414 Nicollet Mall
Minneapolis, MN 55401

October 24, 2019

—Via Electronic Filing—

Mr. Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-1247

RE: REPLY COMMENTS
2019 COGENERATION AND SMALL POWER PRODUCTION
DOCKET NO. E999/PR-19-9

Dear Mr. Wolf:

Northern States Power Company, doing business as Xcel Energy, submits to the Minnesota Public Utilities Commission these Reply Comments in response to the Commission's September 30, 2019 NOTICE OF EXTENDED SUPPLEMENTAL COMMENT PERIOD in the above-referenced docket. Initial comments were submitted on September 30 by the Minnesota Department of Commerce, Division of Energy Resources and on October 14 by the Environmental Law & Policy Center and Institute for Local Self-Reliance (together, "Joint Commenters"), Minnesota Power, Otter Tail Power Company and Xcel Energy.

INTRODUCTION

These Reply Comments primarily focus on the initial comments filed by the Joint Commenters. The Joint Commenters largely focused on a legal analysis and provided little public interest analysis for their position. The public interest strongly favors not publicly providing the material designated as Trade Secret or Protected Data in the September 10 filings. As detailed further below, the law also supports this conclusion. But, we want to highlight in this Introduction the public interest at issue. Much of the discussion in the paragraphs below has already been presented in our February 22, 2019 and March 18, 2019 filings in this docket.

The Protected Data in Schedule A is forward looking pricing that could influence bids that we receive for future RFPs. This information is also third-party confidential as it is obtained from a subscription service from a third-party. The Protected Data in Schedule B address the operating costs, number of hours or operation, and avoided capacity costs of recently added specific generating plants and also of possible future

generating plants. Similarly, the Protected Data on Schedule G contains information similar to that in Schedule A, and also includes specific cost information for operating plant.

Public disclosure of the Protected Data in these Schedules would not be in the public interest as it could allow others to set an artificial floor, and otherwise inform others of the operating characteristics of new and proposed generation that could inform them on how to bid on future generation. If a bidder knows the costs of Xcel Energy or what Xcel Energy expects bid prices to be, there is no longer a competitive playing field in a resource bidding process. If a developer knows the costs of Xcel Energy, it could adjust its bid to come in just under the expected Xcel Energy bid to seek, unfairly, to win the bid. But if it did not know the Xcel Energy costs it could have bid well below this level. In this situation, Xcel Energy customers would be harmed by paying more for what the bid otherwise would have been. This could result in increased costs to our ratepayers (who pay for the generation), and this would not be in the public interest.

We further support the additional reasoning offered in the prior comments filed by Minnesota Power and Otter Tail. Xcel Energy does have some wholesale customers, and the February 22, 2019 comments of Minnesota Power (at page 3) explain the risks involved in the wholesale market in the event of public disclosure of the information at issue.

In Minnesota, we also use the Protected Data to sell and buy wholesale energy in the MISO market, and public disclosure of this information could severely impede our trading operations to the detriment of ratepayers. The Colorado PUC came to a similar conclusion in a comparable matter involving our affiliate company, the Public Service Company of Colorado (PSCo). In that case, attached to our February 22 comments, PSCo sought to designate generating unit price and performance information as confidential because it was used "to sell and buy wholesale energy in the short term markets . . . [and] revelation of such information to suppliers or competitors could severely impede [PSCo]'s trading operations to the detriment of ratepayers." *In The Matter Of Advice Letter No. 1756-Electric Filed By Public Service Company Of Colorado*, Decision No. C17-1090, *Decision Granting Motion For Extraordinary Protection of Highly Confidential Information*, at 2 (Dec. 20, 2016). There, the Colorado PUC found that information was "competitive energy pricing information, and it should be given extraordinary protection[.]" *Id.*, at 3.

Third parties could also be harmed by the public release of this information. This can occur in two ways. First, the forward looking data in Schedule A is obtained through a subscription service from an independent third-party. Second, Schedule B identifies

specific operation plants, and where these are not owned by Xcel Energy they are owned by third parties who have a proprietary and competitive interest in keeping the information non-public. This is Protected Data that we can not publicly release.

REPLY ON SPECIFIC DISCUSSION POINTS

The discussion below follows the discussion points identified in the Commission Notices.

A. Minnesota Power, Otter Tail Power, and Xcel Energy revised 2019 annual cogeneration and small power production filings with the data each utility has proposed to make public and the rationale for these changes to trade secret designation.

The Joint Commenters responded by stating that Xcel Energy has certain data still marked as trade secret. It requests an explanation of "how" the public release of this information could be used to undermine the Company's resource bidding process, and how the public release could result in higher costs of energy for Xcel Energy customers by allowing potential suppliers to modify their pricing from what they would otherwise bid. The explanations are set forth above in the Introduction and in our prior filings of February 22 and March 18.

Similar to their March 8, 2019 comments, Joint Commenters then cite the cases of *Prairie Island Indian Cmty v. Minnesota Dep't of Public Safety*, 658 N.W.2d 876 (Minn. Ct. App. 2003) and *In Re Rahr Malting Co.*, 632 N.W.2d 572 (Minn. 2001) to support their position. We previously showed in our March 18 comments that those cases do not apply here. The Joint Commenters use the same quote from the *Prairie Island* case that they used in their March 8 comments, and this is merely is a summary of the Minnesota Supreme Court's decision in *In Re Rahr Malting Co.* The *In Re Rahr Malting Co.* The court's decision is inapplicable to the current situation as the opinion does did not address the Minnesota Government Data Practices Act (Minn. Stat. § 13.01) that is at issue here. Instead, this opinion addresses the Uniform Trade Secrets Act (Minn. Stat. § 325C.01) and whether an injunction should be entered when there is a misappropriation or threatened misappropriation of trade secrets. They then cite *IBM v. Seagate*, 941 F.Supp. 98 (D.Minn.1992), which similarly addressed the Minnesota Trade Secrets Act but not the Minnesota Government Data Practices Act.

Moreover, as pointed out in our March 18 comments, the *Prairie Island* and *Rahr Malting* holdings already have been distinguished by Minnesota courts in situations where the information "would give an advantage to competitors." *EOP-Nicollet Mall, L.L.C. v. Cty. of Hennepin*, No. 28457, 2004 WL 1161412, at *4 (Minn. T.C. May 3,

2004). In *EOP-Nicollet Mall*, for example, the Minnesota Tax Court upheld a trade secret protection, reasoning that information at issue was "highly competitive and proprietary." In contrast, the court characterized the data in *Prairie Island* as "extremely limited, dated, and largely available to the public." Similarly, the court noted, "In *In Rahr Malting*, in determining whether a tax court trial should be closed, the Minnesota Supreme Court did not determine whether the information sought to be protected was or was not a trade secret but remanded to the Tax Court for further proceedings." *Id.* Here, as was the data in the *EOP-Nicollet Mall* case, our Protected Data is forward looking, affects market competition, and the prices ultimately borne by ratepayers.

