



ENVIRONMENTAL LAW & POLICY CENTER
Protecting the Midwest's Environment and Natural Heritage

September 1, 2011

Ms. Patty Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Re: Revised Draft Rules for Docket RM09-002

Dear Ms. Van Gerpen:

Attached for filing please find the comments of Environmental Law & Policy Center, Dakota Rural Action, Izaak Walton League of America – Midwest Office, South Dakota Chapter of the Sierra Club, and Wind on the Wires on the August 4, 2011 revisions to the draft rules for Docket RM09-002 – In the Matter of the Adoption of Rules Regarding Renewable, Recycled and Conserved Energy.

If you have any questions, please contact me.

Sincerely,

/s/ Justin Vickers

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

IN THE MATTER OF THE)	
ADOPTION OF RULES REGARDING)	DOCKET RM09-002
RENEWABLE, RECYCLED AND)	
CONSERVED ENERGY)	

COMMENTS OF ENVIRONMENTAL LAW & POLICY CENTER, DAKOTA RURAL ACTION, IZAAK WALTON LEAGUE OF AMERICA – MIDWEST OFFICE, SOUTH DAKOTA CHAPTER OF THE SIERRA CLUB & WIND ON THE WIRES ON AUGUST 2011 REVISED DRAFT RULES

The undersigned organizations, representing a wide range of rural, business, and environmental interests, submit these comments on the South Dakota Public Utilities Commission’s Revised Draft Renewable Energy Credit and Renewable, Recycled and Conserved Energy Rules, released for informal comment on August 4, 2011. The Commission released revised draft rules for Dockets RM09-002 and RM10-001 as well as proposed revisions to ARSD 20:10:22:05 and 22:10:36:02 in a single document. Our comments relate only to RM09-002. We appreciate the opportunity to comment on the Revised Draft Rules and commend the Commission for the inclusive and transparent revision process.

We are concerned that the most recent Revised Draft Rules roll back much of the progress the Commission made in developing reporting requirements that encourage compliance with the goal that by 2015, 10% of all electricity sold at retail within South Dakota will be obtained from renewable, recycled, and conserved energy sources. We urge the Commission to adopt rules that ensure high quality information regarding utilities’ progress toward the 10% goal is available to the Commission, the public, and the legislature. Specifically, the Commission should make the following changes in the Revised Draft Rules:

- Remove from the definition of “conserved energy” demand response measures that do not necessarily result in a reduction of energy consumption.
- Require the Commission to work with utilities to compile deemed savings values for commonly-used energy efficiency measures.
- Comply with standard industry practice for measuring energy savings by striking methods (2) and (4) in Section 20:10:38:05.
- Strike the measurement and verification procedures for demand response.
- Include comprehensive and detailed reporting requirements.

Section 20:10:38:01 – Definitions

As set out in more detail in our December 17, 2010 comments to the Commission’s November 2010 Revised Draft Rules, we recommend that Section 20:10:38:01 be amended to reflect that demand response measures do not necessarily qualify as “conserved energy” for the purposes of the renewable, recycled, and conserved energy goal. The Renewable, Recycled, and Conserved Energy Objective is defined in terms of delivered energy: by 2015, 10% of the electricity sold at retail within the state should be obtained from renewable, recycled, and conserved energy sources. From a technical standpoint, reduced capacity produced by demand

response measures is not the same thing as conserved energy. Demand response measures reduce load, which is measured in units of capacity, i.e. kilowatts or megawatts. In contrast, conserved energy is measured in units of consumption, i.e., kilowatt hours or megawatt hours. It is not technically feasible to measure conserved energy in terms of demand response.

We recognize that demand response measures can have significant benefits for the environment, the economy, the consumer, the utility, and the reliability of the grid. We also recognize that some demand response measures actually reduce energy consumption, and we encourage the Commission to include these measures in the definition of conserved energy. For the technical reasons set out above, however, we recommend that demand response measures that do not permanently reduce energy consumption should not be considered to have “conserved energy” for the purposes of the RRCEO.

