



2836 Lyndale Ave, Suite 132
Minneapolis, MN 55408
www.nokomisenergy.com
612.470.3223

August 18, 2025

Via Electronic Filing

Mike Bull
Acting Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

RE: REQUEST FOR COMMENTS, DOCKET NO. E999/R-25-86

Dear Mr. Bull:

Nokomis Energy submits these Comments to the Minnesota Public Utilities Commission pursuant to the Request for Comments issued by the Minnesota Public Utilities Commission on July 14, 2025. The Request for Comments is regarding a possible amendment to rules relating to the definition of “capacity.”

We have electronically filed this document with the Minnesota Public Utilities Commission, and copies have been served on the parties on the attached service list. Please contact me at matthew@nokomisenergy.com or (612) 999-8600 if you have any questions regarding this filing.

Regards,

A handwritten signature in black ink, appearing to read "Matthew D. Melewski", with a long, sweeping horizontal line extending to the right.

Matthew D. Melewski
General Counsel

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

Katie J. Sieben	Chair
Hwikwon Ham	Commissioner
Audrey Partridge	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

IN THE MATTER OF IMPLEMENTATION OF
2023 LEGISLATIVE CHANGES TO NORTHERN
STATES POWER CO. D/B/A XCEL ENERGY'S
COMMUNITY SOLAR GARDEN PROGRAM

DOCKET NO. E999/R-25-86

NOKOMIS ENERGY COMMENTS

August 18, 2025

Nokomis Energy LLC appreciates the opportunity to comment on this matter of important public policy. For the reasons set forth herein, Nokomis Energy recommends that the Minnesota Public Utilities Commission (“PUC”) not amend MINN. R. 7835.0100.

The Commission has correctly identified that there is a problem. Unfortunately, the Commission will only exacerbate the problem by continuing this rulemaking. Therefore, we strongly urge the Commission to abandon the rulemaking, and undertake a more holistic analysis of how, and under what authority, the size of distributed generation is determined in Minnesota.

I. Introduction

The problem is that although the definition of “capacity” in MINN. STAT. § 216B.164 and MINN. R. 7835.0100 is unambiguous, some utilities in Minnesota have been misapplying the statute and regulation for several years. Instead of measuring “capacity” at the point of interconnection, as required by the statute and regulation, those utilities have been measuring capacity as a facility’s nameplate capacity.

The Request for Comments by the Commission mischaracterizes this problem, writing:

“The Commission requests comments on whether to measure capacity based on a qualifying facility’s electric energy production, rather than its nameplate capacity.”¹

This sentence suggests that the rule would change the definition of “capacity” away from nameplate capacity. This is legally and factually incorrect. As several commenters explained throughout the prior comment period, the historical utility use of nameplate capacity has been *contrary* to the current statute and regulation. The obvious solution, and the only legally tenable solution, is to direct compliance with the statute and regulation.

¹ PUC, *Request for Comments*, Doc. No. 25-86 at 1 (July 7, 2025).

Any revision to the current regulation that measures “capacity” anywhere other than the point of interconnection, will render the rule contrary to the statute, and illegal *ab initio*. Additionally, the Commission will have created three definitions of “capacity” for distributed generation in the State of Minnesota. This confusion would add to an ongoing regulatory debate, including in active dockets, over whether FERC rules on qualifying facilities are inferred into or override Minnesota statutes on the size of distributed generation.

II. The Definition of “Capacity” in MINN. STAT. § 216B.164 and MINN. R. 7835.0100 is Unambiguous

The statute defines “capacity” as:

“the number of megawatts alternating current (AC) at the point of interconnection between a distributed generation facility and a utility’s electric system.”²

Pursuant to the plain language of the statute, “capacity” is measured at the point where the facility’s system connects to the utility’s system. The Minnesota Administrative Rules promulgated in furtherance of the statute define “capacity” nearly identically as:

“the capability to produce, transmit, or deliver electric energy, and is measured by the number of megawatts alternating current at the point of common coupling between a qualifying facility and a utility’s electric system.”³

The only meaningful difference between the two is that in place of “point of interconnection,” the rule uses the phrase “point of common coupling.” The Rules further define “point of common coupling” as the point of interconnection between the facility and the utility:

“the point where the qualifying facility’s generation system, including the point of generator output, is connected to the utility’s electric power grid.”⁴

These definitions make clear that the “capacity” of a system is measured at the point where the facility’s system connects to the utility’s system.⁵ There is no reasonable disagreement with this interpretation.⁶ In fact, the Attorney General has already explained that “[t]his statute clearly and unambiguously defines ‘capacity’.”⁷

III. The Commission Cannot Lawfully Make the Regulation Contrary to the Statute

The definition of capacity proposed in the Request for Comments would measure capacity at

² MINN. STAT. § 216B.164, Subd. 2a(c).

³ MINN. R. 7835.0100 Subp. 4.

⁴ MINN. R. 7835.0100 Subp. 17(a).

⁵ As the Department of Commerce noted in its comments on the docket giving rise to this proceeding, this is best described as the “export capacity” of the system. *See* Minnesota Department of Commerce (“DOC”), *Comments*, Doc. 16-521 at 6 (Jan. 12, 2024).

⁶ *See, e.g.,* Nokomis Energy, *Reply Comments*, Doc. No. 24-200 (Sept. 17, 2024).

⁷ OAG, *Reply Comments*, Doc. No. 24-200 (Sept. 17, 2024).

*“the qualifying facility’s inverter or a power control system or supplemental device that controls production at the qualifying facility before the net-metered customer’s load.”*⁸

The facility’s inverter, or power control system, or any supplemental device before the customer’s load, is within the facility’s generation system, and not at the point where the facility’s system is connected to the utility’s system. The statute, however, unambiguously requires capacity to be measured where the facility’s system is connected to the utility’s system. As a result, the proposed definition contradicts the statute.

Although “administrative agencies may adopt regulations to implement or make specific the language of a statute, they cannot adopt a conflicting rule.” *Billion v. Comm’r of Revenue*, 827 N.W.2d 773, 781 (Minn. 2013) (quoting *Green v. Whirlpool Corp.*, 389 N.W.2d 504, 506 (Minn. 1986) (cleaned up). To the extent the rule is an interpretive rule, it also “cannot contradict the plain meaning of the statute.” *Swenson v. Emerson Electric Co.*, 374 N.W.2d 690, 702 (Minn. 1985). The Commission’s rules are governed by the same rules of construction that apply to statutes. *Hagen v. Steven Scott Mgmt.*, 963 N.W.2d 164, 169 (Minn. 2021) (citing *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm’rs*, 713 N.W.2d 817, 828 n.9 (Minn. 2006)). Accordingly, the same analysis that led the Attorney General to determine that the statute is unambiguous would lead to the inexorable conclusion that the proposed rule would contradict the statute.⁹

The Commission should not undertake a rulemaking exercise based on a proposed definition that would clearly contradict the statute and therefore be unlawful.

IV. The Commission Should Not Create More Definitions of “Capacity” For Distributed Generation

The Commission should also take stock of the overall regulatory context for this rulemaking. Although the statute and regulation only create one definition of “capacity,” last year the Commission created a second definition of “capacity” in the context of community solar gardens (“CSGs”) created pursuant to MINN. STAT. § 216B.1641:

*“Capacity” is determined by and measured in alternating current (AC) at the solar photovoltaic electric generating facility’s inverter or a power control system or supplemental device that controls production at this facility before the load at the site of the facility.”*¹⁰

The Commission permitted Xcel Energy to include this new definition of “capacity” in the standard for contract for interconnecting CSGs even though the statute expressly states that the “capacity” of the CSGs is defined by MINN. STAT. § 216B.164, Subd. 2a(c), the very provision at issue here.¹¹

The rulemaking under consideration proposes to create yet a third definition of “capacity.” And each of these definitions is solely in the context of distributed generation in Minnesota.

⁸ PUC, *Request for Comments*, Doc. No. 25-86 at 2 (July 7, 2025).

⁹ See also Nokomis Energy, *Reply Comments*, Doc. No. 24-200 (Sept. 17, 2024).

¹⁰ PUC, *Order Addressing Proposed Changes To The LMI-Accessible Community Solar Garden Program Standard Contract*, Doc. No. 23-335 (Mar. 27, 2025).

