

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

**IN THE MATTER OF THE COMPLAINT BY )  
PRELUDE, L.L.C. AGAINST BASIN ELECTRIC )  
POWER COOPERATIVE, BUTTE ELECTRIC )  
COOPERATIVE, INC., GRAND ELECTRIC )  
COOPERATIVE, INC., MOREAU-GRAND )  
ELECTRIC COOPERATIVE, INC., ROSEBUD )  
ELECTRIC COOPERATIVE, INC., AND )  
RUSHMORE ELECTRIC POWER )  
COOPERATIVE, INC. FOR REFUSING TO )  
ENTER INTO QUALIFIED FACILITIES )  
PURCHASE POWER AGREEMENTS )**

**ORDER GRANTING  
MOTION TO DISMISS**

**EL14-042**

On May 5, 2014, Prelude, L.L.C. (Prelude) filed with the South Dakota Public Utilities Commission (Commission) a Complaint (Complaint) against Basin Electric Power Cooperative, Butte Electric Cooperative, Inc., Grand Electric Cooperative, Inc., Moreau-Grand Electric Cooperative, Inc., Rosebud Electric Cooperative, Inc., and Rushmore Electric Power Cooperative, Inc. (Respondents). Prelude has proposed wind power projects located in Respondents' service territories. Prelude alleged that Respondents failed to enter into good faith negotiations of long-term electric power purchase agreements pursuant to the Public Utility Regulatory Policy Act of 1978, as amended, 16 U.S.C. Chapter 12, § 824a-3 (PURPA).

On May 8, 2014, the Commission electronically transmitted notice of the Complaint and the intervention deadline of May 27, 2014, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. On May 23, 2014, South Dakota Electric Utility Companies (SDEUC) filed a Petition to Intervene. On May 29, 2014, Respondents filed a Motion to Dismiss (Motion). On June 2, 2014, the Commission's staff (Staff) filed Staff's Brief in Support of Respondents' Motion to Dismiss. On June 12, 2014, the Commission issued an Order Granting Intervention to SDEUC. On June 13, 2013, South Dakota Rural Electric Association (SDREA) filed a Petition to Intervene, and Staff filed and served a Notice of Hearing setting the Motion for hearing on July 22, 2014. On June 16, 2014, Prelude filed Prelude LLC's Brief Opposing Motion to Dismiss of Basin Electric Power Cooperative. On June 25, 2014, the Commission issued an Order Granting Intervention to SDREA. On June 27, 2014, Respondents filed a Reply Brief of Basin Electric Power Cooperative.

In the Motion, Respondents assert that the Complaint should be dismissed because the Commission lacks subject matter jurisdiction with respect to the determination of Respondents' avoided cost rate(s) payable to qualifying facilities under PURPA or, in the alternative, that the Complaint should be dismissed for failure to state a claim upon which relief may be granted. Respondents argued that the Commission lacks subject matter jurisdiction because Respondents are cooperatives, over whom the Commission does not have rate-making authority, and are therefore nonregulated utilities under PURPA and subject to self-implementation of PURPA.

At its regularly scheduled meeting on July 22, 2014, the Commission considered this matter. Finding (1) that Respondents are rural electric cooperatives and therefore not "public utilities" under SDCL 49-34A-1(12), (2) that the Commission therefore has no rate-making authority over Respondents under South Dakota law, and (3) that Respondents are therefore "nonregulated electric utilities" under PURPA, the Commission voted unanimously to grant the Motion to Dismiss based upon lack of subject matter jurisdiction.

It is therefore

ORDERED, that the Respondents' Motion to Dismiss is granted.

Dated at Pierre, South Dakota, this 24<sup>th</sup> day of July, 2014.

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| <p style="text-align: center;"><b>CERTIFICATE OF SERVICE</b></p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.</p> <p>By: <u>Joy Lashley</u></p> <p>Date: <u>7-24-14</u></p> <p style="text-align: center;">(OFFICIAL SEAL)</p> |
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BY ORDER OF THE COMMISSION:

Gary Hanson  
GARY HANSON, Chairman

Chris Nelson  
CHRIS NELSON, Commissioner

Kristie Fiegen  
KRISTIE FIEGEN, Commissioner