STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

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In the Matter of a Request for Dispute Resolution with People's Energy Cooperative under the Cogeneration and Small Power Production Statute, Minn. Stat. §216B.164	**MINNESOTA SOLAR ENERGY INDUSTRY ASSOCIATION'S REPLY COMMENTARY ON THE DISPUTE BETWEEN PEOPLE'S ENERGY COOPERATIVE AND ALLAN MILLER'S QUALIFIED FACILITY**
Docket No. E-132/CG-15-255	**Date: 7/10/2015**

REPLY COMMENTS

I. H.F. No. 1437 Ultimately Passed, But It Is Not Implicated In This Instance, Because People's Energy Cooperative Was Charging Its Fee Prior To July 1, 2015.

In our last comments we argued that the state Legislature had attempted to make fees, like People's Energy Cooperative's (PEC), legal, but Governor Dayton had vetoed the legislative action.[1] We articulated that "[t]he failed H.F. No. 1437 provides even further evidence that PEC is acting improperly here" and "[t]he Legislature believes that charging a net metering fee is currently illegal, and although it attempted to alter the fees' legality, the state did not legalize the practice."[2] The fee provision was passed, however, in special session.

The following pertinent language was passed into law:

> Subd. 3. **Purchases; small facilities.** (a) This *paragraph applies to cooperative electric associations* and municipal utilities. For a qualifying facility having less than 40-kilowatt capacity, the customer shall be billed for the net energy supplied by the utility according to the applicable rate schedule for sales to that class of customer. A cooperative electric association or municipal utility may charge an additional fee to recover the fixed costs not already paid for by the customer through the customer's existing billing arrangement. Any additional charge by the utility must be reasonable and appropriate for that class of customer based on the

[1] COMMENTS, MINNESOTA SOLAR ENERGY INDUSTRIES ASSOCIATION, DOCKET NO. E.132/CG-15-255, Doc. ID. 20156-11171-01 at 5.

[2] *Id.*

> most recent cost of service study. The cost of service study must be made available for review by a customer of the utility upon request. 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) or, (d), or (f).[3]

The new legislation, however, has an effective date that states "[t]his section is effective July 1, 2015, and applies to customers *installing net metered systems after that day*."[4] Fees like PEC's are now allowed under state law, but they can only apply to systems installed after July 1, 2015. PEC was applying its fee prior to this new legislation's enactment, and as such, the fee we discuss today should be removed and all parties affected by the fee must be compensated.

The new Legislation brings with it several future points of confusion, because many of the new additions are subject to interpretation. One such issue of interpretation, which the Commission may seek to alleviate today, is what it takes for a fee to be "reasonable and appropriate based on the most recent cost of service study" and where or how these reasonableness questions should be handled going forward.[5]

This issue will likely be brought back to the Commission at a later date as customers begin to question whether a fee is too high. So any guidance the Commission would feel comfortable providing in its order would be useful going forward.

II. Minn. Stat. § 216B.164 Prohibits This Fee.

Both the Minnesota Rural Electric Association (MREA) and the Minnesota Municipals Utilities Association (MMUA) have argued that "[n]either Minn. Stat. § 216B.164, nor Minn. Rules, Part 7835.3000, nor the federal Public Utilities Regulatory Policy Act (PURPA), nor the PURPA rules prohibit this additional charge."[6] But this is false.

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3 State of Minnesota, House of Representatives, H.F. No. 1437 (May 18, 2015) (amending Minn. Stat. 216B.164, subd. 3 (b)).

4 State of Minnesota, House of Representatives, H.F. No. 3, Chapter 1 of Final Engrossment, Article 3 § 21 (available at: https://www.revisor.mn.gov/laws/?id=1&year=2015&type=1#laws.3.21.0).

5 *Id.*

6 COMMENTS – IN SUPPORT OF PEC, MINNESOTA RURAL ELECTRIC ASSOCIATION, DOCKET NO. E.132/CG-15-255, Doc. ID. 20156-111165-01 at 2 (6/4/2015); *See also* COMMENTS, MINNESOTA MUNICIPAL UTILITIES ASSOCIATION, DOCKET NO. E.132/CG-15-255, Doc. ID. 20156-111145-01 at 2-3 (6/4/2015) (stating that "[a]lternatively, the statute could provide prohibitions or conditions for cooperatives and municipals elsewhere. But it does not. Thus there is no ambiguity regarding whether the legislature intends for cooperatives and municipals to be limited in this regard. Clearly it does not.").

