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March 21, 2003

VIA FACSIMILE AND FEDERAL EXPRESS

Dr. Burl W. Haar

Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

Re: In the Matter of the Comments of Missouri River Energy Services on the Department of Commerce Report on Distributed Generation Technical Standards and Tariffs in the Matter of Establishing Generic Standards for Utility Tariffs for Interconnection and Operation of Distributed Generation Facilities,
Docket No. E999/CI-01-1023

Dear Dr. Haar:

Enclosed are the reply comments of Missouri River Energy Services® (MRES®) regarding the establishment of generic standards for utility tariffs for interconnection and operation of distributed generation facilities.

MRES appreciates the opportunity to provide comments in this matter. On behalf of the agency and its municipal utility members in the four states of Iowa, Minnesota, North Dakota and South Dakota, we thank you for your consideration of our viewpoint. If you have any questions please call me at (605) 338-4042.

Sincerely,

Mrg Simon

Mrg Simon
Manager, State Governmental Relations

enclosure

c: service list

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In The Matter of Establishing Generic Standards for Utility Tariffs for Interconnection and Operation of Distributed Generation Facilities Under MN Laws 2001, Chapter 212.	))))	Docket No. E-999/CI-01-1023

COMMENTS OF MISSOURI RIVER ENERGY SERVICES ON THE DOC REPORT ON DISTRIBUTED GENERATION TECHNICAL STANDARDS AND TARIFFS

I. INTRODUCTION

Missouri River Energy Services ("MRES") appreciates the opportunity to file these comments pursuant to notice issued by the Public Utilities Commission ("Commission") on February 18, 2003 entitled "Receipt of Workgroup Report and Establishment of Comment Periods." MRES is a municipal joint action agency consisting of 57 municipal electric systems in a four state area of Minnesota, Iowa, North Dakota and South Dakota. MRES provides wholesale supplemental requirements power service to 21 Minnesota municipal utility members in addition to their respective allocations of firm power from the Western Area Power Administration ("WAPA"). These municipal utilities are required under long-term contract to purchase from MRES whatever energy they do not purchase from WAPA to meet the needs of their consumers.

MRES is filing these comments on behalf of itself, as a wholesale power supplier, those of its Minnesota member utilities that might otherwise be subject to the rule[1] and

[1] Adrian, Alexandria, Barnesville, Benson, Breckenridge, Detroit Lakes, Elbow Lake, Henning, Jackson, Lakefield, Lake Park, Luverne, Madison, Moorhead, Ortonville, St. James, Sauk Centre, Staples, Wadena, Westbrook, and Worthington.

the affiliate of MRES, Western Minnesota Municipal Power Agency ("Western Minnesota"). MRES currently purchases much of its wholesale power supply from Western Minnesota.

II. COMMENTS

A. The Commission Does Not Have Statutory Authority To Impose A Requirement That All Minnesota Utilities Must Purchase The Output Of Distributed Generators.

The "Report to the Public Utilities Commission" dated February 3, 2003, by the Distributed Generation Rate Workgroup in this docket ("DG Rate Report") states the Department of Commerce ("DOC") "understand[s] that general consensus was reached" on the requirement that a utility must buy all the energy supplied by a distributed generation ("DG") customer that sells power under the tariffs to be developed.[2] The remainder of the report expresses the sentiment that utilities should pay rates for the output of DG generators according to the utility's avoided cost and should, in general, reflect the "value of the distributed generation to the utility, including any reasonable credits for emissions or for costs avoided on the generation, transmission and/or distribution system."[3] The remainder of the report specifies the manner in which such values, credits and other payments should be determined and made by the interconnected utility to the distributed generator.

The above-referenced recommendations in the DG Rate Report far exceed the statutory mandate for the DOC's efforts. The substantive provision of the distributed generation statute, Minnesota Statutes § 216B.1611, subd. 2, directs the Commission to adopt "generic standards for utility tariffs for the interconnection and parallel operation of

[2] DG Rate Report, p. 6.

