# Minnesota Public Utilities Commission

***Staff Briefing Papers***

Meeting Dates: August 13, 2015 .....**Agenda Item **#3**

Company: People's Energy Cooperative (People's or PEC)

Docket No. **E-132/CG-15-255**

**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**

Issues: Should the Commission find that the monthly facility fee charged to cogeneration and small power accounts by People's Energy Cooperative is contrary to Commission Rules and/or Minn. Stat. § 216B.164?

Should the Commission take steps to review or investigate the fees of other utilities?


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**Relevant Documents**

Alan Miller request for dispute resolution ..... March 13, 2015
Commission notice requesting response and comments ..... March 16, 2015
People's Energy Cooperative (19 documents) ..... April 1, 2015
People's add'l comments. ..... April 6, 2015
Sam Villella, Connexus cooperative member ..... May 4, 2015
People's add 'l comments ..... May 22, 2015
Minnesota Municipal Utilities Assoc. (MMUA). ..... June 4, 2015
Minnesota Rural Electric Assoc. (MREA) ..... June 5, 2015
The Alliance for Solar Choice (TASC) ..... June 5, 2015
Fresh Energy, ELPC, ILSR, MCEA (Clean Energy Organizations) ..... June 5, 2015
Minnesota Solar Industry Assoc. (MnSEIA) ..... June 5, 2015
Department of Commerce (DOC) ..... July 1, 2015
MnSEIA ..... July 10, 2015
Fresh Energy, ELPC, ILSR, MCEA (Clean Energy Organizations) ..... July 16, 2015
The Alliance for Solar Choice (TASC) ..... July 16, 2015
Dairyland Power Cooperative ..... July 16, 2015
People's reply comments ..... July 16, 2015

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***Statement of the issue***

Should the Commission find that the monthly facility fee charged to cogeneration and small power accounts by People's Energy Cooperative is contrary to Commission Rules and/or Minn. Stat. § 216B.164?

Should the Commission take steps to review or investigate the fees of other utilities?

***Introduction and background***

On March 11, 2015[1], Mr. Miller, a member of People's Energy Cooperative (People's, PEC or the Cooperative),[2] filed a request with the Commission for resolution of a dispute with the Cooperative pursuant to the Commission's dispute resolution authority under the Cogeneration and Small Power Production statute, Minn. Stat. § 216B.164, Subd. 5.[3] Mr. Miller indicated that People's had applied a $5.00 monthly facility fee on his bill, effective with February 2014 energy use. He stated that the imposition of such a fee on his and other distributed (DG) generation accounts (but not on non-DG accounts) is contrary to Minnesota Rules and in violation of Minnesota Statutes with respect to cogeneration and small power production, including but not limited to Minn. Stat. § 216B.164, subd. 3(a).

On March 16, 2015, after receiving Mr. Miller's complaint and request for dispute resolution, the Commission issued a notice seeking specific information from People's. The Commission's notice also set out comment periods.

On April 1, 2015, People's filed 19 documents in eDockets, including a letter responding to the Complaint dated March 24, 2015.[4] People's filed additional comments on April 6, 2015, May 22, 2015, and July 15, 2015.

[1] Mr. Miller earlier filed an informal complaint with the Commission's Consumer Affairs Office (CAO) on this issue. Regulatory Analysis Division staff and CAO staff reviewed the issues, including the Cooperative's responses, and determined that the issues involved interpretation of statutes and policy determinations that could not be resolved at the staff level.

[2] Parties in this docket have referred to Mr. Miller as "Complainant" or "Member."

[3] See also Minn. Rules 7835.4500, which states: "in case of a dispute between a utility and a qualifying facility or an impasse in the 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."

[4] These documents were filed in a confusing fashion with no logical order. In most cases, they are policy or operational documents filed without a cover letter or explanation, and at least one is mislabeled. There is one overall cover letter filed with the documents but it does not explain the documents. See Attachments 5, in Attachments to Staff Briefing Papers for a list and description of the documents.

Comments were filed by: the Minnesota Department of Commerce; a coalition of environmental groups comprised of Fresh Energy, the Environmental Law & Policy Center, Institute for Local Self Reliance, and the Minnesota Center for Environmental Advocacy; the Alliance for Solar Choice; the Minnesota Solar Energy Industries Association; the Minnesota Municipal Utilities Association; the Minnesota Rural Electric Association; and Dairyland Power Cooperative. In addition, Mr. Sam Villella, a member of Connexus, filed a letter in the docket.

***Relevant Statutes, Rules, and Orders***

Public Utilities Regulatory Policy Act (PURPA), Sections 201 and 210; and Federal Energy Regulatory Commission (FERC) rules implementing PURPA, 18 C.F.R. §§292.301 *et seq.*

The 1978 federal Public Utilities Regulatory Act (PURPA), Sections 201 and 210, require retail electric utilities to purchase energy and capacity offered by qualifying facilities (QFs). This statute delegates to state regulatory entities the authority to establish (what may otherwise be federal jurisdictional wholesale) rates, terms, and conditions for utility purchases from QFs, within guidelines set out in PURPA and the FERC's implementing rules.

Minn. Stat. §216B.164, Cogeneration and Small Power Production; and Minn. Rules, Chapter 7835 (the full text of the 2014 version of 216B.164, the full text of Minn. Rules, Chapter 7835, and the 2015 Session Law changes to 216B.164 are included in the Attachments to Staff Briefing Papers.)

The Commission began a rulemaking proceeding in 1980 to implement PURPA at the state level. The legislature enacted Minn. Stat. § 216B.164 in 1981, with net-metering provisions added in 1983, also to implement PURPA at the state level. There was interaction between the legislative process and the Commission's rulemaking efforts.[5] The Commission's rules, Chapter 7835, became effective in 1983.

The first two subdivisions of Minn. Stat. § 216B.164 set out the scope, purpose, and applicability of the statute. The statute and any rules adopted by the Commission apply to all electric utilities, including cooperatives and municipals.

