

**STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION**

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Chair  
Commissioner  
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Commissioner

**In the Matter of a Request for  
Dispute Resolution with Peoples'  
Energy Cooperative under the  
Cogeneration and Small Power  
Production Statute, Minn. Stat.  
§216B.164**

**MINNESOTA SOLAR ENERGY  
INDUSTRY ASSOCIATION'S  
COMMENTARY ON THE  
DISPUTE BETWEEN PEOPLES'  
ENERGY COOPERATIVE AND  
ALLAN MILLER'S QUALIFIED  
FACILITY**

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

**Date: 6/4/2015**

**INTRODCUTION**

The Minnesota Solar Energy Industries Association is a 501(c) 6 non-profit association comprised of over 80 various companies, individuals and non-profits associated with solar energy in Minnesota. Our mission is to encourage solar growth in our state and to promote the interests of solar developers, installers, manufactures and operators.

We comment today to fight back against a trend we are seeing in the utility management of their distributed generation (DG) programs. To date our members have provided us with stories of increased fees, added upgrades, undue cost shifts, and problematic delays. Each one of these increases the QF's costs and elongates the payback period, making DG more expensive and less desirable.

People's Energy Cooperative's (PEC) \$5.00/month net metering general service charge may not seem like a steep impediment for renewable energy, but it is another affront to DG. If PEC is allowed to continue issuing the fee, it will set a dangerous precedent that other utilities will adopt.

We comment today to ensure that the Commission provides the maximum possible encouragement for cogeneration and small power production.

## COMMENTS OF THE MINNESOTA SOLAR ENERGY INDUSTRY ASSOCIATION

### **I. The Commission Has Jurisdiction Over This Matter.**

The first question to determine in any Commission proceeding is whether it has jurisdiction over the issue. Here, the Commission has jurisdiction, because the net metering statute binds all cooperatives and provides the Commission with the authority to protect those standards.<sup>1</sup>

The Commission has control over small power production issues pursuant to the state's net metering statute, Minn. Stat. 216B.164, subd. 2.<sup>2</sup> This is a special statute that allows the Commission to control a cooperative even if it has not elected to Commission regulation. The issue here today is whether People's Energy Cooperative's (PEC) \$5.00/mo net metering general service fee unfairly discourages small power production. Thus, the Commission has jurisdiction over this matter.

### **II. PEC Must Bill Only For The Net Energy Supplied By The Utility.**

#### **a. Minnesota's Net Metering Statute Prohibits PEC's \$5.00/Month Net Metering Fee.**

PEC is prohibited by statute from adding an additional \$5.00/month fee onto QF's bills. Minn. Stat. 216B.164, Subd. 3a governs the interactions between Cooperatives and QFs. It states the following:

- (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. 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).<sup>3</sup>

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<sup>1</sup> Minn. Stat. § 216B.164, subd. 2 (stating “[t]his 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.”).

<sup>2</sup> See Minn. Stat. § 216B.164, subd. 2.

<sup>3</sup> Minn. Stat. § 216B.164, Subd. 3a, emphasis added.

The above paragraph makes clear that the state legislature has determined that cooperatives must bill only at the net metering rate for QFs under 40kW. Any other billing mechanism is prohibited. Any additional monthly fee would effectively supersede Minn. Stat. 216B.164, Subd. 3(a) by altering the applicable rate schedule. This \$5.00/monthly fee is an attempt to side-step the statute and must not be permitted.