[3] DG Rate Report, p. 7.

distributed generation fueled by natural gas or a renewable fuel, or another similarly clean fuel or combination of fuels of no more than 10 MW of interconnected capacity." The section goes on to specify minimum requirements for the tariff's standards. Nowhere does the statute state that the interconnecting utility must be required to purchase the output of the generator. This language stands in stark contrast to the explicit purchase requirements in Minnesota Statutes § 216B.164 or the similar requirements in Minnesota Statutes §§ 216B.1691 and 216B.2411 that specifically require utilities regulated by the Commission to "procure" energy from specified resources to encourage the development of generation by "eligible energy technologies,"[4] or even the suggestion that utilities spend money on constructing distributed energy resources.[5]

At best, the applicable statute, Minnesota Statutes § 216B.1611 requires the Commission to "develop financial incentives based on a public utility's performance in encouraging residential and small business customers to participate in on-site generation."[6] This requirement falls far short of an output purchase obligation. The only reasonable interpretation of that language is that the Commission is to evaluate the success of regulated public utilities; not municipal utilities in encouraging the development of distributed generation to determine, in the context of rate proceedings, the type of financial rewards that the Commission is otherwise authorized to approve. The language is not a purchase requirement that may, by itself, compel regulated utilities to increase their rates to recover the costs of such purchases.

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[4] Minnesota Statutes § 216B.1691, subd. 2.

[5] Minnesota Statutes § 216B.2411.

[6] Minnesota Statutes § 216B.1611, subd. 2(b).

Accordingly, MRES requests the Commission to affirmatively declare that the distributed generation standards approved at the conclusion of this proceeding will not include a "Must-Purchase" requirement for either public utilities or municipal utilities.

B. In The Event That The Commission Approves A "Must-Purchase" Requirement, It Should Enable Full Requirements Wholesale Suppliers To Assume This Obligation In Lieu Of Imposing It On Their Municipal Distribution Utility Customers.

If the Commission purports to impose a "Must-Purchase" requirement from distributed generation resources on distribution municipal utilities notwithstanding the lack of such authority in Minnesota Statutes § 216B.1611, MRES requests that it be permitted to assume the obligation of those of its municipal distribution utility customers that otherwise would be subject to this outcome. The existing MRES Power Supply Contract (S-1) requires each of its Minnesota municipal member-customers to purchase from MRES all capacity and energy needed to meet the requirements of their distribution customers above the amounts that those distributors purchase from WAPA. If the Commission were to impose a Must-Purchase requirement under a distributed generation tariff, that requirement would possibly require a distribution utility member-customer of MRES to violate its Power Supply Contract and thereby compromise the integrity of the financing regime that enabled MRES to procure the power supply resources necessary to meet its contractual obligations to its member-customers in Minnesota and elsewhere.

The Commission's adoption of such an accommodation in its final rule would be consistent with Minnesota statutory policy. The Minnesota statute governing the purchase of energy from cogeneration and small power production contains an explicit exception for qualifying facilities interconnected with a "non-generating utility" that has a sole source contract with a municipal power agency or a generation and transmission

utility.[7] In addition, the Federal Energy Regulatory Commission ("FERC") explicitly permitted MRES to assume the purchase obligations of its member-customers under Section 210 of the Public Utility Regulatory Policies Act of 1978.[8] MRES requests the Commission to adopt a similar accommodation in this policy if it determines that a Must-Purchase requirement is necessary.

C. The Commission Ought Not Adopt A Final Rule Until It Has Approved A Standard Interconnection Contract.

MRES is concerned that the DOC's technical and rates reports propose standards for physical interconnection and certain rate and credit proposals in a vacuum. None of these criteria address how the interconnected distributed generation facilities will be required to perform before meriting any credits. The interconnection standards included in the report of the technical workgroup do not address the issues arising out of parallel operation and the obligation of the distributed generation resource owner to meet certain operating standards. The DG Rates Report contains no indication of the performance obligations of the distributed generation resource to ensure that the relatively microscopic contribution of these resources to the interconnected utility's capacity reserve can actually be realized through required performance on peak and at times of greatest demand on the utility's system.

