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**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 And It's Various Cooperative Members For Refusing To Provide Actual Avoided Costs For Wind Farms And Otherwise Refusing To Enter Into QF Power Purchase Agreements With Prelude, L.L.C.	DOCKET NUMBER EL 14- _____  <b>COMPLAINT</b>
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**INTRODUCTION**

1. Prelude, L.L.C. ("Prelude") files this Complaint requesting the South Dakota Public Utilities Commission ("Commission") assert its jurisdiction and resolve several disputes between the Complainant Prelude, L.L.C., and Respondents: Basin Electric Power Cooperative ("Basin") and it's various involved and affected electric cooperative members: Butte Electric Cooperative, Inc., Grand Electric Cooperative, Inc. (Touchstone Energy Cooperative); Moreau-Grand Electric Cooperative, Inc., Rosebud Electric Cooperative, Inc., and Rushmore Electric Power Cooperative, Inc., with respect to their failure and refusal to enter into good faith negotiations of respective long term electric power purchase agreements. The electricity will be produced and sold pursuant to the Public Utility Regulatory Policy Act of 1978, 16 U.S. Code § 824a-n - Cogeneration and small power production (2003)("PURPA"), from a Qualified Facility ("QF"), such as the Qualified Facilities wind farms of Prelude, L.L.C., involved herein, (as defined in

PURPA) with a design capacity greater than 100 kilowatts (“kW”):

“(a) Cogeneration and small power production rules

Not later than 1 year after November 9, 1978, the Commission shall prescribe, and from time to time thereafter revise, such rules as it determines necessary to encourage cogeneration and small power production, and to encourage geothermal small power production facilities of not more than 80 megawatts capacity, which rules require electric utilities to offer to-

(1) sell electric energy to qualifying cogeneration facilities and qualifying small power production facilities [1] and

(2) purchase electric energy from such facilities.

Such rules shall be prescribed, after consultation with representatives of Federal and State regulatory agencies having ratemaking authority for electric utilities, and after public notice and a reasonable opportunity for interested persons (including State and Federal agencies) to submit oral as well as written data, views, and arguments. Such rules shall include provisions respecting minimum reliability of qualifying cogeneration facilities and qualifying small power production facilities (including reliability of such facilities during emergencies) and rules respecting reliability of electric energy service to be available to such facilities from electric utilities during emergencies. Such rules may not authorize a qualifying cogeneration facility or qualifying small power production facility to make any sale for purposes other than resale.

(b) Rates for purchases by electric utilities

The rules prescribed under subsection (a) of this section shall insure that, in requiring any electric utility to offer to purchase electric energy from any qualifying cogeneration facility or qualifying small power production facility, the rates for such purchase-

(1) shall be just and reasonable to the electric consumers of the electric utility and in the public interest, and

(2) shall not discriminate against qualifying cogenerators or qualifying small power producers.

No such rule prescribed under subsection (a) of this section shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy.”

## **II. COMPLAINANT AND RESPONDENTS**

2. Complainant Prelude, L.L.C’s name and address is:

Prelude, L.L.C., is a foreign Wisconsin limited liability corporation.

Principle Business Address:

PRELUDE, L.L.C.

Attention: Thomas Mattson, CEO

1136 West Mason Street

Green Bay, Wisconsin 54303

Registered Agent Name & Address

CORPORATE FILING SOLUTIONS, LLC  
326 N. MADISON AVE.  
PIERRE, SD 57501

Corporate Counsel's Mailing Address:

Attorney Robert Gerald Lorge  
LORGE & LORGE LAW FIRM  
Post Office Box 14704  
Madison, Wisconsin 53708  
LORGE@LAWFIRM.NET  
920-739-8080

3. Respondent: Basin Electric Power Cooperative's address is:

Basin Electric Power Cooperative is a foreign North Dakota corporation.

Principle Business Address:

Basin Electric Power Cooperative  
1717 East Interstate Avenue  
Bismarck, ND 58303

Registered Agent Name & Address

C T CORPORATION SYSTEM  
319 SO. COTEAU ST.  
PIERRE, SD 57501-3108

That Basin Electric Power Cooperative, individually, and together with its various electric cooperative "members", is engaged in interstate commerce, by virtue of its presence and operation in numerous States basically west of the Mississippi River and Eastern Rocky Mountain States from the Canadian border to the border with Mexico.

Basin Electric Power Cooperative (Basin Electric) is one of the largest electric generation and transmission (G&T) cooperatives in the United States. We are the parent company of eight subsidiaries. A not-for-profit generation and transmission cooperative incorporated in 1961 to provide supplemental power to a consortium of rural electric cooperatives

Basin Electric's core business is generating and transmitting wholesale bulk electric power to customers, primarily to our 137 member rural electric systems, which are located in nine states: Colorado, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Dakota, and Wyoming.

Basin Electric owns generation in North Dakota, South Dakota, Wyoming, Montana, and Iowa, and additionally purchases power from facilities in Minnesota, Colorado and Nebraska.

4. Respondent: Butte Electric Cooperative, Inc. 's address is:

Butte Electric Cooperative, Inc. is a domestic South Dakota public utility

Principle Business Address:

Butte Electric Cooperative, Inc.  
109 Dartmouth Avenue,  
Newell, SD 57760

Registered Agent Name & Address:

JOHN E LEE  
4002 WARD AVE  
SPEARFISH, SD 57783;

Butte Electric Cooperative, Inc., had been contacted by Prelude, L.L.C.'s representatives in 2013 towards entering into a PPA under Butte's Legally Enforceable Obligation to do so; the other respondents had been contacted years earlier, in 2008, and 2009 through the present..

5. Respondent: Grand Electric Cooperative, Inc. (Touchstone Energy Cooperative)'s address is:

Grand Electric Cooperative, Inc., is a domestic South Dakota public utility.

Principle Business Address:

Grand Electric Cooperative, Inc.  
Post Office Box 39  
Bison, South Dakota 57620

Registered Agent Name & Address:

JERRY P REISENAUER  
801 COLEMAN AVENUE  
BISON, SD 57620

Grand Electric Cooperative, Inc., is a member or affiliated Touchstone Energy Cooperative. Touchstone Energy Cooperative, Inc., is a foreign Virginia Corporation, which is not registered in the State of South Dakota.

Principle Business Address:

Touchstone Energy Cooperative, Inc.  
4301 Wilson Blvd  
Arlington VA 22203

Registered Agent/Registered Office

CT CORPORATION SYSTEM  
4701 COX ROAD, SUITE 285

GLEN ALLEN, VA 23060

6. Respondent: Moreau-Grand Electric Cooperative, Inc. 's address is:

Moreau-Grand Electric Cooperative, Inc., is a domestic South Dakota public utility.

Principle Business Address:

Moreau-Grand Electric Cooperative, Inc.  
405 9th Street  
Post Office Box 8  
Timber Lake, South Dakota 57656

Registered Agent Name & Address:

MELISSA D MAHER  
405 9TH STREET  
TIMBER LAKE, SD 57656

7. Respondent: Rosebud Electric Cooperative, Inc. 's address is:

Rosebud Electric Cooperative, Inc., is a domestic South Dakota nonstock Cooperative.

Principle Business Address:

Rosebud Electric Cooperative, Inc.  
PO Box 439  
512 Rosebud Avenue  
Gregory, SD 57533-0439

Registered Agent Name & Address:

GARY CLAYTON  
512 ROSEBUD AVENUE  
GREGORY, SD 57533-1442

8. Respondent: Rushmore Electric Power Cooperative, Inc. 's address is:

Rushmore Electric Power Cooperative, Inc., is a domestic South Dakota public utility.

