MINNESOTA SOLAR ENERGY INDUSTRIES PROJECT

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March 17, 2016

Mr. Daniel Wolf, Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: *Keith Weber, Qualifying Facility, v. Meeker Cooperative Light and Power Association*

Dear Mr. Wolf:

Enclosed for e-filing please find the Verified Complaint of Keith Weber, Qualifying Facility, against Meeker Cooperative Light and Power Association under Minnesota Statute 216B.164, subdivision 5.

Copies of this filing have been mailed to the Respondent, the Minnesota Department of Commerce and the Minnesota Office of Attorney General – Residential Utilities Division, as required by Minn. Rule 7829.1700.

Very truly yours,

David Shaffer, esq., representing Keith Weber, Qualifying Facility
Minnesota Solar Energy Industries Project

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Complaint

&

Customer/Attorney Public Representation Agreement

Enclosed

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
John Tuma	Commissioner
Nancy Lange	Commissioner
Daniel Lipschultz	Commissioner
Matthew Schuerger	Commissioner

INTRODUCTION

Approximately one year, ago several installer members of the Minnesota Solar Energy Industries Association (MnSEIA) brought to the attention of MnSEIA staff that several utilities across the state were acting in ways that are contrary to Minn. Stat. § 216B.164 and other state statutes or rules. After a preliminary analysis of the applicable statutes, MnSEIA determined that the best way to correct utility misconduct was to form a new, separate and distinct, sister organization called the Minnesota Solar Energy Industries Project (MnSEIP). Along with housing other programs, MnSEIP acts as a non-profit law firm that represents Qualifying Facilities (QF) in disputes with their utility.

Today MnSEIP is working on behalf of Keith Weber, the owner of a 5.2kW solar array in Meeker Cooperative Light and Power Association's (the "utility" or "Meeker") service territory. Keith's solar array is a QF pursuant to PURPA and Minn. Stat. § 216B.164. He is requesting a dispute resolution proceeding in accordance with Minn. Stat. § 216B.164, subd. 5.

JURISDICTION

The Minnesota Public Utilities Commission (the "Commission") has jurisdiction over this dispute under Minn. Stat. § 216B.164, subd. 2 and reaffirmed in Docket No. E-132/CG-15-255.[1]

PARTIES

QF (Keith Weber) is located at 32718 742nd Ave. South Haven, MN 55382. Meeker is located at 1725 U.S. Hwy. 12 E., Suite 100 Litchfield, MN 55355.

[1] *See* ORDER FINDING JURSIDCITION AND RESOLVING DISPUTE IN FAVOR OF COMPLAINANT, MINNESOTA PUBLIC UTILITIES COMMISSION, Docket No. E-132/CG-15-255, Doc. ID. 20159-114134-01 at 7 (Sept. 21, 2015) (stating "The Commission finds that it has jurisdiction over this matter").

REPRESENTATION & COMMUNICATIONS

The attorney representing Keith is David Shaffer who is located at 2952 Beechwood Ave. Wayzata MN 55391. All communications relevant to this dispute should be directed to him:

David Shaffer, esq. **Phone:** 612-849-0231
Staff Attorney **Email**: shaff081@gmail.com
Minnesota Solar Energy Industries Project
2952 Beechwood Ave.
Wayzata MN 55391

FACTS

In March of 2015, Keith began planning for his new solar array. He contacted his friend, Jerry Larson, who had installed several solar systems in various states. Larry began procuring supplies and bids in order to install the system himself.[2]

On May 8, 2015, Keith met with the utility to determine what would be necessary to comply with their interconnection requirements. He was then able to attain a building permit.[3]

On June 1, 2015 Keith met with Chris Toenjes, Energy Management Coordinator for Meeker Cooperative. Chris asked who Keith's electrician was and Keith informed him that he was installing the system himself. Chris then told Keith that "you will need a certified electrician to do the installation. You should really touch base with the electrical inspector before moving ahead."[4]

The following week Keith had his friend Jerry speak with the electrical inspector who told them they were unable to install the system themselves or at least until Keith passed a "solar test." Keith then contacted All Energy Solar, a solar company based in St. Paul, to install the system.[5]

On June 13, 2015, after it had initially been vetoed and the state entered a special session, the Minnesota Legislature amended Minn. Stat. § 216B.164 to read in pertinent part:

> 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

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2 *See* APPENDIX A at ¶4.

3 *See Id.* at ¶6.

4 *See Id*. at ¶8.

5 *Id*. at ¶9.

> cost of service study. The cost of service study must be made available for review by a customer of the utility upon request.[6]

The fee was only to apply to systems installed after July 1, 2015.[7]

On or around June 13, 2015, Keith began soliciting bids for the solar array.[8]

On June 24, 2015, Keith decided to use All Energy Solar to install his array.[9]

In July, 2015, Keith received a package of documents from the utility that included 1) an interconnection agreement, requesting $914.12 prior to interconnection ($485.00 for a new "TOU - Detents" meter and $429.12 for a combination of other items, including "Engineering Evaluation" and "Design and Staking"), 2) the utility's Schedule C tariff, which included an Average Retail Cooperative Energy Rate calculation with subtractions for "Fixed Costs," "Security Lights" and "Demand Charges," 3) a note stating that Minn. Stat. § 216B.02 authorized the utility to apply fees to recover fixed costs, and 4) a letter referencing Minn. Stat. § 216B.164's new amended language.[10]

