

TO: COMMISSIONERS AND ADVISORS
FROM: BRIAN ROUNDS AND KAREN CREMER
SUBJECT: EL11-006 STAFF RECOMMENDATION
DATE: JULY 26, 2013

STAFF MEMORANDUM

OVERVIEW

This case was brought to the Commission by Oak Tree Energy (OTE) with a complaint in April of 2011. Since then, the Commission and the Parties have been through an extensive amount of briefs, testimony, hearings and rehearings all resulting in a May 17, 2013, order setting a price and requiring the parties to negotiate a Power Purchase Agreement (PPA) within thirty days. More than sixty days later, the PPA has not been executed as a result of disputes over the cost responsibility of ancillary services and NorthWestern Energy's (NWE's) right to curtail. As explained below, Staff agrees in full with OTE's position on ancillary services and NWE's position on curtailment.

ANCILLARY SERVICES

In its brief, NWE requests the Commission approve their Section 5.5.3. This provision requires OTE to pay any potential future costs of "any ancillary services that are made available to NorthWestern by WAPA or a New Joint Transmission Authority pursuant to applicable tariff, and such services contemplated herein include, without limitation, generator imbalance, reserve and regulation/frequency response services required to maintain the stability of the power system." In its open access tariff, WAPA defines those services as below:

Schedule 9

Generator Imbalance Service

Generator Imbalance Service is provided when a difference occurs between the output of a generator located in the Transmission Provider's Control Area and a delivery schedule from that generator to (1) another Control Area or (2) a load within the Transmission Provider's Control Area over a single hour.

Schedule 5

Operating Reserve – Spinning Reserve Service

Spinning Reserve Service is needed to serve load immediately in the event of a system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output and by non-generation resources capable of providing this service.

Schedule 6

Operating Reserve – Supplemental Reserve Service

Supplemental Reserve Service is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time.

Schedule 3

Regulation and Frequency Response Service

Regulation and Frequency Response Service is necessary to provide for the continuous balancing of resources, generation and interchange, with load and for maintaining scheduled interconnection frequency at sixty cycles per second (60 Hz). Regulation and Frequency Response Service is accomplished by committing on-line generation whose output is raised or lowered, predominantly through the use of automatic generating control equipment, and by other non-generation resources capable of providing this service as necessary to follow the moment-by-moment changes in load.

In all but the Generator Imbalance Service, the costs are incurred as a result of fluctuations in load and generation across the entire system, and total costs are typically spread across all users as a percentage of their load. Determining the added ancillary service costs resulting from the integration of an intermittent resource would likely be a contentious undertaking with questionable results.

As for the Generator Imbalance Service, WAPA does not currently charge for this service, nor did they as of the date of the LEO. Staff believes this issue is similar to the question of whether carbon prices should have been included in the avoided cost calculation. As you know, the Commission ruled against using carbon prices in the avoided cost calculation, and Staff believes a consistent decision would be to leave Generator Imbalance Service costs out of the calculation as well.

The fact that these costs were never considered by NWE in the avoided cost discussions is also notable. The parties in the case, including NWE, argued about what the proper avoided cost would be over a period of approximately two years. If NWE is concerned about the magnitude of those costs, it is troubling that they were never brought up during any of that proceeding.

Finally, **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL] ancillary service charges are typically applied to the load.

CURTAILMENT

NWE and OTE dispute to what extent NWE should be allowed to curtail OTE's delivery of energy. NWE offers to compensate OTE for curtailed energy, including the PTC value, but would prefer the right to curtail under a broad set of circumstances, including for economic purposes such as during times of negative market prices when they would actually have to pay to inject energy into the system. OTE argues that FERC has already ruled on the issue of economic curtailments in the *Idaho Wind* case.

Staff believes more inclusive language may reduce the potential for additional future disputes on this issue but finds that NWE's curtailment language is reasonable. **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL] If the Commission wishes to provide their own edits, Staff suggests giving NWE the right to curtail in all situations, but specifically listing the events in which they are not required to compensate OTE. This might also require adding a catchall provision under the “Compensated Curtailment” list in Section 6.5.2.

Staff disagrees with OTE’s application of the *Idaho Wind* case in this situation because of NWE’s offer to compensate for all curtailed energy, including the OTE’s lost PTC benefits. In the *Idaho Wind* case, FERC ruled that “a utility may not curtail unilaterally where the QF energy is purchases...pursuant to a long-term obligation” and that Idaho Power’s cannot curtail energy “under light loading periods to avoid its contractual obligations under its long-term fixed avoided-cost rate PPAs”. This case is different because the PPA does not yet exist, and NWE is proposing to compensate OTE for any economic curtailments.

Further, Staff questions OTE’s suggestion that NWE’s curtailment discretion will limit their ability to obtain financing. First, NWE will have to pay not only the avoided energy cost approved by the commission, but an additional PTC cost if they choose to curtail for economic reasons. This should severely limit the amount of energy NWE actually curtails. Second, Staff is aware of numerous PPAs executed in 2013 in which small wind developers obtained financing for projects they are now obligated to sell at a fraction of the price OTE is getting and with the curtailment provisions requested by NWE. The LEO may have set the price as of February 25th, 2011, but (fortunately for OTE) the cost to develop and build a wind project today is significantly less than it was then.

Finally, Staff believes NWE should have the best ability possible to control generation they are buying. Over the next twenty years, many things are likely to change, and OTE’s integration into NWE’s generation fleet will be driven by NWE alone. Giving NWE the ability to operate the project as they see fit, especially if they move into an RTO, is in the best interests of NWE’s ratepayers.

STAFF RECOMMENDATION

For reasons stated above, Staff recommends the Commission rule in favor of OTE on Section 5.5.3, removing it entirely from the PPA, and rule in favor NWE on Sections 6.5.1 and 8.2.3, approving NWE’s Section 6.5.1 and removing Section 8.2.3 entirely.