¹¹ MINN. STAT. § 216B.1641 Subd. 6(a)(2). This action by the Commission was likely unlawful because it unambiguously contradicts the statute. See *supra*.

Moreover, there is currently an extensive debate about whether, and how, FERC rules for qualifying facilities should be read into or override Minnesota statutes and regulations. For example, in the docket preceding this rulemaking, Xcel argued that since the statute was created to implement PURPA, and since FERC has a definition of “capacity” for determining a single facility, the Commission should use that definition instead of the plain language of the statute.¹² In another ongoing docket, Xcel has argued that the Commission implicitly adopted different FERC guidance “on determining the size of a QF.”¹³ In ongoing efforts to implement the Distributed Solar Energy Standard (“DSES”), which is in yet another docket, Xcel has also argued that FERC rules impliedly determine the size of DSES facilities, even though that size is dictated by the state statute (again, by reference to the statutory provision at issue here).¹⁴

The issue of how to determine the size of distributed generation in Minnesota is an important, ongoing, uncertain and multifaceted issue.¹⁵ Creating a third definition will only create more confusion.

V. How Did We Get Here?

To reiterate, the problem at issue is that some electric utilities in Minnesota have been misapplying the state statute and regulation for several years. The solution to this problem seems straightforward: insist on the correct application of the statute and regulation, which is stated in unambiguous language. It is not clear why the Commission has undertaken this rulemaking instead.

a. No “stakeholders representing the interests of generation facilities advocated for amending the rule for clarity.”

The order initiating the rulemaking states that “stakeholders representing the interests of generation facilities advocated for amending the rule for clarity.”¹⁶ No reference accompanies the statement, which appears to be incorrect. The only two stakeholders in the docket “representing the interests of generation facilities,” were Nokomis Energy and MNSEIA. Neither party advocated for amending the rule. Much to the contrary, Nokomis Energy explained that the Commission lacks the legal authority to change the rule¹⁷ and MNSEIA has repeatedly explained that several *utilities* are trying to change “the legal definition of capacity.”¹⁸

¹² Northern States Power Company, d/b/a Xcel Energy (“Xcel”), *Comments*, Doc. No. 24-200 at 6 (Sept. 3, 2024).

¹³ Xcel, *Comments*, Doc. No. 24-389 at 2 (July 25, 2025).

¹⁴ Xcel, *DSES 2nd Stakeholder Workshop Presentation*, Doc. No. 23-403 at 10-13 (Oct. 17, 2024); *see* MINN. STAT. § 216B.1691 Subd. 2h(a)(1).

¹⁵ MNDIP and various technical manuals also discuss and in some cases measure and define facility size differently, often for different reasons.

¹⁶ PUC, *Order Initiating Rulemaking Proceeding*, Doc. No. 25-86 at 2 (Jan. 23, 2025).

¹⁷ Nokomis Energy, *Reply Comments*, Doc. No. 24-200 (Sept. 17, 2024).

¹⁸ *See, e.g.*, MNSEIA, *Comments*, Doc. No. 24-200 at 8-9 (Sept. 3, 2024); MNSEIA, *Reply Comments*, Doc. No. 24-200 at 4 (Sept. 17, 2024).

The Proposed Decision Options prior to that order stated that Nokomis Energy, MNSEIA, CEEM and the Department wanted to “Clarify that “capacity,” as defined in Minn. Stat. § 216B.164, subd. 2a(c), for purposes of eligibility for the net-metering rate in Minn. Stat. § 216B.164, subd. 3(d), is measured at the utility’s bi-directional meter,”¹⁹ but neither Nokomis, MNSEIA nor CEEM suggested that in their comments, and in fact each of them stated that the statute and regulation were clear as written.²⁰

In its initial comments, the Department of Commerce did recommend that the Commission “clarify that utilities should apply the definition of capacity for purposes of tariff eligibility at the point of interconnection.”²¹ In its reply comments, however, the Department stated:

*“The Department maintains its position from initial comments that the governing statute is clear that capacity is defined at the point of interconnection with the utility system with respect to net metered rate eligibility. **The Department wishes to clarify its recommendation from initial comments to read that utilities should apply the definition of capacity for purposes of net-metered rate eligibility as the maximum export capacity of the DER system at the point of interconnection, consistent with the governing statute.**”²²*

Regardless, it seems that no “stakeholders representing the interests of generation facilities advocated for amending the rule for clarity.” The Commission should evaluate whether this assertion is correct, and if not, the Commission should retract it and further explain who advocated amending the rule and why.

b. There is No Record Support For the Claim That the Current Law “could result in compensation levels inconsistent with amounts authorized under the statute.”