On August 3, 2016, Keith received and signed the uniform statewide contract. He then sent it to the utility, along with the requested payment amounts. The statewide contract did not include any additional information about a fee assigned for fixed costs.[11]

On or around October 14th, Keith received a copy of the uniform state-wide contract that was signed by a utility representative. This signed copy again did not contain any mention of additional fees.[12]

In December, 2015, the utility posted a newsletter online, which states the following:

> At its November board meeting, Meeker Co-op's Board of Directors voted unanimously to begin charging this fee starting in January of 2016. This fee will show up on the bill those members receive in February of next year. The law only allows utilities to begin charging this fee to those net-metered accounts that connected their electric generating system to the utility after July 1, 2015. The Co-

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6 Minn. Stat. § 216B.164, subd. 3(a).

7 Chapter 1, H.F.No.3, (stating "This section is effective July 1, 2015, and applies to customers installing net metered systems after that day.").

8 APPENDIX A at ¶12.

9 *Id*. at ¶13.

10 *See Id*. at ¶14-¶15; *See also* APPENDIX D.

11 APPENDIX A ¶17; *See also* APPENDIX B.

12 APPENDIX A at ¶19; *See also* APPENDIX B.

op will not be back-billing those accounts from the time the law took effect (the past six months).[13]

In February, 2016, Keith received an energy bill from the utility with a "miscellaneous charge" for the amount of $5.88. He had never received this charge on any prior bills.[14]

On February 23, 2016, Keith called the utility and spoke with Steve Kosab. Keith asked what the miscellaneous charge was for, and how it was determined. He also requested the utility to provide him with a copy of the utility's most recent cost of service study. Steve told him the fee was for his new solar array. Additionally, the representative was unable to provide a detailed answer on how the fee was calculated, but assured Keith an answer would come shortly. Steve also articulated that the fee was predicated on a process being implemented by other cooperatives around the state and that the general sentiment was that a 3.5% fee was appropriate.[15]

Later that day, Keith decided to see what percentage of his rate was actually impacted by the fee and found the fee took up approximately 61% of the money gained by the excess energy his array sent back to the grid. Keith then contacted the Department of Commerce informing them of the fee.[16]

To this day, Keith has received no follow-up information from the utility about how the fee was calculated, nor has he received a cost of service study.[17]

BURDEN OF PROOF

In accordance with Minn. Stat. § 216B.164, subd. 5 and Minn. Rule 7835.4500 the burden of proof in this dispute is on the utility for each claim below.[18]

CLAIM I

The utility has failed to provide a cost of service study under Minn. Stat. § 216B.164, subd. 3 (a) upon request. The newly amended statute articulates that "[t]he cost of service study must be

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13 *Id*. at ¶20; *See also* Meeker Cooperative Pioneer, Meeker Cooperative Power and Light Association, December 2015 at 2 (available at: http://www.meeker.coop/wp-content/uploads/2015/12/Meeker12-15.pdf).

14 *See* APPENDIX A at 21; *See also* Appendix C.

15 *See* APPENDIX A at 22.

16 *Id*. at 23.

17 *Id*. at 24.

18 *See* Minn. Stat. 216B.164, subd. 5; *See also* Minn. Rule 7835.4500 (stating "[i]n any such determination, the burden of proof shall be on the utility.").

made available for review by a customer of the utility upon request."[19] When Keith spoke with Steve on February 23rd, Keith requested that he receive the most recent cost of service study. A reasonable period of time (one month) has lapsed since his last request was made, but Keith has still not received the study nor has the utility provide a timeline for presenting it.

The utility, therefore, is in violation of Minn. Stat. § 216B.164, subd. 3(a) for failing to make a cost of service study available, as required by the statute's plain language.

CLAIM II

The utility has assessed a fee that is illegal under Minn. Stat. § 216B.164, because 1) the fee is not reasonably based on a cost of service study; 2) the fee is not appropriate for Keith's customer class; 3) the fee is not for fixed costs not otherwise accounted for through pre-existing billing arrangements; 4) the utility has failed to file the fee for commission review, as required under Minn. Rule 7835.0300 for 2016; 5) the fee was applied retroactively, after a statewide contract was signed; and 6) the utility unduly delayed the array's installation, thereby causing it to be turned on after July 1, 2015.

1) The Fee Is Not Reasonably Based On A Cost Of Service Study

Any net-metering fee must be predicated on the most recent cost of service study. Minn. Stat. 216B.164, subd. 3(a) articulates the following:

> 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.[20]

The statute uses the term "reasonable." Reasonableness here could be one of two different definitions. First, "reasonable" may require that there be some rational connection between the fee and the fixed costs transposed in the cost of service study.[21]

But the Commission could also articulate "reasonable" as a fair or moderate cost.[22] For instance, if one found a car at a discounted and affordable rate, then one might say they purchased their

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19 Minn. Stat. 216B.164, subd. 3(a).

20 *Id.* (emphasis added).

21 *See* Reasonable, definition 1, 2, 4 and 5, Dictionary.com, *available at* http://www.dictionary.com/browse/reasonable?s=t last visited: 3/11/2016.

