

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
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In the Matter of Minnesota Power’s Petition
for Approval of Revisions to Rider for
Parallel Generation

ISSUE DATE: May 22, 2017

DOCKET NO. E-015/M-16-204

In the Matter of Xcel Energy’s Petition for
Tariff Modifications Implementing Rules on
Cogeneration and Small Power Production

DOCKET NO. E-002/M-16-222

DOCKET NO. E-017/M-16-280

In the Matter of Otter Tail Power’s Request
for Approval of Changes to Rate Schedules

ORDER APPROVING TARIFFS AS
MODIFIED

PROCEDURAL HISTORY

I. Small-Power-Production Statute and Rule Changes

In August 2013, the Commission opened a rulemaking proceeding to incorporate Legislative changes to Minn. Stat. § 216B.164 into the Commission’s cogeneration and small-power-production rules, Minn. R. ch. 7835.¹

Key changes made to Minn. Stat. § 216B.164, and subsequently incorporated into the Commission’s rules, included the following:

- Allowed public-utility customers with net-metered facilities of between 40 kilowatts (kW) and less than 1,000 kW to choose to be compensated for any net input into the utility’s system through a kilowatt-hour (kWh) credit carried forward and applied to subsequent energy bills;²

¹ See *In the Matter of Possible Amendments to Rules Governing Cogeneration and Small Power Production, Minnesota Rules Chapter 7835*, Docket No. E-999/R-13-729, Request for Comments (August 22, 2013).

² See 2013 Minn. Laws ch. 85, art. 9, § 4 (adding a new subdivision 3a to Minn. Stat. § 216B.164); Minn. R. 7835.4017. A net-metered facility is a “facility constructed for the purpose of offsetting energy use through the use of renewable energy or high-efficiency distributed generation sources.” Minn. Stat. § 216B.164, subd. 2a(j).

- Allowed public utilities to require a customer being compensated through a kWh credit to limit the capacity of the customer’s net-metered facility to, for wind systems, 120 percent of the customer’s on-site maximum electric demand and, for all other facilities, 120 percent of the customer’s on-site annual electric consumption;³
- Prohibited public utilities from imposing standby charges on customers with facilities of 100 kW or less;⁴
- Required public utilities, upon request, to aggregate a customer’s designated meter with one or more other meters for billing purposes;⁵ and
- Authorized the Commission to limit the cumulative generation of net-metered facilities upon a public utility’s showing that such generation has reached four percent of the utility’s annual retail electric sales.⁶

The rulemaking concluded in September 2015 with the publication of a Notice of Adoption of the new rules in the State Register.

II. Initial Tariff Filings

In early 2016, three investor-owned electric utilities filed petitions requesting approval of proposed cogeneration and small-power-production tariffs under Minn. R. 7835.0300:⁷

- **Minnesota Power** (Docket No. E-015/M-16-204)
- **Xcel Energy** (Docket No. E-002/M-16-222)
- **Otter Tail Power Company** (Docket No. E-017/M-16-280)

The tariffs included updates to incorporate the above-mentioned changes to Minn. Stat. § 216B.164 and the Commission’s cogeneration and small power-production rules.

III. Party Comments

By November 21, 2016, the Commission had received initial comments on the tariffs from the Minnesota Department of Commerce (the Department), Fresh Energy, and Kandiyo Consulting, LLC.

The Department reviewed the tariffs for consistency with the statute, the rules, and the Commission’s prior orders. It recommended numerous minor changes to tariff language, and it raised other, more major issues, including whether the utilities had adequately justified the

³ 2013 Minn. Laws ch. 85, art. 9, § 8 (adding a new subdivision 4c to Minn. Stat. § 216B.164); Minn. R. 7835.4016.

⁴ See Minn. Stat. § 216B.164, subd. 3a(b); Minn. R. 7835.2600, subp. 2.

