STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

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July 16, 2015

In the Matter of a Request for Dispute Resolution with Peoples' Energy Cooperative under the Cogeneration and Small Power Production Statute, Minn. Stat. § 216B.164	Docket No. E132/CG-15-255

REPLY COMMENTS BY FRESH ENERGY, ENVIRONMENTAL LAW & POLICY CENTER, INSTITUTE FOR LOCAL SELF-RELIANCE AND MINNESOTA CENTER FOR ENVIRONMENTAL ADVOCACY

Fresh Energy, Environmental Law & Policy Center, Institute for Local Self-Reliance and Minnesota Center for Environmental Advocacy (Clean Energy Organizations) submit these Reply Comments in response to the Commission's March 16, 2015 Notice Seeking Comments and the Second Notice of Extended Comment Period issued June 5, 2015. Nothing in the comments filed by other parties changes the conclusion of the Clean Energy Organizations that (1) the net metering charge imposed by Peoples' Cooperative (Peoples') charge is not allowed by statute; and (2) even if the applicable version of the statute allowed utilities to impose net metering charges (which it did not), Peoples has failed to meet its burden of proof under §216B.164 subd. 5 to justify the charges it has proposed. The Clean Energy Organizations respectfully request that the Commission order Peoples to refund all charges collected to date and take other remedial action as further discussed below.

I. Reply to Peoples' Response Comments

Peoples' argues in its reply comments that it has unlimited authority to establish additional charges to distributed generation (DG) customers under Minnesota Statute §216B.01. But, that provision, which exempts the cooperative from general rate regulation specifically provides for Commission regulation on specific issues where it is identified in Chapter 216B, such as in the Cogeneration and Small Power Production section. Section 216B.01 states that "it is deemed unnecessary to subject [cooperative and municipal] utilities to regulation under this chapter *except as specifically provided herein*."[1] The Cogeneration and Small Power Production section, §216B.164, does specifically provide that it applies "to all Minnesota electric utilities, including cooperative electric associations and municipal electric

[1] Emphasis added.

utilities." Therefore, §216B.01 does not preclude Commission authority to enforce and apply §216B.164 to cooperative and municipal utilities. This authority includes applying subdivision 3(a), which states that "the customer shall be billed for the net energy supplied by the utility according to the applicable rate schedule for sales to that class of customer" and subdivision 3(c), which states that costs for customers billed under §216B.164 may not be "discriminatory in relation to the costs charged to other customers of the utility." Furthermore, if Peoples' argument were correct, then the Special Session amendment to this section, which squarely addresses cooperative and municipal DG fees such as the one at issue here, would be completely unnecessary. Instead, this legislative action clearly demonstrates that DG and net metering fees should be considered in the context of §216B.164 and are not exempt under §216B.01. We discuss the new legislation in more detail below in section IV.

II. Reply to Department of Commerce Comments

The Department of Commerce (Department) analyzed the net metering contract between Alan Miller and Peoples' and determined that the contract does not "authorize the Cooperative to unilaterally implement new charges or fees for interconnection or fixed distribution services."[2] Clean Energy Organizations agree with this analysis and the Department's recommendation that the Commission deny Peoples' net metering facilities charge. We also reassert our argument from our Initial Comments filed June 5, 2015 that the net metering charge imposed by Peoples' is not authorized under Minnesota's net metering statute. We recommend that the Commission analyze Mr. Miller's Complaint based on the statutory language and rules in addition to interpreting the contract. The contract between Alan Miller and Peoples' reflects the statutory and regulatory language stating that discriminatory charges to DG customers are impermissible. As we stated in our initial comments[3]:

> A key premise of net metering is that distributed generation (DG) customers are billed for net consumption at the *identical* rate schedule as non-DG customers so that rates are "non-discriminatory" between DG and non-DG customers.[4] Extra fees or charges specific to DG customers is directly contrary to this principle. This "non-discrimination" principle is reflected in Minnesota's net metering statute. Minn. Stat. §216B.164 subd. 3(a) states that net metering customers "shall be billed for the net energy supplied by the utility according to the applicable rate schedule for sales to that class of customer." Costs

[2] Department of Commerce Comments dated July 1, 2015 at 6.
[3] *Id.* at 4.
[4] *See e.g.*, Illinois' net metering statute 220 ILCS 5/16-107.5(e) ("An electricity provider shall provide to net metering customers electric service at non-discriminatory rates that are identical, with respect to rate structure, retail rate components, and any monthly charges, to the rates that the customer would be charged if not a net metering customer."). *See also* the Interstate Renewable Energy Council's model net metering rules, Section (b)(13) available at http://www.irecusa.org/irec-model-net-metering-rules-2009/ ("An Electricity Provider shall not charge a Customer-generator any fee or charge; or require additional equipment, insurance or any other requirement not specifically authorized under this sub-section or the interconnection rules in Section [[reference state interconnection rules here]], unless the fee, charge or other requirement would apply to other similarly situated customers who are not Customer-generators.").

