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July 21, 2017

VIA E-Filing

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
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**RE: SUPPLEMENTAL COMMENTS OF MISSOURI RIVER ENERGY SERVICES
ON POSSIBLE DISTRIBUTED GENERATION SUBCOMMITTEE UNDER
MINN. STAT. §216A.03, SUBD. 8
DKT. E999/CI-17-284**

Dear Mr. Wolf:

Enclosed for filing please find the Supplemental Comments of Missouri River Energy Services in response to the Commissions July 6, 2017 Notice of Supplemental Comment Period in the above-mentioned docket.

We have served a copy to all parties on the service list either by e-service or paper service, as indicated by the enclosed Certificate of Service. Please contact me at 800.678.4042 or by email at derek.bertsch@mrenergy.com if you have any questions regarding this filing.

Sincerely,

/s/ Derek Bertsch

Derek Bertsch
Staff Attorney

Enc.

c: Service List via E-Filing and U.S. Mail

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange
Dan Lipschultz
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Commission Inquiry
into the Creation of a Commission
Subcommittee under Minn. Stat. §216A.03,
subd. 8.

Docket E999/CI-17-284

Date: July 21, 2017

SUPPLEMENTAL COMMENTS OF
MISSOURI RIVER ENERGY SERVICES

Introduction

Missouri Basin Municipal Power Agency, d/b/a Missouri River Energy Services (“MRES”), offers these supplemental comments in response to the **Notice of Supplemental Comment Period on Possible Distributed Generation Subcommittee Under Minn. Stat. §216A.03, Subd. 8**, issued by the Minnesota Public Utilities Commission (“Commission”) on July 6, 2017. These Supplemental Comments are intended to supplement our initial comments submitted on May 22, 2017.

Comments

As a preliminary matter, developments in the Minnesota Legislature since the initial comment period have arguably eliminated the need for a distributed generation (“DG”) subcommittee, at least as it pertains to municipal electric utilities and cooperative electric associations. On May 22, 2017, the Governor signed S.F. 1456, enacting a large number of statutory amendments. Specifically, S.F. 1456 amended Subdivisions 5, 9, and 11 of Minn. Stat. §216B.164, adopting a dispute resolution process for qualifying facilities over 20 megawatts, and amending the dispute resolution process for municipal electric utilities and cooperative electric associations.¹ At the very least, these statutory changes to the dispute resolution process should give the Commission and its staff an avenue to informally resolve certain DG matters, thereby saving agency time and resources.

¹ 2017 Minn. Sess. Laws, Chapter 94.

In Attachment A-1 to the Notice of Supplemental Comment Period, Commission staff lays out a series of potential alterations and alternatives to the initial proposal for a DG subcommittee – Further Options, for Consideration (“Further Options”). These Further Options fall short of addressing the concerns raised in the initial comments of MRES. In particular, the following issues cause MRES to renew its objections to the concept of a DG subcommittee or any of the Further Options:

1. Little evidence or arguments have been presented to demonstrate the necessity and benefits of adopting a DG subcommittee or any of the Further Options.
2. The DG subcommittee and all of the Further Options may ultimately lead to further delays, administrative burden, and taxpayer expense. Rather than eliminating or streamlining existing administrative structures, the proposals would create new layers of agency review and public input. All other regulatory rights and processes would remain unchanged, such as the right to appeal to the full Commission, thereby exacerbating the alleged problem of delays.
3. Staff’s initial proposal and Further Options for consideration are broad and incomplete when it comes to the scope of delegations, protections for utilities and consumers, applicable rules of administrative procedure, and other fundamental issues. These ambiguities make it difficult to provide meaningful comments on the proposed DG subcommittee and Further Options.
4. Neither the DG subcommittee nor any of the Further Options should be available outside of common DG issues that have been addressed previously by the Commission and on which there is pertinent, settled authority from the Commission. Established precedent from the Commission is essential in order to avoid decisions being made without the necessary legislative or regulatory authority.

The Further Options presented by Commission staff raise these and other concerns outlined in our previous comments. In addition, each of the Further Options raises new questions and may result in greater expense, delay, and regulatory burden for the Commission and its staff, as well as utilities, consumers, and other stakeholders. We offer the following comments for the Commission’s consideration on each of the Further Options.