22 *See* Reasonable, definition 3, Dictionary.com, *available at* http://www.dictionary.com/browse/reasonable?s=t last visited: 3/11/2016 (stating "moderate, especially in price; not expensive").

car at a "reasonable" price. Applying this to the statutory language, then the utility would be required to create a fee that is both fair and modest.

Here, when Keith spoke with a Meeker representative on February 23rd, he requested that he receive the most recent cost of service study and asked how the fee was determined, but the copy of the cost of service study was never provided and the representative was unable to articulate how the fee was determined beyond providing that other cooperative utilities were using 3.5% as a basis. To Keith's knowledge, Steve provided no summary follow-up information. So the only basis for determining how the fee was calculated is to take the 3.5% number that Steve alluded to in his phone call and to look at the various bills.[23]

Applying the first definition to reasonable to the facts here is difficult because the utility did not provide a cost of service study and has not shown that it ever had a cost of service study conducted. If a cost of service study does not exist, then it follows that there is no reasonable fee that can be derived from it, and no reasonable fee that can be imposed on the utility's customers. Further, if the methodology for approving a fee is arbitrary, like a blanket 3.5% reduction, then the fee would automatically be unreasonable as well. "Reasonable" in this context requires an element of logical progression that is absent if there is no cost of service study or rationally supported approach for taking information from a cost of service study and creating a fee from it.

But if the fee is predicated on the other definition of "reasonable" – one closer to a fair and modest cost – then the utility has also failed to formulate a fee that could meet the statutory requirement. The fee is extremely costly on a per-kilowatt hour and fiscal basis. Without the utility's fee Keith estimates he will receive $.09364/kWh for energy sold back to the grid, but with the fee his rate of return would effectively drop to $.036/kWh. This dramatic effect is certainly more than a fair and modest cost, as it is 61% of his energy production gains. It is a dramatic reduction in the viability of Keith's solar array's payback potential. Other Meeker customers with larger arrays are paying upwards of $55.00/month.[24]

Regardless what definition of reasonableness is used and even if the utility has a cost of service study (which it doesn't appear to have), it is impossible that the fee could be reasonably based on any cost of service study.

2) The Fee Is Not Appropriate For Keith's Customer Class

Similar to the above argument, the fee needs to be both reasonable and "appropriate" for Keith's customer class. A fee that consumes 61% of an array's returns and can be upwards of $55.00/month is not an appropriate fee. It will have a preclusive effect over small power production in the utility's service territory, because it will decimate the array's financial viability.

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23 *See* APPENDIX C and F.

24 *See* APPENDIX F.

Moreover, an appropriate fee should be predicated on the actual costs and benefits that arrays provide. The fee seems to be a flat tax on solar. It seems, based on Keith's conversation with Steve, that the fee is merely an unfounded, ball-park estimate of what utilities think is fair compensation for letting an array operate on their system.

The fee doesn't take into account the net system benefits provided by Keith's system that benefit all cooperative members. These benefits include those identified in the Commission-approved Value of Solar Methodology, such as line-loss reductions and environmental improvement. In order for a fee based on a cost of service study to be appropriate, then if a fee is going to be calculated based on a QF's costs, it should also be netted against the QF's benefits.

Lastly, an appropriate fee must demonstrate actual costs created by DG customers that is not recovered in the standard customer charge. This $5.88 fee is highly detrimental to an individual solar array, because it adds an additional $1,764 in costs to the system over a 25-year contract period. If this fee was distributed over the utilities' 7,553 customers, then the average ratepayer would pay $.23 over the course of a 25-year contract.[25] It is hard to believe that the average Meeker ratepayer would be unwilling to gain the additional benefits from Keith's solar array for less than $.01 a year. As such, the fee does not seem appropriate for Keith's customer class.

3) The Fee Is Not For Fixed Costs Not Otherwise Accounted For Through Pre-Existing Billing Arrangements

Because the fee is based on a percentage of something it seems unlikely that the fee is actually based on the fixed costs of anything. The statute requires that the fee be used only to cover "fixed costs" not otherwise accounted for through pre-existing billing arrangements.

In February 2016, Keith contacted the utility and inquired into what the fee was for and how it was calculated. The response he received is that the utility does not know how it was created or what it is based on. The only thing that the representative knew is that other cooperatives were adopting a similar approach across the state and that 3.5% seemed fair.

The biggest issue for Keith is he has been unable to find out from the utility what fixed costs the utility is billing him for. The utility has failed to explain what additional and unique fixed costs his solar system causes that are not already recovered in Meeker's substantial customer charges.

Additionally, the fact that the fee is predicated on a percentage of something further suggests that the fee is not for "fixed costs" at all. A fixed cost by definition should be a fixed amount per-month. For instance, it may cost $10.00/month to hire a meter reader, and now Keith's additional meter would put increased demand on the reader. In this hypothetical, then the fee to Keith should be predicated on his share of the meter reader's cost. It should not be predicated on how

[25] The Power of Connection, Meeker Cooperative Light and Power Association, 2014 Annual Report at 5 available at http://www.meeker.coop/wp-content/uploads/2010/06/2014ANNREPORT.pdf last viewed: Mar. 16, 2016.

much Keith's system generates, because that has no bearing on meter reading charges. The utility would need to pay that meter reader $10 regardless of whether Keith's system is 1 kW or 40 kW.

