Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: June 9, 2016 .....**Agenda Item **#4**

Company: All Electric Utilities

Docket No. **Docket Nos. E999/PR-16-09**
E121/CG-16-240
(E123/CG-16-241)

In the Matter of Cogeneration and Small Power Production Filings

In the Matter of a Request for Dispute Resolution by Keith Weber, the Qualifying Facility, with Meeker Cooperative Light and Power Association under the Cogeneration and Small Power Production Statute, Minn. Stat. §216B.164

In the Matter of a Complaint of Larry Fagen against Minnesota Valley Cooperative Light & Power Association

Issues: 1) What action, if any, should the Commission take in response to the May 9, 2016 request filed by Fresh Energy and the Environmental Law and Policy Center?

2) Should the Commission take any other procedural action or issue any clarifications?

Staff: Janet Gonzalez (651) 201-2231 Janet.Gonzalez@state.mn.us
Michelle Rebholz (651) 201-2206 Michelle.Rebholz@state.mn.us
Andy Bahn (651) 201-2249 Andrew.Bahn@state.mn.us

Relevant Documents

Docket 16-09

Fresh Energy and ELPC, *Compliance Filing (Comments/Objection)* ..... May 9, 2016
MCEA, Sierra Club, *Comments* ..... May 20, 2016
Novel Energy Solutions, *Comments* ..... May 20, 2016
MnSEIA, *Comments* ..... May 20, 2016
MMUA, *Comments* ..... May 24, 2016
TruNorth Solar, *Comments* ..... May 24, 2016
Department of Commerce, *Comments* ..... May 25, 2016

Missouri River Energy Services, *Comments* ..... May 25, 2016
Keith Weber, *Comments* ..... May 25, 2016
Energy Freedom Coalition of America, *Comments* ..... May 25, 2016
Minnesota Rural Electric Association, *Comments* ..... May 25, 2016
Meeker Cooperative Light and Power Association, *Comments* ..... May 25, 2016
Peoples Energy Cooperative, *Comments* ..... May 25, 2016
The Alliance for Solar Choice, *Comments* ..... May 25, 2016
Minnesota Electric Cooperatives, *Comments* ..... May 25, 2016
Fresh Energy and ELPC, *Comments (Letter, Amended)* ..... May 25, 2016
Public Comments from Speak Up! ..... May 27, 2016

Docket 16-240
Weber Initial Complaint ..... March 22, 2016
All Energy Solar *Testimony/Affidavit* ..... March 25, 2016
Weber *Class Cost of Service Study from Meeker* ..... March 28, 2016
Meeker Cooperative Light and Power *Initial Response*/*Comments* ..... May 9, 2016
Meeker *Joint Stipulation for Dismissal of Certain Claims* ..... May 25, 2016

Staff Note: There are a number of Appendices and Attachments filed as separate documents in e-dockets which are associated with the primary documents listed above. They were not specifically listed because the issues before the Commission at this juncture involve procedure and scope rather than substance. The full record to-date is available in e-dockets.

Docket 16-241
Staff Note: The service list for 16-241 Docket, Fagen v. Minnesota Valley Cooperative Light and Power Association dispute under Minn. Stat. §216B.164, subd. 5 have been noticed of this meeting. This dispute was filed on the same day as the Weber dispute with Meeker. At the time the meeting notice was sent out, it was not known whether parties would raise issues from the 16-241 docket. No specific documents are listed from 16-241. The full record to-date is available in e-dockets.

The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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Statement of the Issues

1) What action, if any, should the Commission take in response to the May 9, 2016 request and objection filed by Fresh Energy and the Energy Law and Policy Center (ELPC) in 16-09?

- Does the Commission have jurisdiction to investigate the fees to recover fixed costs under the 2015 amendments to Minn. Stat. §216B.164, subd. 3(a)?
- Should the Commission open an investigation into the reasonableness and appropriateness of the fees proposed by cooperative electric associations?
- Should the Commission take any actions with respect to DG fee implementation prior to the conclusion of any investigation?

2) Should the Commission take other procedural actions or make any clarifications in 16-240?

- Should the issue of the reasonableness of the fee imposed by the Meeker Cooperative Light and Power Association raised in the dispute in Docket E-121/CG-16-240 be moved into the generic investigation of fees if such an investigation is opened?
- Should the Commission act on the *Joint Stipulation for Dismissal of Certain Claims*?
- Should the Commission make findings regarding Meeker's allegations of bad faith?

