

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

IN THE MATTER OF THE CONSIDERATION)	DECISION REGARDING
OF THE NEW PURPA STANDARDS AS SET)	FUEL DIVERSITY AND
FORTH IN THE ENERGY POLICY ACT OF)	FOSSIL FUEL GENERATION
2005)	EFFICIENCY STANDARDS;
)	NOTICE OF ENTRY OF
)	ORDER
)	EL06-018

On August 8, 2005, the Energy Policy Act of 2005 ("EPAAct 2005") was signed into law. Certain provisions in the EPAAct 2005 amend the Public Utility Regulatory Policies Act ("PURPA") of 1978. The EPAAct 2005 adds five new federal standards to PURPA. The five standards regard net metering, fuel diversity, fossil fuel generation efficiency, time-based metering, and interconnection for distributed resources. Under the EPAAct 2005, the Public Utilities Commission (Commission) has varying timelines within which to consider these standards and determine whether to adopt them.

At its May 23, 2006, meeting, the Commission considered how to proceed with the consideration of the new PURPA standards. The Commission sought comments from interested persons or entities on how to proceed and other issues. Written comments were due on or before June 20, 2006.

At its July 11, 2006, meeting, the Commission considered this matter. With respect to net metering, the Commission found that it will not consider the net metering standard. The Commission noted that the Legislature has already considered the implementation of net metering and has rejected any such implementation in past legislative sessions. Pursuant to section 112(d) (3) of PURPA, the obligation to consider the net metering standard does not apply if "the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility."

The Commission further found that the affected utilities are the rate regulated investor owned utilities. The Commission also decided that this docket will encompass all of the affected utilities and will address all of the remaining standards. In addition, the Commission determined that it would decide what type of hearings to hold and whether to implement any standards through a rulemaking after the intervention deadline.

The Commission set an intervention deadline of August 15, 2006. On August 11, 2006, the Commission received a Petition to Intervene from MidAmerican Energy Company (MidAmerican). On August 14, 2006, the Commission received a Petition to Intervene from Itron, Inc. (Itron). On August 15, 2006, the Commission received Petitions to Intervene from NorthWestern Corporation d/b/a NorthWestern Energy (NWE), Northern States Power Company d/b/a Xcel Energy (Xcel) and Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. (MDU). On August 17, 2006, the Commission received a Petition to Intervene from Otter Tail Corporation d/b/a Otter Tail Power Company (OTP) and a Petition for Late Filed Intervention from Black Hills Power, Inc. (BHP). By order dated September 11, 2006, the Commission granted intervention to MidAmerican, Itron, NWE, Xcel, MDU, OTP and BHP.

At its November 14, 2006, meeting, the Commission considered how to proceed. The Commission decided to ask for written comments from the parties regarding the standards and then conduct workshops to further study whether to implement the standards. The Commission requested that the parties file the comments on or before January 9, 2007. On January 9, 2007, the Commission received comments from OTP, MidAmerican, and BHP.

The Commission held a workshop on May 1, 2007, to further discuss the standards. At its May 8, 2007, meeting, the Commission decided to hold a hearing regarding the interconnection for distributed generation and time-based metering standards. The hearing was held as scheduled on May 30, 2007.

At its July 11, 2007, meeting, the Commission considered the interconnection and time-based metering standards. With respect to the time-based metering standard, the Commission unanimously voted to not adopt the standard. With respect to the interconnection standard, the Commission unanimously voted to adopt the standard. By order dated July 26, 2007, the Commission issued its findings of fact and conclusions of law regarding these standards.

By order dated May 13, 2008, the Commission set an additional comment period regarding the final two standards, fuel diversity and fossil fuel generation efficiency standards. The Commission further determined that when making its decision regarding the fuel diversity and fossil fuel generation efficiency standards, it will take into consideration the comments made at the workshop, any previously filed comments, and any additional comments. The deadline for filing additional comments was June 13, 2008. On June 11, 2008, the Commission received comments from Commission Staff. On June 13, 2008, the Commission received comments from the Environmental Law and Policy Center.

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

FINDINGS OF FACT

1. On August 8, 2005, the EAct 2005 was signed into law. Certain provisions in the EAct 2005 amend PURPA. The EAct 2005 adds five new federal standards to PURPA. The five standards regard net metering, fuel diversity, fossil fuel generation efficiency, time-based metering, and interconnection for distributed resources. Under the EAct 2005, the Commission has varying timelines within which to consider these standards and determine whether to adopt them.

2. The goals of PURPA are to encourage: 1) the conservation of energy supplied by electric utilities; 2) optimal efficiency of electric utility facilities and resources, and 3) equitable rates for electric consumers. Section 101 of PURPA.

3. In a prior order, the Commission found that the utilities affected by the Commission's decisions regarding these standards are the rate-regulated public utilities.

4. By order dated September 11, 2006, the Commission granted intervention to MidAmerican, Itron, NWE, Xcel, MDU, OTP and BHP.

5. In a prior order, the Commission found that it will not consider the net metering standard. The Commission noted that the Legislature has already considered the implementation of net metering and has rejected any such implementation in past legislative sessions. Pursuant to section 112(d) (3) of PURPA, the obligation to consider the net metering standard does not apply if "the

State legislature has voted on the implementation of such standard (or a comparable standard) for such utility.”

6. The Commission requested written comments from the parties regarding the standards. The Commission received comments from OTP, MidAmerican, and BHP.

