BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of Possible Amendments to Rules Governing Cogeneration and Small Power Production, *Minnesota Rules* Chapter 7835

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STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The Commission currently has rules governing interconnections between utilities and qualifying facilities, cogeneration and small power production facilities, entitled under federal law to sell their output to utilities. The rules govern filing and reporting requirements, conditions of service, compensation rates, wheeling and exchange agreements, interconnection guidelines, and they also establish a uniform statewide contract.

During the 2013 legislative session, the Legislature amended Minn. Stat. § 216B.164 governing cogeneration and small power production. The statutory changes primarily affect interconnections between qualifying facilities and *public utilities*.

The changes increase the capacity threshold for facilities interconnecting to a public utility. Under the changes, the threshold increases from *less than 40 kilowatts* (kW) to *less than 1,000 kW*.

The statutory changes also include:

- establishing a new annual billing/accrediting method;
- prohibiting standby charges for facilities under 100 kW;
- requiring public utilities to aggregate meters for net metering at customer's request;
- authorizing the Commission to limit cumulative generation from net-metered facilities and permitting a public utility to request that the Commission set such limits;
- authorizing public utilities to limit capacity to 120% of demand for wind customers and to 120% of energy consumption for solar photovoltaic customers; and

- changing requirements governing the uniform statewide contract to incorporate the new net-metering threshold.

This rulemaking proceeding will update the rules to incorporate the recent statutory changes and to make housekeeping changes as necessary. On August 26, 2013, the Commission published a Request for Comments in the *State Register* and did a mass mailing to the rulemaking list, requesting comments on amending the rules to incorporate the statutory changes.

The Commission subsequently appointed an advisory committee, which met monthly between April and August 2014. The committee included the following stakeholders:

- Department of Commerce
- Xcel Energy
- Otter Tail Power Company
- Energy Systems Consulting Services, LLC
- Minnesota Power
- Interstate Power and Light Company
- Solar Rate Reform Group
- Fresh Energy
- Minnesota Rural Electric Association
- Southern Minnesota Municipal Power Agency
- Cummins Power Generation
- Midwest Cogeneration Association
- TransEnergy LLC on behalf of Midwest Cogeneration Association
- Minnesota Municipal Utilities Association.

Several other interested stakeholders also attended committee meetings, including Great River Energy, Steele Waseca Cooperative Electric, Dakota Electric Association, Connexus Energy, and the Metropolitan Council.

II.
THIS MATERIAL IS AVAILABLE IN ALTERNATIVE FORMAT

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III.
STATUTORY AUTHORITY

The Commission's statutory authority to adopt these rules is set forth at Minn. Stat. §§ 216A.05, 216B.08, and 216B.164.

IV.
STATEMENT OF NEED

The Administrative Procedure Act, Minn. Stat. Ch. 14, requires the Commission to establish the need for the proposed rules by an affirmative presentation of facts. Minn. Stat. §§ 14.14 subd. 2 and 14.23.

In this case, the proposed rules are necessary to ensure that the Commission's rules governing cogeneration and small power production are consistent with recent statutory changes made to Minn. Stat. § 216B.164.

V.
STATEMENT OF REASONABLENESS

The Minnesota Administrative Procedure Act also requires the Commission to establish that the proposed rules are a reasonable solution to the problems they are intended to address, that the Commission relied on evidence in choosing the approach adopted in the rules, and that the evidence relied upon is rationally related to the approach the Commission chose to adopt. Minn. Stat. §§ 14.14, subd. 2 and 14.23. Minn. R. 1400.2070, subp. 1.

A. The Process Used to Develop the Rules Facilitated Informed Decision-making and was the Most Efficient Method for Establishing Reasonable Rules

The proposed rules are a reasonable means of incorporating recent statutory changes governing cogeneration and small power production. The Commission notified all persons who could be identified as potentially interested in or affected by the rules. After issuing a Request for Comments that resulted in recommendations made by stakeholders, the Commission established an advisory committee. The committee recommended, and the Commission incorporated, several changes that were reasonable and responsive to the needs of diverse stakeholders.

B. The Rules' Approach to Implementing Policy Goals is Reasonable

The Commission has determined that the proposed rules are needed and are the most reasonable way to implement the recent statutory changes. Without rule changes, the Commission's rules would be inconsistent with the amended statute, which could hinder the Commission's ability to enforce the rules and could hinder regulated parties' knowledge and understanding of the laws governing cogeneration and small power production.

VI.
ANALYSIS OF INDIVIDUAL RULES

7835.0100 – Definitions

The statutory changes include newly defined terms, some of which are included in the proposed rule changes, as explained below.

Subp. 4. "Capacity"

Capacity. "Capacity" means the capability to produce, transmit, or deliver electric energy, and is measured by the number of megawatts alternating current at the point of common coupling between a qualifying facility and a utility's electric system.

This proposed rule incorporates the statutory language in addition to retaining existing rule language.

It is necessary to update the rules to incorporate the recent statutory changes, which define capacity as the "number of megawatts alternating current at the point of interconnection between a distributed generation facility and the utility's electric system." Under this definition, capacity is, in effect, the amount of electricity actually produced. It is therefore reasonable to incorporate this language into the rules by stating that capacity is the capability to produce, transmit, or deliver electric energy and is measured by the amount produced.

Further, it is reasonable to include in the definition of capacity the term "qualifying facility," rather than "distributed generation facility," which is a type of qualifying facility. Capacity is used in statutory provisions and rule parts governing interconnections between utilities and all qualifying facilities; without use of "qualifying facility," the term capacity could be unreasonably excluded from applying to rule parts where the term is used.

It is also reasonable to use the term "point of common coupling," which is used in the Commission's interconnection standards as the point where the customer's electric power system connects to the utility's power system. Although the "point of interconnection" and the "point of common coupling" are commonly used interchangeably, the proposed rule's use of "point of common coupling" is consistent with earlier Commission decisions.[1]

Some advisory committee members suggested further clarifying capacity by requiring that it be measured based on standard 15-minute time intervals. Others suggested measuring capacity based on net input. The statute does not prescribe whether capacity is measured over standard 15-minute intervals or other time interval, such as a daily or monthly average.

The proposed rule does not incorporate a 15-minute interval for measuring capacity, in part because a 15-minute standard is not applicable to all rule parts where the term is used and also because it raises compliance issues that the proposed rules do not address. Further, industry practice is to specify in Commission-approved utility tariffs that standard 15-minute intervals are used for measuring capacity to determine applicable billing rates, making the suggested specificity unnecessary.

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[1] *In the Matter of Establishing Generic Standards for Utility Tariffs for Interconnection and Operation of Distributed Generation Facilities under Minnesota Laws 2001, Chapter 212*, Docket No. E-999/CI-01-1023, Order Establishing Standards (September 28, 2004); and *In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy for Approval of its Proposed Community Solar Garden Program*, E-002/M-13-867, Order Approving Solar Garden Plan with Modifications (September 17, 2014).