⁵ See 2013 Minn. Laws ch. 85, art. 9, § 6 (adding a new subdivision 4a to Minn. Stat. § 216B.164); Minn. R. 7835.4018.

⁶ See 2013 Minn. Laws ch. 85, art. 9, § 7 (adding a new subdivision 4b to Minn. Stat. § 216B.164); Minn. R. 7835.4022.

⁷ Minn. R. 7835.0300 requires Minnesota electric utilities to file their cogeneration and small power-production tariffs annually for Commission review and approval.

monthly service charges they proposed to charge their generator–customers and whether utilities were permitted to require a production meter for customer generating systems with a capacity of less than 40 kilowatts.

By December 12, the three utilities had filed reply comments responding to the Department’s comments.

By February 7, 2017, the Department had filed comments responding to each utility’s reply comments. The Department recommended that the Commission approve the utilities’ petitions with modifications.

On February 9, Otter Tail filed additional comments.

On March 10, the Office of the Minnesota Attorney General – Residential Utilities and Antitrust Division (OAG) filed comments on the monthly-service-charge issue.⁸

On April 10, the Department filed additional comments in response to Otter Tail’s February 9 comments.

IV. Proceedings Before the Commission

On April 18, 2017, the Commission met to consider the matter. At that time, the following major issues remained unresolved:

- Whether the utilities had adequately justified their monthly service charges and what action the Commission should take on the proposed charges;
- Whether a production meter could be required for systems less than 40 kW; and
- Whether Otter Tail’s proposal for purchasing renewable energy credits from its customers was reasonable and how it might be modified consistent with the public interest.

The Commission addresses these and several other, more minor issues below.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

In this order, the Commission approves the utilities’ cogeneration and small-power-production tariffs with modifications, including provisional approval of the monthly service charges. The Commission will direct each utility to refile, within 60 days, compliance tariffs reflecting the decisions made by the Commission herein.

⁸ The OAG’s comments pertained only to Xcel Energy’s and Otter Tail’s tariffs.

II. Monthly Service Charges

A. Introduction

Each utility's proposed tariff imposes on distributed-generation customers a fixed monthly charge that ranges from \$1.40 to \$8.00, depending on a customer's specific service conditions. Referred to in the tariffs as "customer charges," "metering charges," or "service charges," they are collected on top of the fixed monthly charges paid by all customers and are intended to capture the extra metering, billing, labor, and other costs associated with serving a distributed-generation customer.

The Commission is investigating distributed-generation fees, including the charges at issue here, in Docket No. E-999/CI-15-755.⁹ That investigation is examining, among other issues, (1) the appropriate methodology for computing the fees and (2) the most appropriate means of collecting them—whether monthly via tariff or once via an interconnection agreement. The Commission has received several rounds of comments from stakeholders in that docket, most recently in November 2016.

The issue for the Commission now is what action to take on the utilities' proposed service charges while the investigation is pending.

B. Minnesota Power's Service Charges

Minnesota Power attached to its petition a detailed spreadsheet illustrating how its monthly service charges are calculated. The two components of the utility's proposed monthly service charge were meter maintenance and customer-accounting expense.

The Department reviewed Minnesota Power's calculations but could not determine whether the charges truly reflected the extra cost of serving a customer with distributed generation. It therefore requested that Minnesota Power provide a side-by-side comparison of the monthly service-charge calculations for distributed-generation and non-distributed-generation customers to demonstrate the incremental costs associated with serving the former.

Minnesota Power responded that a side-by-side comparison of the monthly service-charge calculation for distributed-generation and non-distributed-generation customers was not possible because its existing monthly charge for residential customers was set by the Commission and does not truly reflect the costs of serving that class.

The Department concluded that, without a comparison of the cost to serve distributed-generation and non-distributed-generation customers, it was not possible to verify that Minnesota Power's monthly charges for distributed-generation customers truly reflect the extra cost of serving these customers. The Department therefore recommended that the Commission deny Minnesota Power's proposed monthly service charge.

