

Michael J. Uda
UDA LAW FIRM, P.C.
7 West 6th Avenue, Suite 4E
Helena, MT 59601
(406) 457-5311
(406) 447-4255 fax
muda@mthelena.com

Yvette K. Lafrentz
DONEY CROWLEY PAYNE BLOOMQUIST P.C.
220 South Pacific Street
P.O. Box 1418
Dillon, MT 59725
(406) 683-8795
(406) 683-8796 fax
ylafrentz@doneylaw.com
Attorneys for Oak Tree Energy, LLC

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

**IN THE MATTER OF The Complaint By
Oak Tree Energy, LLC Against
NorthWestern Energy For Refusing To
Enter Into A Purchase Power Agreement**

**DOCKET NO. EL11-006
OAK TREE ENERGY LLC'S
POST SECOND HEARING
REPLY BRIEF**

OAK TREE ENERGY, LLC'S POST SECOND HEARING REPLY BRIEF

I. INTRODUCTION

Oak Tree Energy, LLC (Oak Tree), by and through counsel and pursuant to the Procedural Order issued by the South Dakota Public Utilities Commission ("Commission") on December 26, 2012, hereby submits its *Post Second Hearing Reply Brief* as follows:

II. EXECUTIVE SUMMARY

NorthWestern Energy (NWE) has failed in its Post-Hearing Response Brief to Supplemental Hearing (NWE Post-Hearing Brief) to respond to Oak Tree's argument that its avoided cost rate proposal violates the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 16 U.S.C. § 824a *et. seq.* under the precedent of *Exelon Wind 1, LLC et al.*, 140

FERC ¶ 61,152. In *Exelon*, the Federal Energy Regulatory Commission (FERC) rejected a methodology approved by the Texas Commission because it was based on a single congested node in a market to which the qualifying facility had no direct access. NWE's proposal suffers from a similar legal defect, being based on a single congested point on the Midwest Independent System Operator's (MISO) system, a market to which Oak Tree does not have access and does not represent NWE's actual avoided costs. NWE also did not respond to the numerous other criticisms of the methodology for calculating market rates offered by NWE witness Steve Lewis. See Oak Tree's Post Second Hearing Brief at pp. 5-8. Each of these criticisms reflects a valid concern that NWE was essentially "cherry picking" data to keep the avoided cost rate for Oak Tree as low as possible. Oak Tree's concerns are not refuted, and the Commission should therefore not adopt NWE's calculation of avoided cost.

NWE misses the mark on every other argument made in its Post-Hearing Response Brief. Oak Tree *never* argued that the Commission was required to set a single, levelized rate. NWE does not cite to Oak Tree's brief for this proposition. Instead, Oak Tree argued that "... an annual non-levelized energy avoided cost calculation, such as that prepared by Commission Staff witness Mr. Rounds, can properly represent avoided cost consistent with 18 C.F.R. § 292.304." Oak Tree's Post Second Hearing Brief at pp. 8-9. It is not clear why NWE did not understand this point, but nonetheless NWE has misrepresented Oak Tree's position. Oak Tree's position was, and is, that although the forecast rate may vary annually, a levelized or partially levelized rate would assist Oak Tree in obtaining financing, just as was done in the case of the Titan Wind contract.

With respect to NWE's argument regarding the ability to annually adjust the capacity payment for Oak Tree, NWE fails to come to terms with the fact that adjusting the *payment* annually will make it *more difficult* for Oak Tree to obtain financing. Since PURPA requires the Commission to encourage the development of qualifying facilities such as Oak Tree, it is hard to see how making it more difficult for Oak Tree to obtain financing is not discouraging QFs in violation of PURPA. Additionally, as pointed out at hearing on this matter, such an annual recalculation of the capacity payment will engender disputes over the proper peak periods, because the utility has control of the information. As the Commission may recall, NWE refused to produce the avoided cost information that it was lawfully required to provide pursuant to 18 C.F.R. § 292.302 until ordered to do so by the Commission pursuant to a

motion to compel by Oak Tree. Given NWE's refusal to negotiate in this case, and its reluctance to provide data that it was lawfully required to produce, Oak Tree is not sanguine that an annual recalculation will produce anything more than continuing controversy and devotion of additional party and Commission resources to what should be a relatively straightforward calculation.

