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*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  
MOTION TO ALLOW ELECTRONIC  
TESTIMONY**

**OAK TREE ENERGY, LLC'S  
MOTION TO ALLOW ELECTRONIC TESTIMONY**

**I. INTRODUCTION**

Oak Tree Energy, LLC (Oak Tree), by and through its counsel of record, requests that Mr. Thomas K. Anson, a rebuttal witness, be allowed to testify telephonically before the SD Public Utilities Commission (PUC) at the hearing in the above referenced Docket.

**II. BACKGROUND**

On April 27, 2011 Oak Tree filed a complaint with the PUC to resolve a dispute between Oak Tree and NorthWestern Energy (NWE) regarding a Purchase Power Agreement. Shortly thereafter, NWE filed an Answer to the complaint. No interested parties filed for

intervention, therefore, on June 17, 2011, the first Scheduling Order was issued. The discovery process that followed included Oak Tree filing two Motions to Compel and the PUC issuing two Orders Granting in Part these Motions to Compel. Oak Tree, NWE, and the PUC staff have filed Direct and Rebuttal Testimony and this Docket has now been set for hearing before the PUC.

### **III. MOTION TO ALLOW ELECTRONIC TESTIMONY**

Under 20:10:01:01.02, absent an administrative rule or commission rule that specifically allows otherwise, the rules of civil procedure as applied in South Dakota Circuit Court will be followed during a proceeding before the PUC. Furthermore, the intent of the Rules of Procedure in Circuit Courts is to ensure the “just, speedy and inexpensive determination of every action.” SDCL §15-6-1. To that end, Oak Tree requests that rebuttal witness, Thomas K. Anson, be allowed to testify before the PUC in this matter telephonically.

Telephonic testimony is not a novel event in South Dakota proceedings. Understanding the rural nature of the state and the technological tools available, courts and administrative agencies in South Dakota utilize teleconferencing and video conferencing on a regular basis to conduct their business. See *Rathke v. Astrue*, CIV. 08-5084, 2010 WL 1258100 (D.S.D. Jan. 27, 2010) report and recommendation adopted in part, rejected in part, CIV. 08-5084-JLV, 2010 WL 1258097 (D.S.D. Mar. 26, 2010) (testimony via telephone of non-treating medical expert during hearing) and *Cody v. Hillard*, 2000 WL 287520 (D.S.D. 2000), 88 F.Supp.2d 1049 (plaintiff’s expert testified via telephone). By taking advantage of this alternative, the courts and administrative agencies are better able to conduct these proceedings in a “just, speedy and inexpensive” manner.

Mr. Anson’s physical presence in front of the PUC is not essential to the credibility or reliability of his testimony. As is often the case, testimony given, especially by one who is not a fact witness, need not be in person to be beneficial. The Court, and in this case the PUC, has the ability to obtain oral testimony from Mr. Anson via the telephone. Furthermore, the PUC has had considerable experience in utilizing this technology during its many proceedings. Consequently, the testimony of Mr. Anson telephonically would not be a hardship or prejudice any party in this matter.

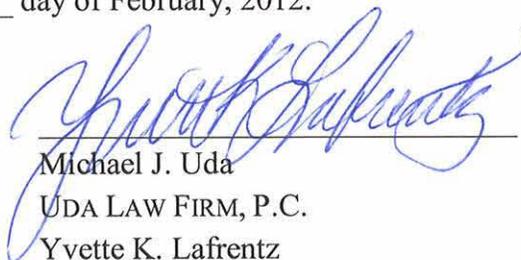
Allowing Mr. Anson to testify telephonically would be more cost effective. Mr. Anson is a resident of Texas. In addition, Mr. Anson is a rebuttal witness. Therefore, should

Mr. Anson be required to appear in person, he will be traveling a long distance for a relatively limited purpose. This will be at a considerable expense to Oak Tree, who has already incurred substantial expense in this matter.

#### IV. CONCLUSION

For the reasons set forth above, Oak Tree respectfully requests that the PUC allow Oak Tree's rebuttal witness, Mr. Thomas K. Anson, to testify at the hearing for the above referenced Docket via telephone.

Respectfully submitted this 28<sup>th</sup> day of February, 2012.



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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served electronically on this 28<sup>th</sup> day of February, 2012, upon the following:

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