Meeker's blanket percentage shows that this fee is irrationally applied, and it is likely based on utility desires to recover what it perceives as lost revenue from Keith's decision to self-generate, as opposed to actual "fixed costs" as the statute requires.

4) The Utility Has Failed To File A Document Containing The Fee With The Commission

Minn. Stat. § 216B.1611 created reporting requirements for all utilities in Minnesota and Minn. Rule 7835.0300 requires that each utility file their small power production tariffs and rate schedules with the Minnesota Public Utilities Commission on January 1st of that year.[26] Meeker, however, has not filed anything with the Commission that is germane to cogeneration and small power production since 2014.[27]

Further substantiating the state statute and administrative rules, is the People's Energy Cooperative (PEC) Order in Docket 15-255. In that particular Docket, Alan Miller, an owner of a small QF wind turbine, requested a dispute resolution proceeding under Minn. Stat. § 216B.164, because PEC retroactively starting charging him a $5.00/month net metering fee.[28]

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[26] *See* Minn. Stat. § 216B.1611 (requiring cooperatives and municipal utilities to report to the Commission on "the new distributed generation facilities interconnected with the system since the previous year's report, any distributed generation facilities no longer interconnected with the utility's system since the previous report, the capacity of each facility, and the feeder or other point on the company's utility system where the facility is connected. The annual report must also identify all applications for interconnection received during the previous one-year period, and the disposition of the applications."); *See also* Minn. Rule 7835.0300 (stating "Within 60 days after the effective date of this chapter, on January 1, 1985, and every 12 months thereafter, each utility must file with the commission, for its review and approval, a cogeneration and small power production tariff. The tariff for generating utilities must contain schedules A to G, except that generating utilities with less than 500,000,000 kilowatt-hour sales in the calendar year preceding the filing may substitute their retail rate schedules for schedules A and B. The tariff for nongenerating utilities must contain schedules C, D, E, F, and H, and may, at the option of the utility, contain schedules A and B, using data from the utility's wholesale supplier.").

[27] Distributed Generation Interconnection Report, MEEKER COOPERATIVE LIGHT AND POWER ASSOCIATION, Docket No. E999/PR-14-10, Doc. ID. 20143-97004-01 (Mar. 3, 2014).

[28] INITIAL FILING – REQUEST OF DISPUTE RESOLUTION, ALAN MILLER, Docket No. E-132/CG-15-255, Doc. ID. 20153-108114-01 (Mar. 12, 2015).

Upon Department of Commerce investigation, it was clear that PEC had failed to file documentation of the fee. The Minnesota Public Utilities Commission found that People's Energy Cooperative was "in violation of Minn. R. 7835.0300 and .0400 for failing to file the proposed fee changes in 2014."[29] The Commission also noted that "[m]ost concerning, People's failed to file a revised tariff in 2014 when it imposed the new fee on its distributed-generation customers."[30]

Here, there is legislation that does allow Cooperatives to propose some sort of additional fee. However, the Peoples' Order clarifies that any such fee must be first reported to, and approved by, the Commission. The new law does not negate the need to inform the Commission of tariff changes. Attempting to bypass state law by simply implementing these fees is a contrary to law and undermines the Commission's authority over small power production and cogeneration.

Moreover, the Commission was also previously concerned with the fact that no revised tariff filing was submitted prior to imposing the fee on new customers. Similarly in this case, Meeker has also failed to submit revised fees before implementing them on their customers.

5) The Fee Was Applied Retroactively And After A Uniform Statewide Contract Was Signed

In October of 2015, Keith's system was installed, and he received his utility signed contract that month. However, starting in February of 2016, the utility has decided to retroactively apply a fee to Keith's system. This is contrary to the Uniform Statewide Contract and state law generally.

Agreement 18 of the statewide contract articulates the following:

> This contract contains all the agreements made between the QF and the Utility except that this contract shall at all times be subject to all rules and orders issued by the Public Utilities Commission or other government agency having jurisdiction over the subject matter of this contract. The QF and the Utility are not responsible for any agreements other than those stated in this contract.[31]

The contract clearly articulates that the financial agreements are confined within the four corners of the statewide contract. If additional fees or charges could be applied, it would be stated. For instance, under Agreement 9 of the statewide contract, utilities are permitted to also incorporate their own "rules, regulations and policies" that "provide reasonable technical connection and operating specifications for the QF."[32] But additional fees for fixed costs have no similar

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29 ORDER FINDING JURSIDCITION AND RESOLVING DISPUTE IN FAVOR OF COMPLAINANT, MINNESOTA PUBLIC UTILITIES COMMISSION, Docket No. E-132/CG-15-255, Doc. ID. 20159-114134-01 at 7 (Sept. 21, 2015).

30 *Id.*

31 Minn. Rule 7835.9910, Agreement 18.

32 *Id.* at Agreement 9.

integrating language, so a QF is not responsible for fees applied after the contract has been signed.

There is, however, a section of the uniform statewide contract that allows for rate changes to be integrated into the contract, and Meeker seems to believe this gives them the authority to charge the fee without Commission approval. When Meeker sent their initial bundle of information to Keith, the cooperative included a document, which reads in pertinent part:

> Rates as defined by Minnesota Statute 216B.02 include every charge, fare, fee and classification collected by the utility in providing the service. As of July 1st, 2015, Minnesota Statute 216B.164 allows electric cooperatives and municipal utilities to charge a fee to recover the fixed costs to serve a distributed generation qualifying facility. The recovery of fixed costs through a fee or other charges to recover the cooperative's cost of providing service is part of the rate structure of the cooperative that may change over time.[33]

The above paragraph implies that Meeker believes they can charge a fee retroactively because of Minn. Stat. § 216B.02's definition of "rate."