⁹ See *In the Matter of a Request for Dispute Resolution with People's Energy Cooperative Under the Cogeneration and Small Power-Production Statute*, Minn. Stat. § 216B.164, Docket No. E-132/CG-15-255, Order Finding Jurisdiction and Resolving Dispute in Favor of Complainant (September 21, 2015) (opening Docket No. E-999/CI-15-755).

However, at the Commission hearing, the Department stated that it could support *provisional* approval of Minnesota Power's service charges if the Commission refers them for further record development.

C. Otter Tail's Service Charges

Otter Tail's monthly service charges (with the exception of a new charge for customers opting to receive a kWh credit for net input) were approved by the Commission in the utility's 2010 rate case.¹⁰ However, the reasonableness of the charges was not litigated in the rate case, and Otter Tail did not provide documentation or calculations in that case demonstrating that the charges were based on incremental costs.

The Department therefore requested that Otter Tail provide a calculation showing the derivation of its monthly charges and demonstrating how the charges truly represent the incremental costs of serving a distributed-generation customer.

Otter Tail provided data showing the incremental costs of serving a residential customer providing non-firm power and a general-service time-of-day customer providing firm power.

The Department concluded that Otter Tail's proposed monthly service charges for all classes of distributed-generation customers appeared to be based on the costs associated with only these two customer types. It requested that Otter Tail either justify its decision to base the monthly charge for all distributed-generation customers on these two types of customers or provide similar data for each type of customer.

In response to a Department information request, Otter Tail provided calculations of the monthly incremental cost of serving each type of distributed-generation customer eligible for the net-energy billing rate in Section 12.01 of its tariff.

The Department concluded that Otter Tail's calculations were reasonable. It recommended that the Commission direct the utility to update its fixed monthly charges in Section 12.01 accordingly, calculate the incremental costs of serving each type of customer listed in Sections 12.02 (simultaneous purchase and sale) and 12.03 (time-of-day purchase rates) using the same methodology, and update its fixed monthly charges for those customers.

D. Xcel's Service Charges

Xcel's monthly charges for distributed-generation customers have not changed since 2007. The utility provided documentation in Docket No. E-999/CI-15-755 showing the derivation of these fees, including a side-by-side comparison of the costs of serving a customer with distributed generation and the same type of customer without distributed generation.

¹⁰ *In the Matter of the Application of Otter Tail Power Company for Authority to Increase Rates for Electric Utility Service in Minnesota*, Docket No. E-017/GR-10-239, Order Approving Compliance Filing (September 29, 2011).

As discussed more fully in the next section, the Department and Xcel disputed whether customers with generators smaller than 40 kW could be required to have production meters. The Department contended that, under a 2004 Commission order establishing distributed-generation interconnection standards, systems smaller than 40 kW could not be required to have production meters.¹¹

Because Xcel's monthly charges for customers with distributed-generation systems under 40 kW included the cost of production meters, the Department concluded that the charges were not truly reflective of the incremental cost of serving these customers. The Department therefore recommended that the Commission direct Xcel to propose new monthly charges without that cost.

E. Service Charges Generally

Fresh Energy recommended that, if the Commission approves the tariffs in these dockets before it issues a decision in Docket No. E-999/CI-15-755, it include in its order a statement that the approval does not prejudice a decision on the fees at issue in that docket.

F. Commission Action

While the record in these dockets is not as extensive as that being developed in Docket No. E-999/CI-15-755, the Commission concludes that it is sufficient to allow for provisional approval of the utilities' service charges, with the modifications discussed below.

The Commission appreciates the Department and the utilities' effort to flesh out the cost basis for the monthly charges in these dockets. The 15-755 investigation is more exhaustive but will take time to complete; in the meantime, provisional approval here will provide some closure and allow the utilities to assess the charges until further notice. And, by approving the charges on a provisional basis, the Commission addresses Fresh Energy's concern that the approval here not prejudice the outcome of the investigation.

