

# KEYES & FOX<sup>LLP</sup>

November 10, 2016

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

VIA ELECTRONIC SERVICE

*Re: In the Matter of the Commission's Inquiry into Fees Charged on Qualifying Facilities*

*PUC Docket No.: E-999/CI-15-755*

Dear Mr. Wolf,

The Energy Freedom Coalition of America ("EFCA") hereby submits the **SUPPLEMENTAL RESPONSIVE COMMENTS OF THE ENERGY FREEDOM COALITION OF AMERICA** to the above-entitled matter.

EFCA has electronically filed this document with the Commission and is serving a copy on all persons on the official service list for this docket. A Certificate of Service is also enclosed.

If you have any questions regarding this filing, please contact me at (720) 639-2190 or at [jschlesinger@kfwlaw.com](mailto:jschlesinger@kfwlaw.com).

Sincerely,

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Enclosure

Cc: Service List

STATE OF MINNESOTA  
BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE COMMISSION'S INQUIRY  
INTO FEES CHARGED ON QUALIFYING FACILITIES

DOCKET No. E999/CI-15-755

**SUPPLEMENTAL  
RESPONSIVE  
COMMENTS OF THE  
ENERGY FREEDOM  
COALITION OF  
AMERICA**

The Energy Freedom Coalition of America (“EFCA”) hereby submits its Supplemental Responsive Comments pursuant to the State of Minnesota Public Utilities Commission’s (“Commission”) Notice of Comment Period (“Notice”), issued June 22, 2016 requesting Supplemental Comments **“limited to issues raised by a party in its reply comments that were not included in its initial comments”** and the subsequent notices granting extensions of time (emphasis in original). In Reply Comments, EFCA argued that it would not be fair to allow utilities to present their case-in-chief through reply comments and deny other stakeholders an opportunity to respond. Nevertheless several parties ignored this Commission directive and provided new arguments and justifications through supplemental initial comments.<sup>1</sup> EFCA requests that any such new information be stricken from the record as procedurally improper and contrary to the requirements contained in the Commission’s Notice. Nevertheless, out of an abundance of caution, EFCA provides substantive responses to some of the new information provided for the first time in supplemental comments. EFCA further requests that the Commission clarify its policy regarding discovery for non-parties in uncontested case

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<sup>1</sup> Note not all parties captioned their October 17, 2016 as “supplemental initial comments” but EFCA uses this term generally to apply to all comments filed on October 17.

proceedings.

**1. Fixed Fees Charged to DG Customers Prior to July 1, 2015 are Illegal.**

On May 6, 2016 EFCA and several other commenters provided legal analysis that demonstrates that prior to July 1, 2015 Minnesota law prohibited all utilities from imposing any additional fees on qualifying facilities (“QFs”) for electric service beyond those paid by other customers in the same rate class.<sup>2</sup> EFCA will not repeat those arguments here, but hereby incorporates them by reference. EFCA maintains that any fixed monthly fee charged only to DG customers is a violation of the non-discrimination principle and is contrary to both federal and Minnesota laws. However, to the extent that the Commission finds that any such fees may be legal, or to the extent that the Commission chooses not to address this legal issue, EFCA offers the following comments.

**2. New Arguments or Justifications are Outside of the Scope of Supplemental Comments.**

Almost a year ago, on December 11, 2015, the Commission opened this docket “to collect information about fees applied to customers with distributed generation (“DG”) that are not charged to other customers.”<sup>3</sup> In its initial notice, the Commission asked all utilities that applied such a fee to explain how the amount of the fee was determined.<sup>4</sup> Utilities’ responses to these information requests (“IRs”) represented their **first** opportunity to provide justification for any fees charged to DG customers.

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<sup>2</sup> EFCA Initial Comments at p. 2.

<sup>3</sup> Notice Requesting Information from Investor-Owned, Cooperative, and Municipal Utilities, *Issued: October 13, 2015*.

