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MONTANA EIGHTH JUDICIAL DISTRICT COURT  
CASCADE COUNTY

MONTANA ENVIRONMENTAL  
INFORMATION CENTER,

Plaintiff,

v.

MONTANA PUBLIC SERVICE  
COMMISSION, MONTANA  
DEPARTMENT OF PUBLIC SERVICE  
REGULATION, and NORTHWESTERN  
CORPORATION d/b/a NORTHWESTERN  
ENERGY,

Defendants.

Case No.  
Judge:

**COMPLAINT AND PETITION  
FOR JUDICIAL REVIEW**

**INTRODUCTION**

1. This case concerns the viability of a state program to encourage local renewable energy projects in Montana. Plaintiff challenges the Montana Public Service Commission's ("Commission") September 24, 2018 decision to grant NorthWestern Energy's requests for waivers from its statutory obligation to obtain approximately 65 megawatts of energy from Community Renewable Energy Projects ("CREP" resources) in compliance years 2015 and 2016. Order No. 7578b ("Final Order"), Dkts. D2016.4.33, D2017.8.65, attached as Exhibit 1.

Since 2012, when the Montana Legislature first obligated NorthWestern to purchase energy from CREP resources—small, Montana-owned renewable energy projects—NorthWestern has never achieved compliance. Instead, NorthWestern has repeatedly obtained waivers from the Commission to avoid satisfying the CREPs requirement. In granting waivers from the requirement for five consecutive years, the Commission has effectively nullified the Legislature’s clear intent to foster clean energy and associated economic development.

2. Regarding compliance years 2015 and 2016, which are at issue here, the Commission was authorized to grant NorthWestern’s waiver requests only if it found, based on record evidence, that NorthWestern took “all reasonable steps” to comply with the CREP purchase requirement, but was unable to comply because of “legitimate reasons that are outside the control of the public utility.” Mont. Code Ann. § 69-3-2004(11)(b). The Commission flouted this requirement, granting NorthWestern’s waivers based not on the statutory criterion, but rather on the disagreement of the majority of Commissioners with the Legislature’s enactment of the CREP law.

3. As a result of the Commission’s failure to hold NorthWestern accountable for its obligation to purchase power from Montana-owned renewable resources, residents in the rural communities in which those projects would be sited have been deprived of the income, tax revenue, and economic development opportunities that the CREP statute was designed to promote. Mont. Code Ann. § 69-3-2002(2). This includes residents of Cascade County, the proposed location for the Tiger Butte wind farm, which has consistently been found to promise among the lowest costs of all proposed CREP resources yet time and again has been rejected by NorthWestern based on opaque and shifting rationales.

4. Further, by exempting NorthWestern from administrative penalties for its non-compliance, the Commission has thwarted significant contributions of such penalties to the universal low-income energy assistance fund, which is used for both low-income bill assistance and low-income weatherization. These programs benefit low-income households in Montana, and they also benefit all of NorthWestern's customers by increasing efficiency across the utility's energy system and reducing arrearages (i.e. non-payment of bills), the costs of which are otherwise passed on to other NorthWestern ratepayers. The Commission's decision to waive administrative penalties that would otherwise be assessed against NorthWestern's corporate shareholders for the utility's violation of its CREP purchase obligation in 2015 and 2016 thus harmed all NorthWestern ratepayers.

5. The issues presented in this petition are not confined to 2015 and 2016. In the hearing before the Commission, NorthWestern represented that it again failed to comply with the CREP purchase obligation in 2017 and would be seeking yet another compliance waiver. Accordingly, the stage is set for yet another statutory violation, and the issue of whether NorthWestern's deficient efforts to procure CREP resources satisfy the governing statutory requirements is one of ongoing importance.

6. Because the Commission's decision to waive NorthWestern's statutory obligation to purchase Montana-owned renewable energy in 2015 and 2016 was unreasonable, arbitrary, and unlawful, the Commission's challenged Final Order should be vacated and its waiver decision should be reversed.

### **JURISDICTION AND VENUE**

7. This action is brought pursuant to the Montana Renewable Power Production and Rural Economic Development Act, Mont. Code Ann. §§ 69-3-2001 et seq., and Montana

Administrative Procedure Act, Mont. Code Ann. §§ 2-4-101 et seq. This Court has jurisdiction over Plaintiff's 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.

8. Plaintiff exhausted its 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 became final for purposes of appeal on October 23, 2018, when the Commission denied Plaintiff's motion for reconsideration, and is now 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 ....").

9. 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 certain projects subject to the challenged decision were proposed. 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"). Venue is also proper in this District because NorthWestern has service customers within Cascade County who will be affected by the Final Order. See Mont. Code Ann. § 25-2-126(1) ("venue is proper in actions against the state in the county in which the claim arose").

## **PARTIES**

10. 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.

11. MEIC, its staff, and its members and supporters who are residential electric customers in NorthWestern Energy’s service territory have direct and substantial interests in the challenged decision because NorthWestern’s failure to procure energy from CREP resources has deprived them of the legislatively identified benefits of such resources, including rural economic development, diverse sources of electricity generation, and opportunities for expanding their use of clean energy from wind and solar resources.

12. The legal violations alleged in this complaint cause direct injury to MEIC and its members’ interests in economic development, electrical grid diversification, and the expansion of their use of clean energy because the challenged decision negatively impacts the development of clean energy resources in the state. Moreover, by failing to require NorthWestern’s shareholders to pay an administrative penalty for the company’s noncompliance, the Commission has deprived MEIC members of funding for low-income energy assistance, which would otherwise assist NorthWestern’s low-income customers to make bill payments and benefit

other NorthWestern customers by reducing non-payment of energy bills that ratepayers otherwise pay for collectively through increased rates. These are actual and concrete injuries to MEIC members caused by the Commission's failure to enforce Montana law that would be redressed by the relief requested in this complaint. MEIC has exhausted its administrative remedies and thus has no other adequate remedy at law.

13. 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.

14. 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.

15. 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.

