

CASS COUNTY ELECTRIC COOPERATIVE'S

**Manual of Practice and Procedure for
PURPA Proceedings Under
The Energy Policy Act of 2005**

**Approved by the
Board of Directors of
Cass County Electric Cooperative,
Inc.**

July 25, 2006

MANUAL OF PRACTICE AND PROCEDURE
FOR PURPA PROCEEDINGS

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PREAMBLE

The Energy Policy Act of 2005, Subtitle E, amended Title I of the Public Utility Regulatory Policies Act of 1978 (“PURPA”). See Pub. L. 109-58, Title XII, Subtitle E. Title I’s purposes, as stated in the 1978 law, are to encourage conservation of energy supplied by electric utilities, the optimization of the efficiency of use of facilities and resources by electric utilities, and equitable rates to electric consumers. See § 16 U.S.C. § 2611(1)-(3). The Energy Policy Act of 2005 requires certain nonregulated electric utilities to consider whether it is appropriate to implement five new federal standards relating to electric service and rate structures to carry out the purposes of Title I of PURPA. See 16 U.S.C. § 2621(a), (d)(11)-(15). These policies and matters will be available through the PURPA link found at www.kwh.com.

The five federal standards are as follows:

- **Net Metering**

The Net Metering Standard requires consideration of making available upon request net metering service to any electric consumer that the electric utility serves. Net metering service means service to an electric consumer in which electricity generated by the consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided to the consumer during the applicable billing period. See 16 U.S.C. § 2621(d)(11).

- **Fuel Source Diversity**

The Fuel Source Diversity Standard requires consideration of development of a plan to minimize dependence on one fuel source and to ensure that the electric energy the utility sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies. See 16 U.S.C. § 2621(d)(12).

- **Fossil Fuel Generation Efficiency**

The Fossil Fuel Generation Efficiency Standard requires consideration of development and implementation of a ten-year plan to increase the efficiency of the utility's fossil fuel generation. See 16 U.S.C. § 2621(d)(13).

- **Time-based Metering and Communications (Smart metering)**

The Time-based Metering and Communications Standard, otherwise known as “smart metering,”

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requires consideration of offering and providing a time-based rate schedule to each of the utilities' customer classes and to individual customers upon customer request. Under a time-based rate schedule, the rate charged varies during different time periods and reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level. It enables the electric consumer to manage energy use and cost through advanced metering and communications technology. Under this standard, the electric utility provides each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively. See 16 U.S.C. § 2621(d)(14)(a).

- **Interconnection**

The Interconnection Standard requires consideration of making interconnection service available, upon request, to any electric consumer that the electric utility serves. Interconnection service is service in which an on-site generating facility on the consumer's premises is connected to the local distribution facilities. See 16 U.S.C. § 2621(d)(15).

Nonregulated utilities must consider implementation of each standard after public notice and hearing. 16 U.S.C. § 2621(b)(1). Cass County Electric Cooperative will use the procedures set forth in this manual to consider the federal standards.

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ARTICLE 1 - SCOPE

Cass County Electric Cooperative's procedures for consideration, determination, and implementation of the PURPA standards in the Energy Policy Act of 2005, as set forth herein and adopted by the Cass County Electric Cooperative's Board of Directors ("Board of Directors") on July 25, 2006, are modeled after the Rules of Practice and Procedure before the Public Service Commission, State of North Dakota, found at Article 69-02 of the North Dakota Administrative Code [<http://www.legis.nd.gov/information/acdata/html/69-02.html>], for adjudicative/nonrulemaking proceedings, with the exception of discovery. The provisions regarding discovery are modeled after the Administrative Agencies Practice Act, found at Chapter 28-32 of the North Dakota Century Code [<http://www.legis.nd.gov/cencode/t28c32.pdf>].

ARTICLE 2 - GENERAL PROVISIONS

2.1 Communications

All correspondence to and filings with Cass County Electric Cooperative for these PURPA proceedings must be addressed to:

**Jane Lindemann, Board Recording Secretary
Cass County Electric Cooperative
ATTN: PURPA Proceedings
P.O. Box 8
491 Elm Street
Kindred, ND 58051**

Documents must be printed, typewritten, or otherwise mechanically reproduced on paper that is eight and one-half by eleven inches. The left, top, and bottom margins must be one inch deep on all pages. Each filing must contain a transmittal letter summarizing the purpose of the filing, include the name and address of the person making the filing, and identify each item in the filing.

Electronic filing of correspondence and documents will also be accepted and is encouraged. Any filed correspondence and documents must be attached as .pdf files to e-mail addressed to jlindemann@kwh.com with the subject line "PURPA Proceedings." When a party provides an e-mail address, all subsequent service of documents will be made by e-mail.

