

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

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

Case No. PU-09-20

**ORDER ON EISA STANDARDS
September 29, 2009**

The Federal Energy Independence and Security Act of 2007 (EISA) was enacted on December 19, 2007. The EISA amends the Public Utility Regulatory Policies Act of 1979 (PURPA) to require each state regulatory authority to consider adopting certain specified energy policy standards.

Section 532 of the EISA amends PURPA Section 111(d) to require that states conduct an investigation and issue a decision whether to adopt two new electric policy standards regarding (1) integrated resource planning, and (2) rate design modifications to promote energy efficiency investments.

Section 532 also amends PURPA Section 303(b) to require consideration of two natural gas policy standards regarding (1) energy efficiency and (2) rate design modifications to promote energy efficiency investments.

Section 1307 requires consideration of two new PURPA electric policy standards regarding (1) consideration of smart grid investments, and (2) smart grid information.

Section 374 is a stand-alone provision of the EISA that requires consideration of a non-PURPA standard regarding additional incentives to owners or operators of waste energy recovery projects identified on the Registry of Recoverable Waste Energy Sources for recovery use and prevention of industrial waste energy. This standard differs from the PURPA standards in that the North Dakota Public Service Commission (Commission) may defer consideration until six months after receiving a request from a project.

The Commission is not obligated to adopt any of these seven standards. The Commission may decline to implement any or all of the standards or adopt different or modified standards from those included in the EISA. In choosing whether to adopt these standards, the Commission should consider whether implementation of the standards is necessary to further the purposes underlying the original PURPA standards, which are:

1. Conservation of energy supplied by electric utilities;
2. Optimal efficiency of electric utility facilities and resources, and
3. Equitable rates for electric consumers.

Proceedings under PURPA Sections 111 and 303 are to begin within two years and be completed within three years after enactment of the EISA.

Summary of NDPSC Proceedings:

On November 19, 2008, in Case No. PU-08-884, the Commission opened a rulemaking proceeding regarding energy efficiency and load management. A workshop was conducted on January 5, 2009.

On January 14, 2009, the Commission issued an Order Opening Investigation and Notice of Workshop and Paper Hearing to consider whether to propose rules to adopt any or all of the new standards suggested under sections 532, 1307, and 374 of the EISA. Those interested were encouraged, but not required, to submit written comments prior to the workshop. The Commission clarified in its notice that formal intervention would not be necessary to participate in the proceeding, but anyone wishing to become a formal party must file a petition to intervene with the Commission prior to the workshop. The Commission further stated in its notice that, under certain conditions, compensation for expenses incurred by participation or intervention in this proceeding may be available under PURPA Section 122. The Commission's notice identified the following issues to be considered:

1. Whether the Commission should adopt any or all of the standards suggested by the Act;
2. Whether the Commission should adopt different or modified standards from those described in the Act; and,
3. What compensation, if any, should be made available to consumers under PURPA section 122 for their reasonable expenses incurred by participating or intervening in this proceeding.

On May 11, 2009, a workshop was held as scheduled.

Summary of Comments Received:

Written comments were received from Northern States Power Company d/b/a Xcel Energy (NSP), Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (MDU), Plains Justice, Dakota Resource Council, and Otter Tail Corporation d/b/a Otter Tail Power Company (Otter Tail). In short summary, NSP, MDU and Otter Tail urge the Commission not to adopt any of the EISA standards. Plains Justice and Dakota Resource Council encourage adoption of EISA or similar standards for integrated resource planning, energy efficiency and rate design. A more detailed summary of comments follows:

Dakota Resource Council submitted general statements urging the Commission to adopt strong energy efficiency standards for utilities that save ratepayers money through reduced consumption and reduced utilities' overall demand. Dakota Resource

Council states there is great potential to reduce energy use and lower commercial and household utility costs. Dakota Resource Council states it is entirely appropriate that all utilities regulated by the Commission be required to submit an annual, integrated plan setting a goal for energy savings, and indicating how they plan to reduce overall demand using a combination of incentives, educational programs and materials, and energy audits. Dakota Resource Council states these plans, as well as a report on how the utilities fared in meeting the previous year's goal, should be released to the public annually.

Section 532
(PURPA § 111(d) Amendments)

1. *Electric Integrated Resource Planning (IRP)*

NSP comments that it has been developing resource plans for the Northern States Power Company system every two years since the mid 1990's, and all of the plans have included energy efficiency programs as an integral part of meeting future energy and demand needs. In the future, in accordance with requirements from NSP's last rate case, NSP will file North Dakota versions of its system resource plan in conjunction with its bi-annual resource planning process in the state of Minnesota. NSP currently uses the four tests referenced in the California Standard Practices Manual (CSPM), as referenced in the EISA Standards Manual, when evaluating its programs for cost-effectiveness. In addition, NSP uses the Total Resource Cost Test (TRC) within its plans. NSP states it will continue to evaluate various programs for cost-effectiveness in future resource plans, and will seek approval to incorporate those that are shown to be cost-effective. Therefore, NSP does not believe it is necessary for the Commission to adopt standards regarding integration of energy efficiency into the resource planning process.