Subp. 5. "Capacity costs."

Capacity costs. "Capacity costs" means the costs associated with providing the capability to deliver energy. ~~They consist of~~ tThe utility capital costs consist of facilities used to generate, transmit, and distribute electricity and the fixed operating and maintenance costs of these facilities.

"Capacity costs" is not defined by the statute, but the draft includes a minor modification to clarify that "capital costs" are the costs of a *utility*. This proposed rule change is necessary and reasonable to make the rule clearer.

Subp. 6a. "Customer."

Customer. "Customer" means the person named on the utility electric bill for the premises.

The statutory changes include a definition of this term. It is necessary and reasonable to define the term, which is used in subsequent rule parts, consistent with the statutory definition.

Subp. 15a. "Net metered facility."

Net metered facility. Net metered facility means an electric generation facility constructed for the purpose of offsetting energy use through the use of renewable energy or high-efficiency distributed generation sources.

The statutory changes include a definition of this term. It is necessary and reasonable to define the term, which is used in subsequent rule parts, consistent with the statutory definition.

Subp. 17a. "Public utility."

Public Utility. "Public utility" has the meaning given in Minnesota Statutes, section 216B.02, subdivision 4.

The statutory changes affect interconnections with a public utility, but the statute does not define the term. To increase clarity and avoid ambiguity, it is necessary to define the term and reasonable to do so using the definition contained in Minn. Stat. § 216B.02, subd. 4, which excludes electric cooperative associations and municipal electric utilities. This distinction is relevant to implementing the statutory changes that apply to interconnections with *public* utilities but do not apply to interconnections with cooperative electric associations or municipal electric utilities.

Subp. 19. "Qualifying facility."

Qualifying facility. "Qualifying facility" means a cogeneration or small power production facility which satisfies the conditions established in Code of Federal Regulations, title 18, ~~section 292.101 (b) (1), (1981), as applied when interpreted in accordance with the amendments to Code of Federal Regulations, title 18, sections 292.201 to 292.207 adopted through Federal Register, volume 46, pages 33025-33027, (1981)~~ part 292. The initial operation date or initial installation date of a cogeneration or small power production facility must not prevent the facility from being considered a qualifying facility for the purposes of this chapter if it otherwise satisfies all stated conditions.

The statute uses this term but does not define it. The proposed rule is necessary and reasonable to update the existing rule definition, which includes a citation to the federal rule definition.

Subp. 20a. "Standby charge."

Standby charge. "Standby charge" means the rate or fee a utility charges for standby service or standby power.

Subp. 20b "Standby service."

Standby service. "Standby service" means:

A. for public utilities, service or power that includes backup, maintenance, and related services necessary to make electricity service available to the facility, as described in th public utility's commission-approved standby tariff.

B. for a utility not subject to the commission's rate authority, the service associated with the applicable tariff in effect under Minnesota statutes, section 216B.1611, subdivision 3, clause (2).

The statute defines "standby *charge*," as follows:

> "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.

Within the statutory definition of standby *charge* is a description of standby *service*. Subsequent rule parts use both terms, and it is therefore reasonable and necessary for the proposed rules to define both terms, consistent with the statutory language.

7835.0200 – Scope and Purpose

The purpose of this chapter is to implement certain provisions of Minnesota Statutes, section 216B.164; the Public Utility Regulatory Policies Act of 1978, United States Code, title 16, section 824a-3 ~~(Supplement III, 1979)~~; and the Federal Energy Regulatory Commission regulations, Code of Federal Regulations, title 18, ~~sections 292.101 to 292.602 (1981)~~ part 292. Nothing in this chapter excuses any utility from carrying out its responsibilities under these provisions of state and federal law. This chapter must at all times be applied in accordance with its intent to give the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public.

This proposed rule part includes an update to the federal citation, which is both necessary and reasonable to increase clarity.

7835.0400 – Filing Option

If, after the ~~initial~~ January 1, 2015 filing, schedule C is the only change in the cogeneration and small power production tariff to be filed in a subsequent year, the utility may notify the commission in writing, by the date the tariff is due, that there is no other change in the tariff. This notification and new schedule C will serve as a substitute for the refiling of the complete tariff in that year.

The proposed rule includes a clarification that will apply the rule to filings made after January 1, 2015. The current rules require each utility to make an annual filing unless schedule C is the only change to the tariff. Under the proposed rule change, each utility will be required to make a filing in 2015 and only subsequently will the exception in the rule apply. This rule is necessary and reasonable to ensure that the Commission will receive new and updated utility tariff filings, consistent with the statutory and rule changes, and will ensure that the exception to filing the full tariff will apply only to filings made after the January 1, 2015.

7835.0800 – Schedule E

Schedule E must contain the utility's safety standards, required operating procedures for interconnected operations, and the functions to be performed by any control and protective apparatus. ~~These standards and procedures must not be more restrictive than the interconnection guidelines listed in parts 7835.4800 to 7835.5800.~~ The utility may include in schedule E suggested types of equipment to perform the specified functions. No standard or procedure may be established to discourage cogeneration or small power production.

The proposed rule strikes language referring to the rule's interconnection guidelines. This proposed rule change is necessary and reasonable to eliminate inconsistencies with interconnection standards separately set forth by the Commission, by order, in 2004.[2]

[2] *In the Matter of Establishing Generic Standards for Utility Tariffs for Interconnection and Operation of Distributed Generation Facilities under Minnesota Laws 2001, Chapter 212*, Docket No. E-999/CI-01-1023, Order Establishing Standards (September 28, 2004).

The Commission considered incorporating by reference the Commission's order setting forth the interconnection standards but did not pursue that approach in anticipation of changes to those standards in the reasonably foreseeable future.

7835.1200 – Availability of Filings

All filings required by parts 7835.0300 to 7835.1100 must be ~~made with~~ filed in the ~~commission~~ commission's electronic filing system and be maintained at the utility's general office and any other offices of the utility where rate case filings are kept. These filings must be available for public inspection at the commission and at the utility offices during normal business hours.

It is necessary and reasonable to amend the current rule language to include language on the Commission's electronic filing system, consistent with Minn. Stat. § 216.17, which requires utilities to file documents with the Commission using the Commission electronic filing system.

7835.1300 – General Reporting Requirements

Each utility interconnected with a qualifying facility must provide the commission with the information in parts 7835.1400 to 7835.1800 annually on or before ~~November~~ March 1~~, 1984, and annually thereafter~~, and in such form as the commission may require.

It is necessary and reasonable to amend this rule provision to require filings to be made by March 1, instead of November 1, consistent with the Commission's recent decision varying the rule.[3] In that case, the Commission varied this rule part so that the reporting date would coincide with the reporting deadline for the annual distributed generation interconnection report, which is required under Minn. Stat. § 216B.1611.

