STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

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November 10, 2016

**In the Matter of a Commission Inquiry into Fees Charged on Qualifying Facilities**

**Docket No. E999/CI-15-755**

# SUPPLEMENTAL REPLY COMMENTS OF FRESH ENERGY, ENVIRONMENTAL LAW & POLICY CENTER AND VOTE SOLAR

Fresh Energy, Environmental Law & Policy Center and Vote Solar submit these supplemental reply comments in response to the Commission's June 22, 2016 Notice Seeking Comments and October 26, 2016 Extension Variance. Based on our initial comments and a number of stakeholder comments demonstrating that the distributed generation ("DG") fees at issue in this docket are impermissible under Minnesota law and unsupported in the record, we continue to request that the Commission order Connexus Energy, Goodhue County Cooperative Electric Association, Mille Lacs Energy Cooperative, Minnesota Power, Otter Tail Power, and Xcel Energy to cease assessing additional fees and charges to DG customers within 30 days of the order.

## I. The Fees at Issue Are Not Permitted As Monthly, Tariffed Charges Even If They Represented Valid Interconnection Costs

The fees at issue in this docket are not permitted to be collected as monthly, tariffed charges under Minnesota statute and rules, even if they are demonstrated to be reasonable and appropriate interconnection costs (which they have not been demonstrated to be in this record). The utilities argue that their fees are allowed under Minnesota law as interconnection costs per Minn. Stat. § 216B.164, subd. 8(b). The issue in this docket has never been whether net metering customers or other qualifying facilities ("QFs") are responsible for reasonable and appropriate costs to interconnect their systems. Indeed, our initial comments state this point explicitly: "[w]hile Minn. Statute §216B.164 and standard net metering policy prohibit additional energy and fixed charges that apply only to DG customers, both provide that reasonable interconnection costs are the customer's responsibility."[1] The issues here are (i) whether Minnesota law permits such costs to be collected through monthly charges that are included in

[1] Fresh Energy, ELPC and Vote Solar Comments, May 6, 2016 at 10.

the utility's tariff and are charged for the entirety of a system's operation; and (ii) if the Commission finds that it does, whether the utilities have met their burden demonstrating that these charges are reasonable, appropriate and non-discriminatory. The answer to both is "no."

Addressing the first issue, Minnesota law does not permit utilities to charge continuous monthly fees in their DG rate tariffs that are unique to DG customers. First, it appears that there is agreement among the parties that Minnesota law indeed prohibits additional DG-customer specific charges that are not properly classified as interconnection costs. This agreement is demonstrated by the utilities' sole reliance on Minn. Stat. §216B.164, subd. 8(b) and Minn. R. 7835.0100, subp. 12 as justification for their fees in this docket. This agreement is consistent with the analysis detailed in our initial comments that Minnesota law adheres to the "non-discrimination" principle for DG rates.[2]

Moving to interconnection costs, we addressed this issue in our initial comments. As stated there:

> While Minn. Statute §216B.164 and standard net metering policy prohibit additional energy and fixed charges that apply only to DG customers, both provide that reasonable interconnection costs are the customer's responsibility. Subd. 8(b) provides that "nothing contained in this section shall be construed to excuse the qualifying facility from any obligation for costs of interconnection." The categorical difference between the prohibited discriminatory charges and permissible interconnection costs is that the latter are identified as legitimate through the interconnection process, established at the time of interconnection and included in the interconnection agreement rather than in a generic monthly charge in the DG rate tariff.
>
> In short, the only permissible additional DG customer-specific charges are interconnection-related costs that are: (1) consistent with Minnesota's interconnection standards, (2) not already covered in the standard customer charge, (3) transparently outlined in the utility's interconnection tariff, (4) compiled and cost-justified at the time of interconnection, and (5) documented in the Interconnection Agreement. As described below, none of the DG fees at

[2] Fresh Energy, ELPC and Vote Solar Comments, May 6, 2016 at 5 "Any fee charged to a self-generating customer that is more than the fees charged to a non-DG customer and outside of an interconnection agreement is not permitted under Minnesota's Cogeneration and Small Power Production statute and rules. Fees that single-out DG customers are not permitted because the plain language of the statute and rules does not authorize such charges and because allowing extra fees and charges to customers interconnecting under the statute would undermine the statute's intent – transparently setting the compensation for customers self-generating with small systems."