The Commission will approve Otter Tail's charges with two modifications. First, it will direct the utility to set the monthly fixed customer charges for net-energy-billed customers in Section 12.01 of its tariff to the incremental costs of serving each type of customer, as shown in the utility's response to the Department's information request. Similarly, for the charges in Sections 12.02 and 12.03, the Commission will direct Otter Tail to set those charges based on the incremental costs of serving each type of customer listed, using the same methodology shown in its response to the Department's information request.

The Commission will require Xcel to propose new monthly metering fees for systems that do not have production meters, as recommended by the Department. For the reasons discussed in the next section, the Commission concludes that production meters are not required for systems under 40 kW. Because Xcel's monthly charges include the cost of meters for systems under 40 kW, that cost should be removed and the charge recalculated.

¹¹ See *In the Matter of Establishing Generic Standards for Utility Tariffs for Interconnection and Operation of Distributed Generation Facilities under Minnesota Laws 2001, Chapter 212*, Docket No. E-999/CI-01-1023, Order Establishing Standards (September 28, 2004).

Finally, because Minnesota Power did not supply a side-by-side comparison of the cost of serving distributed-generation and non-distributed-generation customers, the record needs further development to ensure that its charges truly reflect the incremental cost of serving distributed-generation customers.

The Commission will therefore continue record development on Minnesota Power's charges, as recommended by the Department. So that the necessary supporting data can be expeditiously obtained, the Commission will delegate authority to its Executive Secretary to issue notices and set deadlines for further stakeholder comments on the monthly service charges.

III. Requiring Production Meters for Systems Under 40 kW

A. Introduction

In September 2004, the Commission issued an order establishing the standards under which distributed generators with a capacity of up to 10 MW would be allowed to connect to utility networks.¹²

The standards require customers with generators smaller than 40 kW to use “bidirectional” metering to measure the net inflow or outflow of power between the customer's premises and the utility's system. If such a customer elects to sell power to a party other than the utility, the standards also require the customer to install a separate “production” meter measuring the generator's total output, including any portion consumed at the customer's premises.¹³

B. Positions of the Parties

Minnesota Power, Otter Tail, and Xcel each proposed to require a production meter for all new distributed-generation interconnections, regardless of system size.¹⁴ The utilities argued that a universal production-meter requirement would provide several benefits, including the ability to determine the amount of “hidden load” on the system, which is important for ensuring reliability if many distributed generators suddenly go offline, and the ability to substantiate compliance with Minnesota's Renewable Energy Standard (RES)¹⁵ and Solar Energy Standard (SES).¹⁶

¹² *In the Matter of Establishing Generic Standards for Utility Tariffs for Interconnection and Operation of Distributed Generation Facilities Under Minnesota Laws 2001, Chapter 212*, Docket No. E-999/CI-01-1023, Order Establishing Standards (September 28, 2004).

¹³ *Id.*, Attachment 2, at 14.

¹⁴ Minnesota Power did not expressly set forth its production-meter policy in its initial tariff filing. However, the utility clarified its proposed policy in response to the Department's comments.

¹⁵ The Renewable Energy Standard requires most Minnesota utilities to generate or procure 20 percent of their total retail electric sales from renewable sources by 2020, and 25 percent by 2025. Minn. Stat. § 216B.1691, subd. 2a(a). Xcel was required to reach 25 percent by 2016 and must reach 30 percent by 2020. *See id.*, subd. 2a(b).

¹⁶ The Solar Energy Standard requires utilities to generate or procure at least 1.5 percent of their total retail electric sales from solar energy by the end of 2020, with at least 10 percent of the 1.5 percent goal coming from solar photovoltaic devices with a nameplate capacity of 20 kW or less. Minn. Stat. § 216B.1691, subd. 2f(a).

Fresh Energy supported the utilities' proposals to require production meters for all future interconnections, provided that the cost of the meters is spread across a utility's entire customer base.

