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May 1, 2009

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VIA U.S. MAIL AND E-MAIL (dnitschk@nd.gov)

Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 E Boulevard
Department 408
Bismarck, ND 58505

**RE: Public Service Commission Case No. PU-09-20
Federal 2007 EISA Standards Investigation**

Dear Mr. Nitschke:

Enclosed please find comments submitted on behalf of Plains Justice in response to the North Dakota Public Service Commission's Notice of Workshop and Paper Hearing, dated January 14, 2009, on standards in the federal Energy Independence and Security Act of 2007.

Please let me know if there are any questions or problems regarding this submission.

Very truly yours,

Jana M. Linderman
Staff Attorney

Admitted to practice law in Iowa and North Dakota

Enclosure

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Comments of Plains Justice

Plains Justice

Jana Linderman, Staff Attorney

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Federal 2007 EISA Standards
Investigation**

Case No. PU-09-20

COMMENTS SUBMITTED ON BEHALF OF PLAINS JUSTICE

On January 14, 2008, the Public Service Commission (Commission) invited comments on the adoption of certain energy policy standards contained in the federal Energy Independence and Security Act of 2007 (EISA), which amends the Public Utility Regulatory Policies Act of 1978 (PURPA).

Plains Justice is a non-profit public interest law center that provides legal advocacy and policy guidance on energy and environmental issues in seven states, including Iowa, North Dakota, South Dakota, Nebraska, Montana and Wyoming. The following comments are submitted on behalf of Plains Justice for consideration by the Commission in its investigation of the energy efficiency policy standards in EISA.

EISA SEC. 532

Section 532 of EISA amends PURPA to include standards for:

- (1) integrated resource planning and rate design modifications to promote energy efficiency investments by electric utilities; and
- (2) resource planning and rate design modifications to promote energy efficiency investments by natural gas utilities.

EISA Sec. 532 sets forth standards that are directly related to the issues already under review by the Commission as part of the rulemaking inquiry in Case No. PU-08-884 (Electric Demand Side Management Rulemaking). The comments and input received by the Commission in that rulemaking are relevant to and should be included in the Commission's consideration and analysis of the EISA energy efficiency standards at issue in this investigation. Conversely, the Commission should consider the energy efficiency standards in EISA and the comments and input received as part of this investigation when determining what policies, procedures and rules should be adopted pursuant to the rulemaking initiated in Case No. PU-08-884.

According to the U.S. Energy Information Administration, North Dakota's per capita energy consumption is among the highest in the nation.¹ At the same time, the American Council for an Energy-Efficient Economy has ranked North Dakota 49th on its 2008 State Energy Efficiency

¹*State Energy Profile – North Dakota*, U.S. Energy Information Administration (last updated April 23, 2009), available at tonto.eia.doe.gov/state.

Scorecard.² Taken together, these facts show significant potential for energy efficiency investment in North Dakota. As demonstrated by the written comments submitted to the Commission in Case No. PU-08-884, North Dakota utilities have a strong interest in developing a comprehensive portfolio of energy efficiency and demand response measures for their North Dakota customers, and each utility has valuable experience and insights that can help to achieve that goal. By opening a rulemaking to consider policies and standards for utility demand side management, the Commission has shown an admirable and timely commitment to improving the portfolio of energy options available to meet the needs of North Dakota energy consumers.

Energy efficiency measures for electric and natural gas customers have a wide range of benefits, including lower energy rates (compared to new generation investments), lower energy bills, lower utility emissions, more diverse utility energy portfolios and the creation of skilled, local jobs in the energy efficiency sector. Action by this Commission is particularly timely as Congress considers expansive federal energy legislation that includes limits on greenhouse gas emissions and a federal energy efficiency resource standard that would impact most of the nation's utilities.³

Using the standards set forth in EISA as a guide, along with the input of utilities, utility customers and other interested parties, this Commission has a valuable opportunity to design new standards and procedures and a rate structure that will promote energy efficiency, diversify and improve the energy profile of the state and significantly benefit North Dakota's energy consumers.

