

## **Resolutions Regarding the Energy Independence and Security Act of 2007**

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 referred to as PURPA EISA 2007), requires nonregulated electric utilities that have total annual retail electric sales greater than 500 million kilowatt hours in 2007 to consider and determine whether to implement ratemaking standards addressing energy efficiency integrated resource planning, rate design modifications to promote energy efficiency investments, consideration of smart grid investments, and access to smart grid information (PURPA EISA Standards).

WHEREAS, Denton County Electric Cooperative, Inc., d/b/a CoServ Electric (cooperative) is a nonregulated electric utility with total annual retail electric sales greater than 500 million kilowatt hours in 2007, and has exclusive jurisdiction over the subject matter of this proceeding pursuant to PURPA and Sections 41.055 and 41.061 of the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 41.055, 41.061 (Vernon 1998 & Supp. 2005) (PURA).

NOW, THEREFORE, the Board of Directors (board) of the cooperative hereby adopts the following resolutions:

RESOLVED, the board approves the procedural requirements set forth below to commence the process of considering the PURPA EISA Standards.

RESOLVED, the Cooperative's Chief Executive Officer, with the assistance of the Cooperative's Staff, shall follow the approved procedural requirements and study and formulate a proposed determination on each PURPA EISA Standard referenced below.

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

### **PURPA EISA 2007 PROCEDURAL REQUIREMENTS**

#### **I. ESTABLISH PROCEEDING TO COMPLY WITH PURPA EISA STANDARDS**

In accordance with PURPA Sections 2602(6)(C) and 2621(a)-(c), as amended by EISA 2007, the board directs Cooperative Staff to establish a rulemaking project designated Project No. 2008-TX049-0001 and styled *Proceeding to Consider and Determine Whether to Implement the Federal Ratemaking Standards for Integrated Resource Planning, Rate Design Modifications to Promote Energy Efficiency Investments, Consideration of Smart Grid Investments, and Smart Grid Information pursuant to 16 U.S.C. § 2621(d)(16), (17), (16) and (17) as amended by Pub. L. No. 110-140, 121 Stat. 1492 (2007)*. During the proceeding, Cooperative Staff shall 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—

- (A) integrate energy efficiency resources into utility, State, and regional plans; and
- (B) 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>**

(A) 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.

(B) POLICY OPTIONS.— In complying with subparagraph (A), 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 1 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.

**C. Second PURPA Standard 16 – CONSIDERATION OF SMART GRID INVESTMENTS  
(16 U.S.C. § 2621(d)(16), 121 Stat. 1791)**

*Under this standard, each State must consider whether to require an electric utility to demonstrate that it has considered an investment in a qualified smart grid system before investing in non-advanced grid technologies. Although the cooperative cannot direct state action or implement the entire standard as drafted, the board has decided that the cooperative will consider how it makes smart grid investments and determine whether to implement a modified version of the standard that best serves its members.*

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<sup>1</sup> Due to a drafting error, PURPA EISA 2007 contains two standards assigned the number 16. Congress does not intend to correct the numbering errors. Therefore, the first standard 16 should be referred to by its full name – *Integrated Resource Planning Standard 16*, and the second standard 16 should be referred to by its full name – *Consideration of Smart Grid Investments Standard 16*.

<sup>2</sup> Due to a drafting error, PURPA EISA 2007 contains two standards assigned the number 17. Congress does not intend to correct the numbering errors. Therefore, the first standard 17 should be referred to by its full name— *Rate Design Modifications Standard 17*, and the second standard 17 should be referred to by its full name – *Smart Grid Information Standard 17*.

(A) IN GENERAL.—Each State shall consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the State demonstrate to the State that the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including—

- (i) total costs;
- (ii) cost-effectiveness;
- (iii) improved reliability;
- (iv) security;
- (v) system performance; and
- (vi) societal benefit.

(B) RATE RECOVERY.—Each State shall consider authorizing each electric utility of the State to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on the capital expenditures of the electric utility for the deployment of the qualified smart grid system.

(C) OBSOLETE EQUIPMENT.—Each State shall consider authorizing any electric utility or other party of the State to deploy a qualified smart grid system to recover in a timely manner the remaining book-value costs of any equipment rendered obsolete by the deployment of the qualified smart grid system, based on the remaining depreciable life of the obsolete equipment.