**b. Commission Precedent Suggests that PEC's Fee is a Violation of the State's Contract and it Does Not Provide the "Maximum Possible Encouragement to Cogeneration and Small Power Production."**

There have only been four instances where the Commission has taken on a cogeneration dispute resolution proceeding. But even with a limited amount of binding precedent, the Commission's past decisions suggests that this \$5.00/month fee should be rejected.<sup>4</sup>

Only the dispute between Nobles Cooperative Electric (Nobles) and several of its member QFs is relevant to this issue. The Nobles dispute was about a \$6.22/month check writing fee assessed to those QFs that opted to receive Noble's checks via mail.<sup>5</sup>

The Commission prohibited the check writing fee, because its addition was an alteration to the statewide contract governing cogeneration and small power production.<sup>6</sup> The cooperative argued that they did not actually alter the contract, but only informed members of the change verbally.<sup>7</sup> The Commission found that "Nobles erred in altering the Contract," arguing that "[a]ltering the Contract to impose a check writing fee is impermissible under the Contract, violates the statute, and contravenes the public policy goal of establishing statewide uniformity in those transactions."<sup>8</sup> The Commission sided against the imposition of a fee.

Here, PEC has altered the statewide contract as well. If the goal is to establish a statewide uniformity among cogeneration producers, then allowing a single cooperative to include a \$5.00/month fee erodes that goal away.

The Commission also reasoned in Nobles that "charging a fee to a qualifying facility for the disbursement of money that the facility is owed is inconsistent with the stated intent of the statute, which is to give the maximum possible encouragement to cogeneration and small power

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<sup>4</sup> See ORDER PROHIBITING CHECK WRITING CHARGE AND ORDERING REFUND, PUBLIC UTILITIES COMMISSION, DOCKET NO. E-126/CG-10-1195, Doc. ID 20112-59645-01 at 2-3 (2/17/2011).

<sup>5</sup> See *Id.* at 2.

<sup>6</sup> See *Id.* at 2-3.

<sup>7</sup> See *Id.* at 2.

<sup>8</sup> *Id.* at 2-3.

production.”<sup>9</sup> Nobles was required to repay all collected fees to its members, because the cooperatives’ fee discouraged cogeneration.

Here, PEC’s \$5.00/month net metering fee also discourages cogeneration and small power production. It tacks an additional burden onto the co-generators and small power producers in PEC’s territory. A \$5.00/month fee may not seem substantial, but it results in a longer payback period, making renewable energy less cost-effective.

The last notable similarity between Nobles and the case at hand is the rationale that the two cooperatives use to impose their fees. Nobles argued that “the fee is caused by those members who select the check writing service and that other members receiving no benefit from the service should not be required to pay the fee.” Similarly, PEC’s primary argument is that “[t]he Cooperative’s general ratepayers should not have to pay costs attributable to solar generation in this instance.”<sup>10</sup>

Just as Nobles’ argument fell flat, so should PEC’s. In order to protect the state’s contract from impermissible alteration, to give the maximum possible encouragement to cogeneration and small power producers and to stay consistent with its own precedent, the Commission should prohibit Peoples’ \$5.00/month net-metering fee.

### **III. The State Legislature Attempted To Legalize Similar Fees For Cooperatives This Session But Has Failed To Do So Thus Far.**

On 5/18/2015 both the state House and Senate passed a bill (“H.F. No. 1437”) that included language that is relevant to this issue, because it amends the very statute we debate today. The alerted portion of Minn. Stat. § 216B.164, subd. 3 (b) is quoted in pertinent part below:

**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,*

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<sup>9</sup> ORDER PROHIBITING CHECK WRITING CHARGE AND ORDERING REFUND, PUBLIC UTILITIES COMMISSION, DOCKET NO. E-126/CG-10-1195, Doc. ID 20112-59645-01 at 3 (2/17/2011).

<sup>10</sup> REPLY COMMENTS—ADDITIONAL, PEOPLE’S ENERGY COOPERATIVE, Docket No. E-132/CG-15-255, Doc. ID 20154-108988-01 at 1 (4/6/2015), emphasis in italics was added, but emphasis demarcated with underlined text was included in the bill.

compensation to the customer shall be at a per kilowatt-hour rate determined under paragraph (c) or, (d), or (f).<sup>11</sup>

The above underlined language illustrates that the state Legislature believes that cooperatives currently cannot charge a fee for fixed costs. This amendment was created so that cooperatives, like PEC, could charge their net metering customers for fixed costs as long as it is based on a cost of service study.