Minn. Stat. § 216B.164, subd. 3 (a) - which explicitly applies to cooperatives - articulates that "[f]or a qualifying facility having less than 40-kilowatt capacity, the customer *shall* be billed for the net energy supplied by the utility according to the applicable rate schedule for sales to that class of customer."[7] There is further discussion in the statute as to what the customer should be paid for excess. But until the recent legislative changes, this was the full description of what cooperatives can bill for their net-metering customers' generation.

Both MREA and MMUA suggest that because the Legislature had not directly said fees could not be charged, that it followed fees could be charged. But the statute does not contemplate additional fees, because it states that the only thing a net-metered customer can be billed for is the "net energy supplied by the utility."[8] This language doesn't directly say fees, because it does not need to. The statute is clear that the *only* thing that can be on a customer's bill is the energy charge for their use that they do not offset with their qualifying facility.

III. Just Because Other Utilities Have Fees, It Does Not Make It Right.

On May 21, 2015 PEC submitted additional commentary arguing that several of the Investor Owned Utilities (IOU) have their own net-metering fees.[9] In response, the Department of Commerce (the "Department") stated "[t]he Commission may wish to open a new docket to request additional information from Xcel, Ottertail Power, Interstate Power and Light, and Minnesota Power on the implementation date of any net metering charge, and the Docket in which such charge was approved."[10] The Department is insinuating - and we agree - that these extra fees, whether they are from an IOU, a cooperative or a municipal utility, may be contrary to Minn. Stat. § 216B.164 and that the Commission should consider investigating or removing them.

It seems that PEC is correct. Other IOUs and utilities appear to already be charging similar fees, and in MREA's comments they referred to these IOU fees are "precedence."[11] This statement is far too strong of a proposition, because it is difficult to figure out exactly how these fees came to pass without utility assistance or a specific docket. For instance, it is possible that there is some IOU-specific reason for why the Commission may have previously allowed the application of

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7 Minn. Stat. § 216B.164, subd. 3 (a).

8 *Id.*

9 *See* REPLY COMMENTS – INFORMATION ON OTHER DG RATES WITH SERVICE CHARGES, PEOPLE'S ENERGY COOPERATIVE, DOCKET NO. E.132/CG-15-255, Doc. ID. 20155-110675-01 at 1 (5/22/2015).

10 COMMENTS, DEPARTMENT OF COMMERCE, DOCKET NO. E.132/CG-15-255, Doc. ID. 20157-112052-01 at 10 (7/1/2015).

11 *See* COMMENTS – IN SUPPORT OF PEC, MINNESOTA RURAL ELECTRIC ASSOCIATION, DOCKET NO. E.132/CG-15-255, Doc. ID. 20156-111165-01 at 2 (6/4/2015).

these fees, maybe the fees are artifacts of a previous statute that require updating, possibly the utilities are applying fees that were never formally approved, or perhaps all the aforementioned IOUs managed to slip illegal fees passed the Commission in prior filings and they need to be corrected.[12] Simply because other utilities are charging a fee, it does not follow that PEC's fees should be legal or that there is precedent for it.

To make PEC's and MREA's argument hold any weight a full investigation into the other fees must take place. But for now we are discussing how PEC is misapplying fees, which - according to statute - it is. The Commission should find that fees assessed to net-metered customers prior to July 1, 2015 are incompatible with the statute, should refund paid customer fees and should look into the legality of the IOU's fees.

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[12] The most recent Legislative amendment highlights that IOU fees may violate the statute. The IOUs are still subject to Minn. Stat. § 216B.164, subd. 3 (b), which states in pertinent part "[t]his paragraph applies to public utilities. For a qualifying facility having less than 1,000-kilowatt capacity, the customer *shall* be billed for the net energy supplied by the utility according to the applicable rate schedule for sales to that class of customer." The same language that applies to cooperatives in subd. 3 (a) applies here as well. But now subd. 3(a) allows cooperatives and municipal utilities to charge a fee after July 1, 2015, but there is no provision allowing for IOUs to do the same.