

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

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**In the Matter of Updating the Generic
Standards for the Interconnection and
Operation of Distributed Generation
Facilities Established under Minn.
Stat. §216B.1611
Docket Nos. E999/CI-16-521 and
E999/CI-01-1023**

May 20, 2021

**REPLY COMMENTS of the
MINNESOTA SOLAR ENERGY
INDUSTRIES ASSOCIATION
(MnSEIA), VOTE SOLAR,
FRESH ENERGY, and the
ENVIRONMENTAL LAW AND
POLICY CENTER**

Docket No. CI-16-521/M-01-1023

The Minnesota Solar Energy Industries Association (MnSEIA), Vote Solar, Fresh Energy, and Environmental Law & Policy Center (“Joint Commenters”) respectfully submit these reply comments in response to comments filed in this docket on October 30, 2020 and April 30, 2021.

I. Response to the Midwest Cogeneration Association and Heat is Power Association

The Midwest Cogeneration Association and Heat is Power Association submitted comments that the Joint Commenters agree with in full.¹ Their statement illustrates the primary point in this docket, which the utilities seem to be misapplying:

To the extent that Xcel or any other Minnesota utility believes that it can apply a rate methodology from another statute to determine avoided costs for DG resources, Attachment 6 should expressly state that the methodology provided in Attachment 6 is the proper rate method for establishing avoided cost rates for DG.²

¹ See Joint Comments of Midwest Cogeneration Association and Heat is Power Association (Oct. 30, 2020), archived at <https://perma.cc/LUN2-EZ6J>.

² *Id.* at 1.

Attachment 6 and the DG Tariffs that are derived from Attachment 6 are not governed by Minn. Stat. § 216B.164, subd. 4, because the enabling statute is Minn. Stat. § 216B.1611.

Attachment 6 uses an avoided cost methodology, not because the Commission must use such a ratemaking method, but because the Commission *chose* to do so in 2004. It could have been set using other rate making methodologies, like by using proxies, competitive solicitations, etc. The Commission is not bound by Minn. Stat. § 216B.164, because it opted to implement a similar methodology under Minn. Stat. § 216B.1611.

II. Response to The Minnesota Department of Commerce

While the Department of Commerce (DOC) requested a six month extension and did not truly file initial comments, they did submit a note marked as comments as part of their extension request.³ The Department is generally supportive of an attachment 6 revision process. However, the Department did share some cautionary notes, stating as follows:

Revisiting the Attachment 6 methodology may be appropriate, but the Department cautions that any revisions must be done in consideration of more current proceedings and methodologies such as the VOS in order to ensure that the methodologies and rate outcomes are consistent. Should the methodology adopted under an Attachment 6 revision of avoided cost result in significantly higher avoided costs than that generated under the VOS, distributed generation customers would have an incentive to choose projects that would use the revised Attachment 6 results rather than VOS. Additionally, the VOS focuses solely on solar generation and capacity, but could be adopted for other types of renewable generation.⁴

The Joint Commenters agree with the Department's thoughts. The VOS could serve as a great model for the DG Tariff reformation process. Many of the variables from the VOS could be easily imported to Attachment 6. A lot transpired in the DG world between 2004 and 2013, and VOS was created using a robust stakeholder working group with state funded consultants from Clean Power Research. The VOS has been routinely used in the Community Solar Gardens program and has been vetted annually for several years, honing its accuracy over time.

With that in mind, using VOS as a template for the Attachment 6 revisions process for values where all types of distributed generation contribute in a similar fashion makes a lot of sense. Technology specific DG Tariff rates could then stem from the pricing around the differences in

³ See, Comments of the Minnesota Department of Commerce (Oct. 29, 2020), *archived at* <https://perma.cc/Q2V7-HL68>.

⁴ *Id.* at 2.

the DG. For instance, wind and solar would both offset a utility's need to burn natural gas fuel on a similar per/kWh level, but they have different capacity values. Dispatchable storage or solar-plus-storage systems should be valued appropriately as well. Perhaps a technology-agnostic temporal value or adder would be most appropriate to capture the value added to the system by a DER optimized to generate during peak load. Furthermore, locational values that would account for congestion mitigation, for instance, would be appropriate. In short, the DG Tariff should build on lessons learned from the VOS methodology to account for "smart" DER.

