

11. Open a new docket to expedite compliance with Minn. Stat. section 216B.164 (2014) to refund any inappropriate monthly charges made prior to July 1, 2015, for qualified facilities having less than 40 kilowatt (kW) capacity. Prior to July 1, 2015, the Commission finds that this statute explicitly requires all utilities, including cooperative electric associations and municipal utilities, to compensate all distributed generation qualifying facilities less than 40 kW on “a per kilowatt hour rate”. The qualified facility had the choice to have that rate calculated pursuant to two options identified in subdivision three of that statute. The language of that statute does not allow utilities to unilaterally charge a separate ongoing monthly fee for metering or other fixed costs. Further, subd. 8 of that statute limits utilities to charging qualified facilities only those fixed charges that are “normally assessed [to] non-generating customers.”

This statute gives the Commission authority to promulgate rules and to mediate disputes under the terms of that statute as it relates to payment and interconnection with qualified facilities.

Minn. Rule 7835.2700 promulgated by the Commission, requires customers having qualified facilities to cover the requisite cost of the meter interconnection, however, this was clearly intended as a one-time fee that only covers the cost of the meter and the initial labor to hook it up and not an ongoing fee.

Minn. Rule 7835.3000 and 7835.3100 would allow a utility, including cooperatives and municipal utilities, to include in any tariff applying to qualified facilities to “establishment of specific rates for supplemental, maintenance, backup or interruptible power.” As authorized by the statute that gives a Commission rule making authority, this additional charge is only allowed upon petition of the Commission.

Therefore, in order to fulfill the obligations outlined above by November 1, 2015, each cooperative and municipal utility shall:

- A. Identify all customers having qualifying facilities of less than 40 kW prior to July 1, 2015;
- B. Identify all fees charged to these customers that are not normally assessed to non-generating customers of the same class;
- C. Provide a copy of tariffs related to these customers prior to July 1, 2015;
- D. Identify all petitions filed with the Commission that purport to establish specific rates for supplemental, maintenance, backup or interruptible power.
- E. Identify all fees and charges against qualified facilities that are not normally assessed to non-generating customers that are in addition to the one time hook up charges, and have not been approved upon a petition to the Commission as an allowed specific rate for supplemental, maintenance, backup or interruptible power.

- F. Notify each and every customer of these additional unauthorized charges along with the proposed resolution, including interest. Provide notice that the proposed resolution to the unauthorized fees will be submitted to the Commission for approval as proposed. This notice shall include a statement clearly identifying the process by which the customer may become a party to the action and dispute the reasonableness of the proposed resolution. The notice should include any alternative dispute resolution or mediation that is offered to the customer. The form of this notice shall be approved by the Executive Secretary of the Commission.

In lieu of the above requirements, a cooperative electric association and municipal utility may file a letter with the Commission certifying that they have had no qualified facilities of less than 40 kW prior to July 1, 2015, or that they have not charged any of their qualifying facilities prior to July 1, 2015, any flat fee different from that normally assessed to non-generating customers.

12. Effective July 1, 2015, the legislature amended Minn. Stat. section 216B.164 in part to allow a “cooperative electric association or municipal utility [to] charge an additional fee to recover fixed costs not already paid for by the [qualified facility] customer through the customer’s existing billing agreement.” These additional charges were required by the statute to “be reasonable and appropriate for that class of customer based on the most recent cost of service study.” The legislature did not modify the requirement that the Commission promulgate rules and be decision-makers on disputes as it relates to qualified facilities in their relation to all utilities including cooperative electric associations or municipal utilities. Further, the legislature did not modify the requirement that the section should be construed to “maximize possible encouragement to cogeneration and small power production consistent with protection of ratepayers and the public.”

Therefore, in order to expedite resolution of disputes on cogeneration and small powered production in a fashion that encourages the growth of cogeneration and small production in a fashion that protects ratepayers and the public, the Commission orders that all cooperative electric associations and municipal utilities to:

- A. File with the Commission any new or amended tariffs effective on or after July 1, 2015, relating to qualified facilities under Minn. Stat. 216B.164.
- B. Identify all customers who have interconnected qualified facilities after July 1, 2015 and their customer classification for billing purposes. File with the Commission a list of all their customers who have qualified facilities and identify their customer class. This list must be updated annually through the filings made pursuant to Minn. Rule 7835.1400.
- C. By November 1, 2015, file the most recent cost of service study completed by the utility that covers fixed costs for the class of customers that are identified to have qualified facilities. Include a summary identifying the specific areas of the study that the utility believes authorizes them to establish a reasonable and appropriate monthly recurring fixed charge for qualified facilities. Provide

documentation of how that study and the above summary is made available to all customers having qualified facilities.

D. If the class cost of service study is more than one year old, provide a rationale why this particular class cost of service study is sufficient to determine whether any fixed charges made pursuant to Minn. Stat. 216B.164, subd. 3(a) against customers that have qualified facilities is reasonable and appropriate. If the study is more than one year old, also provide plans by the utility to update that study.

E. Provide a filing that documents the rationale by the governing board of the cooperative electric associations and municipal utilities why any additional ongoing monthly fixed charges for qualified facilities are reasonable and appropriate.

F. Provide any and all notices sent to customers having a qualified facility that were sent by the utility providing notice of the new or changed tariff establishing the fixed charge pursuant to Minn. Stat. 216B.164, subd. 3(a). The notice shall include how a customer with a qualified facility may obtain the most recent cost of service study. Further, the notice should contain a statement approved by the Executive Secretary of the Commission that if the customer disputes whether the charge is reasonable and appropriate or in accordance with the statute, they may file with the Commission to resolve the dispute.

G. File with the Commission by November 1, 2015, any alternative dispute resolution or mediation services provided to customers who have qualified facilities and a general description of those services. If such services are provided, proof that any notifications sent to customers having qualified facilities clearly identify the availability of that resource.

This does not apply to utilities that have opted into rate regulation pursuant to Minn. Stat. 216B.025 and 216B.026. The Commission finds that the protection of ratepayers and the public interest along with the encouragement of the growth of qualified facilities is already occurring in Commission directed rate cases or other proceedings.

Or as an alternative to decision option 6 through 12

13. Open a new docket in which all cooperatives, municipal utilities and parties to docket E132/CG-15-255 may submit initial party briefs on the scope of the Commission's authority to resolve disputes and regulating fees both prior to and after July 1, 2015, pursuant to Minn. Stat. 216B.164 by November 1, 2015. Alternatively, the parties may reach settlement which can be submitted to the Commission by no later than October 15, 2015. If there is a settlement filed, it will be taken up first before any briefs are required to be filed on the Commission's scope and authority as it relates to Minn. Stat. 216B.164. At the time the review of any settlement agreement, the Commission will re-set November 1 deadline for initial party briefs if it's deemed necessary after review of any settlement agreement.