Background

Introduction and Procedural History

Amendments to Minn. Stat. §216B.164, Cogeneration and Small Power Production, subd. 3(a), enacted in 2015 allow electric utilities, which are defined in this statute as specifically including cooperative electric associations and municipal utilities, to charge additional fees to small generators to recover fixed costs not already collected under current billing arrangements if such fees are reasonable and appropriate based on a recent cost of service study. The fees may be applied only to net-metered facilities installed after July 1, 2015.

On March 22, 2016, a request for dispute resolution was filed under Minn. Stat. §216B.164, subd. 5, by Keith Weber against Meeker Cooperative Light and Power Association; it was assigned Docket Number E-121/CG-16-240. Issues raised in Mr. Weber's petition included: the reasonableness of the DG fee[1] imposed on him by Meeker, the calculation of the cooperative's average retail utility energy rate, the failure of Meeker to file its new tariff with the Commission, the failure of the cooperative to make the cost study supporting the DG fee available, the level of interconnection costs, and the costs of a new meter.

On May 9, 2016, Meeker responded to the Commission's notice of the dispute in 16-240. Meeker argued that the complaint should be dismissed as premature, alleging Mr. Weber did not

[1] The cooperative and municipal utility fees under the 2015 amendments to Minn. Stat. §216B.164, subd. 3(a) apply only to small generating facilities, i.e. those under 40 kW, which are net-metered. Stakeholders and parties have often referred to these as distributed generation or "DG" fees. Staff generally adopts that convention in these briefing papers, with the understanding the DG fees being discussed are limited to those under the 2015 amendments to Minn. Stat. §216B.164, subd. 3(a).

attempt to negotiate with senior cooperative personnel or the Board or ask for arbitration under the Commission's 2004 DG interconnection order in Docket 01-1023 prior to filing the action with the Commission. Meeker also responded in detail to the factual and policy allegations in Mr. Weber's filing.

On May 9, 2016, Fresh Energy and the Energy Law and Policy Center (ELPC) filed an objection in Docket E-999/PR-16-09 to the fees filed in this docket by 10 cooperative electric associations.[2] Fresh Energy/ELPC allege that the DG fees proposed by the cooperatives are not lawful, primarily because the fees are based on lost revenue recovery rather than recovery of incremental costs caused by DG customers.

Comments on the Fresh Energy/ELPC objection were filed between May 20 and May 25, 2016 by the Department of Commerce, MCEA/Sierra Club, MnSEIA, MMUA, TruNorth Solar, Missouri River Energy Services, Keith Weber, Energy Freedom coalition of America, MREA, Meeker, People Energy Cooperative, the Alliance for Solar Choice and jointly by 22 retail electric cooperatives (Minnesota Electric Cooperatives). Commenters associated with cooperatives questioned the Commission's authority to investigate and set DG fees under the statute. MMUA and MRES asserted that the Commission can only look at municipal utility issues upon complaint. The other commenters all recommended that the Commission investigate cooperative DG fees.

On May 25, 2016 in Docket 16-240, Meeker and Mr. Weber filed a Joint Stipulation for Dismissal of Certain Claims and Extension of Reply Comment Period. The Joint Stipulation asks that claims related to provision of the cost study, interconnection costs, and meter costs be dismissed with prejudice and without costs. The Joint Stipulation also asks that if the Commission goes forward with an investigation of DG fees as requested by Fresh Energy/ELPC in 16-09, then the DG fee issue be dealt with in that docket prior to any action in the 12-240 docket.

Background on Minn. Stat. §216B.164, Cogeneration and Small Power Production

Minn. Stat. §216B.164 governs Cogeneration and Small Power Production. This statute was enacted in 1981 to implement state authority under Section 210 of the federal Public Utilities Regulatory Policies Act of 1978 (PURPA) and related state policy. PURPA requires electric utilities, including investor-owned, cooperatives, and municipals, to purchase power from Qualifying Facilities (QFs), including small power producers and cogenerators. Minn. Stat. §216B.164 expressly gives the Commission authority over cooperative and municipal utilities for the purposes of the statute.[3]

In 1983, Minn. Stat. §216B.164 was amended to provide for net-metering of facilities less than 40 kW in size. Also in 1983, the Commission adopted Minn. Rule 7835 pursuant to its authority to implement Minn. Stat. §216B.164. There were no significant changes to Minn. Stat.

