STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

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June 5, 2015

In the Matter of a Request for Dispute Resolution with Peoples' Energy Cooperative under the Cogeneration and Small Power Production Statute, Minn. Stat. § 216B.164	Docket No. E132/CG-15-255

COMMENTS IN RESPONSE TO THE COMMISSION'S MARCH 16, 2015 NOTICE BY FRESH ENERGY, ENVIRONMENTAL LAW & POLICY CENTER, INSTITUTE FOR LOCAL SELF-RELIANCE AND MINNESOTA CENTER FOR ENVIRONMENTAL ADVOCACY

Fresh Energy, Environmental Law & Policy Center, Institute for Local Self-Reliance and Minnesota Center for Environmental Advocacy (Clean Energy Organizations) submit these Comments in response to the Commission's March 16, 2015 Notice Seeking Comments. On March 11, 2015, a member of People's Energy Cooperative (Peoples), Alan Miller, filed a request with the Commission seeking a resolution of a dispute resulting from Peoples' imposition of an additional $5.00 fee monthly fee on his account because he has an interconnected small wind facility. This fee was also added only to Peoples customers with small systems interconnected under Minn. Stat. § 216B.164, subd. 3(a) and is not tied to the costs of any specific hardware or other legitimate costs. Notably, Peoples provides no cost justification for the fee other than that it is the same fee Peoples charges customers enrolled in its "dual fuel meter" program. Alan Miller argues that including a fee exclusively to distributed generation customers violates Minnesota statutes and rules with respect to cogeneration and small power production, including but not limited to Minn. Stat. § 216B.164, subd. 3(a). We agree.

Clean Energy Organizations submit that the Commission should resolve this dispute in Mr. Miller's favor and find that fixed charges limited to self-generating, net-metering customers and not tied to unique and necessary hardware costs specifically required under Minnesota's interconnection rules violate Minn. Stat. § 216B.164, subd. 3.

I. The Commission Has Jurisdiction to Resolve This Dispute

The Minnesota Municipal Utilities Association (MMUA) submitted comments asserting that the Commission should not resolve this dispute because there is a lack of "guidance" in the Cogeneration and Small Power Production statute and rules.[1] This misconstrues the Commission's jurisdiction to hear disputes under this statute.

Although the legislature generally exempted cooperative electric utilities from the Commission's regulation, it did so "except as specifically provided" in Minnesota statutes.[2] Minnesota's Cogeneration and Small Power Production statute specifically provides for the Commission's jurisdiction "in the event of disputes between an electric utility and a qualifying facility."[3] This section explicitly applies "to all Minnesota electric utilities, including cooperative electric associations and municipal electric utilities."[4] Accordingly, the legislature determined that this is a situation when the Commission has jurisdiction to hear disputes involving cooperatives such as Peoples. There is nothing in this subdivision that limits the Commission's authority to only resolving disputes of a certain subject matter or for which the Commission has "guidance to adjudicate [the dispute]."[5]

Minnesota Rules reflect this statutory scheme. Minnesota Rule 7835.4500 states that "[i]n the case of a dispute between a utility and a qualifying facility . . . either party may request the commission to determine the issue." A "utility" under this rule is defined as "any public utility, including municipally owned electric utilities or cooperative electric associations, that sells electricity at retail in Minnesota."[6] This definition includes Peoples. Nobody is disputing that Mr. Miller owns a qualifying facility.

The Commission has acted in accordance with this authority in past proceedings. Most analogous to this proceeding, the Commission invalidated a "check writing fee" that Nobles Cooperative Electric discriminatorily charged to qualifying facilities.[7] The Commission noted that "[u]nder Minn. Stat. § 216B.164, subd. 5, and under Minn. Rules, part 7835.4500, disputes between a utility and a qualifying facility may be brought to the Commission for determination."[8] The Commission determined in this past proceeding that Nobles Electric's charge was "impermissible under the [Uniform Statewide] Contract, violates the statute, and contravenes the public policy goal of establishing statewide uniformity in those

[1] MMUA Comments filed June 4, 2015.
[2] Minn. Stat. § 216.01.
[3] Minn. Stat. § 216B.164, subd. 5.
[4] Minn. Stat. § 216B.164, subd. 2.
[5] MMUA Comments filed June 4, 2015.
[6] Minn. R. 7835.0100, subp. 24.A.
[7] Order Prohibiting Check Writing Charge and Ordering Refund, Docket No. E-126/CG-10-1195, February 17, 2011.
[8] *Id.* at 2.

transactions. Further, charging a fee to a qualifying facility . . . is inconsistent with the stated intent of the statute, which is to give the maximum possible encouragement to cogeneration and small power production."[9] The dispute between Nobles Electric did not involve "rates" in the sense that MMUA suggests is required to invoke the Commission's jurisdiction. Rather, it involved a disputed fee charged by the cooperative just like the dispute between Peoples and Mr. Miller. There is simply no language in the applicable statute or rule that limits the Commission's jurisdiction in the manner suggested by MMUA, nor has the Commission interpreted its jurisdiction in that way in the past.

