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CLERK, U.S. DISTRICT COURT
DISTRICT OF MONTANA
MISSOULA

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

THOMAS TOSDAL,

Plaintiff,

v.

NORTHWESTERN CORPORATION AND DOES 1-5,

Defendants.

Case No. 19-205-M-DLC-KLD

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCIVE RELIEF

Plaintiff alleges:

NATURE OF ACTION

1. This action seeks a declaratory judgment that Plaintiff's shareholder proposal, attached as Exhibit 1, complies with the requirements of 17 C.F.R. §240.14a-8 so as to require NorthWestern Corporation to include the proposal in its forthcoming proxy statement for review and vote by shareholders at its annual meeting to be held in April 2020. This action also seeks preliminary and permanent injunctive relief enjoining NorthWestern Corporation from excluding the proposal from these proceedings.

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JURISDICTION

2. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this civil action arises under the laws of the United States, in particular the Securities and Exchange Act, 15 U.S.C. §78n(a), and 17 C.F.R. § 240.14a-8.

3. This Court has personal jurisdiction over Defendant NorthWestern Corporation because NorthWestern Corporation has substantial contacts within the state of Montana, including having seven offices and operating electricity generation plants and transmission lines throughout much of the state.

VENUE

4. Venue is proper in the United States District Court for the District of Montana under 28 U.S.C. §§ 1391(b)(1) and (c)(2), because NorthWestern Corporation is deemed to reside within the District of Montana.

PARTIES

5. Plaintiff Thomas Tosdal is an individual, residing near Ovando, Montana. Plaintiff is a shareholder of NorthWestern Corporation, who has satisfied the legal requirements to bring the shareholder proposal. Plaintiff is an attorney licensed to practice law in another state but not in Montana, and who as a result appears *pro se* in this action.

6. Defendant NorthWestern Corporation is a Delaware corporation, with its principal executive offices in Sioux Falls, South Dakota. NorthWestern Corporation owns and operates the NorthWestern Energy Company, which generates and transmits electricity to parts of Montana, South Dakota, and Nebraska.

NorthWestern Corporation is a publicly held company, trading in the New York Stock Exchange under "NWE."

7. The true names and capacities of DOES 1-5 are presently unknown to Plaintiff. It is alleged DOES 1-5, and each of them, are in some manner responsible for the acts and omissions alleged in this complaint.

GENERAL ALLEGATIONS

8. On September 20, 2019, Plaintiff caused to be mailed to NorthWestern Corporation a cover letter, a shareholder proposal, and proof of holding the requisite number of NWE shares for over a year, requesting the proposal be included in the corporation's next proxy statement and annual meeting. The gist of the proposal is to request the corporation develop a plan to cease coal fired generation of electricity from the Colstrip coal fired plant, located in Montana, and replace that electricity with non-carbon renewable energy no later than the end of the year 2025.

9. The proposal was timely and complied with the requirements of 17 C.F.R. § 240.14a-8.

10. NorthWestern Corporation first responded by letter dated October 4, 2019, received on October 10, 2019, alleging two technical defects regarding proof of Plaintiff's holding of NWE shares: (1) that the letter from the broker proving the holding of shares was dated the day before the proposal was mailed, and (2) the letter from the broker was insufficient because the broker is not a participant or affiliate of a participant in the Depository Trust Corporation (DTC). The

corporation's letter gave Plaintiff two weeks from receipt of the letter to cure the alleged defects.

11. On or about October 17, 2019, Plaintiff sent a letter to NorthWestern Corporation disputing the corporation's allegations of defects but nonetheless providing a letter from the broker establishing Plaintiff held the requisite NWE shares as of October 18, 2019, to qualify the proposal for the proxy statement and annual meeting, thereby curing the first alleged defect.

12. On October 22, 2019, and by overnight mail, Plaintiff sent to NorthWestern Corporation a letter from National Financial Services LLC, a DTC participant, verifying that Plaintiff held the requisite NWE shares for over a year to qualify the proposal for the proxy statement and annual meeting, thereby curing the second alleged defect.

13. Nothing further was heard from NorthWestern Corporation until December 20, 2019, when Plaintiff received a copy of a letter dated December 17, 2019, from NorthWestern's counsel to staff of the Division of Corporate Finance of the Securities and Exchange Commission. The letter announces NorthWestern's intention to omit the proposal from its proxy materials on different yet still invalid alleged grounds from proof of share ownership and requests staff not recommend an enforcement action against NorthWestern for that decision.

14. On December 22, 2019, Plaintiff responded to NorthWestern's letter. A decision by staff of the Division of Corporation Finance has not been received as of the date

of filing this complaint. By law, a staff decision to grant or not grant such a "no action" request is not a legally binding adjudication of rights.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment)

15. Plaintiff incorporates by reference paragraphs 1-14 of this complaint.

16. An actual controversy within the jurisdiction of this Court exists within the meaning of 28 U.S.C. § 2201 with regard to the rights and legal relations between Plaintiff and NorthWestern Corporation concerning the legal duty of Northwestern Corporation under 17 C.F.R. § 240.14a-8 to include the proposal in its next annual proxy statement for voting by the shareholders at the next annual meeting to be held in April 2020.

17. Plaintiff requests a judgment from this Court declaring Northwestern Corporation has the legal duty to include the proposal in its next proxy statement for voting by the shareholders at the next annual meeting.

18. Time is of the essence for adjudication of this claim. NorthWestern Corporation states in its letter to the Division of Corporation Finance it intends to file its 2020 proxy materials for the 2020 annual meeting on or about March 6, 2020. Plaintiff requests a speedy hearing of this claim under Rule 57 F.R.C.P.