## **BACKGROUND**

### **I. LEGAL BACKGROUND**

16. In 2005, the Montana Legislature passed the Renewable Power Production and Rural Economic Development Act (the "Act"), emphasizing the importance of renewable energy production to "promote[] sustainable rural economic development by creating new jobs and

stimulating business and economic activity in local communities across Montana.” Mont. Code Ann. § 69-3-2002(2). Starting in 2012, the Act required public utilities, including NorthWestern, to purchase a certain amount of renewable energy credits and electricity output from community renewable energy projects, or “CREP” resources. Id. § 69-3-2004(3).

17. The Act defines a CREP resource as an eligible renewable resource that is either (a) “interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 25 megawatts in total calculated nameplate capacity;” or (b) “owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.” Id. § 69-3-2003(4). Nameplate capacity refers to the maximum electricity a unit is capable of generating.

18. NorthWestern is obligated to purchase CREP electricity if it is “demonstrated through a competitive bidding process that the total cost of electricity from that [CREP resource] ... is less than or equal to bids for the equivalent quantity of power over the equivalent contract term from other electricity suppliers.” Id. § 69-3-2007(1). This “cost cap” language is designed to promote development of CREP resources demonstrated through a competitive solicitation to be cost-effective relative to other “bids” in that process.

19. From 2012 to 2014, the law required NorthWestern to obtain 44 megawatts of energy from CREP resources, see id. § 69-3-2004(3), which amounts to at least two CREP projects with a generating capacity of 25 megawatts or less. Beginning in January 2015, the amount of energy NorthWestern must acquire from CREP resources rose to 65.4 megawatts. See id.<sup>1</sup>

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<sup>1</sup> By way of comparison, NorthWestern Energy’s Ryan Dam—about 10 miles downstream from Great Falls, Montana on the Missouri River—has a total generating capacity of 60 megawatts.

20. If a public utility fails to meet its statutory obligation to acquire CREP resources, the Act imposes an administrative penalty of \$10 per megawatt hour of renewable energy credits that the public utility failed to procure. Id. § 69-3-2004(10). Assessed penalty funds may not be passed on to ratepayers and must be deposited in the universal low-income energy assistance fund. Id. Monies deposited in this fund finance low-income bill assistance and low-income weatherization programs in Montana.

21. In limited circumstances, a public utility may avoid the administrative penalty by obtaining from the Commission a “short-term waiver” that exempts the utility from full compliance with the CREP purchase obligation and the penalty for noncompliance. Id. § 69-3-2004(11). To obtain this waiver, the utility must submit a petition to the Commission demonstrating that the utility “has undertaken all reasonable steps to procure renewable energy credits under long-term contract, but full compliance cannot be achieved because renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the public utility.” Id. § 69-3-2004(11)(b); see also Admin. R. Mont. 38.5.8301(4) (waiver provision).

## **II. FACTUAL BACKGROUND**

22. Since the CREP procurement requirement went into effect in 2012, NorthWestern has never met its statutory obligation to purchase CREP resources. Nevertheless, the Commission granted NorthWestern compliance waivers for 2012, 2013, and 2014. Order No. 7416b, Dkt. D2015.3.27 (May 17, 2016); Order No. 7334g, Dkt. D2013.10.77 (Dec. 17, 2014); Order No. 7177b, Dkt. D2011.6.53 (June 13, 2012). In granting NorthWestern’s waiver petition for the 2014 compliance year, the Commission cautioned NorthWestern that it “ought to carefully consider” certain factors going forward. Order No. 7416b ¶ 16, Dkt. D2015.3.27.



First, the Commission admonished NorthWestern to fully consider both power purchase agreements, in which the project developer operates the project and sells the electricity it generates to NorthWestern, and build-transfer options, in which resources are sold to NorthWestern to own and operate. Id. The Commission observed that “build-transfer options circumvent the difficulty in finding projects that clearly qualify as CREPs under the law,” because the utility’s ownership of the resource satisfies the local-ownership criterion. Id. The Commission also critiqued NorthWestern’s reliance on individual projects to take full responsibility for their certification as a CREP resource, including their satisfaction of the local ownership requirement. Id. ¶ 18. “Such reliance on parties that are not NorthWestern, and which do not have obligations to procure CREPs under the law, may be contributing to NorthWestern’s failure to meet its CREP obligations.” Id. And the Commission repeated its direction to NorthWestern to exercise “prudence” in the CREP solicitation process, which the Commission had previously described as “wanting.” Id. ¶ 19. Thus, while granting NorthWestern’s 2014 waiver petition, the Commission identified certain reasonable steps that NorthWestern should take to facilitate future CREP compliance.

23. Nevertheless, when it came to addressing compliance with the Act in 2015 and 2016, NorthWestern repeated its past failures and again requested waivers from its CREP purchase obligation.

24. NorthWestern submitted its waiver petition for the 2015 compliance year, together with pre-filed direct testimony, on March 28, 2016. On August 18, 2017—before the Commission acted on the 2015 petition—NorthWestern submitted its petition and testimony requesting a waiver for the 2016 compliance year. The Commission consolidated the two

proceedings. MEIC intervened in the consolidated docket and submitted testimony to oppose both waiver requests.

25. For the 2015 compliance year, NorthWestern’s petition documented that it conducted a Request for Proposals (“RFP”) that generated four finalists—two proposals for power purchase agreements (“PPAs”) (Greycliff and New Colony) and two proposals for build-transfer projects (Tiger Butte and Judith Gap II). In establishing criteria for these RFPs, NorthWestern required that all projects must be operational by the end of 2015, refusing to accommodate longer development timeframes that are typically required to plan, permit, and develop energy projects, including CREP resources.

26. Although both proposals for build-transfer projects in NorthWestern’s RFP had higher viability scores than the PPA proposals, and one (the Tiger Butte wind project) was the least-cost proposal, NorthWestern did not pursue either build-transfer project. Instead, NorthWestern began negotiating PPAs for the Greycliff and New Colony proposals. Before doing so, NorthWestern did not investigate the potential for these two PPAs to satisfy the statutory requirement that CREP resources be locally owned, despite the Commission’s prior admonition that NorthWestern’s approach to the statutory local-ownership requirement may be contributing to its non-compliance. Order No. 7416b ¶ 18; see Mont. Code Ann. § 69-3-2003(4)(a) (defining a CREP as a resource in which “local owners have a controlling interest”). Subsequently, on May 18, 2015, the Commission found that the ownership structure proposed by the PPAs did not satisfy the Act’s requirement that projects be locally owned, meaning they could not be certified as CREP resources.