B. Provide further explanation of how the specific information claimed to be trade secret does or does not qualify as trade secret under the Data Practices Act, Minnesota Statute Chapter 13.

The Joint Commenters did not address this issue.

C. Is any of the specific, trade secret-designated information required by Minnesota rules under part 7835.0500 (Schedule A); part 7835.0600 (Schedule B); and part 7835.1000 (Schedule G) not required by PURPA?

The Joint Commenters correlate certain provisions associated with Schedules A and B to provisions in 18 CFR §292.302(b), but do not show that Schedule G is tied to requirements in that FERC rule. Also, their analysis is not on point given that FERC rule at 18 CFR §292.302(d) applies here and that rule has no specific filing requirement but instead defers to the state rules.

D. Discuss the 'public inspection' requirement under PURPA and Minn. Rules 7835.1200 and whether that can be satisfied by granting developers interested in providing generation as qualifying facilities (QFs), and their consultants and advisors, access to the data required by the rules under a Commission-approved nondisclosure agreement.

The Joint Commenters raise four issues on this topic, and these are addressed in the sub-sections below.

1. *The Commission has discretion not to require public inspection of the Protected Data under state law.*

The Minnesota Government Data Practices Act (Minn. Stat. § 13.01, et seq.) protects this information from public disclosure. This state statute prevails over the state rule (Minn. R. 7835.1200) that states that it should be publicly filed. Protection against public disclosure is consistent with the public interest, established practice, and with elemental law that a statute prevails over a conflicting state rule.

The Minnesota Government Data Practices Act protects the Company's estimated marginal energy cost and estimated capacity cost information from disclosure because it constitutes trade secret information. Minn. Stat. § 13.37, subd. 1(b) defines "trade secret information" as data that was supplied to the government: (1) by an affected organization; (2) that took reasonable efforts to maintain its secrecy; and (3) which derives actual or potential independent economic value from it not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. The Minnesota Government Data Practices Act further provides that trade secret information is nonpublic data (Minn. Stat. § 13.37, subd 2), and that this nonpublic data may only be released with the consent of the affected organization or ten years after it was initially collected, unless if the data were to be made public and the harm to the public or data subject would outweigh the benefit to the public or to the data subject. (Minn. Stat. § 13.03, subd. 8.)

In this matter, the Company and its third-party vendors have taken steps to protect the confidentiality of the designated protected information. While Minn. R. 7835.1200 generally states that utility filings required by parts 7835.0300 to 7835.1100 be available for public inspection, it would be inconsistent with the Minnesota Government Data Practices Act to allow public inspection of this Protected Data. As discussed above, the Company's marginal energy cost and estimated capacity cost information constitute trade secret information and are protected under the Minnesota Government Data Practices Act because the Company takes steps to protect its confidentiality and derives independent economic value by maintaining the confidentiality. Also, public disclosure could result in higher costs to our customers, and the interest of third-parties whose information is at issue would be harmed. To the extent that Minn. R. 7835.1200 and the Minnesota Government Data Practices Act conflict, the statute enacted by the Legislature must prevail over the rule adopted by the agency. *Berglund v. Comm'r of Revenue*, 877 N.W.2d 780, 784-5 (Minn. 2016).

As we pointed out in prior comments, the last docket that we recall the protected nature of this type of information being challenged was in 2005 when the "DG Coalition" filed objections on April 22, 2005, to proposed tariffs of Xcel Energy in Docket No. E002/M-04-2055 regarding keeping the tariffed projected 5-year avoided cost information nonpublic. This information is included in the Protected Data in Schedules A and G at issue here. The DG Coalition in that same filing made similar objections to the tariffs of Minnesota Power (Docket No. E015/M-04-2030), Otter Tail Power (Docket No. E017/M-04-2013) and others. In our June 13, 2005, response in that docket, we cited to Minn. Stat. § 13.37 and long-standing practice as justification for keeping the information nonpublic. We provided specific reasoning similar to what we have provided in our January 2, 2019 filing. In 2005, we stated:

> This information includes data regarding costs of energy from possible new generating facilities that is not otherwise public. Disclosure of this information could result in higher costs of energy for Xcel Energy customers by allowing potential suppliers to modify their pricing from what they would otherwise bid. The capacity and energy payment schedules should not be explicitly made part of the DG tariff.

On February 17, 2006, Xcel Energy filed a revised proposed tariff that reflected agreement among the parties on the many topics that were at issue. This filing included keeping as nonpublic the tariffed projected 5-year avoided cost information. On July 14, 2006, the Commission issued its order approving the tariff filings that kept this information as nonpublic. Consistent with the long-standing practice of the Commission, and consistent with the public interest, the Commission should continue to treat the Protected Data as non-public.

We also note that at the August 22, 2019 hearing in this docket, there was discussion by some of the Commissioners that the Minnesota Government Data Practices Act could be harmonized or combined with the Commission's rules so as to properly treat the Protected Data as non-public. This certainly would be consistent with how this type of data has been protected, and how the statute and rule have been applied, on a long-standing basis.

We also take issue with the legal argument of the Joint Commenters, that even if there were no statute controlling the protection of this data, that the Commission would have no option but follow the literal wording of the rule that the material must be available for public inspection. We dispute their position that the only way to avoid this would be through a rulemaking to change the Commission rule. Even in this situation, the Commission would not need to formally change its rule, because

under existing Commission rules the Commission can order a variance to any of its rules under Minn. R.7829.3200. This rule states:

> **7829.3200 OTHER VARIANCES.**
> Subpart 1. **When granted.**
> The commission shall grant a variance to its rules when it determines that the following requirements are met:
> A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
> B. granting the variance would not adversely affect the public interest; and
> C. granting the variance would not conflict with standards imposed by law.
> Subp. 2. **Conditions.**
> A variance may be granted contingent upon compliance with conditions imposed by the commission.
> Subp. 3. **Duration.**
> Unless the commission orders otherwise, variances automatically expire in one year. They may be revoked sooner due to changes in circumstances or due to failure to comply with requirements imposed as a condition of receiving a variance.

Out of caution, here the Commission could issue a variance to the "public inspection" language in Minn. R. 7829.1200 as all of the requirements for a variance have been met:

A. As shown above in the Introduction, enforcement of the rule would impose an excessive burden on Xcel Energy, third-parties, and the customers of Xcel Energy.
B. Granting the variance would not adversely affect the public interest. Instead, as shown in the Introduction, keeping the Trade Secret data non-public would be in the public interest.
C. Granting the variance would not conflict with standards imposed by law. Instead, keeping the Trade Secret data non-public would align with applicable law discussed above.

2. *The Commission has discretion not to require public inspection of the Protected Data under federal law.*

Similar to the interplay on how a state statute prevails over a conflicting state rule, there is a comparable analysis at the federal level. The Joint Commenters reference a federal rule designating certain information as being public (18 CFR 292.302(b)), but there is also a federal statute, the Defend Trade Secrets Act (DTSA, 18 U.S.C § 1839(3)), that requires trade secret information to remain nonpublic.