[2] Since the Fresh Energy/ELPC filing, at least 4 other cooperatives have filed fees, as noted in an update filed by Fresh Energy/ELPC May 25, 2016.

[3] Pursuant to PURPA, enforcement of PURPA for entities not under state ratemaking jurisdiction rests with the Federal Energy Regulatory Commission (FERC).

§216B.164 between 1983 and 2012, and no changes to the Commission's rules. In 2013, legislation was enacted that primarily affected investor-owned utilities, which included raising the size limit for net-metered customers. The Commission subsequently amended its rules to reflect the 2013 statutory changes.

In 2015, Minn. Stat. §216B.164 was amended with respect to cooperative electric associations and municipal utilities to allow these entities, under certain conditions, to charge an additional fee to small QFs and net-metered customers to recover fixed costs not already recovered through existing bill arrangements. The charge must be reasonable and appropriate based on the most recent cost study, which must be made available to the customer upon request.[4]

The Minnesota Rural Electric Association (MREA) developed a methodology on behalf of its members for deriving a fee to recover fixed costs under the 2015 amendments. In the fall of 2015, MREA informally presented its methodology to Commission staff and to a number of stakeholders.[5] It appears that at least 14 cooperatives have already adopted fees based on this methodology, and more have already done so or are likely to do so in the near future.

Other recent and pending dockets related to QF disputes and DG Fees

E-132/CG-15-255: In Docket 15-255, a member of People's Energy Cooperative filed a request for dispute resolution under Minn. Stat. §216B.164, subd. 5. The member took issue with the Cooperative's imposition of a monthly "facility fee" in addition to the fixed monthly customer charge applied to all residential customers. The Commission found in favor of the QF. In the course of that docket it was determined that some other utilities were imposing fees on distributed generation customers. This matter related to fees imposed prior to the 2015 legislative amendments to Minn. Stat. §216B.164, subd. 3(a).

E-999/CI-15-755: In its September 21, 2015 Order in 15-255, the Commission directed Staff to "ask each investor-owned utility, cooperative, and municipal utility to indicate whether it applies a charge to net-metered or distributed-generation customers that is not applied to other customers, and if so, when it began assessing that charge and in which docket(s), if any, the charge was approved by the Commission." The Commission also authorized Staff to request additional information as Staff deemed appropriate. A notice requesting information from utilities was issued in October 2015. Responses from utilities were received in early December 2015 which identified six utilities—Connexus Energy, Goodhue Cooperative Electric Association, Mille Lacs Electric Cooperative, Minnesota Power, Otter Tail Power, and Xcel Energy—that currently charge additional monthly fees to customers with DG systems.

After receiving these responses, Staff issued information requests to the six utilities that currently charge additional DG fees, and issued a notice identifying several topics for comment.

[4] The 2015 legislation also included an option for net-metered customers of cooperative and municipal utilities to elect to be compensated for net input as a kWh credit carry-forward which cancels out at end of year with no additional compensation. Interpretation of this change is an issue in 16-241, but is not being addressed at this stage in these briefing papers.

[5] MREA was scheduled to present and explain its methodology as a discussion-only item at the Commission's January 6, 2016 agenda meeting, but it was pulled from the agenda at the request of MREA.

Comments were filed by approximately 12 different entities in early May 2016. Reply comments are due June 6, 2016.

E-123/CG-16-241: On March 22, 2016, Larry Hagen, a QF customer of Minnesota Valley Cooperative Electric Light & Power Association, filed for dispute resolution under Minn. Stat. §216B.164, subd. 5, alleging that the Cooperative required the QF to be compensated under the kWh carry-forward mechanism contrary to statute. The complaint was amended on March 28, 2016 to add the issue of a minimum bill charge. This matter was assigned Docket No. E-123/CG-16-241. Minnesota Valley filed an initial response and comments on April 21, 2016 and responded to Commission staff information requests on May 27, 2016. The Department has asked for an extension of time to file reply comments, given its workload and the recent information request responses.

Informal Complaints and Inquiries: Staff notes that the Commission's Consumer Affairs Office has been receiving increasing number of informal complaints from customers about small QF issues, especially solar. Some of these matters will likely end up in formal disputes under Minn. Stat. §216B.164.