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Cass County Electric Cooperative’s Board Recording Secretary (“Board Recording Secretary”) will provide service of filed documents by e-mail if an e-mail address has been provided or, in the alternative, by first-class mail. The Board Recording Secretary will provide proof of service by preparing an Affidavit of Service in accordance with the North Dakota Rules of Civil Procedure [<http://www.court.state.nd.us/rules/civil/frameset.htm>].

Source: N.D. Admin. Code § 69-02-01-03 (as modified).

2.2 Personal and Representative Appearances

Parties, as defined by Section 2.3 of this manual, may appear in any proceeding in person or by an attorney or other qualified representative. The following persons may appear in any proceeding on behalf of an Intervenor: (1) an individual member of the utility on the individual's behalf; (2) a partner of a partnership that is a member of the utility; (3) an officer or authorized employee of a member of the utility that is a corporation or other legal entity; (4) an officer or authorized employee of an affected utility.

Source: N.D. Admin. Code § 69-02-01-05 (as modified).

2.3 Parties

The parties to the proceedings will be designated as either Applicant or Intervenor. Cass County Electric Cooperative’s Staff will represent the Applicant in these proceedings. An Intervenor is an entity or person who becomes a party under Article 4 of this manual.

Source: N.D. Admin. Code § 69-02-01-07 (as modified).

2.4 Suspension of Rules

The Board of Directors reserves the right to suspend, upon its own initiative, the operation of or necessity for compliance with any rule of procedure or part thereof, upon due notice to all parties.

Source: N.D. Admin. Code § 69-02-01-11 (as modified).

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ARTICLE 3 - APPLICATION

3.1 General

The Applicant will file electronically or by first-class mail postmarked on or before **January 15, 2007**, an Application in writing setting forth its position whether or not it is appropriate for the Board of Directors to implement each of the five federal PURPA standards for consideration under the Energy Policy Act of 2005. Filing of the Application is effective upon electronic transmission or first-class mailing.

3.2 Form and Content of Application

The Application will state the venue as "Before the Cass County Electric Cooperative's Board of Directors" and include a caption stating "In Re: PURPA Proceedings under the Energy Policy Act of 2005" with Cass County Electric Cooperative's Staff as Applicant and designating the names of any Intervenors, as Intervenors. The Application must include the name, e-mail address (if available), mailing address, and telephone number of the Applicant's attorney, if any, or other representative. The Application will set forth in short and plain statements the Applicant's position and the grounds therefore on each federal standard for consideration.

3.3 Number

The Applicant will file one paper original if filed by first-class mail. Electronic filing is preferred, in which case the Applicant will retain the signed original.

3.4 Service and Proof of Service

The Board Recording Secretary will serve a copy of the Application on the Hearing Officer and each Intervenor upon the Intervenor's intervention under Section 4.1 of this manual. If an Intervenor provides notice of intervention before the Applicant's Application is filed, the Board Recording Secretary will serve the Application on such Intervenor within three calendar days after receipt of the Application. The Board Recording Secretary will provide proof of service in accordance with Section 2.1 of this manual.

Source: N.D. Admin. Code § 69-02-02-04 (as modified).

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ARTICLE 4 - INTERVENTION

4.1 General

The Secretary of Energy, any affected electric utility, and any consumer member of Cass County Electric Cooperative can intervene as a matter of right in the proceedings by filing electronically or by first-class mail postmarked on or before **February 15, 2007**, a pleading designated Notice of Intent to Intervene. See 16 U.S.C. § 2631(a). The Board of Directors may declare any notice of intent to intervene and right or standing to intervene inappropriate consistent with the standards set forth 16 U.S.C. § 2631(a). Any such determination may be appealed to the U.S. District Court pursuant to 16 U.S.C. § 2633(b). The Board Recording Secretary will serve notice of the Board's determination to the Hearing Officer and all parties, together with proof of service in accordance with Section 2.1 of this manual.

Source: 16 U.S.C. § 2631(a).

4.2 Form and Content of Notice of Intent to Intervene

The Notice of Intent to Intervene will state the venue as "Before the Cass County Electric Cooperative's Board of Directors" and include a caption stating "In Re: PURPA Proceedings under the Energy Policy Act of 2005" with Cass County Electric Cooperative's Staff as Applicant and designating the names of any Intervenors, as Intervenors. The Notice of Intent to Intervene must include the name, e-mail address (if available), mailing address, and telephone number of the Intervenor's attorney, if any, or other representative. The Notice of Intent to Intervene must be in writing and set forth a short, plain statement of the parties standing to intervene under Section 4.1, the federal standard or standards for which intervention is sought, and a short plain statement of the Intervenor's position on the standard or standards for which intervention is sought. An Intervenor's scope of discovery under Article 9 of this manual and admissibility of evidence under Article 8 of this manual will be limited to the standard or standards for which intervention is sought.

