Minnesota Solar Energy Industries Association
We Move Minnesota Solar + Storage Forward

July 25, 2025

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

Re: In the Matter of the Petition of Northern States Power Co. d/b/a Xcel Energy to Revise Its Net Metering Tariffs to Apply to Qualifying Facilities Up to 5 MW
Docket No. E-002/M-24-389

Acting Executive Secretary Bull;

Please find included in this filing the Answer of the Minnesota Solar Energy Industries Association (MnSEIA). This Answer is being filed pursuant to Minn. R. 7829.3000 in support of Hennepin County's Petition for Amendment and Reconsideration filed on July 15, 2025. For the reasons discussed in the Answer, MnSEIA agrees with Hennepin County that the Minnesota Public Utilities Commission should clarify that the capacity of a facility in Minnesota is measured pursuant to Minnesota law, which measures the capacity of a facility at the point of interconnection/common coupling.

Sincerely,

/s/ Curtis P. Zaun, Esq.
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STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

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

ANSWER

July 25, 2025

Docket No. E-002/C-24-389

INTRODUCTION

The Minnesota Solar Energy Industries Association (MnSEIA) is a nonprofit association of over 170 members that represents Minnesota's solar and storage industry. Our broad membership ranges from rooftop installers to non-profit organizations, manufacturers, developers, and many others, all of whom collectively employ over 5,000 Minnesotans. MnSEIA submits Answer in response to the Petion for Amendment and Reconsideration filed by Hennepin County in the above-referenced docket on July 15, 2025.

MnSEIA agrees with Hennepin County that the Minnesota Public Utilities Commission (Commission) should clarify 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. As the Commission is well-aware, there are two compensation

programs available to facilities in Minnesota.[1] One under Federal law, PURPA, and one under state law, Minn. Stat. § 216B.164.[2] 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.[3]

The plain language of Minnesota law clearly determines the compensation rate for purchases from a qualifying facility for purposes of Minn. Stat. § 216B.164 by the capacity of the facility at its point of interconnection/common coupling.[4] Any particular facility only has one point of interconnection/common coupling, and, unlike Federal law, Minnesota law does not combine them for the purpose of determining the compensation rate for purchases. Moreover, unlike the definition of a qualifying facility under Minn. R. 7835.0100, subp. 19, the definition of a "net metered facility" does not incorporate the Federal definition of a qualifying facility. As such, the One-Mile Rule is clearly inapplicable to those facilities as well.

Although the Commission's order in this docket did not specifically address the One-Mile Rule, MnSEIA agrees with Hennepin County that it would be beneficial to Hennepin County and other stakeholders for the Commission to re-affirm this point of law because there appears to be some confusion surrounding it. MnSEIA has been informed by some of its members that utilities other than just Xcel, including cooperatives, have been using the One-Mile Rule to say that facilities are co-located and, therefore, ineligible for compensation rates provided for by Minnesota law. The

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[1] *See In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, p. 19-20 (Minn. Ct. App. May 31, 2016) (unpublished decision) (citing FERC's Winding Creek Solar decision, which states, that "as long as a state provides QFs the opportunity to enter into long-term legally enforceable obligations at avoided cost rates, a state may also have alternative programs that QFs and electric utilities may agree to participate in"); *see also, Otter Creek Solar LLC*, 146 FERC 61,192 at p. 3-4 (2014) ("Vermont's SPEED program, in contrast, is a voluntary program that Otter Creek and other QFs may choose to avail themselves of if they wish to do so, but it in no way replaces or supersedes the Rule 4.100 program. Instead, the SPEED program is simply an option offered by Vermont to QFs like Otter Creek in addition to, but not as a replacement for, the Rule 4.100 program.").

[2] *Id*.

[3] *Id*.

[4] *See* Minn. Stat. § 216B.164, subd. 2a(c); Minn. R. 7835.0100, subp. 4.