Relevant Statutes and Rules

The following statutory and rule provisions identify the Commission's authority over the DG fee that is at issue in the Objection filed by Fresh Energy and ELPC.

MINNESOTA STATUTES
216A.05 Commission Functions and Powers.
Subdivision 1. **Legislative and quasi-judicial functions**. The functions of the commission shall be legislative and quasi-judicial in nature. It may make such investigations and determinations, hold such hearings, prescribe such rules, and issue such orders with respect to the control and conduct of the businesses coming within its jurisdiction as the legislature itself might make but only as it shall from time to time authorize. It may adjudicate all proceedings brought before it in which the violation of any law or rule administered by the Department of Commerce is alleged.
Subd. 2. **Powers generally**. The commission shall, to the extent prescribed by law:
* * *
(2) review and ascertain the reasonableness of tariffs of rates, fares, and charges, or any part or classification thereof, and prescribe the form and manner of filing, posting, and publication thereof[.]

216B.01 Legislative Findings
It is hereby declared to be in the public interest that public utilities be regulated as hereinafter provided in order to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities and their need to construct facilities to provide such services or to otherwise obtain energy supplies, to avoid unnecessary duplication of facilities which increase the cost of service to the consumer and to minimize disputes between public

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

216B.164 Cogeneration and Small Power Production.

*** * ***

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

* * *

Subd. 3. **Purchases; small facilities**.

(a) This paragraph applies to cooperative electric associations and municipal utilities. For a qualifying facility having less than 40-kkilowatt capacity, the customer shall be billed for the net energy supplied by the utility according to the applicable rate schedule for sales to that class of customers. A cooperative electric association or municipal utility may charge an additional fee to recover the fixed costs not already paid for by the customer through the customer's existing billing arrangement. Any additional charge by the utility must be reasonable and appropriate for that class of customer based on the most recent cost of service study. The cost of service study must be made available for a customer of the utility upon request. In the case of net input into the utility system by a qualifying facility having less than 40-kilowatt capacity, compensation to the customer shall be at a per kilowatt-hour rate determined under paragraph (c), (d), or (f).

[Note: This section and the other provisions amended in 2015 are an Attachment to these briefing papers in legislative format]

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Subd. 5. **Dispute; resolution.** In the event of disputes between an electric utility and a qualifying facility, either party may request a determination of the issue by the commission. In any such determination, the burden of proof shall be on the utility. The commission in its order resolving each such dispute shall require payments to the prevailing party of the prevailing party's costs, disbursements, and attorneys' fees of the utility only if the commission finds that the claims of the qualifying facility in the dispute have been made in bad faith, or are a sham, or are frivolous.

Subd. 6. **Rules and uniform contract.**

(a) The commission shall promulgate rules to implement the provisions of this section. The commission shall also establish a uniform statewide from of contract for use between utilities and a qualifying facility having less than 1,000-kilowatt capacity if interconnected to a public utility or less than 40-watt capacity if interconnected to a cooperative electric association or municipal utility.

MINNESOTA RULES

7835.0300 Filing Dates.

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.

Public Comments

The Commission received a large number of public comments through its Speak Up! web page. As of May 25, 2016, there were 88 participants and 140 comments on the two topics in the Commission's March notices. Every comment on the question of whether the Commission should investigate the fees said yes, and every comment on the question of whether the fees should be suspended during any investigation said yes. Many commenters state that the fees are excessive, not based on costs, not transparent, and discourage small solar.

The majority of comments are from members of different Minnesota electric cooperatives, some are from solar installers/developers, and for some it is not clear. Staff notes that the comments are not "cookie cutter" and raise a variety of specific issues and situations.

Party Positions and Staff Comments

Party comments are sorted by topic**.** Overall, party comments were brief and discussed the Commission's jurisdiction, whether and how to move forward on these disputes, and general policy positions.

<u>Jurisdiction Over DG Fees</u>

Party Positions

The utilities that commented, and their trade organizations, raised concerns that the Commission did not have the authority to adjudicate the matters raised by Fresh Energy. All other commenters either alleged or assumed that the Commission had jurisdiction.