The order initiating the rulemaking also explained that the existing definition of “capacity,” if enforced as written, “could result in compensation levels inconsistent with amounts authorized under the statute.”²³ However, there is nothing in the record before the Commission to support this claim, which appears to have been raised for the first time orally in the November 7, 2024 hearing.

¹⁹ Decision Options, Doc. No. 24-200 at 2.

²⁰ See Nokomis Energy, *Comments*, Doc. No. 24-200 at 1 (Sept. 3, 2024) (“Nokomis believes the Commission should apply the definition of “capacity” as written in the statute”); Nokomis Energy, *Reply Comments*, Doc. No. 24-200 (Sept. 17, 2024) (explaining that the statute is unambiguous); MNSEIA, *Comments*, Doc. No. 24-200 at 14 (Sept. 3, 2024) (providing support for “applying the definition of “capacity” consistent with the clear language of the law”); MNSEIA, *Reply Comments*, Doc. No. 24-200 at 20 (Sept. 17, 2024) (“Neither MnSEIA nor the other members of the MSA believe a discussion about net metering eligibility is necessary because the law is already clear on that issue”); CEEM, *Reply Comments*, Doc. No. 24-200 at 9 (Sept. 17, 2024) (“CEEM respectfully requests the Commission apply the definition of “capacity” as defined in Minnesota law”).

²¹ DOC, *Comments*, Doc. No. 24-200 at 1, 11 (Sept. 3, 2024).

²² DOC, *Reply Comments*, Doc. No. 24-200 at 9 (Sept. 17, 2024) (emphasis added). Thereafter, the Department revised its position again in a proposed modification to Decision Option 1, see DOC, *Letter*, Doc. No. 24-200 (Nov. 5, 2024), and changed its position yet again in the November 7, 2024 hearing.

²³ PUC, *Order Initiating Rulemaking Proceeding*, Doc. No. 25-86 at 3 (Jan. 23, 2025).

Further record development is the appropriate next step for such a conclusory assertion, not a rulemaking.

c. There Is No Record Support For “Reliability Problems”

At the hearing preceding the prior docket, on April 11, 2024, some utilities raised concerns that applying the statutory definition of capacity with respect to net-metering eligibility might impact reliability. This concern gave rise to the prior comment period, which specifically asked about potential “reliability problems.” Stakeholders to this proceeding met to discuss these potential reliability problems on several occasions in May, June and July of 2024.

Representatives of Nokomis attended each of these stakeholder meetings. Notwithstanding the purpose of these meetings, and the stated issue in that comment period, Nokomis is not aware of any “reliability problems” advanced by any stakeholder.

Nokomis believes that it is appropriate for a utility to ensure that adequate standards or controls are in place to enforce the capacity limitation set forth in statute and regulation. We welcome participation in further discussion regarding any changes to appropriate standards or controls, within the appropriate setting (*e.g.*, DGWG). This is not, however, a reason to revisit the definition of “capacity.”

VI. Conclusion

The Commission cannot lawfully adopt the proposed definition of “capacity,” and the record lacks any factual or legal support for the proposed definition. Because such a rule would be unlawful *ab initio* and only further confuse the determination of distributed generation size, the Commission should not continue with the rulemaking. Instead, the Commission should undertake a more holistic analysis of how, and under what authority, the size of distributed generation is determined in Minnesota.

Dated August 18, 2025

/s/ Matthew Melewski
General Counsel
Nokomis Energy LLC
2836 Lyndale Ave S #132
Minneapolis, MN 55408

Pursuant to MINN. R. 7829.0400 Subp. 3, I have electronically filed the foregoing with the Minnesota Public Utilities Commission, and copies have been served on the parties on the attached service list.

/s/ Matthew Melewski