



Minnesota Solar Energy Industries Association

May 22, 2017

VIA ELECTRONIC FILING

Mr. Daniel P. Wolf, Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

**Re: Minnesota Solar Energy Industries Association (MnSEIA) and Minnesota Solar Energy Industries Project (MnSEIP) comments
In the Matter of a Commission Inquiry into the Creation of a Commission Subcommittee under Minn. Stat. § 216A.03, subd. 8
Docket No. E999/CI-17-284**

Dear Mr. Wolf,

MnSEIA and MnSEIP hereby electronically submit the attached comments in response to the Minnesota Public Utilities Commission's Notice of Comment Period ending May 22, 2017 in the above-mentioned docket. Fresh Energy hereby joins our comments as an additional signatory. We appreciate the opportunity to participate in this docket.

Please contact me should you have any questions regarding this filing.

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**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

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**In the Matter of a Commission
Inquiry into the Creation of a
Commission Subcommittee under
Minn. Stat. § 216A.03, subd. 8**

**MINNESOTA SOLAR ENERGY
INDUSTRIES ASSOCIATION'S
COMMENTS ON THE
COMMISSION'S PROPOSED
CONSUMER COMPLAINT
SUBCOMMITTEE**

May 22, 2017

Docket No. E999/CI-17-284

**COMMENTS OF THE MINNESOTA
SOLAR ENERGY INDUSTRIES ASSOCIATION, THE MINNESOTA SOLAR ENERGY
INDUSTRIES PROJECT AND FRESH ENERGY**

BACKGROUND

I. Overview of the Commission's Notice of Comment Period

On April 17, 2017, the Commission posted a Notice of Comment Period¹ regarding the creation of a subcommittee under Minn. Stat. § 216A.03, subd. 8, to allow faster decisions to be issued for certain distributed generation (“DG”) disputes or undisputed filings. The Commission noted that it “receives customer complaints and formal filings on DG and solar issues that may benefit from the clarification a subcommittee decision could provide because they do not involve the determination of high level policy considerations.”² The Commission cited its authority to create and appoint members to such a subcommittee, and that it may delegate any of the Commission's functions to the subcommittee.³

¹ NOTICE OF COMMENT PERIOD, PUC, Docket No. E999/CI-17-284, Doc. ID. 20174-130831-01 (April 17, 2017).

² *See Id.*, at 1.

³ *Id.*; *see also*, Minn. Stat. § 216A.03, subd. 8.

The following workflow process is proposed by the Commission:

- (1) A customer complaint is filed with the Commission's Consumer Affairs Office ("CAO");
- (2) If determined to be an issue for the Subcommittee (on its face or after CAO attempts mediation), the CAO consults with staff assigned to the Subcommittee;
- (3) If determined to be an issue for the Subcommittee, documentation is added to edockets (with either one docket number for all Subcommittee work done that year, or separate docket numbers for each matter), and additional information is sought and filed in edockets;
- (4) Comment deadlines are set (rules may be varied to shorten comment periods);
- (5) The Subcommittee schedules a hearing; and
- (6) At the hearing, the commissioner appointed to the Subcommittee hears the matter, makes a decision, and issues an order or other written form of decision.⁴

The scope of work proposed for the Commission's Subcommittee includes the following:

Complaints filed with the CAO or filed in formal dockets where it is fairly clear that a non-violation or a violation exists; undisputed DG filings that would benefit from streamlined approval; and instances where high level policy issues do not need to be decided, and where clarity to the broader utility/customer/solar community would be useful. Priority would be given to disputes that have come up repeatedly and are affecting multiple parties.⁵

The proposed Subcommittee members would be appointed by the Commission, including at least one Commissioner, and would be delegated administrative and quasi-judicial functions to provide record development, set deadlines (including shortening comment periods as appropriate), and issue short decisions in cases where statute, rule, order, or tariff can be easily interpreted.⁶ Pursuant to applicable statute, a party or participant may request that the Commission not delegate the proceeding to a subcommittee, and the request must be granted.⁷

II. Overview of MnSEIA's and MnSEIP's Experience with the Commission's Customer Complaint Process.

The Minnesota Solar Energy Industries Association ("MnSEIA") is a membership organization made up of over 100 different solar-related companies, including installers, developers, manufacturers, labor unions, energy service companies, and other ancillary service

⁴ See NOTICE OF COMMENT PERIOD, PUC, Docket No. E999/CI-17-284, Doc. ID. 20174-130831-01 (April 17, 2017), Attachment A: Staff Proposal, at 4.