We also largely agree with the Department's concerns regarding the DG Tariff as compared to the VOS, and their desire for consistency. It would be a surprising result for a 10 MW solar project that uses a DG Tariff to receive a higher per/kWh rate than a 1 MW Community Solar Garden that takes service under the VOS Tariff, especially if those two projects were in the same location on the distribution system. This comparison illustrates the need for technology and site specific rates as part of Attachment 6. However, if the methodology uses consistent valuations and it turns out that the DG Tariff rates are higher than the VOS for certain types or blends of DG, like solar plus storage for instance, or for places on the distribution system that are more congested than others, then that result should not trouble the Commission. That would show only that some resource types or specific locations for DG are more valuable to the utilities and their ratepayers than the current rate for distributed solar. An outcome like this would be consistent with VOS.

Looking at the VOS can also illustrate that the DG Tariff, as calculated today, is clearly undercompensating Distributed Energy Resources that would seek to utilize the current rates. While any DG Tariff rate likely would not exceed the utility's VOS rate, even a cursory glance at the VOS component values would reveal that new DG Tariff projects should be compensated well above the current offer price, which appears to be on the order of one-quarter of the current VOS rate. It would be surprising for the Commission to approve a rate that gives such a differential in rates to solar versus other distributed energy resources, but that is currently the case with the existing DG Tariffs. Using the VOS as a template further illustrates the need for change more generally.

III. Response to Minnesota Rural Electric Association

Before addressing the Minnesota Rural Electric Association's (MREA) comments outright, we would like to reiterate that the outcome of the Attachment 6 revision process should have virtually no bearing on the cooperatives or municipal utilities, with the exception of Dakota Electric. They would be required to consider changes to their own DG Tariff process, but so long as their tariffs are consistent with what the PUC determines, they are in compliance. While public participation is a critical component of the PUC process and each participant deserves to

be heard, MREA and its members will not be materially impacted by amending Attachment 6. Its comments should be viewed in that light.

As to whether the Commission should revise or replace Attachment 6, MREA does not believe there is “compelling need” to make any changes to the rate guidance provided in Attachment 6,⁵ but the Commission has already decided this issue. In its March 19, 2019 Order to approve the Joint Movant’s motion to revise Attachment 6, this was the central question.⁶ The Commission, by virtue of approving the motion, illustrated that it believes there is a compelling need to revisit Attachment 6.

Additionally, even if the Commission were to reconsider whether it has a compelling reason to consider modifying Attachment 6 as the Joint Movants request, we have offered seven compelling reasons. In the March 27, 2018 Joint Movant’s motion the movants outlined the following compelling needs:

1) “The DG Tariffs were originally drafted at the same time as the Interconnections Standards, and if those are outdated and warrant re-review, the DG Tariffs are also outdated;”⁷ 2) “To the Movants’ knowledge, no DG facility has ever used a DG Tariff in Minnesota;”⁸ 3) “A dispute recently arose because there is no good financing mechanism for DG Facilities in Minnesota, and more disputes are likely to proceed as solar and wind prices decline;”⁹ 4) “The statute contemplates utility incentives for DG deployment but such incentives have never been considered;”¹⁰ 5) “The DG Tariffs are so old that various aspects of the September 2004 Order are no longer present in the utility tariffs;”¹¹ 6) “The September 2004 Order has ambiguous components that necessitate reevaluation;”¹² and 7) “The September 2004 Order is missing some critical components for modern Distributed Generation deployment, like term-length, energy storage benefits and an outdated requirement for on-site Distributed Generation.”¹³

⁵ See Comments of the Minnesota Rural Electric Association at 3 (Oct. 30, 2020), *archived at* <https://perma.cc/442Y-FPRP>.

⁶ See Order Authorizing Further Proceedings, Minnesota Public Utilities Commission (March 19, 2019), *archived at* <https://perma.cc/5S9Z-NQAD>.

⁷ See MOTION OF THE MINNESOTA SOLAR ENERGY INDUSTRIES ASSOCIATION & PROJECT, THE ENVIRONMENTAL LAW AND POLICY CENTER, THE MINNESOTA CENTER FOR ENVIRONMENTAL ADVOCACY, THE INSTITUTE FOR LOCAL SELF RELIANCE, CLEAN ENERGY ECONOMY MINNESOTA AND MINNESOTA BROWNFIELDS at 4 (March 27, 2018), *archived at* <https://perma.cc/AWC3-LMB5>.

⁸ *Id.*, at 5.

⁹ *Id.*, at 6.

¹⁰ *Id.*, at 8.

¹¹ *Ibid.*

¹² *Id.*, at 9.