> Subdivision 1**. Scope and purpose.** This section shall at all times be construed 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.

[5] For example, the Commission's Order Adopting refers in several places to Hearing Examiner findings on whether a cooperative or municipal utility was subject to the Commission's rules prior to having any QFs interconnected, given language in the statute. This statutory language got "cleaned up" in the 1983 version so this was no longer an issue.

> Subd. 2. **Applicability.** This section as well as any rules promulgated by the commission to implement this section or the Public Utility Regulatory Policies Act of 1978, Public Law 95-617, Statutes at Large, volume 92, page 3117, and the Federal Energy Regulatory Commission regulations thereunder, Code of Federal Regulations, title 18, part 292, shall, unless otherwise provided in this section, apply to all Minnesota electric utilities, including cooperative electric associations and municipal electric utilities.

While there were some minor amendments over the years, the statute did not change significantly until 2013, when the net-metering threshold for QFs connected to public utilities was raised, with other changes also affecting primarily public utilities. The 2013 changes do not directly affect the issues in the instant dispute.

The Commission opened a rulemaking proceeding in 2013 to incorporate the 2013 amendments to the statute and make "housekeeping" updates. Staff expects these amended rules to be effective in late August or early September, 2015. Again, the proposed rule changes do not directly affect the issues in the instant matter.

Minn. Stat. § 216B.164 was further amended in the First Special Session in 2015. The changes do apply to cooperative and municipal electric utilities, including the ability to impose an additional fee on QFs who interconnect <u>after</u> July 1, 2015, under certain conditions:

> **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. <u>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 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.</u> 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).[6]
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> . . . . .
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> **<u>EFFECTIVE DATE.</u>** <u>This section is effective July 1, 2015, and applies to customers installing net metered systems after that day.</u>

<u>Commission's March 7, 1983 Order Adopting Rules, E-999/R-80-560</u> (Full text included in Attachments to Staff Briefing Papers.)

[6] 2015 Minnesota Session Laws, Chapter 1, H.F. No. 3, Sec. 21, included as Attachment 3, in Attachments to Staff Briefing Papers.

As noted above, the Commission adopted its Cogeneration and Small Production rules, Minn. Rules, Chapter 7835 in 1983. The rules as adopted in 1983 have not been changed since then (other than Revisor's updates in codification, grammar, and the like). The statute has also not changed with respect to the issues in the instant dispute prior to the 2015 changes. Therefore, staff believes the Commission's reasoning when adopting the rules is still relevant to the issues to be resolved in the instant matter, and thus is making a copy available.

Commission's February 17, 2011 Order Prohibiting Check Writing Charge and Ordering Refund, E-126/CG-10-1195

The 10-1195 docket involved a dispute over a check-writing fee imposed by Nobles Cooperative Electric. The Commission found that Nobles was prohibited from charging a check-writing fee to QF members, and required refunds of fees already collected. Several parties have cited to this decision in their comments as being relevant to the instant matter.

***Brief statement of parties' positions***

*Mr. Alan Miller, Complainant*

Mr. Miller filed his request for resolution of a dispute with People's pursuant to the Commission's dispute resolution authority. He indicated that People's had applied a $5.00 monthly facility fee on his bill, effective with February 2014 energy use. He stated that the imposition of such a fee on his and other DG accounts is contrary to Minnesota Rules and in violation of Minnesota Statutes with respect to cogeneration and small power production, including but not limited to Minn. Stat. § 216B.164, subd. 3(a).

*People's Energy Cooperative (People's, PEC or the Cooperative)*

People's argued that it has statutory authority under Minn. Stat. § 216B.164 to charge the monthly $5.00 fee to DG customers to offset recurring costs unique to the existence of the interconnected cogeneration and small power production systems that are not recovered through other charges and are not part of a stand by fee.[7] It argued that the costs are related to interconnection and wheeling and that statute makes clear that QFs are not to be excused from these types of costs. It noted that this authority was set in statute prior to PEC's implementation of the fee in February 2014. As the rate setting body for PEC, its Board of Directors was therefore authorized under statute to set the fee. People's also claimed authority to charge the fee based on the fact that other IOUs charge what it claimed was a similar fee.

[7] PEC argued that qualifying costs would include those related to monitoring interconnected systems, processing of readings, including incremental information service charges, and associated purchasing payments. An additional area of unique costs would be ongoing maintenance costs specific to interconnection.

*Minnesota Municipal Utility Association (MMUA)*

MMUA supported all of the arguments made by People's and commented that "A monthly charge by cooperative electric associations or municipal utilities to recover costs associated with servicing net metering or qualifying facilities is not precluded by any law." MMUA also argued that since the statute provides no prohibition or conditions regarding fees charged by municipals and cooperatives, there is no guidance for the Commission to adjudicate complaints regarding these fees as there would be for public utilities. MMUA urged the Commission to find that this matter would be appropriately resolved by People's governing Board of Directors.

*Minnesota Rural Electric Association (MREA)*

MREA supported People's position and commented that the Members with interconnected DG create unique costs not recovered through the Cooperative's fixed charge. It argued that Minn. Stat. § 216B.164 allows these ongoing costs to be recovered if they are unique to the existence of the interconnected system, are not covered by other charges, or are not part of a stand by fee. MREA also argued that there is precedent for this additional charge because the Commission has approved similar charges for IOUs.

*Dairyland Power Cooperative (DPC)*

DPC is the wholesale Generation and Transmission cooperative of which Peoples is a member. DPC argued that Minn. Stat. § 216B.164 permits PEC and other Minnesota electric cooperatives to recover the costs of serving a QF that are not recovered from net energy billing via a separate charge. DPC argued that Minn. Stat. § 216B.164, subd. 3(a), in context, authorizes a cooperative to implement other charges to recover its costs for which it is not compensated under the energy rate applicable to both the utility and the QF for purposes of net energy metering. Although Minn. Stat. § 216B.164, subd. 3(a) addresses net energy billing for QFs, there are other provisions in the statute that allow for charges in addition to the net energy billed to the QF. Subd. 3(a) states that excess energy must be net billed. This subdivision does not prohibit extra charges by a cooperative to recover costs that were not recovered via kWh energy charges. DPC argued that statutory language to provide "maximum possible encouragement" to cogeneration and small power production must be balanced against language that requires actions to be "consistent with the protection of the ratepayers and the public."

