

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
Nancy Lange
Dan Lipschultz
John Tuma
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

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. E-132/CG-15-255

REPLY COMMENTS

REPLY COMMENTS OF THE ALLIANCE FOR SOLAR CHOICE

The Alliance for Solar Choice (TASC) hereby submits the following reply to opening comments submitted by parties pursuant to the State of Minnesota Public Utilities Commission's (Commission) *Notice Requesting Response from Peoples' Energy Cooperative and Opportunity to Comment on Dispute* (Notice) issued in this docket on March 16, 2015 and the *Second Notice of Extended Comment Period* issued June 5, 2015.

1. Introduction

This proceeding arises out of a complaint (Complaint)¹ filed by Alan Miller (Complainant), a member of People's Energy Cooperative (Cooperative), in opposition to the Cooperative's attempt to impose a monthly charge (DG charge) on its customer-generators. TASC's advocacy thus far has focused on the Cooperative's lack of authority to levy its proposed charge and the Cooperative's failure to provide evidence to justify the imposition of the charge on its customers.² Recent legislation provides further clarity and re-affirms TASC's prior advocacy. Comments of others also generally support the position that the Complaint is valid

¹ Alan Miller, *Request for Dispute Resolution Under the Cogeneration and Small Production Statutes and Rules* (Mar. 11, 2015).

² See TASC Comments (June 5, 2015).

and that the Cooperative's DG charge is illegal. Finally, TASC responds to the Minnesota Municipal Utilities Association's (MMUA) argument that the Commission lacks jurisdiction to hear this Complaint.

2. Recently enacted H.F. No. 3 demonstrates that cooperatives lacked authority to impose a DG charge prior to July 1, 2015.

As noted in SEIA's Reply Comments, a special session of the Minnesota Legislature recently provided cooperatives with the explicit authority, under certain circumstances, to "charge an additional fee to recover the fixed costs not already paid for by the customer through the customer's existing billing arrangement."³ Any such fees must be "reasonable and appropriate for that class of customer based on the most recent cost of service study."⁴ The legislation further requires that "[t]he cost of service study must be made available for review by a customer of the utility upon request."⁵ However, this new legislation has an effective date of July 1, 2015 "and applies to customers *installing net metered systems after that day.*"⁶ Certain DG fees are now allowed for cooperatives and municipal utilities under state law when they are properly justified, but they can only apply to systems installed after July 1, 2015. DG fees that were imposed prior to the grant of this authority are illegal. Because the Cooperative assessed its fee prior to this new legislation's enactment, the Commission should find that it was illegal and order the Cooperative to provide refunds to all customers who were illegally charged.

3. Nearly all parties support the Complaint

Almost all parties submitting comments offered support for the Complaint and oppose the

³ State of Minnesota, House of Representatives, H.F. No. 3, Chapter 1 of Final Engrossment, Article 3 § 21 (available at: <https://www.revisor.mn.gov/laws/?id=1&year=2015&type=1#laws.3.21.0>).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

Cooperative's proposed DG charge.⁷ Notably, the only support for the Cooperative's DG charge came from associations representing municipal utilities and cooperatives.⁸ As a number of clean energy parties who submitted joint comments stated, the Cooperative's "unjustified DG charge violates the letter, spirit and intent of Minnesota's cogeneration and small power production statute as well as the state's intent to promote renewable and distributed energy."⁹ TASC agrees with this assessment and respectfully requests the Commission resolve this dispute in favor of the Complainant.