But on May 23, 2015 Governor Mark Dayton vetoed H.F. No. 1437, citing the net metering provision as one of issues influencing his decision.<sup>12</sup> While we are still approaching a special session, and a net meter charging provision could be included in a final and passed law, it does not exist in the law today. The failed H.F. No. 1437 provides even further evidence that PEC is acting improperly here. The Legislature believes that charging a net metering fee is currently illegal, and although it attempted to alter the fees' legality, the state did not legalize the practice.

Even if the Legislature and the Governor do come to terms on the net-metering provision and pass a Jobs and Energy bill with its inclusion, PEC's fee is not "reasonable and appropriate for that class of customer based on the most recent cost of service study." Through its reply comments and answers to the Department of Commerce's (DOC) information request (IR) PEC has failed to establish a rational reason for why it decided \$5.00/month was an appropriate fee to assess.

According to PEC's response to the DOC's IR No. 3, the cost of service study PEC provided indicates the fee should be based on the \$18.84/month cost of increased fees for meters, transformer depreciation and customer accounting expenses.<sup>13</sup> This suggests that the \$5.00/month fee is somehow intertwined with this study. But none of the listed fees in the cost of service study are \$5.00/month and the study doesn't appear to include any of DG's benefits.<sup>14</sup> Also, there is no combination of adding the costs together that equals PEC's fee amount.<sup>15</sup> There is no rational connection between PEC's fee and the cost of service study it provided.

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<sup>11</sup> State of Minnesota, House of Representatives, H.F. No. 1437 (May 18, 2015) (amending Minn. Stat. 216B.164, subd. 3 (b)).

<sup>12</sup> Office of Governor Mark Dayton, Veto Announcement at 1 (May 23, 2015) (stating "I have vetoed and am returning Chapter 80, House File 1473, a bill related to jobs and energy [...] it contains changes to Minnesota's net metering laws that will disincentivize the use of wind and solar power.).

<sup>13</sup> See INFORMATION REQUESTS--RESPONSE TO DOC IRS 1-9, PEOPLE'S ENERGY COOPERATIVE, DOCKET NO. E-126/CG-10-1195, Doc. ID 20155-110675-02 at 9-10 (05/22/15).

<sup>14</sup> *Id.* at 10.

<sup>15</sup> *Id.*

Further down in IR No. 7, DOC asked PEC to provide cost support for the \$5.00/month figure.<sup>16</sup> PEC admits that they used this number, because it is kind of like its “dual fuel” fee of \$4.70/month.<sup>17</sup> PEC then explains that it decided to add an additional \$0.30/month, but listed no reason for the increase.<sup>18</sup> On the following page, PEC lays out its costs associated with a dual fuel fee. They add up to a \$6.28/month charge.<sup>19</sup> Again, none of the fees are themselves \$5.00/month and none of the fees when added together equal \$5.00/month.<sup>20</sup>

PEC did do a cost of service study and they do have a dual fuel model they could draw information from, but their \$5.00/month fee is not based on either of them. Allowing an arbitrarily determined fee to continue on would set a precedent that would tell cooperatives that they are free to set fees on net metering with reckless abandon. PEC’s fee is - at best - a ballpark estimation of meter and upgrade costs that also conveniently ignores DG’s benefits. If this fee is allowed to continue forward, we are concerned that the next cooperative may decide to charge its net metering members an insurmountably high fee, simply because its board feels like it.

PEC’s fee is most likely a discriminatory impediment created solely to reduce future net metering customers. The fee is not currently allowed under state law, and it would be inappropriate even if the Legislature’s net-metering provision outlined in H.F. No. 1437 is passed during a special session.

