

# Minnesota Public Utilities Commission

## Staff Briefing Papers

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Meeting Date: October 12, 2017.....\*\*Agenda Item # 3

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Company: All Electric Utilities

Docket No. **E-999/CI-17-284**

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

Issues: 1) Should the Commission create a Subcommittee under Minn. Stat. §216A.03, subd. 8?

2) Should the Commission take any other action?

Staff: Michelle Rebholz.....651-201-2206

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### **Relevant Documents**

Commission, Notice of Comment Period ..... April 17, 2017  
ILSR, Comments..... May 19, 2017  
Xcel Energy, Comments ..... May 22, 2017  
Missouri River Energy Services, Comments ..... May 22, 2017  
Minnesota Rural Electric Association, Comments ..... May 22, 2017  
Minnesota Municipal Utilities Association, Comments ..... May 22, 2017  
Dakota Electric Association, Comments ..... May 22, 2017  
MnSEIA/MnSEIP/Fresh Energy, Comments ..... May 22, 2017  
DOC-DER, Comments ..... May 22, 2017  
Scott Randall, Informal Comments (scanned e-mail)..... May 23, 2017  
Commission Staff, Letter to DOC-DER ..... May 30, 2017  
MnSEIA/MnSEIP, Reply Comments ..... June 2, 2017  
Xcel Energy, Reply Comments..... June 2, 2017  
Minnesota Power, Reply Comments..... June 2, 2017  
DOC-DER, Reply Comments ..... June 2, 2017  
Otter Tail Power, Reply Comments..... June 2, 2017  
Commission, Notice of Supplemental Comment Period ..... July 6, 2017  
DOC, Supplemental Comments..... July 17, 2017

Minnesota Municipal Utilities Association, Comments .....	July 21, 2017
Missouri River Energy Services, Comments .....	July 21, 2017
Darryl Thayer, Comments .....	July 21, 2017
MnSEIA, Comments.....	July 21, 2017
Otter Tail Power Company, Comments.....	July 21, 2017
Xcel Energy, Comments .....	July 21, 2017
CURE, Comments.....	July 24, 2017

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### ***Statement of the issue***

- 1) Should the Commission create a Subcommittee under Minn. Stat. §216A.03, subd. 8?
- 2) Should the Commission take any other action?

### ***Background***

Minn. Stat. §216A.03, subd. 8 states:

Subd. 8. Delegations to commission subcommittees. (a) The commission may create and appoint members to standing or ad hoc subcommittees of the commission consisting of at least one commissioner. The commission, at a regularly scheduled agenda hearing, may delegate any of the commission's legislative, administrative, or quasi-judicial functions, as defined in section 216A.02, to a subcommittee of the commission.

(b) Upon objection by a party, a participant, or a commissioner, a decision by a subcommittee must be referred to the full commission. Subcommittee decisions for which no objection is filed with the commission within ten days from the date of receipt of the written decision of the subcommittee are deemed decisions of the full commission. If referred to the full commission, the full commission may rely on the record developed by the subcommittee but shall treat the subcommittee decision as advisory.

(c) In either their initial or reply filings with the commission, a party or a participant may request that the commission not delegate the proceeding to a commission subcommittee. The request must be granted.

(d) For the purposes of this subdivision:

(1) a "party" means a person by or against whom a proceeding before the commission is commenced or a person permitted to intervene in a proceeding under this chapter; and

(2) a "participant" means a person who files comments or appears to present views without becoming a party in a proceeding, other than public hearings held in contested cases and other commission proceedings conducted to receive general public comments.

On April 17, 2017, the Commission issued a Notice of Comment Period, asking interested parties for input on a possible DG subcommittee under the above statute.

### ***Party Comments***

In general, utilities raised concerns about creating a subcommittee while other parties supported it.