*Department of Commerce (DOC or Department)*

The DOC concluded that the contract between People's and Mr. Miller did not authorize the Cooperative unilaterally to implement new charges for interconnection or for fixed distribution services. The DOC recommended that the Commission deny the facility fee imposed by People's and direct it to submit a compliance filing identifying the amount of refund owed to the Complainant, as well as a plan for issuing the refund. It also recommended that People's identify additional QF customers who have been assessed a charge that is not identified in their contract and provide a mechanism to refund to these customers.

*Fresh Energy, Environmental Law & Policy Center (ELPC), Institute for Local Self-Reliance (ILSR) and Minnesota Center for Environmental Advocacy (MCEA) or the Clean Energy Organizations (CEO)*

CEO, like the DOC, believes that PEC's facility fee is not authorized under Minn. Stat. § 216B.164 and asked the Commission to resolve the dispute in the favor of the Complainant and "require payments to the prevailing party of the prevailing party's costs, disbursements, and reasonable attorneys' fees" as provided by Minn. Stat. § 216B.164, subd. 5. CEO also recommended that the Commission require PEC to provide a compliance filing identifying the amount owed to the Complainant and the plan for issuing a refund. CEO suggested that People's compliance filing identify additional customers with QFs less than 40 kW who have been assessed the $5.00 DG charge, so that these customers can receive a refund. CEO proposed a "fast-track" process for refunds to customers from other cooperatives that have been billed for similar what it considers to be impermissible net metering charges. Finally, CEO supported the DOC recommendation to open a new docket to request additional information from the IOUs on net metering charges.

*The Alliance for Solar Choice (TASC)*

TASC believes the Complainant's concerns are well founded and that the proposed DG charge is not authorized by statute and violates PURPA. Moreover, TASC believes PEC has failed to meet its burden to justify the charge and that 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."[8] According to TASC, Subd. 3(c) refers to situations in which a net metered customer ends a billing period with "net input into the utility system" or net excess generation. Subd. 8(b) does not authorize a utility to levy an additional fixed charge upon customer-generators without authorization and without justifying the decision. TASC argued that recent legislation provides further evidence in support of its position.

*Minnesota Solar Energy Industries Association (MnSEIA)*

MnSEIA argued that the Commission should provide the maximum possible encouragement for cogeneration and small power production and that if PEC is allowed to continue applying the net metering facility fee, it will set a dangerous precedent. MnSEIA argued that the Commission has jurisdiction over this matter and that Minn. Stat. § 216B.164, subd. 3(a) prohibits PEC's $5.00/month net metering fee. It also maintained that the $5.00 monthly fee is not an interconnection cost. In reply, it argued that the new legislation making certain fees legal is not relevant because People's was charging the fee prior to July 1, 2015, the effective date of the new legislation. MnSEIA argued that simply because other IOUs may be charging fees that

[8] Minn. Stat. § 216B.164, subd. 1.

could be of a similar nature, this does not mean PEC's fee is legal or that there is precedent for People's to charge the fee.

***Staff discussion***

*Does the Commission have jurisdiction in this matter?*

This request for dispute resolution was filed pursuant to, and cites to, Minn. Stat. § 216B.164, subd. 5, which states that disputes between a QF and an "electric utility" are to be determined by the Commission. Minn. Stat. § 216B.164, subd. 2 states that this section applies "to all Minnesota electric utilities, including cooperative electric associations and municipal electric utilities."

In staff's view, those parties questioning the Commission's jurisdiction do not appear to be challenging the Commission's overall subject matter jurisdiction, but rather are interpreting the statute to allow a fee, and asking the Commission to give deference to People's decision to impose the fee.

Arguments questioning whether the Commission should assert jurisdiction

In its April 6, 2015 comments, People's does not argue that the Commission cannot decide the dispute, instead stating that their interpretation of Minn. Stat. § 216B.164 is that "ongoing costs can be recovered if those costs are unique to the existence of the interconnected system…." In their May 21, 2015 letter, Peoples simply refers to general monthly charges assessed by other utilities. Peoples also submitted a number of attachments which largely include their own internal documents, and which do not speak at all to jurisdiction.

For the first time, in their July 15, 2015 reply comments, Peoples cites to a general statute, Minn. Stat. §216B.01, which states the following:

> Because municipal utilities are presently effectively regulated by the residents of the municipalities which own and operate them, and cooperative electric associations are presently effectively regulated and controlled by the membership under the provisions of chapter 308A, it is deemed unnecessary to subject such utilities to regulation under this chapter except as specifically provided herein.

MREA and MMUA, likewise, do not explicitly state that the Commission lacks authority over this dispute, although they do suggest deference to PEC. MREA's short comments specifically ask the Commission "to allow PEC and other electric cooperatives in Minnesota to charge for the cost of serving interconnected distributed generation facilities described above." MMUA does state that the matter is best left to People's board, but does not specifically argue that the Commission lacks jurisdiction. Dairyland Power Cooperative (DPC), which did not file initial comments but filed replies, argues for a statutory interpretation that allows the fee, which staff

will discuss in a later section. DPC also cited to a 1984 appellate decision concerning a refund unrelated to Minn. Stat. §216B.164.

Arguments in favor of the Commission asserting jurisdiction

While there has not been a significant dispute over jurisdiction, a number of commenters did analyze and argue in favor of Commission jurisdiction.