If an Intervenor files a Notice of Intent to Intervene **before** the Applicant's Application is filed, the Intervenor may file electronically or by first-class mail postmarked on or before **February 15, 2007** an Amended Notice to Intervene containing the information required in a Notice of Intent to Intervene, and a short, plain statement of the Intervenor's position on the standard or standards on which intervention is sought in response to the Applicant's Application.

4.3 Number

The Intervenor will file one paper original if filed by first-class mail. Electronic filing is

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preferred, in which case the Intervenor will retain the signed original.

4.4 Service and Proof of Service

The Board Recording Secretary will provide service of the Notice of Intent to Intervene and Amended Notice of Intent to Intervene, if any, on all parties and the Hearing Officer and proof of service in accordance with Section 2.1 of this manual.

Source: 16 U.S.C. § 2631(a); N.D. Admin. Code 69-02-02-05 (as modified).

ARTICLE 5 - MOTIONS

5.1 General

All motions and supporting briefs or other documents shall be in writing and filed with the Board Recording Secretary, unless made at a hearing. The Board Recording Secretary will provide service on all nonmoving parties and the Hearing Officer and proof of service in accordance with Section 2.1 of this manual.

Nonmoving parties shall have 10 days, excluding weekends and state holidays, from the date of service to file an answer brief and other supporting papers. The Board Recording Secretary will provide service on all other parties and the Hearing Officer and proof of service in accordance with Section 2.1 of this manual.

Source: N.D. Admin. Code § 69-02-02-08 (as modified).

5.2 Argument

The Hearing Officer may set any motion for oral argument.

Source: N.D. Admin. Code § 69-02-02-08 (as modified).

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5.3 _Disposition

The Hearing Officer is authorized to rule upon any motion.

Source: N.D. Admin. Code § 69-02-02-08 (as modified).

ARTICLE 6 - CONFERENCES

6.1 To Adjust Proceedings

Conferences may be held to expedite the orderly conduct and disposition of the hearing. Conferences may concern the following:

- A. Simplification of issues.
- B. Admissions or stipulations of facts not in dispute.
- C. Admissions and stipulations of authenticity of documents.
- D. Limitation of the number of witnesses.
- E. Limitation of the time allowed for the testimony of witnesses.
- F. Other matters that may be necessary or desirable to expedite the proceeding.

Source: N.D. Admin. Code § 69-02-03-01 (as modified).

6.2 Initiation of Conferences

Upon its own motion or the motion of any party, the Hearing Officer may direct that a conference be held and order the parties to appear. Due notice of the time and place of the conference must be given to all parties by the Board Recording Secretary at the direction of the Hearing Officer.

Source: N.D. Admin. Code § 69-02-03-03 (as modified).

6.3 Conference Results

Upon conclusion of the conference, the Hearing Officer will issue an order reducing the results to writing and provide the order to the Cass County Electric Cooperative's Board Recording Secretary for service on the parties. Stipulations may be received in evidence at a hearing and,

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when and so received, shall be binding on the parties with respect to the matters concerned. All stipulations are subject to approval by the Hearing Officer.

Source: N.D. Admin. Code § 69-02-03-04 (as modified).

ARTICLE 7 - HEARINGS

7.1 Notice

The public hearing will be held on **June 14, 2007**, at a location determined by the Board of Directors. The Board of Directors will provide notice of such hearing by **October 15, 2006**. The notice will provide the date, time, and location for the hearing, a summary of the federal standards for consideration, notification of the right to intervene, and where additional information can be obtained.

Source: N.D. Admin. Code § 69-02-04-01 (as modified).

7.2 Appearances

Each interested party shall enter an appearance at the beginning of the hearing by giving the party's name and address and briefly stating the capacity in which the party appears. All appearances must be noted on the record. The name and position of each member of Cass County Electric Cooperative's Staff participating in the hearing must be included in the record as an appearance.

Source: N.D. Admin. Code § 69-02-04-02 (as modified).

7.3 Order of Procedure

The Applicant shall open and close. Intervenors in support of the Applicant will follow the Applicant. Where the intervention is not in support of the Applicant, the Hearing Officer shall designate at which stage the Intervenor will be heard.

