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VIA E-MAIL AND FIRST CLASS U.S. MAIL

Kate Kahlert
Minnesota Public Utilities Commission
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Re: COMMENTS OF THE MIDWEST COGENERATION ASSOCIATION
In the Matter of Possible Amendments to Rules Governing Cogeneration and Small Power Production, Minnesota Rules Chapter 7835; Docket No. E-999/R-13-729

Dear Ms. Kahlert:

The Midwest Cogeneration Association (MCA) appreciates the opportunity to comment on the Proposed Amendments in the above docket. The MCA is a not-for-profit professional association dedicated to promoting clean and energy efficient combined heat and power (CHP) and waste heat-to-power (WHP) technologies. MCA members include representatives of CHP and WHP technology manufacturers and project developers, energy efficiency analysts, and energy and environmental consultants and attorneys – a number of whom do business in Minnesota and all of whom have expertise in distributed generation CHP and WHP technologies and projects.

As you know, the MCA and several of its members, individually, participated in Advisory Committee meetings on these rules last spring and summer and provided feedback and suggestions on early drafts. We appreciate that some of our suggestions have been included in the rules as proposed, e.g. a definition of "cogeneration" in the draft that was inconsistent with the Minnesota statutory definition is not included in the proposal.

It was our understanding that this rulemaking proceeding was intended to make changes in the regulations necessary to implement the statutory changes made by H.F. 729 in 2013. However, we believe the Proposed Rules are inconsistent with H.F.729 on two critical points and will undermine the intent of the statute if not reconsidered.

First, the Proposed Rules contain a definition of "Standby Charges" which differs substantively from the statutory definition adopted in H.F. 729. MCA raised this issue in the Advisory Committee meetings and provided written comments on this point to PUC Staff and the Committee.

Second, the Proposed Rules in Section 7835.4012 regarding compensation for net-metered facilities with capacities between 40 kW to 1,000 kW are inconsistent with the letter and intent of H.F. 729 and will undermine the usefulness of the net-metering provisions adopted in that law.

MCA requests the PUC's reconsideration of it's the Proposed Rules on these points and requests that a hearing be held to obtain full public review of these issues.

1) STANDBY CHARGES

The Proposed Rules propose new definitions of "standby charge" and "standby service" which differ from the statutory definition of "standby charge." Section 216B.164.2.a states:

> "(l) "Standby charge" means a charge imposed by an electric utility upon a distributed generation facility for the recovery of costs for the provision of standby services, as provided for in a utility's tariffs approved by the commission, necessary to make electricity service available to the distributed generation facility."

This language contains a legal standard for what utilities can charge for standby service. "Standby Charges" must be "for the recovery of costs … necessary to make electricity service available to the distributed generation facility." This language provides an important directive to utilities and the commission on how they are to establish standby tariffs and also provides a legal basis for challenging unwarranted charges.

The proposed regulatory definition ("the rate or fee a utility charges for standby service or standby power") is simply tautological and therefore unnecessary. But what is more troubling is that it fails to reference the statutory definition or include the legal standard stated in the statutory definition. The proposed definition of "standby service" doesn't help. It simply references "commission approved tariffs." This suggests that "Standby Charges" can be based on whatever tariff the utility chooses to offer and the commission approves. While the commission should consider the legal standard stated in the statutory definition in setting these tariffs, it is confusing to not reference that standard in the proposed regulatory definition.

MCA provided written comments and recommendations to the PUC Staff and Advisory Committee on this point (attached here) and believed that there was consensus in the Advisory Committee that the PUC should either not provide a definition of "standby charges" in the regulations or simply incorporate the statutory language in the regulation. MCA continues to believe either of these approaches would be satisfactory.

Given the existing statutory definition, the Proposed new regulatory definition is not necessary. Moreover, as the PUC has now opened a generic docket to review standby charges in general, it is unhelpful and confusing to adopt a new and inconsistent regulatory definition in this proceeding.