Commission has previously rejected the application of any geographic proximity for the purposes of determining a facilities size[5] and Minnesota law only allows facilities to be combined for the purpose of imposing a solar production tax.[6] But, even in that situation, it is done based on a temporal requirement and the application of a multi-factor test that does not have any irrebuttable presumptions. Accordingly, MnSEIA respectfully requests that the Commission grant Hennepin County's request to clarify that the Federal One-Mile Rule does not apply for the purpose of determining the compensation rate for facilities under Minnesota law.

LEGAL ANALYSIS

To determine the size of a small power production facility under Minnesota law for the purpose of determining what compensation rate it is entitled to receive under state law, one must review the applicable Minnesota statutes and rules, consistent with the requirements of Chapter 645. This chapter states, among other things:

> The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.
>
> When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.[7]

Thus, the Commission must look at all the provisions and how they fit together or don't fit together to determine what the Minnesota Legislature intended by the language that it used. And, to the extent that any agency establishes any rules, those rules must be authorized and consistent with the relevant statute.[8]

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[5] *See In the Matter of the Petition of Northern States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, Dkt. 13-867, Minn. Pub. Util. Comm., ORDER APPROVING TARIFFS AS MODIFIED AND REQUIRING FILING, p. 3 (Dec. 15, 2015).
[6] *See* Minn. Stat. § 272.0295
[7] Minn. Stat. § 645.16.
[8] *See* Minn. Stat § 14.05, subd. 1.

Minnesota Energy Law and Policy Applies to All Utilities, unless Explicitly Excluded.

The Minnesota Legislature adopted Minn. Stat. § 216B.164 to implement Minnesota's energy policy and PURPA.[9] This section's stated purpose is to "give the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public.[10] This section and "any rules promulgated by the commission to implement this section or the Public Utility Regulatory Policies Act of 1978 . . . apply to all Minnesota electric utilities, including cooperative electric associations and municipal electric utilities," unless another provision explicitly excludes a particular type of utility.[11] So, as the Commission is aware, while cooperative and municipal utilities are excluded from some oversight by the Commission, they are still subject to the requirements of Minnesota law and, thus, oversight by the Commission,[12] the Minnesota Department of Commerce (Commerce),[13] and Minnesota courts.[14]

To determine the compensation rate of a solar generating facility one must review Minnesota law, which includes both statutes and rules. One starts with the applicable statute and then reviews any applicable rules to the extent the statute is unclear. Minnesota statutes trump Minnesota rules, which must be consistent with the statutes.

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[9] *See* Minn. Stat. § 216B.164, subd. 2(a) ("This section as well as any rules promulgated by the commission to implement this section or the Public Utility Regulatory Policies Act of 1978")
[10] Minn. Stat. § 216B.164, subd. 1.
[11] Minn. Stat. § 216B.164, subd. 2(a).
[12] *See, e.g.*, Minn. Stat. § 216B.17 (stating that the Commission can investigate complaints against cooperative utilities regarding their "service standards and practices").
[13] *See* Minn. Stat. § 216A.07, subd. 2 ("The commissioner is responsible for the enforcement of chapters 216A, 216B and 237 and the orders of the commission issued pursuant to those chapters.").
[14] See Minn. Stat. § 308A.941 (court may grant equitable relief that it deems just and reasonable, including an award of reasonable expenses and attorneys' fees, against a cooperative if "the directors or those in control of the cooperative have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members").

Compensation Rate for Facilities Under Minn. Stat. § 216B.164.