> charged to the net metering customer may not be "discriminatory in relation to the costs charged to other customers of the utility."[5]

In addition to being clearly prohibited by the statutory language, the intent and purpose of §216B.164, which is to clearly define the compensation scheme for DG customers and to promote DG in Minnesota, "is undermined if utilities are able to circumvent the statute's explicit compensation structure for net metered customers by simply adding extra fees to only those same customers."[6]

The Department also notes that "[a]lthough the Uniform Contract language could be read narrowly to permit only changes to the energy charge for the purchases or sale of electricity, the language does grant some authority to the utility to modify the rates charged to a QF."[7] While this specific portion of the Uniform Contract could be read as ambiguous, an interpretation that would allow the type of charge imposed by Peoples' would contradict the state's net metering statute. The statute and rules make clear that adding the type of DG-specific charge Peoples' has imposed here is impermissible, as described above and in more detail in our initial comments. Therefore, while we agree that the contract between Peoples' and Alan Miller does not authorize Peoples' charge, the Commission should base its decision on the statute and rules to prevent the potential interpretation identified by the Department and to prevent the Commission from having to interpret individual Cooperative contracts in potential future disputes when the statute and rules clearly govern.

Clean Energy Organizations also agree with the Department's recommendation that the Commission "direct the Cooperative to submit a compliance filing identifying the amount of refund owed to the Complainant and the Cooperative's plan for issuing a refund to the Complainant," and we recommend that the Commission adopt the Department's suggestion that the Commission may wish to order Peoples' to identify additional DG customers who were assessed similar types of charges and to identify a plan for refunding these charges.[8]

III. Distributed Generation Fees Charged by Other Cooperatives

Public comments in this docket show that at least one other cooperative, Connexus Energy, has been billing DG customers a $2.65 "Cost of Basic Service - Net Metering" fee.[9] It is possible that other cooperatives have instituted similar impermissible charges. Customers from other cooperatives charged similar DG fees should also be entitled to refunds. For this reason, we recommend that the Commission also direct the Commission's Consumer Affairs Office to establish a process to "fast-track" requests for refunds from customers from other cooperatives who have been billed for similar impermissible DG

[5] Minn. Stat. §216B.164 subd. 3(c).
[6] Department of Commerce Comments dated July 1, 2015 at 5.
[7] *Id.* at 6.
[8] *Id.* at 7.
[9] Sam Villella Comments dated May 6, 2015 at 1.

charges. Handling these refunds through a streamlined process with the Consumer Affairs Office should be more efficient than requiring a Commission proceeding for each cooperative that has been impermissibly charging DG fees.

IV. 2015 Legislation

As the Department discussed in its Comments, the 2015 Special Session of the Legislature amended Minn. Stat. §216B.164 subd. 3(a) to allow cooperative and municipal utilities to add an additional charge under limited circumstances to its DG customers interconnecting after July 1, 2015. The new language is as follows:

> (a) this paragraph applies to cooperative electric associations and municipal utilities. For a qualifying facility having less than 40-kilowatt capacity, the customer shall be billed for the net energy supplied by the utility according to the applicable rate schedule for sales to that class of customer. A cooperative electric association or municipal utility may charge an additional fee to recover the fixed costs not already paid for by the customer through the customer's existing billing arrangement. Any additional charge by the utility must be reasonable and appropriate for that class of customer based on the most recent cost of service study. The cost of service study must be made available for review by a customer of the utility upon request. In the case of net input into the utility system by a qualifying facility having less than 40-kilowatt capacity, compensation to the customer shall be at a per kilowatt-hour rate determined under paragraph (c) ~~or~~ ,(d), or (f).

A. The Amendment to § 216B.164 subd. 3(a) Shows that Peoples' DG Charge is not Authorized by Minnesota's Cogeneration and Small Power Production Statute.

The amendment to §216B.164 subd. 3(a) is yet more evidence that Peoples' DG charge, and similar existing DG-specific charges by other cooperatives, are impermissible. Peoples' charge at issue here is "an additional fee" to customers electing compensation under this section. This amendment, which is directly on the subject of additional DG customer charges and which sets parameters for when such a charge may be instituted would be superfluous if Peoples' DG charge were already allowed under current law.

