

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Cogeneration and Small Power
Production Tariff Filings

ISSUE DATE: June 27, 2016

DOCKET NO. E-999/PR-16-09

In the Matter of a Request for Dispute Resolution
by Keith Weber, the Qualifying Facility, with
Meeker Cooperative Light and Power Association
Under the Cogeneration and Small Power
Production Statute, Minn. Stat. § 216B.164

DOCKET NO. E-121/CG-16-240

DOCKET NO. E-124/CG-16-241

In the Matter of a Complaint of Larry Fagen
Against Minnesota Valley Cooperative Light &
Power Association¹

DOCKET NO. E-999/CI-16-512

ORDER OPENING INVESTIGATION,
DELEGATING AUTHORITY, AND
FINDING THAT TARIFFS MUST BE
APPROVED BEFORE BECOMING
EFFECTIVE

In the Matter of a Commission Investigation into
Fees Charged to Qualifying Facilities by
Cooperative Electric Associations under the 2015
Amendments to Minn. Stat. § 216B.164, Subd. 3

PROCEDURAL HISTORY

I. Introduction and Background

The federal Public Utility Regulatory Policies Act, 16 U.S.C. § 824a-3, encourages cogeneration and small power production by entities other than public utilities as a matter of national energy policy. The Act and its implementing regulations² establish standards that cogenerators and small power producers must meet for their facilities to be designated “qualifying facilities.” Once a facility becomes a qualifying facility, public utilities must purchase its output under specified circumstances.

The federal statute delegates to state regulatory commissions the determination of avoided cost and implementation of the Act generally.³ Minnesota has implemented the Act by statute and regulation.⁴

¹ The official service list for this complaint docket was included in the notices issued for the Commission meeting of June 9 on docket E-999/PR-16-09, because some issues in the two cases overlapped. In this order the Commission takes no direct action on the complaint in docket E-124/CG-16-241.

² 18 CFR 292.101–292.601.

³ 16 U.S.C. § 824a-3 (f), 18 CFR 292.401–403.

⁴ Minn. Stat. § 216B.164; Minn. R. 7835.0100–7835.9910.

In Minnesota and most other states, small, customer-owned qualifying facilities—usually wind- or solar-powered—qualify for “net-metering.” Under net-metering, the customer pays the utility only for energy used in excess of what the customer produces, and the utility purchases any energy in excess of what the customer uses.

In 2015, the Minnesota Legislature amended the portion of the net-metering statute addressing the amount cooperative and municipal utilities may bill qualifying-facility customers. The 2015 amendments, highlighted below, permit these utilities to charge these customers additional fees to recover fixed costs not included in existing billing arrangements. The fees must be supported by a cost study demonstrating that they are reasonable and appropriate for that customer class.

(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).⁵

II. The Challenged Filings

Under Minn. R. 7835.0300, all Minnesota utilities must file cogeneration and small-power-production tariffs for Commission review and approval by January 1 of each calendar year.

New monthly fees for the net-metering customers of cooperative utilities began to appear in the 2016 tariff filings, filed in docket E-999/PR-16-09. The filing utilities stated that these fees were authorized under the 2015 amendments to Minn. Stat. § 216B.164, subd. 3 (a) to recover fixed costs imposed by net-metering customers that were not included in their existing billing arrangements. By May 9, 2016, ten cooperative electric associations had filed new tariffs incorporating these fees.⁶

On May 9, 2016, Fresh Energy and the Environmental Law and Policy Center filed an objection to Commission approval of these fees, claiming that they exceed the statutory ceiling of fixed costs not paid through existing billing arrangements by including, among other things, lost sales revenues. They also claimed that at least some cooperative utilities have violated Minn. R. 7835.0300 by charging the new fees before the Commission has approved them.

⁵ Amendments to Minn. Stat. § 216B.164, subd. 3 (a). 1Sp2015 c 1 art 3 s 21.

⁶ Those cooperatives are Nobles Cooperative Electric, South Central Electric Association, Lyon-Lincoln Electric Cooperative, Redwood Electric Cooperative, Stearns Electric Association, Meeker Cooperative Light and Power Association, North Star Electric Cooperative, Brown County Rural Electrical Association, Itasca-Mantrap Cooperative Electric Association, and People’s Energy Cooperative.

They asked the Commission to review the fees and invalidate them, but recommended deferring these actions until the Commission has resolved a customer complaint raising similar issues in docket E-121/CG-16-240, captioned above.

III. The Notice of Comment Period

On May 12, 2016, the Commission issued a notice establishing a comment period on the objecting parties' filing. Two issues were noticed for comment: (1) whether the Commission should investigate the fees and other tariff provisions filed in docket E-999/PR-16-09, as requested by the objecting parties and (2) whether the Commission should suspend the operation of proposed fees filed under the 2015 amendments to Minn. Stat. § 216B.164, subd. 3 (a), pending final Commission action on them.