We recommend the following changes to Section 20:10:38:01:

20:10:38:01. Definitions. Terms defined in SDCL 49-34A-1 have the same meaning when used in this chapter. In addition, terms used in this chapter mean:

(1) "Conserved energy," the permanent reduction of energy consumption and capacity usage achieved through energy efficiency measures ~~and demand response measures~~;

(2) "Demand response," temporary changes in energy use by end use customers from their normal consumption patterns in response to changes in the price of energy over time, or in response to incentive payments designed to induce lower energy use at times of high wholesale market prices or when system reliability is jeopardized;

~~(3) "Demand response baseline energy use," an estimate of the electricity that would have been consumed in the absence of the implementation of a demand response measure;~~

~~(4) "Demand response impact evaluation," the performance of studies and activities intended to determine demand response reduction;~~

~~(5) "Demand response measure," any measure designed, intended, or used to implement demand response;~~

~~(6) "Demand response reduction," the reduction of electrical consumption achieved during the time a demand response measure was implemented as compared to the demand response baseline energy use;~~

~~(37)~~ "Energy efficiency," the decrease in electricity requirements of specific customers during any selected period with end-use services of such customers held constant;

(48) "Energy efficiency baseline energy use," the energy consumption estimated to have occurred before the energy efficiency measure was implemented and is representative of normal operations;

(59) "Energy efficiency impact evaluation," the performance of studies and activities intended to determine the actual savings and other effects from energy efficiency measures;

(640) "Energy efficiency measure," any measure designed, intended, or used to improve energy efficiency;

(744) "Location," the county and state where the facility is located;

(842) "Post-installation energy use," energy consumption that occurs after an energy efficiency measure is implemented; and

~~(13) "Reported conserved energy savings," the capability of installed energy efficiency and demand response measures to result in conserved energy. Reported conserved energy savings are an estimate of electricity savings from individual projects where engineering or other calculations were submitted with project proposals for specific energy conservation projects or where deemed savings are used.~~

Section 20:10:38:03 – Measurement and Verification of Energy Efficiency Measures

We commend the Commission for revising Section 20:10:38:03 to make clear that the process for measuring and verifying energy savings from energy efficiency measures is a two-step process under which retail providers (1) estimate savings through a deemed savings approach, and (2) conduct an energy efficiency impact evaluation to validate estimates.

Section 20:10:38:04 – Deemed Savings Approach

In our comments on the November 2010 Revised Draft Rules, we suggested that Section 20:10:38:04 be amended to give the Commission the role of working with utilities to compile deemed savings values for commonly-used energy efficiency measures. We reiterate that suggestion here and recommend that Section 20:10:38:04 be amended as follows:

20:10:38:04. Deemed savings approach. A deemed savings approach uses pre-determined, validated estimates of energy savings attributable to a particular energy efficiency measure based upon engineering calculations, baseline studies, or reasonable assumptions. A retail provider of electricity may use a deemed savings approach for projects that involve simple energy efficiency measures with documented per-measure values.

Retail providers shall coordinate with the Commission to compile industry-accepted, geographically specific, deemed savings values for commonly used energy efficiency

measures. Deemed savings values shall be made available to all participating retail electric providers and the public and shall be reviewed and updated on an annual basis through a public comment process. Participating retail electric providers shall be encouraged to utilize compiled values; if a provider chooses to apply a deemed savings value that deviates from the published values, it must provide documentation for the substitute value in its annual report.

Section 20:10:38:05 – Measured Savings Approaches

In our comments on the November 2010 Revised Draft Rules, we suggested that Section 20:10:38:05 be amended to comply with standard industry practice for measuring energy savings. In particular, we recommended that methods (2) and (4) be stricken because engineering methods and computer models are generally considered methods for *estimating* deemed savings, not *measuring* actual savings. We reiterate our recommendation that Section 20:10:38:05 be amended as follows:

20:10:38:05. Measured savings approaches. A measured savings approach shall be based on one ~~or more~~ of the following methods:

(1) The use of direct metering and monitoring to measure baseline energy use and post-installation energy use; or

~~(2) The use of engineering methods that use standard formulas and assumptions to calculate the energy use of baseline and post-installation energy systems;~~

~~(23) The use of statistical analyses to scale metered results obtained through Method (1) to identical measures program-wide. estimate baseline energy use and postinstallation energy; or~~

~~(4) The use of computer models to predict the change in energy use after energy efficiency measures are implemented.~~

Section 20:10:38:06 – Measurement and Verification of Demand Response Measures

For the reasons set out above and in our comments on the November 2010 Revised Draft Rules, we recommend striking Section 20:10:38:06 because demand response measures that reduce or shift load, but do not actually reduce energy consumption, should not be considered “conserved energy” for the purposes of the RRCEO. If the Commission adopts our recommendations to exclude demand response measures from the definition of “conserved energy”, Section 20:10:38:06, which explains how to measure and verify energy savings from demand response measures, is unnecessary and confusing.

