

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

IN THE MATTER OF A REQUEST FOR DISPUTE
RESOLUTION WITH PEOPLES' ENERGY COOPERATIVE
UNDER THE COGENERATION AND SMALL POWER
PRODUCTION STATUTE, MINN. STAT. §216B.164

DOCKET NO. E-132/CG-15-255

COMMENTS

COMMENTS OF THE ALLIANCE FOR SOLAR CHOICE

Pursuant to the *Notice Requesting Response from Peoples' Energy Cooperative and Opportunity to Comment on Dispute* (Notice) issued in this docket by the State of Minnesota Public Utilities Commission (Commission), The Alliance for Solar Choice (TASC) hereby submits the following comments addressing the topics open for comment identified by the Commission.

1. Introduction

This case arises from a dispute between the People's Energy Cooperative (Cooperative) and Alan Miller (Complainant), a member of the Cooperative, concerning the Cooperative's imposition of a new \$5.00 monthly fee (DG charge) on self-generating customers. The Complainant filed a Request for Dispute Resolution with the Commission on March 11, 2015, in which he contends that imposing such a charge violates Minnesota statutes and rules pertaining to cogeneration and small power production.¹

¹ *Request for Dispute Resolution Under the Cogeneration and Small Production Statutes and Rules* (Mar. 11, 2015).

TASC believes the Complainant's concerns are well founded. The Cooperative's proposed DG charge is not authorized by Minnesota's cogeneration and small power production statute² and violates the Public Utility Regulatory Policies Act (PURPA). Even if the DG charge was authorized by statute (which it is not) and did not run afoul of federal law (which it does), the Cooperative has failed to meet its burden to justify the DG charge. Allowing utilities to levy separate additional monthly fees on net metering customers undermines the intent of Minnesota's net metering statute "to give the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public."³ TASC therefore respectfully requests that the Commission determine that the Cooperative's proposed charge violates Minnesota and federal law and is against the State Legislature's expressed policy.

2. The Imposition of an Additional Monthly Charge on Distributed Generation Accounts is Prohibited under Minnesota and Federal Law

One of the core principles of net metering is that customer-generators should be billed for net consumption at a rate identical to the rate paid by non-generating customers in the same rate class. This is known as the "nondiscrimination" principle. This widely accepted principle means that no extra fees or charges should be imposed upon customer-generators who choose to participate in net metering.⁴

² Minn. Stat. § 216B.164.

³ Minn. Stat. § 216B.164, Subd. 1.

⁴ The nondiscrimination principle is recognized as a key component of net metering throughout the country. *See* 220 ILL. COMP. STAT. 5/16-107.5(e) ("An electricity provider shall provide to net metering customers electric service at non-discriminatory rates that are identical, with respect to rate structure, retail rate components, and any monthly charges, to the rates that the customer would be charged if not a net metering customer."); *See also* Interstate Renewable Energy Council, Model Net Metering Rules (2009), Sec. (b)(13), *available at* <http://www.irecusa.org/irec-model-net-metering-rules-2009/> ("An Electricity Provider shall not charge a Customer-generator any fee or charge; or require additional equipment, insurance or any other requirement not specifically authorized under this sub-section or the interconnection rules in Section [[reference state interconnection rules here]], unless the fee, charge or other

Minnesota’s cogeneration and small power production statute reflects the “nondiscrimination” principle. Minnesota Statutes Section 216B.164, Subdivision 3(a)⁵ requires that net metering customers of cooperatives “shall be billed for the net energy supplied by the utility *according to the applicable rate schedule* for sales to that class of customer.”⁶ Section 216B.164, Subdivision 3(c) states that costs charged to net metering customers shall not be “discriminatory in relation to the costs charged to other customers of the utility.”⁷ The Commission’s rules promulgated under this statute further reflect this principle, requiring that customer-generators be billed for net consumption “according to the utility’s applicable retail rate schedule.”⁸ Federal law also prohibits discrimination against qualifying facilities. 18 C.F.R. § 292.305 states that “Rates for sales . . . shall not discriminate against any qualifying facility in comparison to rates for sales to other customers served by the electric utility.”⁹ The clear takeaway from these examples of Minnesota and federal law is that customer-generators should not be charged different fees than are charged to non-generating customers.

The Cooperative cites to Section 216B.164, Subdivisions 3(b) and 8(b), to support its view that it can collect additional costs from net-metering customers if those costs are “unique to the existence of the interconnected system, are not covered by other charges associated with their existing service where the DG system is interconnected, or are not part of a standby fee.”¹⁰

However, the statute does not support this interpretation.

requirement would apply to other similarly situated customers who are not Customer-generators.”).

⁵ All code citations are to the Minnesota Statutes unless otherwise noted.