NWE also argues that Mr. Lauckhart's four adjustments to Commission Staff witness Brian Rounds' spreadsheet are inappropriate, but NWE offers no record justification for those arguments. NWE argues it has no obligation to serve wholesale spot market load, but that argument misses the point: the point made in Oak Tree's Post Second Hearing Opening Brief is that the assumption inherent in NWE's and Staff's load calculations is that NWE is backing down its coal plants when it has surplus coal generation. The answer, plainly, is that NWE has another market for its coal generation, and that it is the opportunity market. Those sales are significant; 220,000 megawatt hours (MWHs) in 2010 alone. The assumption that NWE is not making those sales results in a systematic understatement of the number of hours in any year when NWE is in the market, and thus reduces the price to Oak Tree under the hybrid methodology. This sort of unreasonable assumption, as is explained further below, violates PURPA because it is based on an unreasonable, fantasy world where NWE is never selling in the market.

NWE also argues that there is no rational basis to assume that Big Stone and Neal 4 would be shut down, presumably meaning they were not avoidable in the year 2016 as of February 25, 2011, the date of Oak Tree's LEO. NWE does not argue, nor could it, that market purchases could be a reasonable alternative to Big Stone if Big Stone is more expensive than market alternatives. This is a rational way to do utility resource planning. Simply assuming that the retrofit of Big Stone *must go forward* is not utility planning; it is utility fiat. As will be demonstrated below, *infra* Section III. A.4., NWE knew well in advance of February 25, 2011 that there was a need for Big Stone to be retrofitted, and that cost was likely to be considerable. In fact, Big Stone is *still* avoidable *unless* the Commission has already predetermined that issue.

NWE argues that Mr. Lauckhart's capacity cost calculation of \$141/kW year should be rejected because acquiring Oak Tree wind would: (1) not allow NWE to avoid constructing the Aberdeen plant; and (2) allow NWE to build a smaller, less expensive plant. These

assertions are unsupported by any citation to the record, and in fact are counterintuitive. Seemingly, this contention is based on the argument that only *short term* purchases of market capacity count, rather than a 20-year capacity commitment. This is plainly an irrational assumption. Any long-term commitment of capacity would necessarily be more expensive as it calls upon the entity providing the capacity to keep that capacity available for a much longer time. Perhaps if NWE had produced a long-term market capacity calculation, then NWE's argument would have some credibility. Purchasing from Oak Tree could have avoided, long-term, 4 MWs of capacity from a projected gas plant over 20 years. There is simply no difference between the capacity made available from Oak Tree (assuming it is only 4 MWs, which is not credible given Oak Tree's estimated capacity factor of over 40 percent), and the capacity made available by any other facility. Mr. Lauckhart did not assume the Oak Tree plant would contribute 100 percent of its capacity toward Resource Adequacy needs, but adjusted that number downward to reflect capacity likely available from a wind generator. There is simply no record evidence to support NWE's assertions and it is illogical and contrary to everything known about utility planning assumptions.

NWE also criticized the use of a 20 percent capacity contribution as utilized by the Midwest Reliability Organization (MRO). NWE is a member of the MRO. The 12.9 percent capacity contribution developed by the Midwest Independent System Operator (MISO) was an *average* number throughout the MISO footprint, with a range between 0 and 30 percent. The Commission would be making an unreasonable assumption to take an average number throughout the MISO region when that number does not reflect the individual characteristics of a newer wind plant with state of the art technology. In essence, the Commission would be penalizing Oak Tree for utilizing the newest, best, most reliable generating equipment. There is also the testimony in this record that Titan, which is located near the Oak Tree site, has achieved a 20 percent capacity contribution for 2010 and over 30 percent for 2011. Given this evidence, for the Commission to determine that Oak Tree should only be credited with a 12.9 percent capacity contribution based on the MISO average would be to ignore better, more recent and more specific information. Finally, NWE belongs to MRO, not MISO. MRO says 20 percent, and that is the number NWE should use.