27. After the PPAs were found ineligible, NorthWestern failed to pursue further negotiations with either build-transfer project, both of which would have satisfied CREP-

eligibility requirements because they would be sold to NorthWestern. Mont. Code Ann. § 69-3-2003(4)(b). NorthWestern declined to pursue such negotiations despite the fact that the developer of Tiger Butte proposal, which had the lowest cost and one of the highest viability ratings (10 out of 10) of any project, invited them. Although not discussed in NorthWestern’s pre-filed testimony, late in the proceeding NorthWestern attempted to defend its failure to continue negotiations regarding the Tiger Butte project based on alleged environmental concerns with the site.

28. With the ineligibility of the two PPA proposals and NorthWestern’s failure to pursue build-transfer projects, NorthWestern added no CREP power to its portfolio in 2015.

29. For the 2016 compliance year, NorthWestern again issued an RFP, requiring previously short-listed projects to start the bidding process anew and again requiring that projects be operational by the end of the compliance year. Ultimately, NorthWestern rejected all proposals—including the resubmitted Tiger Butte proposal—based on its conclusion that none of the projects was cost-effective as compared against NorthWestern’s existing large, fossil fuel resources. NorthWestern did not perform the cost-cap analysis of comparing the proposed CREP resources against other “bids for the equivalent quantity of power over the equivalent contract term” in the competitive bidding process. Mont. Code Ann. § 69-3-2007(1). Because it rejected all bids in the RFP, NorthWestern thus failed again to comply with its CREP purchase obligation in 2016.

30. In the proceeding before the Commission, NorthWestern argued that it took “all reasonable steps” to procure energy from CREP resources in 2015 and 2016, and that reasons beyond NorthWestern’s control prevented its compliance. Id. § 69-3-2004(11)(b). In addition, NorthWestern argued that the Act’s CREP requirement was fundamentally flawed based on the

company's contention that projects with 25 MW or less in generation capacity and projects that are locally owned—both of which are fundamental CREP requirements—are unlikely to be competitive on a cost basis with other, larger resources that can utilize economies of scale to produce energy at lower costs.

31. As intervenors, MEIC submitted testimony that urged the Commission to reject NorthWestern's waiver requests for both the 2015 and 2016 compliance years because NorthWestern failed to take a number of reasonable steps, any one of which would have helped the utility's efforts to satisfy its CREP purchase obligation. Further, MEIC argued that NorthWestern's cost-effectiveness analyses for CREP proposals did not lawfully apply the statutory cost-cap provision because NorthWestern compared the cost of proposed CREP resources to dissimilar, large fossil-fuel resources already in NorthWestern's portfolio rather than to other "bids for the equivalent quantity of power over the equivalent contract term" in NorthWestern's CREP RFPs for 2015 and 2016. Mont. Code Ann. § 69-3-2007(1).

32. Following an evidentiary hearing on April 4, 2018 and the filing of post-hearing briefs, the Commission's staff issued a memorandum in which it recommended that the Commission deny NorthWestern's request for a CREP waiver for compliance year 2015. As explained in the August 30, 2018 memorandum, staff found that NorthWestern failed to take all reasonable steps to acquire CREP resources because it: 1) unreasonably disqualified projects that could not become operational by the end of the compliance year, which particularly impeded the success of build-transfer projects for which NorthWestern insisted on a potentially time-consuming "pre-approval" process; and 2) unreasonably rejected the Tiger Butte proposal without documenting any environmental risks associated with that project. Staff Memo on

NorthWestern Energy's Petitions for CREP Waivers, 2015 and 2016, at 5-9, 14 (Aug. 30, 2018).<sup>2</sup> Additionally, staff found that the failure of the PPAs to satisfy the local-ownership criterion was not a factor "outside the control of" NorthWestern, Mont. Code Ann. § 69-3-2004(11)(b), and NorthWestern's failure to conduct "marginal due diligence to ensure that a finding of compliance was plausible" was "questionable," though not unreasonable. Id. at 15. Based on its recommendation to deny the 2015 waiver, staff recommended that the Commission assess an administrative penalty of \$1,259,000 against NorthWestern.

33. Commission staff recommended granting the waiver from CREP compliance in 2016, but failed to grapple with the issues underlying NorthWestern's failure to comply in that year. Id. at 16. While finding that NorthWestern's constrictive operation deadline on CREP proposals for the 2015 compliance year impeded NorthWestern's CREP compliance in subsequent years, staff failed to recognize that this defect constituted a failure to take all reasonable steps in both 2015 and 2016. See id. Additionally, although staff observed that "no bids satisfied NorthWestern's cost-cap analysis," id., the staff memorandum did not evaluate NorthWestern's analysis for compliance with the statutory language, stating only that the language "is ambiguous, as it reasonably allows for conflicting interpretations of how to conduct a cost-cap analysis." Id. at 18.

