To: South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

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

Commissioners:

Star Distributed Energy LLC supports and encourages the adoption of rules governing avoided cost determinations. Star is a renewable energy developer, with renewable energy generation projects across the Midwest, and including South Dakota.

Similar to the experience Oak Tree Energy LLC, Star has experienced a lack of cooperation from South Dakota utilities in negotiating power purchase agreements for the output of proposed renewable projects. Star submits comments on the following issues raised by staff:

1) Requirements for the creation of a Legally Enforceable Obligation (LEO);
2) Acceptable methodology or methodologies for determination of avoided cost;
3) Appropriateness of particular methods in specified circumstances;
4) Appropriate contract term;
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.

The establishment of rules related to avoided cost determinations would expedite the development of independent power projects. The Oak Tree Energy in EL 11-006 required two years to complete. A contested regulatory proceeding tends to discourage development because of the cost, both time and money. While utilities and developers have legitimate interests in avoided cost proceedings, the economic development within the State is affected. The experience of Oak Tree and Star suggests that rules are necessary for orderly and timely development of renewable energy projects constructed by independent producers.

In a November 19, 2009 order the Federal Energy Regulatory Commission (FERC) reaffirmed that the Public Utility Regulatory Policies Act of 1978 (PURPA) and related

FERC rules (particularly Section 292.304(d)) entitled to a legally enforceable obligation and an avoided cost rate calculated when that obligation is incurred. Rules are a preferable alternative to requiring each developer prosecuting an enforcement proceeding similar to Oak Tree.

The Oak Tree proceeding raised basic issues associated with qualified facilities and avoided cost, in a proceeding of first impression. As a policy matter the Commission should explore the best method for calculating avoided cost, as well as resource specific avoided costs.

The economic rationale for PURPA was to address market power disparity between independent power producers and utilities. Both overpayment and underpayment for power production by independent power producers can harm the customers of utilities, particularly customers of vertically-integrated monopoly utilities. It is fairly obvious that overpayment will occur if a utility pays more for power than the utility saves over the long run, and that protection of customer interests requires regulation to ensure that utilities do not overpay. It is perhaps less obvious that customers are also at risk if a utility under pays for power from independent power producers. While the net savings represent a “bargain” for the utility’s customers, setting the purchased power rate too low also discourages development of alternative resources. See REVIVING PURPA’S PURPOSE: The Limits of Existing State Avoided Cost Ratemaking Methodologies In Supporting Alternative Energy Development and A Proposed Path for Reform, by Carolyn Elefant.

The high cost of renewable energy construction requires long term financing. The commission should determine contract terms sufficiently long to recover the cost of construction of renewable energy projects of less than 20 megawatts. The contract terms, i.e. price and escalator should be based on the utility’s current LEO.

Historically state commissions have not addressed ownership of renewable energy credits associated with renewable energy OFs. The Commission should as a matter of public policy allow the QF to retain the RECs. The purpose of REC was to encourage and offset the cost of renewable energy development. Allowing the QF to retain the REC would provide an additional source of funding to offset the expense of renewable energy construction.

The writer is Energy & Transmission Counsel for Star Distributed Energy LLC (Star); he previously served as a public utility commissioner and electric utility executive. Star encourages the Commission to consider rules which would support the production of independent power in an efficient and transparent for developers and utilities.

Emmit George, Counsel
Star Distributed Energy LLC
922 S 500 W-90
Markle, IN 46770
(312) 636-2072