We acknowledge the provisions of the DTSA previously cited by the Joint Commenters (Jt. Commenters, March 8, pp. 7-8), that the DTSA "… does not prohibit or create a private right of action for … any otherwise lawful activity conducted by a governmental entity of the United States, a State, or a political subdivision of a State…" (18 U.S.C § 1833(a)(1)). But, the Joint Commenters misconstrue what this provision means. Under this federal statute, if there is a state law specifying whether information should be public or nonpublic, the state law controls. The United States District Court for the District of Massachusetts confirmed this and concluded that "it is entirely reasonable to read the [DTSA] as demonstrating that Congress did not intend . . . [to] interfere with lawful policy decisions made by state legislatures[.]" *Fast Enterprises, LLC v. Pollack*, No. 16-CV-12149-ADB, 2018 WL 4539685, at *4 (D. Mass. Sept. 21, 2018).

We note that the result here is consistent with the Maine Public Utilities Commission decision cited by the Joint Commenters, and attached to the Joint Commenters January 29, 2019 filing. In its decision in *Re: Central Maine Power Company*, (Docket No. 92-315(II), 1995 WL 826878), the Maine Commission determined that the back-up for the avoided cost energy information, similar to the type of information at issue here, was protected from public disclosure.

We also support the reasoning of Otter Tail on conflict preemption (Otter Tail, February 22, p.4), and the Otter Tail discussion of this issue in its October 14, 2019 filings.

3. The Commission should not require the Biannual filing under 18 CFR § 292.302(b).

The Joint Commenters have not provided any public interest discussion as to why a Biannual filing under 18 CFR §292.302(b) should be required. There is no such public interest. The state statutes and rules allow for the calculation of avoided costs and provide a proper process for this.

Further, their position that a state must show two requirements before its rules can act as a substitution under 18 CFR §292.302(d) is misplaced. They point to the following language:

> (d) Substitution of alternative method.
>
> (1) After public notice in the area served by the electric utility, and after opportunity for public comment, any State regulatory authority may require (with respect to any electric utility over which it has ratemaking authority), or any non-regulated electric utility may provide, data different than those which are otherwise required by this section if it determines that avoided costs can be derived from such data.

> (2) Any State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or nonregulated utility which requires such different data shall notify the Commission within 30 days of making such determination.

Under par. (d)(1), after a notice has been issued with an opportunity for public comment, then a state may require data different from what is required in 18 CFR §292.302(b). The Joint Commenters imply that when the Commission originated its rulemaking to create what is now Minn. R. 7835, that the Commission somehow did this without providing public notice or opportunity to comment and therefore the "Substitution of alternative method" is not available in Minnesota. We attach as Attachment A, a copy of the notice issued for the rulemaking proceeding published on March 29, 1982 in the State Register that lead to provisions in what became Minn. R.7835. This shows robust notice and opportunity to comment, with at least ten public hearings at different locations throughout the state. This notice references MPUC Docket No. 80-560 where the rules were developed, and there was robust participation from many parties in that docket. This notice, at page 1638, states that this rulemaking would consider several issues, including rules to implement the FERC regulations at 18 CFR §292.101 et seq. The Commission in its June 27, 2016 order in Docket No. E999/PR-16-09[1] stated that the federal statute delegates to state regulatory commissions the determination of avoided cost and implementation of the Act generally. This was a focus of that rulemaking.

The Joint Commenters then point to par. (d)(2) to argue that notice to the FERC is a condition precedent to the state rules being a "Substitution of alternative method." This paragraph does not say this. Instead, the only condition precedent is the notice and opportunity to comment set forth in par. (d)(1). Further, the intent of this "substitution of alternative method" rule was "... to permit a State regulatory authority or nonregulated utility to adopt a substitute method for the provision of system cost data without prior Commission approval." (45 FR 12232, February 25, 1980). This "substitution of alternative method" rule is not worded to make the legality or enforceability of the state rule contingent on the state providing notification to the FERC. At this point, given the long length of time involved, we do not know if the Commission provided any such notice to the FERC. But, just because the Commission may have not provided notice to FERC (if that's the case) doesn't mean that the Commission didn't establish a "substitution of alternative method" rule, it just would mean that the Commission did not send notice to the FERC. The substitution of alternative method rule would should still be valid given that the only condition precedent to the state rule being effective is the type of notice and opportunity for comment in par. (d)(1) and this requirement has been met.

[1] *In the Matter of Cogeneration and Small Power Production Tariff Filings*

4. *Use of a Standardized Non-Disclosure Agreement.*

The Joint Commenters, tied to their position that "public inspection" is mandated, take the position that if a non-disclosure agreement (NDA) needs to be used to access this date the NDA should be available to anyone who requests it. This type of access would be akin to public access and would not be in the public interest as explained in the Introduction. Given the harm to the Company, third-parties, and our customers, access to the Protected Data needs to be restricted to those who have a valid purpose. The terms of the NDA also need to be appropriate. It might be possible to have a uniform NDA throughout the state, but it would need to take into account the third-party information for which a separate NDA may be needed that addresses the requirement of any third-party before its information can be released. Also, there should be flexibility to add or remove provisions as appropriate in a given situation. The process for requesting a NDA should be structured to help assure that the information will not be mis-used.

CONCLUSION

Xcel Energy in its September 10, 2019, filing properly identified protected non-public data. The public interest and law support this conclusion. If, out of caution, the Commission believes that a variance under Minn. R. 7829.3200 is appropriate to further support this non-public treatment, then there has been a sufficient showing for the Commission to issuance of such a variance.

We have electronically filed this document with the Commission and copies have been served on all parties on the attached service list. Please contact me at james.r.denniston@xcelenergy.com or 612-215-4656 if you have any questions regarding this matter.

Sincerely,

/s/

JAMES R. DENNISTON
ASSISTANT GENERAL COUNSEL

c: Service List

80-560 (152) 110

Minnesota Public Utilities Commission

Proposed Rules Governing Cogeneration and Small Power Production

Notice of and Order for Hearing

Notice is hereby given that public hearings in the above entitled matter will be held by the Minnesota Public Utilities Commission (the commission) pursuant to Minn. Stat. § 15.0412, subd. 4, at the following times and locations:

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Friday, April 30, 1982, 9:00 a.m., Auditorium, Room 83, State Office Building, 435 Park St., St. Paul, MN 55155

Monday, May 3, 1982, 10:00 a.m., Council Chambers, City Hall, 20 Fourth Avenue South, St. Cloud, MN 56301

Monday, May 3, 1982, 6:00 p.m., County Commissioners Board Room, Annex, Fifth Avenue West and First Street, Duluth, MN 55802

Tuesday, May 4, 1982, 9:30 a.m., Conference Room, City Hall, Grand Rapids, MN 55744

Tuesday, May 4, 1982, 6:00 p.m., Conference Room, Koochiching County Courthouse, International Falls, MN 56649

Wednesday, May 5, 1982, 1:00 p.m., Room to be Assigned, Polk County Courthouse, 617 North Broadway, Crookston, MN 56716

Thursday, May 6, 1982, 9:00 a.m., Basement Meeting Room, Government Services Building, 505 South Court Street, Fergus Falls, MN 56537

Friday, May 7, 1982, 9:00 a.m., Community Room, Pipestone County Courthouse Annex, 119 S.W. Second Ave., Pipestone, MN 56164

Monday, May 10, 1982, 10:00 a.m., Board Room, Olmsted County Courthouse, 515 Second St. S.W., Rochester, MN 55901

Tuesday, May 11, 1982, 10:00 a.m., Auditorium, Minnesota Valley Regional Library, 100 East Main St., Mankato, MN 56001.

