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## SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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October 22, 2008

Patricia Van Gerpen  
SD Public Utilities Commission  
500 E. Capitol Ave  
Pierre, SD 57501

Re: Energy Independence and Security Act of 2007

Dear Ms. Van Gerpen:

The Commission recently finished its work in EL06-018. The docket has been closed and the Commission has moved into the rule making process. EL06-018 dealt with the five PURPA standards in the Energy Policy Act of 2005. A new set of standards are once again before this Commission for consideration. The President signed the Energy Independence and Security Act of 2007 into law on December 19, 2007. The Act adds four new federal standards to PURPA for state commissions and utilities to consider and a fifth "standard" that is not labeled as a PURPA standard, but is similar in some respects.<sup>1</sup> The new standards are titled:

Section 532 PURPA 111(d)

- (16) Integrated Resource Planning
- (17) Rate Design Modification to Promote Energy Efficiency Investments

Section 1307 PURPA 111(d)

- (16) Consideration of Smart Grid Investments
- (17) Smart Grid Information

The Commission must consider these standards and make a specific determination on "whether implementation of the federal standards is appropriate to carry out the Title 1 purposes" (PURPA section 111(a)). The stated purpose of the PURPA Title 1 standards are to encourage (1) conservation of energy supplied by electric utilities, (2) optimal efficiency of electric utility facilities and recourses, and (3) equitable rates for electric consumers (PURPA section 101). Attached to this filing please find the 'Reference Manual and Procedures for Implementation of the "PURPA Standards" in the Energy Independence and Security Act of 2007' prepared August 11, 2008 by Kenneth Rose and

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<sup>1</sup> Reference Manual and Procedures for Implementation of the PURPA Standards in the Energy Independence and Security Act of 2007, August 11, 2008 - Page 4

Mike Murphy and sponsored by several nationally recognized electric associations and institutes.

**RECOMMENDATION 1:** Commission Staff recommends the Commission open a docket to begin its research and consideration of the standards to determine whether they should be implemented in South Dakota.

Just as in the Energy Policy Act of 2005, the Act of 2007 has time limits for several of the standards. The 532 standards are, however lacking statutory time frames. Regardless of whether the lack of written timeframe is a drafting error or intentional, Staff proposes the Commission investigate and act on each standard within a prompt timeline. The deadline for compliance of Section 1307 standards is one year after enactment. In other words, the Commission must begin consideration of the standards by December 19, 2008. Then, within two years after enactment, or December 19, 2009, the Commission must have completed its consideration and made a determination of whether or not to adopt the standard.

**RECOMMENDATION 2:** Commission Staff recommends the Commission use the Section 1307 standard timelines for all four of the new standards. Specifically, Staff believes we can and should complete our research and investigation of all four standards by December 19, 2009.

The Commission used a variety of methods to investigate the Energy Policy Act of 2005 standards. The Commission ordered a combination of workshops, paper hearings and live testimony. The combination worked well. The only legal requirement, present in the statute is for “consideration to be made after public notice and hearing and then the determination is to be made (1) in writing, (2) based upon findings and on evidence presented in the hearing, and (3) available to the public” (PURPA section 111(b)). After some initial study of the standards at issue, Commission Staff believes it is most efficient to first conduct a paper hearing. After completion of the paper hearing, if more information is necessary or upon request from any party to the docket, Staff can certainly coordinate a workshop or live testimony hearing.

**RECOMMENDATION 3:** Commission Staff work with Commission Counsel to set a procedural schedule for a paper hearing after time for intervention has run. Future workshops or live testimony shall be considered if necessary to completely investigate the standards.

Finally, as previously stated, the Energy Independence and Security Act of 2007 added a standalone “standard” that is not an amendment to PURPA.<sup>2</sup> The section is titled, “Additional Incentives for Recovery, Use and Prevention of Industrial Waste Energy.” The focus of the standard is to encourage “waste energy recovery.”<sup>3</sup> This standard is distinctly different than the PURPA standards in that consideration is not required until

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<sup>2</sup> Reference Manual page 10

<sup>3</sup> Reference Manual page 74

six months after receiving a request from a project.<sup>4</sup> It is not necessary, therefore, for the Commission to take action on this “standard” at this time. Rather, Staff reserves any recommendation and proposed investigation until receipt of a request from a project.

Sincerely,

A handwritten signature in cursive script that reads "Kara Semmler". The signature is fluid and connected, with a prominent loop at the end.

Kara Semmler

Enc.

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<sup>4</sup> Reference Manual page 76