The March date enables utilities to report information on a calendar year basis, by giving them sufficient time to prepare and file an annual report for the preceding calendar year. Further, using the same reporting deadlines for related reports increases efficiency and clarity. The rule variance granted by the Commission applies indefinitely, and amending this rule part makes it clear that the deadline is, in fact, is March 1.

7835.2100 – Electrical Code Compliance ~~with National Electrical Safety Code.~~

Subpart 1. **Compliance; standards.** The interconnection between the qualifying facility and the utility must comply with the requirements of the National Electrical Safety Code~~, 1981 edition,~~ issued by the Institute of Electrical and Electronics Engineers ~~as American National Standards Institute Standard C2 (New York, 1980)~~. The interconnection is subject to subparts 2 and 3.

[3] This draft change is consistent with the Commission's decision granting a rule variance request to change the deadline for submitting the required reports from November 1 to March 1. See *In the Matter of Missouri River Energy Services Request for Approval of a Variance to Commission Rules Regarding Qualified Facilities Reporting*; Docket No. E-999/M-13-671 (Order dated September 25, 2013).

Subpart 2. **Interconnection.**

The interconnection customer is responsible for complying with all applicable Local, state, and federal codes, including building codes, the National Electric Code (NEC), the National Electric Safety Code (NESC), and noise and emissions standards. The Area Electric Power System will require proof of complying with the NEC before the interconnection is made. The interconnection customer must obtain installation approval from an electrical inspector recognized by the Minnesota State Board of Electricity.

Subp. 2. **Generation system.**

The Interconnection customer's generation system and installation must comply with the American National Standards Institute/Institute of Electrical and Electronics Engineers(ANSI/IEEE) standards applicable to the installation.

This proposed rule is necessary to include a more accurate citation to the National Electrical Safety Code. Further, it is necessary and reasonable to add two new subparts to more specifically describe the customer's responsibilities under that code, and it is reasonable to do so using language that references the code.

7835.2600 – Types of Power to be Offered; Standby Service.

Subp. 1. **Service to be offered.** The utility must offer maintenance, interruptible, supplementary, and backup power to the qualifying facility upon request.

Subp. 2. **Standby service; public utility.** A public utility may not impose a standby charge for standby service on a qualifying facility having 100 kilowatt capacity or less. A utility imposing rates on a qualifying facility having more than 100 kilowatt capacity must comply with an order of the commission establishing allowable costs.

Subp. 3. **Standby service; cooperative or municipality.** A cooperative electric association or municipal utility must offer a qualifying facility standby power or service consistent with its applicable tariff for such service adopted under Minnesota statutes, section 216B.1611, subdivision 3, clause (2).

This proposed rule incorporates recent statutory changes that prohibit standby charges on facilities with 100 kilowatts capacity or less.

Subpart 1 contains existing rule language requiring the utility to offer maintenance, interruptible, supplementary, and backup power to the qualifying facility upon request. Two of these (backup and maintenance) are included in the proposed rule definition of standby service.

Subpart 2 is necessary and reasonable to incorporate the statutory language that prohibits a public utility from imposing a standby charge on facilities with 100 kilowatt capacity or less.

This subpart also incorporates the statutory change that prohibits a public utility from imposing a standby charge on customers with more than 100 kilowatt capacity, except in accordance with an order of the Commission establishing allowable costs.

Subpart 3 is necessary and reasonable to set forth the requirements of a cooperative electric association or a municipal utility. The proposed rule clarifies that cooperatives and municipalities must offer standby service consistent with their applicable tariffs.

7835.3000 – Rates for Utility Sales to a Qualifying Facility to be Governed by Tariff

Except as otherwise provided in part 7835.3100, rates for sales to a qualifying facility must be governed by the applicable tariff for the class of electric utility customers to which the qualifying facility belongs or would belong were it not a qualifying facility.

This proposed rule includes a necessary and reasonable clarification stating that the applicable rate is the rate for the customer class to which the qualifying facility "belongs," or the class to which it would belong if it were not a qualifying facility.

7835.3150 Interconnection with Cooperative Electric Association or Municipal Utility

Parts 7835.3200 to 7835.4000 apply to interconnections between a qualifying facility and a cooperative electric association or municipal utility.

This proposed rule is necessary and reasonable to clarify that the rule parts identified govern interconnections between a qualifying facility and either a cooperative electric association or municipal utility (not interconnections with a *public* utility, which are governed by separate proposed rule changes).

7835.3200 – Standard Rates for Purchases by Cooperative Electric Associations and Municipal Utilities from Qualifying Facilities.

7835.3200 STANDARD RATES FOR PURCHASES ~~IN GENERAL~~ BY COOPERATIVE ELECTRIC ASSOCIATIONS AND MUNICIPAL UTILITIES FROM QUALIFYING FACLIITIES.

Supb. 1. Qualifying facilities with 100 kilowatt capacity or less. For qualifying facilities with capacity of 100 kilowatts or less, standard purchase rates apply. ~~Qualifying facilities with capacity of more than 100 kilowatts may negotiate contracts with the utility or may be compensated under standard rates if they make commitments to provide firm power.~~ The utility must make available three types of standard rates, described in parts 7835.3300, 7835.3400, and 7835.3500. The qualifying facility with a capacity of 100 kilowatts or less must choose interconnection under one of these rates, and must specify its choice in the written contract required in part 7835.2000. Any net credit to the qualifying facility must, at its option, be credited to its account with the utility or returned by check within 15 days of the billing date. The option chosen must be specified in the written contract required in part 7835.2000. Qualifying facilities remain responsible for any monthly service charges and demand charges specified in the

tariff under which they consume electricity from the utility.

Subp. 2. Qualifying facilities over 100 kilowatt capacity. A qualifying facility with more than 100 kilowatt capacity has the option to negotiate a contract with a utility, or if it commits to provide firm power, be compensated under standard rates.

This proposed rule includes a necessary and reasonable clarification under subpart 1 to more specifically state that the standard rates that apply are standard *purchase* rates. Further, it is necessary and reasonable to clarify the existing rule language by reorganizing the rule using two subparts, without amending the existing rule language now located in subpart 2.

7835.4010 through 7835.4015 – Interconnection with Public Utility.

7835.4010 INTERCONNECTION WITH PUBLIC UTILITY.

Parts 7835.4011 to 7835.4023 apply to interconnections between a qualifying facility and a public utility.

7835.4011 STANDARD RATES FOR PURCHASES BY PUBLIC UTILITIES FROM QUALFIYING FACILITIES.

Subp. 1. **Standard rates.** For qualifying facilities with less than 1,000 kilowatt capacity, standard rates apply. The utility must make available the types of standard rates described in parts 7835.4012 to 7835.4015. Qualifying facilities remain responsible for any monthly service charges and demand charges specified in the tariff under which they consume electricity from the utility.