The utilities' main concerns were that: 1) informal CAO complaints or formal DG disputes to date did not justify their own subcommittee; 2) that it was not clear enough what types of disputes would actually be referred to a subcommittee; and 3) any delegation to a subcommittee of the Commission's authority, even if intended to cover only minor decisions, could be perceived as deciding significant policy or legal matters. For example, Xcel stated:

[I]f the scope of delegation is expanded to disputed matters or issues that are novel, then subcommittee decisions could send mixed or conflicting signals to other interested parties. Some may view a quick subcommittee decision as setting a Commission precedent, while others may think such a decision implies weaker authority and should only apply to the facts stated in that particular proceeding.<sup>1</sup>

Six commenters supported the creation of a subcommittee. (The Department originally raised questions about the subcommittee but then supported it in its June 2, 2017 comments after a letter from staff clarifying the intent and possible process.) MnSEIA et al, for example, outlined the value to all stakeholders and the Commission of a subcommittee:

For matters that the CAO determines it cannot resolve...there are likely complaints, queries, and issues that are dropped or withdrawn despite their relevance to the DG and QF community....Where the proposed Subcommittee can address and resolve such issues by drafting an order, helpful precedent is established and useful information is shared. Otherwise, issues filed with the CAO are inaccessible to the public and DG community without escalation to a full Commission hearing.

Further, having an intermediary Subcommittee positioned between the CAO and a full Commission hearing – a Subcommittee with authority to file notices, develop a record, and issue orders in edockets – will add a layer of transparency and technical assistance to all parties seeking guidance on a particular DG subject.<sup>2</sup>

ILSR, likewise, stated that:

We believe such a committee would offer parties a smoother pathway to resolution. As described in the Commission's recent notice, the proposed subcommittee would allow for streamlined, focused proceedings for certain parties whose disputes do not necessarily require the lengthier and more technical review that comes with a formal Commission hearing process.<sup>3</sup>

Some commenters focused their comments more on excluding cooperative and municipal utilities from a DG subcommittee.<sup>4</sup>

After receiving initial and reply comments, staff issued a supplemental notice for comments seeking input on alternatives to the DG subcommittee as originally envisioned. These alternatives included:

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<sup>1</sup> Xcel initial comments, page 4.

<sup>2</sup> MnSEIA et al initial comments, page 5.

<sup>3</sup> ILSR initial comments, page 1.

<sup>4</sup> See, for example, MMUA's initial May 22, 2017 comments.

- Changing the subcommittee's scope of work to record development for dockets not referred to OAH;
- Posting or reporting on DG complaints (to the extent not involving non-public data)
- Creating the subcommittee as a pilot;
- Modifications to staff processes for complaints, similar to how other states act; the Commission's rules already allow staff to assist in resolving informal complaints through correspondence, mediation, arbitration, and other means;
- A stakeholder advisory group.

Parties did not coalesce around any particular alternative. For example, Xcel raised concerns about the stakeholder advisory group but OTP supported the concept. Commenters were generally not opposed to exploring alternatives, but most commenters who originally supported the concept of a subcommittee continued to support a subcommittee in combination with alternatives.

Parties such as Xcel also suggested other ideas, such as regular planning meetings.

### *Staff comment*

Staff initiated this docket in an effort to start a dialogue about the Commission's processes and how they affect stakeholders on DG matters. The purpose behind this proceeding is to ensure:

- Accessibility of the Commission's process to a new set of stakeholders in light of DG and solar legislation, and the growth of DG in Minnesota;
- Closure for customer complaints, which benefits the customer, the Commission, the utility, and other interested stakeholders;
- More certainty on answers to DG issues.

These needs must be balanced with existing law and resources.

### *Recap of Existing Commission Work on DG*

The Commission has for decades had authority over distributed generation, but it is only in recent years that this work has substantially increased. Legislation passed in 2013, the increase in solar adoption, and general interest in DG issues have all caused this increase in work. The Commission has already expended substantial resources on addressing these matters, including but not limited to:

- Conducting a rulemaking of Minnesota Rules Chapter 7835;
- Conducting numerous proceedings on Xcel's Community Solar Garden, resulting in 14 formal Commission Orders to date;

- Opening a generic docket on the Solar Energy Standard (SES), issuing numerous clarifications, and requiring yearly reports on SES compliance;
- Issuing decisions on fees assessed on DG customers in a number of generic and utility-specific dockets (Dockets 15-255, 17-255, and others)
- Opening a proceeding to update its interconnection standards;
- Hiring new staff specifically to work on DG issues.