Meeker, however, inappropriately applies Minn. Stat. § 216B.02, subd. 5. The statute is below:

> "Rate" means every compensation, charge, fare, toll, tariff, rental, and classification, or any of them, demanded, observed, charged, or collected by any public utility for any service and any rules, practices, or contracts affecting any such compensation, charge, fare, toll, rental, tariff, or classification.[34]

There are two parts to this statute. The first applies generally. Rates can mean any actual compensation, charge, fare, toll, tariff, rental, and classification, regardless of what type of utility is applying the definition.

Rates can also mean compensation demanded, observed, charged or collected, if the entity is a public utility. The demands, observations, charges, and collections can apply through contractual obligations, only if the utility is a public utility.

Here, Meeker is a cooperative seeking to implement a fee that can only be utilized by cooperative and municipal utilities. So the only definition of rate that can apply is the first one. The compensation, charge, fare, toll, tariff, rental, etc. must not be something the utility wants to do, but is an actual, billable amount.

Often rates are approved through the cooperative directly, which means they are able to approve rates, fees, etc. on their own.[35] But this fee is under the jurisdiction of Minn. Stat. § 216B.164, and

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33 *See* APPENDIX D.

34 Minn. Stat. § 216B.02, subd. 5.

35 Minn. Stat. § 216B.026.

it requires Commission approval prior to being actualized. As noted in the previous section, Meeker has failed to provide notice to the Commission about this new fee, so approval is impossible. In this instance the fee currently isn't an actual compensation, charge, fare, toll, tariff, etc. so it cannot be integrated into the uniform statewide contract to apply retroactively. Thus, the fee was not included in the statewide contract and Meeker retroactively applied the fee after the contract was signed.

6) The Utility Unduly Delayed The Array's Installation, Thereby Causing It To Be Turned On After July 1, 2015

The new fee amendment was passed and signed into law on June 13, 2015. The fee was to go into effect on July 1, 2015 and was to apply only to systems installed after that date. The fee amendment, however, did not appear overnight. It had been previously passed by the Legislature on May 23, 2015, but was being deliberated on during the special session.[36]

Keith initially attempted to install his own system in May of 2015, and he approached the utility to do so. The utility refused to service his request, and required him to seek out a state inspector even though at the time the law was unclear as to whether an electrician did need to install a system. While we do not want to attempt to interpret the utility's actions and ascribe an element of intentionality, it is notable that the timing of this unusual delay is consistent with the potential passing of this net-metering fee.

Keith's intention was to get his system installed prior to July 1, 2015 and he believes he could have done it but for the utility's unusual procedures for his interconnection.[37] At the very least it is clear that Keith intended to have his system installed prior to July 1, 2015 and he even made significant progress towards those ends. Moreover, he was doing so without the intent to install his system prior to the onset of this fee clause, because at the time he started his planning the fee had not even been passed yet. For those reasons, if there was any system that should be grandfathered in to the pre-existing rules, it was Keith's.

CLAIM III

The utility has applied an inappropriate Average Retail Utility Energy Rate – or as Cooperatives call it the "Average Retail Cooperative Energy Rate" (ARCER) - calculation in their Schedule C to Keith's solar array, because 1) the rate includes some variables not allowed for under Average Retail Rate calculations; 2) the utility has failed to file any Schedule C calculations since 2012; and 3) the utility has failed to ever file their revised calculation with the Commission and have it approved.

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36 Chapter 1, H.F.No.3, June 13, 2015.

37 *See* APPENDIX A at ¶10.

1) The Rate Includes Some Variables Not Allowed For Under Average Retail Rate Calculations

The utility's supplied Schedule C provides an ARCER amount that is artificially deflated, because the utility has subtracted "demand charges" and "security lights" from the total class revenues and those costs cannot be removed.[38] Minn. Stat. § 216B. 164, subd. 3(d) articulates that "a qualifying facility having less than 40-kilowatt capacity may elect that the compensation for net input by the qualifying facility into the utility system shall be at the average retail utility energy rate."[39] The statute goes on to further expound that "'[a]verage retail utility energy rate' is defined as the average of the retail energy rates, exclusive of special rates based on income, age, or energy conservation, according to the applicable rate schedule of the utility for sales to that class of customer."[40] The statute provides some guidance on what variable rates can go into the Average Retail Utility Energy Rate, but does not discuss whether fixed charges or other things can be removed.

The Commission has further defined how the Average Retail Rate ought to be calculated. Minn. Rule 7835.0100 defines the Average Retail Utility Energy Rate as follows:

> "Average retail utility energy rate" means, for any class of utility customer, the quotient of the total annual class revenue from sales of electricity minus the annual revenue resulting from fixed charges, divided by the annual class kilowatt-hour sales. Data from the most recent 12-month period available before each filing required by parts 7835.0300 to 7835.1200 must be used in the computation.[41]

The above definition outlines exactly how ARCER calculations should be determined. The only deductions that utilities are allowed to make are for fixed charges.