Plains Justice comments that a utility implementing 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 its customers. Plains Justice states the Commission should establish standards for utility planning that allow cost-effective demand side resources to be selected before more costly supply side options. Plains Justice states that appropriate standards and policies 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 energy efficiency, and energy efficiency must be a priority in future resource plans.

Otter Tail is currently required to file an Integrated Resource Plan (IRP) in Minnesota every two years, and sends a copy of its Minnesota IRP to the Commission. Otter Tail recommends that this practice be continued and deemed sufficient to meet the EISA requirements. Otter Tail states its IRP is a least-cost proposal for its entire

system, and gives the Commission sufficient information to monitor Otter Tail's plan to acquire sufficient capacity and energy to supply the electric needs of all customers.

MDU commented that it is required by Commission Order to file an IRP biennially that compares cost-effectiveness of demand and supply-side options to arrive at a resource mix that will provide service at least-possible cost.

2. Electric Rate Design Modifications to Promote Energy Efficiency

NSP comments that it already has in place various tariffs that encourage energy efficiency, including: time of day rates; seasonal rates; limited off-peak service; customer buy-back program; real-time pricing; an off-season rider; standby service. NSP states that charging energy costs through a fuel cost rider versus base rates provides customers with a better price signal than recovering energy costs solely through base rates that are only updated in a general rate case. The company's current residential natural gas rate design is a simplified and pure form of decoupling, designed to recover fixed costs through the fixed monthly Delivery Services Charge, thereby leaving the company indifferent to the amount of natural gas purchased by customers; the company is not disadvantaged in sponsoring or promoting energy efficiency programs. In summary, the company does not believe the Commission needs to adopt further rate design standards to promote electric energy efficiency at this time.

Otter Tail has filed a plan with the Commission to initiate energy efficiency programs for North Dakota customers, which includes financial recovery of costs and incentives for Otter Tail. The demand and energy savings resulting from these programs has been included in past resource plans and will be included in the IRP to be filed in Minnesota in the fourth quarter of 2009. Otter Tail recommends that the current energy efficiency programs filed with the Commission be approved as rate design modifications to promote energy efficiency investments, meeting the requirement of EISA.

Plains Justice comments that under traditional rate structures utilities lack necessary financial incentive to develop programs encouraging consumers to become more efficient in their energy use. Plains Justice states the Commission should design a rate structure for energy efficiency programs aligning the profit motive of utilities with the pursuit of cost-effective efficiency measures for the benefit of utility customers. Plains Justice states the most common regulatory mechanisms to address the removal of disincentives and creation of positive incentives for utility investment in energy efficiency programs are decoupling and performance incentives. Plains Justice states the Commission should adopt rate design policies and standards that place demand side resource options on par with supply side resource options in utility resource planning to ensure that energy consumers benefit from the most economic resource portfolio available, and that the EISA rate design standards are appropriate and important components of such rate design.

MDU supports consideration of rate design policy options on a case-by-case basis as 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 customers served.

Section 532
(PURPA §303 (B) Amendments)

1. *Natural Gas Energy Efficiency Standards*

Currently, NSP does not file with regulators an integrated resource plan for natural gas as they do for electricity. NSP comments that the natural gas energy efficiency standards are being met through its natural gas supply planning processes and its evaluation of energy efficiency programs already in place.

MDU supports natural gas conservation programs but believes they should be implemented on a case-by-case basis.

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

2. *Natural Gas Rate Design Modifications to Promote Energy Efficiency*

NSP Energy comments that the company has a cost of gas rider and a residential natural gas rate structure that promotes energy efficiency. The cost of gas rider is a separate line item on the bill, which comprises 60-80 percent of the total bill, and helps customers make informed decisions about their natural gas usage and resulting charges. The current residential rate structure provides simplified and pure decoupling methodology in its fixed monthly Delivery Services Charge, which does not change with decreases in natural gas usage; the proper price signal is preserved and all financial disincentives of promoting energy efficiency for the company are removed. The company does not believe there is a need for the Commission to establish further rate design standards to promote natural gas energy efficiency.

MDU supports consideration of rate design policy options on a case-by-case basis as 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 customers served.