**D. Second PURPA Standard 17 – SMART GRID INFORMATION  
(16 U.S.C. § 2621(d)(17), 121 Stat. 1792)**

(A) 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 (B).

(B) 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—
  - (I) time-based electricity prices in the wholesale electricity market; and
  - (II) 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.

(C) 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 purchaser through the Internet. Information specific to any purchaser shall be provided solely to that purchaser.

**II. COOPERATIVE STAFF ASSIGNMENTS**

**A.** The individuals listed below are assigned to this project:

- 1) Team Leader – CURTIS TRIVITT
- 2) Team Members – Other Co-op Staff designated by the team leader.
- 3) Consultants – The team leader is authorized to retain any consultants necessary to complete this project.
- 4) Counsel to Staff – Don Richards, Richards, Elder & Green, L.L.P.

**B.** Procedural Officer – The board appoints former administrative law judge Deborah L. Ingraham as the procedural officer responsible for assisting with and resolving procedural matters in this project.

**III. APPLICABLE PROCEDURAL RULES AND REQUIREMENTS**

Pursuant to PURPA, 16 U.S.C. §§ 2602(6)(C) and 2621 (a)-(c) and PURA Ch. 41, the board 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 a reasonable opportunity to participate and submit written comments, data, views or arguments in the project by:

- 1) Publishing notice in Texas Co-op Power or another magazine, newsletter, communication, or customer billing that is mailed or delivered to all member-owners of the cooperative;
- 2) Posting notice and all future information about the proceeding prominently in an area of the cooperative's web site that is accessible to members and the public;
- 3) Publishing notice 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:

Mr. Larry Mansueti  
Director, State and Regional Assistance  
Office of Electricity Delivery and Energy Reliability  
United States Department of Energy, OE-20  
1000 Independence Ave., SW  
Washington, D.C. 20585;

- 5) Providing notice to and requesting comments or assistance from the cooperative's wholesale power supplier(s); 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, any 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 comments on the standards for the cooperative's consideration and may participate in the proceeding. All interested participants will be given reasonable opportunity to present comments, data, views, arguments, and other evidence in this project under the approved timeline.
- C. Schedule of Proceeding.** The board approves the timeline attached to this resolution and authorizes the team leader in consultation with the procedural officer to adjust the timeline as necessary to complete the record of the proceeding and the project in a timely and efficient manner. The proceeding shall be completed and a written determination issued no later than December 19, 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 non-confidential 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;
  - 3) All applicable board resolutions;
  - 4) Service lists;
  - 5) Transcripts or recordings of the public hearing; 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 a recommendation in the form of a proposed determination, which shall 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, including whether the action encourages: 1) conservation of energy supplied by the cooperative; 2) the optimization of the efficiency of use of facilities and resources by the cooperative;

and 3) equitable rates to cooperative consumers. The proposed determination shall be posted on the cooperative's web site and submitted to the board at least 7 days before the meeting at which the board will review the recommendation, provide any comments, and approve the proposal. Upon approval, the Cooperative's Staff shall send the proposed determination to the interested participants with at least 10 days' notice of the date, time, and place for a public hearing and opportunity to comment on the proposal. The notice and approved version of the proposed determination shall also be posted on the web site.

- F. Public Hearing.** Pursuant to PURPA Sections 2602(6)(C) and 2621(b), Cooperative Staff shall hold a public hearing in the proceeding after posting and sending notice of its proposed determination as required in paragraph E above. The hearing shall be held at a location where member meetings are commonly held or in another location convenient to the members and any interested participants. At the hearing, members, interested participants, and Cooperative Staff shall have an opportunity to present additional comments, data, views, arguments, or other evidence and ask questions of all participants about matters in the record and in the proposed determination. A transcript of the hearing shall be made either by a court reporter or by other recording. Section 2632(c) of PURPA requires the cooperative to make the transcript of the proceeding available to the participants at the cost of reproduction. Transcript requests from non-participants will be referred to any court reporting service that transcribed the hearing.
- G. Cooperative Staff's Final Recommendation and Board Adoption.** Cooperative Staff's final recommendation on the PURPA EISA Standards shall be posted on the cooperative's web site, sent to the interested participants, submitted to the board, and placed on the meeting agenda at least 7 days before the meeting at which the board will consider the final recommendation. The final recommendation shall include a summary of comments received from interested participants, the reasons the cooperative agrees or disagrees with the comments, and any discussion of the reasons for the decision required under 16 U.S.C. § 2601 *et seq.* The board will allow interested participants and cooperative members to attend the portion of the meeting at which the recommendation is discussed and voted on. A copy of the board's final determination shall be posted on the cooperative's web site and published in Texas Co-op Power or other member communication as soon as practicable after the written determination is finalized.
- H. 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.
- I. Resolution of Disputes.** If a dispute over access to or relevance of information arises, the procedural officer shall be notified and is authorized to resolve the dispute with guidance from rules applicable to similar regulatory proceedings in Texas, such as the