The Department opposed requiring a production meter for systems smaller than 40 kW. It argued that such a requirement would conflict with the interconnection standards established by the Commission's September 2004 order, which only require small systems to have a separate production meter if they sell power to a party other than the utility. The Department stated that the issue is likely to be revisited and discussed more fully in the Commission's pending proceeding to update the interconnection standards.¹⁷

The Department acknowledged the utilities' need to measure the production of systems smaller than 40 kW for purposes of meeting the SES, and in particular the small-system carve-out.¹⁸ However, it argued that utilities cannot count the energy generated by these systems toward the SES unless the customer elects to sell the associated solar renewable energy credits (SRECs) to the utilities. The Department concluded that it would be reasonable to allow a customer to choose whether to install a production meter.

Otter Tail modified its proposal in response to the Department's comments. The utility proposed to make production meters available to all its customers on a voluntary basis. Customers who sell Otter Tail all their SRECs would receive a production meter at no cost; the cost would be recovered from all Minnesota ratepayers as a cost of SES compliance. Customers who want to keep their SRECs could choose to have the utility install a meter for a monthly fee.¹⁹

The Department concluded that Otter Tail's proposal was reasonable and recommended that the Commission direct the utility to incorporate the proposal into its tariff. The Department recommended that the Commission require Minnesota Power and Xcel to remove the production-meter requirement for facilities under 40 kW from their tariffs.

C. Commission Action

The Commission concurs with the Department and will require Minnesota Power and Xcel to revise their tariffs to make clear that distributed-generation systems with a capacity of less than 40 kW are not required to have a production meter. Otter Tail will be required to incorporate its revised proposal into its tariff to provide clarity for its customers.

A production-meter requirement for distributed generators with a capacity of less than 40 kW conflicts with the Commission's September 2004 order establishing interconnection standards. The standards were developed through a lengthy stakeholder-workgroup process and reflect the best practices for distributed-generation interconnection as they stood at that time.

¹⁷ *In the Matter of Updating the Generic Standards for the Interconnection and Operation of Distributed Generation Facilities Established Under Minn. Stat. § 216B.1611*, Docket No. E-999/CI-16-521.

¹⁸ See Minn. Stat. § 216B.1691, subd. 2f(a) (requiring that at least ten percent of the SES goal must come from systems with a capacity of 20 kW or less).

¹⁹ Otter Tail also proposed, per Minn. Stat. § 216C.414, subd. 3, that customers participating in the Made in Minnesota incentive program be required to obtain a meter from the utility at their own expense.

The Commission recognizes that the utilities have legitimate reasons for wanting to install production meters on distributed generators regardless of their size. However, important considerations, such as who will bear the cost of such meters and in what situations, need further record development. Moreover, a stakeholder process is already underway in Docket No. E-999/CI-16-521 to update the interconnection standards established in the September 2004 order. The Commission will refer the production-meter issue to that docket for final resolution.

IV. Standard-Offer Rate for the Purchase of Customer RECs

A. The Issue

Otter Tail's tariff establishes a standard-offer rate for customers that elect to sell their renewable energy credits (RECs) to the utility. The proposed payment is \$0.52 per megawatt-hour for all distributed-generation customers. Otter Tail stated that this rate was based on "a documented bilateral sale at \$0.52 per REC."

Fresh Energy questioned whether Otter Tail's standard-offer rate, based on historical REC sales, would remain accurate for distributed-generation customers in the future. It also argued that RECs from different generator types should be priced based on their ability to meet a particular renewable-energy standard. For example, only RECs from solar generators under 20 kW count toward compliance with the small-solar carve-out of the Solar Energy Standard,²⁰ and they therefore likely have a different value than other RECs.

The Department agreed with Fresh Energy that Otter Tail's proposed standard-offer rate might not adequately capture the future value of RECs, or the values of RECs from various renewable energy sources. It suggested that Otter Tail revise its offer price to "the current market value of RECs as reported by the Midwest Renewable Energy Tracking System [M-RETS]."

