

**NODAK ELECTRIC COOPERATIVE, INC.**  
**Grand Forks, North Dakota**

**RESOLUTION No. 1679:**

**WHEREAS**, the Public Utility Regulatory Policies Act of 1978 (PURPA), 18 U.S.C. § 2601 *et seq.*, as amended by the Energy Independence and Security Act of 2007 (EISA 2007), Public Law No. 110-140, 121 Stat. 1492 (2007) (collectively called PURPA EISA 2007), requires nonregulated electric utilities that have total annual retail electric sales greater than 500 million kilowatt-hours to consider and determine whether to implement standards addressing energy efficiency integrated resource planning, rate design changes to promote energy efficiency investments, consideration of smart grid investments, and other smart grid information (hereinafter the “PURPA EISA Standards”).

**WHEREAS**, Nodak Electric Cooperative, Inc. (hereinafter the “cooperative”) is a non-regulated electric utility with total annual retail electric sales greater than 500 million kilowatt-hours.

**NOW, THEREFORE**, the Board of Directors (hereinafter the “board”) of the cooperative hereby adopts the following resolution:

**RESOLVED**, the board approves the procedural requirements set forth below to commence the process of considering these PURPA standards.

**RESOLVED**, the President and CEO, with the assistance of the cooperative’s staff, shall follow the approved procedural requirements and study and formulate a proposed determination on each PURPA standard referenced below.

**RESOLVED**, the board shall make its final written determination on the PURPA EISA Standards on or before December 19, 2009.

**Procedural Requirements**

**I. Establish Proceeding to Comply with PURPA EISA 2007 Standards**

In accordance with PURPA Sections 2602(6)(C) and 2621(a)-(c), as amended by EISA 2007, the board directs cooperative staff to gather comments, data, views, arguments and other evidence addressing the following PURPA EISA Standards:

- A. First PURPA Standard 16 – Integrated Resource Planning (16 U.S.C. § 2621(d)(16), 121 Stat. 1665)<sup>1</sup>**

Each electric utility shall:

1. Integrate energy efficiency resources into utility, state and regional plans; and
2. Adopt policies establishing cost-effective energy efficiency as a priority resource.

**B. First PURPA Standard 17 – Rate Design Modifications to Promote Energy Efficiency Investments (16 U.S.C. § 2621(d)(17), 121 Stat. 1666)<sup>2</sup>**

1. IN GENERAL. The rates allowed to be charged by any electric utility shall:
  - i. Align utility incentives with the delivery of cost-effective energy efficiency; and
  - ii. Promote energy efficiency investments.
2. POLICY OPTIONS. In complying with subparagraph 1, each state regulatory authority and each nonregulated utility shall consider:
  - i. Removing the throughput incentive and other regulatory and management disincentives to energy efficiency;
  - ii. Providing utility incentives for the successful management of energy efficiency programs;
  - iii. 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;
  - iv. Adopting rate designs that encourage energy efficiency for each customer class;
  - v. Allowing timely recovery of energy efficiency related costs; and
  - vi. 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.

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<sup>1</sup>Due to a drafting error, PURPA EISA 2007 contains two standards assigned the number 16.

<sup>2</sup>Due to a drafting error, PURPA EISA 2007 contains two standards assigned the number 17.

**C. Second PURPA Standard 17 –Smart Grid Information (16 U.S.C. § 2621(d)(17), 121 Stat. 1792)**

1. **STANDARD.** All electricity purchasers shall be provided direct access, in written or electronic machine-readable form as appropriate, to information from their electricity provider as provided in subparagraph 2.
2. **INFORMATION.** Information provided under this section, to the extent practicable, shall include:
  - i. **PRICES.** Purchasers and other interested persons shall be provided with information on:
    - a. Time-based electricity prices in the wholesale electricity market; and
    - b. Time-based electricity retail prices or rates that are available to the purchasers.
  - ii. **USAGE.** Purchasers shall be provided with the number of electricity units, expressed in kWh, purchased by them.
  - iii. **INTERVALS AND PROJECTIONS.** Updates of information on prices and usage shall be offered on not less than a daily basis, shall include hourly price and use information, where available, and shall include a day-ahead projection of such price information to the extent available.
  - iv. **SOURCES.** Purchasers and other interested persons shall be provided annually with written information on the sources of the power provided by the utility, to the extent it can be determined by type of generation, including greenhouse gas emissions associated with each type of generation, for intervals during which such information is available on a cost-effective basis.
3. **ACCESS.** Purchasers shall be able to access their own information at any time through the Internet and on other means of communication elected by that utility for smart grid applications. Other interested persons shall be able to access information not specific to any purchase through the Internet. Information specific to any purchaser shall be provided solely to that purchaser.