MnSEIA and CEO pointed out that while Minn. Stat. § 216B.01 does limit the Commission's jurisdiction over cooperatives, the statute specifically provides for an exception, when statutes in Chapter 216B do grant jurisdiction. Minn. Stat. § 216B.164, the statute at issue here, happens to be one of those exceptions. Not only does 216B.164, subd 2 cite above specifically state it applies to cooperatives, subd. 3(a) again refers to cooperatives. A number of the subdivisions, such as Subdivision 6 which required the Commission to promulgate rules and develop a uniform standard contract, apply to all utilities. Other sections, such as Subdivision 3(b), 3a, 4a, 4b, and 4c apply only to public utilities.

Staff Analysis: Jurisdiction

Minn. Stat. § 216B.164 specifically states that: it applies to cooperatives; QFs have standing to bring disputes to the Commission; and the Commission has authority to resolve those disputes.

Staff recommends the Commission proceed with the docket.

*Did People's comply with the annual filing requirement under Minn. Rules Chapter 7835?*

Minn. Rules parts 7835.0300 and 7835.0400 require utilities, including cooperative utilities, to make annual filings of their cogeneration and small power production tariffs with the Commission for its review and approval.[9] Minn. Rules 7835.0400 states that if the only change to the tariff is the calculation of the average retail utility energy rate, the utility is permitted to notify the Commission in writing that no other changes have been made.[10]

Following the filing of the request for dispute resolution, the Commission issued a notice seeking information from People's on the required filings under Minnesota Rules, parts 7835.0300-7835.1100. This request was included in the notice because there appeared to be no record of

[9] Minn. Rules 7835.0300 states in relevant part "Within 60 days after the effective date of this chapter, on January 1, 1985, and every 12 months thereafter, each utility must file with the commission, for its review and approval, a cogeneration and small power production tariff."

[10] Minn. Rules 7835.0400 states "If, after the initial filing, schedule C if 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 service as a substitute for the refiling of the complete tariff in that year."

PEC's filings under these sections of the Minnesota Rules for the past three years. As noted above, these sections require PEC to file an annual cogeneration and small power production tariff. The tariff must include certain schedules, which are described in the rules. People's made no filings in 2013 or 2014.[11] The day after the Commission's notice was issued in the instant docket, People's filed its 2015 calculations in e-dockets in 15-09. However, the filing only contains calculations of its average retail energy rate; no tariffs are included.

The Commission's notice requesting that People's provide copies of the 2014 and 2015 cogeneration and small power production tariff reports, along with other information, was issued on March 16, 2015. On April 1, 2015, in response to the notice, People's filed 19 documents in eDockets, including its Annual Cogeneration and Small Power Production Rate Reports for 2014 and 2015.[12] PEC did not provide any proof that it had filed the rate reports on time, and as the printout for that docket demonstrates, no record of it appears in eDockets. See Attachment 1, a printout of the 2014 cogeneration and small power rate reports file in the relevant docket numbers.

Because the 2014 cogeneration and small power rate calculations and tariff changes required under the rules was not filed with the Commission, PEC's $5.00 fee for cogeneration systems, which was first applied in February 2014, was neither on file at the Commission nor available to People's customers prior to being charged. People's customers received no prior notice of the new fee prior to seeing the fee on their bill.[13]

The filing requirements under Minn. Rules parts 7835.0300 and 7835.0400 serve an important purpose. These filings are made in eDockets in order to provide affected customers and interested stakeholders prior notice allowing them to object and at a minimum to be notified.[14]

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[11] 2014 is the filing year of significance in this docket, as that is the year the rate was imposed on QF customers. It is not clear why People's did not make any filing on this rate in 2014, as they did make a eDockets filing with the Commission, in docket 14-481, to modify their electric service areas. Minn. Stat. §216.17 requires all utilities, including cooperative utilities, to make their filings via the eDockets system, starting in 2008.

[12] Contained within the 19 separate documents all filed by People's on April 1, 2015 were documents that were miss-labeled, included incorrect cover letters—cover letters that did not correctly describe what followed, and even some documents that appeared to be incorrectly dated. The docket numbers assigned to the annual filings were: 13-9/13-10, 14-9/14-10, and 15-9/15-10.

[13] PEC did provide an April 24, 2014 letter to an affected customer explaining the fee. The letter explains that the fee took effect two months earlier, in February 2014, and apologizes for not communicating the charge in a timely manner.

[14] As general background, the "filed rate doctrine" is a concept in law that applies to rate-regulated utilities that says that a utility can only charge rates that are on file with, and approved by, a regulatory body. It protects a customer from being charged unapproved rates and prohibits the utility from having special discounts/surcharges/terms and conditions from customers that are not in tariff. It also in effect prohibits retroactive ratemaking, i.e. a rate cannot not be applied before its approved effective date.

By not making the required filings, Peoples did not provide sufficient notice of the rate and deprived customers and stakeholders of the opportunity to review the filing, including the new facility fee, and object.

Therefore, staff believes that People's has violated Minn. Rule 7835.0300 and 7835.0400. Its failure to make these filings in a timely fashion, prior to charging the new fee could be grounds to reject the new fee and require a refund. Refunding what appears to be an unlawful fee is certainly one option that fits the violation here, and is consistent with the action taken by the Commission in the Nobles check-writing fee docket, 10- 1195.

*How should Minn. Stat. § 216B.164 be interpreted with respect to the monthly fee imposed?*

Parties cite to several subdivisions of Minn. Stat. §216B.164 as support that either the fee is not allowed at all or is permitted. Even if a fee may be permitted under the statute and rules, some parties argue that People's fee is unreasonable and discriminatory.

Minn. Stat. §216B.164 (2014), Subdivision 3(a) states:

> 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. 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).

Some parties, such as MnSEIA, state that because the word "shall" is used, it has the effect of prohibiting other fixed monthly fees from being introduced.

Minn. Stat. §216B.164 subd. 8(b), discusses the costs QFs may be responsible for, and 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, or from any fixed charges normally assessed such nongenerating customers.

