



February 13, 2014

Via Electronic Filing

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

RE: Initial Comments of the Alliance for Solar Choice
In the Matter of Establishing a Distributed Solar Value Methodology under Minn. Stat. §216B.164, subd. 10 (e) and (f)
Docket No. E-999/M-14-65

Dr. Haar,

Please find enclosed, in connection with the above matter, the Initial Comments of the Alliance for Solar Choice. We have electronically filed this document with the Minnesota Public Utilities Commission, and the filing has been served on the parties on the attached service list.

Please contact Tim Lindl at tlindl@kfwlaw.com or (510) 314-8385 if you have any questions regarding this filing.

Sincerely,

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Enclosures: Initial Comments of the Alliance for Solar Choice
Proof of Service
Service List

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
David C. Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Betsy Wergin	Commissioner

IN THE MATTER OF ESTABLISHING A DISTRIBUTED
SOLAR VALUE METHODOLOGY UNDER MINN. STAT.
§216B.164, SUBD. 10 (E) AND (F)

DOCKET No. E-999/M-14-65

INITIAL COMMENTS

INITIAL COMMENTS OF THE ALLIANCE FOR SOLAR CHOICE

The Alliance for Solar Choice (“TASC”) respectfully submits these comments pursuant to the January 31, 2014 Notice of Expedited Comment Period on Distributed Solar Value Methodology Proposal (“Notice”) in the above-captioned docket at the Minnesota Public Utilities Commission (“Commission”). The Commission issued the Notice in response to a filing from the Minnesota Department of Commerce (“Commerce”) submitting a proposed methodology (“Commerce Methodology”) to calculate the rate at which utilities will compensate distributed generators under a value of solar tariff (“VOST”). Adopted during the 2013 Legislative Session, Subdivision 10 of §216B.164, Cogeneration and Small Power Production, allows Minnesota utilities to utilize a VOST to compensate owners or operators of distributed solar generation (“DSG”) for their “net input” into the electric grid.¹ The Commerce Methodology is the result of a statutorily-mandated stakeholder proceeding in which TASC submitted comments and participated in workshops.

TASC’s founding members represent the majority of the nation’s rooftop solar market and include SolarCity, Sunrun, Sungevity, Verengo Solar, REC Solar, and Solar Universe. These companies are responsible for tens of thousands of residential, school, government and commercial solar installations across the United States. Member companies have brought thousands of jobs and many tens of millions of dollars of investment to states that have implemented successful policies that support rooftop solar.

TASC was formed on the belief that consumers should have the option to switch to onsite solar power for at least a portion of their energy supply. The development of the rooftop solar market in Minnesota, which advances important state policy goals, has been driven by Minnesotans’ desire to assert control over their electric bills. TASC believes this trend should be encouraged. Accordingly, TASC is committed to defending successful DSG policies, like retail net metering, that provide fair credit to residents, businesses, schools, and public agencies when their DSG systems export power to the local utility grid.

¹ Minn. Stat. §§ 216B.164, Subd. 3, 3a, and 10(b) (2013).

I. INTRODUCTION AND SUMMARY OF TASC'S COMMENTS

TASC believes the Commerce methodology is unreasonable because it undervalues the benefits of distributed solar generation. TASC encourages the Commission to either disapprove the Commerce Methodology or request Commerce's consent to revise the methodology in keeping with these comments. As we explain below, a fair and comprehensive valuation of DSG must be consistent with Minnesota law and include all of the benefits that DSG provides to Minnesota. However, the Commerce Methodology appears to incorrectly resolve a conflict between two inconsistent sections of the statute to conclude that societal benefits cannot be included in the VOST rate. In addition, the Commerce Methodology fails to include all of the benefits that DSG provides from avoided Solar Energy Standard ("SES") compliance costs. These oversights must be corrected before a VOST can be approved.

In addition, Commerce reaches incorrect conclusions about the implementation of the VOST that should be corrected. Specifically, Commerce concludes that upon implementation, the VOST may act as a replacement for existing programs under Subdivisions 3 and 3a of §216B.164. TASC encourages the Commission to correct this misunderstanding and provide guidance to the utilities that State law does not allow an approved VOST to displace a customer-generator's ability to net customer-exported electricity and utility-provided electricity under Subdivisions 3 and 3a of §216B.164.

