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Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501-5070

Re: In the Matter of the Consideration of Standards to Govern Avoided Cost Determinations
Docket No. RM13-002

Dear Ms. Van Gerpen:

MidAmerican Energy Company ("MidAmerican") provides the following comments to the South Dakota Public Utilities Commission ("SDPUC") relating to draft rules under consideration in the above-referenced docket.[1] The draft rules identify the process and procedure for establishing a legally enforceable obligation ("LEO") for qualifying facilities in South Dakota.[2] MidAmerican commends the SDPUC Staff for their work in developing a unique rule that accounts for the need to balance the various interests involved in qualifying facility contracts, including the qualifying facility, the utility and the electric customers of South Dakota. The rules could strike this balance with greater clarity if the SDPUC incorporates the clarifications set forth below.

The definition of "legally enforceable obligation" could be modified to provide more clarity. The proposed definition establishes that the qualifying facility has the option of selecting from two potential avoided cost calculation periods. However, the rule does not make clear when this election must be made. The corresponding federal rule remedies this concern by requiring the qualifying facility to exercise this selection "prior to the beginning of the specified term."[3] The Commission should incorporate this clarifying language into the proposed definition, which could be accomplished as follows:

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[1] *In the Matter of the Consideration of Standards to Govern Avoided Cost Determinations*, Docket No. RM13-002, Order Establishing Comment Deadlines (Nov. 30, 2015).
[2] Draft rules filed by SDPUC Staff (Nov. 5, 2015).
[3] 18 C.F.R. § 292.304(d)(2).

(1) "Legally enforceable obligation," an obligation that the qualifying facility will sell and the affected public utility will purchase energy or capacity or both for a specified term in which the rates for purchase shall, at the option of the qualifying facility, exercised prior to the beginning of the specified term, be based on either the avoided costs calculated at the time of delivery or the avoided costs calculated at the time the obligation is incurred."

Additionally, the rules should clarify that the purchasing utility will be able to recover from the qualifying facility the costs incurred as a result of the addition of the qualifying facility to the system. These interconnection costs include the physical interconnection costs for facilities needed to interconnect the generation, but also administrative interconnection costs, such as costs for congestion management, transmission service expense and ancillary services; costs that are recoverable under the federal rules.[4] While the precise amount of these costs will be subject to determination by the SDPUC, the final rule relating to the LEO should identify that these costs will be recoverable.

Finally, as MidAmerican set forth in its earlier comments, having at least a 90-day notice of a qualifying facility is essential for good utility planning and for identifying the appropriate level of avoided cost to apply.[5] MidAmerican encouraged the SDPUC to adopt provisions from the Public Utilities Commission of Texas rules, which set forth notification requirements.[6] The draft rule proposed by the SDPUC staff adopts a 90-day prior notice requirement, however the draft rules would apply this requirement only to facilities that are 500 kW or larger.[7]

A prior notice requirement is designed, in part, to assist in utility planning, giving the utility the ability to identify changes to the system that are the result of a qualifying facility.[8] Applying this notice requirement to larger qualifying facilities (e.g., those 500 kW or larger) is consistent with the federal requirements and will provide advanced notice of larger facilities that have impacts on the system. However, applying this requirement only to larger qualifying facilities does not provide the full picture of potential system impacts. This is of particular concern in South Dakota, where a smaller qualifying facility could have significant impacts on utility planning, depending on the location of the facility. MidAmerican suggests that the SDPUC adopt this notification requirement for facilities 100 kW or larger.[9] As a requirement to provide notice,

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[4] *See,* 18 C.F.R. § 292.101(b)(7) (defining "interconnection costs" to include both physical capital and administrative costs); see also 18 C.F. R. § 292.306 (identifying that interconnection costs are the obligation of the qualifying facility).
[5] *In the Matter of the Consideration of Standards to Govern Avoided Cost Determinations*, Docket No. RM13-002, Comments of MidAmerican Energy Company at 2 (Feb. 28, 2014).
[6] Id. (citing Texas PUC Subst. Rule 25.242(f)(1)(B)).
[7] Draft Rule § 20:10:40:03 (1).
[8] *See e.g.*, 18 C.F.R. § 292.207(c)(2).
[9] The 100 kW threshold is consistent with the rule adopted by the Public Utilities Commission of Texas. See, Texas PUC Subst. Rule 25.242(f)(1)(B).

applying this lower size threshold should not impose a significant burden, but it could have significant benefits by providing information about potential system impacts. While this is a divergence from the federal requirements, state commissions have the ability to adopt rules relating to the LEO that are different from the federal guidelines.[10] The Commission should use its discretion to modify the draft rule and use the lower 100 kW threshold. To accomplish this change, § 20:10:40:03(1) of the draft rule could be modified as follows:

> (1) The qualifying facility, if it has net power production capacity of ~~500~~ 100 kW or more, has notified the public utility of its status as a qualifying facility at least 90 days prior, ~~pursuant to 18 C.F.R. § 292.207(c)(2)~~;

MidAmerican appreciates the opportunity to offer its recommendations regarding the draft rule and encourages the SDPUC to make the modifications identified above to provide additional clarity in the final rule.

Questions about this submission can be directed to me at 515-281-2559 or by email at bjrybarik@midamerican.com.

Sincerely,

/s/ Brian J. Rybarik
Brian J. Rybarik
Managing Senior Attorney

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[10] *Power Res. Group, Inc. v. Pub. Util. Comm'n of Tex.*, 422 F.3d 231, 237-39 (5th Cir. 2005); *see also Metropolitan Edison Co.,* 72 FERC ¶ 61,015, 61050 (1995).