A. Comments Supporting Investigation and Suspension

TruNorth Solar, Novel Energy Solutions, Minnesota Solar Energy Industries Association, Energy Freedom Coalition of America, Alliance for Solar Choice, the Sierra Club, and the Minnesota Center for Environmental Advocacy filed comments that supported opening an investigation and suspending the proposed fees pending its conclusion.

Some 88 members of the public filed comments in response to the notice of comment period. Everyone commenting on whether to investigate the proposed fees supported an investigation, and everyone commenting on whether to suspend operation of the proposed fees supported suspension.

The Minnesota Department of Commerce filed comments stating that the filing utilities had not demonstrated that the proposed fees meet the statutory requirement that they be “reasonable and appropriate for that class of customer based on the most recent cost of service study.”⁷ The agency recommended investigating the fees and related tariff provisions, but concurred with the objecting parties that it would promote administrative efficiency to first resolve the individual customer's complaint on similar issues in docket E-121/CG-16-240.

B. Comments Opposing Investigation and Suspension

The Minnesota Rural Electric Association, which represents Minnesota's 45 distribution cooperatives and six generation-and-transmission cooperatives, filed comments opposing investigation and opposing suspension. The Association emphasized that the Minnesota Public Utilities Act exempts cooperative electric associations from most of the Act's requirements, including routine rate regulation, unless the membership of an individual cooperative elects rate regulation.⁸

The Association also pointed out that Minnesota's distributed-generation statute exempts cooperative electric associations from the more stringent regulation which that statute imposes on investor-owned utilities⁹ and argued that the Commission's authority and jurisdiction over the

⁷ Minn. Stat. § 216B.164, subd. 3 (a).

⁸ Minn. Stat. §§ 216B.01, 216B.026.

⁹ Minn. Stat. § 216B.1611, subd. 3.

fees challenged here was limited to “a basic review of whether the information included in the tariff filings meets the plain statutory language of 216B.”¹⁰

Twenty-two individual electric cooperatives also filed letters supporting their Association’s comments and recommendations.

The Minnesota Municipal Utilities Association and Missouri River Energy Services, a major wholesale supplier for Minnesota municipal utilities, filed comments pointing out that no municipal utility had filed new proposed fees for net-metering customers and urged that the Commission not include municipal utilities in any investigation undertaken.

C. Comments of the Parties to Customer-Complaint Docket E-121/CG-16-240

Keith Weber—the customer who filed the individual complaint in docket E-121/CG-16-240 challenging new net-metering fees imposed on him under the 2015 statutory amendments—and his utility, Meeker Cooperative Light and Power Association, filed comments urging the Commission not to defer action on the objecting parties’ generic challenge to these fees until their complaint proceeding had been resolved.

They argued that the more comprehensive record produced by a generic proceeding would significantly aid decision-making and would spread the costs of resolving these issues more equitably among interested stakeholders.

D. Commission Hearing

On June 9, 2016, the case came before the Commission.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

The Commission finds that it has jurisdiction to investigate fees proposed or imposed under Minn. Stat. § 216B.164, subd. 3, including the methodologies underlying the cost studies on which they are based. The Commission also finds that it has jurisdiction to determine whether individual utilities’ fees are “reasonable and appropriate,” as the statute requires, and to make any other determinations necessary to ensure utility compliance with Minn. Stat. § 216B.164.

The Commission finds that cogeneration and small-power-production tariffs must be filed with—and reviewed and approved by—the Commission, before becoming effective.

The Commission will open a generic investigation (a) to investigate the appropriate methodology or methodologies for establishing electric cooperatives’ fees under Minn. Stat. § 216B.164, subd. 3; and (b) to review and determine whether the specific fees charged or proposed by electric cooperative associations under Minn. Stat. § 216B.164, subd. 3 comply with the statute. This

¹⁰ Comments of the Minnesota Rural Electric Association at 6.

investigation will include the fee at issue in complaint docket E-121/CG-16-240. The Commission will delegate procedural management of the investigation to the Executive Secretary.

These actions are explained below.

II. Jurisdiction

The Commission finds that it has both the jurisdiction and the responsibility to examine the new monthly fees electric cooperative associations charge or propose to charge to members who own and operate the small qualifying facilities entitled to net-metered billing under the cogeneration and small-power-production statute.¹¹

That statute directs the Commission to construe its terms “to give the maximum possible encouragement to cogeneration and small power production consistent with protection of ratepayers and the public.” Here, stakeholders and at least one net-metering customer claim that many electric cooperatives are charging or preparing to charge monthly fees that exceed the statutory limit and decisively discourage investment in small qualifying facilities by undermining their financial viability. These are serious claims that merit examination.

