BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of Impacts of the "Capacity" Definition in Minn. Stat. § 216B.164 and Associated Rules on Net-Metering Eligibility for Rate-Regulated Utilities	DOCKET NO. E-002, E-111, E-017, E-015/CI-24-200 DOCKET NO. E-999/R-25-86
In the Matter of a Rulemaking to Amend the Definition of "Capacity" under Minn. R. 7835.0100, subp. 4	**COMMENTS OF HENNEPIN COUNTY, MINNESOTA**

Introduction

On July 14, 2025, the Commission filed a Request for Comments on a possible rule amendment to the definition of "capacity" promulgated under the Minnesota net metering statute, to be measured either by a qualifying net-metering facility's electric energy production or its nameplate capacity. While the Commission's stated purpose of the rulemaking proceeding is to consider amending the rule to clarify that a qualifying facility with a nameplate rating of 40 kW capacity or more may be compensated for up to 39 kW of net input into the utility's system at the rate allowed under Minn. Stat. § 216B.164, subd. 3(d), Hennepin County notes the parallel issue raised in Docket No. 24-389 regarding application of FERC's one-mile rule to the definition of "capacity" under these rules.[1] There, Xcel Energy posits – and Hennepin County contests – that the Commission's June 25, 2025 order "clearly" adopts the Federal Energy Regulatory Commission's (FERC's) one-mile rule to define capacity for state net metering facilities.[2]

[1] *Order Approving Net Metering Tariff Changes*, Docket No. E-002/M-24-389, June 25, 2025.

[2] Xcel Energy Answer, Docket No. E-002/M-24-389, July 25, 2025, at 2.

Regardless of how net metering generation is compensated, the Commission may not apply FERC's one-mile rule to the definition of "capacity" under Minnesota's net metering program because state law distinguishes between a qualifying facility and a net metered facility, and FERC precedent does not apply to state net metering.

Discussion

The federal one-mile rule applies to "qualifying facilities" (QFs) as defined by the Public Utility Regulatory Policies Act of 1978 (PURPA)[3] and FERC's rules promulgated thereunder. The one-mile rule provides that where a small power production facility seeking QF status is located one mile or less from an affiliated small power production QF that uses the same energy resource, the facility is subject to an irrebuttable presumption that it is located at the "same site" (and thus considered the same facility for capacity purposes) as the affiliated QF.[4]

On its face, the one-mile rule applies *only* to small power production qualifying facilities "that use the same energy resource and are located one mile or less from the facility *for which qualification or recertification is sought* are located at the same site as the facility *for which qualification or recertification is sought*."[5] A "net metered facility"—which is a creature of state law—need not be synonymous with a QF, and Minn. Stat. § 216B.164 regularly distinguishes between the two.[6] Minnesota's net metering statute

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[3] PURPA was enacted in 1978 as Public Law 95–617 (92 Stat. 3117) and appears generally in 16 U.S.C. § 2601, et. seq. Various provisions appear elsewhere in the United States Code.

[4] *Qualifying Facility Rates and Requirements; Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, Order 872, 172 FERC ¶ 61,041, paragraph 469 (July 16, 2020)(Final Rule).

[5] 18 C.F.R. § 292.204 (i.e., the "one mile rule") (emphasis supplied).

[6] "If the ***qualifying facility or net metered facility*** is interconnected with a nongenerating utility which has a sole source contract with a municipal power agency or a generation and transmission utility, the nongenerating utility may elect to treat its purchase of any net input under this subdivision as being made on behalf of its supplier and shall be reimbursed by its supplier for any additional costs incurred in making the purchase. ***Qualifying facilities or net metered facilities*** having less than 1,000-kilowatt capacity if interconnected to a public utility, or less than 40-kilowatt capacity if interconnected to a cooperative electric association or municipal

states that "a customer with a *net metered facility* having a capacity of 40 kilowatts or greater but less than 1,000 kilowatts that is interconnected to a public utility may elect to [participate in the utility's net metering program]."[7] Nowhere does the statute provide that a net-metered facility *must be* a QF under PURPA. And nowhere does state law require the capacity of separate "net metered facilities" be combined because they are located within one mile of each other.

