

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE CONSIDERATION )  
OF THE ENERGY INDEPENDENCE AND )  
SECURITY ACT OF 2007 )**

**ORDER ADOPTING  
MODIFIED NATURAL GAS  
PURPA STANDARDS  
NG09-006**

On September 25, 2009, the Public Utilities Commission (Commission) opened a docket regarding the consideration of the Energy Independence and Security Act of 2007 (EISA). The EISA amended Section 303(b) of the Public Utility Regulatory Policies Act of 1978 (PURPA) (15 U.S.C. 3203(b)). Specifically, the amendment adds energy efficiency and rate design natural gas standards for state consideration. The Commission must consider these standards and make a specific determination on whether their implementation will help meet the PURPA goals of encouraging the conservation of energy supplied by gas utilities, achieving optimal efficiencies of gas utility facilities and resources, and setting equitable rates for gas consumers.

At its regularly scheduled meeting of October 6, 2009, the Commission considered this matter. Staff recommended that the Commission collect written comments by the end of October, that oral comments be heard in November, and that the Commission make its decision by December 19, 2008. The Commission voted unanimously to adopt Staff's recommendations.

On October 13, 2009, the Commission received a Petition to Intervene from NorthWestern Corporation d/b/a NorthWestern Energy (NorthWestern). On October 16, 2009, the Commission received a Petition to Intervene from MidAmerican Energy Company (MidAmerican). On October 30, 2009, the Commission received Comments of MidAmerican, Comments of NorthWestern, Petition to Intervene from Montana-Dakota Utilities Co. (MDU) and Comments of MDU. At its regularly scheduled meeting of November 10, 2009, the Commission granted the Petitions to Intervene.

A hearing was held as scheduled on November 30, 2009. At its December 8, 2009, meeting the Commission considered the standards. The Commission unanimously voted to adopt the Energy Efficiency standard with modifications and adopt the Rate Design Modifications to Promote Energy Efficiency Investments standard with modifications.

Based upon the record in this proceeding, the Commission makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. The Energy Independence and Security Act of 2007 (EISA) was signed into law on December 19, 2007. The EISA amends section 303(b) of the Public Utility Regulatory Policies Act of 1978 (PURPA) (15 U.S.C. 3203(b)). The EISA includes two new federal natural gas standards to PURPA for state commissions and utilities to consider. The standards are: (1) Energy Efficiency; and (2) Rate Design Modification to Promote Energy Efficiency Investments.

2. The Commission must consider these standards and make a specific determination on whether their implementation will help meet the PURPA goals of encouraging the conservation of energy supplied by gas utilities, achieving optimal efficiencies of gas utility facilities and resources, and setting equitable rates for gas consumers.

3. With respect to consideration of these PURPA standards, the Commission has jurisdiction

over its rate-regulated natural gas utilities. Intervention was granted to all three rate-regulated natural gas utilities which are MDU, MidAmerican, and NorthWestern. Thus, references to "natural gas utilities" apply to these three utilities.

4. The Commission received written comments and testimony from the parties and the hearing was held as scheduled on November 30, 2009.

5. The standard regarding energy efficiency is as follows:

Each natural gas utility shall--

- (A) integrate energy efficiency resources into the plans and planning processes of the natural gas utility; and
- (B) adopt policies that establish energy efficiency as a priority resource in the plans and planning processes of the natural gas utility.

6. Staff did not object to adopting the standard if modified. Tr. at 14-17.

7. MDU supported the standard in general terms, but it did not see the need for the Commission to adopt a formal planning process. Ex. 3 at 2. MDU stated that it has already integrated energy efficiency options into its utility planning processes. *Id.*

8. Similarly, NorthWestern asserted it was already voluntarily integrating energy efficiency into its resource planning efforts and did not see a need for formal requirements or mandates. Ex. 1 at 1.

9. MidAmerican also cautioned against the Commission requiring a formal planning process since MidAmerican uses energy efficiency as a priority resource without using a formal planning process. Ex. 2 at 2.

10. The Commission finds that it will adopt the energy efficiency standard with modifications. The modifications are the addition of the word "cost-effective" to part A and part B. The Commission finds that the adoption of this modified standard is consistent with the Commission's current practices of encouraging energy efficiency as an important resource in the plans of natural gas utilities. The Commission notes that adoption of this modified standard does not require that the natural gas utilities adopt a formal planning process or file a formal plan.

11. Consistent with these findings, the Commission adopts the following modified standard:

Each natural gas utility shall--

- (A) integrate cost-effective energy efficiency resources into the plans and planning processes of the natural gas utility; and
- (B) adopt policies that establish cost-effective energy efficiency as a priority resource in the plans and planning processes of the natural gas utility.