> issue in this docket meet these requirements and therefore are prohibited by Minnesota law.

No party in the docket has offered analysis rebutting our position or provided a valid argument for why any legitimate interconnection costs are permitted to be collected through the utility's DG rate tariff on an on-going basis under Minnesota law.

In addition, we concur with the Department's concerns regarding "the recovery in perpetuity of one-time costs through a monthly charge."[3] Similarly, we agree with the Department that a legitimate interconnection charge may be charged monthly, but we respectfully disagree with the Department's new position that such a monthly charge may be included in the rate tariff. As the Department itself argues, "[a]fter reviewing several cost studies related to these costs, the Department does not object to the use of a monthly fee for recovery, but expects the costs to be reflected in the Uniform Statewide Contract presented to QF providers. In addition, the Department expects utilities to abide by the terms of the Uniform Statewide Contract provision that the permits the QF options regarding how those costs are paid."[4] Clearly, the QF would not have "options regarding how those costs are paid" if the costs are already included in a monthly charge in the rate tariff.

The fees at issue in this docket are a perfect example as to why state law does not contemplate any "actual, reasonable costs of Interconnection"[5] being collected through monthly tariffed rates. The fees themselves and the interconnection hardware, administrative and O&M costs (to the extent they were provided) vary significantly utility to utility, calling their validity into question. As is detailed more below in section and as we stated in our initial comments:

> The six utility charges vary widely across similar meter types, are inconsistent as to what types of meters are used and why, and all purportedly include O&M and administrative costs that are not well described or supported. For example, Table 1 shows the wide variation in the utilities' stated meter costs. The utilities also list different costs for similar work. For example, Xcel reports a $36 cost to replace a customer's existing meter with a reprogrammed meter whereas Minnesota Power reports a $75 cost for ostensibly

[3] Minnesota Department of Commerce Comments, May 6, 2016 at 5 "Finally, the Uniform Statewide Contract appears to provide flexibility as to how the QF will pay for any interconnection costs. To the extent the fees in question are found to be interconnection costs, recovery of a one-time cost on a monthly basis in perpetuity is not reasonable." Minnesota Department of Commerce Comments, October 17, 2016 at 7, 12.
[4] Minnesota Department of Commerce Comments, October 17, 2016 at 7, 13, emphasis added.
[5] Uniform Statewide Contract; Form, Minn. R. 7835. 9910 (line 8).

the same work.[6] The rationale for some other costs is not adequately explained. For example, Minnesota Power's customer accounting expense appears to duplicate expenses already covered in the standard customer charge: "The customer accounting expense is the average customer accounting cost per Residential or General Service customer."[7]

Table 1

| Company | Standard Meter (1ϕ) | Bi-directional Meter (1ϕ) | Standard Meter (3ϕ) | Bi-directional Meter (3ϕ) |
|---|---|---|---|---|
| Connexus | $34 | $149 | $160 | $955 |
| Goodhue | $190 | | | |
| Mille Lacs | $130 | | $285 | |
| Minnesota Power | $130[8] | $709[9] | $240 | $793 |
| Otter Tail | $20 | $161 | $118 | $266 |
| Xcel Energy | $93 | $93 | $354[10] | $354 |

In addition to our filings demonstrating that the utilities have not met their burden demonstrating that their DG charges are reasonable, appropriate and non-discriminatory and/or are reasonable interconnection costs as defined in state rules, the Energy Freedom Coalition of America's October 17, 2016 filing makes this lack of utility justification abundantly clear. The utilities' evidence in this docket has been demonstrated to be either inadequate or non-existent (through lack of responses to information requests). Therefore, the Commission has additional grounds to reject the current charges based on the record before it.