In response, Otter Tail noted that M-RETS does not have a market function. It therefore proposed that the REC offer price be set based on the utility's "most recent transaction price (average of the most recent year) of Renewable Energy Credits." With regard to setting REC prices based on the type of generator, Otter Tail argued that the best place to determine these prices would be an active trading market, which, as it noted, does not currently exist in Minnesota. Otter Tail stated that it had not transacted any bilateral SREC sales to meet the Solar Energy Standard but would be considering this type of purchase in the future.

The Department found Otter Tail's proposal reasonable. The agency concluded that Otter Tail need not establish SREC values at this time but recommended that the utility obtain price quotes at the time purchasing SRECs from small solar generators becomes necessary and update these values on a yearly basis. It proposed the following addition to Otter Tail's tariff language:

The Customer owns all renewable energy credits unless other ownership is expressly provided for by a contract between a Customer and the Company, or state law, rule or specific Commission Order specifying a different outcome. Any credits sold will be transferred to the Company and the generator will be

²⁰ See Minn. Stat. § 216B.1691, subd. 2f(a).

compensated at Otter Tail's most recent transaction price (average of the most recent year) of Renewable Energy Credits or Solar Renewable Energy Credits (whichever is relevant). If the Company has not purchased or sold RECs or SRECs within the most recent 3-year period, the Company will obtain pricing quotes and compensate the generator at the mid-range of the quotes.

B. Commission Action

The Commission concurs with the Department and Otter Tail that, given the lack of an active trading market for RECs, recent REC transactions by the utility are an appropriate way to set a voluntary standard-offer rate. The Commission will therefore require Otter Tail to establish a standard-offer rate for customer RECs based its most recent, documented bilateral transaction. The utility should establish a separate SREC standard-offer rate as soon as substantiated pricing information is available.

The Commission will also require Otter Tail to modify its tariff language as recommended by the Department. The addition clarifies that any SRECs Otter Tail buys from small solar generators must be purchased at the utility's most recent transaction price for SRECs. Moreover, if Otter Tail has not purchased or sold RECs or SRECs within three years of the date it buys customer RECs or SRECs, the utility will be required to obtain quotes to establish a price:

The Customer owns all renewable energy credits unless other ownership is expressly provided for by a contract between a Customer and the Company, or state law, rule or specific Commission Order specifying a different outcome. Any credits sold will be transferred to the Company and the generator will be compensated at Otter Tail's most recent transaction price ~~(average of the most recent year)~~ of Renewable Energy Credits or Solar Renewable Energy Credits (whichever is relevant). If the Company has not purchased or sold RECs or SRECs within the most recent 3-year period, the Company will obtain pricing quotes and compensate the generator at the mid-range of the quotes.

The Commission also concurs with the Department that the REC values should be updated on a yearly basis and will so order.

The Commission concludes that, with the foregoing modifications, Otter Tail's standard-offer proposal will provide distributed-generation customers fair value for the RECs they produce, should they decide to sell the RECs to the utility. By requiring Otter Tail to establish a separate SREC rate as soon as pricing data are available, the modified proposal addresses Fresh Energy's concern that the standard offer should differentiate between types of generators. And requiring that the data be updated on a yearly basis will help ensure that the offer price remains appropriate in this rapidly developing market.

V. Meter-Aggregation Fees

Minn. R. 7835.4018 requires a public utility to aggregate meters at the request of a customer according to the provisions of Minn. Stat. § 216B.164, subd. 4a. Among other things, the statute provides that “a public utility may charge the customer-generator requesting to aggregate meters a reasonable fee to cover the administrative costs incurred in implementing the costs of this subdivision.”²¹

Xcel proposed to charge a \$15-per-month fee for meter aggregation. The utility attached its calculation of the meter-aggregation fee to its initial tariff petition; the calculation is based on the estimated cost of the labor required to manually aggregate five meters per monthly billing period.