7. The Commission held a public workshop on May 1, 2007, to discuss the four remaining standards. On May 30, 2007, the Commission held a public hearing regarding the interconnection and time-based metering standards. At the hearing, the written comments and the workshop proceeding were entered into the record.

8. By order dated July 26, 2007, the Commission issued its decision regarding the interconnection and time-based metering standards.

9. By order dated May 13, 2008, the Commission set an additional comment period regarding the final two standards, fuel diversity and fossil fuel generation efficiency standards. The Commission further determined that when making its decision regarding the fuel diversity and fossil fuel generation efficiency standards, it will take into consideration the comments made at the workshop, any previously filed comments, and any additional comments. The Commission received comments from Commission Staff and the Environmental Law and Policy Center (ELPC).

Fuel Diversity Standard

10. The fuel diversity standard provides as follows:

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.

Section 1252 of the EAct of 2005, Section 111(d)(12) of PURPA.

11. In its written comments, OTP opposed adoption of this standard. OTP stated that it has a fuel diversity program which was determined by geographic and other factors, and relies on an Integrated Resource Planning Process (IRP).

12. MidAmerican also opposed adoption of the standard in its written comments. MidAmerican maintained that a utility’s need to reduce risks and stabilize fuel costs provides a sufficient incentive to maintain fuel and technology diversity. MidAmerican asserted that the result of this incentive, along with federal and state tax credits for renewable energy, has been the construction or purchase of renewable resources. It claimed that adoption of the standard would result in an administrative burden that provided little value.

13. In its comments, BHP recommended that the Commission not adopt the standard. BHP stated that adoption of the standard could result in negative economic impacts to consumers.

14. At the workshop, NorthWestern stated its opposition to the adoption of the standard. NorthWestern asserted that was deficient in that it fails to mention costs, price stability, reliability, or affordability, all of which should be considered when considering generation technologies.

15. Similarly, MDU also recommended not adopting the standard in its comments at the workshop. MDU stated that least cost planning will drive resource optimization, and noted that it

uses integrated resource planning. MDU was also concerned about conflicting requirements across states.

16. In its filed comments, Staff recommended not adopting this standard. Staff stated that more factors than diversity should be considered when a utility plans for future resources. Staff also stated that the Commission may already have jurisdiction to review and have input into utility diversity plans through SDCL 49-41B-3.

17. ELPC recommended that the Commission use its existing statutory authority, SDCL 49-41B-3, to ask utilities to identify in their biennial 10 year plans how they arrive at their resource mix. ELPC stated that the plans should include how and to what extent a utility will include small scale distributed renewable generation in its portfolio.

18. The Commission finds that it will not adopt the fuel diversity standard. Based on the record in this proceeding, the Commission finds that the evidence presented does not demonstrate that the adoption of this standard at this time would meet the PURPA goals of energy conservation, efficiency of facilities and resources, and equitable consumer rates. The Commission finds that this standard fails to take into account that factors other than diversity should be considered when a utility is planning its resource mix.

Fossil Fuel Generation Efficiency Standard

19. The fossil fuel generation efficient standard provides as follows:

Each electric utility shall develop and implement a 10-year plan to increase the efficiency of its fossil fuel generation.

Section 1254 of the EAct of 2005, Section 111(d)(13) of PURPA.

20. In its written comments and at the workshop, it was OTP's position that the Commission not adopt this standard. OTP stated that increasing efficiency is a normal utility practice and is already followed by OTP. OTP further noted that it is required to follow an IRP process in Minnesota, which includes a system wide view and is updated every 2-3 years.

21. In its comments, MidAmerican opposed the adoption of this standard, claiming it is unnecessary. MidAmerican asserted that market forces may be a sufficient replacement for this requirement and that the wholesale market is extremely competitive.

22. In its comments, BHP recommended that the Commission not adopt the standard. BHP stated that adoption of the standard could result in negative economic impacts to consumers.

23. At the workshop, MDU voiced its opposition to the standard. MDU stated that it already makes improvements to the efficiency of its fossil fuel generation through modification of equipment and operational or procedural changes. MDU also mentioned multi-jurisdictional concerns.

24. In their comments, Commission Staff recommended not adopting this standard. Staff stated that increased financial and reliability risks would result for both the utility and customer from implementation.

25. The Commission finds that it will not adopt the fossil fuel efficiency standard. Based on the record in this proceeding, the Commission finds that the evidence does not demonstrate that the adoption of this standard at this time would meet the PURPA goals of energy conservation, efficiency of facilities and resources, and equitable consumer rates. The Commission finds that no evidence was presented that showed that existing requirements and market forces were not sufficient to address fossil fuel generation efficiency. Thus, no additional requirement is necessary.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL chapter 49-34A, specifically 49-34A-93, and the EAct 2005.

2. The Commission concludes, for the reasons listed in findings of fact 10-18, that the Commission will not adopt the fuel diversity standard.

3. The Commission concludes, for the reasons listed in findings of fact 19-25, that the Commission will not adopt the fossil fuel efficiency standard.

It is therefore

ORDERED, that the Commission does not adopt the fuel diversity standard; and it is

FURTHER ORDERED, that the Commission does not adopt the fossil fuel efficiency standard.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 7th day of August, 2008. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 7th day of August, 2008.

CERTIFICATE OF SERVICE	
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>Audrine Kolbo</u>
Date:	<u>8/7/08</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Steve Kolbeck
STEVE KOLBECK, Commissioner

Austin M. Johnson
DUSTIN M. JOHNSON, Commissioner *dk*