The hearings will commence at the designated times and continue until all persons or representatives of associations or other interested groups have had an opportunity to be heard concerning adoption of the proposed rules by submitting either oral or written data, statements or arguments.

This rulemaking proceeding is being held pursuant to Minn. Stat. § 216A.05, subd. 1 and Minn. Stat. § 216B.164, subd. 6 and arises from the need to promulgate rules to implement Minn. Stat. § 216B.164, certain provisions of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. § 2601 *et seq.*) and the Federal Energy Regulatory Commission regulations thereunder (18 CFR § 292.101 *et seq.*).

The purpose of the proceeding is to determine the need for and reasonableness of the proposed rules as well as allowing the commission the opportunity to obtain additional public input on the form and content of the proposed rules.

The hearings will be held before Hearing Examiner Bruce Campbell, Office of Administrative Hearings, 400 Summit Bank Building, 310 South 4th Ave., Minneapolis, Minnesota 55415, telephone (612) 341-7602, a hearing examiner appointed by the chief hearing examiner of the State of Minnesota. All parties have the right to be represented by legal counsel, by themselves, or any other representative of their choice, if not otherwise prohibited as the unauthorized practice of law. The hearings will be conducted in accordance with the applicable laws relating to the commission, the Administrative Procedures Act (Minn. Stat. §§ 15.0411 through 15.0417 and 15.052), the Rules of the Office of Administrative Hearings (9 MCAR §§ 2.101 through 2.113), and the Rules of Practice of the Commission (PSC 500 through 521), to the extent that they have not been superseded by the Rules of the Office of Administrative Hearings.

The above-cited procedural rules are available for inspection at the Office of Administrative Hearings and the Public Utilities Commission or may be purchased from the State Register and Public Documents Division of the Department of Administration, 117 University Ave., St. Paul, Minnesota 55155, telephone (612) 297-3000.

The cited procedural rules provide generally for the procedural rights and obligations including the right to present evidence and cross examine witnesses, the right to purchase a record or transcript, and the obligation to meet certain time limits.

The hearings will address issues pertaining to terms, conditions, rates for purchases, rates for sale, and interconnection specifications and procedures for cogeneration and small power production facilities. A cogeneration facility uses heat of combustion to produce both electricity and useful heat or mechanical energy. A small power plant production facility generates electrical energy from renewable resources (hydro, wind, solar, biomass, etc.) A topical outline of the rules is as follows:

4 MCAR § 3.0450 Scope and Pupose
4 MCAR § 3.0451 Definitions
4 MCAR § 3.0452 Filing Requirements
4 MCAR § 3.0453 Reporting Requirements
4 MCAR § 3.0454 Conditions of Service
4 MCAR § 3.0455 Rates for Sales
4 MCAR § 3.0456 Standard Rates for Purchases
A. Net Energy Billing

B. Simultaneous Purchase and Sale
C. Time of Day Purchase Rates
4 MCAR § 3.0457 Negotiated Rates for Purchases
4 MCAR § 3.0458 Utility Treatment of Costs
4 MCAR § 3.0459 Wheeling and Exchange Agreements
4 MCAR § 3.0460 Disputes
4 MCAR § 3.0461 Notification to Customers
4 MCAR § 3.0462 Interconnection Guidelines
4 MCAR § 3.0463 Existing Contracts

Any interested person will be provided with one copy of the proposed rules without charge upon request to Christopher K. Sandberg, telephone number (612) 296-2357. Additional copies will be available at the hearings.

In the interest of efficiency, the commission requests that any person having comments on or objections to any part of the proposed rules submit their comments or objections to the commission (attention Randall D. Young, Executive Secretary, Docket No. E-999/R-80-560) and to Hearing Examiner Campbell as soon as possible and preferably prior to April 30, 1982. Any such comments or objections should:

state concisely and with particularity each portion of the proposed rules that the author supports or objects to;

state the basis for the author's support or objection; and

state any proposed modifications to the proposed rules, the author's reasons for those modifications, and the basis for those modifications.

Failure to submit such comments or objections prior to the hearings will not prohibit any person from submitting written or oral statements on the record at the hearings.

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the commission offices and at the Office of Administrative Hearings. This statement of need and reasonableness will include a summary of all the evidence and argument which the commission anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

All persons are advised that no factual information or evidence which is not part of the hearing record shall be considered by the hearing examiner or by the commission in the determination of the above-cited matter. Persons attending the hearings should bring all factual information and evidence bearing on the case which they wish to have included in the record.

At the hearings, the commission will, through its staff's written and oral testimony, explain the proposed rules and the commission's reasons for proposing them. Copies of any written testimony and the statement of need and reasonableness will be available at the hearings.

Upon completion of the commission's presentation, interested persons will be given an opportunity to address questions to the commission's staff and to submit written and oral statements. It is the commission's intent and desire that after its staff has completed its presentation, comments and statements be received from interested persons before proceeding to questioning. An opportunity to question the commission's staff will be afforded all persons upon completion of the exchange of information and comments.

Interested persons who wish to make statements may do so by responding to the commission's presentation or by offering new information. In addition, interested persons may request the commission's staff to provide further explanations of any portion of the proposed rules if the persons are unclear about the commission's reasons. All persons making oral statements are subject to questioning by the commission's staff.

The commission will respond, in so far as possible, at the hearings to objections and questions presented at the hearings by interested persons. Interested persons may respond with oral or written statements to any new information presented by the commission. The commission may respond to objections or comments in writing after the close of the hearings.

Written material may be submitted and recorded in the hearing record for five working days after the conclusion of the public hearings. Such a comment period may be extended for a period not to exceed 20 calendar days if so ordered by the hearing examiner.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the commission may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the commission. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the Hearing Examiner's Report), or the commission (in the case of the commission's submission or resubmission to the Attorney General).

All persons are advised that the proposed rules may be modified as a result of the hearing process.