The Commission Staff essentially repeats the criticisms offered by NWE of Mr. Lauckhart's adjustments to Staff witness Rounds' calculations. To briefly reiterate, Oak Tree

emphatically disagrees: (1) that excluding NWE's wholesale loads to determine the number of hours that NWE is in the market is a proper approach as it systematically understates NWE's avoided costs; (2) that the environmental retrofits to Big Stone and Neal 4 are not presently avoidable and were not known to be avoidable in February 2011; (3) that the cost of capacity should be based on a short-term offer that occurred *after* the February 25, 2011 date; and (4) that 12.9 percent for the first year capacity contribution of the Oak Tree facility is a reality based assumption.

Mr. Lauckhart continues to believe that the adjustments he made to Mr. Rounds' spreadsheet were reasonable and necessary to properly develop a 20 year avoided cost for Oak Tree. These adjustments produced a \$60.38/MWH 20-year levelized avoided cost for Oak Tree, if Oak Tree commences generation in 2013 (\$62.08/MWH if Oak Tree commences generation in 2014). Adding a renewable energy credit or REC value of \$7.5 per MWH produces a 20 year avoided cost of approximately \$69/MWH, a figure which falls in the middle range of the 10 avoided cost scenarios that Mr. Lauckhart utilized in his Additional Issues Direct Testimony.

III. ANALYSIS

A. RESPONSE TO NORTHWESTERN

1. Oak Tree Did *Not* Argue that A Fixed Price is a Levelized Price; Oak Tree Argued that Levelized Rates Facilitate Financing

NWE argues that "Oak Tree mistakenly argues that a fixed contract price is a level price." *NWE Post Hearing Response Brief* at p. 4. Oak Tree never took this position. Oak Tree stated on page 3 of its Post Second Hearing Brief that "Oak Tree agrees that an annual non-levelized energy avoided cost calculation, such as that prepared by Commission Staff witness Mr. Rounds, can properly represent avoided cost consistent with 18 C.F.R. § 292.304. However, as a policy matter, Oak Tree believes a fully levelized or partially levelized rate would better meet the objective of PURPA to encourage QF generation." This is because, as a practical matter, fixed contract rates that commence at an extremely low level on the front of the end of the calculation may prove difficult to secure financing for a QF. There is no testimony contrary to that offered by Mr. Lauckhart in this proceeding.

Because financing an annual non-levelized forecast rate can prove problematic, Oak

Tree testified that the Commission should utilize a fully levelized or partially levelized rate. If the Commission believes a partially levelized or fully levelized rate is too risky for South Dakota ratepayers (due to the low probability that the wind plant may not provide power for the 20-year period), then Oak Tree believes that requiring Oak Tree to provide some form of “security” for payments made in the early years of the levelized or partially levelized rate is an appropriate method to deal with that concern. The security must of course reflect the actual risks and costs associated with nonperformance.

2. An Annual Capacity Calculation Would be Unnecessary and Expensive

NWE contends that “the Commission may, and should, require that payment to Oak Tree for capacity be calculated annually based on the capacity that Oak Tree actually provides.” *NWE Post Hearing Response Brief* at p. 6. Oak Tree has testified that such an annual capacity calculation would be unnecessary and expensive. In order to adjust the capacity contribution number annually, there would have to be a hearing for the adjustment to comport with due process. Given NWE’s prior lack of cooperation to discovery in this proceeding, Oak Tree is not sanguine that NWE would voluntarily comply with information requests that would permit Oak Tree to determine the accuracy and probity of NWE’s numbers. At present, Oak Tree is not even certain how and on what basis NWE determines the peak days, or that Oak Tree would agree with the manner in which those were calculated. Having a contested case hearing each year would be unnecessary and a waste of scarce party and Commission resources. It would be an economic hardship for the Commission to require Oak Tree to attend a contested case hearing every year. Finally, Oak Tree notes that there is no annual capacity contribution hearing for Titan Wind each year, and Oak Tree should be treated similarly according to the Commission’s own order of October 15, 2012. Under item 4, that order states that one of the issues for the hearing was: “The proper capacity contribution and resulting capacity credits to be *included* in the avoided cost and *added* into the hybrid method under the *Titan I method*.” *See* Procedural Order; Order for and Notice of Hearing, issued October 15, 2012 (Emphasis added). Thus, for the Oak Tree capacity contribution to be consistent with the Titan I method, the capacity credits should be determined on a forecast basis and rolled into the avoided cost rate to be paid to Oak Tree as