Of course, limiting interconnection cost recovery to the interconnection process is not a silver bullet. Any interconnection costs recovered through that process must be reasonable and meet the state rule requirement that "[c]osts are considered interconnection costs only to the extent that they exceed the costs the utility would incur in selling electricity to the qualifying facility as a nongenerating customer."[11] Ensuring this will require oversight in the interconnection process, and the interconnection rules. Standards and dispute resolution processes will need to be in

[6] Minnesota Power response to October 13, 2015 *Notice Requesting Information from Investor-Owned, Cooperative, and Municipal Utilities*, December 11, 2015 at 3.
[7] *Id.*
[8] *Id.* Minnesota Power's response also notes a cost of $230 in response to the first question. Differences between the two are unclear, but the total cost of $709 is closest to including the $130 meter cost.
[9] Includes the cost of the standard meter plus two external meter reading modules, but does not include the cost of a cellular line of $11.50/month.
[10] Response to Question 3 indicates this cost is for a Form 16S meter for loads three phase loads up to 250 kW. For larger loads, a Form 9S meter is used at an installed cost of $557.
[11] Definitions, Minn. R. 7835.0100, subp. 12.

place to provide a process to ensure customers are only being charged what is necessary and permitted under Minnesota law. We are hopeful that our interconnection proposal being considered in Docket No. 16-521 will provide for the necessary oversight.

## II. Discovery Requests

In its supplemental comments, Otter Tail Power ("OTP") raised concerns about commenters making discovery requests without formal intervention. We agree with OTP that the Commission's Rules of Practice and Procedure (Chapter 7829) provide little guidance on discovery in non-contested case dockets. However, contrary to OTP's assertion, it is common practice for participants to informally serve and respond to information requests; in just the last year, Fresh Energy has filed information requests (and received responses) in several non-contested case dockets, including from OTP.[12] It is also worth noting that, while the Rules of Practice and Procedure are silent on discovery requests, the Commission's resource planning rules directly address discovery. There, parties are required to "comply with reasonable requests for information by the commission, other parties, and other interested persons."[13]

Requiring intervention in non-contested case dockets would needlessly complicate the Commission's process and impair record development. OTP appears to believe all interested persons and organizations should be required to formally petition to intervene on every docket. This would not only introduce significant administrative burden for parties, it may also require Commission to act on intervention requests (in the case of objections), which would needlessly add to the Commission's workload and delay comment periods. Even more concerning, this practice may have a chilling effect on record development: imposing additional burdens on parties could discourage participation, and limiting access to information will produce a record that is less robust and more one-sided. As a quasi-judicial agency, the Commission requires a fully developed record to make an informed decision; efforts to restrict reasonable record development are anathema to the Commission's deliberative process.

## Recommendations

Fresh Energy, Environmental Law & Policy Center and Vote Solar recommend that the Commission:

1. Order that public utilities are not permitted to charge monthly fees in their DG rate tariffs that are unique to DG customers under Minn. Stat. §216B.164.

[12] For example, Xcel's Community Solar Gardens docket (Docket No. 13-867), Minnesota Power's Community Solar Gardens docket (Docket No. 15-825), and Otter Tail Power's Net Metering Tariff update (Docket No. 16-280)
[13] Filing Requirements and Procedures, Minn. R. 7843.0300, subp. 8.

2. Order that the monthly fees charged by Connexus, Goodhue and Mille Lacs to customers with DG installed before July 1, 2015 are not permitted under Minn. Stat. §216B.164.

If the Commission finds that utilities are permitted under Minnesota law to collect reasonable interconnection costs through a monthly tariffed rate, we recommend that the Commission:

1a. Order that public utilities have not met their burden demonstrating (i) that the fees in their DG rate tariffs represent interconnection costs that are reasonable, appropriate and non-discriminatory; and (ii) that the claimed costs are "[c]osts are considered interconnection costs only to the extent that they exceed the costs the utility would incur in selling electricity to the qualifying facility as a nongenerating customer" pursuant to Minn. R. 7835.0100, subp. 12.

2a. Order that Connexus, Goodhue and Mille Lacs have not met their burden demonstrating (i) that the fees in their DG rate tariffs represent interconnection costs that are reasonable, appropriate and non-discriminatory; and (ii) that the claimed costs are "[c]osts are considered interconnection costs only to the extent that they exceed the costs the utility would incur in selling electricity to the qualifying facility as a nongenerating customer" pursuant to Minn. R. 7835.0100, subp. 12.

Under either scenario, we recommend that the Commission:

3. Order that the public utilities make a compliance filing within 30 days of the Order that removes all monthly DG fees and charges from all applicable DG tariffs.

4. Order that the cooperative utilities make a compliance filing with the Commission within 30 days of the Order demonstrating that they are no longer charging unique monthly fees to DG customers interconnected before July 1, 2015.

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