Source: N.D. Admin. Code § 69-02-04-06 (as modified).

7.4 Hearing Officer

The Hearing Officer will be selected by the Board of Directors. The Hearing Officer is delegated procedural authority and may:

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- A. Regulate the course of hearing.
- B. Administer oaths.
- C. Authorize depositions to be taken when authorized under Section 9.3.
- D. Receive evidence.
- E. Hold conferences.
- F. Dispose of procedural matters so long as the disposition does not involve a final determination of proceedings.
- G. Certify any question to the Board of Directors for its consideration and disposition.
- H. Exclude evidence.
- I. Authorize any party to furnish and serve designated late filed exhibits within a specified time after the close of the hearing.
- J. Authorize and limit discovery in accordance with Article 9 of this manual.
- K. Take any other action necessary or appropriate to discharge the duties vested in the Hearing Officer.

Source: N.D. Admin. Code § 69-02-04-07 (as modified).

7.5 Briefs and Other Submissions

Each party to the proceeding may file briefs, testimony, exhibits, or other evidence prior to the hearing. The deadline for filing of such submissions is **May 15, 2007**. Filing is complete upon electronic transmission or first-class mailing. The Board Recording Secretary will provide service on all parties and the Hearing Officer and proof of service in accordance with Section 2.1 of this manual.

Source: N.D. Admin. Code § 69-02-04-10 (as modified).

7.6 Testimony

All direct testimony by witnesses must be submitted in writing by affidavit prior to the hearing.

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The deadline for filing testimony is **May 15, 2007**. Filing is complete upon electronic transmission or first-class mailing. The Board Recording Secretary will provide service on all parties and the Hearing Officer and proof of service in accordance with Section 2.1 of this manual.

At the hearing, the witnesses must be present and provide testimony under oath. The witnesses shall authenticate their pre-filed testimony and be subject to direct-examination summarizing their pre-filed written testimony, cross-examination, and redirect examination within the scope of the cross-examination.

7.7 Rebuttal Testimony and Supplementation of the Record

Rebuttal testimony and supplementation of the record is permitted and will be considered following the hearing if it is submitted in writing by affidavit and filed within 14 calendar days after the hearing. Filing is complete upon electronic transmission or first-class mailing. The Board Recording Secretary will provide service on all parties and the Hearing Officer and proof of service in accordance with Section 2.1 of this manual.

7.8 Proposed Findings of Fact and Conclusions of Law

Proposed Findings of Fact and Conclusions of Law, briefs, or other memoranda may be filed by any party within 30 calendar days after the hearing. Filing is complete upon electronic transmission or first-class mailing. The Board Recording Secretary will provide service on all parties and the Hearing Officer and proof of service in accordance with Section 2.1 of this manual.

Source: N.D. Admin. Code § 69-02-04-10 (as modified).

7.9 Transcript of Proceedings

The proceedings will be transcribed. The Board Recording Secretary will make transcripts of the proceedings available to the parties upon payment by a requesting party of the costs of reproduction..

Source: 16 U.S.C. § 2632(c).

ARTICLE 8 - EVIDENCE

8.1 Rules of Evidence

Evidence is admissible in accordance with the North Dakota Rules of Evidence

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[<http://www.court.state.nd.us/rules/evidence/frameset.htm>]. The Hearing Officer, however, may waive the rules of evidence where such waiver is necessary to ascertain the substantial rights of a party but only relevant evidence may be admitted. A waiver of the rules of evidence must be stated specifically.

Source: N.D. Admin. Code § 69-02-05-01 (as modified).

8.2 Witnesses

Witnesses will be orally examined under oath and will provide testimony in accordance with Section 7.6 of this manual. In addition to the parties, the Board of Directors may examine any witness.

Source: N.D. Admin. Code § 69-02-05-02 (as modified).

8.3 Stipulations

The parties may agree upon all or part of the facts involved in the proceedings. A stipulation must be in writing unless made orally at the hearing and may be received as evidence at the hearing.

Source: N.D. Admin. Code § 69-02-05-05 (as modified).

8.4 Documentary Evidence

Where relevant and material evidence is embraced in a book, paper, or a document containing other matter not material or relevant, the offering party must plainly designate the relevant and material matter. If the other matter is so voluminous that it would unnecessarily encumber the record, it will not be received in evidence. It may be marked for identification and, if authenticated, the relevant and material matter may be read into the record, or copied and be received as an exhibit. All parties appearing at the hearing shall be afforded an opportunity to examine the entire book, paper, or document and offer in evidence any portion found to be material and relevant. All documentary evidence must be filed on or before **May 15, 2007**, in accordance with Section 7.5 of this manual. The Board Recording Secretary will provide service on all parties and the Hearing Officer and proof of service in accordance with Section 2.1 of this manual.

