



Gary Hanson, Chair
Steve Kolbeck, Vice Chair
Dustin Johnson, Commissioner

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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June 11, 2008

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

VIA ELECTRONIC FILING

Re: Staff Memo – EL06-018

Ms. Van Gerpen:

Attached for filing please find the staff memo and recommendation in the above referenced docket.

Thank you,

Kara Semmler

Memo

To: Chairman Hanson, Vice-Chairman Kolbeck, and Commissioner Johnson

From: Kara Semmler and Brian Rounds

Date: June 11, 2008

Re: PURPA Standards 12 and 13

On August 8, 2005 the Energy Policy Act of 2005 (EPAct 2005) was signed into law. The EPAct 2005 adds five new federal standards to the Public Utility Regulatory Policies Act (PURPA) of 1978. Under the EPAct 2005, the Public Utilities Commission (Commission) has specific timelines within which to consider adoption of the standards.

In November, 2006 the Commission requested written comment from the parties specifically regarding the standards subject to Commission consideration. Additionally, the Commission considered workshops to further study whether implementation of the standards is in the public interest. Such comments were filed by January 9, 2007. Subsequent to the filing of comments a workshop and hearing were held. The Commission has since issued an Order regarding three of the five EPAct 2005 standards. The remaining two standards require Commission Action by August 8, 2008.

To provide additional and more specific comment if needed and in an effort to facilitate public participation, a second comment period regarding the final standards,

Standards 12 and 13, was ordered by the Commission. All additional comment must be submitted by June 13, 2008. Please consider this filing a response to such Order.

I. PURPA Standards 12 and 13

The remaining two standards for Commission consideration include Standard 12, Fuel Diversity and Standard 13, Fossil Fuel Generation Efficiency. Specifically, pursuant to section 1251(a) of EAct, section 111(d)(12), the Commission must consider adoption of a fuel diversity standard. This standard provides as follows:

(12) Fuel Sources. Each electric utility shall develop a plan to minimize dependence on 1 fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.

Additionally, pursuant to section 1251(a) of EAct, section 111(d)(13), the Commission must consider adoption of a fossil fuel generation efficiency standard. This standard provides as follows:

(13) Fossil Fuel Generation Efficiency. Each electric utility shall develop and implement a 10-year plan to increase the efficiency of its fossil fuel generation.

Although the EAct 2005 requires the Commission consider the two standards, it does not offer any structure. Therefore, if either standard are adopted, the Commission must determine what this standard will be and the time horizon by which it must be met.

A. STANDARD 12 – FUEL DIVERSITY

Generally, a diverse generation portfolio can be defined as, “deploying a mix of electric generation technologies with different fuel sources.”¹ Standard 12 seems to imply that reliance on a single fuel source may not be the optimal way to supply electricity. While Staff agrees this may be the case in some geographic areas, it may not be an accurate statement for others. Further, “Fuel diversity will not likely change the quantity of energy demanded, unless the fuel choices dramatically change consumers’ electric prices.”¹ Fuel diversity standards may, however, have a “direct impact on the efficiency with which utilities operate their generation portfolio. The use of different fuel sources will ultimately impact the price at which energy can be purchased.”¹

Clearly, it is reasonable to assume there is no defined “ideal diversity level.” The Commission will, rather, consider what may be optimal for South Dakota in light of current utility practice. Staff anticipates such consideration indicates the optimal South Dakota portfolio will change over time and a mandated program may not be best for the rate payer. Based on testimony from the May 1, 2007 Commission PURPA workshop, it appears the standard excludes several primary utility considerations. First, the standard does not mention cost. Additionally, there is no mention of price stability, reliability or affordability to the consumer.² Diversity simply for the sake of it misses the point of this standard. A variety of factors are considered when a utility creates its resource portfolio.² Consumers are best served when, in light of all such factors, utilities acquire resources that result in the lowest cost. To ignore all other utility planning factors may result in a higher consumer cost than necessary.²

¹ *Reference Manual and Procedures for Implementation of the ‘PURPA Standards’ in the Energy Policy Act of 2005*. Kenneth Rose and Karl Meeusen, March 2006, p. 47.

Finally, rather than add an additional layer of regulation, it appears the Commission may already have jurisdiction to review and have input into utility diversity plans. SDCL 49-41B-3 requires, “every utility which owns or operates or plans within the next ten years to own or operate energy conversion facilities shall develop and submit a ten-year plan to the Public Utilities Commission.” Of the information required, the utility must submit, “any relevant information as may be requested by the commission.” Certainly the diversity contemplated by Standard 12 is relevant and already accessible by this Commission.

