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**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**



OVERNIGHT MAIL TO BE DELIVERED FRIDAY, NOVEMBER 29, 2013

November 27, 2013

Ms. Patricia VanGerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Re: In the Matter of the Consideration of Standards to Govern Avoided Cost Determinations
RM13-002

Dear Ms. VanGerpen:

Thank you for the opportunity to comment on the South Dakota Public Utilities Commission's Rule-Making Docket, RM13-002, In the Matter of the Consideration of Standards to Govern Avoided Cost Determinations.¹ Basin Electric Power Cooperative (Basin Electric) supports the Commission and Commission Staff efforts to clarify avoided cost determinations for qualifying facilities (QF) under the Public Utility Regulatory Policies Act of 1978 (PURPA).

Basin Electric respectfully requests that the Commission recognize that, while certain nonregulated entities such as Basin Electric are subject to PURPA and have an obligation to purchase energy and capacity from QFs at an avoided cost rate, these nonregulated entities have the authority to independently set their own avoided cost rates, and such rates would not be subject to rules promulgated in this Rule-Making Docket.

Under PURPA, nonregulated electric utilities such as Basin Electric have the authority to set their own avoided cost rate. Specifically, section 210(f) of PURPA explains that State regulatory authorities and nonregulated electric utilities are required to implement the Federal Energy Regulatory Commission's (FERC's) PURPA regulations, and Section 304 of the FERC's PURPA regulations sets forth guidance on how a State regulatory authority or nonregulated electric utility shall determine avoided costs. 18 C.F.R. § 292.304; *City of Ketchikan, Alaska*, 94 FERC 61,293, at p.9 (2001). The State's role with respect to a nonregulated electric utility's PURPA implementation plan, such as the determination of its avoided cost rate, is limited to

¹ On October 16, 2013, the Commission issued an Order to Proceed and Request for Comments from Interested Persons (Order), directing that a rulemaking proceeding be conducted for the purpose of receiving comments from utilities and other interested persons as to whether rules should be promulgated at this time governing Public Utility Regulatory Policies Act of 1978 qualifying facility avoided cost determinations in South Dakota, and, if so, what subject matter areas should be addressed. On October 22, 2013, the Commission issued an Order Establishing Comment Schedule, directing utilities, Staff, and other interested persons wishing to submit comments to do so by December 3, 2013.

reviewing, in the appropriate State judicial forum, any challenges to that implementation plan. *Policy Statement Regarding the Commission's Enforcement Role Under Section 210 of the Public Utility Regulatory Policies Act of 1978*, 23 FERC ¶ 61,304 at 61,646 (1983).

FERC precedent also makes it clear that the avoided cost of a full requirements customer is the avoided cost of its full requirements supplier because it is the supplier that avoids generation costs when the full requirements customer uses QF output. FERC first made this determination in Order No. 69, which implemented section 210 of PURPA,² and has consistently followed this determination in its case law.³ Since Basin Electric member cooperatives are full requirements customers of Basin Electric, their avoided cost is the avoided cost of Basin Electric.

Basin Electric would ask that the Commission consider these comments in the development of any rules governing avoided cost determinations in this Rule-Making Docket. Thank you for this opportunity to comment.

Sincerely,



Deborah Fohr Levchak
Basin Electric Power Cooperative

dfi/ds

cc: Bob Sahr, East River Electric Power Cooperative, Inc.
Vic Simmons, Rushmore Electric Power Cooperative, Inc.
Jerry Reisenauer, Grand Electric Cooperative, Inc.
Gary Clayton, Rosebud Electric Cooperative, Inc.

² *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, FERC Stats. & Regs. ¶ 30,128 at 30,871, *order on reh'g sub nom. Order No. 69-A*, FERC Stats. & Regs. ¶30,160 (1980), *aff'd in par and vacated in part, American Electric Power Service Corp. v. FERC*, 675 F.2d 1226 (D.C. Cir. 1982), *rev'd in part sub nom. American Paper Institute, Inc. v. American Electric Power Service Corp.*, 461 U.S. 402 (1983).

³ See, e.g., *Western Farmers Electric Cooperative*, 115 FERC ¶ 61,323, at P 27 (2006); *Wahl v. Allamakee-Clayton Elec. Coop.*, 115 FERC ¶ 61,318, at P 10 (2006); *City of Longmont*, 39 FERC ¶ 61,301 at p. 61,974 (1987)