MREA, for example, pointed out that the Commission has limited jurisdiction over electric cooperatives, which is grounded early in Chapter 216B:

Because municipal utilities are presently effectively regulated by the residents of the municipalities which own and operate them, and cooperative electric associations are presently effectively regulated and controlled by the membership under the provisions of chapter 308A, it

is deemed unnecessary to subject such utilities to regulation under this chapter except as specifically provided herein.[6]

MREA goes on to cite to case law reinforcing the Commission's limited jurisdiction over cooperatives as it relates to setting or reviewing rates.[7]

While Minn. Stat. §216B.164 gives the Commission jurisdiction over cooperative rates assessed on QFs, and Minn. Stat. §216B.1611 gives the Commission jurisdiction over interconnection standards, MREA asserted that the legislative intent was for electric cooperatives to regulate themselves. Similarly, although the Commission's Rules in Chapter 7835 require cooperatives to file tariffs with DG fees and other information, MREA states that the Commission's review:

> …cannot extend beyond a basic review of whether the information included in the tariff filings meets the plain statutory language of 216B.[8]

More specifically, as to the DG fees complained of in these two dockets, MREA states:

> The language added to 216B.164 Subd. 3(a) by the legislature in 2015 states that "a cooperative electric association or municipal utility may charge an additional fee". The requirements that the fee recover "fixed cost not already recovered', be "reasonable and appropriate", and "based on a cost of service study", are directions from the legislature to the governing boards of the electric cooperatives as rate setting bodies. There is no language included in this subsection or elsewhere in statute that permits or authorizes the Public Utilities Commission to set rates for electric cooperatives and municipal utilities by determining the amount of the charge or by determining cost of service study methodology used to calculate the charge.
>
> The cost recovery charge implemented by the electric cooperatives is expressly permitted by statute and the methodology used to develop the charge is based on a cost of service study, as directed by the statutory language. The decision to implement the authorized cost recovery charge and the means by which it is established is the responsibility of each local electric cooperative's member elected board of directors rather than the Public Utilities Commission.[9]

MMUA and MRES, commenting from a municipal utility perspective, observe that no municipal utility's fee has been complained of, and the Commission's jurisdiction over municipal utilities is even more unclear than it is for electric cooperatives. They recommend that municipal utilities be excluded from any inquiry or investigation, if there is one.

MnSEIA, on the other hand, notes that the Commission has the authority under Minn. Stat. §216B.17 to investigate the practices of cooperatives. The Alliance for Solar Choice (TASC)

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[6] Minn. Stat. §216B.01.
[7] See pages 5-6 of MREA's May 25, 2016 comments in Docket 16-09.
[8] MREA comments, p. 7.
[9] MREA comments, p. 7.

observes that the Commission expressly has the authority to resolve disputes between QFs and cooperative utilities under Minn. Stat. §216B.164 subd. 5.

A number of commenters do not make elaborate jurisdictional arguments but presume that since the 2015 language governing the fees is located within Minn. Stat. §216B.164 subd. 3(a), the Commission is the agency responsible for interpreting that language. For example, the Energy Freedom Coalition of America (EFCA) states:

> The Cooperatives have failed to demonstrate that their new DG fees meet the requirements of Minn. Stat. §216B.164, subd. 3(a) that such fees be "reasonable and appropriate for [the] class of customer based on the most recent cost of service study." As ELPC and Fresh Energy note, the Cooperatives have not yet "established, nor have they apparently attempted to quantify, this cost of service data," but instead have based their fees on a "lost revenue" theory that is not supported or allowed by statute. Minnesota statute unequivocally directs the Cooperatives to base their fees on a cost-of-service study, rather than an accounting of lost revenue. EFCA therefore believes Fresh Energy and the ELPC have raised a prima facie case and the Commission should commence an investigation to determine the lawfulness of the Cooperatives' DG fees and other tariff provisions.[10] [Footnotes omitted]

MnSEIA also cites to the Commission's rules as a basis for proceeding. Minnesota Rules 7835.0300 requires electric cooperatives to file their tariffs with the Commission, yet some have not filed at all, some have filed late, and some have filed with missing or incorrect information.[11]

Staff Comments

MREA is correct that the Commission's traditional rate-setting authority over electric cooperatives is not the same as its jurisdiction over investor owned utilities. Electric cooperatives do not file rate cases or undergo other traditional rate-setting filings, unless they have elected to be rate regulated.