Questions concerning the content or form of the above-entitled rules should be directed to Stuart Mitchell or Christopher Sandberg, 780 American Center Bldg., 150 East Kellogg Boulevard, St. Paul, Minnesota 55101, telephone (612) 296-8662 or (612) 296-2357. Any questions concerning the conduct of the hearings should be directed to the assigned hearing examiner.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

March 11, 1982

Randall D. Young
Executive Secretary

Rules as Proposed (all new material)

4 MCAR § 3.0450 Scope and purpose. The purpose of 4 MCAR §§ 3.0450-3.0463 is to implement certain provisions of Minn. Stat. § 216B.164; the Public Utility Regulatory Policies Act of 1978, 16 United States Code, Section 824a-3 (Supplement III, 1979); and the Federal Energy Regulatory Commission regulations, 18 Code of Federal Regulations, Sections 292.101-292.602 (1981). Nothing in 4 MCAR §§ 3.0450-3.0463 excuses any utility from carrying out its responsibilities under these provisions of state and federal law. Rules 4 MCAR §§ 3.0450-3.0463 shall at all times be applied in accordance with their intent to give the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public.

4 MCAR § 3.0451 Definitions.

A. Applicability. For purposes of 4 MCAR §§ 3.0450-3.0463, the following terms have the meanings given them.

B. Average annual fuel savings. "Average annual fuel savings" means the annualized difference between the system fuel costs that the utility would have incurred without the additional generation facility and the system fuel costs the utility is expected to incur with the additional generation facility.

C. Backup power. "Backup power" means electric energy or capacity supplied by the utility to replace energy ordinarily generated by a qualifying facility's own generation equipment during an unscheduled outage of the facility.

D. Capacity. "Capacity" means the capability to produce, transmit, or deliver electric energy.

E. Capacity costs. "Capacity costs" means the costs associated with providing the capability to deliver energy. They consist of the capital costs of facilities used to generate, transmit, and distribute electricity and the fixed operating and maintenance costs of these facilities.

F. Commission. "Commission" means the Minnesota Public Utilities Commission.

G. Energy. "Energy" means electric energy, measured in kilowatt-hours.

H. Energy costs. "Energy costs" means the variable costs associated with the production of electric energy. They consist of fuel costs and variable operating and maintenance expenses.

I. Interconnection costs. "Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions, and administrative costs incurred by the utiltiy that are directly related to

installing and maintaining the physical facilities necessary to permit interconnected operations with a qualifying facility. Costs are considered interconnection costs only to the extent that they exceed the corresponding costs which the utility would have incurred if it had not engaged in interconnected operations, but instead generated from its own facilities or purchased from other sources an equivalent amount of electric energy or capacity. Costs are considered interconnection costs only to the extent that they exceed the costs the utility would incur in selling electricity to the qualifying facility as a nongenerating customer.

J. Interruptible power. "Interruptible power" means electric energy or capacity supplied by the utility to a qualifying facility subject to interruption under certain specified conditions.

K. Maintenance power. "Maintenance power" means electric energy or capacity supplied by a utility during scheduled outages of the qualifying facility.

L. Marginal capital carrying charge rate. "Marginal capital carrying charge rate" means the percentage factor by which the amount of a new capital investment in a generating unit would have to be multiplied to obtain an amount equal to the total additional annual amounts for the cost of equity and debt capital, income taxes, property and other taxes, tax credits, depreciation, and insurance which would be associated with the new capital investment.

M. On-peak hours. "On-peak hours" means, for utilities whose rates are regulated by the commission, those hours which are defined as on-peak for retail ratemaking. For any other utility, on-peak hours are either those hours formally designated by the utility as on-peak for ratemaking purposes or those hours for which its typical loads are at least 85 percent of its average maximum monthly loads.

N. Purchase. "Purchase" means the purchase of electric energy or capacity or both from a qualifying facility by a utility.

O. Qualifying facility. "Qualifying facility" means a cogeneration or small power production facility which satisfies the conditions established in 18 Code of Federal Regulations, Section 292.101 (b) (1) (1981), as applied when interpreted in accordance with the amendments to 18 Code of Federal Regulations, Sections, 292.201-292.207 adopted through 46 Federal Register 33025-33027 (1981). The initial operation date or initial installation date of a cogeneration or small power production facility shall not prevent the facility from being considered a qualifying facility for the purposes of 4 MCAR §§ 3.0450-3.0463 if it otherwise would satisfy all stated conditions.

P. Sale. "Sale" means the sale of electric energy or capacity or both by an electric utility to a qualifying facility.

Q. Supplementary power. "Supplementary power" means electric energy or capacity supplied by the utility which is regularly used by a qualifying facility in addition to that which the facility generates itself.

R. System emergency. "System emergency" means a condition on a utility's system which is imminently likely to result in significant disruption of service to customers or to endanger life or property.

S. System incremental energy costs. "System incremental energy costs" means amounts representing the hourly energy costs associated with the utility generating the next kilowatt-hour of load during each hour.

T. Utility. "Utility" means any public utility engaged in the generation, transmission, or distribution of electricity in Minnesota. The term includes cooperative electric associations and municipally-owned electric utilities.

4 MCAR § 3.0452 Filing requirements.

A. Filing dates. Within 60 days after the effective date of 4 MCAR §§ 3.0450-3.0463, on January 1, 1983, and every 12 months thereafter, each utility shall file with the commission, for its review and approval, a cogeneration and small power production tariff which shall contain Schedules A through F or, if applicable, schedules A through D plus Schedules F and G.

B. Schedule A. Schedule A shall contain the estimated system average incremental energy costs by seasonal peak and off-peak periods for each of the next five years. For each seasonal period, system incremental energy costs shall be averaged during system daily peak hours, system daily off-peak hours, and all hours in the season. Schefule A shall describe in detail the method used to determine the on-peak and off-peak hours and seasonal periods and shall show the resulting on-peak and off-peak and seasonal hours selected.

C. Schedule B. Schedule B shall contain the information listed in 1.-5.

1. Schedule B shall contain a description of all planned utility generating facility additions anticipated during the next ten years, including:

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a. Name of unit;

b. Nameplate rating;

c. Fuel type;

d. In-service date;

e. Completed cost in dollars per kilowatt in the year in which the plant is expected to be put in service, including allowance for funds used during construction;

f. Anticipated average annual fixed operating and maintenance costs in dollars per kilowatt;

g. Energy costs associated with the unit, including fuel costs and variable operating and maintenance costs;

h. Projected average number of kilowatt-hours per year the plant will generate during its useful life; and

i. Average annual fuel savings resulting from the addition of this generating facility, stated in dollars per kilowatt.

2. Schedule B shall contain a description of all planned firm capacity purchases, other than from qualifying facilities, during the next ten years, including:

a. Year of the purchase;

b. Name of the seller;

c. Number of kilowatts of capacity to be purchased;

d. Capacity cost in dollars per kilowatt; and

e. Associated energy cost in cents per kilowatt-hour.

3. Schedule B shall contain the utility's overall average percentage of line losses due to the distribution, transmission, and transformation of electric energy.