These issues necessarily must be addressed in the standard contract as well as in applicable tariffs. The report of the "Distributed Generation Technical Workgroup" ("DG Technical Report"), at page 3, more or less punts on the issues, as follows:

> Participants in the workgroup believe that the standard procedures and agreements developed by FERC have a high probability of serving as a

[7] Minnesota Statutes § 216B.164 subd.3(d).

[8] *Missouri Basin Municipal Power Agency*, 69 FERC ¶ 62,250 (1994).

> relatively complete platform for use by all states. There has already been a great deal of consensus in comments by state regulators, generators and electric utilities. The FERC expects to issue a final rule on the ≤ 20 megawatt standardized interconnection procedure and agreement near the end of March 2003. The department believes it is prudent and efficient to reap the mutual benefits of this national effort.

This "belief" neither meets the standards required in Minnesota Statutes § 216B.1611 subd. 2(5), nor reality. In actuality, there was not a great deal of consensus by state regulators in favor of the FERC proposal with respect to the procedures and agreements proposed by FERC in the small generator interconnection notice of proposed rulemaking.[9] Several state commissions suggested that FERC ought not impose rules and standardized agreement for the very reason that they (the State Commissions) had done so.[10] Indeed, there is no assurance whether FERC will adopt a standard interconnection or agreement for small generators. At this time, it is not expected that FERC will promulgate the rule during the month of March as stated by the DOC.

MRES believes that it would be imprudent and unreasonable for the Commission to promulgate a rule on the basis of the DG Technical Report and the DG Rates Report without having a proposed set of interconnection agreements and procedures in hand to ensure that these contracts contain the performance requirements necessary to ensure that the expected benefits of distributed generation resource development will be realized. The agreements, the policy on credits, the tariffs and other standards have to work together and be viewed as a whole. Approving a tariff without the applicable contracts and interconnection procedures, or even ensuring that the needs of Minnesota utilities are

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[9] *See* comments filed in *Standardization of Small Generator Interconnection Agreements and Procedures Advance Notice of Proposed Rulemaking*, Docket No. RM02-12-000 (Aug. 16, 2002).

[10] The New York Public Service Commission and the National Association of Regulatory Utility Commissioners were particularly vociferous in opposing FERC's incursion into this area.

met through whatever standard agreement or procedures that FERC might adopt and the applicable regional transmission operator ("RTO") implement would not be prudent.

There is another factor that must go into the consideration of a final rule. The tariffs of the Midwest Independent Transmission System Operator ("MISO"), the RTO for most, if not all, of Minnesota, contain penalties among other things, for failure by interconnected generators to perform as required. MISO goes into its "Day Two" operating mode at the end of 2003. It will determine the dispatch of all generation within the control areas subject to its oversight as part of the day-ahead and real-time markets and will establish location-based marginal pricing ("LBMP"). The ability of distributed generation resources, particularly those above 100 kW, may well play into the workings of the determination of LBMP market. The four major investor-owned utilities in Minnesota, Xcel Energy (NSP), Minnesota Power, Alliant Energy and Otter Tail Power Company, all are members of MISO and will be required to implement the next stage of the MISO markets. Even if Xcel drops out of MISO to join TRANSLink, it will likely be operated within the ambit of the MISO-administered energy markets. Several of the municipal utilities and cooperative electric associations also will be participating in these markets, either directly or through TRANSLink.

MRES thus requests that the Commission not adopt a final rule concerning distributed generation assets until either (a) FERC has issued a final rule concerning small generation interconnection agreements and procedures and the Commission and relevant working groups have reviewed those procedures and agreements for application in Minnesota, or (b) the Commission directs the development of such agreements and

procedures specifically designed to meet the needs of Minnesota consistent with MISO's rules.