FERC precedent has no binding authority over Minnesota's net metering program. Under the Federal Power Act and PURPA Title II, FERC has jurisdiction over *wholesale sales* by public utilities or QFs, respectively. FERC has determined that under net metering programs, no purchase or sale of electricity at wholesale is taking place so long as a retail customer with on-site, behind-the-meter generation is not a net supplier of energy to the grid over the applicable retail billing period.[8] Therefore, unless and until there is a demonstrated case in which net energy is being provided to the utility, FERC rules, including the one-mile rule, are inapplicable to net metering eligibility under Minnesota

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utility may, at the customer's option, elect to be governed by the provisions of subdivision 4 (emphasis supplied). Minn. Stat. § 216B.164, subd. 3(e); "[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." Minn. Stat. § 216B.164, 3(f)(emphasis supplied); "[a] public utility may not impose a standby charge on a ***net metered or qualifying facility;"*** Minn. Stat. § 216B.164, subd. 3a(b)(emphasis supplied); "(a) Except as otherwise provided in paragraph (c), this subdivision shall apply to all qualifying facilities having 40-kilowatt capacity or more as well as ***qualifying facilities as defined in subdivision 3 and net metered facilities*** under subdivision 3a, if interconnected to a cooperative electric association or municipal utility, or 1,000-kilowatt capacity or more if interconnected to a public utility, which elect to be governed by its provisions." Minn. Stat. § 216B.164, subd. 4(a)(emphasis supplied); "(a) The commission shall promulgate rules to implement the provisions of this section. The commission shall also establish a uniform statewide form of contract for use between utilities and ***a net metered or qualifying facility*** having less than 1,000-kilowatt capacity if interconnected to a public utility or less than 40-kilowatt capacity if interconnected to a cooperative electric association or municipal utility." Minn. Stat. § 216B.164, subd. 6 (emphasis supplied).

7 Minn. Stat. § 216B.164, subd. 3a.

8 *MidAmerican Energy Co.,,* 94 FERC ¶ 61,340, at 62,262-63 (2001).

law.[9] As FERC explained in 2009, "the Commission does not assert jurisdiction when the end-use customer that is also the owner of the generator receives a credit against its retail power purchases from the selling utility."[10] Most recently, in *New England Ratepayers Ass'n*,[11] FERC specifically declined to answer whether credits to a retail customer under net metering are wholesale sales subject to FERC's jurisdiction because the energy is sold to the utility's retail load, or whether net metering is merely a function of retail billing, which falls under a state's jurisdiction.

Under the current definition of "capacity" in Minn. Stat. § 216B.164, subd. 3(d) and Minn. R. 7835.0100, subp. 4, state law already unambiguously defines the term "capacity" without resort to the one-mile rule. Regardless of whether the Commission alters this definition to compensate a net metering facility based on its electric energy production or nameplate rating, FERC's promulgation of the one-mile rule is without effect on Minnesota's state net metering program. The Commission may not incorporate the one-mile rule into the definition of "capacity" under Minnesota's net metering statute and associated rules.

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[9] See, NARUC PURPA Title Compliance Manual, at 104. https://www.publicpower.org/system/files/documents/PURPA%20Title%20II%20Compliance%20Manual%202.0.pdf

[10] *Sun Edison LLC*, 129 FERC ¶ 61,146 (2009). While FERC has stated it would assert jurisdiction "[o]nly if the end-use customer participating in the net metering program produces more energy than it needs over the applicable billing period, and thus is considered to have made a net sale of energy to a utility over the applicable billing period," it has never actually done so.

[11] 172 FERC ¶ 61,042 (2020).

HENNEPIN COUNTY, MINNESOTA

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