However, Minn. Stat. §216B.01 clearly provides for rate regulation of cooperatives if expressly stated elsewhere in the chapter.[12] Minn. Stat. §216B.164, subdivision 1 in turn expressly provides that the entire statute applies to the rates and practices of all utilities, including cooperative utilities, with respect to matters covered by the statute. In addition, subdivision 5 of the statute provides that the Commission has the authority to resolve disputes between a QF and a utility, and subdivision 6 authorizes the Commission to adopt the rules it needs to implement the statute.

Pursuant to its authority under Section 216B.164, the Commission has exercised its dispute resolution authority in other dockets, most recently, in the People's docket, when a QF alleged

[10] EFCA comments in 16-09, page 2.
[11] MnSEIA comments in 16-09, page 4.
[12] In addition to Minn. Stat. §216B.164 at issue here, other parts of Chapter 216B cover retail or wholesale cooperatives such as service areas, CIP, resource planning, and renewable energy standards.

that it was being charged an unfiled and illegal fee.[13] It has also recently exercised its investigative authority in the pending inquiry into DG fees implemented prior to July 2015 in Docket E-999/CI-15-755.

Even MREA agrees in its comments that the Commission can review cooperatives' practices and rates for compliance with the plain language of the statute. In order to do so, the Commission must review the statute's language in relation to the dispute before it to determine whether a cooperative's practices or rates do indeed comply with the plain language of the statute regarding the DG fee:

> A cooperative electric association or municipal utility may charge an additional fee to recover the fixed costs not already paid for by the customer through the customer's existing billing arrangement. Any additional charge by the utility must be reasonable and appropriate for that class of customer based on the most recent cost of service study. The cost of service study must be made available for review by a customer of the utility upon request.

It is possible that after an investigation and interpretation of the statutory language that the Commission will find the methodology and fees proposed by some or all of the cooperatives to be reasonable and appropriate, or will find that modifications are needed. Simply because MREA believes its cooperatives' DG fees are compliant with the statute, there is no basis in Section 216B.164 to conclude that the Commission lacks authority to review the fees to determine if they are indeed compliant with the statute's requirements.

Whether an Investigation Should Be Opened

Party Positions

Eight (8) parties, including the Department, recommend that the Commission open an investigation; three (3) parties oppose it.

Multiple parties that favor an investigation allege that the methodology used to calculate these fees is based upon lost revenues rather than costs, the fee is discriminatory, and the fees must be reviewed and approved pursuant to Minn. Rule 7835.0300. The Department focuses on the fact that it is not clear whether the fees are reasonable or appropriate. MnSEIA states that "without the ability to weigh in on these matters, QFs are subject to whatever the utilities may unjustly decide to do. They are afforded no due process"[14].

Keith Weber, the complainant in the Meeker docket, requests that the DG fee issue in his complaint be moved to 16-9. DG fees affect many consumers from many different cooperatives; it would not be a good use of resources to have the Commission wait for individual dispute resolution dockets. In the alternative, if the Commission only proceeds with Mr. Weber's complaint, Mr. Weber would like a finding that his complaint was made in good faith; under the

[13] See Docket 15-255.
[14] MnSEIA Comments in 16-09, p. 4

dispute resolution statute, he could be responsible for Meeker's attorneys' fees if his complaint was not made in good faith, which Meeker is alleging.

MREA, MRES, and MMUA, on the other hand, requested that the Commission not move forward because of jurisdiction and because the fees are compliant with statutory language.

Staff Comments

Staff believes that the 2015 changes to the statute to allow DG fee are not completely self-executing or self-explanatory, and are open to interpretation. For example, what detail needs to be in a cost of service study? How does the information in a cost study translate into a fee that is "reasonable" and "appropriate for that class of customer"? Is the MREA methodology a reasonable basis for determining DG fees? It is clear from public and party comments that there is not a meeting of minds among stakeholders on these issues.

Some parties request an investigation because they believe the fees are illegal; others oppose an investigation because the fees are compliant. At this time, the Commission has not made either finding. It would be reasonable to proceed with the Department's middle approach to have the Commission build a record and work towards a decision on the interpretation and application of the statute and fees.

It would also be logical to include the DG fee issue from 16-240 and proceed with all fees in one proceeding, since they have all appear to have been imposed using the same MREA developed methodology. This would offer clarity for DG customers and utilities alike and be an efficient use of the parties' and Commission's resources.