Given the new legislation and emerging issues, many of these matters must be explored through formal dockets that have taken months or even years. Discovery must be conducted and parties must be given sufficient time to provide input. As many of these issues are new, in some of these dockets there have been multiple rounds of comments or extra time for discovery so that parties have sufficient understanding of the issues before a full record is developed.

The formal docket process will continue to play a significant role regardless of the decision made here. The formal process is purposefully methodical and thorough to allow maximum participation and accessibility by any interested person. The DG issues being explored in formal dockets can only be decided after all interested persons have had sufficient time to provide meaningful comments. And while the written comment process may come across at times as quite formal, the posting of all written comments provides transparency and accessibility.

#### *Whether to Create a Subcommittee*

While staff proposed the concept of a DG subcommittee, staff also understands that delegating some portion of the Commission's authority is no small task and should only be done after serious consideration and a full record.

Commenters on both sides of the issue raised valid points: MnSEIA, for example, points out that there would be great value in a middle road between the informal CAO complaint process and a full Commission hearing, "in terms of time, resources saved, and ease of access."<sup>5</sup> At the same time, Xcel raises a good point that any clarification of a statute or rule could have policy implications. While a subcommittee may not intend to make policy decisions, it could appear to stakeholders that a series of small decisions not intended to affect policy could be perceived, on the whole, as turning the Commission in a particular policy direction.

A second option for the subcommittee is to be limited to record development for disputed DG dockets that have not been referred to the OAH. Increasingly, there are disputes on record development or docket management in DG dockets that stay unresolved or must be brought to a full agenda meeting. Examples include: requests for an ALJ to conduct public hearings in uncontested cases; discovery disputes; issues over who must or should intervene in dockets; parties raising new issues in reply or later comments. In some instances these types of issues have delayed dockets. These matters seem to arise in DG dockets more often than others due to the new stakeholders involved and the new subject matter.

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<sup>5</sup> MnSEIA comments, page 3.

### *The Need for More Dialogue*

Staff finds it noteworthy that utilities were hesitant about the subcommittee while non-utilities supported it. One can read the comments and imagine that parties have quite different expectations about what the subcommittee could accomplish. One supporter of the subcommittee, for example, suggests that it “implement and test policy,” others suggest that subcommittee decisions could establish precedent, and other supporters focus on the transparency and accessibility that a subcommittee would bring. Some utilities, on the other hand, question how transparent the subcommittee would be given that it would likely be up to staff to determine what matters are (or are not) referred to the subcommittee. Other utilities point out that the subcommittee could simply add another layer of administrative burden since any party can petition that the full Commission hear a matter referred to the subcommittee. Each of these points by supporters and opponents alike are valid, yet staff wonders whether additional dialogue is necessary on the needs stakeholders are facing and what specific processes best meet those needs. Regardless of the Commission’s decision on a subcommittee, staff recommends alternatives be implemented to encourage this dialogue. Alternatives are listed later in these staff comments.

### *Scope of the Subcommittee*

If the Commission moves forward with the subcommittee, staff recommends that the subcommittee not involve cooperative or municipal electric utilities. Recent legislation changes the Commission’s authority with respect to cooperative and municipal electric utilities. A decision on the matter of jurisdiction is a high level decision that should involve the full Commission.

### *Needs that Could Be Met by Alternatives*

During the course of this docket, staff and parties examined alternatives that could meet some of the needs initially identified in the Commission’s original notice. After notice and comment, and internal discussions, staff identifies the following alternatives to a subcommittee, with some commentary on each.

<b>Alternative</b>	<b>Benefits</b>	<b>Drawbacks</b>
DG information on PUC’s webpage	Consistency (provides the same information to all readers) Efficient method of providing information to larger groups Flexibility: can be changed, modified at any time	May only answer basic questions, and would not account for specific fact circumstances
Regular updates at planning meetings	The structure of a planning meeting allows for more informal dialogue and two-way conversations	Formal decisions could not be made

