

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
John Tuma	Commissioner

In the Matter of Cogeneration and Small Power Production Tariff Filings	Docket No. E999/PR-16-09
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In the Matter of a Commission Investigation into Fees Charged to Qualifying Facilities by Cooperative Electric Associations under the 2015 Amendments to Minn. Stat. § 216B.164, Subd. 3.	Docket No. E999/CI-16-512
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**ENVIRONMENTAL LAW & POLICY CENTER AND FRESH ENERGY RESPONSE
TO THE MINNESOTA RURAL ELECTRIC ASSOCIATION’S PETITION FOR
CLARIFICATION OF THE COMMISSION’S JUNE 27, 2016 ORDER**

On June 28, 2016 the Minnesota Rural Electric Association (MREA) filed a Petition for Clarification regarding the Commission’s June 27, 2016 Order opening an investigation into the small power-production fees and tariffs at issue in this docket. The Commission’s rules of practice do not describe “petitions for clarification,” but Rule 7829.3000 does allow parties “aggrieved and directly affected” by a commission decision or order to file a “petition for rehearing, amendment, vacation, reconsideration, or reargument within 20 days of the date the decision or order is served by the executive secretary.”¹ The hurdle for post order petitions is high. Aggrieved parties must “set forth specifically the grounds relied upon or errors claimed” in their petition.² Requests for amendment “must set forth the specific amendments desired and the

¹ Minn. R. 7829.3000.

² *Id.*

reasons for the amendments.”³ MREA’s Petition for Clarification fails to meet these standards and the claimed ambiguity in the Commission’s Order is not present. For the reasons described below, the Environmental Law & Policy Center (“ELPC”) and Fresh Energy respectfully request that the Commission deny MREA’s Petition for Clarification.

In its June 27, 2016 Order, the Commission determined that it has jurisdiction to review the fees proposed or imposed by Minnesota Electric Cooperatives under Minn. Stat. § 216B.164 subd. 3, and that any such fees “must be filed with—and reviewed and approved by—the Commission, before becoming effective.”⁴ MREA claims that clarification is necessary because the Commission’s Order “did not specifically respond” to the issue of “whether annual tariff compliance filings (and rates, fees and charges included within the filings) must be approved before becoming effective.” MREA is not correct. As just stated, the Commission’s Order *does* specifically address this issue in straightforward language. For example, at page 4 of the Order the Commission finds that the cogeneration and small-power-production tariffs must be approved before becoming effective:

The Commission finds that cogeneration and small power-production tariffs must be filed with—and reviewed and approved by—the Commission, before becoming effective.⁵

The Commission restates this finding at page 6 of the Order:

Finally, the Commission clarifies that co-generation and small power-production tariffs—including those setting the fees newly authorized under Minn. Stat. § 216B.164, subd. 3 (a)—must be reviewed and approved by the Commission before becoming effective, as provided under Minn. R. 7835.0300.⁶

³ *Id.*

⁴ Order at 4.

⁵ Order at 4 (emphasis added).

⁶ Order at 6 (emphasis added).

These Commission findings and statements are clear and do not require clarification.

MREA further argues that “it is not clear from the order what action the Commission is taking with respect to suspending cost recovery fees and approval of annual cogeneration compliance tariff filings generally.”⁷ Again, the ambiguity claimed by MREA is not present. The Commission’s Order is clear that co-generation and small power-production tariffs must be approved before becoming effective. It is undisputed that the Commission has not yet reviewed or approved any of the fees and tariffs at issue in this docket. Therefore, under the plain language of the Commission’s Order, these fees and tariffs are not “effective” and cannot be charged to customers until the Commission concludes its investigation to “review and determine whether the specific fees charged or proposed by specific electric cooperative associations under Minn. Stat. § 216B.164, subd. 3 comply with the statute.”⁸

MREA’s petition for clarification does not meet the standards for a post order petition pursuant to Rule 7829.3000. The petition does not raise any new issues or arguments or identify any specific grounds for error. Furthermore, as explained above, there is no ambiguity in the Order that the fees and tariffs at issue must be reviewed and approved by the Commission before becoming effective. The Commission’s statements on this point are clear and do not require clarification. For these reasons, ELPC and Fresh Energy respectfully request that the Commission deny MREA’s June 28, 2016 Petition for Clarification.

⁷ MREA Petition for Clarification at 1.

⁸ Order at 6.

Respectfully submitted,

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