

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

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Nancy Lange	Commissioner
Daniel Lipschultz	Commissioner
Matt Schuenger	Commissioner
John Tuma	Commissioner

**In the Matter of Cogeneration and
Small Power Production Tariff
Filing**

July 12, 2016

**MINNESOTA SOLAR ENERGY
INDUSTRIES ASSOCIATION'S
ANSWER ON VARIOUS
COOPERATIVE UTILITIES'
FILED TARIFFS AND
PETITION FOR
CLARIFICATION**

Docket No. E999/PR-16-09

**ANSWER OF THE MINNESOTA
SOLAR ENERGY INDUSTRIES ASSOCIATION TO MREA'S PETITION FOR
CLARIFICATION AND PETITION FOR CLARIFICATION**

ANSWER

Pursuant to Minn. Rule 7829.3000, the Minnesota Solar Energy Industries Association (MnSEIA) submits this Answer to the Minnesota Rural Electrical Association's Petition for Clarification.¹

Our association believes that the Commission has jurisdiction to require that the fees are approved prior to being applied to the cooperative utilities in our state. That authority comes from Minn. Stat. § 216B.164 and § 216A.05, as illustrated by the Statutory Authority outlined in

¹ Minn. Rule 7829.3000, subp. 4.

Minn. Rule 7835.0300.² In 2000 when this rule was promulgated, the Commission interpreted their statutory obligation to include the review and approval of filed tariffs.³

While the statutes do not specifically require tariff filing, it is presumable that the Commission has the ability to evaluate the tariffs in order to perform its statutory obligations under Minn. Stat. § 216B.164.⁴ For instance, how could the Commission determine whether a cooperative is using a correct Average Retail Rate for its purchased energy, if it is not allowed to review the tariff that includes the rate? Furthermore, if the utility inappropriately calculated its Average Retail Rate and if the Commission did not have the ability to approve the tariffs, then the Commission would be unable to evaluate and correct the issue. The ability to approve or not approve the tariffs couched in Minn. Rule 7835.0300 is a necessary Commission function.

Since then, Minn. Stat. § 216B.1611 further bolsters the Commission’s authority to review and approve tariffs. In 2001, this statute granted the Commission broad authority to establish various standards for integrating renewable energy onto utility grids.⁵ This included jurisdiction over cooperative and municipal utilities, which were also required to “adopt a distributed generation tariff that addresses the issues included in the commission's order.” This other guiding statutory precedent requires that the utilities refile the tariff on an annual basis, and this seems like a reasonable and appropriate approach to ensure that the cooperative’s tariff’s remain consistent with Commission orders and rules.

Additionally, Minn. Rule 7835.0300, which was promulgated by the Commission sixteen years ago, gives the Commission direct authority to approve or deny tariffs. It requires that “each utility must file with the commission, for its review and approval, a cogeneration and small power production tariff.” Certainly, any utility added fees have an impact upon whether the tariff is reasonable, appropriate and should be approved under the rule. Here the Commission opted to not approve the tariffs, as is their purview under the rule.

PETITION FOR CLARIFICATION

Pursuant to Minn. Rule 7829.3000, MNSEIA submits this Petition for Clarification to be considered instead of MREA’s petition.⁶

² See Minn. Rule 7835.0300 (stating its statutory authority is derived from “MS s 216A.05; 216B.08; 216B.164”).

³ See *Id.* (stating “Published electronically: February 28, 2000).

⁴ See Minn. Stat. § 216B.164.

⁵ Minn. Stat. § 216B.1611.

⁶ Minn. Rule 7829.3000, subp. 1 and 2.

In our first round of comments for this docket we stated the following:

Lastly, the current ambiguity on how much the fees will be is having a chilling effect on the market. As such, we request that the Commission determine upfront that the fees can only be applied to customers that have installed systems after the tariffs have been approved. This would allow customers certainty over whether, and to what extent, they will have fees, prior to their installation date.⁷

This particular decision option did not appear verbatim in the staff briefing papers. But it was presumed that Decision Option 9 was intended in part to integrate our concerns into a decision option.⁸ Staff did discuss the issue higher up in the briefing papers, noting “MnSEIA also requests that the Commission should find, upfront, that fees can only be applied to customers that have installed systems after the tariffs have been approved.”⁹ So when the option did not appear lower, it seemed that staff felt it could be integrated into Decision Option 9.

Since the order was published, MnSEIA installers have still had a difficult time selling systems, because customers are too afraid to buy systems that may be subject to fees. It is unclear whether a system installed while the investigation is ongoing is subject to the retroactive application of a fee, if one is eventually Commission approved. It seems the problem can be summarized with this questions: what does “becoming effective” mean? Does it mean before the fee can be applied to Qualifying Facilities installed after July 1, 2015, or does it mean before the fee can be applied to any Qualifying Facilities at all?

Furthermore, it is important that this issue is resolved quickly and upfront. A statewide investigation into cooperative fees has the potential to be a lengthy and drawn-out process. It could take years.¹⁰ In the mean-time it could deprive several homeowners and business owners

⁷ COMMENTS, MINNESOTA SOLAR ENERGY INDUSTRIES ASSOCIATION, Docket NO. E999/PR-16-09, Doc. ID 20165-121536-01 at 5 (May 20, 2016).

⁸ See BRIEFING PAPERS – JUNE 9 2016 AGENDA, PUBLIC UTILITIES COMMISSION, Docket NO. E999/PR-16-09, Doc. ID 20166-121974-01 at 14 (June 3, 2016) (stating “Find that cogeneration and small power production tariffs must filed with, and reviewed and approved by, the Commission before becoming effective, as provided for in Minn. Rules, Part 7835.0300. Find that none of the DG fees filed by cooperatives in 16-09 or fees implemented without filing have been reviewed nor approved by the Commission.”).

⁹ *Id.* at 12.

¹⁰ The fee Connexus applied to Sam Vilella in Docket 15-755 is a similar parallel to the fees here. Sam initially brought this fee up to the Commission in Docket 15-255 over a

of months of solar production, slow the onset of renewable energy, and harm local solar businesses.

To ensure that customers can proceed without fear of retroactive fee application, today we request that the Commission specifically state that “becoming effective” means any fee that results from the conclusion of the Commission investigation will only apply to systems installed after the fee is approved.

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year ago. Both this docket and those ones are also about cooperative net-metering fees. Docket 15-755 is still in the commentary phase.