

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

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

In the Matter of a Complaint of
Larry Fagen against Minnesota
Valley Cooperative Light & Power
Association.

August 5, 2016

Docket Number: E-123/CG-16-241

Comments of Larry Fagen Regarding
Minnesota Valley Cooperative Light
and Power Association's Reply and
New Claim Regarding the Charge to
Meet the Minimum

COMMENTS OF LARRY FAGEN

I. BACKGROUND

On March 22, 2016, Larry Fagen, QF, filed a formal complaint against his utility, Minnesota Valley Cooperative Light and Power Association ("MN Valley").¹ His initial filing outlined several complaints centering around MN Valley's requirement that Larry enter a "Carry-forward" or roll-over program, and their assertion that he would face a currently indeterminate fee at that time.²

On March 31, 2016, the Minnesota Public Utilities Commission (the "Commission" or "PUC") published a request for comment on the above issues.³

¹ See INITIAL FILING-COMPLAINT, LARRY FAGEN, Docket No. E123/CG-16-241, Doc. ID. 20163-119324-01 (March 22, 2016).

² *Id.*

³ See NOTICE OF COMMENT PERIOD, MINNESOTA PUBLIC UTILITIES COMMISSION, Docket No. E123/CG-16-241, Doc. ID. 20163-119601-01 (Mar. 31, 2016).

On April 21, 2016 MN Valley published its Response to the Complaint, denying each of Larry's claims.⁴

Our comments regarding MN Valley's response and the PUC Notice for Comment are laid out here today.

II. COMMENTS

- i. **IT IS COMPLETELY IMPERMISSIBLE FOR AN ELECTRICAL COOPERATIVE TO REQUIRE A CUSTOMER TO ENTER INTO A ROLL-OVER PROGRAM.**
 - a. **MN Valley Contends The Plain Meaning Of Minn. Stat. § 216B.164 Supports Their Position, But It Does Not.**

In its Response, MN Valley argues its interpretation of the statute is derived from its "plain meaning." MN Valley states the following:

Under well-established Minnesota law, words and phrases in a statute must be given their "plain and ordinary meaning." *State v. Struzyk*, 869 N.W.2d 280, 284 (Minn. 2015). Although the Minnesota Legislature certainly could have done so, it did not draft the foregoing sentence of Subdivision 3(a) of Section 216B.164 in a way that signals that the decision as to which subparagraph to proceed is left solely to the net metering customer to choose. See *Struzyk*, 869 N.W.2d at 288 (explaining that the legislature could construct a statute differently if it had intended a particular meaning).⁵

The portion of text that surrounds MN Valley's entire statutory argument is this sentence: "In the case of net input into the utility system by a qualifying facility having less than 40-kilowatt capacity, *compensation to the customer* shall be at a per kilowatt-hour rate determined under paragraph (c), (d), or (f)."⁶ This particular sentence references "compensation to the customer." While this is not entirely dispositive on its own, it suggests that if one party has a right to select the compensation method, it is the customer. Furthermore, it does not even mention the utility, let alone making it at the utility's election.

Compounding MN Valley's misinterpretation of the statute is its unwillingness to accept that dispositive, statutory requirements can be found later in the statute, which bolster Larry's

⁴ See COMMENTS-INITIAL RESPONSE REQUEST FOR COMMENTS, MINNESOTA VALLEY COOPERATIVE LIGHT AND POWER ASSOCIATION, Docket No. E123/CG-16-241, Doc. ID. 20164-120443-01 through -04 (April 21, 2016) [hereinafter, *MN Valley Initial Response*].

⁵ See *MN Valley Initial Response* at 4-5.

⁶ *Id.* at 4.

argument that the option is the customer's. If it is true that "[s]tatutory words and phrases must be construed according to the rules of grammar and common usage," then it seems that Larry's interpretation would be correct.⁷ As MN Valley admits, and the statute clearly illustrates, the other subdivisions clearly outline that the decision rests with the customer.⁸

b. MN Valley Contends That Subdivision (c), (d) And (f) Are Not Exclusive Of One Another, But Can Be Blended Together Inclusively, However, It Cannot.

MN Valley also is suggesting that the various subdivisions can be blended together at the utility's election.⁹ They contend that they have not infringed upon Larry's right to receive an Average Retail Rate, they are merely giving him the Average Retail Rate in the form of a bill credit.¹⁰ Thus, they contend that they are simultaneously applying subdivision 3d and subdivision 3f.

This argument fails from a logical perspective because paragraph (c) and paragraph (d) are in conflict with each other. A customer cannot be billed at the avoided cost rate and the average retail rate. From a logical perspective the "or" cannot apply inclusively to paragraphs (c) and (d), so it also should not apply to paragraphs (d) and (f).

This argument also fails, because subdivision 3f clearly requires the customer to opt into the program. Even if the two subdivisions can be blended together, it would still require the customer's consent, which MN Valley only received, because it failed to provide Larry with any other legal billing option.

Lastly, the entity that makes the determination about whether the "or" is inclusive or exclusive is the Commission. The Commission is charged with interpreting the intentions of the Legislature - not the utility - and the Commission has already interpreted this clause in its statewide contract. Prior to the inclusion of subdivision (f) there was an "or" between subdivisions (c) and (d), and the Commission interpreted that to be an exclusive or for the purposes of the statewide contract.¹¹ The addition of a new subdivision option should not alter the Commission's interpretation of the original "or," which can still be found in the most recent revisions of the statewide contract.

