NorthWestern Energy
Delivering a Bright Future

February 28, 2014

Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

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

Dear Ms. Van Gerpen:

NorthWestern Corporation, d/b/a NorthWestern Energy (NorthWestern), appreciates this opportunity to submit comments on rules regarding establishment of a legally enforceable obligation (LEO) by a qualifying facility (QF) for consideration by the South Dakota Public Utilities Commission (PUC). NorthWestern remains supportive of the comments it submitted to the PUC on December 3, 2013, and January 10, 2014, in response to the PUC's order dated October 16, 2013.

To summarize NorthWestern's previous comments as they relate to the LEO issue, NorthWestern believes the administrative rule promulgated by the Texas Public Utility Commission (TXPUC) regarding establishment of an LEO provides the most equitable criteria to be used in defining how and when an LEO is created by a QF (See Tex. Admin. Code, Rule § 25.242(f)(1)(B)). NorthWestern continues to recommend that the PUC adopt rules similar to the TXPUC administrative rule. A rule in South Dakota, similar to the administrative rule in Texas, is appropriate because there would be

- an unconditional commitment to deliver energy and capacity at a price no greater than the utility's avoided cost;
- a date certain for commencement of delivery of energy and capacity and for a term set by the Commission;
- sufficient guarantees of performance that the QF has been built;
- guarantees that the utility and its customers are held harmless from any QF-related liability if
  the project fails to be constructed or does not operate in the manner expected;
- written evidence that the developer has obtained all necessary permits, site acquisition, FERC certification as a QF, and financing prior to the creation of an LEO; and
- a signed interconnection agreement with all milestones agreed to and performance of the milestones by the QF.

These criteria ensure that a QF that creates an LEO will actually produce and deliver energy to the utility and that the utility can rely on the QF for performance.

In response to the PUC Order dated January 29, 2014, and consistent with its comments to date on this matter, NorthWestern offers the following proposed rules for the PUC's consideration.

<u>New Rule I – Definitions</u>

(1) The Commission hereby adopts and incorporates by reference 18 CFR, Part 292, which sets forth general requirements and criteria for cogeneration and small power production facilities which are eligible for consideration under sections 201 and 210 of the Federal Public Utility Regulatory Policies Act of 1978.

(2) For purposes of these rules, the following definitions apply:

- **(a) Cogeneration Facility means equipment used to produce electric energy and forms of useful thermal energy such as heat or steam, used for industrial, commercial, heating or cooling purposes, through the sequential use of energy.**

- **(b) Commission means South Dakota Public Utilities Commission.**

- **(c) Delivery means delivery of energy from a Qualifying Facility directly to an Electric Utility's system.**

- **(d) Electric Utility means any public utility, as defined in S.D. Codified Laws § 49-34A-1, which provides electric service subject to the jurisdiction of the Commission.**

- **(e) Qualifying Facility means:**
  - **(i) A Cogeneration Facility which meets the operating, efficiency, and ownership standards established by FERC regulations, 18 CFR, Part 292, as incorporated in [this New Rule I, subpart 1]; or**
  - **(ii) A Small Power Production Facility which meets the production capacity, energy source, and ownership criteria established by FERC regulations, 18 CFR, Part 292, as incorporated in [this New Rule I, subpart 1].**

- **(f) Small Power Production Facility means a facility with a power production capacity which, together with any other facilities located at the same site, does not exceed the size limitation provided for in 18 CFR 292.204(a), and which depends upon biomass, waste, or renewable resources for its primary source of energy. At least 50 percent of the equity interest in a Small Power Production Facility must be owned by a person not primarily engaged in generation or sale of electric energy. The provisions of FERC regulations, 18 CFR, Part 292, as incorporated in [this New Rule 1, subpart 1], respecting site location and primary energy sources are incorporated by reference in this definition.**

New Rule II - Establishment of a Legally Enforceable Obligation

(1) If an Electric Utility has a mandatory obligation to purchase energy or energy and capacity from a Qualifying Facility, a Qualifying Facility with a design capacity of more than 100 kilowatts incurs a legally enforceable obligation if it notifies an Electric Utility that either energy or energy and capacity from the Qualifying Facility is or will be available for Delivery to and purchase by the Electric Utility in the next ninety (90) days at the Electric Utility's avoided costs, and the Qualifying Facility makes an unconditional commitment to sell the available energy or energy and capacity to the Electric Utility. Nothing in this rule shall be construed in a manner that would preclude a Qualifying Facility from notifying and contracting for energy or energy and capacity with an Electric Utility prior to ninety (90) days before Delivery of such energy or energy and capacity.

As for the process going forward, NorthWestern believes that a Roundtable or Workshop that involves all stakeholders would be beneficial in this docket. NorthWestern looks forward to working with the Commissioners, Staff and other interested parties as the PUC continues its deliberations in this rulemaking proceeding. We are available for further questions and discussion if necessary.

Sincerely,

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RM13-002 Service List