Whether the Commission should take any action with respect to implementation of DG fees:

Party Positions

Some parties request that the Commission suspend or not allow implementation of new DG fees until it has completed its investigation and approved a utility's fees under Minn. Rules, Part 7835.0300. MnSEIA also requests that the Commission should find, upfront, that fees can only be applied to customers that have installed systems after the tariffs have been approved.

Staff Comments

Staff believes it would be appropriate to put cooperatives on notice that the Commission plans to review and approve these fees under Minn. Rules, Part 7835.0300, and no fees have been approved to-date.

Whether the joint request for dismissal of certain claims in 16-240 should be granted

On May 25, 2016 in Docket 16-240, Meeker and Mr. Weber filed a Joint Stipulation for Dismissal of Certain Claims and Extension of Reply Comment Period. The Joint Stipulation

asks that claims related to provision of the cost study, interconnection costs, and meter costs be dismissed with prejudice and without costs.

The Commission is not far along enough in the docket to know whether dismissal with prejudice is appropriate in light of the issues proposed for dismissal, which involve allegations that the coop did not treat Mr. Weber's in accordance with statutory requirements, and in light of what appears to be an unfounded claim that Mr. Weber's complaint was brought in bad faith.

Meeker's Contention that Mr. Weber's Petition Was Made in Bad Faith

Minn. Stat.216B.164, subd. 5, sets out the right of the utility or the QF to bring a dispute for determination and resolution by the Commission; the burden of proof is on the utility in any determination. This subdivision also directs the Commission to require the utility to pay the QFs' costs, disbursements, and attorney fees if the QF prevails in the dispute; if the utility prevails, the QF is responsible for the utility's costs only if the Commission finds the QFs' claims in the dispute "have been made in bad faith, or are a sham, or are frivolous."

Staff is very troubled by Meeker's suggestion in its May 9, 2015 Initial Comments that Mr. Weber's request for Commission resolution of the issues in his dispute was made in bad faith because "the Cooperative was denied any opportunity to address or resolve them before the Complaint was filed." Meeker requested the Commission dismiss the QF request and award costs to the Cooperative. Staff sees no basis for finding that Mr. Weber brought his dispute to the Commission in bad faith, and using such language is likely to have a chilling effect on QFs who have legitimate disputes with their cooperatives. There are obviously a large number of stakeholders who question the MREA-developed approach to deriving DG fees. There was substantial information in Mr. Weber's initial filing that he had interacted with Meeker personnel and was not satisfied with answers and explanations. There is no requirement in statute or rule that a QF must negotiate with the next level of management or the Board of Directors' before filing a dispute with the Commission. One wonders, for example, how a QF could negotiate a DG fee that was already adopted by the Board and in the cooperative's tariff?

Staff believes it would be appropriate for the Commission to make a finding that Mr. Weber's claims on the record to-date have not been made in bad faith, are not a sham, and are not frivolous.

Decision Options

Jurisdiction (16-09)

1. Find the Commission has jurisdiction to interpret the provisions of Minn. Stat. 216B.164, subd. 3, to investigate whether the methodology used to develop fees proposed to be implemented under that statutory provision comply with statutory requirements, to determine whether the specific fees proposed are reasonable and appropriate, and to make other necessary determinations to assure compliance with the statute.
2. Make a more general finding that the Commission has jurisdiction over the subject matter of the filing made by Fresh Energy/ELPC.
3. Find the Commission does not have jurisdiction to investigate the fees proposed by cooperative electric associations under Minn. Stat. 216B.164, subd. 3 (a).
4. Make no explicit finding on jurisdiction.

Investigation (16-09)

5. Open a generic investigation into the methodology for establishing cooperative fees under the statute[15], and
6. Include the issue of the reasonableness of the DG fee for Meeker in the generic investigation and hold the DG fee issue in abeyance in the 16-240 docket.
7. Delegate to the Executive Secretary the authority to issue notices and establish procedures for the investigation.
8. Do not open a generic investigation into the methodology for establishing cooperative fees under the statute.

Status of DG fees under Minn. Stat. §216B.164 (16-09)

9. Find that cogeneration and small power production tariffs must filed with, and reviewed and approved by, the Commission before becoming effective, as provided for in Minn. Rules, Part 7835.0300. Find that none of the DG fees filed by cooperatives in 16-09 or fees implemented without filing have been reviewed nor approved by the Commission.
10. Make no finding at this time[16].