⁷ *Id.* at 5.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Minn. Stat. § 216B.164, subd. 3 (2015) [available at: <https://www.revisor.mn.gov/laws/?id=1&year=2015&type=1>]; See also Minn. Rule 7835.9910.

ii. MN VALLEY FAILED TO DELIVER THE STATEWIDE CONTRACT, AND ITS PROVIDED CONTRACT DID NOT SUBSTANTIALLY CONFORM TO THE STANDARD CONTRACT.

MN Valley also contends that it has delivered a statewide contract that “substantially conformed with the model statewide contract published at Minn. R. 7835.9910.”¹² This statement is false. Not only did MN Valley pre-select options, and insert its own language surrounding the new amendment subdivision 3f, they also failed to provide the other available options.¹³ This would have been more than substantial nonconformity already.

But it gets worse. MN Valley created an entirely new payment alternative and listed it as the only alternative payment method without an “X.” Their new method states “The QF elects to not use the KWh crediting and will be compensated for any KWhs sold to the Cooperative at the KWh rate calculated from the Cooperative’s previous year’s average wholesale power cost figures.”¹⁴ The wholesale power rate is not a statutorily authorized rate. It appears that they simply invented it, and inserted it into the statewide contract. It seems this was done in an effort to either 1) bypass the statute and statewide contract or 2) to make the carry forward program look more appealing in an effort to trick customers.

MN Valley’s contract was radically different than the statewide contract. They did, however, have the ability to request some of their changes via a Commission proceeding, pursuant to Minn. Rule 7835.9920.¹⁵ But MN Valley went ahead and made their changes without Commission consent. For those reasons, the utility failed to provide a sufficient contract to Larry.

¹² *Id.* at 6.

¹³ *See* INITIAL FILING-APPENDIX A-DELIVERED STATEWIDE CONTRACT, LARRY FAGEN, Docket No. E123/CG-16-241, Doc. ID. 20163-119324-02 (March 22, 2016).

¹⁴ *Id.* at 3.

¹⁵ Minn. Rule 7835.9920 (Stating “A utility intending to implement provisions other than those included in the uniform statewide form of contract must file a request for authorization with the commission. The filing must conform with chapter 7829 and must identify all provisions the utility intends to use in the contract with a qualifying facility”).

A NEW CLAIM AGAINST MN VALLEY: THEY ARE CHARGING A “CHARGE TO MEET THE MINIMUM” WHICH IS 1) ARBITRARY AND CAPRICIOUS, 2) IS DISCRIMINATORY TOWARDS SMALL POWER PRODUCTION, AND 3) MAY BE DOING SO IN RETALIATION FOR THIS DISPUTE RESOLUTION PROCEEDING AND/OR LARRY’S SOLAR ARRAY’S EXPANSION.

I. FACTS REGARDING THE NEW CLAIM

On March 22, 2016, Larry Fagen, QF, filed a formal complaint against his utility, MN Valley.¹⁶ His initial filing outlined several complaints centering around MN Valley’s requirement that Larry enter a “Carry-forward” or roll-over program, and their assertion that he would face a currently indeterminate fee at that time.¹⁷ In his complaint he stated “[...] Larry also files this claim as a protective measure against future utility retaliation [...]”.¹⁸

On April 8, 2017 Larry’s bill contained a new charged. It was a “Charge to Meet the Minimum” (the “Charge”) and was \$21.93.¹⁹ Larry’s system was working in both January and February, and the Charge was not present. There is no information on the cooperative’s website about the Charge.²⁰

On May 2, 2016, Larry, by and through his attorney, sent three information requests (IRs) to MN Valley about the Charge. The responses were requested by May 12, 2016.²¹

On May 16, 2016, Larry’s attorney called MN Valley and sought to contact Pat Carruth. According to the secretary, Pat was present, and would call back. He did not call back.²²

¹⁶ See INITIAL FILING-COMPLAINT, LARRY FAGEN, Docket No. E123/CG-16-241, Doc. ID. 20163-119324-01 (March 22, 2016).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *See April Bill.*

²⁰ Minnesota Valley Cooperative Light and Power Association Website (Available at: <http://www.mnvalleyrec.com/>).

²¹ See EXTENSION VARIANCE REQUEST-EXTENSION AND COMMISSION PROCESS SERVICE DUE TO UTILITY NON-RESPONSE ON IRS, MINNESOTA PUBLIC UTILITIES COMMISSION, Docket No. E123/CG-16-241, Doc. ID. 20165-121412-01 (May 17, 2016).

²² *See Id.*

On May 17, 2016, Larry requested an extension and submitted his information requests to the Commission to have them serve the requests upon MN Valley.²³ That same day, Larry published his April – May bill, which included an increased Charge of \$22.50.²⁴

On May 17, 2016, having not received any responses from MN Valley, Larry requested that the Commission serve the IRs on MN Valley. Larry also requested an extension, because he wanted the IR answers prior to submitting comments and MN Valley’s non-responsiveness necessitated an extension.²⁵

On May 19, 2016, the Commission served the IRs on MN Valley.²⁶

On May 26, 2016, MN Valley submitted its IR responses, its Schedule A and an example bill. In the response MN Valley outlined how it calculates the Charge. MN Valley response stated the following:

All consumers are then charged \$1.50 per KVA for those in excess of the initial 10 KVA. Therefore, the Fagens are charged a \$20 base rate and \$22.50 (15 x 1.50) for the excess KVA for the 25 KVA transformer on site (25 – 10 = 15 KVA). They previously had a 37.5 KVA transformer, which was reduced to a 25 KVA. They are not able to reduce the transformer size any lower due to the fact that their previous peak KW demand during the past 12 months was 23.25 KW in January of 2016.²⁷

The attached Schedule A tariff also supports the above approach.²⁸

On June 21, 2016, the Department of Commerce (DOC) served seven different IRs on MN Valley and two contained inquiries about the Charge.²⁹