The Department concluded that this methodology, based on the cost of aggregating five meters, appears to favor customers with more than five meters. The Department reasoned that, because customers with fewer than five meters will pay more on a per-meter basis than those with more than five meters, the aggregation fee will likely discourage customers with two, three, or four meters from aggregating.

The Commission concurs with the Department and will require Xcel to set its meter-aggregation fee based on cost per additional meter. Xcel’s proposal to impose a flat fee no matter how many aggregated meters a particular customer has would send inaccurate price signals to customers with more or fewer meters than the number of meters on which the flat fee is based (here, five). Setting the fee based on cost per additional meter will send accurate price signals and treat all aggregating customers equitably.

VI. Meter Aggregation – “Same Legal Entity” Requirement

All three utilities proposed to require that “the account(s) associated with the meters must be in the name of the same legal entity” to qualify for aggregation. The Commission agrees that it is appropriate to require that the aggregated accounts be in the name of the same customer and will require the utilities to replace the phrase “same legal entity” with “customer.”

Minn. Stat. § 216B.164 uses the word “customer” but does not use or define the phrase “same legal entity.” The Commission concludes that the utilities’ tariffs should mirror the statutory language and not introduce an undefined term whose effect is uncertain.

VII. Altering the Uniform Statewide Contract

Minn. R. 7835.9910 sets forth the form of the Uniform Statewide Contract, which public utilities, municipal utilities, and cooperative electric associations must apply to all new and existing interconnections with small power producers. The contract includes two purchase provisions: one that applies only to public utilities and one that applies only to cooperatives and municipal utilities.

²¹ Minn. Stat. § 216B.164, subd. 4a(e).

Xcel included the language of the Uniform Statewide Contract in its tariff but, for clarity, proposed to omit the provision that applies only to cooperatives and municipal utilities.

The Department agreed that the contract would be clearer with the superfluous language removed. However, it noted that Minn. R. 7835.6100 requires that “[t]he form of the uniform statewide contract for use between a utility and a qualifying facility having less than 40 kilowatts of capacity must be as shown in part 7835.9910.” The Department reasoned that to alter the language of the contract would require the Commission to vary Minn. R. 7835.6100, and it argued that Xcel had not met the standard for a variance.

Under Minn. R. 7829.3200, the Commission must grant a variance to its rules when it determines that the following requirements are met:

- enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- granting the variance would not adversely affect the public interest; and
- granting the variance would not conflict with standards imposed by law.

The Department argued that the third requirement—that the variance not conflict with standards imposed by law—was not satisfied because Minn. Stat. § 216B.164, subd. 6(c), requires that “[t]he uniform statewide form of contract shall be applied to all new and existing interconnections established between a utility and a net metered or qualifying facility having less than 40-kilowatt capacity.”

The Commission concurs and will deny Xcel’s request to remove the language relevant only to cooperatives and municipal utilities from the version of the Uniform Statewide Contract filed in its tariff.

VIII. References to C-BED in Xcel’s Tariff

Prior to 2016, Minn. Stat. § 216B.1612, the Community-Based Energy Development (C-BED) statute, directed Minnesota utilities to take steps designed to facilitate the creation of small projects powered by renewable sources of energy, provided the projects had the requisite degree of ownership by local or tribal interests. In 2016, however, the Minnesota Legislature repealed the C-BED statute.²²

Xcel’s tariff includes references to C-BED in two places. At Section 9, Original Sheet 8.2, the tariff refers to “a PPA [power purchase agreement] for a C-BED project” as an example of a PPA that would require the Commission’s approval. And Section 10, 3rd Revised Sheet 160, sets forth the terms and conditions under which a C-BED facility delivers its output to Xcel (“C-BED tariff”).

Because the C-BED statute has been repealed, the Commission will require Xcel to remove the reference to C-BED at Section 9, Original Sheet 8.2, and to indicate that the C-BED tariff at Section 10, 3rd Revised Sheet 160, is closed to new customers.