#### **IV. Even If A Balancing Act Between QFs and Ratepayers Is Required, It Falls In The QF’s Favor.**

In its April 4th Reply Comments PEC attempts to justify its fee increase by arguing that Minn. Stat. § 216.164’s scope and purpose requires balancing renewable DG with ratepayer harm, and that the ratepayers would be best served through the imposition of this fee.<sup>21</sup> While we do not dispute the purpose and scope of this statute, there is little room for interpretation regarding

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<sup>16</sup> INFORMATION REQUESTS--RESPONSE TO DOC IRS 1-9, PEOPLE’S ENERGY COOPERATIVE, DOCKET NO. E-126/CG-10-1195, Doc. ID 20155-110675-02 at 16 (05/22/15).

<sup>17</sup> *See Id.*

<sup>18</sup> *See Id.*

<sup>19</sup> *See Id.* at 17.

<sup>20</sup> *Id.*

<sup>21</sup> Minn. Stat. § 216B.164, subd. 1 (stating “[t]his 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.”).

Subd. 3a. The statute is clear that PEC must bill only at the applicable rate schedule. As such, a balancing test seems entirely unnecessary in this particular instance.

But even if we adopt PEC's balancing test, the determination would side with prohibiting the \$5.00/month fee for two reasons. First, it does not encourage cogeneration and small power production. Second, it does not benefit the ratepayers in an appreciable way.

Regarding the first point, a \$5.00/month fee dramatically reduces the viability of a solar array or small wind turbine. This fee would result in a net loss to the QF of \$1,500 over the life of a 25 year contract. That is a substantial addition to an individual consumer's cost of buying an array or turbine. The fee is also very regressive, because it is not based on generation, but is instead a static \$5.00/month fee. As such, it is especially prohibitive to an individual looking to install a small system. It tacks on \$1,500 regardless of whether it is a 40kW or 10kW system.

The fee also does not truly benefit PEC's ratepayers. PEC services about 11,800 members.<sup>22</sup> If an individual QF interconnects and has its \$5.00 fee dispersed among PEC's members, then that increases PEC's members' bills by \$0.0004/month. Over the course of a 25 year contract each PEC member will pay about \$.12 per net-metered system.

We do acknowledge that if a large percentage of PEC's members were QFs then this could add up and may potentially require a measure to protect ratepayers. But PEC has 32 people currently operating QFs in its service territory. So if the \$5.00/month cost was shifted to the ratepayers the total QFs in PEC's territory would cost each PEC member about \$.014/month or \$4.07 over 25 years. This is a negligible impact on PEC's members. Plus, it does not include the benefits that either the cooperative or the members are getting from the existence of the DG projects.

The entire Value of Solar (VOS) project was an attempt to capture the value to society and the utility for solar, and one could do a similar calculation for other DG utility and ratepayer benefits. While it is true that cooperatives, like PEC, are not required to use the VOS, it does not follow that solar also does not provide societal and environmental benefits. Things like cleaner air, grid stability, fuel clause hedging, and reduced line losses all arrive with added solar to the local grid.

There is even value in marketing that your co-op has some renewable generation options, as is evident by how PEC proudly displays its "Minnesota Three Solar Array" on its website.<sup>23</sup> If the \$5.00/month fee was distributed across PEC's ratepayers, its members should see a return on their \$.014/month investment through the benefits of the added QF.

It is clear that this \$5.00/month fee on QFs will have a much more prohibitive impact on DG than it will have a positive impact on ratepayers. In fact, we argue that the \$5.00/month impact

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<sup>22</sup> Service Territory, People's Electric Cooperative website, last viewed: May 29, 2015 (available at: <https://www.peoplesrec.com/content/service-territory>).

<sup>23</sup> Minnesota Three LLC Solar Array, People's Electric Cooperative website, last viewed: May 29, 2015 (available at: <https://www.peoplesrec.com/content/minnesota-three-llc-solar-array>).

may currently have a *negative* impact on PEC's ratepayers because of the lost benefits future DG would provide that this fee will now inhibit.