was done for Titan Wind. Oak Tree prominently made this argument at hearing, and again in its Post Second Hearing Opening Brief. There was no response to this argument from either Commission Staff or NWE. Oak Tree is the only party who has offered testimony consistent with the Commission's order, and the Commission should so rule.

3. Eliminating Wholesale Sales Systematically Increases the Amount of Time NWE is Deemed to be Using Coal to Serve Load

NWE objects to Oak Tree including NWE's wholesale sales in the calculation of the loads that NWE actually serves with its coal plants. NWE argues that "NorthWestern has no obligation to serve wholesale load." *NWE Post Hearing Response Brief* at p. 7. NWE's argument misses the mark. Whether or not NWE has an obligation to serve wholesale load, the fact remains that NWE does serve wholesale load and, in fact, the load is quite substantial. According to NWE's 2010 FERC Form 1, NWE served 220,000 MWHs of wholesale sales during that year, which is roughly 13 to 15 percent of NWE's entire load.

That NWE does serve wholesale load means that it is *not* backing down its coal plants when it is making those sales, but is in fact making sales when it has surplus power. If NWE has another market for its surplus power (whether that is a firm obligation of NWE or just an opportunity market) then NWE is not backing down its coal plant when it has power surplus to its firm obligations. The evidence adduced at hearing clearly shows that NWE has an opportunity market for its surplus coal and does not back down its coal when it is surplus. Mr. Lauckhart pointed out at hearing that exclusion of these wholesale sales systematically overstates the number of hours that NWE needs to back down its coal fired generation resources and, thus, inappropriately reduces the avoided costs to be paid to Oak Tree.

4. The Environmental Retrofit Costs of Big Stone and Neal 4 Were Avoidable as of February 25, 2011

NWE has argued that the decision to retrofit Big Stone is inevitable. NWE argues that: "Mr. Lauckhart assumed that Big Stone and Neal 4 'went away' at the end of 2015. There is no rational basis for assuming that existing baseload plants will be shut down." *NWE Post Hearing Response Brief* at p. 8. There is no rational basis for assuming the continued

operation of very expensive coal plants that will cost in excess of \$70/MWH to retrofit to meet existing air quality standards. As stated at hearing, Mr. Lauckhart is familiar with Midwestern utilities who are considering the use of market purchases to replace much larger coal generation facilities. The fact that NWE has not considered this is astonishing. To be very clear, Oak Tree is not arguing that the Oak Tree facility would be a replacement for Big Stone or Neal 4. Instead, Oak Tree is arguing that the market alternative to Big Stone and Neal 4 should have been studied, as this cost would presumably establish a reasonable avoided cost for facilities such as Oak Tree. This is not a fantasy on Oak Tree's part: many owners of base load coal plants are choosing to shut them down rather than spending the considerable money to clean up their emissions. By early 2011, the utility industry recognized that these plants would require very large capital investments if these coal plants were to operate beyond 2015. As indicated in the Petition of Otter Tail to the SDPUC, Exhibit OT 13, there are many new emissions requirements that Big Stone needs to make. These requirements were known by February 2011. Also, as indicated in that Petition, even though the Maximum Available Control Technology (MACT) regulations had not been finalized by the EPA, it was clear in February 2011 that such a rule was coming. Clearly as of February 2011 it was known that significant money would need to be spent on Big Stone if it were to continue to be allowed to operate. NWE had not made the decision to spend that money as of 2011. Nor has NWE made that decision today as evidenced by NWE's most recent 10K filed with the Securities and Exchange Commission. Unless the Commission has already predetermined that issue, then the decision about the prudence of the retrofit to Big Stone and Neal 4 has not been made because the hearing on that matter is yet to be concluded.