²² 2016 Minn. Laws ch. 189, art. 6, § 16.

ORDER

1. The Commission approves the utilities' cogeneration and small-power-production tariffs, including provisional approval of the monthly metering charges, with the modifications set forth below.
2. The Commission approves Minnesota Power's cogeneration and small-power-production tariff subject to additional requirements:
 - a. Minnesota Power shall include the Department's requested additions that it agreed to incorporate in its December 12, 2016, reply comments;
 - b. Minnesota Power shall include the updates to Schedule E proposed in its March 14, 2017 information-request response;
 - c. The Commission approves provisionally Minnesota Power's monthly service charges based on generation size and meter costs as listed in its initial February 29, 2016 filing;
 - d. Record development on Minnesota Power's monthly service charges will continue in Docket No. E-015/M-16-204; the Commission delegates authority to the Executive Secretary to issue notices and set deadlines;
 - e. Minnesota Power shall incorporate language into its tariff specifying that production meters are required only for systems between 40 kW and 1,000 kW; and
 - f. Minnesota Power shall replace "same legal entity" with "customer" in the meter-aggregation sections of its tariff.
3. The Commission approves Xcel's cogeneration and small-power-production tariff subject to additional requirements:
 - a. Xcel shall remove from its tariff the requirement that production meters be required for facilities rated under 40kW;
 - b. Xcel shall propose new monthly metering fees for systems that do not have production meters;
 - c. Xcel shall set its meter-aggregation fee on a per-additional-meter basis;
 - d. Xcel shall not remove language relevant only to cooperatives and municipal utilities from the version of the Uniform Statewide Contract included in its tariff;
 - e. Xcel shall replace "same legal entity" with "customer" in the meter-aggregation sections of its tariff; and

- f. Xcel shall remove the C-BED–related provision from Section 9, Original Sheet 8.2, and close its C-BED tariff to new customers under Section 10, 3rd Revised Sheet 160.
4. The Commission approves Otter Tail’s cogeneration and small-power-production tariff subject to additional requirements:
 - a. Otter Tail shall establish an optional REC, SREC, or small-scale SREC standard-offer rate based on the documented bilateral sale for REC and to-be-determined SREC and shall update the SREC standard-offer rate as soon as substantiated pricing is provided in the record;
 - b. Any RECs purchased by Otter Tail from small solar generators shall be purchased at current SREC values, which should be updated once a year; Otter Tail shall modify its proposed tariff language to reflect this policy, as follows:

The Customer owns all renewable energy credits unless other ownership is expressly provided for by a contract between a Customer and the Company, or state law, rule or specific Commission Order specifying a different outcome. Any credits sold will be transferred to the Company and the generator will be compensated at Otter Tail’s most recent transaction price ~~(average of the most recent year)~~ of Renewable Energy Credits or Solar Renewable Energy Credits (whichever is relevant). If the Company has not purchased or sold RECs or SRECs within the most recent 3-year period, the Company will obtain pricing quotes and compensate the generator at the mid-range of the quotes.
 - c. Otter Tail shall set the monthly fixed customer charges in Section 12.01 of its tariff to the appropriate incremental costs of serving each type of customer listed, as determined using the methodology shown in the Company’s response to the Department’s IR No. 1;
 - d. Otter Tail shall set the monthly fixed customer charges for Sections 12.02 and 12.03 based on the incremental costs of serving each type of customer listed, using the same methodology shown in the Company’s response to the Department’s IR No. 1;
 - e. Otter Tail shall incorporate its revised production-meter policies into its tariff; and
 - f. Otter Tail shall replace “same legal entity” with “customer” in the meter-aggregation sections of its tariff.
5. The Commission refers the meter-requirement issue for resolution in Docket No. E-999/CI-16-521.

6. Within 60 days, Minnesota Power, Xcel, and Otter Tail shall refile compliance tariffs reflecting the decisions made by the Commission in this order.
7. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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