II. THE COMMERCE METHODOLOGY IS UNREASONABLE BECAUSE IT UNDERVALUES THE BENEFITS OF DISTRIBUTED SOLAR GENERATION.

Although the Commerce Methodology includes a number of components that are essential to fully and fairly valuing the benefits that DSG provides to the State's ratepayers, it excludes important benefits that DSG provides to the state. These omissions result in an undervaluation of DSG that is unreasonable when viewed in the light of the State's laws on Cogeneration and Small Power Production, Minn. Stat. §216B.164, *et seq.*, and in the light of best practices for valuing the benefits of DSG.

A. The Commerce Methodology Should Include Societal Benefits in its Compensation Rate.

A fair and comprehensive valuation of DSG includes all of the benefits that DSG provides to Minnesota. Subdivision 10(a) of the VOST statute requires as much when it states a utility must compensate customer-generators "through a bill credit mechanism for the value to the utility, its customers, *and society*" (emphasis added) for DSG that is "operated by customers primarily for meeting their own energy needs."² TASC's comments during the Commerce stakeholder proceeding discussed a number of benefits that DSG provides to the State of Minnesota that should be included in the VOST compensation rate consistent with state statute.³

² Minn. Stat. § 216B.164, Subd. 10(a) (2013).

³ Minn. Stat. § 216B.164, Subd. 10(f) (2013); TASC's September 20 Comments at Department of Commerce at pp. 3-7; TASC's October 8 Comments at Department of Commerce at pp. 2-4.

Ignoring Subdivision 10(a), the Commerce Methodology does not include any societal benefit that DSG provides to the State of Minnesota but, instead, limits the benefits included in the methodology to those “based on known and measurable evidence of the cost or benefit of solar operation to the utility.”⁴ This approach is based on Subdivision 10(f), which states:⁵

The department may, based on known and measurable evidence of the cost or benefit of solar operation to the utility, incorporate other values into the methodology, including credit for locally manufactured or assembled energy systems, systems installed at high-value locations on the distribution grid, or other factors.⁶

Although Subdivisions 10(a) and 10(f) use different terms to describe benefits that should be included in Commerce’s Methodology, TASC believes it is inappropriate to resolve such differences by simply ignoring Subdivision 10(a) and focusing entirely on Subdivision 10(f). The Minnesota law on statutory construction states that the “legislature intends the *entire* statute to be effective and certain” (emphasis added).⁷

Viewing the relevant statutory section as a whole, TASC believes Subdivisions 10(a) and 10(f) can be harmonized so that meaning is given to both provisions, as opposed to elevating one subdivision to the exclusion of the other, rendering it surplus and without meaning within the statute. To the extent Commerce’s Methodology does so, and does not include the societal benefits from DSG that accrue to the residents of Minnesota, which Subdivision 10(a) expressly requires, the Commerce Methodology should be considered unreasonable. The Commission should either disapprove the Commerce Methodology or revise it to consider societal benefits similar to those included in TASC’s comments during the Commerce stakeholder proceeding.

B. The Commerce Methodology Undervalues the Benefits that DSG Provides From Avoided SES Compliance Costs.

The Interstate Renewable Energy Council, Inc., Vote Solar Initiative, Fresh Energy, Environmental Law and Policy Center, and SunEdison (“Joint Parties”) are submitting Initial Comments that TASC had an opportunity to review prior to submitting these comments. TASC agrees with the Joint Parties’ recommendation that a value component should be included for the avoided SES compliance costs that ensures customer-generators receive fair compensation for solar renewable energy credits. Inclusion of such a value component will fully and fairly value the benefits that DSG provides through avoided SES compliance costs.

⁴ Commerce Methodology at 3.

⁵ *Proposal of the Minnesota Department of Commerce Division of Energy Resources*, Docket No. E999/M-14-65 at 3.

⁶ Minn. Stat. § 216B.164, Subd. 10(f) (2013);

⁷ Minn. Stat. § 645.17(1) (2013).