5. The Aberdeen Gas Turbine is the Appropriate Measure of Avoided Capacity Cost for Oak Tree

NWE objects to the use of the cost of the Aberdeen gas turbine to set the avoidable cost of capacity for the Oak Tree project. NWE further argues that the only capacity avoided by the Oak Tree project is the "cost of market-purchased capacity." *NWE Post Hearing Response Brief* at p. 8. However, in 2011 NWE informed its Board of Directors that *long term capacity purchases were not available* and that was not an option that could be considered rather than building a new plant. Furthermore, the only evidence proffered by

NWE in this proceeding that it was able to purchase capacity from a third party was a conditional offer from Basin Electric in November of 2010, which was for 2012-2015. *See* Exhibit OT 16. No offer to provide a 20-year market purchase of capacity has ever been introduced in this proceeding, and Oak Tree believes this is because no such long term purchase of capacity was avoidable. Therefore, Oak Tree believes a reasonable approximation of the value of the capacity provided by Oak Tree would approximate the roughly \$141/KW-year calculation for the Aberdeen gas turbine. There is simply no other evidence in this proceeding as to what a long term avoided capacity cost would be other than for the Aberdeen facility. The absence of a liquid market for long term capacity in the region is likely the reason NWE informed its Board in 2011 that a long term capacity purchase contract was not available. The lack of long term capacity contract in the region is also the reason that a short-term offer cannot form the basis for a long term avoided capacity price in this proceeding.

There is a general attitude among NWE and Commission Staff that OTE cannot provide the same sort of capacity that the Aberdeen plant or another large gas combustion turbine would provide. In a sense, this is indisputably true. Oak Tree is not a substitute for a combustion gas turbine because it is not dispatchable. However, Mr. Lauckhart's capacity value calculations took this into account by reducing the capacity cost associated with Oak Tree by its capacity contributions. In that sense, Oak Tree is a very real substitute for a portion of the capacity that might have come from Aberdeen or another gas fired combustion turbine. NWE and the Commission Staff are simply wrong. There is no other evidence in this proceeding for the long-term capacity cost of alternatives to Oak Tree other than Aberdeen, and thus it must be used to establish the avoided capacity cost for Oak Tree.

6. The Capacity Contribution of Oak Tree Should be 20 Percent as Established by MRO – not 12.9 Percent

NWE asserts that “Mr. Lauckhart assumed that the capacity contribution from Oak Tree would be 20% nameplate capacity. This level is not supported by any operational history and is higher than the amount that MISO would allow for planning purposes.” *NWE Post Hearing Response Brief* at p. 8. NWE's allegation is simply untrue. The 12.9 percent MISO number for planning purposes is the *average* of all wind plants throughout the MISO

footprint. Each wind plant has its *own* capacity contribution that contributes to that average. Those individual plant's actual capacity contributions vary widely, ranging from near 0 to over 30 percent. Also, there is clear operational history that in 2010 the Titan Wind project contributed 20% toward capacity. Finally, NWE belongs to MRO, not MISO, and MRO has stated that wind within its footprint should be assumed to have a 20 percent contribution towards a utility's capacity.

The point is that there is no evidence in this record that 12.9 percent is the appropriate capacity contribution. MRO believes otherwise. NWE chose a lower figure based on an average of all wind plants on the MISO system, a number which includes older and likely less reliable technology than that which would be employed by the Oak Tree facility. Under these circumstances, to utilize a 12.9 percent capacity contribution figure would be error.