⁶ Minn. Stat. § 216B.164 Subd. 3(a) (emphasis added).

⁷ Minn. Stat. § 216B.16 Subd. 3(c).

⁸ Minn. R. § 7835.3300, Subp. 2.

⁹ 18 C.F.R. § 292.305(a)(1)(ii); *See also* 110 FERC ¶ 63,026 (Feb. 9, 2005).

¹⁰ People’s Energy Cooperative, Comments Letter (hereinafter Cooperative Letter), Apr. 6, 2015).

The language the Cooperative cites for Subdivision 3(b) is actually found in Subdivision 3(c). However, that subdivision does not support the Cooperative's proposal either. Subdivision 3(c) states, in relevant part, "In setting rates, the commission shall consider the fixed distribution costs to the utility not otherwise accounted for in the basic monthly charge and shall ensure that the costs charged to the qualifying facility are not discriminatory in relation to the costs charged to other customers of the utility."¹¹ When viewed in relation to the rest of Section 216B.164, it is clear that Subdivision 3(c) concerns the Commission's establishment of rates calculated for *compensation to the customer* for any *net input* into the utility system, rather than rates charged to the customer for net consumption. That is, Section 3(c) refers to situations in which a net metering customer ends a billing period with "net input into the utility system."¹² This is often referred to as "net excess generation" (NEG).

Under Section 3(a), the utility is directed to compensate the customer for its NEG according to a "per kilowatt-hour rate determined under paragraph (c) or (d)."¹³ Rather than calculating an appropriate rate for "net input," the Cooperative is attempting to use Subdivision 3(c) to assess an additional net metering charge. This is an entirely different purpose that ignores Subdivision 3(a)'s, requirement that utilities bill net metering customers "according to the applicable rate schedule" applied to all other customers in the customer-generator's rate class.¹⁴

Furthermore, Subdivision 3(c) reaffirms the nondiscrimination principle by requiring the Commission "ensure that the costs charged to the qualifying facility are *not discriminatory* in

¹¹ Minn. Stat. § 216b.164, Subd. 3(c).

¹² See Minn. Stat. § 216B.164, Subd. 3(a) ("In the case of net metering input into the utility system by a qualifying facility . . . compensation to the customer shall be at a kilowatt-hour rate determined under paragraph (c) or (d).").

¹³ Id.

¹⁴ Minn. Stat. § 216B.164, Subd. 3(a).

relation to the costs charged to other customers of the utility.”¹⁵ Subdivision 3(c) therefore does not authorize a new fixed charge and expressly forbids levying a fixed charge solely on customer-generators; it therefore does not support the Cooperative’s proposal.

The Cooperative also points to Section 216B.164, Subdivision 8(b) as support for its new DG charge. This subdivision states, “Nothing contained in this section shall be construed to excuse the qualifying facility from any obligation for costs of interconnection and wheeling in excess of those normally incurred by the utility for customers with similar load characteristics who are not cogenerators or small power producers.”¹⁶ While this language makes clear that customer-generators are not excused from interconnection or wheeling costs in excess of those incurred for non-generating customers, this language does not authorize a utility to levy an additional fixed charge upon customer-generators to recoup such costs. At issue here is not a customer-generator’s effort to be excused from paying any costs they may cause the Cooperative to incur. Rather, it is the fact that the Cooperative is attempting to levy a new charge solely upon customer-generators without authorization and without justifying that decision. Furthermore, additional language in Subdivision 8(b), not cited by the Cooperative, reaffirms the “nondiscrimination” principle in the context of “fixed charges.” Section 216B.164, Subdivision 8(b) authorizes utilities to charge customer-generators “fixed charges that are normally assessed [to] nongenerating customers.”¹⁷ The Cooperative’s proposed DG charge is explicitly not normally assessed to non-generating customers. The Legislature’s explicit limiting of fixed charges authorized by this language to charges normally assessed to non-generating customers is consistent with the nondiscrimination principle reflected throughout Chapter 216B.

¹⁵ Minn. Stat. § 216B.164, Subd. 3(c) (emphasis added).

¹⁶ Minn. Stat. § 216B.164, Subd. 8(b).

¹⁷ Minn. Stat. § 216B.164, Subd. 8(b).

In an attempt to use statutory language in Section 216B.164, Subdivisions 3(c) and 8(b) to support its discriminatory additional DG charge, the Cooperative interprets the statutory language out of context and ignores the structure and purpose of the statute. Thus, Section 216B.164 does not grant the Cooperative the authority to levy its discriminatory new DG charge on customer-generators.