Minnesota statute establishes the jurisdiction of the Commission over this dispute, and this is confirmed by the implementing regulations and past Commission action. The Commission should exercise its jurisdiction and resolve this dispute in line with the goal of the statute "to give maximum possible encouragement to cogeneration and small power production."[10]. That requires an order finding the $5.00 per month fixed charge imposed by Peoples impermissible as discussed below and requiring Peoples, and any other utilities violating the statute in this manner, to refund their customers.

II. Peoples' Distributed Generation Charge is Not Allowed by Statute or Supported By Evidence

The Commission should find in favor of Mr. Miller because Peoples' $5.00 monthly distributed generation fee (DG charge) is:

1. Not authorized by Minnesota's net metering statute, Minn. Stat. § 216B.164; and
2. Even if the charge was consistent with the statute (which it is not), Peoples has completely failed to justify the additional fixed charge it is assessing.

A. Peoples' DG Charge is not Authorized by Minnesota's Cogeneration and Small Power Production Statute.

Peoples' DG charge is not permitted under Minnesota's Cogeneration and Small Power Production statute, Minn. Stat. § 216B.164, because the plain language of the statute does not authorize such charges and because allowing extra fees and charges to customers interconnecting under the statute would allow utilities to circumvent the statute's intent – setting the compensation for customers self-generating with small systems.

Peoples' DG charge applies to its customers that self-generate with small (under 40kw) wind and solar systems. These customers are eligible for a billing arrangement commonly referred to as "net metering" where any electricity generated from a customer's small wind or solar system that is not used on-site can

[9] *Id.* at 2-3.
[10] Minn. Stat. § 216B.164, subd. 1

offset electricity that customer purchases from the utility. Minn. Stat. § 216B.164 governs net metering for customers and utilities.

A key premise of net metering is that distributed generation (DG) customers are billed for net consumption at the *identical* rate schedule as non-DG customers so that rates are "non-discriminatory" between DG and non-DG customers.[11] Extra fees or charges specific to DG customers is directly contrary to this principle. This "non-discrimination" principle is reflected in Minnesota's net metering statute. Minn. Stat. § 216B.164 subd. 3(a) states that net metering customers "shall be billed for the net energy supplied by the utility according to the applicable rate schedule for sales to that class of customer." Costs charged to the net metering customer may not be "discriminatory in relation to the costs charged to other customers of the utility."[12]

Peoples' argues that Minn. Stat. § 216B.164, subd. 3(b) and subd. 8(b) allows it to collect additional fees from DG customers if the fees are "unique to the existence of the interconnected system, are not covered by other charges associated with the existing service where the DG system is interconnected, or are not part of a standby fee."[13] However, the statute does not support Peoples' interpretation. First, subd. 3(b) "applies to public utilities" and has nothing to do with fixed charges. It is likely that Peoples intended to cite to subd. 3(c), but that section also does not support the Company's proposal. Subd. 3(c) states, in relevant part, that "[i]n setting rates, the commission shall consider the fixed distribution costs to the utility not otherwise accounted for in the basic monthly charge and shall ensure that the costs charged to the qualifying facility are not discriminatory in relation to the costs charged to other customers of the utility." It is important to read this statutory language in context. Subd. 3(c) has to do with the Commission's establishment of rates calculated for compensation to the customer for any net input into the utility system. In other words, in situations where a net metering customer ends the month with "net input into the utility system" over the course of a month (often referred to as "net excess generation," or NEG) then the utility is directed to compensate the customer for its NEG according to a "per kilowatt-hour

[11] *See e.g.*, Illinois' net metering statute 220 ILCS 5/16-107.5(e) ("An electricity provider shall provide to net metering customers electric service at non-discriminatory rates that are identical, with respect to rate structure, retail rate components, and any monthly charges, to the rates that the customer would be charged if not a net metering customer."). *See also* the Interstate Renewable Energy Council's model net metering rules, Section (b)(13) available at http://www.irecusa.org/irec-model-net-metering-rules-2009/ ("An Electricity Provider shall not charge a Customer-generator any fee or charge; or require additional equipment, insurance or any other requirement not specifically authorized under this sub-section or the interconnection rules in Section [[reference state interconnection rules here]], unless the fee, charge or other requirement would apply to other similarly situated customers who are not Customer-generators.").
[12] Subd. 3(c).
[13] April 6, 2015 Letter at 1.

