

Staff Briefing Papers

Meeting Date Thursday, September 4, 2025

Agenda Item 5**

Company Northern States Power Co. d/b/a Xcel Energy

Docket No. E002/M-24-389

**In the Matter of the Petition of Northern State Power Co. d/b/a Xcel Energy to
Revise Its Net Metering Tariffs to Apply to Qualifying Facilities Up to 5MW.**

Issues Should the Commission grant Hennepin County's Petition for Reconsideration of
the Commission's June 25, 2025, Order?

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✓ Relevant Documents

Date

Commission Order	June 25, 2025
Petition for Amendment and Reconsideration, Hennepin County	July 15, 2025
Answer to Petition, Xcel Energy	July 25, 2025
Answer to Petition, MnSEIA	July 25, 2025
Answer to Petition, Association of Minnesota Counties	July 25, 2025
Petition for Leave to File Reply Comments and Reply to Answer, Hennepin County	July 29, 2025

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The attached materials are work papers 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.

BACKGROUND

In September of 2015, the Commission concluded a rulemaking proceeding intended to incorporate 2013 legislative changes to Minn. Stat. § 216B.164 into the Commission's cogeneration and small-power-production rules (Minn. R. 7835). Key changes to Minn. Stat. § 216B.164 included:

- Customers with net-metered facilities between 40 kW and under 1,000 kW may opt for compensation via kilowatt-hour (kWh) credits, which are carried forward and applied to future bills.
- Public utilities may require net-metered customers using kWh credits to size their systems at no more than 120% of their on-site maximum demand (for wind) or annual consumption (for all other systems).

On July 21, 2017, Northern States Power Co. d/b/a Xcel Energy (Xcel or the Company) filed a compliance tariff, updating its net metering tariffs to align with the Commission's rulemaking for Minn. R. Ch. 7835 and incorporate modifications required by a May 22, 2017 Order in Docket No E-002/M-16-222. Xcel's compliance tariff filing was accepted by the Commission through a December 19, 2017 Order in the same docket.

On June 29, 2021, as part of PURPA reform, the Federal Energy Regulatory Commission (FERC) issued an Order determining that Xcel was no longer obligated to purchase energy from qualifying facilities (QFs) with a capacity greater than 5 megawatts (MW).¹ On November 20, 2024, Xcel Energy filed a petition in this docket seeking approval of tariff changes and a variance to Minn. R. 7835², to extend net metering under its Simultaneous Purchase and Sale A51 (non-Time of Day) and A52 (Time of Day) rate codes to QFs with capacity up to 5 MW.

On November 20, 2024, Xcel filed a petition to revise its net metering tariffs to apply to QFs up to 5 MW. On December 18, 2024, the Commission filed a notice requesting comments on Xcel's petition. On February 18, 2025, the Commission received comments from the Department of Commerce— Division of Energy Resources (the Department), United Health Group, and Xcel customer Joe Bauer. On February 28, 2025, Xcel filed reply comments. On March 31, 2025, the Department filed a letter responding to Xcel's reply comments. On May 8, 2025, the Commission met to consider the matter. On June 25, 2025, the Commission issued its Order Approving Net Metering Tariff Changes in the instant docket.

Hennepin County (Hennepin County or the County) filed a Petition for Reconsideration on July 15, 2025. Xcel, Minnesota Solar Energy Industry Association (MnSEIA), and the Association of

¹ Xcel's Initial Petition for Net Metering Tariff, November 20, 2024, Attachment A.

² Initially Xcel did not clearly identify the specific rule in Chapter 7835 from which it seeks a variance, although it referenced a variance to "the tariffed version of the Uniform Statewide Contract." Id at 7. Minn. R. 7835.9910 sets out the Uniform Statewide Contract.

Minnesota Counties filed Answers to the Petition on July 25, 2025. On July 29, 2025, Hennepin County petitioned for leave to file reply comments along with a copy of its reply comments.

DISCUSSION

Hennepin County

Hennepin County's Petition for Reconsideration requests the Commission clarify its June 25, 2025 Order did not adopt FERC's one-mile rule so as to combine the capacity of net metered facilities under state law, and to the extent the order adopted such a rule, that it reconsider that aspect of the order because it is inconsistent with state and federal law. The Association of Minnesota Counties (AMC) and MnSEIA support Hennepin County. **(Decision Option 3)**

Hennepin County recently completed construction of its 720-kW solar facility at its new Public Safety Services (PSS) Headquarters in Plymouth and is close to completing construction of a second and separate 620-kW solar facility 0.17 miles from the PSS facility at its Adult Correctional Facility (ACF) in Plymouth. The two facilities are separately metered and are served from different Xcel distribution substations. Hennepin County planned for and constructed the arrays in reliance on two separate Uniform Statewide Contracts it signed with Xcel for each of the arrays, effective September 5, 2024, and October 9, 2024, respectively. Under the Uniform Contracts, Xcel agreed to purchase the monthly net amount of electric energy produced by the solar arrays at rate codes A53/A54 and A55/A56. The accounts are not aggregated, and the county has not requested aggregation.³