2) COMPENSATION FOR NET-METERING FOR >100KW BUT < 1000KW FACILITIES

Proposed new Section 7835.4012 (for public utilities) addresses "Compensation" for distributed generation facilities. It provides in Subpart 1, that facilities with < 40 kW capacity have the option to be billed at the "net energy rate, the simultaneous purchase and sale billing rate, or the time-of-day billing rate." But, in Subpart 2, facilities with a generating capacity between 40 – 1000 kW have only the options of the "simultaneous purchase and sale billing rate" ("SPS Rate") or the "time of day billing rate" ("TOD Rate").

The problem with this proposal is that the SPS Rate and TOD Rate provisions in the existing rules, which the Proposed Rule references and which would be the only option for facilities with capacity between 40 kW and 1000 kW, require that the distributed generation facility must provide "firm power" to receive any payment for the "capacity" component of the "avoided cost" rate, which is the rate H.F. 729 requires be paid to these generators. This "firm power" requirement undermines the letter and intent of the net-metering provisions in H.F.729.

The existing definition of "firm power' in Section 7835.0100, Subpart 1 of the rules is as follows:

> "Subp.9 **Firm power**: 'Firm Power' means energy delivered by the qualifying facility to the utility with at least a 65 percent on-peak capacity factor in the month. The capacity factor is based upon the qualifying facility's maximum on-peak metered capacity delivered to the utility during the month."

The proposed "firm power" requirement for capacity payments is entirely inconsistent with the concept of "net-metering" at distributed generation facilities, including combined heat-to-power systems ("CHP Systems"), particularly where the facility's capacity is less than 1,000kW. The reason net-metering is useful for CHP Systems, in particular, is because it allows the CHP System to be optimized for the thermal load at the facility and therefore to run most efficiently. When a CHP System is designed to meet the full thermal load of a facility, e.g. an industrial plant's manufacturing processes or a commercial buildings comfort heating, the CHP System may generate more electricity than the facility can use on-site. Net-metering provides the avenue for "off-take" of that excess electric energy – to the grid. As the Commission knows well, excess electricity cannot be "flared" to the environment as can heat. Without that "off-take" of the excess electricity, the CHP System would have to reduce both electric and thermal production and thus not meet the thermal load of the facility. This reduces the efficiency and value of the CHP System. The electric load of the "thermal host" facilities can vary daily and even hourly. Thus, net-metering is an ideal solution allowing CHP Systems to run in a consistent, stable mode while balancing variations in the facility's electric-to-thermal load ratio.

But, CHP Systems, particularly those below 1,000kW, are installed by private businesses primarily to meet the electric and thermal load at their own facilities – not primarily to sell power back to the grid. While some CHP Systems, mainly much larger than 1,000 kW systems, may be able to provide the utility with "firm power," as defined in the Commission's rules, most CHP System host facilities need the majority of their CHP System electric generation for their own operations -- particularly during on-peak periods.

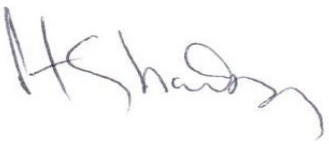
H.F. 729 expressly requires that qualifying facilities with capacity between 40 kW and 1000 kW must be compensated at the "avoided cost" rate. That rate includes both energy and capacity components. By making the capacity component of the compensation contingent on the provision of "firm power," the Proposed Rules will effectively deny the great majority of distributed generation facilities of this size the compensation intended and required by H.F. 729.

The Commission does not have the authority to limit the full "avoided cost" compensation required by H.F 729 for these facilities. Therefore, the Commission should reconsider these proposed rules and amend these rules to conform with statutory requirements.

MCA also agrees with the Department of Commerce Division of Energy Resources and other commenters in this proceeding, that the existing regulatory definition of "firm power" and "firm power" requirements in the Commission's regulations, which are now being re-stated in these rules, are outdated and inconsistent with MISO requirements and the utilities' own practices. These requirements should be revisited, either in this proceeding or another Commission docket.

Thank you for this opportunity to comment on these important regulations. MCA believes that the issues identified herein are substantial and warrant the Commission holding a public hearing.

Respectfully submitted,



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