Subp. 2. **Negotiated rates.** A qualifying facility with 1,000 kilowatt capacity or more has the option to negotiate a contract with a utility, or if it commits to provide firm power, be compensated under standards rates.

7835.4012 COMPENSATION.

Subp. 1. **Facilities with less than 40 kilowatt capacity.** A qualifying facility with less than 40 kilowatt capacity has the option to be compensated at the net energy billing rate, the simultaneous purchase and sale billing rate, or the time-of-day billing rate.

Supb. 2. **Facilities with at least 40 kilowatt capacity but less than 1,000 kilowatt capacity.** A qualifying facility with at least 40 kilowatt capacity but less than 1,000 kilowatt capacity has the option to be billed at the simultaneous purchase and sale billing rate or at the time-of-day billing rate.

7835.4013 AVERAGE RETAIL ENERGY RATE.

Subp. 1. **Method of billing.** The utility must bill the qualifying facility for the energy supplied by the utility that exceeds the amount of energy supplied by the qualifying facility during each billing period according to the utility's applicable retail rate schedule.

Subp. 2. **Additional calculations for billing.** When the energy generated by the qualifying facility exceeds that supplied by the utility during a billing period, the utility must compensate the qualifying facility for the excess energy at the average retail utility energy rate.

7835.4014 SIMULTANEOUS PURCHASE AND SALE BILLING RATE.

Subp. 1. **Method of billing.** The qualifying facility must be billed for all energy and capacity it consumes during a billing period according to the utility's applicable retail rate schedule.

Subp. 2. **Compensation to qualifying facility.** The utility must purchase all energy and capacity which is made available to it by the qualifying facility. At the option of the qualifying facility, its entire generation must be deemed to be made available to the utility. Compensation to the qualifying facility must be the sum of items A and B.

A, The energy component must be the appropriate system average incremental energy costs shown on schedule A; or if the generating utility has not filed schedule A, the energy component must be the energy rate of the retail rate schedule, applicable to the qualifying facility, filed in lieu of schedules A and B; or if the nongenerating utility has not filed schedule A, the energy component must be the energy rate shown on schedule H.

B. If the qualifying facility provides firm power to the utility, the capacity component must be the utility's net annual avoided capacity cost per kilowatt-hour averaged over all hours shown on schedule B; or if the generating utility has not filed schedule B, the capacity component must be the demand charge per kilowatt, if any, of the retail rate schedule, applicable to the qualifying facility, filed in lieu of schedules A and B, divided by the number of hours in the billing period; or if the nongenerating utility has not filed schedule B, the capacity component must be the capacity cost per kilowatt shown on schedule H, divided by the number of hours in the billing period. If the qualifying facility does not provide firm power to the utility, no capacity component may be included in the compensation paid to the qualifying facility.

7835.4015 TIME-OF-DAY PURCHASE RATES.

Subp. 1. **Method of billing.** The qualifying facility must be billed for all

energy and capacity it consumes during each billing period according to the utility's applicable retail rate schedule. Any utility rate-regulated by the commission may propose time-of-day retail rate tariffs which require qualifying facilities that choose to sell power on a time-of-day basis to also purchase power on a time-of-day basis.

Subp. 2. **Compensation to qualifying facility.** The utility must purchase all energy and capacity which is made available to it by the qualifying facility. Compensation to the qualifying facility must be the sum of items A and B.

A. The energy component must be the appropriate on-peak and off-peak system incremental costs shown on schedule A; or if the generating utility has not filed schedule A, the energy component must be the energy rate of the retail rate schedule applicable to the qualifying facility, filed in lieu of schedules A and B; or if the nongenerating utility has not filed schedule A, the energy component must be the energy rate shown on schedule H.

B. If the qualifying facility provides firm power to the utility, the capacity component must be the utility's net annual avoided capacity cost per kilowatt-hour averaged over the on-peak hours as shown on schedule B; or if the generating utility has not filed schedule B, the capacity component must be the demand charge per kilowatt, if any, of the retail rate schedule applicable to the qualifying facility, filed in lieu of schedules A and B, divided by the number of on-peak hours in the billing period; or if the nongenerating utility has not filed schedule B, the capacity component must be the capacity cost per kilowatt shown on schedule H, divided by the number of on-peak hours in the billing period. The capacity component applies only to deliveries during on-peak hours. If the qualifying facility does not provide firm power to the utility, no capacity component may be included in the compensation paid to the qualifying facility.

These proposed rules govern interconnections between a public utility and a qualifying facility with less than 1,000 kilowatt capacity. They set forth the applicable compensation rates for a customer's monthly energy production. The language comes from existing rules, which – prior to the proposed rule changes – apply these rates to all interconnections.[4] As a result of the recent statutory changes that increase the capacity limit to *up to 1,000 kilowatts* for qualifying facilities that interconnect to a *public* utility, it is necessary and reasonable to apply these rates to the larger facilities.

Customer compensation is based on the size of the system, for which there are two size categories: less than 40 kilowatt capacity; and at least 40 kilowatt capacity but less than 1,000 kilowatt capacity. The statute authorizes compensation at either the avoided cost rate or the average retail energy rate. The avoided cost rate is available to all qualifying facilities. But

[4] See Minn. R. 7835.3200 through 7835.3500.

smaller facilities with less than 40 kW capacity and interconnected to a public utility have the option to be compensated for input into the utility's system at the average retail energy rate.

Under the proposed rule changes, the average retail energy rate (generally higher than the avoided cost rate) is described as the net energy billing rate. The avoided cost rate is made available using either the simultaneous purchase and sale billing rate, or the time-of-day purchase rate. Consistent with the statutory changes, a larger qualifying facility (with at least 40 kilowatt capacity but less than 1,000 kilowatt capacity) does not have the option to be compensated at the average retail energy rate and must be compensated at the avoided cost rate.

There is, however, an exception for larger facilities *if* the facility is a *net metered facility* with capacity of 40 kilowatts or greater but less than 1,000 kilowatts. A net metered facility is a facility that generates electricity from natural gas, renewable fuel, or a similarly clean fuel (which may include waste heat, cogeneration, or fuel cell technology). Under the statute, a customer with a net metered facility has the option to be compensated in the form of a kilowatt-hour credit on the customer's bill, which is, in effect, the average retail energy rate. This exception is further addressed in the discussion of rule parts 7835.4016 and 7835.4017 below.

Further, some comments from the committee suggested including compliance provisions to govern situations where the customer's production reaches 40 kW capacity or greater. The proposed rules do not, however, reach compliance issues. It is not clear to what extent compliance issues might arise under the statutory and rule changes, and further experience with these issues will assist informed decision-making. It is therefore not necessary at this time to include compliance provisions without experience to illustrate what provisions would be reasonable. Additionally, any compliance issues brought to the Commission can be decided on a case-by-case basis, using either the Commission's informal review process under Minn. R. Ch. 7829 or using contested case proceedings under Minn. Stat. Ch. 14.