12. The standard regarding rate design modifications to promote energy efficiency investments is as follows:

- (A) IN GENERAL - The rates allowed to be charged by a natural gas utility shall align utility incentives with the deployment of cost-effective energy efficiency.
- (B) POLICY OPTIONS- In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider-
  - (i) separating fixed-cost revenue recovery from the volume of transportation or sales service provided to the customer;
  - (ii) providing to utilities incentives for the successful management of energy

- efficiency programs, such as allowing utilities to retain a portion of the cost-reducing benefits accruing from the programs;
- (iii) promoting the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives; and
  - (iv) adopting rate designs that encourage energy efficiency for each customer class.

13. Staff stated that the Commission can promote energy efficiency investments without modifying base rates. Ex. 4 at 9. With respect to the part B policy options, Staff noted that the Commission should not limit itself to certain methods since it likely will need to continually evaluate and modify energy efficiency plans to accomplish its regulatory goals. *Id.* Staff did not object to adopting a modified part A as a general policy. Tr. at 16.

14. MDU recommended that the policy options be considered by the Commission on a case-by-case basis. Ex. 3 at 2. MDU pointed out that the “Commission is currently addressing many of those options in individual cases where it is appropriate to do so, based on the operating characteristics and demographics of the individual utility and the customers served.” *Id.*

15. MidAmerican supported the “adoption of rate design modification policies to promote energy efficiency since energy efficiency will play a very important role in meeting future resource needs.” Ex. 2 at 4. MidAmerican noted that its current South Dakota energy efficiency plan already includes timely cost recovery of energy efficiency costs. *Id.* It encouraged the Commission to “consider other policy changes to move energy efficiency to an even higher level.” *Id.*

16. NorthWestern listed several incentives that could be used by the Commission to encourage utilities to promote energy efficiency investments. Ex. 1 at 2.

17. The Commission finds that it will adopt a modified version of this standard. For part A, the Commission substitutes “may” for the word “shall and adds in “cost-effective” to A. the Commission also adds in the words “and promote cost-effective energy efficiency investments” at the end of the sentence. The Commission declines to adopt part B of the standard which lists policy options related to energy efficiency. The Commission finds that listing policy options for the Commission to consider is not necessary and may hinder its ability to consider other policy options during its evaluation of cost-effective energy efficiency. The Commission also clarifies that the reference to rates in the standard includes the use of incentive mechanisms for energy efficiency programs. The Commission finds that, with these modifications, the standard is consistent with the Commission’s current practices and past actions which include the approval of energy efficiency plans implemented by the utilities. The Commission will continue to review the effectiveness of the utilities’ energy efficiency plans, including an evaluation of the cost-effectiveness of those plans.

18. Consistent with these findings, the Commission adopts the following modified standard:

The rates allowed to be charged by a natural gas utility may align utility incentives with the deployment of cost-effective energy efficiency and promote cost-effective energy efficiency investments.

### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to SDCL chapter 49-34A, specifically 49-34A-93, and the EISA.

2. Pursuant to the EISA, the Commission was required to consider two new federal natural gas standards. The standards are: (1) Energy Efficiency; and (2) Rate Design Modification to Promote

Energy Efficiency Investments.

3. The Commission must consider these standards and make a specific determination on whether their implementation will help meet the PURPA goals of encouraging the conservation of energy supplied by gas utilities, achieving optimal efficiencies of gas utility facilities and resources, and setting equitable rates for gas consumers.

4. The Commission adopts of the following modified standard regarding energy efficiency:

Each natural gas utility shall--

- (A) integrate cost-effective energy efficiency resources into the plans and planning processes of the natural gas utility; and
- (B) adopt policies that establish cost-effective energy efficiency as a priority resource in the plans and planning processes of the natural gas utility.

5. The Commission adopts of the following modified standard regarding rate design to promote energy efficiency:

The rates allowed to be charged by a natural gas utility may align utility incentives with the deployment of cost-effective energy efficiency and promote cost-effective energy efficiency investments.

It is therefore

ORDERED, the Commission adopts modified versions of the Energy Efficiency and Rate Design Modifications to Promote Energy Efficiency Investments standards as set forth above;

Dated at Pierre, South Dakota, this 18th day of December, 2009.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.
By: <u><i>Amia Gashli</i></u>
Date: <u>12-18-09</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

*Dustin M. Johnson*  
DUSTIN M. JOHNSON, Chairman *ag*

*Steve Kolbeck*  
STEVE KOLBECK, Commissioner

*Gary Hanson*  
GARY HANSON, Commissioner