Principle Business Address:

Rushmore Electric Power Cooperative, Inc.  
1715 Cambell Street  
Rapid City, SD 57701

Mailing address:

Rushmore Electric Power Cooperative, Inc.  
PO Box 2414

Rapid City, SD 57709

Registered Agent Name & Address:

VICTOR L. SIMMONS  
1715 CAMBELL STREET  
RAPID CITY, SD 57701-3949  
vsimmons@rushelec.com

9. That upon information and belief, Grand Electric Cooperative, Inc., and Touchstone Energy Cooperative, Inc., are affiliated with or members of Basin Electric Power Cooperative.

**III. BACKGROUND FACTS**

10. Prelude, L.L.C., is an independent wind power and wind farm developer active in various counties throughout South Dakota and has qualified facility wind farms throughout Perkins County, South Dakota, and across the United States. Prelude, L.L.C., has projects located in each of the Respondents' operating territories in South Dakota ("Projects" or "Wind Farm Projects" or "Wind Farms"). The Projects will have an initial electrical generating capacities of 19.5 megawatts (19,500 kW). The Projects can begin to produce energy as early as January 1, 2015.

11. Prelude, L.L.C., intends to own and operate the Projects, or to engage in partnerships and like agreements with other investors or wind farm companies to own and operate the individual Wind Farm Projects together with Prelude, L.L.C.

12. Prelude Faith Wind Farm 3, is a QF (Qualified Facility) Wind Farm, with qualifying small power production facility status, which is an original certification; facility were expected to be installed by August 1, 2014 and to begin operation on January 1, 2015; now they are anticipated to be installed in January 2016 due to delays caused by respondents in negotiating true avoided costs comparables for wind farms towards entering into PPAs under their LEO; whereby the petitioner's QFs filing may be modified accordingly as may be required.

Prelude Faith Wind Farm 3's Geographic coordinates are: West 102.352 degrees longitude and North 45.321 degrees latitude, located in Faith, Perkins County, South Dakota.

Western Area Power Administration ("WAPA") (WAPA Headquarters, P.O. Box 281213 Lakewood, CO 80228-8213) is the interconnecting utility with Prelude Faith Wind Farm 3 and respondent Butte Electric Cooperative would be the utility purchasing the useful electric output from Wind generation renewable energy resource development by Prelude Faith Wind Farm 3.

Prelude Faith Wind Farm 3 is anticipated to have a maximum gross power production capacity at the terminals of the individual generator(s) under the most favorable anticipated design conditions of 19,500 kW (19.5 MW); with Electrical losses in interconnection transformers of 583.0 kW; for a Maximum net power production capacity of 18,917.0 kW (18.917 MW).

Prelude Faith Wind Farm 3's primary components are: 19500 KW gross generation. 28 1.5MW turbines will be installed. The wind farm output will be collected at its own circuit and a

10 mile home run 38Kv line will run to Prelude Faith Wind Farm #2, and be stepped up to 115Kv, where 20 miles of 115kv line will connect to the 115Kv WAPA Faith Substation.

Prelude Faith Wind Farm 3's Form 556 Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility is attached hereto as Prelude LLC EXHIBIT 1, and incorporated by reference herein as if set out in full.

13. Prelude Bison Wind Farm 1, is a QF (Qualified Facility) Wind Farm, with qualifying small power production facility status, which is an original certification; facility expected to be installed by August 1, 2014 and to begin operation on January 1, 2015.

Prelude Bison Wind Farm 1's Geographic coordinates are: West 102.553 degrees longitude and North 45.552 degrees latitude, located in Bison, Perkins County, South Dakota.

Respondent Grand Electric Cooperative is the interconnecting utility with Prelude Bison Wind Farm 1 and respondent Grand Electric Cooperative would also be the utility purchasing the useful electric output from Wind generation renewable energy resource development by Prelude Bison Wind Farm 1.

Prelude Bison Wind Farm 1 is anticipated to have a maximum gross power production capacity at the terminals of the individual generator(s) under the most favorable anticipated design conditions of 19,500 kW (19.5 MW); with Electrical losses in interconnection transformers of 583.0 kW; for a Maximum net power production capacity of 18,917.0 kW (18.917 MW).

Prelude Bison Wind Farm 1's primary components are: 19500 KW gross generation. 28 1.5MW turbines will be installed. The wind farm output will be collected and stepped up to 69Kv at the wind farms own substation, 6 miles of 69kv line will run to the 69 KV Grand Electric Bison Substation.

Prelude Bison Wind Farm 1's Form 556 Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility is attached hereto as Prelude LLC EXHIBIT 2, and incorporated by reference herein as if set out in full.

14. Prelude Bison Wind Farm 2, is a QF (Qualified Facility) Wind Farm, with qualifying small power production facility status, which is an original certification; facility expected to be installed by August 1, 2014 and to begin operation on January 1, 2015.

Prelude Bison Wind Farm 2's Geographic coordinates are: West 102.442 degrees longitude and North 45.496 degrees latitude, located in Bison, Perkins County, South Dakota.

Respondent Grand Electric Cooperative is the interconnecting utility with Prelude Bison Wind Farm 2 and respondent Grand Electric Cooperative would also be the utility purchasing the useful electric output from Wind generation renewable energy resource development by Prelude Bison Wind Farm 2.

Prelude Bison Wind Farm 2 is anticipated to have a maximum gross power production capacity at the terminals of the individual generator(s) under the most favorable anticipated design conditions of 19,500 kW (19.5 MW); with Electrical losses in interconnection transformers of 583.0 kW; for a Maximum net power production capacity of 18,917.0 kW (18.917 MW).

Prelude Bison Wind Farm 2's primary components are: 19500 KW gross generation. 28 1.5MW turbines will be installed. The wind farm output will be collected at the wind farms

38Kv circuit and a single 4 mile home run to Prelude Bison Wind Farm 1's substation, where 6 miles of 69kv line will run to the 69 KV Grand Electric Bison Substation.

Prelude Bison Wind Farm 2's Form 556 Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility is attached hereto as Prelude LLC EXHIBIT 3, and incorporated by reference herein as if set out in full.

15. Prelude Maurine Wind Farm 1, is a QF (Qualified Facility) Wind Farm, with qualifying small power production facility status, which is an original certification; facility expected to be installed by August 1, 2014 and to begin operation on January 1, 2015.

Prelude Maurine Wind Farm 1's Geographic coordinates are: West 102.478 degrees longitude and North 45.203 degrees latitude, located in Faith, Perkins County, South Dakota.

Respondent Grand Electric Cooperative is the interconnecting utility with Prelude Maurine Wind Farm 1 and respondent Grand Electric Cooperative would also be the utility purchasing the useful electric output from Wind generation renewable energy resource development by Prelude Maurine Wind Farm 1.

Prelude Maurine Wind Farm 1 is anticipated to have a maximum gross power production capacity at the terminals of the individual generator(s) under the most favorable anticipated design conditions of 19,500 kW (19.5 MW); with Electrical losses in interconnection transformers of 585.0 kW; for a Maximum net power production capacity of 18,915.0 kW (18.915 MW).

Prelude Maurine Wind Farm 1's primary components are: 19500 KW gross generation. 28 1.5MW turbines will be installed. The wind farm output will be collected and stepped up to 115 kv at its own substation, where 20 miles of 115kv line will run to Grand Electric's Maurine 69Kv substation where the 115Kv will be stepped down to 69Kv.

Prelude Maurine Wind Farm 1's Form 556 Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility is attached hereto as Prelude LLC EXHIBIT 4, and incorporated by reference herein as if set out in full.