rate determined under paragraph (c) or (d)."[14] Instead of calculating the appropriate rate for "net input," Peoples is attempting to use subd. 3(c) to assess an additional net metering charge. An additional charge is an entirely different purpose that ignores the structure and the intent of paragraph (c) and ignores the relevant and applicable language from subd. 3(a) requiring utilities to bill net metering customers "according to the applicable rate schedule" that applies to all other customers in the class.

Furthermore, paragraph (a) of subd. 3 explicitly requires that the "net input" rate calculated under paragraph (c) to be a per kilowatt-hour rate to be paid to a qualifying facility: "In the case of net input into the utility system by a qualifying facility having less than 40-kilowatt capacity, compensation to the customer shall be at a per kilowatt-hour rate determined under paragraph (c) or (d)." This language does not allow the utility to calculate and charge a separate flat monthly fee as Peoples attempts to do here. Finally, there is a statutory provision, not quoted by Peoples, that does cover "fixed charges." This language at subd. 8(b) allows utilities to charge DG customers for "fixed charges" that are "normally assessed [to] nongenerating customers." The fact that the legislature qualified its provision for the recovery of fixed charges to those charges "normally assessed [to] nongenerating customers" reflects the same nondiscrimination principle repeated throughout Chapter 216B and undermines Peoples' attempt to collect a separate fixed charge for DG customers that is explicitly not "normally assessed [to] nongenerating customers."

Looking beyond the statute's plain language, the intent and purpose of Minnesota's Cogeneration and Small Power Production statute is undermined if utilities are able to circumvent the statute's explicit compensation structure for net metered customers by simply adding extra fees to only those same customers. The "Scope and Purpose" of § 216B.164 lays out the statute's intent and states that "[t]his section shall at all times be construed in accordance with its intent to give the *maximum possible encouragement* to cogeneration and small power production consistent with protection of the ratepayers and the public."[15] The statute encourages cogeneration and small power production in the case of net metering by providing customers that self-generate within the limits of the statute with certainty and clarity as to how they will be compensated—a one-for-one offset of electricity used and electricity generated. A utility adding an extra fixed charge only to net metered customers and not tied to costs explicitly identified in interconnection rules—like Peoples does here—clearly impacts the billing arrangement and the one-for-one offset for net metering laid out in the statute. Therefore, these extra charges are directly contrary to the statute because they alter and undermine the statute's whole purpose—setting the compensation and billing arrangement for these systems. As such, the Peoples'

[14] *See* Subd. 3(a) ("In the case of net input into the utility system by a qualifying facility … compensation to the customer shall be at a kilowatt-hour rate determined under paragraph (c) or (d).").
[15] Subd. 1 (emphasis added).

charge is an end-run around complying with § 216B.164, subd. 3(a) which requires cooperative electric associations to offer retail rate net metering to its customers with systems smaller than 40kw.

In summary, Peoples' attempt to use the statutory language at subd. 3(c) to support an additional, discriminatory DG charge takes the statutory language out of context and ignores the purpose and structure of the statute.

B. Even if Peoples' DG Charge was Authorized (Which it is not), Peoples Has Not Met Its Burden of Proof

Even if Peoples' DG charge was allowed under § 216B.164 (which it is not as discussed above), Peoples' attempt to collect unquantified and nebulous "costs attributable to [distributed] generation" does not meet the utility's burden of proof. Utilities bear the burden of proof in billing disputes with qualifying facilities.[16] As such, Peoples bears the burden of proof that its DG charge is allowed under Minnesota law and, if it is, that the charge is reasonable and justified. It has not met this burden.

Peoples lists a number of "costs" that it claims are "attributable" to solar generation (or small wind generation in Mr. Miller's case), but entirely fails to quantify these costs or explain why Peoples should be allowed to collect additional revenue from DG customers when those customers choose to self-supply part of their own needs through self-generation. Utilities do not have a "right" to a certain amount of consumption and revenue from each of their customers. So the simple fact that some of the utilities' customers choose to reduce their electricity purchases by investing in distributed generation or energy efficiency does not justify additional charges being levied on those customers to "make up" for lost revenue.