procedural rules of the Public Utility Commission of Texas in Title 16, Chapter 22 of the Texas Administrative Code, 16 TEX. ADMIN. CODE Ch. 22, to the extent appropriate.

- J. 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, and the representation is necessary for a fair determination in the proceeding; and b) 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 costs 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-consumer representative. Persons interested in the proceeding and seeking such member-consumer representation are required to make a request in writing to the project team leader, Curtis Trivitt, at CoServ Electric, 7701 S. Stemmons, Corinth, Texas 76210, setting forth detailed reasons representation is requested no later than 30 days after the deadline for expressing interest in participating in the proceeding. The team leader shall send the procedural officer a copy of the request upon receipt.

If a request for representation is received, the procedural officer is authorized to examine the request and conduct any conferences or hearings necessary to determine whether the request fits the criteria listed in PURPA Section 2632(b). The burden is on the person requesting assistance to demonstrate the elements in PURPA Section 2632(b)(1)-(2). The procedural officer shall make a recommendation to the board as soon as practicable addressing whether the request should be granted or denied, suggesting options for providing an alternative means for compensation, and estimating the cost of the alternative means. The board must approve or deny the request as soon as practicable or may delegate the authority to approve or deny the request to the Cooperative's Chief Executive Officer. The board may, in its discretion, cap the cost at a reasonable amount.

- K. Judicial Review.** A member-consumer of the electric cooperative or interested participant who is adversely affected by determination in this project is entitled to judicial review using the procedures in Section 41.061 of PURA. A person initiates judicial review by filing a petition in the district court of Travis County not later than the 90th day after the board issues the final written determination on the PURPA EISA Standards. The determination shall be presumed valid, and the burden of showing that the determination is invalid rests on the person challenging the determination. A court reviewing a PURPA EISA determination made by an electric cooperative may consider any relevant factor, including the cooperative's substantial compliance with the procedures established for the proceeding and otherwise applicable state law as provided in 16 U.S.C. § 2601 *et seq.*

If the court finds that the electric cooperative's determination was made through procedures that did not substantially comply with those required by the board or the determination violates the requirements of 16 U.S.C. § 2601 *et seq.* as amended by Public Law No. 110-140, 121 Stat. 1492 (2007), the court shall enter an order stating the specific basis for its determination that a violation exists and directing the electric

cooperative to take action to correct the error within 60 days. The court may not enter an order substituting its judgment for the judgment of the board by requiring the cooperative to implement one or more PURPA EISA Standards. A person having obtained an order of the court under this provision may seek enforcement of the order in the manner prescribed in PURA Section 41.061(j).

**NOW, THEREFORE BE IT RESOLVED** by the Board of Directors of CoServ Electric, 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 Sections I through III of these Resolutions.

Passed and approved this 18th day of December, 2008.

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Jerry Cobb, Chairman of the Board

**CERTIFICATION**

I, \_\_\_\_\_, do hereby certify that I am the Secretary or Assistant Secretary of CoServ Electric, and that the foregoing is a true and correct copy of resolutions which were duly adopted by the Board of Directors at a meeting held on December 18, 2008. A quorum was present at this meeting.

**IN WITNESS WHEREOF**, I have hereunto subscribed my name as Secretary or Assistant Secretary and affixed the corporate seal of said Corporation this \_\_\_ day of \_\_\_\_\_ 200\_\_.

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Secretary/Assistant Secretary