<sup>4</sup> *Id.*

On December 23, 2015, the Commission issued a Notice of Comment Period that included periods for both initial and reply comments.<sup>5</sup> In that notice, the Commission requested comments on the legal issues and also asked for comments as to whether each of the fees imposed was reasonable. Utilities that charged special DG fees thus had a **second** opportunity to justify their fees, however only Otter Tail Power Company (“Otter Tail”) chose to file initial comments and to provide justification.

During the open comment period on March 31, 2016, EFCA propounded additional IRs on each of the six utilities that are at issue in this docket. This represented a **third** opportunity for utilities to provide support for their DG fees. Unfortunately five of the six utilities failed to respond.<sup>6</sup>

On June 6, 2016, all six of the utilities, either on their own, or through a trade association, submitted, “reply comments” which included arguments in support of the reasonableness of their fees, representing a **fourth** bite at the apple. EFCA objected to the utilities including such arguments in reply comments and thus depriving interested stakeholders from an opportunity to respond to their arguments. EFCA therefore suggested that the Commission strike any new arguments.

In response, the Commission issued another Notice of Comment Period on June 22, 2016 and stated that, “[r]ather than striking the reply comments as procedurally improper, Commission Staff believes it would be more appropriate to allow parties an opportunity to respond. **Comments should be limited to issues raised by a party in its reply comments that were not included in its initial comments.**” (Emphasis in

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<sup>5</sup> Notice of Comment Period, *Issued: December 23, 2015; Supplemented by*, Notice of Extended Comment Period, *Issued: February 24, 2016*.

<sup>6</sup> While Xcel initially objected to providing responses to EFCA’s IRs it nevertheless provided some limited responses on May 16, 2016.

original).<sup>7</sup> The Commission extended this supplemental comment period on July 15, 2016 and then again on September 14, 2016. In the September 14 Notice of Extension, the Commission added for the first time an additional round of supplemental reply comments.

On October 17 five of the utilities filed supplemental initial comments, which contrary to the June 22 Notice, included issues that were *not* “limited to issues raised by a party in its reply comments that were not included in its initial comments.” Such comments, if accepted by the Commission, would represent the utilities **fifth** opportunity to argue for the reasonableness and justification of their DG fees.

Including this additional justification and support is directly contradictory to the Commission’s explicit instructions and should therefore be struck as procedurally improper. In general, the utilities at issue in this docket have been given every opportunity to present their arguments and have taken only a handful of those opportunities. Allowing parties to continually add arguments and justification depletes Commission and stakeholder resources and is fundamentally unfair and disrespectful to the Commission process. As such, EFCA recommends that the Commission strike any new arguments presented for the first time in supplemental initial comments.

### **3. The Commission Should Act Quickly to Clarify Discovery Procedures.**

Both Otter Tail and Northern States Power Company, doing business as Xcel Energy (“Xcel”) raised questions about the role of discovery in this proceeding. EFCA also has questions about the role of discovery and the responsibility of utilities to provide timely and accurate information to develop a sufficient record upon which the Commission can make a just and reasonable decision. Xcel states that it is “uncertain

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<sup>7</sup> Notice of Comment Period, *Issued: June 22, 2016*

whether any interested party is entitled to submit discovery requests in this matter, and whether such discovery shall be limited or broad in scope.”<sup>8</sup> Similarly, Otter Tail states that it “welcomes the Commission’s guidance on this issue.”<sup>9</sup>

Prior to submitting its information requests on March 31, 2016 EFCA contacted the Staff of the Commission by telephone to inquire about the permissibility of discovery. Staff verbally informed EFCA’s representative that Commission rules do not explicitly address the issue but assured EFCA that the Commission’s decades long practice and the practice of utilities was to permit such fact-finding.

Utilities are the gatekeepers of information when it comes to identifying costs and setting rates. Commenters in uncontested case proceedings have no means to acquire such information other than asking for it through IRs. Without such procedures, the Commission may end up making a decision without considering all relevant facts. If intervention and party status is a prerequisite to propounding discovery, such a policy should be explicit. Had such a rule or written directive been available, EFCA certainly would have sought party status prior to submitting its IRs.