4. Schedule B shall contain the utility's net annual avoided capacity cost stated in dollars per kilowatt-hour averaged over the on-peak hours and the utility's net annual avoided capacity cost stated in dollars per kilowatt-hour averaged over all hours. These figures shall be calculated as follows:

a. The completed cost per kilowatt of the utility's next major generating facility addition, as reported in Schedule B, shall be multiplied by the utility's marginal capital carrying charge rate. If the utility is unable to determine this carrying charge rate as specified, the rate of 15 percent shall be used.

b. The dollar amount resulting from the calculation set forth in a. shall be discounted to present value, as of the midpoint of the reporting year, from the in-service date of the generating unit. The discount rate used shall be the most recent overall rate of return authorized by the commission for the reporting utility. If the reporting utility is not rate regulated by the commission or is regulated but has not yet had an overall rate of return established by the commission, the utility shall use the overall rate of return most recently authorized for the largest electric utility, measured by annual Minnesota revenues, in the commission's jurisdiction.

c. The figure for average annual fuel savings per kilowatt described in 1.i. shall be discounted to present value using the procedure of b.

d. The number resulting from the calculation in c. shall be subtracted from the number resulting from the calculation in b. This is the net annual avoided capacity cost stated in dollars per kilowatt at present value.

e. The net annual avoided capacity cost calculated in d. shall be multiplied by 1.15 to recognize a reserve margin.

f. The figure determined from the calculation of e. shall be increased by the amount of the anticipated average annual fixed operating and maintenance costs as reported in 1.f.

g. The figure determined from the calculation of f. shall be increased by the percentage amount of the average system line losses as shown on Schedule B.

h. The annual dollar per kilowatt figure, as calculated in accordance with g., shall be divided by the annual number of hours in the on-peak period as specified in Schedule A. The resulting figure is the utility's net annual on-peak avoided capacity cost in dollars per kilowatt-hour.

i. The annual dollar per kilowatt figure resulting from the calculation specified in g. shall be divided by the total number of hours in the year. The resulting figure is the utility's net annual avoided capacity cost in dollars per kilowatt-hour averaged over all hours.

5. If the utility has no planned generating facility additions for the ensuing ten years, Schedule B shall contain its net

annual avoided capacity cost stated in dollars per kilowatt-hour averaged over the on-peak hours and the utility's net annual avoided capacity costs stated in dollars per kilowatt-hour averaged over all hours. These shall be calculated as follows:

a. The annual capacity purchase amount, in dollars per kilowatt, for the utility's next planned capacity purchase, other than from a qualifying facility, shall be discounted to present value as of the midpoint of the reporting year, from the year of the planned capacity purchase. The discount rate used shall be determined in the manner described in 4.b.

b. The net annual avoided capacity cost shall be computed by applying the figure determined in a. to the steps enumerated in 4.d.-4.i., excluding 4.g.

D. Schedule C. Schedule C shall contain all standard contracts to be used with qualifying facilities, containing applicable terms and conditions.

E. Schedule D. Schedule D shall contain the utility's safety standards, required operating procedures for interconnected operations, and the functions to be performed by any control and protective apparatus. These standards and procedures shall not be more restrictive than the interconnection guidelines listed in 4 MCAR § 3.0462. The utility may include in Schedule D suggested types of equipment to perform the specified functions. No standard or procedure shall be established to discourage cogeneration or small power production.

F. Schedule E. Schedule E shall contain procedures for notifying affected qualifying facilities of any periods of time when the utility will not purchase electric energy or capacity because of extraordinary operational circumstances which would make the costs of purchases during those periods greater than the costs of internal generation.

G. Schedule F. Schedule F shall contain and describe all computations made by the utility in determining Schedules A and B.

H. Schedule G; special rule for nongenerating utilities. An electric utility which purchases all the power it sells shall obtain the data for Schedule A and Schedule B from its supplying utility. The nongenerating utility shall file this data as Schedule A and Schedule B. In addition, the nongenerating utility shall file Schedules C, D, F, and Schedule G. Schedule G shall list the rates at which the nongenerating utility currently purchases energy and capacity.

I. Availability of filings. All filings required by A.-H. shall be made with the commission and shall be maintained at the utility's general office and any other offices of the utility where rate case filings are kept. These filings shall be available for public inspection at the commission and at the utility offices during normal business hours.

4 MCAR § 3.0453 Reporting requirements.

A. General requirements. Each utility shall provide the commission with the following information on or before November 1, 1982, and at any other such times and in any form as the commission may require.

B. Net energy billed qualifying facilities. For qualifying facilities under net energy billing, the utility shall provide the commission with the following information:

1. A summary of the total number of interconnected qualifying facilities, the type of interconnected qualifying facilities, and the name plate ratings of such units;

2. For each qualifying facility type, the total kilowatt-hours delivered per month to the utility by all net energy billed qualifying facilities;

3. For each qualifying facility type, the total kilowatt-hours delivered per month by the utility to all net energy billed qualifying facilities; and

4. For each qualifying facility type, the total net energy delivered per month to the utility by net energy billed qualifying facilities.

C. Other qualifying facilities. For all qualifying facilities not under net energy billing, the utility shall provide the commission with the following information:

1. A summary of the total number of interconnected qualifying facilities, the type of interconnected qualifying facilities, and the nameplate ratings of such units; and

2. For each qualifying facility type, the total kilowatt-hours delivered per month to the utility, reported by on-peak and off-peak periods to the extent that data is available.

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D. Wheeling. The utility shall provide a summary of all wheeling activities.

E. Major impacts. The utility shall provide a statement of any major impacts that cogeneration or small power production has had on the utility's system.

F. Effectiveness. The utility shall provide a statement of the effectiveness of Minn. Stat. § 216B.164 and 4 MCAR §§ 3.0450-3.0463 in encouraging cogeneration and small power production, as observed by the utility.

4 MCAR § 3.0454 Conditions of service.

A. Requirement to purchase. The utility shall purchase energy or capacity from any qualifying facility which offers to sell energy to the utility and agrees to the conditions set forth in 4 MCAR §§ 3.0450-3.0463.

B. Written contract. A written contract shall be executed between the qualifying facility and the utility.

C. Compliance with national electrical safety code. The interconnection between the qualifying facility and the utility shall comply with the requirements of the 'National Electrical Safety Code,' 1981 edition, issued by the Institute of Electrical and Electronics Engineers as American National Standards Institute Standard C2 (New York, 1980).

D. Responsibility for apparatus. The qualifying facility, without cost to the utility, shall furnish, install, operate, and maintain in good order and repair any apparatus the qualifying facility needs in order to operate in accordance with Schedule D. At the request of the qualifying facility, the utility shall furnish, install, operate, and maintain all or any portion of the apparatus and bill the qualifying facility for the equipment and service at cost.

E. Liability insurance. A utility or qualifying facility shall not require the procurement of liability insurance as a condition of service.

F. Legal status not affected. Nothing in 4 MCAR §§ 3.0450-3.0463 affects the responsibility, liability, or legal rights or any party under applicable law or statutes.