34. Despite this Commission staff recommendation to deny NorthWestern's waiver request for 2015, the Commission ultimately granted it. The Commission held a work session on September 11, 2018, during which the Commissioners voted 3-2 to grant NorthWestern's CREP compliance waivers for 2015 and 2016. At the work session, the Commissioners did not make

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<sup>2</sup> Available at <http://psc2.mt.gov/Docs/ElectronicDocuments/pdfFiles/D2016.4.33-D2017.8.65StaffMemo8-30-18.pdf>

any findings regarding the reasonable steps identified by Commission staff that NorthWestern failed to take. Nor did the Commissioners discuss NorthWestern’s legal interpretation of the statutory cost-cap provision or its application of that provision to reject every bid submitted in NorthWestern’s RFP for the 2016 compliance year. Instead, the Commissioners voting to grant the waivers were transparent in asserting that there could not have been any circumstances that would have caused them to reject the waiver requests, because they think the CREP law is unreasonable. Commissioner Lake commented, “I believe if we were to exercise the penalties that come with it, it would become punitive in nature ... because there is absolutely no way that any company, and—I’m going to say it—in any circumstance, could reach the all reasonable [steps] ... standard....” Video Recording of Sept. 11, 2018 work session, at 2:08:28.<sup>3</sup>

Commissioner O’Donnell echoed, “It’s [an] unreasonable law. And to hold somebody to the standard of attempting to have to reasonably accommodate an unreasonable requirement is an impossible situation.” Id. at 2:10:29. In other words, regardless of the record before them, these Commissioners’ decision to grant NorthWestern’s waiver requests was a foregone conclusion. They explained that they were casting their votes to “send the message” to the Legislature, not because they evaluated the evidence and staff recommendation and believed that NorthWestern took all reasonable steps to comply. See id. at 2:08:59 (Commissioner Lake stating, “I believe we would send the message back to the Legislature, ‘you guys have go to do something about this.’”); id. at 2:12:00 (statement of Commissioner O’Donnell, stating “I agree with Commissioner Lake that this would send a message to the Legislature ... to eliminate this program.”).

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<sup>3</sup> Available at [http://psc2.mt.gov/Docs/WorkSessions/WorkSessionVideo/20180911\\_1148\\_Work\\_Session.f4v](http://psc2.mt.gov/Docs/WorkSessions/WorkSessionVideo/20180911_1148_Work_Session.f4v).

35. The two dissenting Commissioners rejected this rationale. While disagreeing with the “public policy motivations” for the CREP statute, Commissioner Kavulla observed that “[t]he reality is the law does require the Commission to consider whether a utility has taken all reasonable steps within its control and if we find that they have not, the Commission shall impose a penalty.” Id. at 2:13:12. Putting a finer point on his disagreement, Commissioner Koopman stated, “[w]e cannot flout the law. We do not have the authority to nullify law because we think it’s bad law. ... In this case, we have to apply the law clearly and by the clear language of the law ... they have been out of compliance and we cannot waive the CREP requirement in a year when they were out of compliance based on the law.” Id. at 2:19:11.

36. The Commission’s Final Order, dated September 24, 2018, was almost entirely devoid of rationale for the decision to grant the 2015 and 2016 waiver petitions. See Final Order, Order No. 7578b. Without addressing the analysis and recommendations of the Commission’s own staff, the Final Order simply asserted that “[i]ssuing a competitive solicitation is a reasonable step toward compliance with the CREP requirement” and “NorthWestern took all reasonable steps to procure CREP resources in 2015 and 2016.” Id. ¶¶ 16-17 (citations omitted). Additionally, without explanation, the Final Order concluded that “the cost analysis performed ... sufficiently determines how the CREP proposals would impact portfolio costs and risks.” Id. ¶ 20. Thus, consistent with the Commission’s prior vote, the Final Order granted NorthWestern’s petitions for CREP compliance waivers for 2015 and 2016 and waived any administrative penalty. Id. ¶¶ 18-19.

37. MEIC filed a timely motion for reconsideration on September 28, 2018.

38. On October 23, 2018, the Commission voted to deny reconsideration, rendering Order No. 7578b final for purposes of appeal. Admin. R. Mont. 38.2.4806(6).

**FIRST CAUSE OF ACTION**  
**Arbitrary and Unreasonable Finding that NorthWestern Took “All Reasonable Steps” to Comply with CREP Purchase Obligation in 2015**  
**(Mont. Code Ann. § 69-3-2004(11)(b); Admin. R. Mont. 38.5.8301(4))**

39. Plaintiff hereby realleges and reincorporates Paragraphs 1 through 38.

40. The Commission is authorized to grant a “short-term waiver” that exempts a utility from full compliance with the CREP purchase obligation and the penalty for noncompliance only if the utility demonstrates that it “has undertaken all reasonable steps” but could not achieve compliance because of “legitimate reasons that are outside the control of the public utility.” Id. § 69-3-2004(11)(b); see also Admin. R. Mont. 38.5.8301(4) (waiver provision).

41. Based on the evidentiary record, the Commission could not have rationally concluded that NorthWestern met this statutory standard for the 2015 compliance year.

42. The record before the Commission demonstrated that NorthWestern failed to take a number of reasonable steps to attempt to procure CREP resources in 2015. First, NorthWestern failed to afford CREP resources an opportunity to compete in a multi-year process that matches the development timeframe for such projects, instead requiring proposals to achieve a commercial operation date by the end of 2015. NorthWestern’s unreasonable commercial operation date was particularly problematic for build-transfer projects such as Tiger Butte and Judith Gap II, for which NorthWestern also decided to require a lengthy Commission preapproval process that made compliance with NorthWestern’s commercial operation date an even greater hurdle. Because NorthWestern decided to require an unreasonable commercial operation date for the 2015 compliance year, NorthWestern rejected otherwise competitive CREP proposals and diminished its compliance opportunities.



43. Second, NorthWestern failed to pursue reasonable negotiations regarding the Tiger Butte project, which had received a perfect 10 out of 10 viability score by NorthWestern's own consultant. NorthWestern alleged an environmental concern about the project but this concern was not "documented" in NorthWestern's petition or otherwise supported by the record evidence. Admin. R. Mont. 38.5.8301(4)(d).

44. Third, NorthWestern pursued PPAs for the Greycliff and New Colony projects without adequately investigating whether they satisfied the requirement that CREP resources be locally owned. Mont. Code Ann. § 69-3-2004(4)(b). Despite the Commission's prior admonition that NorthWestern's approach to the local ownership requirement may be contributing to its non-compliance, Order No. 7416b ¶ 18, NorthWestern continued to rely primarily on the CREP resource developers to meet the local ownership condition. NorthWestern should have conducted due diligence into the ownership structure of these proposed projects, and at a minimum, should have factored in the risk that such projects may not meet CREP eligibility requirements.