Stakeholder advisory group (for example, quarterly meetings convened by PUC staff on process, resources, and future issues)	Offers transparency and a greater understanding into the PUC process Offers a more certain method for stakeholders to provide feedback on PUC processes	Limited topics could be discussed due to ex parte rules. Would need to ensure that all relevant stakeholders engage in the process.
Generic docket with periodic notices on clarifications to Minn. Rule 7835	Staff could periodically compile questions for clarification based on CAO complaints, other input	Time Staff and party resources May not account for specific fact situations
Added information to annual complaint reports under 7820.0500	Because the rule already allows the staff to determine the format of the report, the report could be tailored to most effectively provide complaint info on DG or related issues	Information would be in the aggregate and would not by itself resolve complaints, but may be useful context.
Expanded staff resolution letters under 7829.1600 This rule already allows staff to resolve informal complaints by “correspondence, mediation, arbitration, and other informal means.”	Provides potential closure and clarity in certain situations  “Arbitration,” as the term is used in the rule, could include a proposed resolution or non-binding decision on an informal complaint.	Less certainty and closure than through formal Commission action Unclear timelines for resolution
Decision option clarifying that only the Commission can interpret and apply Minn. Stats 216B, Minn. Rules 7835, and related laws and Orders.	Clarification could assist stakeholders newer to the Commission in understanding the Commission’s role.	
Delegate authority to the Executive Secretary to require new information to be sent to prospective or new DG customers, which would include but is not limited to identifying the CAO for questions and complaints	Provides consistent information to all DG customers.	



## ***Decision alternatives***

### *Authorize a Subcommittee*

1. Authorize a Subcommittee for distributed generation matters under Minn. Stat. §216A.03, subd. 8 as outlined below for public utilities, and delegate administrative and quasi-judicial functions:
  - a. For matters under applicable state statutes and Commission rules involving undisputed or settled matters, or for disputes that do not involve high-level policy decisions including:
    - i. Complaints filed with the Commission's Consumer Affairs Office or in formal dockets where it is reasonably clear that a violation or non-violation exists;
    - ii. Undisputed DG filings, for streamlined approval.
  - AND/OR
  - b. For record development and docket management work only, including but not limited to:
    - i. Objections to interventions in dockets not referred to the Office of Administrative Hearings;
    - ii. Discovery disputes in dockets not referred to the Office of Administrative hearings;
    - iii. Requests for the OAH to conduct public hearings, where the docket is not already referred to such office;
    - iv. Other determinations or clarifications under the Commission's Rules of Practice and Procedure, Minn. Rules 7829, where such clarification will prevent untimely delay of dockets.
2. Authorize the subcommittee for a period of 18 months from initial operation. Before determining whether to continue the subcommittee beyond 18 months, the Commission shall solicit comments on the effectiveness of the subcommittee and its work and bring the matter to an agenda meeting.

*Alternatives to Subcommittee (May be Illustrative Only—The Commission may choose to vote on these decision options, or they may simply provide verbal guidance to staff.)*

3. Provide summaries of applicable DG statutes, rules and Commission Orders on the Commission's website. (*Staff note: staff is already looking into this option.*)
4. Receive periodic updates from staff on DG complaints at planning meetings.
5. Establish a stakeholder advisory group, to be convened by staff.
6. Confirm that staff may expand its use of letters as authorized under Minn. Rules 7829.1600, with proposed resolutions to DG customer complaints under the Commission's jurisdiction.

*Alternatives to Subcommittee (may need Commission vote)*

7. Clarify that for matters within its jurisdiction, only the Commission may interpret and apply matters under Minn. Stat. §216B, Minn. Rules 7835, and related statutes and rules.
8. Authorize staff to revise annual complaint reports under Minn. Rule 7820.0500, and direct utilities to work with staff on a timeline developed by staff.
9. Delegate authority to the Executive Secretary to require additional language by public utilities to prospective and/or new DG customers (either on bills or in a separate mailing) that identifies the Commission's Consumer Affairs Office for DG complaints and provides other relevant information on the complaint process and the Commission's jurisdiction.
10. Delegate authority to the Executive Secretary to open a generic docket, and to issue notices consistent with legislation passed since the suspension of comment periods on its previous net metering generic docket.

**Staff Recommendation**

Staff makes no recommendation on the creation of a DG subcommittee, but supports Decision Options 7-10. Staff also supports Decision Options 3-6.