EFCA recommends that the Commission clearly state the requirements and procedures for interested parties to build a sufficient record in uncontested case proceedings. This is especially critical in uncontested case proceedings like this where a particular rate or fee can have a significant impact on the ability of DG providers to sell renewable energy systems to customers that choose to self-generate.

The ability for parties to have access to information is a fundamental due process right that cannot be ignored. EFCA requests that this issue be fully resolved prior to final

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<sup>8</sup> Xcel’s Initial Supplemental Comments at p. 3.

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comments being due in Docket No. 16-512, where new fixed fees for DG systems at cooperatives are at issue. Ample discovery in that docket will be necessary for stakeholders to determine whether fees proposed by cooperatives comport with statutory requirements.

#### **4. EFCA's Responds to Other Parties Initial Supplemental Comments.**

While EFCA believes that issues raised for the first time in supplemental initial comments are contrary to specific Commission directives, are procedurally improper and that the Commission should refuse to consider them, EFCA nevertheless provides some responses below.

##### **a. Department of Commerce ("DOC")**

In its Initial Comments filed on May 6, 2016, the DOC stated, "[t]o the extent the fees in question are found to be interconnection costs, recovery of a one-time cost on a monthly basis in perpetuity is not reasonable."<sup>10</sup> However in its October 17 supplemental initial comments, the DOC reversed this position seemingly based in part on its reading of the Uniform Statewide Contract Form found at Minnesota Rule 7835.9910.<sup>11</sup> The DOC notes, "The Uniform Statewide Contract in 2013, provided in Minnesota Rules 7835.9910, provides for an estimation of 'actual, reasonable costs of interconnection' and includes a line to identify how the QF will pay for those interconnection costs." The DOC has apparently re-interpreted this language to allow for unlimited flexibility in how such interconnection costs can be recovered. However, closer examination of the Rules on Interconnection calls this interpretation into question.

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<sup>10</sup> Comments of the Minnesota Department of Commerce, Division of Energy Resources, filed on May 6, 2016 at p. 5.

<sup>11</sup> Comments of the Minnesota Department of Commerce, Division of Energy Resources, filed on October 17, 2016 at pp. 6-7.

Minnesota Rule 7835.4750, is titled “INTERCONNECTION STANDARDS” and states,

Before a customer signs the uniform statewide contract, a utility must distribute to that 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, or to currently effective interconnection standards established by subsequent commission order.

The referenced order lays out the process for interconnection of DG resources.

Step 5 of the Process for Interconnection explains that the utility shall provide to an applicant, among other items, a “[c]ost estimate and *payment schedule* for required Area EPS [electric power system] work, *including, but not limited* to; a) Labor costs related to the final design review. b) Labor & expense costs for attending meetings c) Required Dedicated Facilities and other Area EPS modification(s). d) Final acceptance testing costs.”<sup>12</sup> (Emphasis added). Step 6 of the interconnection process requires an applicant who decides to move forward with interconnection to provide to the utility the “[a]pplicable *up-front payment* required by the Area EPS, *per Payment Schedule*, provided in Step 5. (if applicable).”<sup>13</sup> The 2004 Order also includes an Appendix A, which provides a graphical representation of the interconnection process. This graph clearly corroborates the above language and clearly indicates under Step 5 that the area EPS is to provide an applicant “*Estimated Interconnection Costs*” and that Step 6 requires the applicant to provide the EPS with the “*Applicable up-front payment.*”

DOC’s initial interpretation was therefore correct. While the Commission’s interconnection requirements do allow for the “upfront payment” to be paid over time,

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<sup>12</sup> Commission's order establishing interconnection standards dated September 28, 2004, in docket number E-999/CI-01-1023 at Attachment 1, p. 40, item 7.

<sup>13</sup> *Id.* at p. 41, item 1; *See also, Id.* at Appendix A, p. 45 (also referring to an “*up-front* payment”).



*per a payment schedule*, they do not contemplate recovery of a one-time cost on a monthly basis in perpetuity. Indeed, utilities are required to provide all costs, *including but not limited to* those listed in Step 5 to be included in their estimated interconnection costs.