45. Because NorthWestern was required to take "all reasonable steps" to comply with its CREP purchase obligation, Mont. Code Ann. § 69-3-2004(11)(b) (emphasis added), its failure to take any one of these steps was sufficient grounds for denying the requested waiver.

46. Commission staff recommended that the Commission deny NorthWestern's 2015 waiver petition, identifying all of the foregoing concerns. Although the Commission rejected that recommendation, the Commission arbitrarily failed to supply any rationale for disregarding the analysis of its own staff, and indeed, failed even to acknowledge these staff findings that contradicted the Commission's conclusions in the Final Order.

47. Rather than relying on record evidence and the “all reasonable steps” requirement that governs a utility’s eligibility for compliance waivers, Mont. Code Ann. § 69-3-2004(11)(b); Admin. R. Mont. 38.5.8301(4), the Commission exceeded its authority by relying on its own dissatisfaction with the Act’s statutory CREPs requirement in granting the 2015 waiver.

48. Because the Commission’s decision to grant NorthWestern’s petition for a waiver of its 2015 CREP purchase obligation was unreasonable, arbitrary, and unlawful, it should be reversed. Mont. Code Ann. §§ 2-4-704(2)(a)(i), (ii), (vi); 69-3-402(1).

**SECOND CAUSE OF ACTION**  
**Arbitrary and Unreasonable Finding that NorthWestern Took “All Reasonable Steps” to Comply with CREP Purchase Obligation in 2016**  
**(Mont. Code Ann. § 69-3-2004(11)(b); Admin. R. Mont. 38.5.8301(4))**

49. Plaintiff hereby realleges and reincorporates Paragraphs 1 through 48.

50. As stated above, the Commission is authorized to grant a “short-term waiver” that exempts a utility from full compliance with the CREP purchase obligation and the penalty for noncompliance only if the utility demonstrates that it “has undertaken all reasonable steps” but could not achieve compliance because of “legitimate reasons that are outside the control of the public utility.” Id. § 69-3-2004(11)(b); see also Admin. R. Mont. 38.5.8301(4) (waiver provision).

51. As with NorthWestern’s efforts in 2015, the Commission could not have rationally concluded based on the record evidence that NorthWestern took “all reasonable steps” to comply with its statutory CREP purchase obligation for 2016. Mont. Code Ann. § 69-3-2004(11)(b); Admin. R. Mont. 38.5.8301(4).

52. The record before the Commission demonstrated that, in evaluating CREP proposals for the 2016 compliance year, NorthWestern once again adopted a requirement that CREP projects be operational by the end of the year, thereby unreasonably disqualifying projects

that could help NorthWestern meet its compliance obligations in the following year.

Additionally, NorthWestern's disqualification of projects that bid into its 2015 RFP on grounds that they could not become operational during that year meant that viable, cost-effective projects proposed in the 2015 RFP that could have become operational and contributed to CREP compliance in 2016 were unreasonably disqualified. Thus, NorthWestern's insistence on a constrictive operation deadline in 2015 and 2015 both impeded NorthWestern's CREP compliance in 2016.

53. Rather than relying on record evidence and the "all reasonable steps" requirement that governs a utility's eligibility for compliance waivers, Mont. Code Ann. § 69-3-2004(11)(b); Admin. R. Mont. 38.5.8301(4), the Commission exceeded its authority by relying on its own dissatisfaction with the Act's CREP purchase requirement in granting the 2016 waiver.

54. Because the Commission's decision to grant NorthWestern's petition for a waiver of its 2016 CREP purchase obligation was unreasonable, arbitrary, and unlawful, it should be reversed. Mont. Code Ann. §§ 2-4-704(2)(a)(i), (ii), (vi); 69-3-402(1).

**THIRD CAUSE OF ACTION**  
**Unlawful Interpretation of the Cost-Cap Provision**  
**(Mont. Code Ann. § 69-3-2007(1))**

55. Plaintiff hereby realleges and reincorporates Paragraphs 1 through 54.

56. The Commission acted unlawfully by granting NorthWestern's waiver petitions for compliance years 2015 and 2016 based on an unreasonable and unlawful interpretation of the Act's cost-cap provision.

57. The plain language of the statutory cost cap-provision compels NorthWestern to purchase electricity from a CREP if it is demonstrated through a "competitive bidding process" that its total cost "is less than or equal to bids for the equivalent quantity of power over the

equivalent contract term from other electricity suppliers.” Mont. Code Ann. § 69-3-2007(1) (emphasis added). In other words, the statutory cost cap requires NorthWestern to compare the total cost of a CREP project to other “bids” in the competitive solicitation. Here, because NorthWestern’s RFPs in 2015 and 2016 specifically solicited bids for CREP resources, such a comparison among “bids” necessarily requires a comparison among CREP proposals.

58. Contrary to this statutory requirement, NorthWestern failed to compare CREP proposals to other “bids for the equivalent quantity of power” in its RFPs. NorthWestern instead rejected CREP proposals because NorthWestern concluded they were not cost effective compared with large, fossil-fuel resources already in NorthWestern’s portfolio.

59. NorthWestern’s evaluation of project costs contributed to its failure to comply with its CREP purchase obligation in 2015 and 2016.

60. For projects competing for 2015 CREP procurement, it is unclear precisely how cost was used in NorthWestern’s final evaluation of projects. However, NorthWestern’s 2015 waiver petition suggested that CREP resources are inherently not “cost effective” as compared against NorthWestern’s existing resources as one of the reasons for its assertion that there were legitimate reasons beyond the control of NorthWestern for its failure to meet the 2015 CREP standard.

61. For projects competing for 2016 CREP procurement, NorthWestern used its erroneous interpretation of the statutory cost-cap provision to reject every proposal it received.

62. Although the Final Order concluded that “[t]he Commission agrees that the cost analysis performed ... sufficiently determines how the CREP proposals would impact portfolio costs and risks,” Order No. 7578b ¶ 20, the Commission never analyzed the statutory language of the cost-cap provision.

63. Because the Commission's decision to grant NorthWestern's petitions for compliance waivers for 2015 and 2016 was based on NorthWestern's erroneous interpretation of the statutory cost-cap provision, the decision was unreasonable and unlawful and should be reversed. Mont. Code Ann. §§ 2-4-704(2)(a)(i), (ii); 69-3-402(1).

