Minnesota Municipal Utilities Association

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Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

RE: In the Matter of a Commission Inquiry into the Creation of a Commission Subcommittee under Minn. Stat. §216A.03, subd. 8; Docket No. E-999/CI-17-284

Dear Commissioners:

Minnesota Municipal Utilities Association (MMUA) submits the following Comments in response to the Notice of Comment Period in the above-referenced docket.

MMUA represents the interests of its member municipal electric, gas, and water utilities. Our mission is to unify, support and serve as a common voice for these utilities.

In the Notice of Comment Period, the Commission asks:

- Should the Commission establish a subcommittee as outlined in Attachment A that would more quickly move issues forward that are raised in customer complaints or other filings at the Commission?
- Is the intention and proposed process for the subcommittee reasonable?
- Are there other examples or types of issues that could be handled by the subcommittee?

The Commission's intention to respond to distributed generation (DG) complaints and questions and to clear up what it perceives as misunderstandings or misinterpretations is understandable. And the subcommittee option available under Section 216A.03, subdivision 8 would seem at first to be a viable tool to use toward that purpose. To the extent that the proposal is aimed at resolving issues that require interpretation where statutes, rules and tariffs are either unclear or apparently silent, MMUA finds the subcommittee proposal unacceptable.

However, there may be value in a narrower version of the proposal if the scope of disputes sent to the subcommittee could be strictly limited to those that can be resolved regardless of what utility's rules or tariffs apply. Use of the subcommittee should be limited to cases where it is clear that jurisdiction lies with the state Commission and not the local governing body, where it is clear that the rules that apply are those of the Commission and not those of the local governing body, and where it is clear that a non-violation or a violation exists.

Even Relatively Minor Disputes Can Require Interpretation; Whose Standards Apply?

Attachment A notes that informal questions and complaints from customers, utilities and others are taking up undue staff, utility and customer time and that some of these same issues have been

raised in formal proceedings as well. "These issues do not involve *high level* policy considerations and *often* do not involve *significant* interpretation of statute, rule, order, or tariff because the interpretation of the material is *relatively* clear; however, staff is unable to issue definitive advice and clarification." Notice, p. 3, emphasis added.

The italicized qualifiers in the preceding paragraph, while accurate, nonetheless indicate that some of the issues contemplated for subcommittee disposition do contain some level of policy consideration that sometimes does involve significant interpretation of statute, rule, order or tariff - and that the appropriate interpretation is not completely clear.

Formal determinations that require even a small amount of law or rule interpretation would set policy affecting other situations whether made by the full Commission or a subcommittee. Any such rulings should only be made through proceedings that can properly analyze those potential ramifications. The subcommittee structure outlined in Section 216A.03 does not provide for that type of issues vetting. It would be improper and imprudent if staff were to refer disputes to the proposed subcommittee whose outcome could not clearly be settled upon first look according to a law, rule or other appropriate standard.

One reason is that such dispute handling would be better left to the governing bodies of the utilities involved simply because it would be inefficient and more difficult for the MPUC generally to attempt to resolve such issues as they relate to utilities with which the Commission is not familiar through frequent other proceedings such as rate cases. The MPUC is not privy to the safety and reliability issues, interconnection processes and other legitimate intervening considerations of the various municipal utilities as regulated by their customer-owners through their utility commissions and/or city councils.

Another problem with the proposal would be in trying to apply the appropriate governing rule or standard for making determinations in a given dispute. Most rules relating to distributed generation fall under Minnesota Statutes §216B.164, and interconnection standards are established pursuant to §216B.1611. As explained below, however, there is not simply one set of rules, and there is not simply one set of standards governing all utilities under these statutes.

For the purposes of §216B.164, "the term 'commission' means the governing body of each municipal electric utility that adopts and has in effect rules implementing this section which are consistent with the rules adopted by the Minnesota Public Utilities Commission under subdivision 6." §216B.164, subd. 9. The rules adopted by a municipal utility, while consistent with the state Commission's rules, may differ in ways that are significant relative to issues of dispute.

As to interconnection standards and processes, Minnesota Statutes §216B.1611, subdivision 2 states, in part,

> "The commission shall initiate a proceeding within 30 days of July 1, 2001, to establish, by order, generic standards for utility tariffs for the interconnection and parallel operation of distributed generation fueled by natural gas or a

> renewable fuel, or another similarly clean fuel or combination of fuels of no more than ten megawatts of interconnected capacity."

What happens with those generic standards follows in accordance with subdivision 3 which states:

> "Within 90 days of the issuance of an order under subdivision 2:
> (1) each public utility providing electric service at retail shall file a distribute generation tariff consistent with that order, for commission approval or approval with modification; and
> (2) each municipal utility and cooperative electric association shall adopt a distributed generation tariff *that addresses the issues included in the commission's order*." Minn. Stat. §216B.1611, subd. 3, emphasis added.

While the tariffs that set out interconnection processes, requirements and technical standards for consumer-owned utilities are consistent with the state's generic standards, they may vary in ways that are small but material to properly determining disputes from one utility to the next. It would problematic for the state Commission to switch gears among tariffs and attempt to apply those of municipal utilities that were not its responsibility to review and approve. In fact, as those tariffs and local rules under §216B.164 were officially adopted by local public bodies under statutory directive, it would not be appropriate.