16. Prelude Maurine Wind Farm 2, is a QF (Qualified Facility) Wind Farm, with qualifying small power production facility status, which is an original certification; facility expected to be installed by August 1, 2014 and to begin operation on January 1, 2015.

Prelude Maurine Wind Farm 2's Geographic coordinates are: West 102.324 degrees longitude and North 45.216 degrees latitude, located in Faith, Perkins County, South Dakota.

Respondent Grand Electric Cooperative is the interconnecting utility with Prelude Maurine Wind Farm 2 and respondent Grand Electric Cooperative would also be the utility purchasing the useful electric output from Wind generation renewable energy resource development by Prelude Maurine Wind Farm 2.

Prelude Maurine Wind Farm 2 is anticipated to have a maximum gross power production capacity at the terminals of the individual generator(s) under the most favorable anticipated design conditions of 19,500 kW (19.5 MW); with Electrical losses in interconnection transformers of 585.0 kW; for a Maximum net power production capacity of 18,915.0 kW (18.915 MW).

Prelude Maurine Wind Farm 2's primary components are: 19500 KW gross generation. 28 1.5MW turbines will be installed. The wind farm output will be collected at its own 38Kv



circuit and an 8 mile home run will run to Prelude Maurine Wind Farm #1's 115 KW substation, where the 38Kv will be stepped up to 115Kv, where 20 miles of 115kv line will run to Grand Electric's Maurine 69Kv substation where the 115Kv will be stepped down to 69Kv.

Prelude Maurine Wind Farm 2's Form 556 Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility is attached hereto as Prelude LLC EXHIBIT 5, and incorporated by reference herein as if set out in full.

17. Prelude Maurine Wind Farm 3, is a QF (Qualified Facility) Wind Farm, with qualifying small power production facility status, which is an original certification; facility expected to be installed by August 1, 2014 and to begin operation on January 1, 2015.

Prelude Maurine Wind Farm 3's Geographic coordinates are: West 102.355 degrees longitude and North 45.256 degrees latitude, located in Faith, Perkins County, South Dakota.

Respondent Grand Electric Cooperative is the interconnecting utility with Prelude Maurine Wind Farm 3 and respondent Grand Electric Cooperative would also be the utility purchasing the useful electric output from Wind generation renewable energy resource development by Prelude Maurine Wind Farm 3.

Prelude Maurine Wind Farm 3 is anticipated to have a maximum gross power production capacity at the terminals of the individual generator(s) under the most favorable anticipated design conditions of 19,500 kW (19.5 MW); with Electrical losses in interconnection transformers of 585.0 kW; for a Maximum net power production capacity of 18,915.0 kW (18.915 MW).

Prelude Maurine Wind Farm 3's primary components are: 19500 KW gross generation. 28 1.5MW turbines will be installed. The wind farm output will be collected at its own 38Kv circuit and an 8 mile home run will run to Prelude Maurine Wind Farm #1's 115 KW substation, where the 38Kv will be stepped up to 115Kv, where 20 miles of 115kv line will run to Grand Electric's Maurine 69Kv substation where the 115Kv will be stepped down to 69Kv.

Prelude Maurine Wind Farm 3's Form 556 Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility is attached hereto as Prelude LLC EXHIBIT 6, and incorporated by reference herein as if set out in full.

18. Prelude, L.L.C. has secured the contract and real property rights needed to build and operate the Wind Farm Projects from the landowners at the sites, by recorded easements such as in Tripp County and other unrecorded options and easements and Wind Farm agreements. These rights typically run for a period 20 years.

Prelude, L.L.C., has other Wind Farms in the respective Respondents' service territories, in addition to those illustrated in Prelude LLC Exhibits 1 through 6 herein.

19. The Prelude, L.L.C. Wind Farm Projects are located in the various Respondents' service territories. The Respondents', each, or acting together with Basin Electric Power Cooperative, or with others, are each an electric utility within the meaning of and subject to PURPA and its implementation of federal and state regulations, including by United States Federal Energy Regulation Commission ("FERC") and the South Dakota ("SD") Public Utilities Commission ("PUC").

20. That in addition to the QFs herein in Perkins County, S.D., Prelude, L.L.C., has easements and contracts under option in various other South Dakota counties in the operating territories of the Respondents, including but not limited to over 120,000 acres in contract options in Perkins County, S.D., and over 150,000 acres under contract options in Tripp and Gregory Counties, South Dakota; and also had over 40,000 acres under contract options in Zeibach and Dewey Counties, South Dakota, many of which option are running out or ran out because of the actions and inactions caused by the Respondents in failing to enter into PPAs with Prelude, L.L.C., that Prelude is attempting to renew and extend these options towards mitigation of damages caused by the respondents herein.

21. That in addition to the QFs of Prelude, L.L.C., Wind Farms illustrated in Exhibits 1-6, Prelude, L.L.C., has other South Dakota QF Wind Farms, including but not limited to the following QFs filed in the public records of the FERC which are incorporated by reference herein as if set out in full: Bonesteel 8 and Bonesteel 9; Witten 1; Witten 2, Witten 3; Witten 4; Witten 5; Witten 6; Witten 7; Witten 8; Winner #1; Winner #2; Winner#3; East Orange; N Orange; Colome #1; Purple; W Light Blue; W Purple. Prelude, L.L.C., may continue to add additional QFs from its extensive portfolio of acres under contract options in South Dakota during these proceedings, all of which are subject to the Respondents, respectively in their service territories, to enter into a LEO PURPA rate PPA with Prelude, L.L.C.

22. The Prelude, L.L.C., Wind Farm Projects are each a Qualified Facility ("QF") under PURPA. A copy of the documents qualifying each of the Prelude, L.L.C. Wind Farm Projects as a QF pursuant to 18 C.F.R. § 292.207 is attached to this Complaint and incorporated by reference herein for all purposes. See, Prelude LLC EXHIBITS 1 - 6, and also as on file with the FERC.

#### **IV. REGULATORY BACKGROUND**

23. Section 210(a) of PURPA requires the Respondents to purchase electricity from QFs, like the Prelude, L.L.C. Wind Farm Projects, located in each of their respective service territory. See, 16 U.S.C. § 824a-n3.

24. The price each Respondent must pay for electricity delivered from a QF, such as the respective QF Prelude, L.L.C. Wind Farms herein, is not to exceed the "incremental cost to the electric utility of alternative electric energy." Id. The FERC regulations implementing Section 210(a) of PURPA refer to this rate as the "avoided cost." See generally, 18 C.F.R. § 292.101(b)(5) and (6); 18 C.F.R. §292.304.

25. 18 C.F.R. § 292.101(b)(5) and (6), provide the following definitions:

“(5) Rate means **any** price, rate, charge, or classification made, demanded, observed or received with respect to the sale or purchase of electric energy or capacity, or **any** rule, regulation, or practice respecting **any** such rate, charge, or classification, and **any** contract pertaining to the sale or purchase of electric energy or capacity. [emphasis added in bold underline].

(6) Avoided costs means the incremental costs to an electric utility of electric energy or

capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.”

26. 18 C.F.R. §292.304 provides rates for purchases:

“(a) Rates for purchases.

(1) Rates for purchases shall:

(I) Be just and reasonable to the electric consumer of the electric utility and in the public interest; and

**(ii) Not discriminate against qualifying cogeneration and small power production facilities.** [emphasis added in bold].

(2) Nothing in this subpart requires any electric utility to pay more than the avoided costs for purchases.

(b) Relationship to avoided costs.