Peoples' responses to the Commission fail to support the Company's proposed $5 per month charge with analysis or data. In its original March 24 letter, the Company states that the additional charge was intended to recover certain recurring interconnection-related costs, such as "those related to monitoring interconnected systems, processing of readings (including incremental information services charges), and associated purchasing payments." The letter has no further description or explanation of these costs or how they accounted for or calculated the charge. The Company's April 6 letter changes the rationale for the charge. Instead of "interconnection-related costs" the Company now claims that the $5.00 charge is intended to recover "fixed distribution costs not accounted for in the initial basic monthly charge of $37.00." Beyond a very basic "cost of service" statement provided in response to the Department of

[16] Minn. Stat. § 216B.164, subd. 5 ("In the event of disputes between an electric utility and a qualifying facility, either party may request a determination of the issue by the commission. In any such determination, the burden of proof shall be on the utility.").

Commerce's Information Request No. 3, there is no description of how Peoples calculated this "fixed distribution cost" or determined whether and to what extent those costs were "accounted for" by the customer. There is still further no explanation of how Peoples' DG customers, as a class, are failing to cover their "fixed distribution costs."

Taking the Company's shifting rationales one at a time, first, it is clear that a recurring $5.00 charge is not appropriate for recovering interconnection-related charges. Interconnection costs and charges are covered by Minn. Stat. § 216B.1611 and by various interconnection-related orders and tariffs. A fundamental principle of the interconnection process is that a DG customer must pay the legitimate costs to interconnect their system safely and reliably, but that clear standards, consistency and transparency are needed to help streamline the interconnection process and minimize unnecessary costs. The Commission Order establishing interconnection standards explained that DG has "many benefits," but these benefits "would be lost" if the process for negotiating with the utility "proved too burdensome."[17] It is for this very reason that the Legislature directed the Commission to "establish parameters" to govern this process. These parameters include "standardized terms" and are intended to be transparent and predictable "so that a person interested in developing distributed generation could anticipate the financial terms for interconnecting with any electric utility in the state."[18]

Peoples' DG charge violates all of these principles. It is not transparent—nowhere does the Company explain the basis for the charges. It is not predictable—DG customers were assessed this fee without warning. It is not uniform—Peoples has singled out DG customers for fees that no other utility is authorized to charge in the State. If Peoples believes these are actually "interconnection" related costs, then they should be (1) justified as interconnection costs, (2) recovered through the interconnection process, and (3) transparently outlined in the Company's interconnection tariff. It is not appropriate for Peoples to charge a separate, monthly DG "fee" in the guise of an "interconnection" cost.

The Company similarly fails to justify the additional DG charge as recovery for "fixed distribution costs not accounted for in the initial basic monthly charge of $37.00."[19] First, Peoples monthly fixed charge is already substantial. While rural electric cooperatives generally have somewhat higher distribution costs than investor-owned utilities, a $37.00 monthly fixed charge is still very high in comparison to many other utilities across the Midwest. Fundamentally, however, in order to determine whether DG customers are paying their "fair share" of fixed costs, the Commission would need to know more about (1) the Company's actual costs to serve DG customers as a class, and (2) the corresponding benefits that

[17] Docket E-999/CI-01-1023, Order Establishing Standards, p. 3 (Sept. 28, 2004).
[18] *Id.*
[19] April 6, 2015 Letter.

distributed generation provides to Peoples' system. However, Peoples' responses to the Commission provide no data or even any evidence that the Company has studied its actual costs of service for DG customers as a class or the corresponding values that DG provides to the grid. Without properly studying either the costs or the benefits of serving DG customers, the Company's conclusion that these customers are being "subsidized" by other customers is nothing more than speculation.[20]

The Utah Public Service Commission recently rejected a similar utility proposal to assess a "residential net metering facilities charge" to recover alleged "fixed distribution costs" from DG customers.[21] In that case, PacifiCorp estimated that "the cost shift from net metered customers to all customers is $4.65 per month per customer" and proposed a separate charge to "create an appropriate price structure for residential net metered customers before the shifting of distribution and customer costs from net metered customers produces a much larger cost burden on non-participating customers."[22] The Commission rejected the Company's proposal, finding that PacifiCorps had entirely failed to justify the charges. Specifically, it held that the utility failed to present evidence demonstrating that net metering customers are sufficiently different than other residential customers to justify a separate, discriminatory charge:

> Simply using less energy than average, but about the same amount as the most typical of PacifiCorp's residential customers, is not sufficient justification for imposing a charge, as there will always be customers who are below and above average in any class. Such is the nature of an average. In this instance, if we are to implement a facilities charge or a new rate design, we must understand the usage characteristics, e.g., the load profile, load factor, and contribution to relevant peak demand, of the net metered subgroup of residential customers. We must have evidence showing the impact this demand profile has on the cost to serve them, in order to understand the system costs caused by these customers.[23]