## **II. Applicable Procedural Rules and Requirements**

The board reserves the right to provide additional formality including the establishment of a formal hearing in the event that it determines that a full and adequate record is not available upon which to base its determinations. The board presently finds that the following procedures are appropriate for this proceeding:

**A. Public Notice of Proceeding.** Cooperative staff shall give members and interested persons notice of the proceeding, including a brief description of the purpose of the proceeding and its procedure so as to provide a reasonable and meaningful opportunity to participate and submit written comments, data, views or arguments in the project by:

1. Publishing the notices contemplated herein in the *Nodak Neighbor* that is mailed or delivered to all member-owners of the cooperative;

2. Posting notices, comments, proposed determinations and all future information about the proceeding prominently in an area of the cooperative's Web site ([www.nodakelectric.com](http://www.nodakelectric.com)) that is accessible to members and the public;
3. Publishing notice of the process contemplated herein one time in one or more newspapers of general circulation in the cooperative's service territory;
4. Mailing a copy of the notice to the Secretary of Energy's representative, as applicable;
5. Providing notice to and requesting comments or assistance from the cooperative's wholesale power supplier, Minnkota Power Cooperative; and
6. Giving members and interested persons at least 30 days after notice is published to indicate their interest in participating in the proceeding and to submit comments.

**B. Participating in Proceeding.** Pursuant to PURPA Section 2631(a), the Secretary of Energy, and affected electric utility subject to the regulatory authority of the cooperative, which might therefore be affected by precedents set in the proceeding, and any electric consumer of an affected electric utility, including any member of the cooperative, may participate in the proceeding as a matter of right. Other interested persons may submit written comments on the standards for the cooperative's consideration and may participate in the proceeding according the schedule detailed below. All interested participants will be given reasonable opportunity to present comments, data, views, arguments and other evidence in this project under the schedule set forth herein. Timely received written comments will be posted on the cooperative's website as soon as possible upon receipt and in as complete a fashion as practical.

**Communication.** All correspondence to and filings with Nodak Electric Cooperative, Inc. concerning these proceedings must be addressed to:

Kim Soper, Board Recording Secretary  
Nodak Electric Cooperative, Inc.  
ATTN: PURPA PROCEEDINGS  
4000 32<sup>nd</sup> Avenue South  
P.O. Box 13000  
Grand Forks, ND 58201

E-mail correspondence may be provided, as .pdf files, to [ksoper@nodakelectric.com](mailto:ksoper@nodakelectric.com)

**C. Schedule of Proceeding.** The proceeding shall be completed and a written determination issued no later than December 19, 2009. The board approves the following timeline but also authorizes the President and CEO to adjust the timeline as necessary to complete the record of the proceeding and the project in a timely and efficient manner.

Procedural Timeline:

Submission of initial comments from members and public: **April 1, 2009**

Posting and distribution of staff's proposed determination: **April 17, 2009**

Reply comments concerning staff's proposed determination: **May 1, 2009**

Open house for board's initial consideration of staff's recommendation and receipt of verbal questions or comments from members and public concerning staff's recommendation: **May 7, 2009**

Posting and distribution of staff's final recommendation: **May 22, 2009**

Board's meeting to consider final recommendation of staff: **June 9, 2009**

**D. Record of Proceeding.** Cooperative staff shall maintain a permanent written or electronic record of all information prepared for and submitted in the project. The written or electronic record shall include, but is not limited to, the following nonconfidential documents:

1. Proof of notice of the proceeding consisting of one or more affidavits attesting to the completion of notice and attaching copies of the notices;
2. Comments, data, views, arguments and other evidence gathered from members and interested persons who participated in the project, all of which shall be timely placed on the cooperative's website in as complete a fashion as is practical;
3. All applicable board resolutions;
4. Service lists;
5. Notes from open house; and
6. Comments, data, views, arguments and other evidence prepared by cooperative staff and any consultants, which form the basis of staff's recommendation to the board on the subject matter of the standards.

