

April 10, 2026

Sasha Bergman  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101

Re: In the Matter of Verified Formal Complaint of Hennepin County, Minnesota Against  
Xcel Energy Under Minn. Stat. § 216B.164  
Docket No. E002/C-25-435

Executive Secretary Bergman:

Please find the attached reply comments of Hennepin County, Minnesota in response to the Commission's January 13, 2026 Notice of Comment Period in the above matter. Thank you for your attention to this matter.

Sincerely,

*/s/ Todd J. Guerrero*

Todd J. Guerrero

cc: Service List (attached)

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

121 7th Place East, Suite 350

St. Paul, MN 55101-2147

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In the Matter of Formal complaint of  
Hennepin County, Minnesota Against Xcel  
Energy Under Minn. Stat. 216B.164

MPUC Docket No. E-002/C-25-435

**COMMENTS OF  
HENNEPIN COUNTY, MINNESOTA**

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**I. Introduction**

Hennepin County respectfully offers the following replies with respect to parties' comments on the Commission's jurisdictional and procedural questions.<sup>1</sup> In short, as the County, Department of Commerce, Xcel Energy and other parties agree, the Commission has jurisdiction over the County's complaint. And as all parties other than Xcel agree, the Commission should proceed with an investigation promptly. The County respectfully requests the Commission to find it has jurisdiction and proceed with its investigation according to the County's March 13 procedural recommendations and as set forth further below.

**II. Reply Comments**

In its March 13 comments, Xcel sets forth several arguments why it believes it has singular authority to combine the capacity of the County's separate solar arrays based on the Federal Energy Regulatory Commission's one-mile rule<sup>2</sup> and to abrogate the contracts it signed with the County in 2024. These arguments are premature and without merit.

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<sup>1</sup> Notice of Comment Period, January 15, 2026, MPUC Docket No. E-002/C-25-435.

<sup>2</sup> 18. C.F.R. 292.204(a)(2)(i)(A).

**1. The Commission has jurisdiction over the complaint; and should deny Xcel's request to dismiss it.**

All parties agree, and there is no reasonable question, the Commission has jurisdiction over the dispute. Having conceded jurisdiction, Xcel nonetheless argues the Commission should dismiss the complaint because, in Xcel's judgment, the complaint lacks merit, there are no reasonable grounds to investigate, and that an investigation is not in the public interest.<sup>3</sup> Because each of these arguments are themselves without merit, the Commission should deny Xcel's request.

First, the County's complaint raises a legitimate grievance caused by Xcel's misapplication of the law and threatened termination of the contracts. As the complaint explains, Xcel proposes to unilaterally adopt FERC's one-mile rule by combining the capacity of the County's two net metered solar arrays in contravention of the plain language of Minnesota's net metering statute, Commission rules, and applicable Xcel tariffs, effectively usurping the legislature's and the Commission's authority to make statewide law. As the complaint further demonstrates, the County spent approximately \$4.1 million of taxpayers' money based on the wholly reasonable expectation Xcel would adhere to the law and the terms of the Uniform Statewide Contracts it signed. Without Commission intervention, Xcel's proposed actions will cause significant harm to the County and to other current and future net metered customers. The County's complaint presents more than sufficient grounds for the Commission to investigate.

Second, as the combined comments of the Environmental Law and Policy Center and Vote Solar demonstrate, Xcel's proposal to unilaterally adopt the one-mile rule has created confusion not only within Hennepin County but with respect to Minnesota's net-metering program and

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<sup>3</sup> See, e.g., Xcel Energy Initial Comments, p. 4, March 13, 2026.

applicable rules generally.<sup>4</sup> Such confusion makes it essential the Commission investigate this matter and decide whether the public's interest is served by allowing Xcel to unilaterally enforce the FERC one-mile rule for net-metered projects, particularly where state law has not adopted such a rule, after Xcel has signed tariffed contracts which are void of any mention of such rule, and which rule, if applied, would entirely frustrate the contracts' primary purpose.

Last, Xcel itself suggested that utilizing the Commission's complaint process would be the "most civil" way in which to resolve this dispute.<sup>5</sup> It is disingenuous for Xcel to suggest the best way to resolve the dispute is for the County to utilize the Commission's complaint process only to then argue the Commission should dismiss the complaint before it even considers it.

The Commission has jurisdiction over the complaint and should promptly utilize its authority to resolve the County's grievance.

**2. Hennepin County's replies to specific comments of Xcel Energy.**

The County offers the following in reply to several other Xcel Energy comments.