Here, the utility has lowered the rate by at least $.003/kWh, because they have subtracted "security lights." But the "demand charge" subtraction is more troubling, because it is unclear exactly why it is included. When looking at Meeker's ARCER calculation, "demand charge" is listed as a subtraction. But when the math is done the "demand charge" is $0 here. That may be because the utility is intending to further reduce the ARCER result at a later period, perhaps through an end of the year true-up approach.

The only subtraction allowed under statute or rule is for fixed charges, but the utility has separated the "security lights" and "demand charges" from its bulk "fixed costs" subtraction. So the utility itself is clearly articulating that these fees fall outside of a traditional "fixed costs" definition. These fees are not "fixed costs" and should not be permitted in an ARCER calculation, because

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38 *See* APPENDIX D.

39 Minn. Stat. § 216B. 164, subd. 3(d).

40 *Id*.

41 Minn. Rule 7835.0100.

they are unallowed subtractions from the Total Class Revenues prior to averaging, according to Minn. Rule 7835.0100.

2) The Utility Has Failed To File Any Schedule C Calculations Since 2012

The ARCER calculation also should not apply because the utility has failed to file any Schedule C, since 2013. Minn. Rule 7350.0300 requires:

> Within 60 days after the effective date of this chapter, on January 1, 1985, and every 12 months thereafter, each utility must file with the commission, for its review and approval, a cogeneration and small power production tariff. The tariff for generating utilities must contain schedules A to G, except that generating utilities with less than 500,000,000 kilowatt-hour sales in the calendar year preceding the filing may substitute their retail rate schedules for schedules A and B. The tariff for nongenerating utilities must contain schedules C, D, E, F, and H, and may, at the option of the utility, contain schedules A and B, using data from the utility's wholesale supplier.[42]

The Commission has also placed a specific emphasis on filing Schedule C for approval purposes. Minn. Rule 7835.0400 provides an option for utilities to file tariffs that effectively seek approval for what they submitted the year before, if Schedule C is the only change. The rule, however, requires that at least a new Schedule C is filed annually.[43]

In short, each year a cooperative utility must file their Schedule C for Commission approval, and the utility here has failed to do so.

3) The Utility Has Failed To Ever File Their Revised Calculation With The Commission And Have It Approved

More disconcerting than the utility not filing a Schedule C is that the utility has revised the Schedule C calculation without notifying – let alone receiving approval from - the Commission. Filing a Schedule C every year is important to illustrate changes in the per-kilowatt rate amount. But the utility here has not only changed the per-kilowatt rate amount, but they have actually changed the methodology for determining the per-kilowatt rate amount, and they have done so without first filing with the Commission.

This is similar to the above scenario of applying a fee without Commission approval. Similar to the example in People's Energy Cooperative's case, Docket 15-255, the most troubling issue is that in addition to illegal changes to the rate, the changes are being made without first filing with the Commission. There is no opportunity for relevant stakeholders to intervene, and it affords the regulators no opportunity for oversight of rates within their jurisdiction.

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42 Minn. Rule 7350.0300.

43 *See* Minn. Rule 7835.0400.

For the foregoing reasons, the Demand Charge and Security Light subtractions should be removed from the utility's ARCER calculation, and the utility should be required to file a revised tariff with the Commission.

CLAIM IV

Keith also alleges that the utility charged him too much for estimated interconnection costs, because "Engineering Evaluation" falls outside of the scope of what he can be billed for and because the utility did not do any "design/staking" work.

1) Engineering Evaluation Falls Outside Of The Scope Of What Keith Can Be Billed For

Included in the Statewide Interconnection Guidelines contain the chart below:[44]

Interconnection type	**< or = 20kW**	**>20kW & < or =250kW**	**>250kW & < or=500kW**	**>500kW & < or=kW**	**>1000kW**
Open Transfer	$0	$0	$0	$100	$100
Quick Closed	$0	$100	$100	$250	$500
Soft Loading	$100	$250	$500	$500	$1000
Extended Parallel (Pre Certified System)	$0	$250	$1000	$1000	$1500
Other Extended Parallel Systems	$100	$500	$1500	$1500	$1500

Under the chart is some additional information that is also relevant to the claim, it states:

> This application fee is to contribute to the Area EPS Operator's labor costs for administration, review of the design concept and preliminary engineering screening for the proposed Generation System Interconnection.[45]

In short, the fees assessed for interconnection costs should be predicated upon the chart, and the fees include several costs such as administration, review of the design and engineering screening.

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44 ORDER ESTABLISHING STANDARDS, MINNESOTA PUBLIC UTILITIES COMMISSION, Docket No. E-999/CI-01-1023, Doc. ID. 59785 at ATTACHMENT 1 pp. 9 (Sept. 28, 2004) [hereinafter *Interconnection Guidelines*].

45 *Id.*

If complexity arises, utilities are allowed to charge additional fees for engineering in the below amounts: [46]

Generation System Size	**Engineering Study Maximum Costs**
<20kW	$0
20kW – 100kW	$500
100kW – 250kW	$1000
>250kW or not pre-certified equipment	Actual Costs

Applying the above to Keith's scenario, it is clear that the utility has charged significantly more than they are allowed to do under the Guidelines. Keith's system is a simple 5.2kW array. Therefore, the utility is not allowed to charge him anything for "administration, review of the design concept and preliminary engineering screening for the proposed Generation System Interconnection."