III. COMMERCE REACHES INCORRECT CONCLUSIONS REGARDING THE IMPLEMENTATION OF THE VOST THAT SHOULD BE CORRECTED.

The Commission should provide guidance to the utilities that the VOST provisions in Subdivision 10 do not discard the monthly netting of customer-exported electricity and utility-provided electricity under Subdivisions 3 and 3a⁸ of the State's laws on Cogeneration and Small Power Production. Subdivision 10(b) clearly states that the VOST rate "is in lieu of the applicable rate under Subdivisions 3 and 3a" (emphasis added).⁹ Section 10(b) does not state that the VOST replaces Subdivisions 3 and 3a in their entirety; only the "rate" for monthly net input to the utility system changes.

Subdivisions 3 and 3a address how customer-exported electricity and utility-provided electricity will be netted over a billing period. These Subdivisions also identify an applicable "rate" that will be applied to "net input," which occurs when customer-exported electricity exceeds utility-supplied electricity during a billing period. Since Subdivision 10(b) states that the approved VOST tariff "is in lieu of the applicable rate under Subdivisions 3 and 3a", and not that the VOST replaces the entirety of Subdivisions 3 and 3a, the only aspect of Subdivisions 3 and 3a that are impacted by the VOST are the rates provided for compensation for net input. For example, Subdivision 3(c) sets the rate for net input from qualifying facilities ("QFs") larger than 40 kW but less than 1,000 kW at avoided cost,¹⁰ and Subdivision 3(d) sets the rate for net input from QFs less than 40 kW at the utility's "average retail utility energy rate."¹¹ If the Commerce Methodology is approved, which TASC believes it should not be without modifications, the resulting VOST rate would replace these current rates for net input.

Commerce incorrectly concludes that the VOST rate will be applied to all generation with customers unable to serve onsite load or net utility deliveries against customer exports on a monthly basis. Commerce states: "if a VOS tariff is approved, solar customers will be billed for all usage under the existing applicable tariff, and will receive a VOS credit for their gross solar energy production."¹² It adds "[e]nergy derived from the PV systems will not be used to offset ('net') usage prior to calculating charges."¹³ This language suggests that the VOST will disallow netting of load and generation for all solar customers and replace in their entirety Subdivisions 3 and 3a with a single new program that allows for no ability to serve onsite energy needs or net customer-exported electricity and utility-provided electricity during a billing period. As explained above, the plain language of the statute does not support that conclusion.

⁸ Subdivisions 3 and 3a use the term "net input". While the statute does not provide an explanation of the timeframe in which "net input" is calculated, the Commission's rules implementing these sections of the Minnesota Statutes state that this netting is to occur each "billing period," *i.e.*, on a monthly basis. Public Utilities Commission of Minnesota, Cogeneration and Small Power Production, Chapter 7835, Parts 7835.3300-3500.

⁹ Minn. Stat. § 216B.164, Subd. 10(b) (2013).

¹⁰ Minn. Stat. § 216B.164, Subd. 3(b), (c) (2013).

¹¹ Minn. Stat. § 216B.164, Subd. 3(b), (d) (2013).

¹² Commerce Methodology at p. 3.

¹³ *Id.* at p. 7.

In addition to being in conflict with the plain language of the statute, Commerce's interpretation suffers from additional defects. First, eliminating the ability for customers to serve onsite load conflicts with requirements of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), which provides customers with a right to serve onsite load with a QF. The VOST provisions exist within the statutory section that implements PURPA, and any interpretation that does away with a customer-generator's right to serve onsite load under subsections 3 and 3a would not be compliant with PURPA.¹⁴ Second, if the VOST statute was interpreted to completely remove a QF's ability to use private property to supply power onsite, by requiring all of the output from such property be sold to the utility, TASC has concerns that such an interpretation would constitute a regulatory taking. Regulating the use of private property located behind a utility billing meter may even be beyond the Commission's jurisdiction to regulate public utilities. Finally, treating the VOST as two separate, buy-all/sell-all transactions would increase a customer's tax liability and jeopardize access to tax incentives under Section 25D of the Internal Revenue Code, thereby reducing the cost-effectiveness of solar and endangering the States' DSG goals.¹⁵