**(a) The County has not stated that a net metered facility "cannot be a QF."**

At page 8 of its comments, Xcel states that the "Complaint also argues that a 'net metered facility' cannot be considered a qualifying facility . . . ."<sup>6</sup> Nowhere in the complaint does the County make such assertion. In fact, the County has consistently stated that a net metered facility is a type of qualified facility specifically authorized by state law. In its March 13 comments,

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<sup>4</sup> Initial Comments of the Environmental Law & Policy Center and Vote Solar, March 13, 2026, MPUC Docket No. 25-435, at 3.

<sup>5</sup> Compl., Attach. 6, October 20, 2025 email from Xcel Energy to Hennepin County.

<sup>6</sup> Xcel further states that "Hennepin County is arguing in its Complaint that it is not a QF . . . ." Xcel Energy Comments, MPUC Docket No. 25-435, at 12.

at footnote 7, the County explains that a small power production facility (including a net metered facility) can be *both* a net metered facility *and* a qualifying facility, which is true for the County’s solar arrays.<sup>7</sup> Consistent with this position, in its July 29, 2025 comments in the #24-389 docket, the County pointed out that Minn. Stat. § 216B.164 specifically uses both “net metered facility” and “qualifying facility,” each with a specific meaning depending on where the term is used in the statute.<sup>8</sup> As Xcel itself acknowledges, an NMF is a “subset” of a QF.<sup>9</sup> And as MNSEIA and ELPC/Vote Solar point out, the compensation due a “net metered facility” is different from the compensation due a QF that is otherwise not also a net metered facility.<sup>10</sup>

**(b) It is unnecessary to determine whether there are “cross subsidies” for the Commission to decide this dispute on legal grounds.**

At page 10 of its comments, Xcel rightly points out that Minn. Stat. § 216B.164, subd. 1’s proclamation that the statute’s intent “at all times” to “give the maximum possible encouragement to cogeneration and small power production” is tempered by the phrase “consistent with protection of the ratepayers and the public.” Xcel relies on the last clause to conclude that expanding net metering “beyond the [1 MW] Minnesota statutory cap . . . would not be in the public interest as it would effectively push more costs on other ratepayers.” Of course, the county’s separate solar arrays exceed the 1 MW metering cap only if Xcel is able to

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<sup>7</sup> A qualifying facility under state law is a facility that satisfies the conditions established in Code of Federal Regulations, title 18, part 292 – i.e., (i) is under 80 MW, meets the fuel requirement, and is exempt from QF filing requirements because the facility is under 1 MW. Minn. Rule part 7835.0100, subp. 19. A “net metered facility” is an electric generation facility constructed for the purpose of offsetting energy use through use of renewable energy or high-efficiency distributed generation sources. Minn. Stat. § 216B.164(2)(a)(j).

<sup>8</sup> Hennepin County Petition, MPUC Docket No. 24-389, at 3.

<sup>9</sup> Xcel Energy Initial Comments, p. 8, March 13, 2026.

<sup>10</sup> MNSEIA Initial Comments, MPUC Docket No. 25-435, at 8; Initial Comments of EL&PC and Vote Solar, MPUC Docket No. 25-435, at 5.

unilaterally combine the capacity of the two solar arrays, something which the County asserts Xcel may not do. In any event, there is no evidence in this proceeding whether net metered facilities are subsidized by other ratepayers. Or, even assuming such evidence exists, whether such evidence would be sufficient to overcome the legislature’s clear directive that small solar arrays such as the County’s be encouraged to the maximum possible extent. At this stage, however, it is sufficient to acknowledge that any factual inquiry regarding subsidies is unnecessary because, as Xcel agrees, this case presents a *legal*, not *factual* question.<sup>11</sup> The Commission is not presented with the question – and need not decide — whether the County’s separate solar arrays are being subsidized.

**(c) Xcel’s comments regarding meter aggregation are misleading.**

Despite the plain language of Xcel’s tariff that the capacity of distributed generation systems is measured at the point of interconnection (common coupling) and that a customer’s meters may only be aggregated at the customer’s request, Xcel suggests that “[t]here is no requirement that a customer must participate in ‘meter aggregation’ in order for the one-mile rule to apply.” Such an assertion is inconsistent with Xcel’s detailed tariffs addressing cogeneration and small power production facilities. Throughout its approximately 24 pages, Xcel’s cogeneration and small power production tariffs (1) clearly distinguish between a “QF” and an “NMF” for compensation purposes, (2) clarify that the capacity of separate distributed generation systems, such as the County’s solar arrays, are measured at the point of