B. RESPONSE TO COMMISISON STAFF

Much of Commission Staff's criticism of Oak Tree's positions as represented in its Post Second Hearing Opening Brief has been addressed in Section III.A., above, and serves as a reply to Commission Staff's similar criticisms. However, several additional points are made by Commission Staff which Oak Tree will address separately here. First, Staff argues that it would be inappropriate to assume that Big Stone and Neal 4 are avoidable as of 2016 because:

The formal document requiring environmental upgrades at Big Stone, South Dakota's Regional Haze State Implementation Plan was not finalized until the fall of 2011. Using OTE's logic then, there was no formal requirement for NWE to make environmental upgrades as of the LEO date, and no decision had been made to close the plant. This adjustment is not realistic, and the Commission should not consider such an argument.

Staff Post Second Hearing Br. at p. 3.

First, the Commission must note that the document referenced by Staff is nowhere in the record in this proceeding and cannot, without additional procedure, be admitted at this point. The Commission Staff is a party and had every opportunity to cross examine and present evidence at hearing, yet this document was nowhere mentioned or introduced. Thus, even if it were material evidence (and, as will be shown, it is not) it cannot be relied upon at this state of the proceeding.

Furthermore, if the Commission Staff had attempted to argue this position at hearing,

Oak Tree would have pointed out that although the State of South Dakota did not adopt its regional plan until the Fall of 2011, it was well known in the industry and at the U.S. Environmental Protection Agency as of February 25, 2011 that these were requirements that would have to be met. The Burns and McDonnell report, prepared by and for the co-owners of the Big Stone plant, notes (on the bottom of page 3) that the EPA Maximum Available Control Technology (MACT) regulations would not be in place until the end of 2011, it was well known to every owner of a coal plant well before the end of 2011. *See* Exhibit OT 12. In other words, the fact that the plan was not in place does not mean that the regulations and requirements were unknown, which is obvious from the Burns and McDonnell report which was dated March 2012. It is obvious that Burns and McDonnell did not prepare this report in a few days, meaning that well prior to March 2012 the co-owners of the Big Stone plant (including NWE) knew of the impending MACT requirements and their respective obligations to meet it. There is also a discussion in the Burns and McDonnell report about other emission requirements and limitations to be imposed by EPA. Thus, it is a fantasy to suggest that the decision to retrofit Big Stone was not an avoidable one as of February 25, 2011, and that it remains unavoidable to this day.

In point of fact, Staff used information not in the record in its Post Second Hearing Brief, which is improper, to make a point about which it is emphatically wrong. There is no question but that the entire electric industry knew of these pending EPA requirements well before February 25, 2011.

Second, Commission Staff witness Rounds is using a much lower capacity cost than either NWE or Oak Tree in his calculations. This is based, apparently, on the following belief, as expressed in Staff's brief:

NWE cannot simply choose a combustion turbine that is 4 MW smaller. Although Staff agrees that NWE's decision to construct a new combustion turbine shows a need for capacity, Staff disagrees that the price of the turbine would set the avoided cost. Avoided costs are defined as "the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source." 18 CFR 292.101(b)(6) The only capacity costs NWE will avoid as a result of taking delivery of OTE's capacity will be those short-term, low capacity contracts similar to the Basin contract that Mr. Rounds based his calculations on. Thus, Staff recommends that the Commission reject this adjustment.

Staff Post Second Hearing Br. at p. 3.

There are a number of things wrong with Staff's explanation, but first and foremost among them is that Mr. Rounds avoided capacity cost of \$20/kw-year levelized is approximately one seventh of Oak Tree's proposed levelized capacity rate of \$141/kw-year, and approximately one-third of NWE's levelized capacity cost of \$56/kw year. This is because even NWE recognizes that a 20-year contract purchase of capacity cannot be based on short term contract purchases of capacity, and this is the errant assumption made by Mr. Rounds. No utility or business would forecast long-term costs based on what a short term purchase would be today. Yet, this is precisely the error made by Mr. Rounds.