TASC acknowledges that the Commerce Methodology looks at the costs and benefits of all generation, not just monthly net input. Although TASC raised this issue in comments throughout the stakeholder process at Commerce, we believe a methodology based on all exports is suitable for being applied solely to monthly excess.¹⁶ It is not uncommon for states to develop a single avoided cost rate that can then be applied to i) all generation, ii) instantaneous exports, iii) monthly excess generation, or iv) annual excess generation. PURPA expressly grants a right to QFs to determine the extent of exports.¹⁷ PURPA also grants states the ability to determine a reasonable period during which customer-exported electricity and utility-provided electricity will be netted.¹⁸ In Minnesota, state statute provides for monthly netting.

Since the VOST does not replace netting under Subdivisions 3 and 3a, we believe the VOST statute will most likely be implemented in a way that limits its effects to revising rates for monthly net input under Subdivisions 3 and 3a. However, the utilities should also develop a VOST for facilities with no onsite load or for facilities that will generate significantly more electricity than is needed to serve onsite load. Subdivision 10(c) states that the Commission shall approve a VOST provided "the utility has demonstrated the "VOST meets eight standards."¹⁹ Those standards include language that describes a buy-all/sell-all arrangement where load and

¹⁴ TASC Comments at Department of Commerce on Draft Commerce Methodology at pp. 2 (December 10, 2013).

¹⁵ TASC Comments at Department of Commerce on Study Scope at p. 3, Attachment (September 20, 2013).

¹⁶ TASC Comments at Department of Commerce on Study Scope at pp. 2-3, (September 20, 2013); TASC Comments at Department of Commerce on Workshop at p. 4, (October 8, 2013); TASC Comments at Department of Commerce on Draft Commerce Methodology at pp.2-3 (December 10, 2013).

¹⁷ 18 CFR § 292.304(d) gives qualifying facilities ("QFs") the option either: "(1) to provide energy as the *QF determines such energy to be available for such purchases*, in which case the rates for such purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery; or (2) to provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term" (emphasis added).

¹⁸ *MidAmerican Energy Company*, 94 FERC ¶ 61,340, 62,263-62,364 (2001).

¹⁹ Minn. Stat. § 216B.164, Subd. 10(c) (2013).

generation are not netted.²⁰ TASC believes a VOST should be made available that accommodates such situations. However, under Subdivision 10(b), a buy-all/sell-all arrangement can only exist *in addition* to the QFs ability to net under Subdivisions 3 and 3a.

TASC believes the Commission should use this proceeding to provide guidance to the utilities to this effect so that any subsequent tariff modifications proposed by the utilities conform to Minnesota law and federal law. As such, TASC suggests Commission require the following revisions to the Commerce Methodology:

- “[I]f a VOS tariff is approved, solar customers that opt, at their election, to sell under a full buy/sell arrangement will be billed for all usage under the existing applicable tariff, and will receive a VOS credit for their gross solar energy production.”²¹
- “Energy derived from the PV systems in which the owner has opted, at its election, to sell under a full buy/sell arrangement will not be used to offset (‘net’) usage prior to calculating charges.”²²

IV. CONCLUSION

For the reasons discussed above, TASC believes the Commission should either disapprove the Commerce Methodology or request Commerce’s consent to revise the methodology in keeping with these comments. In addition, TASC respectfully requests the Commission provide guidance to the utilities that implementing a VOST will not replace Subdivisions 3 and 3a in their entirety.

RESPECTFULLY SUBMITTED this 13th day of February, 2014.



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²⁰ Minn. Stat. § 216B.164, Subd. 10(c)(2)-(5) (2013).

²¹ Commerce Methodology at p. 3.

²² *Id.* at p. 7.

CERTIFICATE OF SERVICE

I, Tim Lindl, hereby certify that I have this day caused to be served copies of the foregoing *Initial Comments of the Alliance for Solar Choice* on the attached list of persons by electronic filing, certified mail, or email.

Dated this 13th day of February, 2014,

A handwritten signature in black ink, appearing to read 'Tim Lindl', with a large, sweeping flourish extending to the right.

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