G. Payments for interconnection costs. Payments for interconnection costs may, at the option of the qualifying facility:

1. Be made at the time the costs are incurred;
2. Be amortized over the life of the contract; or
3. Be made according to any schedule agreed upon by the qualifying facility and the utility.

H. Types of power to be offered. The utility shall offer maintenance, interruptible, supplementary, and back-up power to the qualifying facility upon request.

I. Metering. The utility shall meter the qualifying facility to obtain the data necessary to fulfill its reporting requirements to the commission as specified in 4 MCAR § 3.0453. The qualifying facility shall pay for the requisite metering as an interconnection cost unless the qualifying facility is operating under net energy billing. In that case, the utility shall provide the second meter without cost to the qualifying facility.

J. Discontinuing sales during emergency. The utility may discontinue sales to the qualifying facility during a system emergency, if the discontinuance is not discriminatory.

K. Interconnection plan. The utility may, prior to interconnection, require the qualifying facility to submit an interconnection plan in order to facilitate interconnection arrangements. If such a plan is required, it shall include no more than:

1. Technical specifications of equipment;
2. Proposed date of interconnection; and
3. Projection of net output or consumption by the qualifying facility when available.

4 MCAR § 3.0455 Rates for sales.

A. Rates to be governed by tariff. Except as otherwise provided in B., rates for sales to a qualifying facility shall be governed by the applicable tariff for the class of electric utility customers to which the qualifying facility would belong were it not a qualifying facility.

B. Petition for specific rates. Any qualifying facility may petition the commission for establishment of specific rates for supplementary, maintenance, backup, or interruptible power.

4 MCAR § 3.0456 Standard rates for purchases.

A. General. For qualifying facilities with capacity of 100 kilowatts or less, standard rates apply. Qualifying facilities with capacity of more than 100 kilowatts may negotiate contracts with the utility or may be compensated under standard rates if they make commitments to provide firm electric power. The utility shall make available three types of standard rates, described in

B., C., and D. The qualifying facility shall choose interconnection under one of these rates, and shall specify its choice in the written contract required in 4 MCAR § 3.0454 B. Any net credit to the qualifying facility shall, at its option, be credited to its account with the utility or returned by check within 15 days of the billing date. The option chosen shall be specified in the written contract required in 4 MCAR § 3.0454 B. Qualifying facilities remain responsible for any monthly service charges and demand charges specified in the tariff under which they consume electricity from the utility.

B. Net energy billing rate.

1. The net energy billing rate is available only to qualifying facilities with capacity of 40 kilowatts or less which choose not to offer electric power for sale on a time-of-day basis.

2. The utility shall bill the qualifying facility for the excess of energy supplied by the utility above energy supplied by the qualifying facility during each billing period according to the utility's applicable retail rate schedule.

3. When the energy generated by the qualifying facility exceeds that supplied by the utility during a billing period, the utility shall compensate the qualifying facility for the excess energy under either a. or b.

a. For a qualifying facility with capacity of 20 kilowatts or less, compensation shall be at the energy rate of the rate schedule applicable to sales to the qualifying facility. If the rate schedule consists of more than one block, the lowest per kilowatt-hour rate shall apply. The compensation shall reflect changes to the energy rate due to the operation of the utility's fuel adjustment clause.

b. For a qualifying facility with capacity of more than 20 kilowatts but not greater than 40 kilowatts, compensation shall be as specified under C.3.

C. Simultaneous purchase and sale billing rate.

1. The simultaneous purchase and sale rate is available only to qualifying facilities with capacity of 40 kilowatts or less which choose not to offer electric power for sale on a time-of-day basis.

2. The qualifying facility shall be billed for all energy and capacity it consumes during a billing period according to the utility's applicable retail rate schedule.

3. The utility shall purchase all energy generated by the qualifying facility. Compensation to the qualifying facility shall be the sum of a. and b.

a. The energy component shall be the appropriate stystem average incremental energy costs shown on Schedule A; or if the purchasing utility is nongenerating, the energy rate shown on Schedule G;

b. The capacity component shall be the utility's net annual avoided capacity cost per kilowatt-hour averaged over all hours as calculated according to 4 MCAR § 3.0452 C.4. or C.5. as appropriate; or if the purchasing utility is nongenerating, the capacity component shall be the capacity cost per kilowatt shown on Schedule G, divided by the number of hours in the billing period.

D. Time-of-day purchase rates.

1. Time-of-day rates are required for qualifying facilities with capacity greater than 40 kilowatts and less than or equal to 100 kilowatts, and they are optional for qualifying facilities with capacity less than or equal to 40 kilowatts. Time-of-day rates are also optional for qualifying facilities with capacity greater than 100 kilowatts if these qualifying facilities provide firm electric power.

2. The qualifying facility shall be billed for all energy and capacity it consumes during each billing period according to the utility's applicable retail rate schedule. Any utility rate-regulated by the commission may propose time-of-day retail rate tariffs which require qualifying facilities that choose to sell power on a time-of-day basis to also purchase power on a time-of-day basis.

3. The utility shall purchase all energy generated by the qualifying facility. Compensation to the qualifying facility shall be the sum of a. and b.

a. The energy component shall be the appropriate on-peak and off-peak system incremental costs shown on Schedule A; or if the purchasing utility is nongenerating, the energy rate shown on Schedule G.

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b. The capacity component shall be the utility's net annual avoided capacity cost per kilowatt-hour averaged over the on-peak hours as calculated according to 4 MCAR § 3.0452 C.4. or C.5. as appropriate; or if the purchasing utility is nongenerating, the capacity cost per kilowatt shown on Schedule G, divided by the number of hours in the billing period.

4 MCAR § 3.0457 Negotiated rate for purchases.

A. Contracts negotiated by customer. For qualifying facilities with capacity greater than 100 kilowatts, the customer may negotiate a contract with the utility. The contract shall set the applicable rates for payments to the customer of avoided capacity and energy costs.

B. Amount of payments; considerations. The amount of such payments shall be determined through consideration of:

1. The capacity factor of the qualifying facility;
2. The cost of the utility's avoidable capacity;
3. The length of the contract term;
4. Reasonable scheduling of maintenance;
5. The willingness and ability of the qualifying facility to provide firm power during system emergencies;
6. The willingness and ability of the qualifying facility to allow the utility to dispatch its generated energy;
7. The willingness and ability of the qualifying facility to provide firm capacity during system peaks;
8. The sanctions for noncompliance with any contract term; and
9. The smaller capacity increments and the shorter lead times available when capacity is added from qualifying facilities.

C. Full avoided energy costs. The qualifying facility shall be entitled to the full avoided energy costs of the utility. The costs shall be adjusted as appropriate to reflect line losses.

D. Qualifying facilities of greater than 100 kilowatts. Nothing in A.-C. prevents a utility from connecting qualifying facilities of greater than 100 kilowatts under its standard rates.