Subdivision 3(c) may also be relevant to the dispute[15], and states:

[15] However, establishing rates for net-metered customers is under Subdivision 3(d), and contains no such language. Nor is such language contained in the 2015 amendments, subdivision 3(f) which also deals with net-metered customers.

> (c) 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. The commission shall set the rates for net input into the utility system based on avoided costs as defined in the Code of Federal Regulations, title 18, section 292.101, paragraph (b)(6), the factors listed in Code of Federal Regulations, title 18, section 292.304, and all other relevant factors.

These same parties argue that the subdivisions read together, allow for only the following:

- An energy charge for the net energy supplied by the utility (subd. 3(a));
- Costs of interconnection (subd. 8(b)), if in excess of those costs normally incurred by the utility for customers with similar load characteristics;
- Wheeling (subd. 8(b)), if in excess of those normally incurred by the utility for customers with similar load characteristics;
- Fixed charges normally assessed to nongenerating customers (subd. 8(b)).
- Rates that take into account fixed distribution costs to the utility not otherwise accounted for in the basic monthly charge (subd. 3c);
- Rates that are not discriminatory in relation to the costs charged to other customers of the utility (subd. 3(c)).

The parties that recommend banning the charge point out that a charge for the costs of interconnection (the second bullet point) would have been assessed at the time the customer interconnected, not years later.[16] They further argue that this fee is discriminatory compared to other non-generating customers.

These commenters favor a reading of the statute as a whole, which staff understands to be the following: the subdivisions that specify how fees or rates may be allowed for specific costs would be rendered meaningless if a cooperative may introduce a new monthly fee assessed only on DG customers at any time. It follows that the Commission must interpret them in a way that gives them some effect, and that way is to prohibit PEC's fee.

However, not all commenters agree with this interpretation. DPC suggests that one cannot read Minn. Stat. § 216B.164, subd. 3(a) to ban monthly fees; rather, the subdivision is merely specifying the method by which net energy billing is to occur:

> Section 216B.164 Subd. 3(a) does not limit the ability of a cooperative to recover its costs incurred as a result of the QF selling its excess energy to the cooperative

[16] The agreement signed by the customer is dated November 9, 2010, while the monthly fee was imposed beginning in February 2014.

> only to net energy billing for the surplus energy purchased by the QF. All that section does is state that excess energy must be net billed. Considering Subd. 3(a) in context with other portions of § 216B.164 show that additional charges to recover costs not otherwise recovered through the energy rate may be the subject of separate charges.[17]

Staff Analysis: Statutory Interpretation

A number of parties cite to the first clause of the first sentence of Minn. Stat. §216B.164, subdivision 3(c) as a primary argument that the statute allows a monthly fee to be imposed on QFs under 40 kW. Others cite to the second clause of the first sentence to argue against imposing such a fee.

> (c) **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.** The commission shall set the rates for net input into the utility system based on avoided costs as defined in the Code of Federal Regulations, title 18, section 292.101, paragraph (b)(6), the factors listed in Code of Federal Regulations, title 18, section 292.304, and all other relevant factors.

Staff believes the Commission's interpretation and discussion of this statutory provision in its original 1983 ORDER ADOPTING RULES, is instructive:

> The Commission has considered "the fixed distribution costs to the utility not otherwise accounted for in the basic monthly charge." The Commission believes that if this were its only requirement it would be reasonable in many cases to assess qualifying facilities an additional fixed charge to recover fixed distribution costs which other customers pay through consumption of energy at elevated energy rates. However, the Commission must also "ensure that the costs charged to the qualifying facility are not also discriminatory in relating [sic] to the costs charged to other customers of the utility**." If a nongenerating customer reduces his consumption to zero, he must pay only the monthly fixed charges. Consequently the Commission believes it would be discriminatory to require a qualifying facilities [sic] to pay more than the standard monthly fixed charge**.[18] [Emphasis added]

[17] DPC comments, pp. 4-5.

[18] In the Matter of the Proposed Adoption of Rules of the Minnesota Public Utilities Commission Governing Cogeneration and Small Power Production, Docket No. E-999/R-80-560, Issued March 7, 1983.

The language of this subdivision has not changed (other than renumbering) since the statute was enacted and the rules were adopted 32 years ago, nor to staff's knowledge has the Commission's interpretation or determination ever been challenged.

Staff also notes that subdivision 3(c) involves the setting of avoided cost rates for QFs under 40 kW who do not choose the average retail utility energy rate under (d). There is no similar language under part (d). The Complainant, and as far as staff knows all, or essentially all, small QFs have chosen to be paid under subd. 3(d).

> (d) Notwithstanding any provision in this chapter to the contrary, a qualifying facility having less than 40-kilowatt capacity may elect that the compensation for net input by the qualifying facility into the utility system shall be at the average retail utility energy rate. "Average retail utility energy rate" is defined as the average of the retail energy rates, exclusive of special rates based on income, age, or energy conservation, according to the applicable rate schedule of the utility for sales to that class of customer.

The other statutory provision cited as a primary argument in support of the fee by several parties is Subdivision 8(b):

> Subd. 8. **Interconnection required; obligation for costs.**
>
> (a) Utilities shall be required to interconnect with a qualifying facility that offers to provide available energy or capacity and that satisfies the requirements of this section.
>
> (b) **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, or from any fixed charges normally assessed such nongenerating customers. [Emphasis added]**

People's has not been consistent as to whether the monthly fee is for interconnection-related costs or other categories of costs, such as reduction in fixed cost recovery due to lower usage. From the perspective of reasonableness and notice, it would seem that interconnection costs should be limited to those disclosed to customers prior to finalizing interconnection, not imposed afterwards on existing customers.