²³ *See Id.*

²⁴ *See OTHER-MAY BILL WITH CHARGE TO MEET MINIMUM, LARRY FAGEN, Docket No. E123/CG-16-241, Doc. ID. 20165-121413-01 (May 17, 2016) [hereinafter, May Bill].*

²⁵ *See EXTENSION VARIANCE REQUEST-EXTENSION AND COMMISSION PROCESS SERVICE DUE TO UTILITY NON-RESPONSE ON IRS, MINNESOTA PUBLIC UTILITIES COMMISSION, Docket No. E123/CG-16-241, Doc. ID. 20165-121412-01 (May 17, 2016).*

²⁶ *See Id.*

²⁷ *MN Valley Initial Response at 2.*

²⁸ *See Id.*, Attachment 1 to MN Valley’s Response to PUC IRs.

²⁹ *See RESPONSE TO DOC REQUEST, MN VALLEY COOPERATIVE LIGHT AND*

On July 15, 2016, MN Valley posted its responses to DOC's IRs.³⁰

On July 22, 2016, Larry, by and through his attorney, requested information on adjusting his meter arrangement to move from a single bi-directional meter to a two detented meter arrangement.³¹ Based on the information gleaned from the IRs, this new arrangement would allow Larry to purchase all of his energy from MN Valley, but then sell all of his energy back to the cooperative at the Average Retail Rate. This is commonly referred to as a buy-all-sell-all approach, instead of net-metering.

Larry requested a response by July 29, 2016. MN Valley has still not responded to this inquiry and each monthly bill since May Larry has had a Charge of \$22.50.

II. JURSDICTION

The Commission has jurisdiction over this Claim under Minn. Stat. § 216B.164, subd. 2 and reaffirmed in Docket No. E-132/CG-15-255.³² While the Charge is applied to some non-distributed generation customers, it disproportionately impacts solar customers, is contrary to the billing requirements of Minn. Stat. § 216B.164, subd. 3, and for reasons described below, is also covered under the Interconnection Standards derived from Minn. Stat. § 216B.1611 and located in Docket 01-1023.

III. BURDEN OF PROOF

In accordance with Minn. Stat. § 216B.164, subd. 5 and Minn. Rule 7835.4500 the burden of proof in this dispute is on the utility.³³

POWER ASSOCIATION, Docket No. E123/CG-16-241, Doc. Id. 20167-123356-01 (July 15, 2016).

³⁰ *See Id.*

³¹ *See* APPENDIX E, Email to Minnesota Valley Cooperative Light and Power Association Requesting.

³² *See* ORDER FINDING JURSDICTION AND RESOLVING DISPUTE IN FAVOR OF COMPLAINANT, MINNESOTA PUBLIC UTILITIES COMMISSION, Docket No. E-132/CG-15-255, Doc. ID. 20159-114134-01 at 7 (Sept. 21, 2015) (stating “The Commission finds that it has jurisdiction over this matter”).

³³ Minn. Stat. § 216B.164, subd. 5; Minn. Rule 7835.4500 (stating “[i]n any such determination, the burden of proof shall be on the utility.”).

IV. ARGUMENT FOR WHY THE CHARGE TO MEET THE MINIMUM IS ILLEGAL, SHOULD BE INVALIDATED AND SHOULD BE REMOVED FROM LARRY'S BILL AND THE BILLS OF OTHER MN VALLEY CUSTOMERS

1. The Bills Are Arbitrary And Capricious

a. The Bills Provided and Discovered Do Not Support MN Valley's Articulated Charge to Meet the Minimum Calculation

Larry contends that the Charge is arbitrarily applied to customers, is sporadically priced, and impacts MN Valley customers in a various and incongruent fashion. To illustrate this, we provide three examples:

First Larry's initial "Charge to Meet the Minimum" was not \$22.50. It was instead \$21.93, indicating that the approach MN Valley articulated for the Charge is more of an after the fact adjustment, rather than an actual calculation. The inconsistency from month to month is fishy, since the charge should be fixed.³⁴

Also, the bill that MN Valley used to illustrate their charge has a large inconsistency with their approach. As MN Valley asserts, Larry's 12 month bills have their highest demand reading at 23.25 KW.³⁵ Since MN Valley has Larry at a 25 KVA transformer, then it follows that the power factor MN Valley is using is somewhere between .9 – 1.³⁶ This makes the math relatively easy for determining how big someone's transformer must be, if you know the KW demand amount.

On the bill that MN Valley supplied as evidence for their charge, they have a "Charge to Meet the Minimum" of \$22.50 for an unknown customer.³⁷ This would suggest that the transformer for the unknown customer is the same size as Larry's; it would be 25 KVA. But if you look at the demand reading for this unknown customer, they have their highest demand reading in October 2015. It is 46.52 KW.³⁸ Using MN Valley's methodology, this would indicate that they would have at least a 46.25 KVA transformer. But if they have a transformer big enough to meet their demand, then a transformer of this size would yield a Charge to Meet the Minimum of at least \$54.38 ($[(46.25-10) * 1.5 = \$54.38]$). The only way this makes sense is either MN Valley is 1)

³⁴ Further, using MN Valley's methodology in reverse ($\$21.93/\$1.5 + 10$), it would indicate that Larry's transformer is 24.62 KVA, which it is not. *See MN Valley IR Response* at 2.

³⁵ *See MN Valley Initial Response* at 2.

³⁶ Our understanding is that KVA transformer power factors are typically 1.

³⁷ *See MN Valley Initial Response*, Attachment 2 to MVCLPA Response to PUC IRs.