(1) For purposes of this paragraph, "new capacity" means any purchase from capacity of a qualifying facility, construction of which was commenced on or after November 9, 1978.

(2) Subject to paragraph (b)(3) of this section, a rate for purchases satisfies the requirements of paragraph (a) of this section if the rate equals the avoided costs determined after consideration of the factors set forth in paragraph (e) of this section

(3) A rate for purchases (other than from new capacity) may be less than the avoided cost if the State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or the nonregulated electric utility determines that a lower rate is consistent with paragraph (a) of this section, and is sufficient to encourage cogeneration and small power production.

(4) Rates for purchases from new capacity shall be in accordance with paragraph (b)(2) of this section, regardless of whether the electric utility making such purchases is simultaneously making sales to the qualifying facility.

(5) In the case in which the rates for purchases are based upon estimates of avoided costs over the specific term of the contract or other legally enforceable obligation, the rates for such purchases do not violate this subpart if the rates for such purchases differ from avoided costs at the time of delivery.

© Standard rates for purchases.

(1) There shall be put into effect (with respect to each electric utility) standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less.

(2) There may be put into effect standard rates for purchases from qualifying facilities with a design capacity of more than 100 kilowatts.

(3) The standard rates for purchases under this paragraph:

(I) Shall be consistent with paragraphs (a) and (e) of this section; and

**(ii) May differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies.**

(emphasis added in bold)

**(d) Purchases "as available" or pursuant to a legally enforceable obligation.**

**Each qualifying facility shall have the option either:** (emphasis added in bold)

(1) To provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery; or

**(2) To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for such purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either:**

**(i) The avoided costs calculated at the time of delivery; or**

**(ii) The avoided costs calculated at the time the obligation is incurred.**

(Emphasis in bold, where indicated in bold).

(e) Factors affecting rates for purchases. In determining avoided costs, the following factors shall, to the extent practicable, be taken into account:

(1) The data provided pursuant to § 292.302(b), (c), or (d), including State review of any such data;

(2) The availability of capacity or energy from a qualifying facility during the system daily and seasonal peak periods, including:

(i) The ability of the utility to dispatch the qualifying facility;

(ii) The expected or demonstrated reliability of the qualifying facility;

(iii) The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirement and sanctions for non-compliance;

(iv) The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities;

(v) The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;

(vi) The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system; and

(vii) The smaller capacity increments and the shorter lead times available with additions of capacity from qualifying facilities; and

(3) The relationship of the availability of energy or capacity from the qualifying facility as derived in paragraph (e)(2) of this section, to the ability of the electric utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and

(4) The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility, if the purchasing electric utility generated an equivalent amount of energy itself or purchased an equivalent amount of electric energy or capacity.

(f) Periods during which purchases not required.

(1) Any electric utility which gives notice pursuant to paragraph (f)(2) of this section will not be required to purchase electric energy or capacity during any

period during which, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases, but instead generated an equivalent amount of energy itself.

(2) Any electric utility seeking to invoke paragraph (f)(1) of this section must notify, in accordance with applicable State law or regulation, each affected qualifying facility in time for the qualifying facility to cease the delivery of energy or capacity to the electric utility.

(3) Any electric utility which fails to comply with the provisions of paragraph (f)(2) of this section will be required to pay the same rate for such purchase of energy or capacity as would be required had the period described in paragraph (f)(1) of this section not occurred.

(4) A claim by an electric utility that such a period has occurred or will occur is subject to such verification by its State regulatory authority as the State regulatory authority determines necessary or appropriate, either before or after the occurrence. “

27. The rates offered by Respondents, and in particular by Basin Electric Power Cooperative do discriminate against Wind Energy generally, per 18 C.F.R. §292.304(a)(1)(ii) and in particular discriminate against the Prelude, L.L.C. Wind Farm Projects herein, and are otherwise not in compliance with 18 C.F.R. §292.304(b)(3) since these lower rates, or offered lower rate is not consistent with paragraph (a) of this section, and is not sufficient to encourage cogeneration and small power production, and in particular small Wind Farm power production, and that contrary to the purpose of the law promoting small wind farm power production such as that by Prelude, L.L.C., that Basin actions herein were designed to thwart Prelude, L.L.C., in order to promote its own larger scale projects such as the Crow Creek wind projects.

28. That attached hereto and marked as Prelude LLC EXHIBIT 15 and incorporated by reference herein is the December 21, 2010 National Wind WATcir article “Crow Creek wind project moves ahead” stating that the 400 megawatt project can be sold to Basin Electric for \$38 to \$42 per kilowatt hour.

29. That attached hereto and marked as Prelude LLC EXHIBIT 16 and incorporated by reference herein is the March 08, 2011 AP article “Basin Electric’s \$363M Crow Lake wind farm operational” that the wind farm was built by a Basin subsidiary and has the capacity to produce 162 megawatts of power and that Basin owns 150 megawatts making it the largest wind project in the country owned by a co-op.

30. That attached hereto and marked as Prelude LLC EXHIBIT 17 and incorporated by reference herein is the March 18, 2014 Rapid City Journal article: “Crow Creek receives federal grant to launch billion-dollar wind farm”, stating that the first phase of the 400 megawatt project would be 100 megawatts and be completed by 2016, and that the 400 megawatt project would have 150 to 160 turbines.

31. Notwithstanding these lowered offered rates, they are also out of compliance as the Prelude, L.L.C., Wind Farm Projects herein are new capacity electric production Qualified Facility (QF) Wind Farms. 18 C.F.R. §292.304(a)(2) Subject to paragraph (b)(3) of this section, states that “a rate for purchases satisfies the requirements of paragraph (a) of this section if the rate equals the avoided costs determined after consideration of the factors set forth in paragraph (e) of this section” and the Respondents’ lower offered rates are not in compliance with these sections, and as alleged further herein.

32. 18 C.F.R. §292.304(b)(5) Allows for estimates of avoided costs, but those estimates must be made in good faith, and the estimates and lowered offered rates from Respondents are not true ACTUAL AVOIDED COSTS, (emphasis in capitals added), that is, they are not good faith comparables based on Wind Farm electric generation and actual avoided costs and therefore are out of compliance with the regulations.

“(5) In the case in which the rates for purchases are based upon estimates of avoided costs over the specific term of the contract or other legally enforceable obligation, the rates for such purchases do not violate this subpart if the rates for such purchases differ from avoided costs at the time of delivery.”

33. Respondents have a legally enforceable obligation (“LEO”) to purchase the power to be produced by the QFs of Prelude, L.L.C., Wind Farms, that is Wind Energy electricity, at the true comparable actual avoided cost rates.

34. The Respondents, each acting individually, or by or through authorizing Respondent Basin Electric Power Cooperative to act as their agent or representative, or under the guise of their “all requirements” contracts with Basin and others, have repeatedly failed to provide Complainant Prelude, L.L.C., and its QF Wind Farms, and agents and representatives with any data, or comparable actual avoided cost data generally or for wind energy avoided costs, at all times material hereto, or to otherwise enter into a Purchase Power Agreement (“PPA”) under their Legally Enforceable Obligation (“LEO”) under PURPA to do so, at the proper PURPA rate(s), only quoting rates that are about half the alleged actual avoided costs rates to discourage or otherwise prejudice Prelude, L.L.C.’s Wind Farms development.

35. That attached hereto and marked as Prelude LLC EXHIBIT 18 and incorporated by reference herein is Rosebud Electric Cooperative’s January 212 “Cooperative Connections” newsletter article, “Cos-op News: Notice of Rate Adjustment”, which is an admission by Rosebud as to Basin’s rates that are therefore Rosebud’s PURPA avoided cost rate, which are about double those ever quoted or offered to Prelude, L.L.C., as alleged herein, with the Basin rate increases to Rosebud as kilowatt charges for the special heat rate rose in February from 5.1 cents per kilowatt hour to 5.3 cents per kilowatt hour.