The cooperative electric associations, on the other hand, argue that the Commission’s jurisdiction over these claims is narrowly circumscribed, pointing out their longstanding exemptions from rate regulation, from the more stringent provisions of the distributed-generation statute, and from any provision of the Public Utilities Act that does not specifically include them.¹² The Commission concurs with the cooperatives on their general autonomy under the Public Utilities Act, but concludes that it has the jurisdiction and responsibility to examine the fees at issue for compliance with the statutory standard.

First, the cogeneration and small-power-production statute, Section 216B.164, explicitly subjects cooperatives both to its provisions and to all Commission rules promulgated under those provisions, unless otherwise provided in Section 216B.164 itself.¹³ The general statutory exemption of cooperatives from most provisions of the Public Utilities Act therefore does not apply. Any exemption from Commission regulation for these fees would have to appear in the cogeneration and small-power-production statute itself.

Second, the provision of the cogeneration and small-power-production statute that authorizes and governs these new monthly fees—Section 216B.164, subd. 3 (a)—does not exempt the cooperatives or the fees from normal Commission review. Nor does an exemption appear in any other part of Section 216B.164. Further, Commission rules promulgated under Section 216B.164 require cooperatives, like all utilities, to file tariffs itemizing payments and charges to qualifying facilities, for Commission “review and approval,”¹⁴ assuming jurisdiction adequate for that purpose.

¹¹ Minn. Stat. § 216B.164.

¹² Minn. Stat. §§ 216B.01; 216B.1611, subd. 3; 216B.02, subd. 4.

¹³ Minn. Stat. § 216B.164, subd. 2.

¹⁴ Minn. R. 7835.0300.

The Commission concludes that it has jurisdiction over the new monthly fees authorized under the 2015 amendments to Section 216B.164, subd. 3 (a) and notes that, in large part, the cooperatives appear to agree, focusing more on the scope of review—on how the Commission exercises its jurisdiction—than on jurisdiction itself.

While the Commission need not make final judgments on jurisdictional or scope-of-review parameters at this point, it is clear that it has ample authority to determine whether fees that are alleged to threaten the viability of cogeneration and small-power-production by customers of cooperative electric associations comply with statutory standards.

Those standards are that fees (a) be limited to fixed costs not paid for through a customer's existing billing arrangement; and (b) be reasonable and appropriate for the customer class to which the customer belongs, based on the utility's most recent cost of service study. Applying these standards requires considering the methodologies used to determine fixed costs, their causation, and their allocation among customer classes, and these issues will be addressed in the course of the investigation.

III. Generic Investigation

The Commission will therefore open a generic investigation to (a) investigate the appropriate methodology or methodologies for establishing electric cooperatives' fees under Minn. Stat. § 216B.164, subd. 3; and (b) review and determine whether the specific fees charged or proposed by specific electric cooperative associations under Minn. Stat. § 216B.164, subd. 3 comply with the statute.

This investigation will include the fee at issue in the individual customer complaint filed by Keith Weber in Docket E-121/CG-16-240.¹⁵ The Commission concurs with Mr. Weber and his utility that the comprehensive record produced by a generic proceeding will result in more informed decision-making and that a generic proceeding will spread the costs of resolving these issues more equitably among affected stakeholders.

The Commission will delegate procedural management of the investigation to the Executive Secretary, who will have authority to set time lines, issue notices, and take other administrative actions essential to conducting an efficient proceeding.

IV. Effective Date of Tariffs

Finally, the Commission clarifies that co-generation and small-power-production tariffs—including those setting the fees newly authorized under Minn. Stat. § 216B.164, subd. 3 (a)—must be reviewed and approved by the Commission before becoming effective, as provided under Minn. R. 7835.0300:

¹⁵ *In the Matter of a Request for Dispute Resolution by Keith Weber, the Qualifying Facility, with Meeker Cooperative Light and Power Association Under the Cogeneration and Small Power Production Statute, Minn. Stat. § 216B.164, Docket No. E-121/CG-16-240.*

Within 60 days after the effective date of this chapter, on January 1, 1985, and every 12 months thereafter, each utility must file with the commission, for its review and approval, a cogeneration and small power production tariff. . . .

ORDER

1. The Commission hereby opens a generic investigation (a) to investigate the appropriate methodology or methodologies for establishing electric cooperatives' fees under Minn. Stat. § 216B.164, subd. 3; and (b) to review and determine whether the specific fees charged or filed by electric cooperative associations under Minn. Stat. § 216B.164, subd. 3 comply with the requirements of Minn. Stat. § 216B.164.
2. The Commission hereby delegates to the Executive Secretary the authority to issue notices and establish procedures for the investigation.
3. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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