A. Additional Work that Could be Delegated to Subcommittee.

Commission staff notes that, “[s]everal commenters asked for further details on work that could be delegated to the proposed [DG] subcommittee.” Rather than providing the type of clarification and further detail requested by MRES and others, Commission staff has simply given three more examples of items that could be delegated to the DG subcommittee. Each of these examples, in turn, are ambiguous and incomplete, raising additional questions.

1. Would the DG subcommittee be given authority to make decisions normally reserved for the Office of Administrative Hearings (“OAH”) and Administrative Law Judges (“ALJs”)? For example, would the subcommittee act in place of an ALJ and rule on

(a) objections to interventions in non-contested cases, (b) requests for discovery disputes, or (c) requests for a public hearing? MRES believes this likely would constitute an improper delegation of power reserved by statute and regulation to the OAH.

2. What rules of administrative procedure would govern the DG subcommittee as it considers these items?
3. If the DG subcommittee would not make formal rulings on these items, why would the Commission create a special subcommittee for addressing these seemingly clerical issues that already can be handled by the Executive Secretary or Commission staff?

B. Create the Subcommittee as a Pilot, With Evaluation.

MRES has demonstrated by its Comments and these Supplemental Comments that a DG subcommittee is unnecessary, burdensome, and unworkable as presented. For all the same reasons, the Commission should not launch a “pilot” to test the concept of a DG subcommittee at this time, especially when the rough overview of that concept is fundamentally vague and unclear.

C. Do Not Create a Subcommittee, and Post Additional Details on Complaints.

MRES would support the decision not to create a DG subcommittee. On this proposed Further Option, MRES has no objection to the Commission expanding the scope of complaint records available on its website. This would be subject, however, to two qualifications. First, regulatory and internal protections would be needed to prohibit and prevent disclosure of nonpublic or confidential information. Second, this Further Option would again create additional burden for the Commission and its staff, running contrary to the purported goal of saving “[s]taff, utility, and customer time...”²

D. Adopt Processes Used by Other State Commissions.

MRES is not opposed to the Commission considering complaint processes adopted in other states. That being said, there is little evidence of any deficiencies in the complaint process currently in place in Minnesota. If the Commission insists on modifications to its complaint process, however, it is unclear why it would adopt a system as expansive as the one before the Iowa Utilities Board. As Commission staff acknowledges in its Further Options, the Commission’s Rules allow “staff to process informal complaints by ‘correspondence, mediation, arbitration, and other informal means.’”³ As such, adoption of an entirely new regulatory process appears redundant and unnecessary.

² Notice of Comment Period on Possible Distributed Generation Subcommittee Under Minn. Stat. §216A.03, Subd. 8 (p. 3).

³ Citing Minnesota R. 7820.0500, subp. B (2017).

E. Stakeholder Advisory Group.

As a general matter, MRES could support the creation of a stakeholder advisory group to provide input to the Commission. However, it is unclear from the language of the proposal how such an advisory group would accomplish the stated goal of saving “[s]taff, utility, and customer time...”⁴ In fact, the stakeholder advisory group would be yet another facet of administrative operation. Stakeholders already have input on most of these overarching questions through the public comment process. If the Commission moves forward with some type of advisory group, the scope of the group’s input should be limited and clearly delineated by rule.

Conclusion

We appreciate the opportunity to provide these supplemental comments to the Commission regarding Commission staff’s additional responses and proposals on a DG subcommittee. While MRES has no immediate objections to a few of the Further Options, all of the proposals appear redundant and unnecessary in light of recent legal developments and existing regulatory processes. Given the ambiguity and lack of specifics in the proposals, moreover, we believe adoption of the proposals have the likelihood to create more problems than would be solved.

Dated: July 21, 2017

Respectfully submitted,

MISSOURI RIVER ENERGY SERVICES

By: /s/ Derek Bertsch

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⁴ Notice of Comment Period on Possible Distributed Generation Subcommittee Under Minn. Stat. §216A.03, Subd. 8 (p. 3).

CERTIFICATE OF SERVICE

I, Derek Bertsch, hereby certify that I served a true and correct copy of the attached document to all persons at the addresses indicated on the following official service list by electronic filing or electronic mail, courier, interoffice mail or by depositing in the United States Mail, postage prepaid, at Sioux Falls, South Dakota on the 21st day of July, 2017.

Docket No. E999/CI-17-284

Dated this 21st day of July, 2017

/s/ Derek Bertsch

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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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