⁵ See *Id.*, at 3.

⁶ *Id.*

⁷ See *Id.*, at 4; see also, Minn. Stat. § 216A.03, subd. 8.

providers for the solar industry. MnSEIA's sister organization, the Minnesota Solar Energy Industries Project ("MnSEIP"), is a nonprofit law firm that, among other programs, represents Qualifying Facilities ("QF's) in disputes with their utility.

Both MnSEIA and MnSEIP have had substantial involvement in the matters that the Commission proposes to delegate to the Subcommittee. Specifically, MnSEIP was established in response to MnSEIA installer-members' concerns that several utilities across the state were acting contrary to Minn. Stat. § 216B.164 and other state statutes or rules. After a preliminary analysis of the applicable statutes, MnSEIA determined that the best way to address these concerns and correct utility misconduct was to form a new, separate and distinct sister organization, and MnSEIP was born. Since its formation, MnSEIP has handled several QF proceedings, both formally and informally before the Commission, and has noted the value of developing a middle-road between the CAO determinations and a full Commission hearing. Both MnSEIA and MnSEIP's respective members and clients would benefit from a streamlined and more efficient process to address matters that do not require a full Commission hearing.

Our comments today detail our support for the proposed Commission Subcommittee and offer suggested amendments to enable its successful implementation.

COMMENTS

I. MnSEIA Supports the Minnesota Public Utilities Commission's ("the Commission") Proposed Consumer Complaints Subcommittee.

As noted above, both MnSEIA and MnSEIP's respective members and clients would benefit from a streamlined and more efficient process to address customer complaints with their utilities, or for other queries and dispute resolution matters under the proposed Subcommittee's scope of work.⁸ For most utility customers and the members of the public, navigating the Commission's hearing process is slow, technical, and arduous. While CAO filings and determinations can take over a month at the outset, full Commission hearings can take years to be resolved in a meaningful way.⁹ We see great value in developing a middle-road between CAO determinations and a full Commission hearing, in terms of time, resources saved, and ease of access.

⁸ See NOTICE OF COMMENT PERIOD, PUC, Docket No. E999/CI-17-284, Doc. ID. 20174-130831-01 (April 17, 2017), Attachment A: Staff Proposal, at 3.

⁹ See generally, IN THE MATTER OF A COMPLAINT OF LARRY FAGEN AGAINST MINNESOTA VALLEY COOPERATIVE LIGHT AND POWER ASSOCIATION, PUC, Docket No. E123/CG-16-241; see also, SAM VILLELLA'S REQUEST FOR EXPEDITED TREATMENT OR DOCKET CHANGE, PUC, Docket No. E999/CI-15-755, Doc. ID. 20172-129456-01 (February 28, 2017).

A. The proposed Subcommittee is needed: the Consumer Affairs Office (“CAO”) role in DG dispute resolution is limited by a lack of technical staff and decision-making authority, and often results in a full Commission hearing with attorney involvement.

The majority of grievances MnSEIP and MnSEIA members have submitted to the CAO were returned and recommended for full Commission hearings for resolution, or otherwise could not be successfully resolved. This is because the CAO office does not have technical expertise and decision-making authority needed to handle many DG consumer complaint queries and matters requiring statutory application. Despite the efforts of our customers and clients to pursue mediation and avoid filing formal docket proceedings at the Commission, this path often becomes their only avenue for dispute resolution. Many customers and clients are overwhelmed when faced with a full Commission hearing after their simple grievance filing could not be resolved by the CAO.