³⁸ *See Id.*

arbitrarily setting transformer sizes, putting their grid at risk, or 2) they are withholding information to adequately support the Charge's methodology.

On the other end of the transformer spectrum is Larry's friend David Hamre, who gets charged \$61.25/month, regardless of his energy purchases. David's "Charge to Meet the Minimum" is \$41.25/month. But David's highest demand in the last 12 months is 2 KW, and 7 months of the last 12 months he didn't even have a demand charge.³⁹ Using MN Valley's formula, it seems David inexplicably has a 37.5 KVA transformer for his 2 KW demand. Either this is a billing mistake, MN Valley has left a very large and unnecessary transformer on his site, or MN Valley is calculating its Charge based off of something other than what they are asserting.

b. MN Valley Apparently Has No Idea How Expensive the Transformer Is That Larry Is Paying For Through His Energy Purchases and the Charge to Meet the Minimum

What's most intriguing about the Charge is not that it is applied in an arbitrary fashion, but that apparently MN Valley has no idea how much their transformers cost to recover, which is what the Charge is supposed to be for. In its IR 5, DOC requested the following:

What is the monthly amount of transformer costs that the Cooperative expects to recover through the energy charge? Does this vary by customer? If so, please provide the amount and usage necessary to recover Mr. Fag[e]n's transformer costs.⁴⁰

To which, MN Valley responded with this:

To answer the last part of this Information Request would seem to require the determination of Mr. Fagen's specific transformer costs including ongoing maintenance, overheads, etc. We do not maintain costs in a way that tracks these costs by customer. Further, rates are designed to recover the cost of serving a class of customers and in manner that reflects cost causation. A class cost of service does not and should not be expected to identify the cost of serving an individual customer within a rate class.⁴¹

So Larry is being charged \$22.50/month for a transformer that MN Valley cannot ascertain the cost of. Presumably a 25KVA transformer has similar, if not the same, maintenance costs as a 10KVA transformer. So the difference is just the transformer cost itself. But MN Valley is apparently unable to state the value of the transformer, so that Larry could have an understanding

³⁹ See APPENDIX D, David Harne Bill.

⁴⁰ See RESPONSE TO DOC REQUEST, MN VALLEY COOPERATIVE LIGHT AND POWER ASSOCIATION, Docket No. E123/CG-16-241, Doc. Id. 20167-123356-01 at Request Number 5 (July 15, 2016).

⁴¹ See *Id.*

on just how many years of the Charge he would have to endure before the transformer has been paid for. Or better yet, whether he has already compensated MN Valley fairly for the transformer through his previous years of energy purchases.

c. In Theory The Charge Could Be Offset By A Buy-All-Sell-All Arrangement But MN Valley Is Not Permitting Metering Of This Nature When Requested

According to MN Valley's tariff the Charge is that it is predicated solely on the amount of energy purchased.⁴² When applying this Charge to a QF the only reason why the Charge happens is that the customer purchases less energy from the utility, because the QF is keeping the energy it produces on site. If, however, the QF sells all the energy it produces to the utility, and buys all its energy from the utility, then in theory the Charge will not be assessed, because the QF will be meeting the Charge's minimum purchase requirements.

It is not that Larry isn't buying enough energy that is the problem. It is that his energy purchases are being netted against his energy production, thereby making it look like he isn't buying enough energy. If there were two meters, MN Valley could track the consumption meter to make sure Larry is consuming enough energy to meet the Charge's minimum billing requirements.

Typically, utilities go with a simple bi-directional meter, as they have done here in Larry's case, but there is nothing in the interconnection standards that prohibits them from using a detented metering array.⁴³

On July 22, 2016, Larry requested that MN Valley start discussing how this switch could occur and MN Valley has not responded, thereby not permitting this metering arrangement.⁴⁴ It seems they are choosing a specific metering approach, knowing that it will result in more revenue for them and less small power production in their service territory. Their metering selection, coupled with their Charge, is exploitative of small power production.

⁴² *MN Valley Response* at Attached Schedule A.

⁴³ ORDER ESTABLISHING STANDARD, MINNESOTA PUBLIC UTILITIES COMMISSION, Docket No. E-999/CI-01-1023, Doc. ID. 59785 at ATTACHMENT 2 pp. 15 (Stating "For Generation Systems which are less than 40kW in rated capacity and are qualified facilities under PURPA (Public Utilities Regulatory Power Act), net metering is allowed and provides the generation system the ability to back feed the Area EPS at some times and bank that energy for use at other times. Some of the qualified facilities under PURPA are solar, wind, hydro, and biomass. For these net-metered installations, the Area EPS may use a single meter to record the bidirectional flow or the Area EPS Generator may elect to use two detented meters, each one to record the flow of energy in one direction.").

⁴⁴ See APPENDIX E, Email to Minnesota Valley Cooperative Light and Power Association Requesting.

d. The Charge To Meet The Minimum Is Applied In Full Even If The Customer Is 1 kW Away From Purchasing Enough Energy

It should be noted that the Charge does not scale with the amount of energy consumed by the member. It either appears on the bill at its fixed amount or it doesn't. That means that the customer could be 1 kW away from procuring enough energy from MN Valley to meet its minimum threshold, but they would still get charged \$22.50 or more for that month.

Based on the facts above, it seems at a minimum that MN Valley assesses the Charge in an arbitrary and capricious manner.

2. The Charge is Discriminatory Against Small Power Production and Contrary to Minn. Stat. § 216B.164, subd. 1 & 3.

Minn. Stat. § 216B.164, subd. 1 seeks “to give the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public.”⁴⁵ The Charge does exactly the opposite.