B. Commission Guidance on New Distributed Generation Fees Based on the 2015 Legislation.

As discussed above, the recent amendments to §216B.164 apply only to cooperative and municipal utility DG customers interconnecting after July 1, 2015, so the Commission should apply the former version of this statute to resolve Mr. Miller's complaint in this docket. However, the Commission may also wish to consider the new statutory language in its Order—specifically the requirements that any additional utility charges be "reasonable and appropriate … based on the most recent cost of service study" and

that charges may only recover fixed costs not already covered by the customer—in order to provide basic guidance and limit unnecessary disputes going forward.

First, we note that the Commission retains authority over any future disputes involving cooperative electric association or municipal utility proposals to collect additional fees from DG customers. The new language in subdivision 3(a) states that any additional charge by the utility "*must* be reasonable and appropriate for that class of customer based on the most recent cost of service study."[10] Subdivision 2 states that the entire section "appl[ies] to all Minnesota electric utilities, including cooperative electric associations and municipal electric utilities," and subdivision 5 provides the Commission with jurisdiction to resolve disputes, places the burden of proof on the utility, and provides for utility payment of the customer's attorneys' fees and costs. The Special Session amendment to § 216B.164 did not make any changes to Commission jurisdiction or subdivision 5 regarding net metering customers' recourse for disputes.

The Department's Comments observed that any additional charges assessed on DG customers under the amendment to subdivision 3(a) should reflect only the *incremental cost* of serving those customers.[11] We agree. It is not reasonable or appropriate for a utility to attempt to collect an additional fee from DG customers for costs that the utility is already recovering from those DG customers through their rates. Therefore, any additional fee must include an analysis of load characteristic data necessary to sufficiently distinguish DG customers from other classes of customers on a cost of service basis. This analysis must go beyond simply showing that DG customers use less energy on average than other utility customers. As the Utah Public Service Commission pointed out in a recent case rejecting a similar DG fee:

> Simply using less energy than average, but about the same amount as the most typical of [the utility's] residential customers, is not sufficient justification for imposing a charge, as there will always be customers who are below and above average in any class. Such is the nature of an average. In this instance, if we are to implement a facilities charge or a new rate design, we must understand the usage characteristics, *e.g.,* the load profile, load factor, and contribution to relevant peak demand, of the net metered subgroup of residential customers. We must have evidence showing the impact this demand profile has on the cost to serve them, in order to understand the system costs caused by these customers.[12]

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[10] Emphasis added.
[11] Department of Commerce Comments dated July 1, 2015 at 7.
[12] Utah Public Service Commission, *In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations*, Docket No. 13-035-184, Report and Order at p. 68 (August 29, 2014) *available at* http://psc.utah.gov/utilities/electric/ordersindx/documents/26006513035184rao.pdf (hereinafter "Utah Order").

The Department similarly finds that it would be unreasonable and would constitute illegal rate discrimination for a utility to attempt to single out DG customers for additional charges to "make up" for revenue decreases attributed to rate design decisions.[13]

Stated another way, two identically situated customers (same peak load, same distribution circuit, same service drops, etc.) that consume different amounts of electricity will contribute different amounts towards fixed costs under standard ratemaking approaches. Costs are apportioned and rates are designed across broad groups of customers, and no single customer has a rate that recovers precisely the proper cost of serving that customer. This is inherent in the average embedded cost ratemaking approach that has been the long-standing rate-making practice. It is far from clear that the usage pattern of a utility's DG customers as a class will differ significantly from the residential or commercial class as a whole, but even if there are some differences we strongly support the Department's conclusion that any utility attempt to "recover those costs only from DG customers would constitute unreasonable rate discrimination."[14] As indicated by the Utah Commission, a more "thorough analysis" such as a "load research study" and a "measurement of net metered customer usage at the time of system coincident peaks" would be required to justify any future proposals.[15]

Any utility proposing an additional DG charge under amended subdivision 3(a) must also provide a full and fair accounting of the benefits of distributed generation and should not focus exclusively on the (purported) costs for the charge to be considered "reasonable". There is broad recognition that DG provides many system benefits beyond just energy, including in Minnesota's own Value of Solar Methodology. Several recent studies applying similar methodologies show that the calculated benefits of distributed photovoltaic generation often approach or exceed residential retail rates.[16] For example, the Mississippi Public Service Commission engaged Synapse to conduct an independent study on the value of solar. The study accounted for energy, capacity, transmission and distribution, system losses, environmental compliance and avoided risk in concluding that solar provided $0.17 kWh of benefits.[17] A recent review of 11 current net metering studies found that the value of solar energy was higher than the average local residential retail electricity rate in 8 of the 11 studies.[18] It is not "reasonable and appropriate" for a utility to assess an additional charge for DG customers that fails to account for these significant grid benefits that accrue to the utility, and by extension, to all of its customers.