(1) Electric Utilities

Section 532 of EISA amends PURPA Section 111(d)⁴ as follows:

(A) Integrated resource planning

With respect to integrated resource planning, EISA standards would require electric utilities to:

- integrate energy efficiency resources into utility, state and regional plans; and
- adopt policies establishing cost-effective energy efficiency as a priority resource.

As part of the rulemaking inquiry in Case No. PU-08-884, the Commission has already begun to consider the question of whether and how utilities should use energy efficiency as a resource to meet future energy needs. Of the three utilities submitting comments in that case (Otter Tail

² Only Wyoming, with a total score of 0.0, is ranked lower than North Dakota on the 2008 ACEEE Scorecard. *The 2008 State Energy Efficiency Scorecard*, ACEEE Report Number E086, American Council for an Energy-Efficient Economy (October 2008), available at aceee.org/pubs/e086.htm.

³ For example, the current discussion draft of the American Clean Energy and Security Act of 2009, under consideration by the U.S. House of Representatives Committee on Energy and Commerce, includes an energy efficiency resource standard that would require utilities to achieve 15 percent cumulative electric energy savings between 2012 and 2020 and 10 percent cumulative natural gas savings during the same period. It is expected that implementation of a federal efficiency standard would occur at the state level under the jurisdiction of state public service commissions.

⁴ 16 U.S.C. 2621(d).

Power Company, Montana-Dakota Utilities Co. and Xcel Energy), all expressed agreement with the proposition that energy efficiency should be integrated into resource planning. Indeed, all three utilities indicated that they already consider cost-effective energy efficiency and demand response programs in their resource plans.

A utility that properly implements cost-effective energy efficiency and demand response measures as part of an integrated resource plan can reduce both energy and peak demand, delay the need for new generation and transmission and lower costs for the utility and utility customers. Not including cost-effective energy efficiency and demand response measures in integrated resource planning does a gross disservice to utility customers. The Commission has an obligation to adopt policies that result in utilities selecting the lowest cost resource options that meet the needs of the state's energy consumers. The Commission should establish standards for utility planning that allow cost-effective demand side resources to be selected before more costly supply side options.

The need to adopt policies that establish energy efficiency as a priority resource is self-evident. Despite the good-faith efforts of the state's utilities to manage demand, North Dakota has only scraped the surface of economic energy efficient potential. In 2006, North Dakota utilities spent only \$513,000 on electric energy efficiency programs.⁵ At the same time, states across the country have adopted a variety of policies to significantly increase investments in efficiency, including energy efficiency resource standards implemented in 19 states. These states have worked with utilities to develop comprehensive energy efficiency portfolios that include traditional efficiency measures, demand response measures, as well as efficient customer-side clean energy solutions such as combined heat and power and distributed renewable generation. As states increase their standards and refine their policies, and utilities gain more experience with efficiency, more utilities in more states are consistently achieving annual energy savings of 1.0 to 1.5 percent or more of annual retail sales – a marked improvement from prior years.⁶

If North Dakota utilities could achieve 1.0 percent annual efficiency savings in their electric portfolios each year through 2020, North Dakota consumers would save millions of megawatt hours of electricity and millions of tons of greenhouse gas emissions. These savings would benefit homeowners trying to pay utility bills in a tough economy, help businesses stay competitive and assist utilities facing expensive investment in new generation and anticipated federal energy policy that limits greenhouse gas emissions. Appropriate policies and standards adopted by the Commission, including those outlined in EISA, are necessary to assist North Dakota utilities and energy consumers in achieving significant savings from cost-effective

⁵ See *North Dakota – Electric Utility Sector Policies*, ACEEE State Energy Policy Database, available at www.aceee.org/energy/state/northdakota/nd_utility.htm. In contrast, Iowa utilities spent \$52.2 million (1.7 percent of revenues) on electric energy efficiency in 2006, contributing to Iowa's 14th place ranking on the ACEEE 2008 energy efficiency scorecard. Among other states in the region, 7th place Minnesota spent \$48.1 million (1.0 percent of revenues) on electric energy efficiency, and 9th place Wisconsin spent \$43.3 million (1.3 percent of revenues).