The Utah Commission also found, as here, that the utility neglected to account for "net metering program benefits."[24] In study after study, independent reviews of distributed solar and net metering programs are finding significant grid benefits that outweigh the costs of the program.[25] Minnesota's Value of Solar

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[20] *See e.g.*, April 24, 2014 Peoples Letter to Alan Miller ("[Net metering] also means that other Cooperative members are subsidizing our purchase of renewable energy from individual members.").
[21] *See* In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations, Docket No. 13-035-184, Report and Order of Aug. 29, 2014.
[22] *Id*. at 21.
[23] *Id.* at 68.
[24] *Id.* at 59.
[25] *See e.g.*, Nevada PUC Ordered Study conducted by E3 consulting firm, available at http://www.renewableenergyworld.com/rea/news/article/2014/07/nevada-net-metering-will-save-the-grid-36-million-says-state-report, http://puc.nv.gov/About/Media_Outreach/Announcements/Announcements/7/2014_-_Net_Metering_Study/ (finding that the grid benefits of solar systems installed through 2016 will exceed

Methodology explicitly analyzes the benefits of distributed solar and evidences the Legislature's recognition of distributed solar's benefits.[26] There is no evidence in this case that Peoples has attempted to study or quantify these net metering program benefits either when it established its new charge or even now when attempting to justify it.

Given the lack of justification and the Company's shifting rationale for its proposed charge, it is more likely that the real intent for this charge is simply to counter a perceived, but thoroughly undocumented "subsidization" of DG customers, by collecting additional fixed charges from only those customers and to make it less likely that more customers will interconnect net metered systems. Each of Peoples' responses to the Commission alludes to this point. Peoples' March 24, 2015 and April 6, 2015 Letters state that the charge is an attempt to prevent DG customers from "causing an undue impact" to non-DG customers, and its April 6, 2015 Letter states that "[t]he Cooperative's general ratepayers should not have to pay costs attributable to solar generation as in this instance." Peoples' April 24, 2014 Letter to Alan Miller describing the rationale for the DG charge is more explicit on this point, likely because the issue was not before the Commission at that time. It stated:

> While the Cooperative supports energy conservation, we do have a concern with the installation of DG such as solar and wind. The current Minnesota statute requires us to pay retail rates for systems under 40KW in size. That means we pay more for that renewable energy than we do the [sic] energy we purchase from Dairyland Power Cooperative, our power supplier. It also means that other Cooperative members as subsidizing our purchase of renewable energy from individual members, which is a concern for us.

Peoples' unjustified DG charge violates the letter, spirit and intent of the Minnesota's cogeneration and small power production statute as well as the state's intent to promote renewable and distributed energy. Therefore, Clean Energy Organizations recommend that the Commission resolve this net metering billing dispute in favor of the Complainant as a violation of Minn. Stat. § 216B.164.

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costs by $36 million); Mississippi PSC Study, available at http://votesolar.org/2014/10/01/study-net-metering-would-help-keep-rates-low-in-mississippi/, http://votesolar.org/wp-content/uploads/2014/10/Synpase-MS.pdf (finding that solar net metering will provide a net benefit to Mississippi in nearly every scenario analyzed); Utah PSC ordering that solar fees are premature without a cost/benefit study, available at http://www.utilitydive.com/news/utah-regulators-turn-down-rocky-mountain-powers-bid-for-solar-bill-charge/304455/, http://psc.utah.gov/utilities/electric/ordersindx/documents/20006513035184rao.pdf Maine PUC study, available at http://www.utilitydive.com/news/maine-puc-study-values-solar-at-33-centskwh-more-than-double-the-price-of/374717/, http://www.nrcm.org/wp-content/uploads/2015/03/MPUCValueofSolarReport.pdf (finding that the value of distributed solar significantly exceeds the retail rate).

[26] Docket E-999/M-01-65, Order Approving Distributed Solar Value Methodology (April 1, 2014).

III. Recommendations

Fresh Energy, Environmental Law & Policy Center, Institute for Local Self-Reliance and Minnesota Center for Environmental Advocacy recommend that the Commission:

1. Find that Peoples' $5.00 per month fee applied only to customers with billing rates under Minn. Stat. § 216B.164 is not authorized under the statute.
2. Resolve this billing dispute in the favor of the Complainant and asses appropriate fees and charges as provided by Minn. Stat. § 216B.164, subd. 5, including refunding all $5.00 charges collected to date.

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