7835.4016– Individual System Capacity Limits.

Subp 1. **Applicability.** Individual system capacity limits are subject to the requirements in Minnesota Statutes, section 216B.164, subdivision 4c.

Subp. 2. **Usage history.** A facility subject to capacity limits with less than 12 calendar months of actual electric usage or no demand metering available is subject to limits based on data for similarly situated customers combined with any actual data for the facility.

The statute authorizes a public utility to limit the total generation capacity of individual distributed generation systems, including wind and solar generation systems.[5] The limits apply to customers with a system having at least 40 kilowatt capacity but less than 1,000 kilowatt capacity. A customer governed by this provision has the option to be compensated for net input in the form of a kilowatt-hour credit on the customer's bill, which is, in effect, the retail rate.

For wind, the capacity limit is based on maximum electric demand. For solar and all other distributed generation, the capacity limit is based on annual electric energy consumption. These

[5] Minn. Stat. § 216B.164, subd. 4c.

limits are based on usage during the previous 12 calendar months or based on a reasonable estimate if there is less than 12 calendar months of actual electric usage or if there is no demand metering available.

The proposed rule language is necessary and reasonable to incorporate the statutory changes. Further, the proposed rule clarifies the statute's use of a reasonable estimate for a facility with less than 12 calendar months of actual electric usage. It is necessary and reasonable to incorporate a standard method of determining an estimate.

Some advisory committee members suggested including compliance provisions to govern situations where the customer's production exceeds capacity limits. The proposed rules do not, however, reach compliance issues. It is not clear to what extent compliance issues might arise under the statutory and rule changes, and further experience with these issues will assist informed decision-making. It is therefore not necessary at this time to include compliance provisions without experience to illustrate what provisions would be reasonable. Additionally, any compliance issues brought to the Commission can be decided on a case-by-case basis, using either the Commission's informal review process under Minn. R. Ch. 7829 or using contested case proceedings under Minn. Stat. Ch. 14.

7835.4017 – Net Metered Facility. Bill Credits.

Subp. 1. **Kilowatt-hour credit.** A customer with a net metered facility can elect to be compensated for net input into the utility's system in the form of a kilowatt-hour-credit on the customer's bill, subject to Minnesota Statutes, section 216B.164, subdivision 3a, and the following conditions:

A) the customer is not receiving a value of solar rate under Minnesota Statutes, section 216B.164, subdivision. 10;

B) the customer is interconnected with a public utility; and

C) the net metered facility has a capacity of at least 40 kilowatt capacity but less than 1,000 kilowatt capacity.

Subp. 2. **Notification to customer.** A public utility must notify the customer of the option to be compensated for net input in the form of a kilowatt-hour credit under subpart 1. The public utility must inform the customer that if the customer does not elect to be compensated for net input in the form of a kilowatt-hour credit on the bill, the customer will be compensated for the net input at the utility's avoided cost rate, as described in the utility's tariff for that customer class.

Subp. 3. **End-of-year net input.** A public utility must compensate the customer, in the form of a payment, for any net input remaining at the end of the calendar year at the utility's avoided cost rate, as described in the utility's tariff for that class of customer.

This proposed rule incorporates statutory changes governing net metered facilities. The statute permits a customer participating in net metering to be compensated for net input into the utility's system in the form of a kilowatt-hour credit on the customer's bill.

While the statute states that the customer has the option to be compensated for the customer's net input into the utility system in the form of a kilowatt-hour credit on the bill carried forward and applied to subsequent energy bills, the statute also states that any net input supplied by the customer during a calendar year must be compensated at the *applicable* rate.

Compensation in the form of a kilowatt-hour credit on the bill is, in effect, the retail rate. The statute does not, however, clarify what rate applies to a customer's remaining net input balance at the end of a calendar year. The Commission received comments suggesting that the rules clarify the applicable rate. Some comments recommended using the avoided cost rate as the "applicable rate" and suggested that a utility's tariff prescribing applicable avoided cost billing rates would apply. Other comments stated that the applicable rate should be the retail rate, which is usually higher than the avoided cost rate.

It is necessary to clarify at what rate a utility must compensate a customer, and it is reasonable to limit compensation for net input at the end of a calendar year to the avoided cost rate applicable to that class of customer. This approach strikes an even balance between furthering the statutory goal of encouraging customers to offset their energy use and limiting incentives to produce energy beyond what is needed by the customer.

7835.4018 – Aggregation of Meters

A public utility must aggregate meters at the request of a customer as described in Minnesota Statutes, section 216B.164, subdivision 4a.

This proposed rule includes a necessary and reasonable reference to the statutory provision governing aggregation of meters to clarify that regulated entities are subject to the statutory provision cited.

7835.4019 – Qualifying Facilities of 1,000 Kilowatt Capacity or More

A qualifying facility with capacity of 1,000 kilowatt capacity or more must negotiate a contract with the utility to set the applicable rates for payments to the customer of avoided capacity and energy costs. Nothing in parts 7835.4010 to 7835.4015 prevents a utility from connecting qualifying facilities of greater than 1,000 kilowatt capacity under its avoided cost rates.

This proposed rule adds language governing facilities with 1,000 kilowatt capacity or more. The proposed language extends existing rule language that is applicable to smaller facilities.[6] Prior to the statutory changes, a facility with 40 kilowatts capacity or more was required to negotiate a contract with the utility to set applicable rates. The proposed rule is necessary and reasonable to apply the same standard to larger facilities by requiring the parties to negotiate a contract that

[6] See Minn. R. 7835.3600.

sets the applicable rates for facilities interconnected to a public utility with a capacity of 1,000 kilowatts or more.

7835.4020 – Amount of Capacity Payments; Considerations.

The qualifying facility which negotiates a contract under part 7835.4019 must be entitled to the full avoided capacity costs of the utility. The amount of capacity payments must be determined through consideration of:

A. the capacity factor of the qualifying facility;

B. the cost of the utility's avoidable capacity;

C. the length of the contract term;

D. reasonable scheduling of maintenance;

E. the willingness and ability of the qualifying facility to provide firm power during system emergencies;

F. the willingness and ability of the qualifying facility to allow the utility to dispatch its generated energy;

G. the willingness and ability of the qualifying facility to provide firm capacity during system peaks;

H. the sanctions for noncompliance with any contract term; and

I. the smaller capacity increments and the shorter lead times available when capacity is added from qualifying facilities.

This proposed rule is necessary and reasonable to extend existing rule language governing capacity payments (applicable to cooperative electric associations and municipal utilities) to interconnections between a public utility and facilities with 1,000 kilowatts or more.[7]

7835.4021 – Utility Treatment of Costs

All purchases from qualifying facilities with capacity of less than 40 kilowatt and purchases of energy from qualifying facilities with capacity of 40 kilowatt or more must be considered an energy cost in calculating a utility's fuel adjustment clause.