SECOND CLAIM FOR RELIEF
(Preliminary and Permanent Injunction)

19. Plaintiff incorporates by reference paragraphs 1-18 of this complaint.

20. Plaintiff is likely to succeed on the merits or at the very least serious questions going to the merits are raised in this action, and the balance of hardships tips sharply in Plaintiff's favor. In the absence of preliminary and permanent injunctive relief enjoining NorthWestern Corporation from excluding the proposal from the 2020 proxy statement and annual meeting Plaintiff will be denied his legal right to present a proposal to his fellow shareholders on matters of company and public concern while the corporation will suffer no hardship by having its shareholders consider and vote – up or down – on the proposal.

21. Plaintiff will likely suffer irreparable injury unless preliminary and permanent injunctive relief is granted, because Plaintiff's right to present a proposal to his fellow shareholders through the established mechanism of shareholder proposals will be denied, for which injury Plaintiff has no adequate remedy at law.

22. The public interests of compliance with law, lawful shareholder participation in corporate governance, and addressing the causes of the existential threat of climate change caused by carbon dioxide emissions favor the granting of a preliminary and permanent injunction. At the very least, the public interest would not be disserved by the granting of a preliminary and permanent injunction enjoining NorthWestern Corporation from excluding the proposal from its 2020 proxy statement and annual meeting.

23. Plaintiff requests the Court issue a preliminary and permanent injunction enjoining Northwestern Corporation, its officers, directors, agents, and employees from excluding the proposal from the 2020 proxy statement and annual meeting.

24. Time is of the essence for adjudication of this claim. NorthWestern Corporation states in its letter to the Division of Corporation Finance it intends to file its 2020 proxy materials for the 2020 annual meeting on or about March 6, 2020. Plaintiff requests a speedy hearing of this claim.

REQUEST FOR RELIEF

Plaintiff requests the following relief:

1. For a declaratory judgment declaring (a) Plaintiff's shareholder proposal qualifies for inclusion in NorthWestern Corporation's 2020 proxy statement for vote by the shareholders at the corporation's 2020 annual meeting, and (b) NorthWestern Corporation has a legal duty to include the proposal in its next annual proxy statement for voting by the shareholders at its next annual meeting;

2. For a preliminary and permanent injunction enjoining NorthWestern Corporation, its directors, officers, employees and agents from excluding the proposal from its 2020 proxy statement and annual meeting;

3. For costs of suit;

4. For such other and further relief as the Court deems just and proper.

Dated: December 22, 2019

Thomas Tosdal

SHAREHOLDER PROPOSAL

WHEREAS the evidence of human-caused climate change is overwhelming, the impacts of climate change are intensifying across the country, and unless prompt action is taken climate change will cause increasing harm to Montana's agriculture, tourism, and infrastructure by severe wildfires, drought, flooding, and decreased flows for hydroelectric generation;

WHEREAS carbon dioxide emissions are the largest contributor to climate change, and coal mining and coal fired plants emit carbon dioxide and other greenhouse gases;

WHEREAS 39% of Northwestern Energy Company's (NWE) Montana electricity generation comes from plants that emit carbon dioxide and other greenhouse gases from coal and natural gas combustion;

WHEREAS NWE projects its carbon emission rates through 2038 to be very close to those in 2020, about 800 pounds of carbon dioxide per megawatt hour, most of which will come from the Colstrip Unit 4 coal fired plant located in Montana;

WHEREAS the plant's age, departure of other owners, remediation costs, uncertain regulatory environment, and the dim future of the coal industry make NWE's 30% investment in Unit 4 and reliance on coal fired electricity an increasingly risky investment, posing a danger Colstrip may become a stranded asset;

WHEREAS Talen Energy, Colstrip's operator, will permanently shut down Units 1 and 2 in 2019 because they are uneconomical and, apart from Talen's 30% interest in Unit 3, the other partial owners of Colstrip Units 3 and 4, (Puget Sound Energy, Inc., Portland General Electric Co., Avista Corporation and PacifiCorp) are required by their home state laws to eliminate coal fired electricity by 2025 and 2030 respectively;

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EX. 7

WHEREAS the present remediation cost for groundwater contamination by Colstrip coal ash approaches $700 million, of which NWE must pay its part, and NWE's future remediation costs will increase out of present proportion as other owners of Colstrip depart;

WHEREAS Units 3 and 4, now 35 years old, continue to emit unlawful levels of hazardous air pollutants, requiring temporary shutdown in 2018, and an enforcement action by Montana DEQ is pending;

WHEREAS the Montana Legislature rejected NWE's effort to expand ownership of Colstrip and pass increased decommissioning and remediation costs to consumers, and the future federal regulatory scheme is uncertain, with candidates extolling a "Green New Deal;"

WHEREAS the coal supply for Colstrip is uncertain given the collapse of the coal mining industry;

WHEREAS non-carbon emitting renewable energy sources such as improved hydroelectric generation, wind, and solar are less expensive and increasingly available in Montana;

THEREFORE, BE IT RESOLVED the shareholders request Northwestern Corporation plan for the Northwestern Energy Company to cease coal fired generation of electricity from the Colstrip plant and replace that electricity with non-carbon emitting renewable energy and 21st century storage technologies with its own assets or from the market no later than the end of the year 2025, and to share that plan with the shareholders no later than the 2021 annual meeting.

Documents supporting this proposal are found at 350montana.org.

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