The utility is also unable to charge Keith anything for his engineering study, because his system is under 20kW. There is nothing that would authorize review of the design concept, engineering or administration in the Guidelines. But the utility has billed Keith $120 for "engineering evaluation," and when Keith inquired into what that entailed the utility failed to explain it.

The lone location where the utility may believe it can bill "engineering evaluation" is under step 5 of the Guidelines, which reads in pertinent part:

> 7) Cost estimate and payment schedule for required Area EPS work, including, but not limited to;
>
> a) Labor costs related to the final design review.
>
> b) Labor & expense costs for attending meetings
>
> c) Required Dedicated Facilities and other Area EPS modification(s).
>
> d) Final acceptance testing costs.[47]

While the interconnection guidelines do state "including, but not limited to;" Keith contends that "engineering evaluation" falls strictly within the purview of the previous Guideline steps that surround engineering costs, and that the utility has failed to articulate a rational basis for why "engineering evaluation" can be aggregated into Step 5's section 7's cost estimates. The burden is on the utility to prove that "engineering evaluation" is an appropriate interconnection cost and if it is unable to do so, then it should reimburse Keith for $120.

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46 *Id*. at ATTACHMENT 1 pp. 10.

47 *Id.* at ATTACHMENT 1 pp. 11.

2) The Utility Did Not Do Design or Staking Work

As part of All Energy's services they provide all of the necessary design work. Keith also contends that no staking work transpired. If both of the above statements are true - which to Keith's knowledge they are - then Keith was billed for an item that the utility did not perform. As such, he should be compensated for the $80 designated for Design/Staking.

CLAIM V

The utility has also charged Keith an excessive amount for his meter. He paid $485 for a "TOU - detents" meter, which is unusual, unnecessary and contrary to state law.[48]

Minn. Stat. § 216B.1611 requires that the Minnesota Public Utilities Commission do the following:

> (a) The commission shall initiate a proceeding within 30 days of July 1, 2001, to establish, by order, generic standards for utility tariffs for the interconnection and parallel operation of distributed generation fueled by natural gas or a renewable fuel, or another similarly clean fuel or combination of fuels of no more than ten megawatts of interconnected capacity. At a minimum, these tariff standards must:
>
> […]
>
> 5) establish (i) a standard interconnection agreement that sets forth the contractual conditions under which a company and a customer agree that one or more facilities may be interconnected with the company's utility system, and (ii) a standard application for interconnection and parallel operation with the utility system.[49]

On September 28, 2004, The Commission approved an Order accomplishing the above statutory requirements.[50] As part of their Order the Commission adopted a Work Group report, specifically the Commission ordered "[t]he February 3, 2003, Rate Work Group report, as amended herein and attached as Attachment 6, shall constitute guidelines for establishing the financial relationship between an electric utility and a qualified generator with no more than 10 MW of capacity."[51] The Work Group report is the process by which utilities must interconnect QFs.

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48 *See* APPENDIX D.

49 Minn. Stat. § 216B.1611.

50 *See Interconnection Guidelines*, *supra* note 44 at 1.

51 *Id.* at 29.

The Order in conjunction with the attached reports make up the "Statewide Interconnection Guidelines", which are as binding on utilities as any rule or Order governing Minn. Stat. § 216B.1611.[52]

Standard Metering requirements are set in the Interconnection Guidelines. The metering requirements come with a note, which states the following:

> Due to the variation in Generation Systems and Area EPS operational needs, the requirements for metering, monitoring and control listed in this document are the expected maximum requirements that the Area EPS will apply to the Generation System.
>
> […]
>
> Table 5A has been written to cover most application, but some Area EPS tariffs may have greater or less metering, monitoring and control requirements then, as shown in Table 5A.[53]

This illustrates that on the issue of metering the Guidelines are not hard and fast rules, and utilities are able to choose different meter types, if they file their need in their tariff.

Below is the pertinent subsection of the metering chart, Table A, included in the Guidelines:

Generation System Capacity at Point of Common Coupling	**Metering**	**Generation Remote Monitoring**	**Generation Remote Control**
<40kW with all sales to Area EPS	Bi-directional metering at the point of common coupling	None required	None required
< 40kW with Sales to a party other than the Area EPS	Recording metering on the Generation system a separate meter on the load	Interconnection customer supplied direct dial phone line	None required
40 – 250kW with limited parallel	Detented Area EPS Metering at the Point of Common Coupling	None Required	None Required

The key thing to note here is that the Guidelines only require "detented" meters for systems over 40kW and bi-directional meters for net-metered systems. Generally, for systems that are under

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[52] Furthermore, several state cooperative and municipal organizations cooperated in the development of the Rate Work Group report, thereby obviating their historical belief that the interconnection guidelines would govern their industry.

[53] *Interconnection Guidelines*, *supra* note 44 at ATTACHMENT 2 pp. 14.

40kW and that sell their energy directly to their utility, they need a bi-directional meter, because the meter needs to track energy flowing into and out of the meter.

The Guidelines have a small explanatory note after Table A that explains what a "detented" meter is. According to the note "'Detented = A meter which is detented will record power flow in only one direction."[54] Detented meters are less complex than bi-directional meters.