The Charge potentially impacts any solar array in MN Valley territory that is greater than 10kW. As noted the power factor is likely 1 here, and so any system that is greater than 10kW will require some sort of transformer upgrade to meet the KVA requirements. Unless the facility that the 10kW QF is associated with has a huge and constant energy demand, then they will be subject to the Charge. If a system larger than 10kW with a bi-directional meter has a month where it sells more energy back to the cooperative than it purchases, then the Charge will be assessed.

Minn. Stat. § 216B.164 requires that the utility purchase the excess energy from 40kW or less QFs at specific rates.⁴⁶ Typically, it is the Average Retail Rate. This Charge, however, devalues the Average Retail Rate by tacking on a \$22.50/month charge for systems between 10kW to 25kW, a \$41.25/month charge for systems between 25kW and 37.5kW, and presumably even a bigger charge for 40kW systems. MN Valley purchases energy at \$.009224/kWh, which means Larry would have to sell 2,439 kWh of energy just to break even.⁴⁷ This monthly charge figure here is so high, it renders any sellback clause in the statute valueless.

In practice the Charge is clearly having an impact on solar arrays in MN Valley's service territory already. MN Valley boasts they have 5,250 members on their website.⁴⁸ According to

⁴⁵ Minn. Stat. § 216B.164, subd. 1.

⁴⁶ Minn. Stat. § 216B.164, subd. 3.

⁴⁷ See COMPLIANCE FILING – COGEN, MINNESOTA VALLEY COOPERATIVE LIGHT AND POWER ASSOCIATION, Docket No. E999/PR-16-09, Doc. ID. 20161-117626-01 at 3 (Jan. 1, 2016).

⁴⁸ Overview Minnesota Valley Cooperative Light and Power Association Website (Available at: <http://www.mnvalleyrec.com/your-co-op/overview>).

their answer to DOC's IR 7, only 406 of those customers are assessed the Charge on a yearly basis.⁴⁹ So approximately 8% of their membership is assessed this fee.

Contrast that with the solar customers assessed the charge and the difference is staggering. MN Valley has 3 single-phase customers that are assessed this Charge annually and one three-phase solar customer that is assessed the Charge annually.⁵⁰ This may not seem like a significant number, but according to MN Valley's 2016 cogeneration report, they only have 6 solar customers.⁵¹ This means that 67% of MN Valley's solar customers are assessed the Charge. That means you're over 8 times as likely to be assessed the Charge to Meet the Minimum if you're a solar customer than if you're not.

The Charge to Meet the Minimum is discriminatory against solar customers and impermissibly reduces the payable rates for energy purchased.

3. The Charge May Be Retaliatory In Nature

While the Charge to Meet the Minimum is applied to 408 different customers in MN Valley's service territory, it seems possible that it may be being applied to Larry as retaliation either for expanding his solar array or for filing this dispute. While we hesitate to cast aspersions, MN Valley has done a series of actions that are tending towards hostility.

First is the date when the Charge to Meet the Minimum appeared on Larry's bill. The first billing period after this complaint was filed was the first time Larry had ever received the Charge. He had his initial solar array since 2012, and he never had received the charge prior, despite low bills. For instance, in June of 2015, Larry's bill was \$16.08.⁵² Now his bill is at a minimum going to be \$51.37/month. This June he paid three times what he paid last June, because he expanded his system.

Second, MN Valley does not apparently keep a running tab of the credits that Larry is generating with his excess generation. Larry currently has no real understanding of how many credits his solar array is producing, nor does he know their value. MN Valley has auto-enrolled him into the

⁴⁹ See RESPONSE TO DOC REQUEST, MN VALLEY COOPERATIVE LIGHT AND POWER ASSOCIATION, Docket No. E123/CG-16-241, Doc. Id. 20167-123356-01 at Request Number 7 (July 15, 2016).

⁵⁰ See *Id.*

⁵¹ QUALIFYING FACILITIES REPORT – MINNESOTA VALLEY COOPERATIVE LIGHT AND POWER ASSOCIATION, MINNESOTA VALLEY COOPERATIVE LIGHT AND POWER ASSOCIATION, Docket No. E999/PR-16-09, Doc. ID. 20162-118627-01 at Spreadsheet pp. 2 (Feb. 25, 2016).

⁵² See APPENDIX C, Larry Fagen's Relevant Bills.

Minn. Stat. § 216B.164, subd. (f) program, but Larry's bills are always the same. His credits are not being applied to his bills, and he's being assessed an exorbitant fee for creating the credits.⁵³

Third is the fact that MN Valley refused to answer the initial IRs filed on May 2, 2016, thereby requiring Commission intervention. They responded to the Commission's request as well as a later Department of Commerce set of IRs, so MN Valley's non-responsiveness does not seem to be a communication issue.

The fourth is that MN Valley has refused to answer Larry's request to adjust his metering to a two-meter approach. Despite feeling that the Charge to Meet the Minimum is illegal and retaliatory, Larry had no intention of bringing this Charge issue before the Commission. Instead, he sought to handle it outside of this venue, because a simple adjustment to his metering setup should alleviate the Charge (if it is designed as MN Valley articulates it to be).

MN Valley, however, has forced this issue before the Commission because of their non-responsiveness. It seems the cooperative has ceased communications with one of its members on all issues, simply because it's having a separate and distinct dispute resolution proceeding with him about his billing. This type of behavior is inappropriate from a monopoly that's purpose is to serve its members, and it seems retaliatory in nature.