Clear Issues

Under "Anticipated Type of Subcommittee Work," the Attachment includes "Complaints filed with the Consumer Affairs Office or filed in formal dockets where it is fairly clear that a non-violation or a violation exists." Notice, p. 3.

There could be disputes wherein one side simply does not understand the indisputable intent of applicable law. The two sides in such disputes could potentially benefit from having a subcommittee explain how that law applies to the facts surrounding their situation. MMUA could see value in the subcommittee proposal if there could be adequate assurance that the subcommittee would take up only such truly non-controversial issues. It is significant to note, however, that the Attachment language uses "fairly" when explaining how clear the violation-or-no-violation determination would have to be in order for the subcommittee to take it up. This is concerning. From MMUA's perspective, a "fairly" clear standard would not be adequate. MMUA would be cautiously willing to explore whether staff could be reliably limited procedurally to refer only disputes with clearly prescribed outcomes to a subcommittee for resolution. However, it is not immediately apparent that such assurances could be established.

Subcommittee Should Not Fill-In-The-Blanks Where Laws are "Silent"

In addition to deciding more-or-less clear issues and issues that require a small degree of law or rule interpretation, the proposal indicates that the subcommittee would be tasked with making

interpretations where statutes and rules are "silent" about an issue. This part of the proposal is particularly troubling.

The Attachment lists as one type of anticipated subcommittee work: "Interpretation of Minn. Stat. §216B.164, 216B.1611, or related statutes, for example individual capacity system limits in Minnesota Statute §216B.164, subd. 4c, or where there is a specific situation that statute, rule or tariff does not address." Notice, p. 3.

For the reasons that follow, MMUA believes that inferring legislative or regulatory intent where there is no guidance in these laws and rules would be extremely problematic and should not be undertaken by a subcommittee.

First, it is always important to remember that the Legislative Findings provision that begins Chapter 216B states clearly the extent of state Commission authority over municipal utilities. Section 216B.01 states, in part, "Because municipal utilities are presently effectively regulated by the residents of the municipalities which own and operate them, and cooperative electric associations are presently effectively regulated and controlled by the membership under the provisions of chapter 308A, it is deemed unnecessary to subject such utilities to regulation under this chapter except as specifically provided herein."

That said, the state Commission does have limited jurisdiction relating to municipal utilities under §216B.164 which states in subdivision 2, "This section as well as any rules promulgated by the commission to implement this section . . . shall, *unless otherwise provided in this section*, apply to all Minnesota electric utilities, including cooperative electric associations and municipal utilities." Id., emphasis added.

The limit on Commission jurisdiction provided in §216B.164 is stated in subdivision 9 (also noted on page 2 of these Comments) which specifically provides that when a municipal utility adopts rules implementing §216B.164 that are consistent with the Commission's rules, then "commission" means the local governing body of the municipal utility for purposes of all of §216B.164, except for a provision in subdivision 5 which allows qualifying facilities to petition the Commission for disputes with any utility.[1] These statutes are significant when considering whether portions of §216B.164 and §216B.1611 are "silent" on issues as they pertain to municipal utilities. MMUA believes that if the distributed generation statutes are "silent" as some say, then local guidance applies at municipal utilities.

Certain provisions of these statutes and rules pertain specifically to "public utilities," - the investor-owned utilities. See Public Utility definition under Minn. Stat. §216B.02, subd. 4. Therefore, those provisions apply only to those utilities – Xcel Energy, Minnesota Power and Ottertail Power. Where those statutes and rules say something about those public utilities and nothing about the same issue in relation to municipal utilities, it does not mean the

[1] Legislation presented to the Governor following May 22, 2017 passage by the Minnesota House and Senate would limit that petition right to qualifying facilities of 20 megawatts capacity or greater.

statutes or rules are silent with regard to municipal utilities. As the statutes noted above affirm, the rules and governing bodies of the municipal utilities govern such issues by default.

For instance, §216B.164, subdivision 4c authorizes public utilities to require customers with facilities of 40-kilowatt capacity or more to limit the total generation capacity of their systems, and then the subdivision describes what limit public utilities may establish and how they must measure customer demand or consumption in calculating it. Nowhere in the entire section does the statute authorize a municipal utility to require customers to limit their generation capacity nor direct how they may do so. It could be said that the statute is "silent" on the issue with regard to municipal utilities. This does not mean that municipal utilities are not authorized to limit customer system capacity. Municipal utility governing bodies retain the authority to adopt rules and policies with regard to such issues pursuant to their own authorities to govern and regulate their city-owned electric utilities as preserved by the statutes referred to above in Chapter 216B.

The same governing standard is true of issues not addressed by §216B.164 and §216B.1611 or the state Commission rules that interpret them for the investor-owned utilities. Where they are "silent," with regard to all utilities, the Commission may interpret that silence with regard to investor-owned utilities. But rules adopted by the governing bodies of municipal utilities, so long as they are consistent with the Commission's rules, govern disputes involving those municipal utilities by default.

Because of these serious concerns with this proposal for a subcommittee to resolve disputes related to distributed generation, MMUA cannot support it in its current form. We would be willing to explore, however, whether a process could be developed to use a subcommittee process in a more narrowly focused manner to resolve simple misunderstandings of law that protects municipal utility authorities and autonomy.

Thank you for the opportunity to provide these comments and for your consideration of them.

Sincerely,

/s/ Bill Black

Bill Black
Government Relations Director