This interpretation is also consistent with those of the Regulatory Assistance Project (“RAP”) in its Smart Rate Design for a Smart Future paper published in July 2015. RAP states that “if a customer is already connected to the grid and then invests in a PV system, then a *one-time cost-based fee* may be appropriate to process the net metering and interconnection agreement and to inspect the installation if required.”<sup>14</sup>

As EFCA mentioned in its Supplemental Reply Comments filed on October 17, from a developer’s perspective, interconnection fees should be paid upfront. Collecting them monthly and in perpetuity allows the utility to charge a carrying fee and is likely to result in over-collection. As stated in a 2013 publication on best practices for interconnection standards in,

Transparent, reasonable, and upfront fees allow project developers to better estimate and assess the projected cost. Providing standard engineering fees is the best means to inform interconnecting customers of all reasonable costs incurred by a utility to review, study, and test for interconnection. This information should be readily available to a contracting party or customer in advance.<sup>15</sup>

Interconnection fees, including metering costs, must be understood and known upfront in order for customers to make economically sound decisions. It is important that the

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<sup>14</sup> Smart Rate Design for a Smart Future, By Jim Lazar and Wilson Gonzalez, July 2015 at p. 42 (*available at*, <https://www.raponline.org/wp-content/uploads/2016/05/rap-lazar-gonzalez-smart-rate-design-july2015.pdf>).

<sup>15</sup> Best Practices for Interconnection Standards, Prepared by: The California Center for Sustainable Energy & The Energy Policy Initiatives Center, University of San Diego School of Law, February 2013 at p. 18 (*available at*, <https://energycenter.org/sites/default/files/docs/nav/policy/research-and-reports/Interconnection%20Standards%20web.pdf>).

Commission keep this in mind when it views its interconnection policy “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” as required by Minnesota law.<sup>16</sup>

On page 25 of its Comments, the DOC also requests that Otter Tail, Xcel and Mille Lacs Energy Cooperative provide additional information in reply comments. Such a request provides those utilities yet another opportunity to provide additional justification for DG fees in contradiction to the Commission’s June 22 notice. EFCA again urges the Commission not to consider such additional information when parties do not have an opportunity to respond.

**b. Connexus Energy (“Connexus”)**

Connexus improperly included new cost justification in its Supplemental Initial Comments. However the new information is inadequate to determine whether its \$2.65 monthly fee is appropriate, even if legal. For example the company asserts that the \$2.65 fee was established in 2005 and remains at the same level today due to increasing costs of metering being offset by the declining cost of capital.<sup>17</sup> Connexus does not provide the costs of a meter in 2016 versus 2005, or the company’s cost of capital in 2005 relative to today. Without this information it is not possible to audit this assertion.

Furthermore, in its Supplemental Initial Comments, Connexus includes incremental metering, billing and customer service costs as components of its fee. However, as previously noted, Connexus’ response to IR PUC # 3, clearly states that they do not track administrative costs for bidirectional meters.

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<sup>16</sup> 216B.164, Subd. 1

<sup>17</sup> Connexus Energy Supplemental Initial Comments, filed on October 17, 2016 at pp. 1-2.

For the first time, Connexus’ includes a “cost of service” analysis in its Supplemental Initial Comments. While this is procedurally improper for the reasons stated above, the analysis raises several substantive issues that render it unreliable. First the company’s assumption that annual operations and maintenance (“O&M”) expense for bidirectional meters mimics the O&M expense of their entire distribution system is unfounded and unsupported.<sup>18</sup> Additional information is required to determine whether this is an appropriate assumption, or whether it is even possible for Connexus to isolate metering O&M expenses given its previous IR responses. Further, the Company’s “Cost of Service Analysis” allocates costs for its “Billing License” by the number of Billing Rate Codes.<sup>19</sup> However, some Billing Rate Codes will have many more members than others, and as a result, Billing Rate Codes with fewer members will pay a higher proportion of “Billing License” costs than members in a larger Billing Rate Code. Allocating the “Billing License” cost by number of members is a more appropriate approach. Connexus has said they have approximately 129,000 members, which means “Billing License” costs would be \$0.61/year per member, rather than \$9.27/year allocated to net energy members.