### **PRAYER FOR RELIEF**

THEREFORE, Plaintiff respectfully requests that the Court:

1. Declare that the Commission's decision in the Final Order was arbitrary, unlawful, and unreasonable;
2. Set aside and reverse the Commission's Final Order;
3. Direct the Commission to assess administrative penalties against NorthWestern based on NorthWestern's failure to comply with its CREP purchase obligation in 2015 and 2016;
4. Award plaintiffs their reasonable fees, costs, and expenses, including attorneys' fees, associated with this litigation; and
5. Grant plaintiffs such additional relief as the Court may deem just and proper.

Respectfully submitted this 16th day of November, 2018.

  
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## CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of November, 2018, I served the foregoing by electronic mail and first-class mail, postage prepaid, on the following:

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\_\_\_\_\_  
Jenny K. Harbine

# EXHIBIT 1

Service Date: September 24, 2018

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

IN THE MATTER OF the Petition of	)	REGULATORY DIVISION
NorthWestern Energy for a Waiver from the	)	
CREP Purchase Obligation for 2015 and for a	)	DOCKET NO. D2016.4.33
Declaratory Ruling Regarding the Administrative	)	ORDER NO. 7578b
Penalty	)	
	)	DOCKET NO. D2017.8.65
IN THE MATTER OF the Petition of	)	
NorthWestern Energy for a Waiver from	)	
Compliance with the CREP for 2016.	)	

**FINAL ORDER**

**PROCEDURAL HISTORY**

1. On December 20, 2016, NorthWestern Corporation, doing business as NorthWestern Energy ("NorthWestern"), filed a consolidated petition for waiver from the Community Renewable Energy Project ("CREP") purchase obligation for 2015, and for a declaratory ruling regarding the administrative penalty with the Montana Public Service Commission ("Commission"). On August 18, 2017, NorthWestern filed a petition for waiver from the CREP purchase obligation for 2016. On October 24, 2017, the Commission voted to consolidate both petitions.
2. On October 25, 2017, the Commission issued a *Notice of Application and Intervention Deadline*, establishing November 17, 2017 as the deadline to intervene with NorthWestern's Petitions. The Montana Consumer Counsel ("MCC"), Montana Environmental Information Center ("MEIC"), and NW Energy Coalition were granted intervention by the Commission on November 20, 2017.
3. On January 10, 2018, the Commission issued *Procedural Order 7578a*, setting deadlines for data requests and testimony.
4. The Commission issued a *Notice of Public Hearing* on March 16, 2018, and conducted a public hearing on April 4, 2018.
5. At the hearing on April 4, 2018, NorthWestern withdrew its request for a declaratory ruling on the administrative penalty, as Docket D2016.4.33 had been filed prior to the Commission's *Declaratory Ruling* issued January 5, 2017 in Docket D2015.3.27.



6. During a regularly scheduled work session on September 11, 2018, the Commission granted waivers to NorthWestern for its CREP obligations in compliance years 2015 and 2016, as discussed below.

### FINDINGS OF FACT

7. Beginning in 2012 and continuing through 2014, NorthWestern is required to procure approximately 44 megawatts (MW) of Community Renewable Energy Projects (CREPs). *See* Pet. at 5; Mont. Code Ann. § 69-3-2004(3)(b) (2017). For compliance years 2012-2014, NorthWestern sought and was granted a short-term waiver from full compliance with this requirement. Order 7177b, Dkt. D2011.6.53, ¶ 49 (May 31, 2012), Order 7334g, Dkt. D2013.10.77, ¶ 19 (Dec. 9, 2014); Order 7416b, Dkt. D2013.3.27 (April 19, 2016). For compliance years 2015 and beyond, NorthWestern is required to procure 65.4 MW of CREPs, and is again seeking short-term waivers from full compliance. Pet. at Ex. B JL-2, Dkt. D2016.3.27; Pet. at 2, Dkt. D2017.8.65.

8. On June 13, 2014, NorthWestern issued a request for proposals (“RFP”) to locate potential CREPs for its 2015 obligation, to which 15 projects from 12 developers submitted bid responses. Pet. at B JL-13, Dkt. D2016.4.33. To administer the RFP, NorthWestern hired a third-party consultant, Lands Energy, which narrowed the proposals down to four finalists on August 13, 2014. *Id.* at SEL-6. NorthWestern signed PPAs with two finalists, Greycliff and New Colony, on February 2, 2015, however, the Commission declined to issue a declaratory ruling stating that Greycliff’s organizational structure satisfied the statutory definition of a CREP. *Id.* at B JL-13. After the Commission’s decision, Greycliff terminated the PPA on July 25, 2015, and New Colony, which had a similar ownership structure to Greycliff, terminated its PPA on May 31, 2015. *Id.* at B JL-13, B JL-14.

9. On July 1, 2015, NorthWestern and Lands Energy issued another RFP, in an attempt to meet its 2016 CREP obligation. Pet. at 3, Dkt. D2017.8.65. Eleven projects submitted proposals, which Lands Energy narrowed to six proposals it presented to NorthWestern. *Id.* NorthWestern conducted a portfolio analysis of the projects, and in February 2016 determined that none of the projects were cost competitive. *Id.* at 4.

10. The Commission finds that NorthWestern ultimately took all reasonable steps to procure CREPs for compliance years 2015 and 2016, but could not achieve full compliance for documented reasons beyond its control. *Supra* ¶¶ 8-9.

### CONCLUSIONS OF LAW

11. The Commission has provided sufficient public notice of this proceeding, and an opportunity for interested parties to be heard. Mont. Code Ann. § 69-3-104, 2-4-601.

12. The Commission has jurisdiction over NorthWestern's CREP applications, as it supervises, regulates, and controls public utilities, and administers Montana's Renewable Portfolio Standard and related CREP compliance. Mont. Code Ann. § 69-3-101 through -102, -2006.

