided carbon costs; (2) failed to compensate qualifying facilities for total avoided costs in years before 2025; and (3) failed to

consider the impact of its reduction of NorthWestern's cost-recovery period to 15 years on NorthWestern's avoided energy and capacity costs.

69. First, the Commission ignored the recommendation of its own staff to maintain a carbon cost adjustment to the standard rate and unreasonably reversed its long-standing practice of compensating non-carbon emitting, renewable energy facilities for avoided regulatory costs associated with carbon emissions. As Vote Solar observed, the Commission previously required NorthWestern's customers to pay the utility a premium of $21/metric ton of carbon emissions avoided through its acquisition of hydroelectric resources. Since then, the Commission required compensation to numerous renewable energy developers for avoided carbon emissions, recognizing that non-carbon emitting resources help to insulate NorthWestern's customers from the projected costs of future carbon regulation.

70. The Commission's about-face decision to omit compensation for avoided carbon costs was based on its "assessment that the political forces that once indicated environmental regulatory action at the federal level was likely in the reasonably foreseeable future has diminished [after the 2016 Presidential election] and, accordingly, the likelihood of carbon emissions regulation has decreased." Initial Order ¶ 77. However, the Commission's prior actions undermined this rationale. Specifically, prior to the challenged decision, the Commission had already considered changes in the political landscape after the 2016 Presidential election affecting potential carbon regulation and nonetheless determined that compensation to a non-carbon emitting qualifying facility (Crazy Mountain Wind) was appropriate. The Commission did not identify any record evidence to justify its changed position in the challenged decision or otherwise demonstrate that carbon costs will not exist during the standard rate contract period.

The Commission also disregarded evidence of regulatory risk associated with carbon emissions that is independent of national "political forces." Id.

71. Second, the Commission underestimated NorthWestern's total avoided costs by basing its estimate on a combination of the costs of NorthWestern's planned construction of a combined cycle combustion turbine in 2025, and the lower projected costs of market purchases in the years before 2025. Although avoided costs may properly be based on market prices for electricity when a utility does not have any need for new generating resources, that is not the case here. NorthWestern's resource procurement plan identified an immediate need for new generating resources because it currently lacks sufficient capacity to meet customer demand. Accordingly, NorthWestern plans to add new resource capacity in 2018, well before its planned construction of a combined cycle combustion turbine in 2025. By basing NorthWestern's avoided costs on market prices before 2025, the Commission underestimated costs that solar qualifying facilities could displace as soon as 2018. Indeed, "the shorter lead times available with additions of capacity from [solar] qualifying facilities" (as opposed to the more extended schedule to plan, permit, and construct a combined cycle combustion turbine) make solar energy resources particularly valuable to help meet NorthWestern's immediate resource needs. 18 C.F.R. § 292.304(e)(2)(vii) (identifying "shorter lead times" as a factor the Commission must consider in determining avoided costs). The Commission's calculation of total avoided costs overlooked these factors.

72. Third, the Commission's calculation of total avoided costs did not account for the Commission's contemporaneous decision to limit NorthWestern's cost-recovery term for its own resources to 15 years. In calculating avoided costs, the Commission relied on the costs of NorthWestern's planned construction and operation of a combined cycle combustion turbine

spread out over 25 years. When the Commission decided to limit NorthWestern's cost-recovery term to 15 years, the Commission did not reevaluate avoided costs based on the much higher annual cost for a combined cycle combustion turbine when the total cost is spread over a shorter term. Nor did the Commission consider whether the shorter recovery term may affect whether NorthWestern would identify a resource other than a combined cycle combustion turbine as the most-economical resource on which the avoided cost rate should be based. As Commission staff observed, "[t]he planned resources that form the basis for the avoided costs and rates approved in [the Commission's Order] may not be preferred resources" given the Commission's decision to limit NorthWestern's cost recovery to a 15-year term. Mike Dalton et al., Memorandum re Motions for Reconsideration, at 25, In the Matter of NorthWestern Energy's Application for Interim and Final Approval of Revised Tariff No. QF-1, Qualifying Facility Power Purchase, Dkt. No. D2016.5.39 (Oct. 2, 2017). Without information about NorthWestern's resource portfolio under the newly adopted cost-recovery term for utility-owned resources, "it is not possible to confirm that the approved [standard] rates are reflective of NorthWestern's avoided costs under [the symmetry] finding and, therefore, whether those rates are just and reasonable to NorthWestern's customers." Id. In other words, Commission staff expressed concern that the Commission lacked evidence to confirm that the standard rates approved in the challenged decision accurately reflect NorthWestern's avoided costs under the utility's shorter cost-recovery term. The Commission's Order on Reconsideration did not acknowledge or respond to concerns raised by Plaintiffs and the Commission's staff about the accuracy of the Commission's avoided-cost calculation.