⁶ For example, Efficiency Vermont (Vermont's "efficiency utility") projected energy efficiency savings of 4.0 percent of retail sales in 2008; 2007 legislation in Minnesota sets benchmarks for utilities to achieve 1.5 percent annual energy savings through 2025; and 2007 legislation in Illinois requires utilities to reach annual energy efficiency savings of 2.0 percent of retail sales by 2015.

energy efficiency. The first step is to integrate energy efficiency as a priority in future resource plans, as outlined in EISA Sec. 532.

(B) Rate design modifications to promote energy efficiency investments

With respect to utility rate design, EISA standards would require that the rates allowed to be charged by any electric utility shall:

- align utility incentives with the delivery of cost-effective energy efficiency; and
- promote energy efficiency investments.

Under traditional rate structures, utilities lack the necessary financial incentive to develop programs that encourage consumers to become more efficient in their energy use. On the contrary, lost revenue from falling energy sales creates an economic disincentive for meaningful investment in energy efficiency. In some cases, utilities have implemented rate structures (such as declining block rates) that undercut incentives for certain consumers to decrease energy consumption.

The Commission needs to design a rate structure for energy efficiency programs that aligns the profit motive of utilities with the goal of pursuing all cost-effective efficiency measures for the benefit of utility customers. As a basic principle, the rate structure for energy efficiency programs should go beyond allowing utilities to recover the direct costs associated with energy efficiency programs. The most common regulatory mechanisms that address the removal of disincentives and the creation of positive incentives for utility investment in energy efficiency programs are:

- (1) **decoupling** (disassociating utility revenues from sales); and
- (2) **performance incentives** (financial incentives that reward utilities for reaching or exceeding program goals).

The states with the highest-achieving utility energy efficiency programs generally have implemented one or both of these rate design mechanisms.⁷

If certain energy efficiency and demand response measures are cost-effective compared to supply side resource options (based on the test or tests for cost-effectiveness adopted by the Commission), then utilities should be able to offer those programs to customers under a rate structure that encourages that investment. The Commission should adopt policies and standards for rate design that place demand side resource options on par with supply side resource options in utility resource planning, to ensure that energy consumers are able to benefit from the most economic resource portfolio available. The EISA standards for rate design are appropriate and important components of whatever regulatory scheme the Commission adopts to govern and promote utility energy efficiency programs.

⁷ A general overview of the incentive structure in each state is provided in the 2008 ACEEE State Energy Efficiency Scorecard. *See supra* note 2.

EISA standards would further require the Commission to consider certain policy options when designing a rate structure to promote utility energy efficiency investment:

- removing the throughput incentive and other regulatory and management disincentives to energy efficiency;
- providing utility incentives for the successful management of energy efficiency programs;
- including the impact on adoption of energy efficiency as one of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives;
- adopting rate designs that encourage energy efficiency for each customer class;
- allowing timely recovery of energy efficiency-related costs; and
- offering home energy audits, offering demand response programs, publicizing the financial and environmental benefits associated with making home energy efficiency improvements, and educating homeowners about all existing Federal and State incentives, including the availability of low-cost loans, that make energy efficiency improvements more affordable.

Some of the measures outlined above such as offering home energy audits, publicizing the benefits of energy efficiency and educating homeowners about federal and state incentives, may already be carried out to some extent by one or more state agencies. However, the effectiveness and reach of energy efficiency programs can be maximized by taking advantage of the resources and expertise of utilities, as well as public agencies that provide educational and other services to the state's residents. Energy efficiency policies and standards adopted by the Commission should encourage maximum program coordination among utilities, state agencies and other entities to reduce costs associated with program administration, education and marketing, while reaching as many energy consumers as possible.

As part of the rulemaking process started in Case No. PU-08-884, the Commission should consider all of the above policies, while basing the final details of rate design on specific input from utilities, energy consumers and other interested parties. States with more developed utility energy efficiency programs provide useful templates for rate design mechanisms such as decoupling and performance incentives, as well as rate structures (such as inclining block rates) that provide incentives to consumers who reduce energy use.

The list of policies outlined by EISA provides a good basis for the Commission to consider what has worked and what has not worked in other jurisdictions, while determining which options for rate design are best suited to the particular environment that exists in North Dakota.