With this arduous hearing process comes the need for additional time, resources, and in many cases, an attorney advocate to navigate the hearing process (i.e., legal research, entry of complaints and comments, collection and presentation of evidence, and communications with utility attorneys) to achieve success. When customers and clients review the statute governing QF dispute resolution applicable to Commission hearings, they see the following language:

The qualifying facility will be required to pay the costs, disbursements, and attorney’s fees of the utility only if the commission finds that the claims of the qualifying facility in the dispute have been made in bad faith, or are a sham, or are frivolous.¹⁰

At the outset, the customer had a seemingly simple dispute for the CAO to resolve in a timely and low-cost manner. Now, the matter has not only been slated for a full Commission hearing, but the customer may also face paying thousands of dollars in utility attorney’s fees if the Commission considers the case a sham, frivolous, or in bad faith.¹¹ This is a risk few residential QF customers are willing to take.

This arduous process can be avoided to the benefit of all parties if the proposed Subcommittee handles the intermediate matters that are technical, but that do not require a

¹⁰ Minn. Stat. § 216B.164, subd. 5.

¹¹ See, PUC BRIEFING PAPERS – JUNE 9, 2016, IN THE MATTER OF A REQUEST FOR DISPUTE RESOLUTION BY KEITH WEBER, THE QUALIFYING FACILITY, WITH MEEKER COOPERATIVE LIGHT AND POWER ASSOCIATION UNDER THE COGENERATION AND SMALL POWER PRODUCTION STATUTE, MINN. STAT. § 216B.164, at 12-14, PUC, Docket No. E-121/CG-16-240, Doc. ID. 20166-121974-03 (June 3, 2016) (discussing Meeker’s unfounded allegation of bad faith filing by complainant); see also, PUC MINUTES, JUNE 6, 2016 AGENDA, at 2, Docket No. E16-240, Doc. ID. 21067-123605-02 (July 26, 2016). (concerning motion to find complainant did not file in bad faith).

formal Commission hearing for resolution. Time, money and relationships could be saved as a result.

B. The delegation of quasi-judicial, order-issuing authority to the proposed Subcommittee promotes transparency, and is both reasonable and prudent.

For matters that the CAO determines it cannot resolve, such as disputes that involve issues, such as statutory interpretations that are outside of CAO staff expertise, there are likely complaints, queries and issues that are dropped or withdrawn despite their relevance to the DG and QF community. Filings with the CAO are not public and are not filed in edockets, nor does the CAO have quasi-judicial authority to issue orders or develop a record. Where the proposed Subcommittee can address and resolve such issues by drafting an order, helpful precedent is established and useful information is shared. Otherwise, issues filed with the CAO are inaccessible to the public and DG community without escalation to a full Commission hearing.

Further, having an intermediary Subcommittee positioned between the CAO and a full Commission hearing -- a Subcommittee with authority to file notices, develop a record, and issue orders in edockets -- will add a layer of transparency and technical assistance to all parties seeking guidance on a particular DG subject. Commission edockets can be searched for key terms, and more parties may utilize the Commission website to search for answers to their queries instead of automatically filing a CAO grievance. This may result in a reduced case load at the Commission as the Subcommittee issues orders that address issues of common concern or occurrence.

In short, the delegation of quasi-judicial, order-issuing authority to the Subcommittee promotes transparency, and is both reasonable and prudent.

II. The Consumer Dispute Resolution Process Should Be Easy for Any DG Customer to Access and Utilize.

As detailed below, it is MnSEIA and MnSEIP's view that both ease of consumer use and accessibility should be of paramount importance in developing a customer complaint platform and Subcommittee process for dispute resolution.

A. The customer should be able to file a complaint that moves from the CAO to the proposed Subcommittee without the requirement of a personal appearance to resolve the dispute.

Location is not of significant importance when it comes to DG customer disputes with their utilities: disputes between QFs and utilities occur statewide in Minnesota, and thus a platform to address such disputes should cater to the *entire state* in terms of accessibility and ease of use.

Especially germane to this point is the hearing process outlined in the Commission's proposed workflow.¹² Once the CAO determines that a complaint is an issue for Subcommittee determination, the Subcommittee schedules a hearing.¹³ Because this process mimics the normal procedure for full Commission hearings, it maintains the same air of formality that would lead a customer to seek attorney aid or a representative to attend the Subcommittee hearing in person.

MnSEIA and MnSEIP support a low-cost process that customers and clients can navigate on their own, *pro se*. To minimize time traveling and resources expended for attorney procurement, we respectfully suggest that the customer-complainant be allowed to attend the Subcommittee hearing via teleconference. This will promote ease of use and access to this helpful dispute resolution platform, and will benefit both greater Minnesota and metro area residents.