36. 18 C.F.R. §292.304(e) and FERC regulations and administrative decisions and case law in addition to SD PUC regulations and administrative decisions and case law specify what constitutes “Avoided Costs”. Avoided costs are to be determined in good faith from the factors set forth in 18 C.F.R. §292.304(e). Avoided cost generally includes two main factors: (1 )

avoided energy cost, which represents variable costs associated with the production of electric energy including operating and maintenance expenses that are saved by the electric utility because of deliveries from a QF ("Avoided Energy Costs"); and (2) avoided capacity cost, which represents primarily, the capital costs saved by an electric utility because new plants or existing plant improvements become unnecessary as a result of deliveries from a QF ("Avoided Capacity Costs").

37. The South Dakota Public Utilities Commission ("SD PUC" i.e. "Commission"), exercising its delegated authority under Section 210(f) of PURPA, issued a decision and order on December 11, 1982 making various Findings And Conclusions Of Law relative to avoided costs. See: In the Matter of the Investigations of Implementations of Certain Requirements of Title II of the Public Utilities Regulatory Policy Act of 1978 Regarding Cogeneration and Small Power Production, No. F-3365 (South Dakota Public Utilities Commission Dec 11, 1982) (SD PUC "Commission PURPA Order").

38. In the SD PUC Commission PURPA Order it was decided that "long term contracts" (those contracts for more than ten years in duration) from QFs with a design capacity more than 100 kilowatts (kW) "should be set by contract negotiated between the QF and the electric utility." Id., at 11. The SD PUC Commission stated that its own role in these negotiations was to assist in "resolving **any** disputes which arise between the parties." Id. [bold underline emphasis added].

39. The Respondents in failing to communicate actual avoided costs or any basis of comparable wind farm data, and failing to communicate generally with Prelude, L.L.C. on its Wind Farm Projects and QF Wind Farms that are long term contracts, longer than ten years, for which there is a LEO upon the Respondents to enter into a PPA with Prelude, L.L.C., but for which they refuse to enter into or negotiate, and said Respondents failures repeatedly to provide comparable and actual avoided costs data and rates, and directing all responses to be made exclusively through Basin Electric Power Cooperative and it and the Respondents only offering lowered rates that are half or less than half the comparable actual avoided rates, all are "disputes" that require the SD PUC "Commission" to act under its authority, to assist and resolve these various disputes.

40. That Respondents are not acting in compliance with 18 C.F.R. § 292.302 which requires them to make available to Prelude, L.L.C., their electric utility system cost data.

41. 18 C.F.R. § 292.302 provides:

“§ 292.302 Availability of electric utility system cost data.

(a) Applicability.

(1) Except as provided in paragraph (a)(2) of this section, paragraph (b) applies to each electric utility, in any calendar year, if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

(2) Each utility having total sales of electric energy for purposes other than resale of less than one billion kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding year, shall not be subject to the provisions of this section until June 30, 1982.

(b) General rule. To make available data from which avoided costs may be derived, not later than November 1, 1980, June 30, 1982, and not less often than every two years thereafter, each regulated electric utility described in paragraph (a) of this section shall provide to its State regulatory authority, and shall maintain for public inspection, and each nonregulated electric utility described in paragraph (a) of this section shall maintain for public inspection, the following data:

(1) The estimated avoided cost on the electric utility's system, solely with respect to the energy component, for various levels of purchases from qualifying facilities. Such levels of purchases shall be stated in blocks of not more than 100 megawatts for systems with peak demand of 1000 megawatts or more, and in blocks equivalent to not more than 10 percent of the system peak demand for systems of less than 1000 megawatts. The avoided costs shall be stated on a cents per kilowatt-hour basis, during daily and seasonal peak and off-peak periods, by year, for the current calendar year and each of the next 5 years;

(2) The electric utility's plan for the addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding 10 years; and

(3) The estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt hour. These costs shall be expressed in terms of individual generating units and of individual planned firm purchases.

© **Special rule for small electric utilities.** (Emphasis added in bold)

(1) Each electric utility (other than any electric utility to which paragraph (b) of this section applies) shall, upon request:

(I) Provide comparable data to that required under paragraph (b) of this section to enable qualifying facilities to estimate the electric utility's avoided costs for periods described in paragraph (b) of this section; or

**(ii) With regard to an electric utility which is legally obligated to obtain all its requirements for electric energy and capacity from another electric utility, provide the data of its supplying utility and the rates at which it currently purchases such energy and capacity.** (Emphasis added in bold)

(2) If any such electric utility fails to provide such information on request, the qualifying facility may apply to the State regulatory authority (which has ratemaking authority over the electric utility) or the Commission for an order requiring that the information be provided.

(d) Substitution of alternative method.

(1) After public notice in the area served by the electric utility, and after opportunity for public comment, any State regulatory authority may require (with respect to any electric utility over which it has ratemaking authority), or any



non-regulated electric utility may provide, data different than those which are otherwise required by this section if it determines that avoided costs can be derived from such data.

(2) Any State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or nonregulated utility which requires such different data shall notify the Commission within 30 days of making such determination.

(e) State Review.

(1) Any data submitted by an electric utility under this section shall be subject to review by the State regulatory authority which has ratemaking authority over such electric utility.

(2) In any such review, the electric utility has the burden of coming forward with justification for its data.”

42. That upon information and belief, all the avoided cost rates that Respondents, and in particular Basin Electric Power Cooperative have sent to Prelude, L.L.C., as lowered rates, did not include any of the comparable actual avoided costs that said Basin has from its recent wind farm PPAs of the Crow Creek wind farm project (Exhibits 15-17 supra) nor from Campbell County Wind Farm signed on or about December 20, 2013 with Fagen Inc., of Granite Falls, Minnesota and Dakota Plains Energy, Aberdeen, South Dakota, nor any other wind farms, a copy of which, reported in the February 2014 Cooperative Connections newsletter, at page 7 is attached hereto and marked as Prelude LLC EXHIBIT 20, and incorporated by reference herein.

43. That Respondent Basin has reported in the February 2014 Cooperative Connections newsletter, at page 7, that its wind farm electric portfolio is now 278 MW of a total portfolio of over 1100MW, that is 25.27% of its total portfolio, yet it has not provided any of this comparable data or rates to Prelude, L.L.C., nor upon information or belief used that data in setting its lowered so called avoided rates to Prelude, L.L.C., which should be higher, at approximately double, that is about 5.5 cents (\$55.00/mW/hr), than the rates cited by Basin in its last correspondence on behalf of itself and respondents to Prelude LLC’s attorney herein.

44. That Basin has said its costs to develop their own wind farms is 6 cents (\$6.00/mW/hr), yet they only offer Prelude, L.L.C., over the last ten years a lower alleged PURPA rate of around 2.3 cents(\$23.00/mW/hr), when inflation is approximately 2% per annum, with allowed depreciation over five years. See attached hereto and marked as Prelude LLC EXHIBIT 25 and incorporated by reference as if set out in full, “CATCH THE WIND”, by Steve Thompson, USDA Rural Development, wherein Basin admits its “projected power generation costs at 5.5 to 6 cents per kilo-watt hour.”