(2) Natural Gas Utilities

Section 532 of EISA amends PURPA Sec. 303(b)⁸ as follows:

(A) Utility planning

With respect to utility planning, EISA standards would require natural gas utilities to:

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

More than 40 percent of North Dakota households use natural gas as their primary energy source for home heating, and high heating demand in the winter months is a major contributing factor to North Dakota's high per capita energy consumption.⁹ There is significant potential for energy savings if natural gas utilities integrate energy efficiency into their planning as a priority resource.

States with utility-level energy efficiency programs typically have standards for both electricity and natural gas, and integrating efficiency resources into the planning of natural gas utilities makes sense for energy consumers for many of the same reasons that it make sense for customers of electric utilities. Utilities exist and are regulated by the Commission for the purpose of serving customers' energy needs. If the most cost-effective way to do that is through efficiency, then utilities should invest in efficiency, and utility planning processes should be designed to encourage that investment.

It is important that the state-level standards and policies adopted by the Commission take a comprehensive approach to energy efficiency that includes both electric and natural gas efficiency measures. A utility customer that is interested in saving energy costs by making a home or business energy efficient should have access to the full range of cost-effective efficiency measures that are available, regardless of the energy source. Efficiency programs such as energy audits, whole house or whole building programs, new construction programs and other similar measures can maximize the energy savings benefits of the utility's and the customer's investment if both electric and natural gas measures are included.

Adopting the EISA standard for integrating efficiency as a priority resource in both natural gas and electric utility planning is essential to promoting and maximizing the benefits of energy efficiency investment by utilities.

⁸ 15 U.S.C. 3203(b).

⁹ This figure is slightly below the national average for proportion of households using natural gas heating. An additional 30 percent of North Dakota households use electricity as their primary source for home heating. See the EIA State Energy Profile for North Dakota, *supra* note 1.

(B) Rate design modifications to promote energy efficiency investments.

With respect to utility rate design, EISA standards would require that the rates allowed to be charged by a natural gas utility shall:

- align utility incentives with the deployment of cost-effective energy efficiency.

In designing such a rate structure for natural gas efficiency programs, EISA would require the Commission to consider certain policy options:

- separating fixed-cost revenue recovery from the volume of transportation or sales service provided to the customer;
- providing 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;
- promoting the impact on adoption of energy efficiency as one of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives; and
- adopting rate designs that encourage energy efficiency for each customer class.

As with electric utilities, the traditional rate structures for natural gas utilities typically have lacked the necessary financial incentive to encourage utilities to develop efficiency programs for their customers. A lower volume of natural gas sales mean decreased revenues, which creates an economic disincentive for meaningful investment in energy efficiency. At the same time, utility customers benefit substantially and see lower energy costs when utilities offer all available cost-effective efficiency measures (although, as with electric utilities, this can be undermined if rate structures include mechanisms that actually reward customers that use more energy).

To promote investment in energy efficiency on the part of natural gas utilities, the Commission needs to design a rate structure for efficiency programs that retains the benefits of energy efficiency for utility customers while creating a financial incentive for utilities to develop and promote efficiency programs. The policies suggested above – including decoupling and performance incentives – are useful tools in achieving that objective and should guide the Commission in designing standards and policies for utility demand side management.

EISA standards (or similar standards) for natural rate design should be a part of whatever regulatory scheme the Commission adopts to govern and promote energy efficiency programs by natural gas utilities.

CONCLUSION

As outline above, the energy efficiency standards contained in EISA clearly further and are necessary to the underlying policy objectives of PURPA:

- (1) Conservation of energy supplied by electric utilities;
- (2) Optimization of the efficiency of use of facilities and resources by electric utilities; and
- (3) Equitable rates for electric consumers.

At the same time, the standards outlined in EISA are useful to and can inform the Commission's analysis of the open rulemaking inquiry in Case No. PU-08-884. While crafting energy efficiency policies that are best-suited to North Dakota, the Commission has the opportunity to benefit from existing federal standards, as well as the experience of other state jurisdictions. By examining what has worked elsewhere and the general principles set forth in EISA, the Commission can design policies, procedures and rules that bypass earlier stumbling blocks experienced by other states and put in place a structure for utility energy efficiency that works well from the start and results in substantial savings for North Dakota energy consumers.