Issue of Bad Faith (16-240)

11. Find that Mr. Weber's claims based on the record to-date in the dispute in Docket 16-240 have not been made in bad faith, are not a sham, and are not frivolous.
12. Make no finding on Meeker's claim of bad-faith at this time.

[15] Staff would then establish a new docket number and take care of related administrative details.
[16] This matter could be developed further in the investigation itself.

ATTACHMENT

Minn. Laws 2015 1st Special Session, Chapter 1 (HF 3)

Article 3, Section 21:

74.13 Sec. 21. Minnesota Statutes 2014, section 216B.164, subdivision 3, is amended to read:

74.14 Subd. 3. **Purchases; small facilities.** (a) This paragraph applies to cooperative
74.15 electric associations and municipal utilities. For a qualifying facility having less than
74.16 40-kilowatt capacity, the customer shall be billed for the net energy supplied by the utility
74.17 according to the applicable rate schedule for sales to that class of customer. A cooperative
74.18 electric association or municipal utility may charge an additional fee to recover the
74.19 fixed costs not already paid for by the customer through the customer's existing billing
74.20 arrangement. Any additional charge by the utility must be reasonable and appropriate
74.21 for that class of customer based on the most recent cost of service study. The cost of
74.22 service study must be made available for review by a customer of the utility upon request.
74.23 In the case of net input into the utility system by a qualifying facility having less than
74.24 40-kilowatt capacity, compensation to the customer shall be at a per kilowatt-hour rate
74.25 determined under paragraph (c) ~~or~~, (d), or (f).
74.26 (b) This paragraph applies to public utilities. For a qualifying facility having less
74.27 than 1,000-kilowatt capacity, the customer shall be billed for the net energy supplied by
74.28 the utility according to the applicable rate schedule for sales to that class of customer. In
74.29 the case of net input into the utility system by a qualifying facility having: (1) more than
74.30 40-kilowatt but less than 1,000-kilowatt capacity, compensation to the customer shall be
74.31 at a per kilowatt-hour rate determined under paragraph (c); or (2) less than 40-kilowatt
74.32 capacity, compensation to the customer shall be at a per-kilowatt rate determined under
74.33 paragraph (c) or (d).
74.34 (c) In setting rates, the commission shall consider the fixed distribution costs to the
74.35 utility not otherwise accounted for in the basic monthly charge and shall ensure that the
75.1 costs charged to the qualifying facility are not discriminatory in relation to the costs
75.2 charged to other customers of the utility. The commission shall set the rates for net
75.3 input into the utility system based on avoided costs as defined in the Code of Federal
75.4 Regulations, title 18, section 292.101, paragraph (b)(6), the factors listed in Code of
75.5 Federal Regulations, title 18, section 292.304, and all other relevant factors.
75.6 (d) Notwithstanding any provision in this chapter to the contrary, a qualifying
75.7 facility having less than 40-kilowatt capacity may elect that the compensation for net input
75.8 by the qualifying facility into the utility system shall be at the average retail utility energy
75.9 rate. "Average retail utility energy rate" is defined as the average of the retail energy rates,
75.10 exclusive of special rates based on income, age, or energy conservation, according to the
75.11 applicable rate schedule of the utility for sales to that class of customer.
75.12 (e) If the qualifying facility or net metered facility is interconnected with a
75.13 nongenerating utility which has a sole source contract with a municipal power agency or a
75.14 generation and transmission utility, the nongenerating utility may elect to treat its purchase
75.15 of any net input under this subdivision as being made on behalf of its supplier and shall
75.16 be reimbursed by its supplier for any additional costs incurred in making the purchase.
75.17 Qualifying facilities or net metered facilities having less than 1,000-kilowatt capacity if
75.18 interconnected to a public utility, or less than 40-kilowatt capacity if interconnected to a
75.19 cooperative electric association or municipal utility may, at the customer's option, elect to
75.20 be governed by the provisions of subdivision 4.

(f) A customer with a qualifying facility or net metered facility having a capacity below 40 kilowatts that is interconnected to a cooperative electric association or a municipal utility may elect to be compensated for the customer's net input into the utility system in the form of a kilowatt-hour credit on the customer's energy bill carried forward and applied to subsequent energy bills. Any kilowatt-hour credits carried forward by the customer cancel at the end of the calendar year with no additional compensation.

EFFECTIVE DATE. This section is effective July 1, 2015, and applies to customers installing net metered systems after that day.