## **V. LEO AND PPA AND CONTRACT NEGOTIATION HISTORY**

45. That as far back as 2009, Prelude, L.L.C., is aware of incidents in which the Respondents, through their employees and agents have sought to interfere with Prelude, L.L.C., obtaining easements and contract options with South Dakota landowners, ranchers and “Wind Farmers”; including but not limited to, by way of illustration, Respondent’s agent Kevin

Mikkelsen talking to one Tim Walker, telling him that the Wisconsin guys (Prelude, L.L.C. agents and employees) needed to be run out of the country and stating falsely that they (Prelude, L.L.C.) were fraudulent, and like slanders and defamation of the products and services of Prelude, L.L.C., and Respondents' agents telling landowners and Wind Farmers not to enter into any contracts or agreements or options or easements with Prelude, L.L.C., and like episode involving one Ron Shattuck and also a like episode involving one Eugene Brumbaugh who were all being dissuaded to not cooperate with Prelude, L.L.C., its agents and employees, and like noncooperation dissuasions perpetrated by Respondents' agents against Prelude, L.L.C.

46. That additionally, Respondent Rosebud's Gary Clayton, manager of the REA, had Respondent Basin's Ron Rebenitsch come to the REA convention to tell them not to support wind developers, and to slow down and otherwise tell the audience to interfere with wind developers, such as Prelude, L.L.C., by instructing them to demand money up front and demand EIS environmental Impact Statements be done in advance of negotiating any signing of contract options, and telling the audience that there was no transmission space left on the lines, and that Basin Electric Power Cooperative did not want any more electricity because they had too much, all to thwart and interfere with the Spirit of the Law, of PURPA and FERC regulations and decisions promoting small wind farm electric production generation, like that developed, owned, operated and optioned under contract by Prelude, L.L.C., and others.

47. That attached hereto and marked as Prelude LLC EXHIBIT 21 and incorporated by reference herein as if set out in full is Basin's "GREEN ENERGY" brochure stating that by the end of 2013 its holds 757 megawatts of green and renewable energy, 713 megawatts of which are of wind generation, and cites also its subsidiary PrairieWinds SD 1 February 2011 commissioned largest wind project in the nation, 162 megawatt Crow Lake Wind Project, and that it purchases wind energy from several wind energy projects, including wind projects owned by others in South Dakota and has contracts for long-term wind purchases totalling 376 megawatts starting in 2015, and purchases the output from more than 145 small wind, solar and biomass generators throughout the cooperatives territory totalling more than 1900 kilowatts.

48. That attached hereto and marked as Prelude LLC EXHIBIT 22 and incorporated by reference herein as if set out in full is Basin's "Serving the Bakken" brochure stating that, and contrary to what it had told Prelude LLC's wind farm optionees that due to the anticipated Bakken oil fields economic growth related thereto that Basin was now planning electrical loads to grow an additional 1000 megawatts by 2025, and that "Basin Electric has been actively monitoring the growth and planning for transmission and generation needs associated with rapidly increasing loads" and that it has contingency plans to bring in additional generation from outside the area if loads develop faster than anticipated.

49. That attached hereto and marked as Prelude LLC EXHIBIT 23 and incorporated by reference herein as if set out in full is Basin's July 1, 2010 letter to the SD PUC stating it is a wholesale supplier of electricity and that small renewable power purchases are generally done at the membership level, even though as other Prelude LLC Exhibits herein demonstrate, Basin asserts that the other respondents must deal through Basin and that Basin in charge and has

shown that it alone answers any inquiries by Prelude LLC as to negotiations relating to avoided cost PURPA rates, PPAs despite the other respondents' LEOs to deal and negotiate and enter PPAs directly with Prelude LLC.

50. That attached hereto and marked as Prelude LLC EXHIBIT 24 and incorporated by reference herein as if set out in full is the affidavit of Richard Dostal, a Radiologic Technologist for the Veterans' Administration who operates a mobile computer tomography (CT) and mobile Magnetic Resonance Imaging (MRI) units, that require dependable energy, so that the Indian Health Service (IHS) can provide MRI service to Native Americans, and stating that there is a need for more certified dependable power, in order for service providers to guarantee coverage for these devices that otherwise burn out due to lack of such dependable power on reservations currently, when the devices, cost \$100,000 electrical equipment and gradient amplifiers that in the absence of such dependable power on reservations burn out, which cost \$15,000 to \$40,000 to replace, indicating there is a shortage of power in the respondents territories that make service providers reluctant to provide MRI service on the reservations.

51. That in an October 21, 2010 California (CPUC) case, the Federal Energy Regulatory Commission (FERC) made a ruling basically allowing previously federally pre-empted wholesale price setting by way of "Feed In Tariffs", ("FIT"), so that the FIT rates could be used to resolve avoided cost disputes, by state utility regulators, such as SD PUC, such as authorizing the SD PUC to resolve the avoided costs disputes between Prelude, L.L.C., and the Respondents herein, for Prelude, L.L.C.'s QFs and the utilities that come under the PURPA requirements, such as each of the Respondents herein, by way of establishing a "multi-tiered avoided cost rate structure" also called a "multi-tiered resource approach for determining avoided costs" that is consistent with PURPA, for particular categories or classes of renewables, such as a separate rate structure just for Wind Energy; and that States may also include in its avoided cost calculation the costs of transmission upgrades that would be avoided by purchasing power from closer resources or offer renewable energy tax credits themselves. See: 133 FERC ¶ 61,059, California Public Utilities Commission Docket No. EL10-64-001 and Southern California Edison Company Pacific Gas and Electric Company San Diego Gas & Electric Company Docket No. EL10-66-001.

52. That the above said CPUC case FERC Ruling would permit States, like the SD PUC to set tariff rates for Wind Energy, accordingly or through "Renewable Energy Standard Offer (RESO) contracts".

53. That by Basin Electric Power Cooperative's letter dated June 27, 2012 it admits that it acts as agent for and on behalf of its cooperative members the Respondents: Grand Electric Cooperative, Inc., Rosebud Electric Cooperative, Inc., Rushmore Electric Power Cooperative, Inc., and its members. This letter is marked as Prelude LLC EXHIBIT 7 and incorporated by reference herein as if set out in full.

54. In Respondent Basin Electric Power Cooperative's letter dated November 27, 2013 to the SD PUC, it states that it can independently establish its own avoided costs rates (impliedly any definition of avoided costs, arbitrarily and unilaterally) although agreeing that it is subject to

buying electricity from QFs under PURPA, being subject to PURPA, asserting that as a nonregulated electric utility, it can basically do as it pleases, due to having locked in the various Respondents herein under its all requirements contracts, asserting that its definition of avoided costs, as their all requirements supplier is their avoided costs. That said letter is incorporated by reference herein, as Prelude LLC EXHIBIT 8, and incorporated by reference herein as if set out in full.

55. That to date, none of the Basin member cooperatives, acting independently of Basin have offered Prelude, L.L.C., their own avoided costs, or their own actual comparable avoided costs for Wind Energy, nor negotiated a PURPA rate PPA, under the LEO to purchase the Wind Energy from the Prelude, L.L.C.'s Wind Farms QFs.

56. That by way of its lawyers, Riter Rogers Law Offices letter dated December 3, 2013 to the SD PUC regarding RM-13-002 on behalf of its clients South Dakota Rural Electric Association ("SDREA", "REA") states they also have "All Requirements" supplemental wholesale power supplier Basin Electric contracts, and likewise, use the Basin all requirements" definition of avoided costs to allegedly comply with PURPA avoided costs regulations. That said letter is marked hereto as Prelude LLC EXHIBIT 9, and incorporated by reference herein as if set out in full.