3. The Cooperative's Justification of the DG Charge Fails to Meet its Burden of Proof

A utility bears the burden of proof in billing disputes with qualifying facilities.¹⁸ Even if there were statutory authority to support a discriminatory DG charge, the Cooperative has failed to make a showing that customer-generators are causing the Cooperative to incur additional costs for which they are not paying. The Cooperative has thereby failed to meet its burden of proof in justifying the DG charge. In order to make a sufficient showing, the Cooperative would need to provide information about the Cooperative's costs to serve customer-generators and the corresponding benefits customer-generators provide to the Cooperative's system. The Cooperative's letters to the Commission provide no data or any evidence that the Cooperative has studied its actual costs to serve customer-generators as a class or the corresponding value customer-generation provides to the grid. Since the Cooperative has apparently failed to study the costs and benefits of serving customer-generators, the Cooperative's conclusion that customer-generators are "subsidized" by non-generating customers is unfounded.¹⁹ The Cooperative has therefore failed to show that its new DG charge is necessary to recoup "fixed distribution costs not accounted for in the initial basic monthly charge of \$37.00."²⁰

¹⁸ Minn. Stat. § 216B.164, Subd. 5; Minn. R. § 7835.4500.

¹⁹ Cooperative Letter, March 24, 2015.

²⁰ Cooperative Letter, April 6, 2015.

The Utah Public Service Commission (UPSC) recently rejected a similar utility proposal to levy a charge upon customer-generators ostensibly to recover “fixed distribution costs.”²¹ In that case, the utility, PacifiCorp, estimated customer-generation was causing a “cost shift from net metered customers to all customers [of] \$4.65 per month per customer,” and proposed a “residential net metering facilities charge” in order to “create an appropriate price structure for residential net metered customers before the shifting of distribution and customer costs from net metered customers produces a much larger cost burden on non-participating customers.”²² In rejecting PacifiCorp’s proposal, the UPSC found that the utility had not justified the charge because it had failed to present evidence demonstrating that net-metering customers are sufficiently different from other residential customers,²³ and had failed to account for “net metering program benefits.”²⁴

The Cooperative has similarly failed to demonstrate that customer-generators create any unique additional costs, and has likewise refused to acknowledge any of the grid benefits provided by customer-generators. The fact is, independent reviews of distributed generation and net metering programs continuously find that grid benefits outweigh the costs of these

²¹ See, Utah Public Service Commission, *In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations*, Docket No. 13-035-184, Report and Order (Aug. 29, 2014).

²² Id. at 21.

²³ Id. at 68 (“Simply using less energy than average, but about the same amount as the most typical of PacifiCorp’s residential customers, is not sufficient justification for imposing a charge, as there will always be customers who are below and above average in any class. Such is the nature of an average. In this instance, if we are to implement a facilities charge or a new rate design, we must understand the usage characteristics, e.g., the load profile, load factor, and contribution to relevant peak demand, of the net metered subgroup of residential customers. We must have evidence showing the impact this demand profile has on the cost to serve them, in order to understand the system costs caused by these customers.”).

²⁴ Id. at 59.

programs.²⁵ Since the Cooperative has provided no evidence that it has even attempted to study or quantify the program benefits it receives from its customer-generators, it is clear that the Cooperative has failed to adequately justify the imposition of a new discriminatory DG charge on its self-generating customers.

4. Conclusion

The Cooperative's lack of justification for its proposed charge raises suspicion that the true intent of the DG charge is to discourage and penalize customers who choose to invest in self-generation. The Cooperative's proposed DG charge violates the letter, spirit and intent of Minnesota's cogeneration and small power production statute, as well as several other legislative goals and programs. The Cooperative has also failed to provide evidence that it has weighed any potential costs against the myriad benefits of self-generation. TASC therefore respectfully requests the Commission resolve this net metering billing dispute in favor of the Complainant and assess appropriate fees and charges as provided in Section 216B.164, Subdivision 5.



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²⁵ See, e.g., Me. Pub. Util. Comm'n, 2014-00171, *Maine Distributed Solar Valuation Study*, at 4-7 (Apr. 2015), available at <https://mpuc.cms.maine.gov/CQM.Public.WebUI/Common/CaseMaster.aspx?CaseNumber=2014-00171>; Miss. Pub. Serv. Comm'n, 2011-AD-2, Synapse Energy Economics, Inc., *Net Metering in Mississippi: Costs, Benefits, and Policy Considerations*, at 1-2 (Sep. 19, 2014), available at http://www.psc.state.ms.us/InsiteConnect/InSiteView.aspx?model=INSITE_CONNECT&queue=CTS_ARCHIVEQ&docid=337867; Nev. Pub. Util. Comm'n, 13-07010, Energy+Environmental Economics (E3), *Nevada Net Energy Metering Impacts Evaluation*, at 92-96 (Jul. 2014), available at http://pucweb1.state.nv.us/PDF/AxImages/DOCKETS_2010_THRU_PRESENT/2013-7/41397.pdf.