The 2015 amendment to Minn. Stat. §216B.164 regarding monthly fixed fees by cooperatives and municipals may also be relevant. The amendment specifically allows monthly fixed fees to be imposed, but sets out specific showings necessary to do so, and apply only to customers interconnected after July 1, 2015:

> **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 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).[19]

The 2011 Nobles decision, cited to by some commenters, may also be instructive. It stands for the principle that even if a cooperative incurs a specific cost (in that case for check-writing), a fee to recover such costs from QFs can be disallowed as discriminatory when a similar fee is not imposed on non-DG customers.

*With whom does the burden of proof lie?*

An issue closely related to the statutory interpretation is where the burden of proof lies in this instance. Under Minn. Stat. § 216B.164 subd. 5, the burden of proof rests with PEC.

CEO states that PEC's descriptions of extra costs are "unquantified and nebulous".[20] TASC, likewise, states that PEC would have had to provide information on its costs to serve customer generators in order to meet its burden of proof.[21]

CEO cites to a Utah Commission decision which appears to support the principle that utilities must provide adequate information to justify these types of charges:

> 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.[22]

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[19] 2015 Minnesota Session Laws, Chapter 1, H.F. No. 3, Sec. 21, attached to these briefing papers.

[20] CEO comments, page 6.

[21] TASC comments, page 6.

[22] CEO comments at 8, citing to In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah…Docket No. 13-035-084, Report and Order of

*Staff Analysis*: Burden of Proof

Staff observes that the Utah decision some commenters cite to is a rate case, not a net metering dispute, so may not be directly relevant.. However, the Commission used similar reasoning in its 1983 Order Adopting Rule discussed above, which is clearly on-point.

However, staff believes the burden of proof issue present in this docket is a significant one. PEC largely provides narratives in response to DOC IRs 7-9 on what additional costs it is incurring with DG customers. PEC mentions that there are additional meter and meter reading costs, customer education costs, and perhaps costs in gathering information for Minnesota reporting requirements. In other parts of its filings it generally references extra costs, or additional interconnection costs.

Even if the Commission were to read the statute to allow fixed charges for net metered customers if those customers impose costs over and above those of non-generating customers, it is not clear whether PEC has provided the right type of information nor whether they have articulated how added metering and customer education costs are unique only to net metered customers. Customers participating in People's CIP or load management programs, for example, may have unique equipment and may need additional customer education.[23] It may be that there are truly unique costs attributable to People's DG customers; the question is whether People's has made that clear.

Staff believes it is likely that additional DG complaints may be filed with the Commission, and it may be useful for the Commission to articulate what type of information it finds useful in these proceedings, to assist in the resolution of future disputes.

*Did People's alter the Uniform Statewide Contract in Minnesota Rules?*

Minn. Stat. § 216B.164, subd. 6(a) requires the Commission to establish a uniform standard contract for use between utilities and a net metered or qualifying facility (QF) having less than 40 kW capacity if interconnected to a cooperative or municipal utility.[24] In promulgating Minn. Rules 7835.9910, the Commission established a Uniform Standard Contract. Minn. Stat. § 216B.164, subd. 6(c) requires the standard contract to be applied to all new and existing interconnections between utility and net metered QF (less than 40 kW), although existing agreements may remain in force until terminated by mutual agreement.

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August 29, 2014.

[23] Although People's is a cooperative, it must still participate in CIP.

[24] Subd. 6. **Rules and uniform contract**. (a) The commission shall promulgate rules to implement the provisions of this section. The commission shall also establish a uniform statewide form of contract for use between utilities and a net metered or qualifying facility having less than 1,000-kilowatt capacity if interconnected to a public utility or less than 40-kilowatt capacity if interconnected to a cooperative electric association or municipal utility.

The DOC reviewed the contract between People's and its Member for both the rate paid by the Member to the Cooperative for electric service and the rate paid by the Cooperative for energy supplied by the QF and provided by the Member. The DOC concluded that the contract did not authorize People's to unilaterally implement new charges or fees for interconnection or fixed distribution services. It noted that section 4.1 of the contract, which governs the rate paid by the Cooperative for electricity, contains no language authorizing rate changes similar to the facility fee charged by People's. Such a fee is clearly not contemplated or identified in the contract, nor do other provisions of the contract authorize new charges or fees for interconnection or fixed distribution services. The contract includes no language governing either fixed distribution or interconnection costs.

The DOC observed that People's did not use the Uniform Statewide Contract promulgated through Minn. Rules 7835.9910, contrary to the statutory requirement in Minn. Stat. §216B.164 subd. 6 (c) that the Uniform Statewide Contract be applied to all new and existing interconnections for QFs under 40 kW.

The DOC stated: "The contract form used by Peoples differs from the Uniform Statewide Contract set forth in Minnesota Rules 7835.9910."[25] The DOC did not describe the specific differences between the PEC "Member Services Contract" and the Uniform Statewide Contract, nor did it include a decision option to rectify the situation. Staff confirmed that the PEC Member Services Contract filed as an attachment to the DOC comments is very different from the Uniform Statewide Contract in Minn. Rules 7835.9910.

In reply comments, People's did not dispute the DOC conclusion that it did not use the Uniform Statewide Contract, nor did People's produce another contract that the customer signed that was consistent with the Commission's Rules.

In response, People's pointed out that IOUs have monthly charges for net metered customers. In comments filed on May 21, 2015, People's stated that Xcel Energy, Otter Tail Power Company, Interstate Power and Light, and Minnesota Power all charge monthly fees to net metered QF customers. Therefore, according to People's, there is authority for the monthly charge imposed on its net metered customers.

CEO agreed with the DOC that the net metering contract between People's and its Member does not allow the Cooperative to unilaterally implement new charges or fees for interconnection or fixed distribution services. However, it emphasized that contract language should always be read in coordination with statutory and rule language to prevent interpretations of contracts counter to statute and rule and so that the Commission does not have to interpret individual Cooperative contracts in future disputes where statutes and rules clearly govern.[26] CEO noted

[25] DOC comments, filed July 1, 2015, p. 6.

[26] CEO comments, filed July 16, 2015, p. 2.

that the contract between People's and its Member reflects the statutory and regulatory language, which states that discriminatory charges to DG customers are impermissible.