Source: N.D. Admin. Code § 69-02-05-06 (as modified).

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8.5 Exhibits

Exhibits must be on paper of good quality, be plainly legible and durable and may not exceed eight and one-half by eleven inches. If an exhibit exceeds the size limit, it is acceptable if it can be folded to conform to the size requirement. Whenever practicable, documents sponsored by a single witness should be assembled and bound together, suitably arranged, and indexed so that they may be identified and offered as one exhibit. The source of all material contained in any exhibit should be shown. All exhibits must be filed on or before **May 15, 2007**, in accordance with Section 7.5 of this manual. The Board Recording Secretary will provide service on all parties and the Hearing Officer and proof of service in accordance with Section 2.1 of this manual.

Source: N.D. Admin. Code § 69-02-05-07 (as modified).

8.6 Official Notice

The Board of Directors may take notice of any fact in its records and files, to which reference is made on the record at the hearing and any fact judicially noticed by the courts of this state.

N.D. Admin. Code § 69-02-05-08 (as modified).

ARTICLE 9 - DISCOVERY

9.1 General

Discovery may be obtained by any party in accordance with the North Dakota Rules of Civil Procedure [<http://www.court.state.nd.us/rules/civil/frameset.htm>], unless otherwise stated in this Article.

9.2 Deadline

The deadline for completion of discovery is **April 16, 2007**.

9.3 Depositions

No depositions will be permitted unless a party can show good cause for taking the deposition and substantial prejudice if the deposition is not taken.

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9.4 Limit On Scope of Intervenor's Access To Information

The parties will have access to information through discovery in accordance with the North Dakota Rules of Civil Procedure if such information is relevant to the federal standard or standards. An Intervenor may seek discovery only with respect to the standards for which the Intervenor has intervened, as set forth in the Notice of Intervention.

Source: 16 U.S.C. § 2631(b).

9.5 Role of Hearing Officer

The Hearing Officer will consider and rule on discovery disputes.

ARTICLE 10 - DETERMINATION AND IMPLEMENTATION

The Board of Directors will make a determination on each standard concerning whether or not it is appropriate for implementation. The determination shall be in writing, based upon findings included in such determination and upon the evidence presented at the hearing, and available to the public. See 16 U.S.C. § 2621 (b)(1)(A)-(C). The Board of Directors will decide whether to implement any standard determined to be appropriate to carry out the purposes of PURPA, Title I, or to decline to implement any such standard. The Board of Directors will state in writing the reasons for the decision and make the statement available to the public. 16 U.S.C. § 2621(c)(2).

Source: 16 U.S.C. § 2621 (b)(1)(A)-(C), (c)(2).

ARTICLE 11 - COMPENSATION

If the position on a standard advocated by an electric consumer/member of Cass County Electric Cooperative is approved, in whole or in part, and the consumer's advocacy substantially contributed to the approval, then Cass County Electric Cooperative will compensate such consumer for reasonable attorneys' fees, expert witness fees, and other reasonable costs incurred in preparation and advocacy of such position in the proceeding.

As a condition of receiving compensation under this procedure, the consumer must first demonstrate in a preliminary proceeding that, but for the ability to receive such award, participation or intervention in the proceeding would be a significant financial hardship for such consumer. See 16 U.S.C. § 2632(a)(3)(A). In addition, as a condition to receiving compensation, persons with the same or similar interests must have a common legal representative in the proceeding. See 16 U.S.C. § 2632(a)(3)(B).

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An Intervenor seeking compensation under this provision must file a motion and supporting documentation, including a detailed, verified statement of costs, not later than 15 days after notice of the Board of Directors' Determination. The Board of Directors will decide if the circumstances warrant compensation and, if so, the amount of such fees and costs to be awarded. The Board of Directors may set a hearing date for oral argument on the motion before issuing its determination on the motion.

Source: 16 U.S.C. § 2632(a)(3)(A)-(B).

ARTICLE 12 - APPEAL

Any party may obtain judicial review of any determination in state court. See 16 U.S.C. § 2633(c)(1). Such review shall be pursuant to applicable state procedures. Id. Judicial review will be subject to Section 28-32-46 of the Administrative Agencies Practice Act. Any person, including the Secretary of Energy, may bring an action to enforce the requirements of PURPA in state court. Id. Any notice of appeal must be filed within 60 days from service of notice of the Board of Directors' Determination.

Source: 16 U.S.C. § 2633(c); N.D. Cent. Code § 28-32-46.