REVISED REQUEST FOR RELIEF

WHEREFORE, the QF, Larry Fagen, now requests:

1. The signed contract between Larry and MN Valley is deemed void and cancelled;
2. MN Valley present a new contract for Larry that complies with state law and is the uniform statewide contract, including an option to select compensation under Minn. Stat. § 216B.164, subd3(d);
3. MN Valley is precluded from implementing a retaliatory or retroactive fee against Larry in any subsequent agreement;
4. The Charge to Meet the Minimum is permanently removed from Larry's bill, or Larry is permitted to move to a detented meter system where his consumption is tracked and applied toward the Charge.
5. MN Valley pay Larry's costs, disbursements and reasonable attorneys' fees, as required by Minn. Stat. § 216B.164, subd. 5 for all Claims.

⁵³ *See Id.*

Respectfully submitted,

On Behalf of Larry Fagen

David Shaffer, esq.

Staff Attorney

Minnesota Solar Energy Industries Project

Email: shaff081@gmail.com

Phone: 612-849-0231

APPENDIX C

LARRY FAGEN'S RELEVANT BILLS

Member #	Name	Location #	Due Date	Billing Date
14755.000	LARRY FAGEN	J3-12-03A	06/25/16	06/08/16

Electricity usage this billing period			
Meter Readings			
Present	Previous	Mult	kWh Used
72822	72207	1	0
Demand Reading		9.250	
883	873	20	200
25391	23053	1	0
16471	13516	1	2955

Account Activity		
Previous Balance		51.37
Payment Received	05/23/16	51.37-
Balance Forward		.00
Base Charge		20.00
Security Light		8.00
Charge to meet minimum		22.50
Sales Tax (75.0% Exempt)		.87
TOTAL DUE ON 06/25/16		51.37

Pd. 6-20-16
CK # 3451

Billing History for Past 12 Months		
Month	Demand	kWh
May 2015	10.25	2,771
June 2015	8.50	2,735
July 2015	9.00	3,102
August 2015	8.50	2,752
September 2015	10.00	2,782
October 2015	22.25	4,333
November 2015	18.25	3,099
December 2015	23.25	3,361
January 2016	17.00	3,766
February 2016	13.75	2,296
March 2016	14.50	1,987
April 2016	15.00	2,278
May 2016	9.25	945



Minnesota Valley Cooperative
 Light and Power Association
 PO Box 248
 Montevideo, MN 56265
 (320) 269-2163 (800) 247-5051
 www.mnvalleyrec.com

A Message from Minnesota Valley R.E.C.

HAPPY FATHER'S DAY!

Remember this
 Location # when
 reporting an outage

Your Location #
J3-12-03A

Keep this portion for your records.

Member #	Name	Location #	Due Date	Billing Date
14755.000	LARRY FAGEN	J3-12-03A	05/25/16	05/06/16

Electricity usage this billing period			
Meter Readings			
Present	Previous	Mult	kWh Used
72207	71322	1	0
Demand Reading		15.000	
873	844	20	580
23053	21331	1	0
13516	11238	1	2278

Account Activity	
Previous Balance	51.36
Payment Received 04/21/16	51.36-
Balance Forward	.00
Base Charge	20.00
Security Light	8.00
Charge to meet minimum	22.50
Sales Tax (75.0% Exempt)	.87
TOTAL DUE ON 05/25/16	51.37
* * Capital Credit Allocation for 2015 * *	
Allocation This Year:	177.71
Your Accumulated Capital Credit:	3,449.66
Patronage for 2015:	1,515.66

Billing History for Past 12 Months		
Month	Demand	kWh
April 2015	10.50	3,054
May 2015	10.25	2,771
June 2015	8.50	2,735
July 2015	9.00	3,102
August 2015	8.50	2,752
September 2015	10.00	2,782
October 2015	22.25	4,333
November 2015	18.25	3,099
December 2015	23.25	3,361
January 2016	17.00	3,766
February 2016	13.75	2,296
March 2016	14.50	1,987
April 2016	15.00	945

Pd. 5-20-16
CK # 3432



Minnesota Valley Cooperative
Light and Power Association
PO Box 248
Montevideo, MN 56265
(320) 269-2163 (800) 247-5051
www.mnvalleyrec.com

A Message from Minnesota Valley R.E.C.

**WE WISH YOU A SAFE AND HAPPY
MEMORIAL WEEKEND!**

**Remember this
Location # when
reporting an outage**

Your Location #
J3-12-03A

Member #	Name	Location #	Due Date	Billing Date
14755.000	LARRY FAGEN	J3-12-03A	04/25/16	04/08/16

Electricity usage this billing period			
Meter Readings			
Present	Previous	Mult	kWh Used
71322	69862	1	13
Demand Reading		14.500	
844	789	20	1100
21331	19884	1	0
11238	9264	1	1974

Account Activity	
Previous Balance	83.13
Payment Received 03/17/16	83.13-
Balance Forward	.00
Base Charge	20.00
13 kwh @ 4.40000 (Heat Rate)	.57
73.48% contributed by MN Valley Power	
Security Light	8.00
Charge to meet minimum	21.93
Sales Tax (75.0% Exempt)	.86
TOTAL DUE ON 04/25/16	51.36

Billing History for Past 12 Months		
Month	Demand	kWh
March 2015	13.00	3,604
April 2015	10.50	3,054
May 2015	10.25	2,771
June 2015	8.50	2,735
July 2015	9.00	3,102
August 2015	8.50	2,752
September 2015	10.00	2,782
October 2015	22.25	4,333
November 2015	18.25	3,099
December 2015	23.25	3,361
January 2016	17.00	3,766
February 2016	13.75	2,296
March 2016	14.50	958



Minnesota Valley Cooperative
 Light and Power Association
 PO Box 248
 Montevideo, MN 56265
 (320) 269-2163 (800) 247-5051
 www.mnvalleyrec.com

A Message from Minnesota Valley R.E.C.