57. That the Respondent Butte Electric Cooperative and through Touchstone Energy Cooperative has failed to provide Prelude, L.L.C., with accurate actual avoided costs and comparable data on their calculations of avoided costs, and comparable avoided costs for wind farms electric generation production costs per PURPA. Therefore, Prelude, L.L.C., by way of its attorney, sent to said Respondent the attached December 4, 2013 letter notifying them of Prelude, L.L.C.'s QFs and again requesting their LEO PURPA avoided cost rates to enter into a PPA, which letter is marked as Prelude LLC EXHIBIT 10, and incorporated by reference herein as if set out in full. Respondent itself did not reply to Prelude, L.L.C.'s attorney's letter, but instead had Basin Electric Power Cooperative respond.

58. That the Respondent Grand Electric Cooperative, Inc., has failed to provide Prelude, L.L.C., with accurate actual avoided costs and comparable data on their calculations of avoided costs, and comparable avoided costs for wind farms electric generation production costs per PURPA. Therefore, Prelude, L.L.C., by way of its attorney, sent to said Respondent the attached November 25, 2012 (sic. 2013) letter notifying them of Prelude, L.L.C.'s QFs and again requesting their LEO PURPA avoided cost rates to enter into a PPA, which letter is marked as Prelude LLC EXHIBIT 11, and incorporated by reference herein as if set out in full. Respondent itself did not reply to Prelude, L.L.C.'s attorney's letter, but instead had Basin Electric Power Cooperative respond.

59. That the Respondent Moreau-Grand Electric Cooperative and through Rushmore Electric Power Cooperative, has failed to provide Prelude, L.L.C., with accurate actual avoided costs and comparable data on their calculations of avoided costs, and comparable avoided costs for wind farms electric generation production costs per PURPA. Therefore, Prelude, L.L.C., by

way of its attorney, sent to said Respondent the attached November 25, 2012 (sic. 2013) letter notifying them of Prelude, L.L.C.'s QFs and again requesting their LEO PURPA avoided cost rates to enter into a PPA, which letter is marked as Prelude LLC EXHIBIT 12, and incorporated by reference herein as if set out in full. Respondent itself did not reply to Prelude, L.L.C.'s attorney's letter, but instead had Basin Electric Power Cooperative respond.

60. That the Respondent Rosebud Electric Cooperative has failed to provide Prelude, L.L.C., with accurate actual avoided costs and comparable data on their calculations of avoided costs, and comparable avoided costs for wind farms electric generation production costs per PURPA. Therefore, Prelude, L.L.C., by way of its attorney, sent to said Respondent the attached November 21, 2012 (sic. 2013) letter notifying them of Prelude, L.L.C.'s QFs and again requesting their LEO PURPA avoided cost rates to enter into a PPA, which letter is marked as Prelude LLC EXHIBIT 13, and incorporated by reference herein as if set out in full. Respondent itself did not reply to Prelude, L.L.C.'s attorney's letter, but instead had Basin Electric Power Cooperative respond.

61. That on January 13, 2014 Respondent Basin Electric Power Cooperative responded to Prelude, L.L.C.'s requests to the Respondents (Prelude LLC Exhibits 10-13) by letter, again stating that due to its all requirements contracts with the other Respondents it is allowed to set its own avoided cost rates, as their supplier, to buy electric power from QFs such as those of Prelude, L.L.C. That it was offering \$23 to \$25 megawatt-hour for fixed 25 to 30 year terms, as "all-in costs" energy (including qualifying capacity) with performance guarantee and all renewable attributes. That Basin's short-term (less than five years) avoided cost rate is \$21.60 per megawatt-hour, based on what it alleges is the highest cost QF from Leland Olds Station avoided expenses consisting of fuel, fuel handling, variable scrubber costs, high voltage transmission like losses, and the North Dakota coal conversion tax. None the rates for avoided costs offered by Basin recite any true comparables such as its recent contract with its Crow Creek wind farm project nor from the Campbell County Wind Farm or the other wind farms that it published stating constitute over 25% of its energy portfolio. That said letter is marked hereto as Prelude LLC EXHIBIT 14, and incorporated by reference herein as if set out in full.

62. The Respondents continue to refuse to give Prelude, L.L.C. actual avoided cost rates, and comparable wind farm electric production generation avoided cost rates and data. That the Respondent, each individually, are required to give Prelude, L.L.C., their actual avoided cost rates for each of the respective QFs submitted by Prelude, L.L.C., in their respective service territory, but they refuse to do so, even though under PURPA they each have a Legally Enforceable Obligation (LEO) to do so, and to enter into negotiations for a PPA with Prelude, L.L.C. based on such actual avoided costs rates.

63. Without the actual avoided cost rates, and comparable wind farm avoided cost rate data, Prelude, L.L.C., is being thwarted from developing its Wind Farm Projects in South Dakota, all to its loss, and to the detriment of the consumers and general public in South Dakota, and adjacent States engaged in interstate commerce that benefit from and use the electricity produced and consumed in South Dakota, or its goods and services that cross state lines and enter

into interstate commerce.

64. In addition to the loss of the profits and compensation from not having a negotiated PPA pursuant to the LEOs with the respondents, Prelude LLC's option holders have also lost out, in money and opportunity costs, as has Prelude, LLC for additional loss reputation, loss goodwill, and opportunity costs, in addition to losses incurred by members of the public throughout the State of South Dakota, and interstate, for loss of construction and infrastructure improvements and business growth, all affecting interstate commerce, adversely, as a result of the respondents' actions and inactions herein.

65. That the Respondents (other than Basin) have a legally enforceable obligation to pay Prelude, L.L.C., the same rate that they pay Basin, under their independent avoided costs and actual comparable avoided costs for Wind Energy under PURPA. Prelude, L.L.C., would charge the local cooperative respondents the same rate as the Respondent Basin charges the small cooperatives under their LEO to pay the applicable PURPA rate that Basin charges for Energy, and that said rate is an actual comparable avoided cost to Basin, approximately double the avoided costs quoted by Basin in its most recent reply letter to Prelude, L.L.C., on behalf of all the Respondents. That said Prelude LLC rate being the actual avoided comparable cost rate accordingly, would not therefore increase any rates born by customers of any of the respondents. See attached hereto and marked as Prelude LLC EXHIBIT 18 and Prelude LLC EXHIBIT 19 and incorporated by reference herein in its January 2012 Rosebud Electric "Cooperative Connection" newsletter respectively: Rosebud's "Notice of Rate Adjustment"(Ex.18) stating Basin's rate increase is 5.3 cents per kilowatt hour, and Manager's Column: "Co-ops Pay Taxes" (Ex.19 respectively), but failing to point out that Basin received tax credits such as the Production Tax Credit and Investment Tax Credit incentives to defray any costs, and upon information and belief was able to use said tax credits and other depreciation to finance and attract investors for its large scale wind farm projects that Prelude LLC could have otherwise have benefitted from likewise since 2008 and onward during the LEO period, when the respondents had a Legally Enforceable Obligation to negotiate Power Purchase Agreement PPAs with Prelude LLC at the proper applicable avoided costs rates for which said PTC and ITC tax credits and depreciation tax benefits were still in effect and available and which otherwise may have constituted part of the true, actual, net avoided costs to Basin and the other respondent co-operatives herein in the pricing of their rate structures.

66. That Basin Electric Cooperative has received the benefit of low interest loans in the development of their own wind farms from the U.S. Department of Agriculture's (USDA) Rural Utilities Service (RUS), together with South Dakota Wind Partners LLC, and through WAPA, on projects such as the South Dakota Prairie Wind Projects, Crow Lake Alternative, their own Crow Creek Wind Farm which also received federal grants (see Exhibit 17), and other related wind energy projects, such that the benefits of the low interest loan rates should be included, that is, accounted for and deducted accordingly, in the avoided costs calculations of any wind farm PPA PURPA rate, that is Prelude, L.L.C., should receive a comparable avoided cost rate increase for the benefit of the low interest USDA RUS loans that Basin has received for Wind Energy projects.