4 MCAR § 3.0458 Utility treatment of costs. All purchases from qualifying facilities with capacity of 100 kilowatts or less, and purchases of energy from qualifying facilities with capacity of over 100 kilowatts shall be considered an energy cost in calculating an electric utility's fuel adjustment clause.

4 MCAR § 3.0459 Wheeling and exchange agreements. For all qualifying facilities with capacity of 30 kilowatts or greater, the utility shall, at the qualifying facility's request or with its consent, provide wheeling or exchange agreements whenever practicable to sell the qualifying facility's output to any other Minnesota utility that anticipates or plans generation expansion in the ensuing ten years. The following provisions apply unless the qualifying facility and the utility to which it is interconnected agree otherwise.

A. Inter-utility payment; wheeling. The utility to which the qualifying facility is interconnected shall pay any reasonable wheeling charges from other utilities arising from the sale of the qualifying facility's output.

B. Inter-utility payment; energy and capacity. Within 30 days of receipt, the utility ultimately receiving the qualifying facility's output shall pay its resulting full avoided capacity and energy costs by remittance to the utility with which the qualifying facility is interconnected.

C. Payment to qualifying facility. Within 15 days of receiving payment under B., the utility with which the qualifying facility is interconnected shall send the qualifying facility the payment it has received less the total charges it has incurred under A. and its own reasonable wheeling costs.

4 MCAR § 3.0460 Disputes. In case of a dispute between an electric 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 shall be on the utility.

4 MCAR § 3.0461 Notification to customers.

A. Contents of written notice. Within 60 days following each annual filing required by 4 MCAR § 3.0452, every electric utility shall furnish written notice to each of its customers:

1. That the utility is obligated to interconnect with and purchase electricity from cogenerators and small power producers;

2. That the utility is obligated to provide customer information to all interested persons free of charge upon request; and

3. That any disputes over interconnection, sales, and purchases are subject to resolution by the commission upon complaint.

The notice shall be in language and form approved by the commission.

B. Customer information. Each utility shall publish customer information that shall be available to all interested persons free of charge upon request. Such customer information shall include at least the following:

1. A statement of rates, terms, and conditions of interconnections;

2. A statement of technical requirements;

3. A sample contract containing the applicable terms and conditions;

4. Pertinent rate schedules;

5. The title, address, and telephone number of the department of the utility to which inquiries should be directed; and

6. The statement: "The Minnesota Public Utilities Commission is available to resolve disputes upon written request," and the address and telephone number of the commission.

4 MCAR § 3.0462 Interconnection guidelines.

A. Denial of interconnection application. The utility may refuse to interconnect a qualifying facility with its power system until the qualifying facility has properly applied under 4 MCAR § 3.0454 K. and has received approval from the utility. The utility shall withhold approval only for failure to comply with applicable utility or governmental rules or laws. The utility shall be permitted to include in its contract reasonable technical connection and operating specifications for the qualifying facility.

B. Notification of telephone utility and cable television firm. The electric utility shall notify the appropriate telephone utility and cable television firm when a qualifying facility is to be interconnected with its system. This notification shall be as early as practicable to permit coordinated analysis and testing before interconnection, if considered necessary.

C. Separate distribution transformer; when required. The utility may require a separate distribution transformer for the qualifying facility if necessary either to protect the safety of employees or the public or to keep service to other customers within prescribed limits. Ordinarily, this requirement should not be necessary for an induction-type generator with a capacity of five kilowatts or less, or other units with a capacity of ten kilowatts or less that utilize line-commutated inverters.

D. Limiting capacity of single-phase generators; when permitted. If necessary, to avoid the likelihood that a qualifying facility will cause problems with the service of other customers, the utility may limit the capacity and operating characteristics of single-phase generators in a way consistent with the utility limitations for single-phase motors. Ordinarily, single-phase generators should be limited to a capacity of ten kilowatts or less.

E. Automatic isolation of generator. The utility may require that the qualifying facility have a system for automatically isolating the generator from the utility's system upon loss of the utility's supply.

F. Discontinuing parallel operation. The utility may require that the qualifying facility discontinue parallel generation operation when necessary for system safety.

G. Permitting entry. The qualifying facility shall make equipment available and permit electric and communication utility personnel to enter the property at reasonable times to test isolation and protective equipment, to evaluate the quality of power delivered to the utility's system, and to test to determine whether the qualifying facility's generating system is the source of any electric service or communciation systems problems.

H. Maintaining power output. The power output of the qualifying facility shall be maintained so that frequency and voltage are compatible with normal utility service and do not cause that service to fall outside the prescribed limits of commission rules and other standard limitations.

I. Varying voltage levels. The qualifying facility shall be operated so that variations from acceptable voltage levels and other service-impairing disturbances do not adversely affect the service or equipment of other customers, and so that the facility does not produce undesirable levels of harmonics in the utility power supply.

J. Safety. The qualifying facility shall be responsible for providing protection for the installed equipment and shall adhere to all applicable national, state, and local codes. The design and configuration of certain cogeneration and small power production equipment might require an isolation transformer as part of the qualifying facility installation for safety and protection of the qualifying facility equipment.

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K. Right of appeal for excessive technical requirements. The qualifying facility has the right of appeal to the commission when it considers individual technical requirements excessive.

4 MCAR § 3.0463 Existing contracts. Any interconnection contracts executed between a utility and a qualifying facility before the effective date of 4 MCAR §§ 3.0450-3.0463 may, at the option of either party, be canceled and replaced by interconnection contracts under 4 MCAR §§ 3.0450-3.0463.

CERTIFICATE OF SERVICE

I, Jim Erickson, hereby certify that I have this day served copies of the foregoing document on the attached list of persons.

xx by depositing a true and correct copy thereof, properly enveloped with postage paid in the United States mail at Minneapolis, Minnesota;

xx electronic filing

Docket No. E999/PR-19-9

Dated this 24th day of October 2019

/s/

_____

Jim Erickson
Regulatory Administrator

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Kenneth A.	Colburn	kcolburn@symbioticstrategies.com	Symbiotic Strategies, LLC	26 Winton Road Meredith, NH 32535413	Electronic Service	No	OFF_SL_19-9_Official
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-9_Official
George	Crocker	gwillc@nawo.org	North American Water Office	PO Box 174 Lake Elmo, MN 55042	Electronic Service	No	OFF_SL_19-9_Official
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David	Dahlberg	davedahlberg@nweco.com	Northwestern Wisconsin Electric Company	P.O. Box 9 104 South Pine Street Grantsburg, WI 548400009	Electronic Service	No	OFF_SL_19-9_Official
James	Darabi	james.darabi@solarfarm.com	Solar Farm, LLC	2355 Fairview Ave #101 St. Paul, MN 55113	Electronic Service	No	OFF_SL_19-9_Official
James	Denniston	james.r.denniston@xcelenergy.com	Xcel Energy Services, Inc.	414 Nicollet Mall, Fifth Floor Minneapolis, MN 55401	Electronic Service	No	OFF_SL_19-9_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_19-9_Official
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Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_19-9_Official
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