



January 10, 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 responsive comments in this matter for consideration by the South Dakota Public Utilities Commission (PUC). NorthWestern remains supportive of our comments submitted on December 3, 2013 in response to the PUC's order dated October 16, 2013.

To summarize our previous comments as they relate to the issues raised by Staff in its letter dated September 25, 2013, NorthWestern believes that the PUC should proceed with rule making related to the following three subject areas:

- (1) Requirements for the creation of a Legally Enforceable Obligation (LEO);
- (5) Standards for determination of when capacity credits shall be allowed; and
- (6) The appropriate method(s) for computing the magnitude and duration of such credits.

NorthWestern remains of the opinion that the remaining three issues raised by Staff are utility specific and, accordingly, should be determined on a case-by-case basis. Both FERC and the courts have affirmed a state regulatory commission's right to implement PURPA by adopting administrative rules, by resolving disputes on a case-by-case basis or by taking other appropriate actions. NorthWestern recommends that the Commission adopt a flexible approach to its implementation of PURPA as it relates to the other three issues identified by Staff.

In response to the numerous comments submitted regarding when or how an LEO is created, NorthWestern reiterates that, in its opinion, the administrative rules developed by the Texas Public Utility Commission (TXPUC) provide 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 recommends that the SDPUC adopt rules similar to the TXPUC administrative rules governing when an LEO is created by a QF. The Texas administrative rule provides that an LEO is created when a QF notifies a public utility that the energy to be delivered is or will be available within the next 90 days. Additionally, the TXPUC administrative rules provide a fair and reasoned standard that does not infringe upon a QF's right to create an LEO. This application of PURPA by the TXPUC also minimizes risk to a utility and its customers as the QF must demonstrate it has met significant project planning milestones that provide a reasonable assurance that the QF will meet its obligation to provide the promised energy to the utility by a date certain.



NorthWestern once again submits that the following criteria support the proposition that a 90-day rule, similar to the administrative rules in Texas, is an appropriate standard for the creation of an LEO in South Dakota:

- 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;
- That a 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
- Necessary interconnection agreements signed by all parties with all milestones agreed to and performance of the milestones by the QF for those occurring prior to the date of the Commission's decision.

These criteria will 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.

NorthWestern remains of the belief that administrative rules to govern the determination of capacity credits for avoided cost calculations related to a QF are needed. A utility should be required to pay for QF capacity only when the availability of that capacity allows the utility to avoid capacity-related costs by either deferring costs to construct new plants or defer costs to purchase firm power resources. Another issue that should be addressed is what standard should be used in allocating capacity for a QF wind project.

The determination of the percentage of wind nameplate capacity that is counted as capacity has fallen under the purview of the regional transmission organizations (RTO). NorthWestern suggests that the PUC consider that when a utility is a member of a RTO, the RTO's valuation of wind capacity is the standard to use. In the absence of an RTO, utilizing the wind capacity credit as determined by a regional reliability organization would be appropriate.

Other important considerations for this discussion and in response comments received by the PUC include:

- PURPA does not require a utility to pay for capacity that it does not need.
- The timing of when capacity credits are to be incorporated into the avoided cost determination should reflect the utility's true need for new capacity.
- Any attempt to include "indirect costs avoided" or using an "expansion planning approach" in calculating an avoided cost rate should be ignored. Using this type of approach will improperly increase costs to the utility and its customers while shifting financial risk from a QF to the utility's customers. PURPA is clear that a customer rates are to be held indifferent or harmless when a utility is required to purchase energy and/or capacity from a QF. Customers are not responsible for providing financial incentives to a QF through their avoided cost rates.



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- NorthWestern cautions the PUC to avoid the temptation of addressing issues raised by other commentators related to energy efficiency, net metering, and small wind certification requirements. These topics are not germane to the issues identified in the PUC's Order of October 16, 2013 or to the application of PURPA to QFs or in determining avoided costs.
- The PUC should also avoid establishing any standard related to the term of a contract as that should remain a negotiated term between a utility and QF. If negotiations fail, then the parties can ask for the PUC to make a determination of the appropriate contract term based on the individual facts of the case.

I also request that Al Brogan, Sarah Norcott and Bleau LaFave from NorthWestern Energy be formally added to the Service List related to this docket. Their contact information is listed below:

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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.

Sincerely,

Pamela A. Bonrud

Director – Government & Regulatory Affairs

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CC: Al Brogan, Counsel Corporate, NorthWestern Energy
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RM13-002 Service List