13. Beginning January 1, 2012, as part of their compliance with the RPS standards, public utilities were required to "purchase both the renewable energy credits and the electricity output from [CREPs] that total at least 50 megawatts in nameplate capacity." *Id.* at § 69-3-2004(3). A CREP is an eligible renewable resource that is less than or equal to 25 MW and either: (1) controlled by "local owners" and interconnected on the utility side of the meter; or (2) owned by a public utility. *Id.* at § 69-3-2003 (also defining "eligible renewable resource").

14. A public utility may petition the Commission for a short-term waiver from full compliance with the CREP requirement. *Id.* at § 69-3-2004(11)(a). A waiver may be granted if a public utility documents and provides evidence that it took "all reasonable steps" to comply, but could not for one or more of the following reasons: the unavailability of sufficient renewable energy credits; integrating additional eligible renewable resources into the electrical grid would jeopardize the reliability of the electrical system; full compliance would cause the public utility to exceed the cost caps; or other documented reasons beyond the public utility's control. Admin. R. Mont. § 38.5.8301(4) (2018); Mont. Code Ann. § 69-3-2004(11)(a).

15. Except as provided through a waiver or other exemption, a public utility that is unable to meet the CREP requirements "shall pay an administrative penalty, assessed by the [C]ommission, of \$10 for each megawatt hour of renewable energy credits that [it] failed to procure." Mont. Code Ann. § 69-3-2004(10).

16. Issuing a competitive solicitation is a reasonable step toward compliance with the CREP requirement. See Or. 7177b at ¶ 43; Mont. Code Ann. §§ 69-3-2005(1)(a), -2007(1), 69-8-419(2)(d), Mont. R. Admin. 38.5.8212(2), 38.5.2010(1)(a).

17. NorthWestern took all reasonable steps to procure CREP resources in 2015 and 2016, yet documented factors beyond its control prevented NorthWestern from achieving full compliance. *Supra* ¶¶ 8-10.

**ORDER**

18. NorthWestern's petitions for a waiver from full compliance with the CREP purchase obligation for calendar years 2015 and 2016 are GRANTED.


19. The administrative penalty associated with NorthWestern's failure to comply with the CREP requirement in 2015 and 2016 is WAIVED.

20. The Commission previously directed NorthWestern to demonstrate its calculation of the cost cap in Mont. Code Ann. § 69-3-207 for CREP resources. Order 7395d, Dkt. 2015.2.18 ¶ 21. The Commission agrees that the cost analysis performed in Docket D2017.8.65 sufficiently determines how the CREP proposals would impact portfolio costs and risks. In future CREP compliance dockets, NorthWestern's methodology should reflect the most recent Commission guidance at the time the analysis is undertaken.


DONE AND DATED this 11th day of September, 2018, by a vote of 3 to 2, Commissioners Kavulla and Koopman dissenting.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

  
BRAD JOHNSON, Chairman


  
TRAVIS KAVELA, Vice Chairman, Dissenting

  
ROGER KOOPMAN, Commissioner, Dissenting

  
BOB LAKE, Commissioner

  
TONY O'DONNELL, Commissioner

ATTEST:

  
Rhonda J. Simmons  
Commission Secretary

Seal



**STATEMENT OF DISSENT BY VICE CHAIRMAN TRAVIS KAVULLA**

1. The Commission has previously faulted NorthWestern in nearly identical circumstances as have occurred here. Then, as now, NorthWestern discontinued its negotiations with shortlisted projects from a request for proposals because it judged that it would not be able to bring them online by the year NorthWestern targeted for compliance, despite the fact that the CREP statute imposes a recurring annual mandate on the utility. Ord. 7177b, ¶ 24 (Jun. 13, 2012). As the Commission found, it was unreasonable not to have continued negotiating with shortlisted projects because, even if a project was not available to come online as soon as NorthWestern would prefer, a project could be available for later compliance years. *Id.*, ¶¶ 24, 48.

2. Here, the situation is even less favorable to NorthWestern's position, both because it was on notice of the Commission's previously announced concern and because, inexplicably, NorthWestern's position on competitive-solicitation timelines has become only *more* constrictive. In this proceeding, NorthWestern issued a request for proposals on June 2014 and imposed a requirement that projects emerging from that RFP be online by the end of December 2015, in time for the calendar year's CREP compliance. *Staff Memorandum* at 7 (Aug. 30, 2018). No CREP project has ever been newly constructed in less than two years, much less the 18 months that NorthWestern provided from the issuance of the request for proposals to its self-imposed commercial-operation-date requirement. *Id.* Indeed, NorthWestern has previously represented to the Commission that, "NorthWestern's experiences indicate that moving from competitive resource solicitation to production requires at least 24 months, even without the processing of a petition for Commission approval before entering into a contract." Resp. Br. of NorthWestern, Dkt. D2011.6.53, pp. 3-4 (Apr. 20, 2012).

3. Once again, NorthWestern did not re-engage shortlisted bidders of the request for proposals after deciding not to proceed with its preferred project, despite an opportunity to do so and indications that shortlisted projects could come online in the next compliance year, 2016, which is the other year which is subject of this consolidated docket. Exh. MEIC-2, p. 16. As the intervenor witness Diego Rivas has testified, such negotiations are reasonable in light of the law's requirement and the Commission's precedent.<sup>1</sup> *Id.* Giving NorthWestern the benefit of the doubt on compliance year 2015,

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<sup>1</sup> It is also, besides our purposes in finding whether or not a reasonable step was or was not taken, important for the Commission to ensure the meaningfulness of the competitive-solicitation process. NorthWestern has issued several unsuccessful requests for proposals for CREP projects (*see* Order 7334g, D2013.10.77, ¶ 8, (Dec. 17, 2014); Order 7416b, D2015.3.27, ¶ 13 (Apr. 19, 2016); Test. Bleau J. LaFave, NorthWestern Energy Petition for Waiver in Compliance Year

and consistent with the Commission's precedent, I would therefore find that NorthWestern did not take a reasonable step within its control with respect to 2016 and impose the mandatory statutory penalty for non-compliance.