On November 11, 2024, Xcel's emailed Hennepin County stating they would no longer be able to net meter the facilities consistent with the contracts it signed.⁴ Xcel followed up with a letter on March 12, 2025 in which it took the position that neither the ACF nor PSS arrays are eligible for net metering because, combined, the capacity of the two arrays exceed the net metering statute's 1 MW per facility limit.⁵

In its Petition for Reconsideration, Hennepin County argues the following:

- 1) Minnesota Statutes and Rules measure capacity at the point of interconnection, not the one-mile rule,
- 2) PURPA is inapplicable to state new metering,
- 3) FERC's one-mile rule applies only to small power production facilities seeking to qualify as QFs under PURPA, which the County is not,
- 4) The Commission should amend its order to clarify that it does not affect the

³ Petition for Reconsideration, page 3.

⁴ Petition for Reconsideration, Attachment 3.

⁵ Petition for Reconsideration, Attachment 4.

- County's net metering contracts with Xcel
- 5) By enforcing the one-mile rule, Xcel seeks to abrogate the Uniform Statewide Contracts it signed in the fall of 2024 and on which the County spent more than \$4 million in reliance,
 - 6) Public policy favors enforcing the contracts as executed.

In its reply comments, Hennepin County argues:

- 1) If the Commission adopted the one-mile rule, it should be explicit about it.
- 2) "Net metered facilities" need not be "qualifying facilities."
- 3) FERC's *SunE* decision does not support adoption of the one-mile rule here.
- 4) The county is not asking for a variance.

Under Minn. 7829.3000 subp. 5, replies are not permitted related to a petition for reconsideration unless specifically authorized by the commission. At the agenda meeting, the Commission will have to decide whether to accept the reply comments (**Decision Option 1 or 2**).

MnSEIA

MnSEIA comments there are two compensation programs available to facilities in Minnesota, one under Federal law, PURPA, and one under state law, Minn. Stat. § 216B.164. As long as Minnesota law provides facilities the option to choose PURPA, Minnesota law can provide different compensation rates, requirements and restrictions under state law.⁶

MnSEIA seeks clarification from the Commission on its June 25, 2025 Order specifically "that while 18 C.F.R. § 292.204(a)(2)(i)(A), commonly referred to as the "One-Mile Rule," applies to determine whether a distributed generation facility is a "qualifying facility" under subdivisions 3 and 4 of Minn. Stat. § 216B.164, it is not used to determine the capacity of the qualifying facility for purposes of determining what compensation rate the facility is entitled to under those subdivisions."⁷ MnSEIA notes the Order does not directly address the One-Mile Rule.

MnSEIA argues that the Legislature did not clearly state that net-metering facilities in Minnesota must be Qualifying Facilities per PURPA, therefore, the one-mile rule does not apply, and Xcel cannot aggregate facilities.

Xcel Energy

Xcel states the Petition should be denied because there are no ambiguities, and the Petition has

⁶ MnSEIA Answer to Petition, page 2.

⁷ Id at page 1.

not raised any new relevant issues or facts that should be considered. **(Decision Option 4)**

Xcel's response argues that the Commission's June 25, 2025 Order is clear on the application of the One-Mile Rule and there is no need for additional clarification. Xcel points to the Order where it noted "United Health Group argued that DER facilities owned by the same customer that are within one mile of each other should not have their capacity aggregated for determining the QF size for purposes of determining eligibility for Minnesota statutory net metering."

It also reiterated where the Order noted Xcel's argument that United Health Group's suggested approach would unfairly reduce monthly electricity payments from larger net metering customers which would shift costs onto other ratepayers. Finally, the Order recognized Xcel had argued the aggregation of net metered facilities within one mile of each other is in the public interest and consistent with Federal Energy Regulatory Commission guidance.⁸

Staff Analysis

The Commission may grant a petition for reconsideration if it "appear[s] that the original decision . . . is in any respect unlawful or unreasonable."⁹ The Commission denies petitions for reconsideration if they "do not raise new issues, do not point to new and relevant evidence, do not expose material errors or ambiguities in the . . . order, and do not otherwise persuade the Commission that it should rethink the decisions set forth in its order."¹⁰

Staff does not believe that the Commission's June 25, 2025 Order determined that the one-mile rule applies in determining the capacity of net-metered facilities under state law. Staff notes that this issue was not raised in Xcel's initial petition nor was it addressed by the Department of Commerce in comments. The issue was also not noticed for comment.

Although the issue was raised by UHG in its comments and discussed at the Commission meeting, the UHG comments were in relation to its request for Xcel to revise its proposal to also make monthly net metering under the A53/A54 rate codes available for facilities with up to 5 MW capacity. Although the Commission did not adopt UHG's recommendations to expand the scope of Xcel's proposed tariff, the Commission order does not purport to adopt the one-mile rule; nor do the tariff changes approved by the Commission appear to specifically adopt the one-mile rule. The Commission took no formal action in relation to monthly net metering

⁸ Commission June 25, 2025 Order, page 4.