Indeed, Mr. Rounds not only made the error of relying on a single short term purchase of capacity from Basin, a transaction which concluded after February 25, 2011, actually in September of 2011. EL11-006 March 2012 Hr'g Tr. 340:2-11. When questioned at hearing, Mr. Rounds pointed to the confidential version of Staff's brief, which utilized the September 2011, Basin Electric numbers as the basis for calculating avoided capacity costs. EL11-006 Dec. Hr'g Tr. 299:7-24. Thus, Mr. Rounds used a transaction for short-term capacity for NWE that was not even available to the parties as of February 25, 2011. Oak Tree believes reliance on such data violates the Commission's Order dated October 15, 2012, which states "that such analyses and inputs [into the hybrid methodology] shall be as of February 25, 2011, the date of Oak Tree's creation of a legally enforceable obligation." Because Mr. Rounds capacity cost calculation violates the Commission's orders, it cannot be utilized in this proceeding.

IV. CONCLUSION

Oak Tree continues to believe that Mr. Lauckhart's additional testimony of November 21, 2012, which concluded that an average avoided cost of \$69/MWH is a reasonable approximation of the avoided cost of the Oak Tree project. As stated therein, Mr. Lauckhart's calculation is not only reasonable; it is consistent with the avoided cost calculation of Commission Staff Analyst Mr. Rounds subject to a few necessary adjustments. The briefs provided by NWE and Commission Staff are not convincing in their criticism of Mr. Lauckhart's adjustments to Mr. Rounds' spreadsheet, as these arguments rely either on evidence that is not in the record or on arguments that are plainly illogical or counterfactual.

The avoided capacity cost calculations offered by Mr. Rounds in particular cannot be justified as they are based on a single transaction with Basin that took place in September of 2011, months after the February 25, 2011 LEO date. The avoided cost calculations by NWE are themselves not credible, and NWE did not respond in any way to the arguments raised by Oak Tree in its opening brief. Finally, a levelized contract rate, which includes a capacity payment, is consistent with PURPA and an option to which Oak Tree is entitled.

Respectfully submitted this 21st day of January, 2013.

/s/ Yvette K. Lafrentz

Michael J. Uda
UDA LAW FIRM, P.C.

Yvette K. Lafrentz
DONEY CROWLEY PAYNE BLOOMQUIST P.C.
Attorneys for Oak Tree Energy, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served electronically on this 21st day of January, 2013, upon the following:

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
patty.vangerpen@state.sd.us
(605) 773-3201 - voice
(866) 757-6031 - fax

Ms. Karen Cremer
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
karen.cremer@state.sd.us
(605) 773-3201 - voice
(866) 757-6031 - fax

Mr. Brian Rounds
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
brian.rounds@state.sd.us
(605) 773-3201 - voice
(866) 757-6031 - fax

Mr. Jeffrey Decker
NorthWestern Corporation d/b/a NorthWestern Energy
600 Market St. West
Huron, SD 57350-1500
jeffrey.decker@northwestern.com
(800) 245-6977 - voice
(605) 353-7519 - fax

Ms. Pamela Bonrud
NorthWestern Corporation d/b/a NorthWestern Energy
3010 W. 69th St.
Sioux Falls, SD 57108
Pam.Bonrud@northwestern.com
(605) 978-2908 - voice
(605) 978-2910 - fax

Bleau LaFave
NorthWestern Corporation d/b/a NorthWestern Energy
3010 W. 69th St.
Sioux Falls, SD 57108
bleau.lafave@northwestern.com
(605) 978-2908 - voice
(605) 978-2910 - fax

Timothy P. Olson
Corporate Counsel & Corporate Secretary
NorthWestern Corporation dba NorthWestern Energy
3010 W. 69th St.
Sioux Falls, SD 57108
(605) 978-2924 - voice
(605) 978-2919 - fax
tim.olson@northwestern.com

Al Brogan
Corporate Counsel
NorthWestern Corporation dba NorthWestern Energy
Ste. 205
208 N. Montana Ave.
Helena, MT 59601
Al.Brogan@northwestern.com
(406) 443-8903 - voice

/s/ *Yvette K. Lafrentz*