C. The Commission's Decision on the Contribution of Solar Energy Resources to NorthWestern's System Capacity

73. The Commission's decision also failed to fully compensate solar qualifying facilities for their contribution to NorthWestern's system capacity to meet its customer demand.

74. Under PURPA and Montana law, the Commission must set avoided cost rates that fairly compensate qualifying facilities for both energy and capacity costs that the qualifying facility allows the purchasing utility to avoid. 18 C.F.R. § 292.304(a), (b), (e); Admin. R. Mont. 38.5.1901(1). "Capacity costs are the costs associated with providing the capability to deliver energy; they consist primarily of the capital costs of facilities." Order No. 69, 45 Fed. Reg. at 12,216. Once a qualifying facility's contribution to a utility's capacity needs is calculated, the facility receives capacity payments based on that value for its output during the utility's period of peak demand, or "on-peak" hours. NorthWestern's 2016 Rate Application identified the utility's "on-peak" hours as high-demand hours in January, February, July, August, and December.

75. In the challenged decision, the Commission assumed that solar qualifying facilities will contribute just 6.1% of their capacity to NorthWestern's overall capacity needs, in stark contrast with solar capacity values ranging from 28% to 51% for other utilities in the region. In rejecting these much higher solar capacity values, the Commission distinguished them as applying to utilities with summer-peaking capacity demands as opposed to NorthWestern's winter-peaking capacity demands. However, the Commission conceded that peak demand on NorthWestern's system occurred during the summer in nearly half of the years it evaluated. Further, the Commission acknowledged that record evidence demonstrated that demand for electricity throughout the region—which the Commission identified as more relevant in ascertaining the capacity value of new resources than demand solely on NorthWestern's system—is projected in future years to occur primarily in the summer. Nevertheless, the

Commission did not attempt to reconcile NorthWestern's projected summer needs with the Commission's conclusion that NorthWestern is exclusively a winter-peaking utility.

76. Further, the Commission calculated solar capacity contribution based on only a narrow subset of NorthWestern's on-peak hours, thereby disregarding solar resources' capacity contribution in the vast majority of hours during NorthWestern's "on-peak" period.

77. The Commission's decision was additionally flawed because it failed to account for the "aggregate value of energy and capacity from qualifying facilities on the electric utility's system," 18 C.F.R. § 292.304(e)(2)(vi)—in particular, the significant synergies of winter-peaking wind resources and summer-peaking solar resources. The Commission dismissed evidence of the complementary production characteristics of these two resource types, claiming that data were not available to allow the Commission to calculate their aggregate contribution. But the Commission was not required to quantify the aggregate value of wind and solar resources; it was simply required to account for the combined benefit of such resources "to the extent practicable." Id. at § 292.304(e). The Commission failed to do so by isolating its analyses of wind and solar resources and assigning capacity value only for a very small number of peak-load hours predominantly in the winter, thereby under-compensating each resource type even while NorthWestern reaps the combined capacity benefits of the two.

78. The Commission's methodology is irreconcilable with NorthWestern's stated capacity needs, particularly as NorthWestern's highest load hours increasingly occur in the summer and not the winter months. NorthWestern's current resource portfolio is inadequate to meet NorthWestern's peak summer demand in every year since 2011, let alone future, higher forecasts of summer loads. Yet, the Commission's methodology fails to recognize the valuable contribution of solar qualifying facilities to meet NorthWestern's growing summer demand.

79. For these reasons, the Commission unreasonably and arbitrarily undervalued the significant contribution that solar qualifying facilities resources make to NorthWestern's system.

FIRST CAUSE OF ACTION
Arbitrary, Unreasonable, and Unlawful Reduction in Contract Length
(Mont. Code Ann. § 69-3-604(2), § 69-3-402, § 2-4-704)

80. Plaintiffs hereby reallege and reincorporate Paragraphs 1 through 79.

81. Montana law requires the Commission to establish "long term" contract rates that are sufficient to "enhance the economic feasibility" of qualifying facilities. Mont. Code Ann. § 69-3-604(2).

82. The Commission's decision unreasonably reduced the maximum duration of standard-offer contracts from 25 years to just 15 years. In so doing, the Commissioners failed to determine based on record evidence that 15-year contracts are sufficient to "enhance the economic feasibility" of qualifying facilities as required by Montana law, Mont. Code Ann. § 69-3-604(2), and failed to evaluate whether longer contracts were necessary in light of the Commission's contemporaneous decision to reduce by more than half the standard rate available for purchases of electric power from qualifying facilities. The record evidence would not support any finding that 15-year contracts satisfy the requirements of Mont. Code Ann. § 69-3-604(2), particularly in light of the combined impact of dramatically reduced standard rates.

83. By adopting a shortened contract length based on insufficient evidence to ensure that the shortened contract length would "enhance the economic feasibility" of qualifying facilities, id.; 16 U.S.C. § 824a-3(a), the Commission violated the requirement that its decisions be reasonable and lawful. See id. §§ 2-4-704, 69-3-402.