Section 20:10:38:07 – Renewable Energy Credit Requirements

In previous versions of the Draft Rules, Section 20:10:38:07 set out annual reporting requirements for the utilities. The current version of Section 20:10:38:07 eliminates all of the reporting requirements except for those relating to renewable energy credits.

We strongly recommend that the reporting requirements be put back in. The current proposed Section 20:10:38:07, which requires utilities to report to the Commission the number of RECs the utility retired to meet South Dakota's 10% goal, the tracking system the RECs were retired under, and the name and location of the facility that produced the RECs, is well-drafted, but does not require the utilities to provide sufficient information for the public, the legislature, and the Commission to meaningfully evaluate and assess the utilities' compliance toward the 10% by 2015 goal. The Commission should exercise its authority under SDCL 49-34A-4 and 49-34A-105 to set out comprehensive and detailed reporting requirements, including retail sales in South Dakota, generation capacity owned, and generation capacity contracted for.

The Commission should adopt a rule that lists all of the information utilities must include in their annual reports because it would reduce confusion created by the current scattering of reporting requirements among SDCL 49-34A-105, Proposed Section 20:10:38:03, Proposed Section 20:10:38:06, and Proposed Section 20:10:38:07, promote uniform reporting, and produce useful and meaningful annual reports.

We recommend that the Commission make the following revisions to Section 20:10:38:07:

20:10:38:07. Renewable energy objective ~~Renewable energy credit~~annual report requirements. A provider of electricity shall include the following information in its annual report:~~that generates electricity from renewable electricity or recycled energy and that retires renewable energy credits shall provide to the commission::~~

(1) The total megawatt hours of retail sales in South Dakota and throughout the whole of the retail provider's service area;

(2) The total electric generation capacity owned by the retail provider and the fuel source, capacity, name, and location of each generation facility, and for hydro-electric facilities, whether the facility was in service before July 1, 2008;

(3) The amount of total electric generation capacity contracted for in purchase power agreements and the fuel source, capacity, name, and location, if known, of each generation facility, and for hydro-electric facilities, whether the facility was in service before July 1, 2008;

(4) The amount of renewable energy credits that the provider retired,~~the amount of renewable energy credits that the provider retired~~ to meet South Dakota's renewable energy objective, the tracking system the renewable energy credits were retired under, and the fuel source, name and location of each facility that produced the retired renewable energy credits; ~~and~~

(5) The amount of renewable energy credits that the provider retired to meet a renewable energy objective or renewable energy standard in each of the other states it provides electricity services, and the name and location of each facility that produced the retired renewable energy credits.

(6) The amount of conserved energy achieved in South Dakota through each one of the retail provider's energy efficiency measures or programs. For each program, the report should indicate whether savings were determined through a deemed savings or measured savings approach.

(7) A description of the retail provider's plans for evaluation, measurement and verification of energy savings for each energy efficiency program. The plan shall include:

(a) Documentation of the deemed savings values used to estimate conserved energy savings for each program. If the retail provider chooses to use a deemed savings value that deviates from the Commission's compiled values, documentation for the substitute value shall be provided; and

(b) Documentation of the measured savings methods used to validate energy savings for each program, and a timeline for replacing deemed savings estimates with actual measured savings.

(8) The dollars spent on energy efficiency programs in South Dakota by the retail provider on an annual basis, and cumulatively since the programs were implemented.

(9) The amount of conserved energy achieved by the retail provider's energy efficiency programs throughout the whole of the retail provider's service area;

(10) The dollars spent on energy efficiency programs by the retail provider throughout the whole of the provider's service area on an annual basis, and cumulatively since the programs were implemented.

(11) A description of the demand response programs undertaken by the retail provider to shift or reduce load, and the resulting reductions in peak load, measured in MW; and

(12) A brief narrative that describes the retail provider's total progress toward the 10% renewable, recycled, and conserved energy objective, the steps taken to meet the objective over time, and any challenges or barriers encountered in meeting the objective.

The information shall be provided for the preceding calendar year by July first.

The undersigned organizations appreciate the opportunity to comment on these draft rules and look forward to working with the Commission and other interested stakeholders to develop clear and fair renewable, recycled, and conserved energy rules.

Dated this 1st day of September, 2011.

Respectfully submitted,

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