BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE	**)**	
CONSIDERATION OF STANDARDS	**)**	**Docket No. RM13-002**
TO GOVERN AVOIDED COST	**)**	
DETERMINATIONS	**)**	

COMMENTS OF MIDAMERICAN ENERGY COMPANY

COMES NOW, MidAmerican Energy Company ("MidAmerican"), and for its comments in the above-captioned rulemaking proceeding, initiated by order of the South Dakota Public Utilities Commission ("Commission") submits as follows:

1. MidAmerican is a rate-regulated public utility providing retail electric service to 4,596 customers in southeastern South Dakota and is thus subject to the Commission's authority. As an electric utility, MidAmerican is also subject to the requirements of the Public Utility Regulatory Policies Act ("PURPA"), 16 U.S.C. Chapter 12, 824a-3, and the PURPA implementing regulations adopted by the Federal Energy Regulatory Commission at 18 C.F.R. Part 292. MidAmerican will thus be subject to any requirements adopted by the Commission as a result of this proceeding.

2. On January 29, 2014, the Commission issued an order requesting comments from interested parties on what should be included in a rule providing for establishment of a legally enforceable obligation ("LEO") to purchase from qualifying facilities ("QF"). Commission Staff is directed to recommend a set of rules on establishment of an LEO for consideration of interested parties and the Commission after review of comments filed in this docket.

3. It is clear that states have the discretion under PURPA, as affirmed in *Power Res. Group, Inc. v. Pub. Util. Comm'n of Tex.*, 422 F.3d 231, 237-39 (5th Cir. 2005), to determine when and how an LEO will be created. The regulations implementing PURPA at 18 CFR

292.304(d)2(ii) simply require utilities to honor requests by QFs for avoided cost rate contract "at the time the [legally enforceable] obligation is incurred", and leave it up to the states to determine when that time is.

4. MidAmerican supports a rule that would require a utility to honor a request for an LEO at a point in time when it was clear that the QF was going to become a generation resource. Specifically, the Commission should adopt the provisions of Texas Rule PUC Subst. Rule 25.242(f)(1)(B), which was upheld in the *Power Resources Group, Inc.* case and provides that a utility may be compelled to purchase power from a QF pursuant to a LEO only if the QF can provide that power within 90 days. Since the premise of PURPA is that utilities must purchase from QFs at avoided cost rates so that the capacity and energy furnished can be used as a supply resource by the utility, pricing of the resource should be accomplished close at the time that the resource will be available to the utility. Pricing the resource at a more remote point in time may cause the regulatory authority to develop a price that will not be used if the resource is not developed. Such a price may also result in improper price signals between the time it is established and the time it is paid out. Prices not reflective of market conditions when paid would also be discriminatory to customers who are not QFs.

Utilities are required to maintain tariffs on file with the Commission setting forth their buy back rates from small QFs under 100 kW and are also required to biennially update information on avoided costs pursuant to PURPA. 18 C.F.R. 292.302. This information provides QFs with baseline information that will reveal expected avoided costs in the future. In addition, for utilities like MidAmerican that are integrated with regional transmission organizations, locational marginal pricing information is transparently available.

5. MidAmerican believes other requirements of PURPA can be established on a case by case basis. While the LEO obligation is common to all electric utilities, whether they are in a regional transmission organization such as the Midcontinent Independent System Operator, Inc. like MidAmerican or not, the other PURPA obligations are not as likely to be able to be established on a uniform basis. Avoided cost rates will differ based on RTO participation and other factors unique to South Dakota's electric utilities.

WHEREFORE, MidAmerican Energy Company respectfully requests the South Dakota Public Utilities Commission and its Staff to give these comments due consideration as rules are proposed by Staff for further Commission action.

Dated this 28th day of February, 2014.

Respectfully Submitted,

MIDAMERICAN ENERGY COMPANY

BY: *_/s/ Suzan M. Stewart_*

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