B. STANDARD 13 – FOSSIL FUEL GENERATION

Efficiency in this arena is taken to mean the “energy efficiency of the fossil fuel generation facilities owned or operated by a utility.”³ It is typically measured by the heat rate. The heat rate is the amount of energy needed to “produce one kWh of electricity, measured in Btu/kWh.”³ Increasing efficiency is the ability to generate a kWh of electricity using less fuel than before the improvement, or lower the heat rate.³ This standard speaks directly the stated purpose of PURPA. That is, “to optimize the efficiency of electric utility facilities and resources.”³ In an attempt to reach that end, and also possibly with hope that this standard would lead to the conservation of energy, Standard 13 requires each electric utility to develop and implement a ten year plan. The ten year plan shall increase the efficiency of fossil fuel generation, optimizing the efficiency of electric utility fossil fuel generation facilities.

² *PURPA Standards Commission Workshop Transcript*, May 1, 2007, p. 95

³ *Kenneth Rose and Karl Meeusen*, p. 63.

This efficiency goal must be measured against other PURPA goals. One such goal is to “encourage equitable rates for electric consumers.”⁴ In other words, do the benefits of an energy efficiency plan outweigh the expected cost? Costs such as expenses and investment costs incurred to increase efficiency in an attempt to meet the ten year plan goals are relevant.

II. Submitted Utility Submitted Comments

The Commission did not receive extensive input as a result of its first request in late 2006. Although limited, none of the participating utility comments support Commission adoption of either Standards 12 or 13. Nonetheless, it is easy to pull three main utility arguments from those submissions. First, unknown financial results may be a consequence of implementation.⁵ Second, adoption may be unnecessary as such a policy is already practiced by utilities.⁶ Finally market based incentives to follow both standards already exist.⁷ The Commission did not receive comment from non-utilities.

III. Jurisdictional Consistency

Most of the utilities we work with are multi-jurisdictional. All other regulatory concerns being taken into consideration, a consistent, state to state regulatory environment affords the opportunity for greater efficiency. This may be particularly true when dealing with new, potentially complex, and inherently ambiguous statutory material, like the proposed PURPA standards. Accordingly we feel that a thorough discussion of the positions taken by the states in which our utilities also operate is useful.

⁴ *Kenneth Rose and Karl Meeusen*, p. 63

⁵ See Black Hills Power Comments in docket EL06-018

⁶ See Ottetail Comments in docket EL06-018

⁷ See MidAmerican Comments in docket EL06-018

We have researched the relevant docketed filings in Minnesota, Iowa, North Dakota, Wyoming, Montana and Nebraska. Nebraska has not been involved in the PURPA standards debate since they do not regulate electric or gas rates. Montana has opened a docket and accepted input from affected parties, but they have neither made any decisions nor have they in any way indicated the parameters under which they are considering the matter.⁸

Minnesota has voted to not implement the five standards at this time. They support the goals of EFACTS's Amendments to the PURPA, but believe their current regulatory environment adequately addresses these issues. Therefore, the adoption of further standards is not necessary per the formal Order of the Minnesota Public Utilities Commission.⁹

The Iowa Department of Commerce, Utility Board has, in a fashion, taken essentially the same stance as Minnesota. Iowa adopted PURPA Standard 12 in principle with the further declaration that no new regulation was needed at this time as existing Iowa regulation was sufficient.¹⁰ Iowa has not formally addressed the Diversity standard, but the recorded input from staff and industry seems to be leaning towards a reliance on competitive market forces to resolve this issue in the near term.

North Dakota has formally rejected both Standards 12 and 13 by formal Public Service Commission Order.¹¹ In rejecting Standard 12 they, similar to Minnesota and Iowa, cite the duplication of regulation issue as being determinative of the issue. With respect to Standard 13, they specifically state that 'market forces', i.e., Midwest

⁸ N2006.5.60

⁹ Docket Nos. E-999/CI-93-894 and G-999/CI-93-895

¹⁰ Docket number NOI-07-1

¹¹ Docket No. PU-06-290

Independent System Operator (MISO) Wholesale Market, provide all of the necessary incentives to achieve efficiency and diversity.

Wyoming has also formally rejected both Standards 12 and 13.¹² In their formal order they specifically rely on market forces and existing regulation to best resolve these issues.

In summary it appears there exists no significant support for the adoption of either Standards 12 or 13 in the service areas in which South Dakota utilities operate. Reliance on existing regulations and a desire to observe the interaction of competitive market forces is a prevailing attitude in the Upper Midwest regulatory environment.

IV. Staff Recommendation

Based on the information presented above, Staff does not recommend the Commission mandate either Standards 12 or 13 at this time. To the extent such policies help a utility provide safe, reliable and economic service, they are already observed and in practice. Increased financial and reliability risks would result for both the utility and customer from implementation. Staff does not believe such a risk is warranted at this time. Staff does not disagree with the purpose of these standards; however, we believe the current regulatory climate along each utility's own economic incentives already serve these purposes. Mandated implementation of Standards 12 and 13 is not necessary. The cost of implementing such a standard simply outweighs the benefits. Staff does, however, encourage periodic feedback on how these standards are applied.

¹² Docket No. 90000-95-XR-06