STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Matt Schuerger	Commissioner
John Tuma	Commissioner

June 6, 2016

In the Matter of a Commission Inquiry into Fees Charged on Qualifying Facilities

Docket No. E999/CI-15-755

REPLY COMMENTS OF FRESH ENERGY, ENVIRONMENTAL LAW & POLICY CENTER AND VOTE SOLAR

Fresh Energy, Environmental Law & Policy Center and Vote Solar submit these reply comments in response to the Commission's March 16, 2016 Notice Seeking Comments and May 11, 2016 Extension Variance. Based on our initial comments and a number of stakeholder comments demonstrating that the distributed generation ("DG") fees at issue in this docket are impermissible and unsupported, we continue to request that the Commission order Connexus Energy, Goodhue County Cooperative Electric Association, Mille Lacs Energy Cooperative, Minnesota Power, Otter Tail Power, and Xcel Energy to cease assessing additional fees and charges to DG customers within 30 days of the order.

I. Department of Commerce

The Depart of Commerce's ("Department") analysis of the DG fees at issue concluded that the only permissible additional charges to DG customers are reasonable interconnection costs and that "any interconnection costs recovered from DG customers should be net of the costs already recovered in that customer's standard customer charge."[1] We agree, and note that this position is consistent with our analysis that Minnesota statute and rules do not permit utilities to charge monthly fees in their DG rate tariffs that are unique to DG customers. As we describe in our initial comments:

> Any fee charged to a self-generating customer that is more than the fees charged to a non-DG customer and outside of an interconnection agreement is not permitted under Minnesota's Cogeneration and Small Power Production statute and rules. Fees that single-out DG customers are not permitted because the plain language of the statute and rules does not authorize such charges and because allowing extra fees and charges to

[1] Department comments at 5.

customers interconnecting under the statute would undermine the statute's intent – transparently setting the compensation for customers self-generating with small systems.

Further, the Department's position is consistent with our analysis and recommendation that any reasonable interconnection costs can, and should, be determined through the statewide interconnection standards. The best way to ensure that DG customers are not being "double-charged" is to preclude utilities from adding additional monthly DG fees through their DG tariffs and, instead, utilize the interconnection standards and processes to determine reasonable interconnection costs and their recovery. Doing so would also prevent "recovery of a one-time cost on monthly basis in perpetuity," which the Department notes is an unreasonable outcome of the utilities' current practice.[2]

Finally, even if the utilities' monthly DG fees were permissible (which they are not), we agree with the Department's view of the record that "the utilities have not provided sufficient information establishing that the charges are incremental to those already recovered from the standard customer charge assessed against all customers including customers with DG facilities."[3]

II. Otter Tail Power Company

Otter Tail Power Company ("Otter Tail") argues that its fee is permissible under general rate principles and that it is reasonable because its DG charge was part of the overall rate design that was included in its last rate case. Otter Tail argues that "the Commission's statutory authority to approve public utility rates using cost-causation principles necessarily includes the authority" for Otter Tail's DG fee.[4] However, Otter Tail does not address the specific statutory and regulatory provisions that apply here to guide and limit DG fees for qualified small power producers. As discussed in detail in our initial comments, Minn. Stat. §216b.164 and accompanying rules require that DG customers can only be charged the same rates and fixed charges as a similarly-situated non-DG customer. DG customers are responsible for reasonable interconnection costs, but those should be handled through the state's interconnection process, not through a monthly charge in the utility's tariff.

Otter Tail also argues that its charge is "inherently reasonable" because it was included in the overall rate design approved in the Company's last rate case.[5] Certainly the Commission has broad rate-setting authority, but it is still required to exercise that authority within the bounds of all applicable statutes. Here, there is a specific statute (and rules) governing the rates and charges for DG customers that clearly governs. Otter Tail's argument is also not persuasive because it does not appear that the legality of Otter

[2] *Id.*
[3] *Id*.
[4] Otter Tail comments at 2.
[5] *Id.* at 4.

Tail's DG fee was squarely raised in its last rate case. Specifically, it appears that neither the Commission nor the Administrative Law Judge explicitly commented on Otter Tail's DG fee, and it does not appear that it was raised as an issue by any party or the Company.[6] Therefore, there is no reason for the Commission to give any special deference to Otter Tail's DG fee or alter the analysis in this docket, which is whether Otter Tail's DG fee is permissible under state law. Otter Tail's comments offer no new evidence or analysis demonstrating that it is.

III. Information Requests

In addition to the merits in this docket, we also respectfully request that the Commission clarify the appropriate procedure for conducting discovery in this docket and related informal dockets. On March 31, the Energy Freedom Coalition of America ("EFCA") sent ten information requests ("IRs") to the six utilities in this docket. No utility responded in any fashion, and, on April 18, EFCA send a follow-up email to the six utilities enquiring on the status of the IRs. Of the six utilities, only Xcel responded and did so with a letter stating that it had no obligation to respond to EFCA's IRs and would not be responding. After bringing this issue to staff's attention, Xcel agreed to a limited response. To date, no other utilities have responded to the IRs or provided any response as to their refusal to answer.

Informal dockets are commonly and increasingly used at the Commission to deal with timely policy issues. Even in informal proceedings there is significant information asymmetry between stakeholders and utilities. Therefore, it is critical that utilities answer reasonable IRs to help address this asymmetry and for parties to be able to create a quality record for the Commission to rely upon. The utility conduct in this docket is contrary to common practice, where parties informally serve and answer IRs, and has led to a delayed and less-developed record, and further underlines the lack of justification for the fees in this docket.

Recommendations

Fresh Energy, Environmental Law & Policy Center and Vote Solar recommend that the Commission:

1. Order that public utilities are not permitted to charge monthly fees in their DG rate tariffs that are unique to DG customers under Minn. Stat. §216B.164.
2. Order that the monthly fees charged by Connexus, Goodhue and Mille Lacs to customers with DG installed before July 1, 2015 are not permitted under Minn. Stat. §216B.164.

[6] This review is based on the Commission's Order in Docket No. E017/GR 10-239 and the Administrative Law Judge's Report.

3. Order that the public utilities make a compliance filing within 30 days of the Order that removes all monthly DG fees and charges from all applicable DG tariffs.
4. Order that the cooperative utilities make a compliance filing with the Commission within 30 days of the Order demonstrating that they are no longer charging unique monthly fees to DG customers interconnected before July 1, 2015.

/s/ Allen Gleckner
Allen Gleckner
Senior Policy Associate
Fresh Energy
408 St. Peter Street, Suite 220
St. Paul, MN 55102
(651) 726-7570
gleckner@fresh-energy.org

/s/ Bradley Klein
Bradley Klein
Senior Attorney
Environmental Law & Policy Center
35 E Wacker Drive, suite 1600
Chicago, IL 60601
(312) 795-3746
bklein@elpc.org

/s/ Rick Gilliam
Rick Gilliam
Program Director – DG Regulatory Policy
Vote Solar
303.550.3686
rick@votesolar.org