DO YOU WANT A \$5.00 CREDIT OFF YOUR NEXT BILL? SIGN UP FOR AUTOMATIC PAYMENT OR OPERATION ROUND UP ON THE BACK SIDE OF THIS STATEMENT AND WE WILL CREDIT YOUR NEXT BILL!

Remember this Location # when reporting an outage

Your Location #
J3-12-03A

Keep this portion for your records.

Member #	Name	Location #	Due Date	Billing Date
14755.000	LARRY FAGEN	J3-12-03A	03/25/16	03/08/16

Electricity usage this billing period			
Meter Readings		Mult	kWh Used
Present	Previous		
69862	67848	1	1242
Demand Reading		13.750	
789	714	20	1500
19884	19112	1	0
9264	8210	1	1054

Account Activity		
Previous Balance		223.23
Payment Received	02/17/16	223.23-
Balance Forward		.00
Base Charge		20.00
1242 kwh @ 4.40000 (Heat Rate)		54.65
87.72% contributed by MN Valley Power		
Security Light		8.00
Sales Tax (75.0% Exempt)		.48
TOTAL DUE ON 03/25/16		83.13

*Pd. 3-12-16
CK # 1982*

Billing History for Past 12 Months		
Month	Demand	kWh
February 2015	21.50	4,212
March 2015	13.00	3,604
April 2015	10.50	3,054
May 2015	10.25	2,771
June 2015	8.50	2,735
July 2015	9.00	3,102
August 2015	8.50	2,752
September 2015	10.00	2,782
October 2015	22.25	4,333
November 2015	18.25	3,099
December 2015	23.25	3,361
January 2016	17.00	3,766
February 2016	13.75	2,187



Minnesota Valley Cooperative
 Light and Power Association
 PO Box 248
 Montevideo, MN 56265
 (320) 269-2163 (800) 247-5051
 www.mnvalleyrec.com

A Message from Minnesota Valley R.E.C.

WE HOPE YOU CAN JOIN US FOR YOUR ANNUAL MEETING ON MARCH 19, 2016 AT PRAIRIE'S EDGE CASINO RESORT! BREAKFAST STARTS AT 8:30 AM AND THE MEETING STARTS AT 10:30 AM.

Remember this Location # when reporting an outage

Your Location #
J3-12-03A

Member #	Name	Location #	Due Date	Billing Date
14755.000	LARRY FAGEN	J3-12-03A	08/25/15	08/10/15

Electricity usage this billing period			
Meter Readings			
Present	Previous	Mult	kWh Used
55424	54729	1	695
Demand Reading			
426	486	20	400
16440	15521	1	919
28780	27292	1	1488

Account Activity		
Previous Balance		16.08
Payment Received	07/30/15	16.08-
Balance Forward		.00
Base Charge		20.00
475 kwh @ 11.63000		55.24
220 kwh @ 7.40000 (Heat Rate)		16.28
54.98% contributed by MN Valley Power		
919 kwh @ 9.07500- (Wind Generator)		83.40-
Security Light		8.00
Sales Tax (75.0% Exempt)		1.71
TOTAL DUE ON 08/25/15		17.83

*Pd. 8-19-15
CK # 1941*

Billing History for Past 12 Months		
Month	Demand	kWh
July 2014	9.25	3,341
August 2014	9.75	3,166
September 2014	10.00	2,466
October 2014	23.25	5,255
November 2014	25.75	4,906
December 2014	10.75	2,701
January 2015	16.50	3,508
February 2015	21.50	4,212
March 2015	13.00	3,604
April 2015	10.50	3,054
May 2015	10.25	2,771
June 2015	8.50	2,735
July 2015	9.00	1,467



Minnesota Valley Cooperative
 Light and Power Association
 PO Box 248
 Montevideo, MN 56265
 (320) 269-2163 (800) 247-5051
www.mnvalleyrec.com

A Message from Minnesota Valley R.E.C.

PLEASE CASH YOUR CAPITAL CREDIT
 BY SEPTEMBER 15, 2015.

Remember this
 Location # when
 reporting an outage

Your Location #
J3-12-03A

Keep this portion for your records.

Member #	Name	Location #	Due Date	Billing Date
14755.000	LARRY FAGEN	J3-12-03A	07/25/15	07/09/15

Electricity usage this billing period			
Meter Readings			
Present	Previous	Mult	kWh Used
54729	54162	1	567
Demand Reading		8.500	
406	394	20	240
15521	14704	1	817
27292	25941	1	1351

Account Activity	
Previous Balance	16.49
Payment Received 06/17/15	16.49-
Balance Forward	.00
Base Charge	20.00
443 kwh @ 11.63000	51.52
124 kwh @ 7.40000 (Heat Rate)	9.18
51.50% contributed by MN Valley Power	
817 kwh @ 9.07500- (Wind Generator)	74.14-
Security Light	8.00
Sales Tax (75.0% Exempt)	1.52
TOTAL DUE ON 07/25/15	16.08

*Pd. 7-28-15
CK # 1929*

Billing History for Past 12 Months		
Month	Demand	kWh
June 2014	11.00	3,166
July 2014	9.25	3,341
August 2014	9.75	3,166
September 2014	10.00	2,466
October 2014	23.25	5,255
November 2014	25.75	4,906
December 2014	10.75	2,701
January 2015	16.50	3,508
February 2015	21.50	4,212
March 2015	13.00	3,604
April 2015	10.50	3,054
May 2015	10.25	2,771
June 2015	8.50	1,339



Minnesota Valley Cooperative
 Light and Power Association
 PO Box 248
 Montevideo, MN 56265
 (320) 269-2163 (800) 247-5051
www.mnvalleyrec.com

A Message from Minnesota Valley R.E.C.