Dairyland disagreed with the DOC. It argued that section 5.1 of the MSA incorporates "Terms and Conditions" into the Agreement that include a rate schedule, and that PEC's bylaws provide that PEC's Rate Schedules are "…from time to time…fixed by the [PEC] Board."[27] In addition, DPC argued that the last sentence of section 3.1 of the MSA expressly gives PEC the authority to change rate schedules.[28]

Based on its review of the contracts, the Department recommended that the Commission deny People's net metering facilities charge, and direct the Cooperative to submit a compliance filing identifying the amount of refund owed to the Member, as well as a plan for issuing such a refund. The DOC suggested that the Commission may also wish to order People's in its compliance filing to identify additional customers with QFs who were assessed similar charges not identified in their contracts with the Cooperative and to identify a plan for either providing a refund or notifying such customers of their right to a refund.

*Staff Analysis*

Staff believes the Commission could find People's in violation of Minn. Rules 7835.9910, direct People's to revise all of its member services contracts with existing QFs, use the Uniform Statewide Contract found in Minn. Rules 7835.9910 going forward, and make a compliance filing to that effect.

In a related matter, the Nobles docket (Docket 10-1195), cited to by MnSEIA and CEO, the Commission rejected a check writing fee assessed on DG customers. It did so on the grounds that the Uniform Statewide Contract set up the fees to be charged to DG customers, that the Commission's contract did not allow for this fee, and that Nobles impermissibly altered statewide contract. It found that this was a violation of the statute, was discriminatory, and was contrary to the public policy goal of establishing statewide uniformity in such transactions.[29]

The uniform statewide contract form in Minn. Rules, Part 7835.9910 provides the following:

> 3. 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 the is contract is in force.

[27] DPC comments, filed July 16, 2015, p. 7.

[28] The last sentence in section 3.1 of the MSA states: "Such electric service shall be supplied under the rate schedules applicable to the Consumer's class of service as revised from time to time by the Cooperative."

[29] MnSEIA comments, filed June 5, 2015, pp. 3-4; CEO comments, filed June 5, 2015, p. 2.

Staff believes the purpose of this section is simply to recognize that the avoided cost rate and average retail utility energy rates change over time, and that a utility's rates to all customers change over time. The uniform contract is required by the statute, and is intended to be a simple, straightforward document for small QFs. This contract as a whole and this provision does not confer on utilities the right to impose any fees, charges, or rates that are not allowed under the statute and the body of the rules and that are not approved by the Commission.

*What are the next steps the Commission could take?*

**Require People's to identify other customers with QFs under 40 kW who have been assessed the $5.00 facility fee.**

In CEO's reply comments, CEO recommended the Commission direct Peoples to include in their compliance filing to also include identifying additional customers with QFs under 40 kW who have been assessed the $5.00 DG charge and identifying a plan for refunding all $5 charges that have been collected from these customers to date.

*Staff Analysis*

Staff believes this is an appropriate decision option to adopt if the Commission orders a refund to the complainant. This will ensure that all of People's customers are treated similarly.

**Fast track proposal**

CEO suggests in its July 16, 2015 reply comments that if the Commission finds People's fee to be unauthorized by statute, the Commission should also "direct the Commission's Consumer Affairs Office to establish a process to 'fast-track' requests for refunds from customers from other cooperatives who have been billed for similar impermissible DG charges."[30]

*Staff Analysis*

Staff agrees in concept with CEO that if the Commission finds the Complainant and other similarly situated customers of People's should receive refunds, similarly situated customers of other utilities should also receive refunds. However, the issues are more complicated than that. Staff believes it is premature to direct any particular process change. When getting a consumer complaint on a fee, CAO first ensures that it has all of the information necessary to proceed: the customer information, the nature of the fee, how long it has been charged and how much the fee is. It is not clear what part of the process should be changed, as CAO would still need all of this information. When a customer complaint is filed that bears similarity to a formal docket the Commission has decided, CAO's normal practice is to bring up that Order to the utility, to preserve consistency in the treatment of customer complaints.

[30] CEO reply comments, page 8.

The fastest way to ensure a large group of customers receive refunds they are due is for the Commission to include in its order a requirement that the utility refund all of its customers and submit a compliance filing proving that it has done so. That decision option is already incorporated here for People's. To extend this to other utilities, the Commission could wait for specific complaints, open a more generic docket, or take other related actions.

**Open a new docket or take some other action to investigate similar charges by IOUs.**

The DOC suggested that the Commission may wish to open a new docket to request additional information from Xcel Energy, Otter Tail Power, Interstate Power and Light, and Minnesota Power on the implementation date of any net metering charges, and the Dockets in which such charges were approved. Similarly, CEO's reply comments support the DOC recommendation to open a new docket to request additional info from each IOU who has a similar charge, and the docket in which such charge was approved.

*Staff Analysis*: Staff agrees that all utilities should be treated consistently, if the same circumstances exist. At this time, it is not clear in the record whether the IOU's fees are of the same type as People's, as People's only mentioned them briefly and did not attach tariff pages or other relevant information. The Department, after researching the issue, found that these IOU charges have been in place since at least each Company's 2010 Distributed Generation Report.[31] The fact that these charges were filed in the appropriate report makes them different from People's, who did not file them. An alternative to automatically opening a new docket could be for the IOUs to communicate with the Department and other interested parties on these fees, and then report back to the Commission. If at that time the Department or another stakeholder believes the fees are inappropriate, the Commission could open a docket then.

In addition, the Commission is now aware that at least one other cooperative charges an additional monthly fee to its DG customers. If further investigation is going to be undertaken with respect to public utilities, it would be logical to also investigate cooperatives and municipal utilities that may be imposing such a fee.