**E. Cooperative Staff's Proposed Determination.** Cooperative staff shall prepare an initial recommendation in written form so as to include a brief explanation of and the

text of the proposed determination, the statutory authority under which the determination is proposed, and a concise explanation of the reasons for the proposed action on each PURPA EISA Standard under consideration. In compliance with the applicable time requirements set forth herein, the cooperative staff's proposed determination shall be posted on the cooperative's website ([www.nodakelectric.com](http://www.nodakelectric.com)), sent to the interested participants who have submitted comments or who have requested to be notified. Further, such recommendation shall also be submitted to the board before the meeting at which the board will initially consider the recommendation.

**F. Cooperative Staff's Final Recommendation and Board Adoption.** Cooperative staff shall prepare a recommendation in the form of a proposed determination, which shall include additional matters based upon input from reply comments or from verbal comments received by the board at the open house. In compliance with the applicable time requirements set forth herein, the cooperative staff's final recommendation shall be posted on the cooperative's website ([www.nodakelectric.com](http://www.nodakelectric.com)), sent to the interested participants who have submitted comments or who have requested to be notified. Further, such recommendation shall also be submitted to the board before the meeting at which the board will consider the final recommendation.

**G. Access to Information.** Pursuant to PURPA Section 2631(b), interested participants shall have access to information available to other participants in the proceeding if the information is relevant to the issues the participant has raised. The comments, data, views, arguments and other evidence prepared for and submitted in the project will be maintained in the cooperative's record of the proceeding, which will be available to all interested participants, except for any information that is privileged or confidential under the law.

**H. Member-Consumer Representation.** Pursuant to PURPA Section 2632(b), the cooperative will provide an alternative means for providing adequate compensation to persons: a) who have or represent an interest that would not otherwise be adequately represented in the proceeding; b) whose representation is necessary for a fair determination in the proceeding; and c) who are or who represent an interest that is unable to effectively participate in the proceeding because those persons cannot afford to pay reasonable attorneys' fees, expert witness fees or other reasonable cost of preparing for and participating in the proceeding, including fees and costs for obtaining judicial review. Alternative means may include the appointment by the board of a member representative. Persons interested in the proceeding and seeking such assistance with representation are required to make a request for assistance in writing to the President and CEO with a copy sent by e-mail to the board's counsel ([gpaul@minnkota.com](mailto:gpaul@minnkota.com)) setting forth detailed reasons representation is requested no later than 30 days after the deadline for expressing interest in participating in the proceeding. The burden is on the person requesting assistance to demonstrate the elements in PURPA Section 2632(b)(1)-(2). The board must approve or deny the request as soon as practicable or may delegate the authority to approve or deny

certain requests to the President and CEO. The board may, in its discretion, cap the cost at a reasonable amount.

- I. Judicial Review.** A member-consumer of the electric cooperative or interested participant who is adversely affected by a determination in this project is entitled to judicial review using the procedures in PURPA.

**NOW, THEREFORE BE IT RESOLVED**, by the Board of Directors of Nodak Electric Cooperative, Inc., that:

- A. There is hereby initiated a proceeding to consider and determine whether to adopt the federal standards established by Congress in the Energy Independence and Security Act of 2007 (EISA 2007), Public Law No. 110-140, 121 Stat. 1492 (2007), effective December 19, 2007; and
- B. The proceeding shall be conducted in accordance with the provisions in Section I through II of this Resolution.

Passed and approved this 4<sup>th</sup> day of December, 2008.

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Roger Diehl, Chairman

**CERTIFICATION**

I, Steven Smaaladen, do hereby certify that I am the Secretary of Nodak Electric Cooperative, Inc., and that the foregoing is a true and correct copy of a resolution, which was duly adopted by the Board of Directors at a meeting held on December 4, 2008. A quorum was present at this meeting.

**IN WITNESS WHEREOF**, I have hereunto subscribed my name as Secretary of said corporation this 4<sup>th</sup> day of December, 2008.

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Steven Smaaladen, Secretary/Treasurer

(Seal)