**c. Mille Lacs Energy Cooperative (“Mille Lacs”)**

Mille Lacs improperly included new cost justification in its Supplemental Reply Comments filed on October 17, 2016. However it is not sufficient to determine whether the Company’s \$4.50/month charge is appropriate. The new information includes a disaggregated estimate of interconnection costs.<sup>20</sup> Mille Lacs does not provide sufficient justification that demonstrates how the costs are quantified, or that the fees charged to

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<sup>18</sup> *Id.* at Exhibit 1

<sup>19</sup> *Id.*

<sup>20</sup> Mille Lacs’ Supplemental Reply Comments filed on October 17, 2016 at p. 2.

customers are actually representative of those costs. For example, Mille Lacs simply states that there are \$500.00 of “[a]dministrative costs for specially handling and billing outside of normal procedures”<sup>21</sup> without any evidence or description of why there are incremental administrative costs.

Further, Mille Lacs notes there is a one-time \$300.00 charge for “engineering review and interconnection” while the remaining \$1,080.00 is recovered over 20 years in a \$4.50 monthly charge.<sup>22</sup> This statement implies the metering costs are recovered in the monthly charge. But it is unclear if the monthly charge includes carrying charges for company’s cost of capital, and whether the carrying charge applies to items like engineering time, meter technician time, and administrative time, which may not be suitable for carrying costs.

**d. Goodhue County Cooperative Electric Association (“Goodhue”)**

Goodhue also improperly included new cost justification in its Supplemental Reply Comments filed on October 17, 2016. However its new information is not sufficient to determine whether their \$3.00/month charge is appropriate. There is no explanation of how Goodhue determined its monthly DG charge should be \$3.00 per month. The company fails to explain why it seeks to recover \$720.00 over 20 years, despite its assertion that it incurs \$1,190.00 of interconnection costs.<sup>23</sup> Goodhue does not provide sufficient evidence about how the costs are quantified, and that the costs they charge customers for are actually incurred. For example, Goodhue simply states that there are \$400.00 of “[e]ngineering time for application, anti-island testing and

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Goodhue’s Supplemental Reply Comments filed on October 17, 2016 at p. 2.

interconnection” without any evidence or description of how the costs are accounted for.<sup>24</sup>

## **5. Conclusion**

EFCA maintains that all of the DG fees at issue are illegal. However, even if legal, the utilities have failed to justify that their fees are reasonable or just. Commenters that have ignored the Commission’s directive and provided new arguments and justifications through supplemental initial comments should not be rewarded with additional opportunities to justify DG fees. EFCA requests that any such new arguments and information be stricken from the record. Nevertheless, even if considered the new information fails to justify the DG fees at issue for the reasons stated above. Finally, EFCA requests that the Commission clarify its policy regarding discovery as soon possible.

Respectfully submitted this 10th day of November 2016.

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**ATTORNEY FOR THE ENERGY  
FREEDOM COALITION OF  
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<sup>24</sup> *Id.*

**CERTIFICATE OF SERVICE**

**RE: Docket No. E999/CI-15-755 - In the Matter of the Commission’s Inquiry into Fees Charged on Qualifying Facilities**

I, Blake Elder, hereby certify that I have this day served a true and correct copy of the “*Supplemental Responsive Comments of the Energy Freedom Coalition of America*” to all persons on the attached service list by electronic filing, electronic mail, or by U.S. mail, postage prepaid and properly addressed at Cary, North Carolina.

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Dated this 10<sup>th</sup> day of November, 2016

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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Dan	Lane	N/A	Archer Daniels Midland Company	400 West Erie Road Marshall, MN 56258	Paper Service	No	OFF_SL_15-755_Official Service List _PUC
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John	Lindell	john.lindell@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_15-755_Official Service List _PUC
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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