¹³ *Ibid.*

These reasons all still hold true three years later. In particular, it's still the case that no DG facility has ever used a DG Tariff in Minnesota. This process is necessary to comply with Minn. Stat. § 216B.1611, and for Attachment 6 and the DG Tariffs that are derived therefrom to work as originally intended.

IV. Response to Otter Tail Power Company

Otter Tail Power's (OTP) comments speak largely to the role of FERC and PURPA in Minnesota. Of course in instances where federal law preempts state law,¹⁴ the PUC should align its legal positions with federal law. That is not the case here.

The Minnesota DG Tariff is a standalone program, authorized by Minnesota law, and is not governed by PURPA or FERC's regulations implementing PURPA. Minnesota's PURPA implementation, while complementary, does not control the DG tariff. Attachment 6 and the DG Tariffs that are derived therefrom make no mention of Minn Stat. § 216B.164, which is the portion of state law that integrates PURPA and FERC rules.

While there are similarities between an avoided cost market stemming from PURPA and a potential distributed generation tariff market that arises from Attachment 6, they are different. PURPA is a federal construct implemented by Minnesota's PURPA regulations, and the DG Tariff is a separate state program created solely by state law. Because compliance with both PURPA and the DG Tariff is possible, there is no federal preemption of state law here.

V. Response to Xcel Energy and Minnesota Power

Joint Commenters reject the foundational proposition underlying Xcel's comments (and those by Minnesota Power) that Minnesota's implementation of Section 210 of the Public Utility Regulatory Policies Act ("PURPA") controls or otherwise limits how the Commission must implement the requirements of Minnesota's DG Tariff statute, Minn. Stat. § 216B.1611.¹⁵ As noted in our initial comments, there is no legal support for the proposition or assumption that

¹⁴ *Keller v. City of Fremont*, 719 F.3d 931, 940 (8th Cir. 2013) ("[S]tate laws are preempted when they conflict with federal law. Conflict preemption occurs when compliance with both federal and state laws is impossible, and when a state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.")

¹⁵ Xcel Energy Comments at 3 (Oct. 30, 2020), archived at <https://perma.cc/2DNW-UMMT>. Other utilities share Xcel's mistaken belief that PURPA limits Minnesota's DG Tariff. See, e.g., Otter Tail Power Company Comments at 3 (Oct. 30, 2020), archived at <https://perma.cc/8EP8-4RXJ>; Minnesota Power Comments at 2 (Apr. 30, 2021), archived at <https://perma.cc/TX8X-DOE6>.

PURPA has any control over how Minnesota's DG Tariff statute is implemented.¹⁶ Minnesota's DG Tariff program and PURPA are created by completely different statutes (Minn. Stat. §§ 216B.1611 and 216B.164). The PURPA statute was enacted in furtherance of a federal statute and makes no reference to Minnesota's DG Tariff statute. To the contrary, the DG Tariff is the product of state law and makes no reference to PURPA or Minnesota's statute implementing PURPA. Xcel's comments conflate these two separate programs and render the majority of its comments unhelpful in determining how Minnesota should update Attachment 6 and the utilities' DG Tariffs.¹⁷

For example, Joint Commenters reject Xcel's proposition to limit the capacity size of the DG Tariff to 5 MW; Xcel's proposition is based on its flawed belief that Minnesota's DG Tariff is limited by PURPA. Xcel's proposition also conflicts with the plain language of Minnesota's DG Tariff statute's requirement that the tariff have a capacity size of up to 10 MW. Minn. Stat. § 216B.1611, Subd. 2.

Xcel's comments regarding PURPA, FERC or Minn. Stat. § 216B.164 are misplaced in a conversation around Attachment 6. It is confusing the record for no need or reason. These references are a red herring instead of helpful commentary on how to revise Attachment 6 to be more usable or technically sound.

The Commission should provide clarification that it does not intend to limit implementation of the DG Tariff based on the requirements of PURPA. That way, the parties can have a more meaningful discussion about updating Attachment 6 and the utilities' DG Tariffs in a manner that spurs development consistent with the goal of Minn. Stat. § 216B.1611.

¹⁶ MnSEIA, et al. Comments at 4-8 (Oct. 30, 2020), archived at <https://perma.cc/9GKP-2ZLQ>.

¹⁷ *Winding Creek Solar LLC v. Peterman*, 932 F.3d 861, 865 (9th Cir. 2019) ("FERC has concluded that an alternative program may exist if a state otherwise satisfies its obligations to QFs under PURPA.")

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