⁹ Minn. Stat. 216B.27, subd. 3 (2022).

¹⁰ *In the Matter of Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-015/GR-16-664, Order Granting Reconsideration in Part, Revising March 12, 2018 Order, and Otherwise Denying Reconsideration Petitions (May 29, 2018).

rate codes under the **A53/A54** rate codes.

Moreover, Hennepin County's contracts, which were signed under the A53/A54 and A55/A56 rate codes, do not appear to be directly impacted by the Commission's order. The only step the Commission order took was make 15-minute net metering under the A51 and A52 rate codes available for facilities up to 5 MW capacity via a tariffed PPA. Hennepin County signed uniform contracts under the monthly and annual net-metering rate codes—A53/A54 and A55/A56. The Commission Order made no changes to these offerings or tariffs.

It is also clear that Hennepin County's dispute with Xcel predates any order in this docket. Xcel indicated to Hennepin County it was applying the one-mile rule in an email dated November 11, 2024—prior to this docket even being initiated. It appears the only effect that the June 25, 2025 order has on Hennepin County is that the County now has the option to avail itself of 15-minute net metering under the A51 and A52 rate codes under the new tariffed PPA.

Staff takes no position on whether the one-mile rule applies in determining the capacity of net-metered facilities under state law. However, this question does not implicate the June 25, 2025 order. In fact, if the Commission decided to wholly rescind its order, it would do nothing to resolve the dispute—the only difference would be that Hennepin County would not have the additional option of a 15-minute net metering offering under rate codes A51/A52 under a tariffed PPA. Staff believes this dispute is properly addressed in the open capacity definition rulemaking (**Decision Option 10**), or in an all-utility investigation (**Decision Option 11**). Staff provides proposed decision options for these options.

DECISION OPTIONS

Motion for Leave to File Reply Comments

1. Grant Hennepin County's motion for leave to file reply comments and accept Hennepin County's July 29, 2025 reply comments.

OR

2. Deny Hennepin County's motion for leave to file reply comments and reject Hennepin County's July 29, 2025 reply comments under Minn. 7829.3000, subd. 5.

Reconsideration

3. Reconsider the June 25, 2025 Order and amend it as follows: (Hennepin County, MnSEIA,

Assoc. of MN Counties)

AND

- A. Require Xcel to modify its A51 and A52 tariffs to specify that distributed generation facilities that are located within one mile of each other and are owned by the same customer do not have their capacity aggregated for purposes of determining eligibility for net metering under Minn. Stat. § 216B.164. (Staff interpretation of Hennepin County, MnSEIA, Assoc. of MN Counties)

OR

- 4. Deny the petitioners' requests for reconsideration of the June 25, 2025 Order. (Xcel)

OR

- 5. Grant a rehearing on the reconsideration petitions and schedule the matter for a future Commission Meeting. Delegate authority to the Executive Secretary to issue a notice and set timelines for comments.

[Staff note: the Commission may select any of the following options regardless of whether it grants or denies the reconsideration petitions.]

Clarification

- 6. Clarify that the June 25, 2025 Order did not adopt the one-mile rule for purposes of determining net-metering eligibility.

AND/OR

- 7. Clarify that a utility *shall not* aggregate the capacities of separate distributed generation facilities that are located within one mile of each other, use the same energy resource, and are owned by the same customer for purposes of determining eligibility for net metering under Minn. Stat. § 216B.164. (Hennepin County, MnSEIA, Assoc. of MN Counties)

OR

- 8. Clarify that a utility *shall* aggregate the capacities of separate distributed generation facilities that are located within one mile of each other, use the same energy resource, and are owned by the same customer for purposes of determining eligibility for net metering under Minn. Stat. § 216B.164. (Staff interpretation of Xcel)

AND/OR

9. Preclude Xcel from unilaterally aggregating net-metered facilities that are under contracts that became effective before June 25, 2025 if the contract does not provide for aggregation for purposes of determining net-metering eligibility under Minn. Stat. § 216B.164. (Staff interpretation of Hennepin County alternative)

Commission Investigation

10. Open a Commission investigation in a new generic docket to consider whether utilities should aggregate the capacities of separate distributed generation facilities that are located within one mile of each other, use the same energy resource, and are owned by the same customer for purposes of determining eligibility for net metering under Minn. Stat. § 216B.164. (Staff alternative)

OR

11. Authorize the Executive Secretary to issue a request for comments in the rulemaking proceeding in Docket No. E-999/R-25-86 regarding whether the definition of “capacity” in Minn. R. 7835.0100 should be amended to provide that the capacities of distributed generation facilities that are owned by the same customer, use the same energy resource, and located within one mile of each other shall be considered in the aggregate. (Staff alternative)