Plains Justice comments that to promote investment in energy efficiency on the part of natural gas utilities, the Commission should 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. Plains Justice states the EISA or similar standards for natural gas rate design should be a part of any regulatory format the Commission adopts to govern and promote energy efficiency programs by natural gas utilities.

Section 1307
(PURPA § 111(D) Amendments)

1. *Smart Grid Investment*

NSP comments they do not feel it is appropriate for the Commission to establish such a standard at this time. NSP is currently in the process of building the nation's first fully integrated smart grid in Boulder, Colorado, a project called SmartGridCity™. SmartGridCity will utilize distributed generation, advanced monitoring, energy storage, smart substations and in-home energy control devices. The company is in the process of evaluating and testing a number of smart grid elements, features, and technologies. NSP believes that more information must be gathered on costs involved in developing and implementing smart grid systems (however such systems are eventually defined) before recommending the adoption of this standard.

MDU supports the smart grid standards in general terms, but urges the Commission to consider deployment of smart grid technologies on a case-by-case basis.

2. *Smart Grid Information*

NSP comments that they provide customers with both pricing and usage information in their monthly billing statements, as well as brochures related to price changes and billing components. In addition, the company has available its Infosmart tool for use by residential customers, and Infowise tool for commercial customers, to analyze their usage. In addition, the company is planning to add an online account management tool to its website. Accordingly, the company already provides much of the information outlined under the EISA, and continues to implement additional methods for facilitating customer access to information regarding energy use; therefore, the Company does not feel additional standards are necessary at this time.

Section 374 – Industrial Waste Energy

NSP has a standard price for energy they purchase from customers for those projects under 100 KW in size. All projects above this size are served at negotiated

prices. NSP posts its interconnection guidelines on its website, and customers may call the company for further information on interconnection and the sale of energy back to the company. As a result, NSP believes there are already sufficient means in place for customers to provide waste energy and be compensated for providing this energy. Rather than establishing specific standards for this subset of customers, NSP feels that if the Commission feels further study is warranted then it should investigate the extent to which such energy may be available. If there is enough of the resource available to warrant different treatment than currently afforded to customers and developers, NSP suggests the Commission look at the establishment of standards after that investigation is complete.

Commission Decision:

Without conceding that the federal Act can *require* states to consider adopting certain energy policy standards, the Commission makes the following decisions:

The Commission will not take further action to adopt additional standards regarding electric integrated resource planning. All jurisdictional electric utilities in North Dakota employ integrated resource planning (IRP) for determining optimal long-range resource plans, which evaluate various supply-side and demand-side options available for cost-effectiveness, and assess them against a set of planning objectives and criteria. The plans are submitted to the Commission on a regular basis, allowing opportunity for the Commission to provide input to each company's planning process prior to company investments in resources for which recovery is sought from North Dakota customers.

The Commission will not take further action to adopt additional standards regarding electric rate design modifications to promote energy efficiency investments. All three jurisdictional electric utilities have recently filed comprehensive demand side management and cost recovery proposals that have either been decided or are currently pending before the Commission. The Commission will continue to address rate design modifications on a case-by-case basis in general rate cases or other miscellaneous tariff proceedings.

The Commission will not take further action to adopt additional natural gas policy standards regarding energy efficiency and rate design modifications to promote energy efficiency investments. The Commission has already approved, as part of a general rate case, a simplified and pure decoupling methodology for NSP in its fixed monthly Delivery Services Charge for residential customers. The Commission will continue to address energy efficiency and rate design for natural gas on a case-by-case basis.

The Commission will not take further action to adopt the EISA Standard 1307 relating to new PURPA standards on consideration of smart grid investments and smart grid information. The Commission acknowledges utilities' efforts in providing more information to customers regarding consumption data and demand rates through educational material, billing information and brochures, and account management options. The Commission believes more information is necessary on the costs to

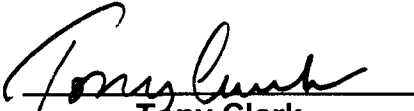
develop and implement smart grid systems before recommending the adoption of this standard for large-scale implementation. The Commission will continue to consider deployment of smart grid technologies on a case-by-case basis.

The Commission will not take action on EISA Section 374 requiring each state regulatory authority to establish a standard for sales of excess power from a waste energy recovery project identified on the Registry of Recoverable Waste Energy Sources. At this time there are no such requests before the Commission. The Commission will address these matters as requests are received.

Order

The Commission Orders that no further action will be taken to adopt the federal EISA standards. The Commission will continue to consider all such appropriate energy efficiency measures on a utility-by-utility and case-by-case basis.

PUBLIC SERVICE COMMISSION



**Tony Clark
Commissioner**



**Kevin Cramer
Chairman**



**Brian P. Kalk
Commissioner**