Vice Chairman Travis Kavulla, Dissenting

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2015, D2016.4.33, p. B JL-13 (Dec. 20, 2016); Test. Bleau J. LaFave, NorthWestern Energy Petition for Waiver in Compliance Year 2016, D2017.8.65, p. B JL-15 (Aug. 8, 2017)). Several have been discontinued in circumstances such as these. At some point, a utility issuing fruitless requests for proposals will come to be regarded by the developer community as an entity which is just going through the motions and has no real intention of acquiring a project. This undermines the credibility of the exercise, and may well warp bidding behavior and make it less economical.

**STATEMENT OF DISSENT BY COMMISSIONER ROGER KOOPMAN**

1. In the almost six years that I have been privileged to serve on the Montana Public Service Commission, I have joined with the majority—albeit with hesitation—each time commissioners were petitioned by NorthWestern Energy to waive its annual Community Renewable Resource Project acquisitions requirements. Applying as broadly as possible the statutory allowance for such waivers, I believe that, until now, the commission has acted both wisely and legally in ordering those CREP waivers.

2. From this commissioner's perspective, the CREP portion of the Renewable Portfolio Standard law, while no doubt well-intentioned, was hastily conceived and poorly crafted. Legislators did not anticipate the extreme difficulty that utilities like NorthWestern would face in their sincere attempts to secure (either through PPAs or build-transfer) CREP certifiable resources.

3. There are numerous reasons for this, not the least of which is the dependence by renewable energy investors on Renewable Energy Investment Tax Credits. It is no exaggeration to state that these federal tax credits are the largest single source of profit for most project investors, precisely because those investors have very large, high-bracket tax exposures. CREP certification requires that these projects be at least 50 percent Montana-owned. And yet, investors with that level of tax exposure are scarce indeed in a small populated state like ours, particularly where public policy is putting the brakes on much of our wealth-creating, natural resource-based industries.

4. Given these and other major flaws in the law, it would be easy to rationalize that, since compliance is almost impossible, the Commission should not penalize NorthWestern for non-compliance with an unreasonable law. Yet this would be wrongful thinking on the Commissions part, since we are charged with the responsibility of executing the law. We are not lawmakers or policy changers.

5. In an advisory capacity, we can and often do make recommendations to the state legislature in our areas of expertise and public trust. But in the dockets that come before us, the Commission does not have the authority to amend or overturn existing state law. I am confident that in our past CREP waiver decisions, commissioners were guided by the limits of their legal authority and acted justly and within the law. However, that cannot be said of its most recent decision.

6. The one saving grace of the CREP (RPS) statute is that, while its compliance expectations are myopic and unreasonable, its waiver provisions are not. The law provides a reasonable

avenue for waiver relief when the considerable efforts of the utility prove fruitless. The legal criteria for waiver that the Commission must apply are satisfaction of “all reasonable steps” taken by the utility to secure sufficient CREP resources, and any frustration of those efforts being “beyond the utility’s control.” Since “reasonable steps” is not clearly defined in law, PSC staff correctly concludes that reasonableness must be viewed through the lens of practicality, i.e., the utility’s obligation to take all steps that could reasonably produce tangible outcomes.

7. Unlike past waiver dockets, where all reasonable steps were demonstrably taken, and where other obstacles were clearly beyond company control, the 2015 CREP waiver docket before us fell far short of establishing these requirements. It appeared that the Commission majority plowed forward in their approval, based on past precedent more than on current evidence. The Commission’s desire to mitigate the effects of bad law appeared to trump a factual record that required commissioners to vote this petition down.

8. Specifically, NorthWestern failed the “all reasonable steps” criteria in two important ways. First, the company failed—despite prior Commission encouragement—to provide a Request for Proposal (RFP) that would allow favorable proposals to extend into a second compliance year if the party was unable to meet a commercial operating date within the first year of their proposal. (This is frequently the case where Commission CREP certification is necessary, or where Commission approval of a build-transfer project is required.) Inexplicably, NorthWestern’s 2015 RFP did not allow for such a reasonable step in the process.

9. Secondly, NorthWestern’s assertion that the short-listed Tiger Butte project was later rejected by NorthWestern for environmental reasons was a position without evidentiary merit. NorthWestern maintained at hearing that Tiger Butte was located over an abandoned mine and Superfund site and was therefore disqualified. This conflicted with earlier representations of the project, i.e., that no environmental challenges existed on the site (buttressed by a high score of 78.8 by Lands Energy). NorthWestern provided no authoritative evidence to the Commission to support its claims of environmental risk.

10. Consequently, NorthWestern Energy’s failure to take all reasonable steps in 2015 is beyond question and, accordingly, the Commission was required to deny its waiver petition on fundamental legal and evidentiary grounds. So what happened?



11. This commissioner only wishes he could logically explain the reasons for the majority's bizarre action in approving the 2015 CREP waiver. I will refrain from speculating as to what transpired here. But in at least one commissioner's case, serious confusion was apparently the cause for his approving vote. This confusion may have extended to other commissioners as well.

12. The referenced commissioner argued at work session that since the CREP portion of the RPS statute was "unreasonable" compliance-wise, it would be therefore unreasonable for the Commission to penalize the utility for non-compliance. This argument altogether misses the point. That the CREP law is a short-sighted and unreasonable burden on public utilities like NorthWestern is a given. Its amendment or outright repeal would be favored by this commissioner. But as I tried, unsuccessfully, to argue, that does not empower the Commission to simply flout the law, when the public record virtually screams "non-compliance."

13. Although the requirements of the law itself may be unworkable and unreasonable, the waiver component of that law is altogether reasonable, as demonstrated by the Commission's previous CREP waiver approval decisions. Based on the reasonable standard for waiver, NorthWestern failed the test in this case, and the Commission needed to honor the law by applying it fairly, accurately, and justly.

14. This we absolutely did not do.

A handwritten signature in black ink, appearing to read 'Koopman', with a long horizontal line extending to the right.

**Commissioner Koopman, Dissenting**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a copy of the Final Order issue on September 24, 2018 in D2016.4.33 was served upon the following,

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Dated: September 24, 2018

/s/Sydney Kessel  
\_\_\_\_\_  
Sydney Kessel, Administrative Assistant