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<sup>11</sup> “The Complaint does not involve the any disputed factual issues but instead focuses on questions related to the interaction between federal and state law as well as the applicability and interpretation of those laws.” Xcel Energy Comments, March 13, 2026, at 15, MPUC Docket No. 25-435.

interconnection, and (3) include a Uniform Contract which specifically incorporates these terms (which Xcel signed and the County relied on). In the face of these tariffs, Xcel's contention that it intended its cogeneration and small power production tariff to be entirely inapplicable if two separately metered NMFs happen to be located within one mile of the other – based on a federal rule adopted specifically to prohibit private energy developers from gaming PURPA's mandatory purchase obligation – is not credible.<sup>12</sup>

**(d) The County's procedural recommendations will allow the Commission to make an informed decision.**

In its March 13 comments, the County presented procedural recommendations regarding how best to allow all parties to present facts and legal arguments fairly and efficiently and in a manner from which the Commission can make an informed decision. The County's recommendation is similar to the process employed by courts for what are known as motions for summary judgment under Rule 56 of the Minnesota Rules of Civil Procedure. Under Rule 56, where there is no genuine dispute as to any material fact, a court may decide the merits of a case based on parties' briefs and supporting materials and without a trial (i.e., contested case). The court then decides whether the moving party (typically, the party bringing the complaint but not always) is entitled to its requested relief as a matter of law. The County continues to think this is the best way to proceed.

Xcel and all parties agree there is no dispute as to any material fact and that the complaint presents purely legal questions requiring the Commission's informed legal interpretation. Thus the County recommends as follows: (1) the Commission determine it has jurisdiction over the

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<sup>12</sup> See, e.g., FERC Order 688, Docket No. RM06-10-000, October 2020, ¶ 63, referring to the concern regarding developers performing "gaming" strategies by developing QF projects under the 80 MW PURPA limit to take advantage of PURPA's mandatory purchase obligations.

complaint forthwith; (2) in its order finding jurisdiction, the Commission provide a briefing schedule that (a) allows the County to file its primary brief on the merits of the complaint in which it would lay out the factual and legal authority in support of its claim, (b) allow Xcel a reasonable amount of time (e.g., 20 days) in which to file its brief setting forth why the County should not be granted its requested relief and why Xcel believes the law allows it to combine the capacity of the County's solar arrays, terminate the two Uniform Statewide Contracts, and provide the County with a rate for net-metered energy that is less than that set forth in the contracts, (c) allow a reasonable amount of time (e.g., 10 days) for the County and other interested parties to respond to either the County's and/or Xcel's arguments, and (d) expeditiously set a time and date for a hearing in which the Commission can hear from all parties and makes its decision in an open forum consistent with the State's open meeting law.

### III. Conclusion

For the foregoing reasons, the Commission should deny Xcel's request to dismiss the County's complaint and move forward expeditiously with an investigation consistent with the County's procedural recommendations.

Respectfully submitted,

#### KUTAK ROCK LLP

Dated: April 10, 2026

By: /s/ Todd J. Guerrero

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**HENNEPIN COUNTY, MINNESOTA**

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**CERTIFICATE OF SERVICE**

I, Trudy Paulson, hereby certify that on April 10, 2026, I e-filed in Docket No. E002/C25-435 the foregoing reply comments of Hennepin County, Minnesota in response to the Commission's January 13, 2026 Notice of Comment Period and served copies of the same upon all parties listed in the attached service list via electronic filing.

Dated: April 10, 2026

By: /s/ Trudy Paulson  
Trudy Paulson

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2	Matthew	Brodin	mbrodin@allete.com	Minnesota Power		30 West Superior Street Duluth MN, 55802 United States	Electronic Service		No	Official 25-435
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27	Carol A.	Overland	overland@legalelectric.org	Legalelectric - Overland Law Office		1110 West Avenue Red Wing MN, 55066 United States	Electronic Service		No	Official 25-435
28	Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us		Office of the Attorney General - Residential Utilities Division	1400 BRM Tower 445 Minnesota St St. Paul MN, 55101-2131 United States	Electronic Service		Yes	Official 25-435
29	Kevin	Reuther	kreuther@mncenter.org	MN Center for Environmental Advocacy		26 E Exchange St, Ste 206 St. Paul MN, 55101-1667 United States	Electronic Service		No	Official 25-435
30	Ken	Smith	ken.smith@districtenergy.com	District Energy St. Paul Inc.		76 W Kellogg Blvd St. Paul MN, 55102 United States	Electronic Service		No	Official 25-435
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