But we still question whether a balancing test is even required here. We make the above counterargument only to highlight that even if a balancing test is necessary, then the scales tip in favor of PEC's QFs.

**V. PEC's Applications Of Minn. Stat. 216B.164 Subd. 3 (B) And (C) Are Both Inappropriate.**

PEC also argues in its April 4th Reply Comments that the Commission must consider its \$5.00/month fee because Minn. Stat. § 216B.164 subd. 3(b) is applicable. But PEC never quotes Minn. Stat. § 216B.164, subd. 3 (b). Instead the cooperative only quotes Minn. Stat. § 216B.164 subd. (c). For reference we've included PEC's passage here:

Furthermore, Minn. Stat. §216B.164, subd. 3(b) states that "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 cost charged to the qualifying facility are not discriminatory in relation to costs charged to other consumers or other customers of the utility."

As a general rule, MnSEIA does not comment on what appear to be typos. Everyone makes mistakes and highlighting them doesn't generally assist the Commission in making its determinations. But we do it here, because we find PEC's quotation unusually confusing. In addition to citing to the wrong portion of statute, it also improperly abbreviates - and subsequently misapplies - Minn. Stat. §216B.164 subd. 3(c). The subdivision states in pertinent part:

(b) *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.<sup>24</sup>

PEC has removed the words "[i]n setting rates," which is critically important to understanding the statute's language. This docket is not a PUC ratemaking procedure. It is a request for dispute resolution. There is no rate here, but only a \$5.00/month fee that PEC decided to institute on its own accord. So Minn. Stat. § 216B.164 subd. (c) is not applicable on its face.

This brings the question back to whether PEC intended to cite to Minn. Stat. 216B.164, subd. 3 (b), but then quoted the wrong portion of text. Minn. Stat. 216B.164, subd. 3 (b), however, only applies to public utilities and doesn't seem particularly beneficial to PEC's argument. It is a

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<sup>24</sup> Minn. Stat. §216B.164 subd. 3(c), emphasis added.



passage about restrictions on charges.<sup>25</sup> Regardless of whether PEC intended to cite to Minn. Stat. 216B.164 subd. (b) or (c), neither are applicable here.

#### **VI. A Monthly \$5.00 Charge Is Not An Interconnection Cost.**

The final argument that PEC makes in its April 4th Reply comments is that the \$5.00/month charge can be assessed under Minn. Stat. 216B.164, subd. 8(b). The co-op argues that it is an interconnection cost. But an interconnection cost would be a onetime fee assessed for the cost of interconnecting the QF to the electrical grid, or it might be a fee for a preliminary study. This would be similar to the cost outlined in PEC's interconnection application.<sup>26</sup> This recurring \$5.00/month fee is not for "interconnection."

Furthermore there is ambiguity about what this fee is actually for. PEC argues earlier in their comments that this fee is for "fixed distribution costs," which would be a more likely source for a monthly fee. If this is actually what the fee is being assessed for, then by its nature the fee would not fall under Minn. Stat. 216B.164, subd. 8(b). It would be neither an interconnection nor wheeling cost.

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<sup>25</sup> See Minn. Stat. § 216B.164, subd. 3 (b).

<sup>26</sup> See REPLY COMMENTS--ADDITIONAL REQUESTED INFORMATION ON POLICIES AND PROCEDURES, PEOPLE ENERGY COOPERATIVE, Docket No. E-132/CG-15-255, Docket ID 20154-108806-03 at 1 (04/01/2015); See also REPLY COMMENTS--ADDITIONAL REQUESTED INFORMATION ON POLICIES AND PROCEDURES, PEOPLE'S ENERGY COOPERATIVE, Docket No. E-132/CG-15-255, Docket ID, 20154-108806-07 at 9-15 (04/01/15) (illustrating all of PEC's interconnection costs).