This proposed rule is necessary and reasonable to extend existing rule language governing utility treatment of costs (applicable to cooperative electric associations and municipal utilities) to interconnections with a public utility.[8]

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[7] See Minn. R. 7835.3700.
[8] See Minn. R. 7835.4000.

7835.4022 – Limiting Cumulative Generation

A public utility requesting that the commission limit cumulative generation of net metered facilities under Minnesota Statutes, section 216B.164, subdivision 4b, must file its request with the commission under chapter 7829.

This proposed rule includes a reference to the statutory provision governing cumulative generation. It is necessary and reasonable to clarify that limits on cumulative generation are subject to the statutory provision cited.

7835.4023 – Alternative Tariff for Value of Solar

If a public utility has received commission approval of an alternative tariff for the value of solar under Minnesota Statutes, section 216B.164, subdivision 10, the tariff applies to new solar photovoltaic interconnections effective after the tariff approval date.

This proposed rule includes a reference to the statutory provision governing the value of solar. It is necessary and reasonable to clarify that applying a value of solar rate is subject to the statutory provision cited.

7835.4750 – Interconnection Standards

Prior to signing the uniform statewide contact, a utility must distribute to each customer a copy of, or electronic link to, the commission's order establishing interconnection standards dated September 28, 2004 in docket number E-999/CI-01-1023. The utility must provide each customer a copy of, or electronic link to, subsequent changes made by the commission to any of those standards.

Several existing rule provisions contain interconnection standards or guidelines. The rule standards are not, however, nearly as extensive as the interconnection standards set by the Commission in 2004.[9] The Commission's 2004 standards were implemented consistent with a statutory directive under Minn. Stat. § 216B.1611 and apply to each public utility. Cooperative electric associations and municipal electric utilities were required to adopt tariffs consistent with those standards.

The Commission considered incorporating by reference the Commission's order setting forth the current interconnection standards but did not pursue that approach in anticipation of changes to those standards in the reasonably foreseeable future. The proposed rule therefore requires the utility to provide a customer a copy of, or link to, the Commission's standards and any subsequent changes.

[9] *In the Matter of Establishing Generic Standards for Utility Tariffs for Interconnection and Operation of Distributed Generation Facilities under Minnesota Laws 2001, Chapter 212*, Docket No. E-999/CI-01-1023, Order Establishing Standards (September 28, 2004).

The draft therefore also repeals the following rules that include interconnection standards and that were codified prior to the Commission's order establishing interconnection standards: 7835.2300; 7835.2500; 7835.2700; 7835.2900 and parts 7835.4800 through .5800.

Some advisory committee members identified two other issues for further development: whether to require a production meter at every customer site and whether to require that the customer's system be sized based on customer consumption. The proposed rules do not reach these issues, and the statute does not address them.

The Commission's 2004 interconnection standards set forth generation metering, monitoring, and reporting requirements, which vary depending on the method of interconnection and size of the generation system. They do not require a production meter at every site, and revisiting the Commission's interconnection standards would appear to be the most appropriate method for further exploring this issue.

There were concerns that without any system sizing requirement, production could exceed consumption and increase net input to unanticipated levels, possibly raising safety and reliability issues for the utility's system, and some committee members therefore suggested including a system size requirement in the rules. The statute, however, incentivizes limits on production by making available the retail compensation rate to customers operating within applicable limits. The lower, avoided cost rate applies if the customer's production exceeds those limits. Further, revisiting the Commission's interconnection standards would appear to be the most appropriate method for addressing issues governing technical requirements and specifications for facility size.

7835.5900 – Existing Contracts

Any existing interconnection ~~contracts~~ contract executed between a utility and a qualifying facility with ~~installed~~ capacity of less than 40 kilowatts ~~before November 13, 1984, may be canceled and replaced with the uniform statewide contract at the option of either party by either party giving the other written notice~~ remains in force until terminated by mutual agreement of the parties. ~~The notice is effective upon the shortest period permitted under the existing contract for termination, but not less than ten nor more than 30 days.~~

This proposed rule incorporates the recent statutory changes governing use of the uniform statewide contract. It is both necessary and reasonable to clarify that an existing contract remains in force until terminated by mutual agreement of the parties.

7835.5950 – Renewable Energy Credit. Ownership

A qualifying facility owns all renewable energy credits unless other ownership is expressly provided for in the contract between the generator and a utility under part 7835.9910.

This proposed rule incorporates the Commission's recent decision on Renewable Energy Credits ownership.[10] It is reasonable and necessary to include rule language on renewable energy credit ownership and to do so consistent with the Commission's recent decision on the issue.

7835.9910 – Uniform Statewide Contract; Form

The form for the uniform statewide contract ~~for use~~ must be applied to all new and existing interconnections between a utility and cogeneration and small power production facilities having less than ~~40~~ 1,000 kilowatts of capacity~~: is as follows:~~, except as described in part 7835.5900.

UNIFORM STATEWIDE CONTRACT FOR COGENERATION AND SMALL POWER PRODUCTION FACILITIES

THIS CONTRACT is entered into _____, ____, by _____ (hereafter called " Utility") and _____ (hereafter called "QF").

RECITALS

The QF has installed electric generating facilities, consisting of _____

_____

_____ (Description of facilities), rated at ~~less than 40~~ _____kilowatts of electricity, on property located at _____.

The QF is prepared to generate electricity in parallel with the Utility.

The QF's electric generating facilities meet the requirements of the Minnesota Public Utilities Commission (hereafter called "Commission") rules on Cogeneration and Small Power Production and any technical standards for interconnection the Utility has established that are authorized by those rules.

The Utility is obligated under federal and Minnesota law to interconnect with the QF and to purchase electricity offered for sale by the QF.

A contract between the QF and the Utility is required by the Commission's rules.

AGREEMENTS

The QF and the Utility agree:

1. The Utility will sell electricity to the QF under the rate schedule in force for the class of customer to which the QF belongs.

2. The Utility will buy electricity from the QF under the current rate schedule filed with the Commission. The QF ~~has elected~~ elects the rate schedule category hereinafter indicated ~~(select one)~~:

____ a. Net energy billing rate under part 7835.3300.

[10] *In the Matter of a Commission Inquiry into Ownership of Renewable Energy Credits Used to Meet Minnesota Requirements*, Docket No. E-999/CI-13-720, Order Determining Renewable Energy Credit Ownership Under Minn. Stat. § 216B.164 (July 22, 2014).

____ b. Simultaneous purchase and sale billing rate under part 7835.3400.

____ c. Time-of-day purchase rates under part 7835.3500.

A copy of the presently filed rate schedule is attached to this contract.