D. The Issue Whether Distributed Generation Tariffs Should Be Limited To Retail Electric Service Customers Of Electric Utilities Illustrates The Working Group's Confusion About The Proper Application Of The Minnesota Statute.

The Commission's February 18, 2003, notice requesting comments on the workgroup reports expresses the Commission's desire to "hear why distributed generation tariffs should be limited to retail electric service customers of electric utilities, as specified in Part III, B.1. of the Report. That is, should a DG tariff be available to an investor with no on-site load independent of occasional station power needs?"

MRES suggests that the Commission's inquiry highlights the confusion in the report about the purpose of the statute and the objective to be achieved by encouraging the development of distributed generation. It should be noted that Minnesota Statutes § 216B.1611 contains no definition of distributed generation. The issue raised by the Commission's question is whether distributed generation ought to be limited to generation developed by retail customers to meet their own loads with any excess sold into the grid or whether the term should encompass any generation fueled by either natural gas or renewable resources with a size of less than 10 MW. MRES urges the Commission to adopt the former concept as long as the Commission recognizes that even the interconnection of distributed generators serving retail loads will have an electrical effect on the interconnected transmission distribution grid.

The logical policy purpose of encouraging distributed generation is to enable customers to develop distributed generation resources that fit the needs of their load with the ability to sell excess back to the interconnecting utility or into the market in order to

help improve the economic attractiveness of such resources. The initiative to undertake such a development ought to come from the customer with the cooperation of the interconnecting utility. The purpose of the statute and this rulemaking should be to encourage such retail customer-oriented development by eliminating arbitrary technical and economic barriers while retaining the rules necessary to impose responsibility for appropriate parallel operation with the grid.

By contrast, neither the statute nor these rules should be available to create incentives to encourage the development of generators not associated with any load under streamlined procedures that minimize their operational responsibilities. The interconnections of both small and large generators affect grid operations and reliability. There is no indication in Minnesota Statutes § 216B.164 and no other justification for enabling commercial generation developers not associated with a retail load to avoid the process of interconnection with the grid which ensures operational responsibility. Both large and small generation additions involve regional planning of the grid. In particular, in cases where distributed generation additions are not associated with any load, it is particularly important that such generation is required to play by the more stringent rules within the MISO and the wholesale market. Stated differently, for Minnesota arbitrarily to construe the distributed generation statute with the purpose of "letting a thousand flowers bloom" without imposing adherence to the planning standards imposed on transmission owners and operators of the interstate interconnected grid will both lead to an unfair subsidy of those developers and to operational chaos on the grid. That is not what appears to be contemplated by the Minnesota Statute; it is not permissible under the MISO tariffs and will appropriately be subject to challenge.

Moreover, in the context of small municipal utility distribution systems, these types of incentives are completely inappropriate and will impose costs on Minnesota rate-payers that cannot be justified by statute or policy.

Respectfully submitted,

Missouri River Energy Services

By _____
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March 21, 2003

STATE OF SOUTH DAKOTA

SS

COUNTY OF MINNEHAHA

AFFIDAVIT OF SERVICE

I, Amy Hilt, being first duly sworn, depose and state that on the 21st day of March, 2003, I served the Comments of Missouri River Energy Services on the Department of Commerce Report on Distributed Generation Technical Standards and Tariffs in the Matter of Establishing Generic Standards for Utility Tariffs for Interconnection and Operation of Distributed Generation Facilities, Docket No. E-999/CI-01-1023

- ☒ by depositing the United States Mail at the City of Sioux Falls, a true and correct copy thereof, properly addressed and enveloped with postage prepaid
- ☐ by personal service
- ☐ by delivery service
- ☒ by express overnight delivery (to Burl Haar)

to all persons on the attached list.

Amy Hilt

Subscribed and sworn to before me
this 21 day of March, 2003.

Geraldyne Shumaker
My Commission expires: 9-23-04

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