Another way to procure this same information that a bi-directional meter might supply is to have two different detented meters. One meter - the consumption meter - will track the influx of energy, while the other meter – the production meter - will track the output of energy onto the grid. Then the two meters are netted against one another at intermittent time periods.

Here, Keith's utility billed as if it intended to use two separate detented meters.[55] But the utility only needed to install a production meter, because Keith's house already comes equipped with a consumption meter. So the utility seems to have billed only to install a single detented meter to track the output of Keith's energy. If the utility wants to install a detented meter, as opposed to a bi-directional meter, then it is free to do so.

But what makes Keith situation worth bringing to the Commission is that a detented meter is generally less sophisticated than a bi-directional meter, and therefore less costly. Yet Keith had to pay significantly more money for his single detented meter than he would for a standard bi-directional meter.

In fact, according to All Energy Solar, the installer that provided his meter, a detented meter can be purchased from Shakopee's municipal utility for $18, but a bi-direciton meter is usually somewhere between $150-$200.[56] So even if Keith did have a bi-directional meter installed, it still should have been approximately half the cost of what he paid for his meter. But it is an even more egregious upcharge on the cost of a detented meter. Further, Chris Toenjes articulated to Keith that he would replace the meter next year for a cheaper model, intimating that he intended to recover the more valuable meter for later use.

Now there is an issue of material fact around what meter was actually installed.[57] It may have been bi-directional. But in their Schedule E, which they last filed with the Commission in 2012 and they provided to Keith, the utility articulates:

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54 *Id*.

55 *See* APPENDIX D.

56 *See* APPENDIX E.

57 We hope to have this issue alleviated shortly and we will file the information when it becomes available. Currently Keith is in Florida at his winter home, and so he will either alleviate this issue when he returns or we will find a representative to go out and check the serial number or model of the meter.

2.3.1 Required metering

> Two meters are required. One meter will be installed in such a manner that it records only the energy sold by the Cooperative to the QF. The second meter will be installed in such a manner that it records only the energy sold by the QF to the Cooperative. The QF shall pay for the requisite metering as an interconnection cost.[58]

Two meters can be required, as noted above, but there doesn't seem to be any filed evidence that the meters need be anything other than a typical detented meter. As such, the utility has failed to state a need - or articulate at all – why they need a meter that is more than twice the going rate than the "maximum" requirement for Keith's class (i.e. a bi-directional meter), and the utility is apparently charging more than 20 times the cost of a traditional detented meter.

REQUEST FOR RELIEF

WHEREFORE, Keith Weber, the QF, requests:

1. Meeker provide Keith a cost of service study;
2. The fee is permanently removed from Keith's billing statement, and he is reimbursed for fees already paid;
3. Meeker is precluded from applying any future fee for fixed costs to Keith's system.
4. Meeker must alter its ARCER calculation by removing deductions for "Security Lights" and "Demand Charges," must file a revised Schedule C, and must compensate Keith for the difference in the two tariffs for all months that Keith's system has produced excess generation.
5. Meeker must repay Keith $120 for inappropriately charging him for an "Engineering Evaluation."
6. Meeker must repay Keith $80 for performing no Design/Staking work on his array.
7. Meeker must compensate Keith the difference between the meter he purchased and a detented or a bidirectional meter priced at or near the state average.
8. Meeker pay Keith's costs, disbursements and reasonable attorneys' fees, as allowed under Minn. Stat. § 216B.164, subd. 5.

Respectfully submitted,

David Shaffer, esq.
Staff Attorney
Minnesota Solar Energy Industries Project
Email: shaff081@gmail.com
Phone: 612-849-0231.

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58 *See* APPENDIX B.

PUBLIC REPRESENTATION AGREEMENT

This is a Public Agreement for civil legal services and representation between the David Shaffer, hereafter called the "Legal Representative", and Keith Weber, hereafter called the "Client". It will be attached to any complaint filed with the Public Utilities Commission's Consumer Affairs Office, with the Public Utilities Commission or the Department of Commerce directly.

The Client hereby authorizes the Legal Representative, as an attorney for the Minnesota Solar Energy Industries Project, to represent the Client in the Public Utilities Commission matter described as follows: A multi-issue dispute with Meeker County Cooperative over 1. excessive fees 2. fees applied retroactively after the interconnection agreement and statewide contract were signed 3. excessive interconnection costs 4. utility interference in the lawful connection of the Qualifying Facility to the grid via a "test" and 5. any other issues that may be discovered in researching the same cases or controversies at the Public Utilities Commission.

The Legal Representative's obligations and duties under this Agreement will end and he will no longer be the Client's representative, subject to necessary court or agency approval, under the following circumstances:

(a) The matter has received a final adjudication in the current legal forum;
(b) The legal service it has agreed to provide has been completed;
(c) Further representation would be useless, unreasonable, or would not help achieve the Client's objectives;
(d) The Client has failed to cooperate in the representation; or,
(e) When otherwise mandated or allowed by the legal Rules of Professional Conduct.

None of the above circumstances currently apply.

I have received and retain a copy of this Representation Agreement. I agree to allow the Legal Representative to provide a copy of this Representation Agreement to the Public Utilities Commission's Consumer Affairs Office, the Public Utilities Commission or the Department of Commerce.

Date: 3-3-16

KW KE Weber

Client

Date: 3-7-16

Legal Representative