SECOND CAUSE OF ACTION
Arbitrary, Unreasonable, and Unlawful Avoided Cost Rates
(Mont. Code Ann. § 69-3-402, § 2-4-704; Admin R. Mont. 38.5.1901(1); 16 U.S.C. § 824a-3; 18 C.F.R. § 292.304(a), (b), (e))

84. Plaintiffs hereby reallege and reincorporate Paragraphs 1 through 83.

85. Under PURPA and Montana law, the Commission must set avoided cost rates that fairly compensate qualifying facilities for both energy and capacity costs that the qualifying facility allows the purchasing utility to avoid. 18 C.F.R. § 292.304(a), (b), (e); Admin. R. Mont. 38.5.1901(1).

86. These rates must be "just and reasonable to the electric consumers of the electric utility and in the public interest" and "shall not discriminate" against qualifying small power producers. 16 U.S.C. § 824a-3(b); 18 C.F.R. § 292.304(a); Admin. R. Mont. 38.5.1901(1).

87. The Commission's determination of avoided costs in its Initial Order and its Order on Reconsideration were unlawful and unreasonable because (1) the Commission arbitrarily and unlawfully eliminated compensation for qualifying facilities for avoided carbon costs; (2) the Commission failed to fully compensate qualifying facilities for total avoided costs in years before 2025; and (3) the Commission arbitrarily failed to consider the impact of its cost-recovery constraints for NorthWestern's future resource acquisitions on avoided costs.

88. The Commission acted arbitrarily in setting avoided costs by failing to consider all relevant factors, see Clark Fork Coal., ¶ 21, and failing to provide a reasoned analysis to justify its departure from its prior precedent, see Waste Mgmt. Partners of Bozeman, Ltd. v. Montana Dep't of Pub. Serv. Regulation, 284 Mont. 245, 257, 944 P.2d 210, 217 (1997).

89. Accordingly, the Commission's decision was arbitrary, unreasonable, and unlawful in violation of Montana law. See Mont. Code Ann. §§ 2-4-704, 69-3-402.

THIRD CAUSE OF ACTION
Failure to Compensate Solar Qualifying Facilities for Full Capacity Contribution (Mont. Code Ann. § 69-3-402, § 2-4-704; Admin R. Mont. 38.5.1901(1); 18 C.F.R. § 292.304(b), (e))

90. Plaintiffs hereby reallege and reincorporate Paragraphs 1 through 89.

91. Under PURPA, the Commission must set avoided cost rates that fairly compensate qualifying facilities for both energy and capacity costs that the qualifying facility allows the purchasing utility to avoid. 18 C.F.R. § 292.304(a), (b), (e); Admin. R. Mont. 38.5.1901(1).

92. The Commission's decision unreasonably adopted a 6.1% capacity contribution value for solar resources that fails to fully compensate solar qualifying facilities for their capacity contribution to NorthWestern's system. Specifically, the Commission ignored NorthWestern's need for capacity resources during summer months when solar energy production is greatest. The Commission's methodology of calculating the capacity value of solar resources based on demand in a narrow set of hours primarily in the winter is irreconcilable with NorthWestern's immediate, year-round capacity needs. The Commission's methodology further failed to account for the aggregate value to NorthWestern of wind and solar resources.

93. Accordingly, the Commission's calculation of solar qualifying facility capacity contribution was arbitrary, unreasonable, and in violation of Montana law. See Mont. Code Ann. §§ 2-4-704, 69-3-402.

PRAYER FOR RELIEF

THEREFORE, plaintiffs respectfully request that the Court:

1. Declare that the Commission's decision was arbitrary, unlawful, and unreasonable;

2. Set aside the challenged aspects of the Commission's decision;

3. Direct the Commission to immediately reinstate 25-year contract lengths for small qualifying facilities as established in Order No. 7199d, In the Matter of NorthWestern's Application for Approval of Avoided Cost Tariff for New Qualifying Facilities, Dkt. No. D2012.1.3 (Dec. 7, 2012);

4. Direct the Commission to immediately establish standard offer rates for small qualifying facilities that: (1) compensate qualifying facilities for avoided carbon costs; (2) compensate qualifying facilities for total avoided costs based on the costs of resource additions in 2018; and (3) account for the impact of a 15-year contract or cost-recovery term for NorthWestern's future resource acquisitions;

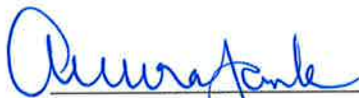
5. Direct the Commission to immediately establish capacity payments to small solar qualifying facilities that compensate such facilities for their production throughout NorthWestern's on-peak period;

6. Enjoin the Commission from adopting future rates or contract lengths inconsistent with this Court's order;

7. Award plaintiffs their reasonable fees, costs, and expenses, including attorneys' fees, associated with this litigation; and

8. Grant plaintiffs such additional relief as the Court may deem just and proper.

Respectfully submitted this 13th day of December, 2017.



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