B. The utility should have the burden of proof in the dispute resolution process regarding disputes arising under Minn. Stat. § 216B.164, per relevant statutory precedent.

As provided in relevant Minnesota rules and statute, “in the case of a dispute between a utility and a qualifying facility or an impasse in negotiations between them, either party may request the commission to determine the issue. When the commission makes the determination, the burden of proof must be on the utility.”¹⁴ It follows from this language that the same burden would apply to the utility in cases originating under this statute and referred to the Subcommittee. This is pursuant to the quasi-judicial authority delegated to the Subcommittee from the Commission.¹⁵

MnSEIA and MnSEIP respectfully request that the Commission confirm that the proposed Subcommittee applies the same statutory and regulatory language as the full Commission in its delegated quasi-judicial authority, specifically that the utility has the burden of proof in disputes between utilities and QFs.

C. A designated representative, including a solar installer, should be allowed to file the complaint with the CAO at the written request of the customer.

Flowing from the ease-of-access discussion above is the need for installer or developer involvement in the Subcommittee process. We suggest allowing an installer or developer to file a complaint with the CAO on behalf of a customer. We further suggest that the customer provide an affidavit acknowledging that the installer or developer filed on its behalf, to prevent any

¹² See NOTICE OF COMMENT PERIOD, PUC, Docket No. E999/CI-17-284, Doc. ID. 20174-130831-01 (April 17, 2017), Attachment A: Staff Proposal, at 4.

¹³ *Id.*

¹⁴ See Minn. Rule 7835.4500; *see also*, Minn. Stat. § 216B.164, subd. 5.

¹⁵ See Minn. Stat. § 216A.03, subd. 8.

confusion. We suggest that the affidavit form be prepared by the Commission and made available to the customer to promote ease of use.

The customer should be encouraged to access the technical knowledge of the installer or developer to properly inform the Commission of the issue in dispute. In some cases, the installer or developer may wish to provide this service to their customer to avoid customer attrition. In such an instance, this will help maintain the business relationships that installers and developers cultivate over time with customers, and help keep their businesses alive during Subcommittee deliberation.

D. The Commission’s “Complaint Form” should be updated to allow more space for complaint details and offer a more robust procedural outline under “What happens next.”

In its current form, the CAO complaint document found on the Commission website directs customers to “write details about your concern and the action you would like the utility company to take.”¹⁶ The document provides about one paragraph of space to describe the issues in dispute. This is an insufficient amount of writing space for most customers and clients MnSEIA and MnSEIP have assisted to-date, unless the complainant notes “see appendix A,” or otherwise denotes an attachment in that space.

Because of the complexity of even simple DG matters, we suggest that the complaint form be updated to allow for longer descriptions of the dispute or query. This will promote ease of use and customer access to the CAO and proposed Subcommittee dispute resolution process. At the very least, the CAO complaint document should inform the filer that additional pages may be attached to the complaint, including, but not limited to, diagrams, appendices or an elongated complaint.

To further promote customer education, we also suggest that the complaint form be updated to include a more detailed outline of the CAO and Subcommittee process under the heading “What happens next.”¹⁷

III. The Proposed Subcommittee Should Be Instituted Immediately to Benefit Both the Customers and Utilities Subject to This Proposal in A Timely Fashion.

We respectfully request that the proposed Subcommittee and associated procedures be implemented immediately. Any delay in rollout and implementation of the Subcommittee would deprive all current parties with disputes of timely solutions to their various DG queries. A quick rollout of this Subcommittee would save parties significant time and money, especially where a

¹⁶ See “Complaint Form” at https://mn.gov/puc/assets/Complaint%20Form%20-%20April%202017_tcm14-289957.pdf (last visited May 22, 2017).

¹⁷ See *Id.*

full docket hearing is unnecessary or where a question repeatedly submitted to the Commission can be addressed in a Subcommittee order to establish precedent.

Regardless of whether the Commission applies a unique docket number to each matter, all parties that follow Commission docket filings can benefit from the timely administration of this Subcommittee, and the transparency and education it provides.

Respectfully submitted,

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