**Determining a "reasonable and appropriate" additional charge in accordance with the new 2015 legislation.**

In its comments, the DOC discussed methods to assist the Commission in determining a "reasonable and appropriate" additional charge in accordance with new legislation.[32] However, Dairyland argued that the issue of how to establish a "reasonable and appropriate" charge with new legislation is not at issue in this docket.[33]

[31] Department comments, page 9.

[32] Department comments, pages 7-8.

[33] Dairyland reply comments, page 3.

*Staff Analysis*

Staff agrees with the point that the new 2015 legislation is subject to interpretation and at some point will need some clarification from the Commission. Staff notes that in this particular docket, the complainant interconnected prior to the effective date of the legislation and therefore the new legislation does not directly apply to this specific situation.

The Commission may choose to initiate a proceeding in an effort to get out in front of disputes; on the other hand, the Commission could choose to wait for a specific, developed dispute before addressing the new legislation. Staff does not have a specific recommendation. Staff notes that the Commission can open a new docket and issue a request for comments at any time, so staff can take direction from the Commissioners at any time (that is, the action to open a new docket does not have to be formally taken as part of this proceeding).

*Does the Commission want to make specific findings on any issues prior to taking up the merits of the dispute?*

The Commission may want to discuss the issues below, and may want to make specific findings on some or all of them, prior to making a determination on the merits of the dispute:

*Statutory Interpretation*

Find that People's monthly charges for DG customers are prohibited by Minn. Stat. §216B.164.

Find that monthly charges for DG customers are discriminatory and/or do not give the maximum possible encouragement to small power production consistent with the protection of ratepayers and the public.

Find that monthly charges for DG customers are allowed under the statute if the utility meets its burden of proof that the charges are reasonable and non-discriminatory.

*Burden of Proof*

Find that People's has not met its burden of proof under Minn. Stat. §216B.164, subd. 5 to show that its monthly charges for DG customers are reasonable.

Find that People's has met its burden of proof.

*Compliance with annual reporting requirements under Minn. Rules, Chapter 7835*

Find People's in violation of Minn. Rules, parts 7835.0300 and 7835.0400 for failing to file the proposed fee changes in 2014.

Find that People's failure to file its proposed fee changes is not material to resolving this dispute.

***Decision Options***

Staff has added some potential findings and options that may not have been specifically set out by parties. These are not necessarily staff recommendations.

**What actions should the Commission take on the dispute between Mr. Miller and People's?**

*Jurisdiction*

1. Yes, the Commission has jurisdiction over this matter.

2. No, the Commission does not have jurisdiction over this matter. Dismiss the dispute.

*Resolution of the Dispute*

*(The Commission may wish to look at the possible findings on page 22 prior to turning to this issue.)*

3. Resolve the dispute in favor of Peoples, and let the monthly fees stand. (People's, Dairyland, MMUA, MREA); and

   A. Find that no payments for costs, disbursements, or attorney's fees are due to People's because the QF's claims were not made in bad faith, a sham, or frivolous.[34] (Staff option) Or

   B. Find the Complainant is responsible for payments of People's costs, disbursements, and reasonable attorney's fees because the claims were made in bad faith, or are a sham, or are frivolous. Require People's to make a filing with the Commission within 30 days of an Order detailing any costs for which it seeks reimbursement. (People's has not requested such payments and no party has suggested them.)

4. Resolve the dispute in favor of the Complainant. (Mr., Miller, Department, CEO , MnSEIA, TASC) And

   A. Direct People's to cease charging the monthly fees to Mr. Miller and all other QFs and refund all fees collected from Mr. Miller and all other QFs. Require People's to make a compliance filing within 60 days of the Order that includes: a new tariff with the fee removed and verification that refunds have been made, including a list of all QFs who

[34] Subdivision 5 of the statute requires the Commission to award costs, disbursements, and reasonable attorney's fees to the prevailing party, but a QF is required to pay such costs only if the Commission finds that the claims of the QF were made in bad faith, are a sham, or are frivolous.

have been charged the fees and the amount of the refund, (Staff rephrasing and enhancement of Department and CEO recommendations)

B. Find that as the prevailing party, Mr. Miller should be awarded any costs, disbursements, and reasonable attorney's fees related to pursuing this dispute. Direct Mr. Miller to make a filing with the Commission within 30 days of an Order detailing any costs for which he seeks reimbursement. (Staff enhancement of CEO recommendation)

5. Determine that more information or further process is needed before deciding the merits of the dispute.

**What other Commission findings and actions are appropriate?**

*Uniform Statewide Contract*

6. Find People's in violation of Minn. Stat. §216B.164, subd. 6 (c) and Minn. Rules, part 7835.9910, for failing to use the statewide uniform contract. (Staff option) And

A. Direct People's to revise all of its member services contracts with existing QFs, use the Uniform Statewide Contract in Minn. Rules 7835.9910 going forward[35], and to make a compliance filing to that effect within 90 days of the written order in this docket. Or

B. Direct Peoples to use the Uniform Statewide Contract going forward.

*Proceedings related to the fees of other utilities:*

7. Direct the Commission's Consumer Affairs Office to establish a process to "fast-track" requests for refunds from customers from other cooperatives who have been billed for similar impermissible DG charges.

8. Open a new docket to request additional information from each investor-owned utility on the implementation date of any net metering charge, and the Docket in which such charge was approved, including Commission orders and utility tariffs first authorizing the charge, any subsequent Commission orders and utility tariffs amending the charge and documentation for the utilities' respective justifications for the charge. (CEO and Department)

9. Open an investigation docket as above, but also require all cooperatives who charge such a monthly fee to DG customers to make a filing.

[35] The uniform statewide contract has been modified in the Commission's proposed rule amendments in E-999/R-13-279, which are expected to become effective by early September. The changes are not substantive for cooperatives and municipals.

10. Request the Department, CEO, MnSEIA, and TASC confer with the investor-owned utilities, and cooperatives if appropriate, on the background and status of any net-metering charges, then report back to the Commission with a recommendation whether to open a new docket. (Staff option; alternative to decision option 8 or 9)