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[13] Department of Commerce Comments dated July 1, 2015 at 8.
[14] *Id.* at 9.
[15] Utah Order at 63, 66.
[16] *See* Rocky Mountain Institute eLab, *A Review of Solar PV Benefits and Costs Studies*, at 22 (Sept. 2013) *available at* http://www.rmi.org/elab_emPower.
[17] Mississippi PSC Study, Net Metering in Mississippi: Costs, Benefits, and Policy Considerations, at p.37-38 (Sept. 19, 2014) *available at* http://votesolar.org/wp-content/uploads/2014/10/Synpase-MS.pdf
[18] Environment America, *Shining Rewards: The Value of Rooftop Solar Power for Consumers and Society* (June 2015) *available at* http://www.environmentamerica.org/reports/amc/shining-rewards.

As the Utah Commission concluded in a similar case, an analysis of net metering program benefits are "integral" to assessing the reasonableness of a proposed DG charge.[19] The Commission in that case found that it was impossible to determine whether the proposed net metering facilities charge was just and reasonable because the utility had entirely failed to quantify the benefits provided by its net metering customers. Thus, the Commission could not determine "whether costs PacifiCorp or its customers will incur from the net metering program will exceed the benefits of the net metering program, or whether the benefits of the net metering program will exceed the costs."[20] Going forward, the Commission should make it similarly clear that any future DG charges proposed under amended §216B.164 must consider both the costs *and benefits* of distributed generation.

V. Investor-Owned Utility Charges

Peoples' May 21, 2015 additional comments cited charges by Minnesota investor-owned utilities (IOUs) Xcel Energy, Minnesota Power, Otter Tail Power Company and Interstate Power and Light Company that appear to be additional charges to net metered customers. Like the Department, we were unable to ascertain the basis and origin of these charges. If these IOU charges are additional fixed charges billed only to self-generating, net-metering customers and not tied to unique and necessary hardware costs specifically required under Minnesota's interconnection rules, these IOU charges would also violate Minn. Stat. §216B.164, subd. 3. Therefore, these IOU charges in no way justify Peoples' DG charge; these charges are either different or similarly impermissible.

Clean Energy Organizations recommend that the Commission adopt the Department's suggestion that "the Commission may wish to open a new docket to request additional information from each utility on the implementation date of any net metering charge, and the Docket in which such charge was approved."[21] The information submitted should also include the orders and tariffs first authorizing the charge, any subsequent orders and tariffs amending the charge and documentation for the utilities' respective justifications for the charge.

VI. Recommendations

Fresh Energy, Environmental Law & Policy Center, Institute for Local Self-Reliance and Minnesota Center for Environmental Advocacy recommend that the Commission:

1. Find that Peoples' $5.00 per month fee applied only to customers with billing rates under Minn. Stat. § 216B.164 is not authorized under that statute.

[19] Utah Order at 59.
[20] Utah Order at 66.
[21] Department of Commerce Comments dated July 1, 2015 at 9.

2. Resolve this billing dispute in the favor of the Complainant and "require payments to the prevailing party of the prevailing party's costs, disbursements, and reasonable attorneys' fees" as provided by Minn. Stat. § 216B.164, subd. 5. Require Peoples' to provide a compliance filing identifying the amount owed to the Complainant and Peoples' plan for issuing a refund for all $5.00 charges collected to date.
3. Direct Peoples' compliance filing to also include identifying additional customers with QFs under 40-kw that have been assessed the $5.00 DG charge and identifying a plan for refunding all $5.00 charges collected from these customers to date.
4. Direct the Commission's Consumer Affairs Office to establish a process to "fast-track" requests for refunds from customers from other cooperatives who have been billed for similar impermissible DG charges.
5. Open a new docket to request additional information from each investor-owned utility on the implementation date of any net metering charge, and the Docket in which such charge was approved, including Commission orders and utility tariffs first authorizing the charge, any subsequent Commission orders and utility tariffs amending the charge and documentation for the utilities' respective justifications for the charge.

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