4. MMUA takes an unsupported and strained view of the law, which clearly gives the Commission jurisdiction over this dispute

MMUA argues unconvincingly that the section of the Minnesota Statutes that expressly grants a qualifying facility (QF) the right to request a determination from the Commission in the event of a dispute with its electric utility does not apply to this situation and, therefore, the Commission lacks jurisdiction to render a decision in this dispute.¹⁰ This interpretation ignores the clear language of Minnesota's net metering statute. Although, as MMUA points out, Section 216b.01 states that cooperatives are not regulated by the commission "except as specifically provided herein," Section 216B.164, Subdivision 2 specifically provides that Section 216B.164 applies to cooperatives.¹¹ Therefore, Section 216B.164, Subdivision 5 of the net metering statute clearly provides for the Commission to resolve disputes between a QF and their utility even

⁷ See Minnesota Department of Commerce Comments at p. 9; Cooperative Member Sam Villela Comments at p. 2; Minnesota Solar Energy Industry Association (MnSEIA) Comments at p. 1; Fresh Energy, Environmental Law & Policy Center, Institute for Local Self-Reliance and Minnesota Center for Environmental Advocacy (Clean Energy Organizations) Comments at p. 1.

⁸ See Minnesota Rural Electric Association (MREA) Comments at pp. 1-2; Minnesota Municipal Utilities Association Comments at p. 1.

⁹ Clean Energy Organizations Comments at p. 9.

¹⁰ MMUA Comments at p. 2.

¹¹ See Minn. Stat. § 216B.164, subd. 2 ("This section as well as any rules promulgated by the commission to implement this section or the Public Utility Regulatory Policies Act of 1978, Public Law 95-617, Statutes at Large, volume 92, page 3117, and the Federal Energy Regulatory Commission regulations thereunder, Code of Federal Regulations, title 18, part 292, shall, unless otherwise provided in this section, apply to all Minnesota electric utilities, *including cooperative electric associations* and municipal electric utilities.") (emphasis added).

when that utility is a cooperative.¹²

MMUA also attempts to conflate what it sees as legislative silence on the question of a cooperative levying a DG charge with a lack of jurisdiction, stating that, “since the statute provides no prohibition or conditions regarding fees charged by municipals or cooperatives, there is not guidance for the commission to adjudicate complaints regarding them . . . There is simply no way for the commission to make a determination supported by authority.”¹³

However, the question of the Commission’s jurisdiction is distinct from the question of whether the law speaks clearly to the substance of the dispute at hand. What matters is that this is a dispute between a QF and the jurisdictional utility regarding the QF’s rights under Minnesota’s net metering law, PURPA and any other statutes or rules.¹⁴ Subdivision 5 grants the Commission the authority to resolve this dispute. The Commission therefore clearly has jurisdiction over this matter.

5. TASC supports the Department of Commerce’s position regarding the need to examine the levying of fixed charges on net metering customers by other Minnesota utilities

Comments submitted by the Minnesota Department of Commerce (Commerce) offer an important perspective on this dispute. Specifically, Commerce expresses concern that Xcel Energy, Otter Tail Power, Interstate Power and Light, and Minnesota Power are all currently levying additional charges upon their net metering customers and have been doing so since at least 2010.¹⁵ TASC is concerned that, like the Cooperative’s proposed DG charge, these charges may not comply with Minnesota’s net metering law and may lack justification. TASC therefore agrees with Commerce that, “[t]he Commission may wish to open a new docket to request

¹² See 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.”).

¹³ MMUA Comments at p. 2.

¹⁴ See Minn. Stat. § 216B.164, subd. 2.

¹⁵ Minnesota Department of Commerce Comments at p. 9.

additional information from each utility on the implementation date of any net metering charge, and the Docket in which such charge was approved.”¹⁶

6. Conclusion

TASC appreciates the opportunity to offer reply comments and looks forward to continuing to contribute to this proceeding. TASC respectfully requests that the Commission resolve this dispute in favor of the Complainant

Respectfully submitted,



Bryan Miller
TASC Co-Chairman

¹⁶ *Id.*

CERTIFICATE OF SERVICE

I, Kimberly Kooles, hereby certify that I have this day served copies of the foregoing document on the attached list of persons by electronic filing, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at Cary, North Carolina.

DOCKET NO. E-132/CG-15-255

Dated this 16th day of July 2015.

/s/ Kimberly Kooles

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