SIGN UP FOR AUTOMATIC PAYMENT,
 PAPERLESS STATEMENTS OR OPERATION
 ROUND-UP AND RECEIVE \$5 OFF YOUR
 NEXT MONTH'S ENERGY BILL.

Remember this
 Location # when
 reporting an outage

Your Location #
J3-12-03A

Keep this portion for your records.

Member #	Name	Location #	Due Date	Billing Date
14755.000	LARRY FAGEN	J3-12-03A	06/25/15	06/09/15

Electricity usage this billing period			
Meter Readings			
Present	Previous	Mult	kWh Used
54162	53539	1	623
Demand Reading		10.250	
394	389	20	100
14704	13791	1	913
25941	24706	1	1235

Account Activity		
Previous Balance		32.59
Payment Received	05/20/15	32.59-
Balance Forward		.00
Base Charge		20.00
557 kwh @ 11.63000		64.78
66 kwh @ 7.40000 (Heat Rate)		4.88
65.93% contributed by MN Valley Power		
913 kwh @ 9.07500- (Wind Generator)		82.85-
Security Light		8.00
Sales Tax (75.0% Exempt)		1.68
TOTAL DUE ON 06/25/15		16.49

*Ad. 6-15-15
CKH 3435*

Billing History for Past 12 Months		
Month	Demand	kWh
May 2014	11.50	2,825
June 2014	11.00	3,166
July 2014	9.25	3,341
August 2014	9.75	3,166
September 2014	10.00	2,466
October 2014	23.25	5,255
November 2014	25.75	4,906
December 2014	10.75	2,701
January 2015	16.50	3,508
February 2015	21.50	4,212
March 2015	13.00	3,604
April 2015	10.50	3,054
May 2015	10.25	1,395



Minnesota Valley Cooperative
 Light and Power Association
 PO Box 248
 Montevideo, MN 56265
 (320) 269-2163 (800) 247-5051
 www.mnvalleyrec.com

A Message from Minnesota Valley R.E.C.

SIGN UP FOR AUTOMATIC PAYMENT,
 PAPERLESS STATEMENTS OR OPERATION
 ROUND-UP AND RECEIVE \$5 OFF YOUR
 NEXT MONTH'S ENERGY BILL.

Remember this
 Location # when
 reporting an outage

Your Location #
J3-12-03A

Keep this portion for your records.

APPENDIX D
DAVID HARME'S BILL



Member #	Name	Location #	Due Date	Billing Date
17999-000	DAVID HAMRE	J3-13-04	05/25/16	05/04/16

Electricity usage this billing period

Meter Readings		Mult	kWh Used
Present	Previous		
589	589	40	0
Demand Reading		.813	
Actual Demand		.520	

Account Activity

Previous Balance	61.25
Payment Received 04/28/16	41.25-
Balance Forward	.00
Base Charge	20.00
Charge to meet minimum	41.25
TOTAL DUE ON 05/25/16	61.25

Billing History for Past 12 Months

Month	Demand	kWh
April 2015		
May 2015	.52	
June 2015	.30	
July 2015	2.08	60
August 2015		
September 2015		
October 2015		
November 2015	1.52	200
December 2015		
January 2016		
February 2016		
March 2016	.50	
April 2016	.52	

 **Minnesota Valley Cooperative**
 Light and Power Association
 PO Box 248
 Montevideo, MN 56265
 (320) 266-2163 (800) 247-6051
www.mnvalleyrec.com

A Message from Minnesota Valley REC.
 WE WISH YOU A SAFE AND HAPPY
 MEMORIAL WEEKEND!

Remember this Location # when reporting an outage

Your Location # J3-13-04

APPENDIX E

EMAIL TO MINNESOTA VALLEY COOPERATIVE
LIGHT AND POWER ASSOCIATION REQUESTING



David Shaffer <shaff081@gmail.com>

To Bob Re: Larry Fagen Metering Inquiry

1 message

David Shaffer <shaff081@gmail.com>

To: bwalsh@mnvalleyrec.com

Bcc: lfagen@hcinet.net, "Peirce, Susan (COMM)" <Susan.Peirce@state.mn.us>, Stacy Miller <Stacy.Miller@state.mn.us>

Fri, Jul 22, 2016 at 1:18 PM

Bob,

I am David Shaffer, the attorney representing Larry Fagen in Minnesota Public Utilities Commission Docket 16-241.

I am writing today in regards to an inquiry Larry has about the "Charge to Meet the Minimum" (the "Charge") and his metering setup. The understanding that we have of the Charge is that it is predicated on how much energy he purchases from Minnesota Valley Light and Power Association (MN Valley). But because he is using most of his energy on-site, he doesn't need to buy as much energy from MN Valley. Therefore, the Charge is assessed to him even though his energy needs have remained constant.

So we have two questions. They are as follows:

1. If we remove Larry's bi-directional meter and insert two meters (one to measure energy purchases and one to measure energy sales) would this work with MN Valley? If not, why? This would result in a buy-all-sell-all approach as opposed to net-metering. In theory it should meet the Charge's minimum purchase requirements on a monthly basis, thus making both parties happy. The charge would go away on Larry's bill and MN Valley would have ample energy purchased to meet its transformer costs.

2. If MN Valley is amenable to this buy-all-sell-all approach would it still charge Larry a "Charge to Meet the Minimum"?

Please let me know at the latest by July 29, 2016.

David Shaffer, Esq.
MnSEIP Staff Attorney
Phone: 612-849-0231