3. The Utility will buy electricity from the QF under the current rate schedule filed with the Commission. If the QF has less than 40 kilowatts capacity, the QF elects the rate schedule category hereinafter indicated:

____ a. Net energy billing rate under part 7835.4013.

____ b. Simultaneous purchase and sale billing rate under part 7835.4014.

____ c. Time-of-day purchase rates under part 7835.4015.

A copy of the presently filed rate schedule is attached to this contract.

4. The Utility will buy electricity from the QF under the current rate schedule filed with the Commission. If the QF has at least 40 kilowatts capacity but less than 1,000 kilowatt capacity, the QF elects the rate schedule category hereinafter indicated:

____ a. Simultaneous purchase and sale billing rate under part 7835.4014.

____ b. Time-of-day purchase rates under part 7835.4015.

A copy of the presently filed rate schedule is attached to this contract.

~~3~~ 5. The rates for sales and purchases of electricity may change over the time this contract is in force, due to actions of the Utility or of the Commission, and the QF and the Utility agree that sales and purchases will be made under the rates in effect each month during the time this contract is in force.

~~4~~ 6. The Utility will compute the charges and payments for purchases and sales for each billing period. Any net credit to the QF will be made under one of the following options as chosen by the QF:

____ 1. Credit to the QF's account with the Utility.

____ 2. Paid by check to the QF within 15 days of the billing date.

7. Renewable energy credits associated with generation from the facility are owned by:

_____

~~5~~ 8. The QF must operate its electric generating facilities within any rules, regulations, and policies adopted by the Utility not prohibited by the Commission's rules on Cogeneration and Small Power Production which provide reasonable technical connection and operating specifications for the QF. This agreement does not waive the QF's right to bring a dispute before the Commission as authorized by Minnesota Rules, ~~parts 7835.4800, 7835.5800, and~~, part 7835.4500~~,~~ and any other provision of the Commission's rules on Cogeneration and Small Power Production authorizing Commission resolution of a dispute.

~~6~~ 9. The Utility's rules, regulations, and policies must conform to the Commission's rules on Cogeneration and Small Power Production.

~~7~~ 10. The QF will operate its electric generating facilities so that they conform to the national, state, and local electric and safety codes, and will be responsible for the costs of conformance.

~~8~~ 11. The QF is responsible for the actual, reasonable costs of interconnection which are estimated to be $_____. The QF will pay the Utility in this way:

_____

_____.

~~9~~ 12. The QF will give the Utility reasonable access to its property and electric generating facilities if the configuration of those facilities does not permit disconnection or testing from the Utility's side of the interconnection. If the Utility enters the QF's property, the Utility will remain responsible for its personnel.

~~10~~ 13. The Utility may stop providing electricity to the QF during a system emergency. The Utility will not discriminate against the QF when it stops providing electricity or when it resumes providing electricity.

~~11~~ 14. The Utility may stop purchasing electricity from the QF when necessary for the Utility to construct, install, maintain, repair, replace, remove, investigate, or inspect any equipment or facilities within its electric system. The Utility will notify the QF before it stops purchasing electricity in this way:

_____

_____.

~~12~~ 15. The QF will keep in force liability insurance against personal or property damage due to the installation, interconnection, and operation of its electric generating facilities. The amount of insurance coverage will be $_____ (The ~~utility may not require an amount greater than $300,000~~ amount must be consistent with the Commission's interconnection standards under rule part 7835.4750).).

~~13~~ 16. This contract becomes effective as soon as it is signed by the QF and the Utility. This contract will remain in force until either the QF or the Utility gives written notice to the other that the contract is canceled. This contract will be canceled 30 days after notice is given.

~~14~~ 17. This contract contains all the agreements made between the QF and the Utility except that this contract shall at all times be subject to all rules and orders issued by the Public Utilities Commission or other government agency having jurisdiction over the subject matter of this contract. The QF and the Utility are not responsible for any agreements other than those stated in this contract.

THE QF AND THE UTILITY HAVE READ THIS CONTRACT AND AGREE TO BE BOUND BY ITS TERMS. AS EVIDENCE OF THEIR AGREEMENT, THEY HAVE EACH SIGNED THIS CONTRACT BELOW ON THE DATE WRITTEN AT THE BEGINNING OF THIS CONTRACT.

QF

By:_____

UTILITY

By:_____

(Title)

This proposed rule contains necessary and reasonable changes to the uniform statewide contract that correspond to proposed rule changes affecting the terms and conditions contained in the contract. Specifically, under "Recitals," the description of a facility with "less than 40 kilowatts" is changed to ensure that interconnections with facilities having less than 1,000 kilowatt capacity

are governed by the contract, consistent with the recent statutory changes. The customer will instead specify the size of the facilities.

There are necessary and reasonable clarifications to Agreement terms 2 through 4 of the contract. These changes list the billing options available to larger facilities, consistent with the statutory changes and proposed rule changes to parts 7835.4013 through 7835.4015. Agreement term 7 is new and requires that the contract list the owner of renewable energy credits, consistent with proposed rule part 7835.5950, which governs ownership of renewable energy credits. Agreement term 15 includes a necessary and reasonable clarification to strike language setting a limit on liability insurance. Liability insurance is governed by the Commission's order setting interconnection standards, and those standards are referred to in proposed rule part 7835.4750.

7835.9920 – Non-standard Provisions

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 to chapter 7829 and must identify all provisions the utility intends for use in its contract with a qualifying facility.

This proposed rule is necessary and reasonable to permit a utility to implement non-standard provisions approved by the Commission. It is reasonable to require the filing to be made consistent with the Commission's rules of practice and procedure.

VII.
REGULATORY ANALYSIS

The Administrative Procedure Act requires the statement of need and reasonableness to address the regulatory issues set forth and addressed below.

(1) A description of the class of persons who will probably be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule. Minn. Stat. § 14.131 (1).

The following persons will probably be affected by the proposed rules:

- Minnesota utilities providing retail electric service.
- Retail electric customers installing cogeneration or distributed generation facilities to offsetting their energy use.
- Retail electric customers whose utility providers will purchase energy production, including renewable energy production, from qualifying facilities.

The following persons will probably bear the costs of the proposed rules:

- Minnesota electric retail utilities, which must implement the rule's requirements.
- Public utility ratepayers, whose rates could ultimately reflect any long-term cost increases resulting from compliance.

The following persons will probably benefit from the proposed rule:

- Retail electric customers, who will offset their energy costs by producing their own electricity.
- Retail electric customers, who will offset reliability concerns during outages by using electricity they are producing.
- Utilities providing retail electric service and their customers, who will benefit from increased energy efficiency, including increased use of renewable energy resources.
- Utilities providing retail electric service and their customers, who will experience environmental benefits from increased energy efficiency, including increased use of renewable energy resources.
- Government agencies with regulatory responsibilities whose enforcement responsibilities will be clearer under rules consistent with recent statutory changes.