67. That due to the Respondents failure to enter into a PPAs with Prelude, L.L.C., over the last several years, Prelude. L.L.C., has lost Production Tax Credits, and depreciation over the lost time period since the LEOs, including bonus depreciation all to its harm and loss and damage.

68. Production Tax Credit, enacted in 1992, 26 USC § 45, expired at the end of 2013, and had provided 2.3¢/kWh for wind, geothermal, closed-loop biomass; 1.1¢/kWh for other eligible technologies. Generally applies to first 10 years of operation. Unused credits may be carried forward for up to 20 years following the year they were generated or carried back 1 year if the taxpayer files an amended return.

69. That Prelude, L.L.C., in addition to the lost PTC has lost approximately 2% lost opportunity costs due to inflation over 10 years of on tax credits and depreciation lost.

70. That the said lost depreciation money would have also been able to be used by Prelude, L.L.C., to lower wind farm debt and therefore raise the internal rate of return thereby lower interest rates, for development and production loans, since debt and earnings rate of returns determine interest rates on investment, investor, and commercial loans involved in wind farm development and construction. The lost “time value” of money should not be allowed to be argued by Respondents to lower their avoided costs, since it is their actions and inactions that have prevented Prelude, L.L.C., to lock in to the PTC and lost depreciation.

71. The Production Tax Credits (PTC) and other depreciation lost, as a result of the actions and inactions of the Respondents in not negotiating PPAs in good faith prior to the December 31, 2013 expiration of the PTC, would also have enabled Prelude, L.L.C., to attract partners and investors in renewable energy, all to its development losses and damages.

72. That on average, electric wind turbines operate at approximately 45% capacity factor, whereby for every megawatt (mW, 1000 kW) of nameplate installed wind turbine generation, there would be an average of approximately 450kW per hour of energy multiplied by 8700 hours per year of operation generation, equaling a production of 3,915,000 KW per year, that would have been qualified for Production Tax Credits PTC of 2.3 cents multiplied by 3,915,000 kW per year, or \$90,045 depreciation value per year, over ten years of tax treatment, equaling noninflationary cost of \$900,450.00 lost per megawatt of Prelude LLC’s QFs, under the PPAs that respondents were required under their LEO to enter into at the applicable PURPA rate. That the approximate ITC Investment Tax Credits per megawatt would be \$600,000.000 based on \$2 million per megawatt total turbine and installation costs. That these tax credits are being used by Basin Electric for example, for taxes they and the respondent co-ops pay, see Prelude LLC Exhibit 19, and which tax credits and depreciation could have benefitted Prelude LLC as the supplier of wind energy under the lost PPAs with respondents, and used to defray Prelude LLC’s tax liabilities, sold to other investors or qualified entities, used for financing purposes by Prelude LLC to construct and operate the said QF wind farms and other purposes all to Prelude LLC’s loss, and harm, caused by the respondents’ actions and inactions herein.

73. 18 CFR§ 292.601 Exemption to qualifying facilities from the Federal Power Act. Provides:

“(a) Applicability. This section applies to qualifying facilities, other than those described in paragraph (b) of this section. This section also applies to qualifying facilities that meet the criteria of section 3(17)(E) of the Federal Power Act (16 U.S.C. 796(17)(E)), notwithstanding paragraph (b).

(b) Exclusion. This section does not apply to a qualifying small power production facility with a power production capacity which exceeds 30 megawatts, if such facility uses any primary energy source other than geothermal resources.

© General rule. Any qualifying facility described in paragraph (a) of this section shall be exempt from all sections of the Federal Power Act, except:

(1) Sections 205 and 206; however, sales of energy or capacity made by qualifying facilities 20 MW or smaller, or made pursuant to a contract executed on or before March 17, 2006 or made pursuant to a state regulatory authority's implementation of section 210 the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a-1, shall be exempt from scrutiny under sections 205 and 206;

(2) Section 1-18, and 21-30;

(3) Sections 202©, 210, 211, 212, 213, 214, 215, 220, 221 and 222;

(4) Sections 305©; and

(5) Any necessary enforcement provision of part III of the Federal Power Act (including but not limited to sections 306, 307, 308, 309, 314, 315, 316 and 316A) with regard to the sections listed in paragraphs (c)(1), (2), (3) and (4) of this section. “

74. Under 18 CFR§ 292.601, Prelude L.L.C.'s QFs size are not subject to the standard avoided cost “lowest available” doctrine, or arguably the standard “just and reasonable” rates, as Section 205 for under 20MW QFs of Prelude, L.L.C., are exempt, since otherwise the Basin last recent lower (approx. half) quoted avoided costs rates would be and are “unduly discriminatory” to Prelude LLC and “preferential” to Respondents, unless “green value” renewable wind energy source avoided costs are used instead of Basin’s “brown value” nonrenewable (fossil fuels) quoted avoided costs. An actual comparable avoided cost PURPA rate pursuant to the holding in “Oak Tree Energy LLC” to encourage alternative renewable energy production. See: February 21, 2013 Final Decision and Order; SD PUC Docket#EL11-006 - In the Matter of the Complaint by Oak Tree Energy LLC against NorthWestern Energy for refusing to enter into a Purchase Power Agreement.

## **VI. RELIEF REQUESTED**

**WHEREFORE**, based on the foregoing Prelude, L.L.C., requests that the South Dakota Public Utilities Commission grant the following relief:

A. Hold a hearing, as to the LEO required PPAs, the avoided cost criteria set forth in this Complaint and, according to the Commission's PURPA Order, determine the avoided costs over the 20 year life of the each of the Prelude, L.L.C. Wind Farm Projects that each of the Respondents respectively must pay to Prelude, L.L.C., for electricity generated from each of the



Prelude, L.L.C. wind farm (QFs) Projects.

B. Require each of the Respondents to provide to Prelude, L.L.C., their PURPA rates that they pay Basin and other suppliers, and their comparable data and actual avoided costs for Wind Farms and setting and determining rates under the LEO to enter into a PPA, and establish the actual avoided costs and PURPA rates thereto.

C. Establish a separate “multi-tiered resource approach for determining avoided costs” encompassing what would include a Feed In Tariff (“FIT”) for Wind Energy, and to otherwise establish all applicable PURPA rates and tariffs applicable for new capacity Wind Farm electric production generation and delivery or to other set tariff rates under “Renewable Energy Standard Offer (RESO) contracts” for Wind Energy renewable PPAs like those involving Prelude, L.L.C.

D. Award attorney fees and costs to Prelude, L.L.C., for Respondents’ failures to fulfill each of the independent or combined duties under PURPA and the SD PUC Commission's PURPA orders, regulations, decisions and case law, and damages for lost Production Tax Credits, lost Investment Tax Credits, lost depreciation, and related damages as alleged herein.

E. Grant Prelude, L.L.C., such other relief and enforcement orders as is necessary for Prelude, L.L.C., to obtain the LEO Power Purchase Agreements with each of the Respondents respectively for electricity produced or to be produced from the Prelude, L.L.C., Wind Farm Projects on terms acceptable to Prelude, L.L.C. and each of the Respondents, but in all events consistent with the requirements of PURPA and the SD PUC Commission's PURPA Order.

Dated this 2nd day of May, 2014.

**PRELUDE, L.L.C.**

Local Counsel

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