(2) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues. Minn. Stat. § 14.131 (2).

The proposed rules will make claims on the resources of the Commission and the Department of Commerce, the agencies with regulatory responsibilities for utilities implementing the proposed changes, and possibly on the Antitrust and Utilities Division of the Office of the Attorney General, which represents the interests of residential and small business ratepayers. In relation to existing rules, however, the probable costs to these agencies to implement and enforce the proposed rules are negligible.

The Commission does not expect this rule to have any effect on state revenues.

(3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule. Minn. Stat. § 141.131 (3).

The proposed rules were developed to comply with recent statutory changes, and no less costly or less intrusive methods were identified by stakeholders or the Commission in the course of rule development.

(4) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule. Minn. Stat.§ 141.131 (4)

The Commission concluded that the statutory changes required amending the rules to comply with those changes, precluding use of other less intrusive or less costly approaches.

(5) The probable costs of complying with the proposed rules. Minn. Stat. § 14.131. (5)

The proposed rules do not impose costs on anyone. Without the proposed rule changes, compliance with, and enforcement of, the rules could ultimately result in increased costs by creating uncertainty as to how the rules apply or by requiring frequent rule variances.

(6) The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals; Minn. Stat. § 14.131. (6)

The rules are necessary to incorporate recent statutory changes, which the Legislature implemented in 2013. In the absence of a rule change, the existing rules would not comply with the changes made to Minn. Stat. § 216B.164. This could hinder both enforcement and compliance with applicable law. Only through this rulemaking proceeding can the Commission's rules be updated to effectively incorporate the legislative changes, and therefore the Commission has determined there is no other less costly or less intrusive method for achieving the purpose of the proposed rule.

(7) An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference. Minn. Stat. § 14.131 (7)

The Commission has examined the federal regulations and is not aware of any differences between the proposed rules and any federal regulations.

(8) An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. Minn. Stat. § 14.131 (8)

The Commission is not aware of any cumulative effects of the rule with other federal and state regulations related to the specific purpose of the rule, which is to govern interconnections with qualifying facilities having less than 1,000 kilowatt capacity consistent with recent statutory changes. The Commission worked with an advisory committee during this rulemaking proceeding and no one on the committee or attending the advisory committee meetings identified any such cumulative effects.

VIII.
CONSIDERATION OF PERFORMANCE BASED REGULATORY SYSTEMS

Minn. Stat. § 14.002 requires agencies to develop rules and regulatory programs that emphasize superior achievement in meeting regulatory goals while retaining maximum flexibility for agencies and regulated parties in meeting those goals. Minn. Stat. § 14.131 requires agencies to explain in their statements of need and reasonableness how they have taken this legislative policy into account.

The Commission was guided by performance-based regulatory principles as it developed these rules. The rules incorporate recent statutory changes and extend duties and burdens no further than is necessary to incorporate the legislative changes.

IX.
COST OF RULE COMPLIANCE

The Commission has consulted with the Department of Minnesota Management and Budget (MMB), as required by Minnesota Statutes § 14.131, to help evaluate the fiscal impact and fiscal benefits of the proposed rule on local units of government. MMB stated that it did not appear that the proposed rule changes would result in significant costs to local units of government.

MMB stated that the potential fiscal impacts on local units of government relate to their status as ratepayers of a utility. As a customer, a local unit of government could offset its energy usage, resulting in cost savings, depending on the investments (such as solar panels) made to produce its own energy. The proposed rule changes could also affect local units of governments as ratepayers, whose rates could ultimately reflect any long-term cost increases resulting from compliance. Requested rate changes by a public utility are, however, subject to contested case proceedings and Commission review.

MMB also stated that the proposed rule amendments could possibly impact municipal electric utilities and cooperative electric associations, who will be affected by changes that, for example, amend filing requirements to increase efficiency.

While Minnesota Statutes § 14.127 directs agencies to evaluate the cost its rules will impose on small businesses or cities, the proposed rules are exempt from this requirement. See Minnesota Statutes § 14.127, subdivision 4(d).

X.
EFFECTS ON LOCAL GOVERNMENTS

The Commission has determined, under Minn. Stat. § 14.128, that no local unit of government will be required to adopt or amend an ordinance or other regulation to comply with the proposed rule changes governing cogeneration and small power production.

The Commission makes this determination based on its Statement of Need and Reasonableness (SONAR), the comments received, the review conducted by the Commissioner of Management and Budget, and the input and feedback provided by the advisory committee.

On pages 23 and 24 of the SONAR, the Commission identified persons who would likely be affected by and bear the costs of the rules. These include utilities providing retail electric service and their ratepayers. The rules do not impose specific requirements, administrative burdens, or costs on local units of government. The Commission has therefore determined that local governments will not be required to adopt or amend ordinances or other regulations to comply with the proposed rules.

Furthermore, the Commission consulted with the Commissioner of Management and Budget, as required by Minn. Stat. § 14.131. The Commissioner of Management and Budget determined that it does not appear that there will be a significant cost to local units of government.

Additionally, neither the comments received from stakeholders nor the feedback from the advisory committee indicated that local governments would be significantly affected by, or required to adopt or amend local regulations to comply with, the proposed rules.

XI.
LIST OF WITNESSES

The Commission does not plan to rely on any non-agency witnesses at any rule hearing.

XII.
ADDITIONAL NOTICE PLAN

To ensure the public has sufficient notice to participate in a proposed rulemaking, the Administrative Procedure Act requires agencies to take certain prescribed steps to publicize their rulemakings. In addition, Minnesota Statutes § 14.14, subdivision 1a requires agencies to make unspecified additional efforts to notify persons who might be affected by proposed rules, and § 14.131 requires agencies to describe these efforts in their Statements of Need and Reasonableness.

The Commission plans to publicize its proposed rule changes in the following manner:

- Publishing the Notice of Intent to Adopt Rules, and text of the proposed rule changes, in the *State Register*.
- Mailing a copy of the Notice of Intent to Adopt Rules to everyone who has requested to receive it pursuant to Minnesota Statutes § 14.14, subdivision 1a.
- Giving notice to the Legislature as required by Minnesota Statutes § 14.116.
- Publishing the Notice of Intent to Adopt Rules and this Statement of Need and Reasonableness, including the text of the proposed rules, on the Commission's website at http://mn.gov/puc/index.html.
- Mailing the Notice of Intent to Adopt Rules to Minnesota's electric utilities.
- Mailing the Notice of Intent to Adopt Rules to everyone on the Commission's official service list for this proceeding.
- Issuing a press release to all newspapers of general circulation throughout the state.

XIII.
CONCLUSION

For all the reasons set forth above, the Commission respectfully submits that the proposed rules are both needed and reasonable.

Burl W. Haar
Executive Secretary