Thus, the starting point for determining the compensation rate a facility will receive is determining the type of utility a facility is interconnecting to. Different provisions of Minn. Stat. § 216B.164, apply to different types of utilities and have different requirements. Minn. Stat. § 216B.164, subd. 3, relates to purchases from small facilities. Subdivision 3(a) applies to cooperative and municipal utilities, while subdivision 3(b) applies to public utilities. Subdivision 3(a) states, in relevant part, "In the case of net input into the utility system by a qualifying facility having less than 40-kilowatt capacity, compensation to the customer shall be at a per kilowatt-hour rate determined under paragraph (c), (d), or (f)." Subdivision 3(b), states, in relevant part, "In the case of net input into the utility system by a qualifying facility having: (1) more than 40-kilowatt but less than 1,000-kilowatt capacity, compensation to the customer shall be at a per kilowatt-hour rate determined under paragraph (c); or (2) less than 40-kilowatt capacity, compensation to the customer shall be at a per-kilowatt rate determined under paragraph (c) or (d)." The most common rate for facilities under 40 kW is the "average retail utility energy rate," which is under subd. 3(d). The rate under subd. 3(c) is called the avoided cost rate and is established by the Commission pursuant to Federal rules. Subdivision 3a(a) applies to net metered facilities and states, in relevant part, "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 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." While subdivision 4 applies 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," and requires that they pay "the utility's full avoided capacity and energy costs as negotiated by the parties, as set by the commission, or as determined through competitive bidding approved by the commission."

The language of Minnesota Rule Chapter 7835 largely mirrors the relevant statutory language. For example, Minn. R. 7835.3300, subp 1, which is applicable to cooperative and municipal utilities, states:

> The average retail utility energy rate is available only to qualifying facilities with capacity of less than 40 kilowatts which choose not to offer electric power for sale on either a time-of-day basis or a simultaneous purchase and sale basis.

Minn. R. 7835.4012, subp. 1, which applies to public utilities, states:

> A qualifying facility with less than 40 kilowatt capacity has the option to be compensated at the average retail utility energy rate, the simultaneous purchase and sale billing rate, or the time-of-day billing rate.

Thus, the first question is to determine whether a small power production facility needs to be a net metered facility or a qualifying facility. While all facilities under PURPA must be qualifying facilities, Minnesota law provides different compensation rates for qualifying facilities and net metered facilities.

A Net Metered Facility Must Be Interconnected with Public Utility, more than 40 kw, but Less than 1 MW.

Both Minnesota statute and rule provide the same definition of a "net metered facility," which is, "an electric generation facility constructed for the purpose of offsetting energy use through the use of renewable energy or high-efficiency distributed generation sources."[15] In addition, both statute and rule require that the facility be interconnected to a public utility and have a capacity of at

[15] Minn. Stat. § 216B.164, subd. 2a(j); Minn. R. 7835.0100, subp. 15a.

least 40 kW, but less than 1 MW.[16] Net metered facilities are entitled to receive a kilowatt-hour credit, with any net input remaining at the end of the year credited at the utility's avoided cost rate.[17]

A Qualifying Facility is a Solar Production Facility under 80 MWs.

Because Minn. Stat. § 216B.164, nor any other statute, defined the term "qualifying facility," the Commission defined it under Minn. R. 7835.0100, subp. 19, to mean:

> "Qualifying facility" means a cogeneration or small power production facility which satisfies the conditions established in Code of Federal Regulations, title 18, part 292. The initial operation date or initial installation date of a cogeneration or small power production facility must not prevent the facility from being considered a qualifying facility for the purposes of this chapter if it otherwise satisfies all stated conditions.

Thus, this Minnesota rule incorporates "the conditions established in Code of Federal Regulations, title 18, part 292" to determine whether a facility is a qualified facility. The conditions in title 18, part 292, for a small power production facility include, among other things, a maximum size of 80 MWs and certain limits on the facility's "primary energy source."[18] As noted above, a provision of 18 C.F.R. § 292.204 called "Method of calculation," is commonly referred to as the One-Mile Rule. It states:

> For purposes of this paragraph (a)(2), there is an irrebuttable presumption that affiliated 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*. (Emphasis added).

However, it is important to note that under 18 C.F.R. § 292.203, a small power production facility that has "a net power production capacity of 1 MW or less is exempt" from any filing requirements under PURPA. In other words, it does not need to seek qualification or recertification from FERC or anyone else. Thus, by its plain language, the One-Mile Rule does not apply to small

[16] *See* Minn. Stat. § 216B.164, subd. 3a(a); Minn. R 7835.4017, subp. 1.
[17] See Minn. Stat. 216B.164, subd. 3a(a); Minn. R. 7835.4017, subps. 1 & 3.
[18] *See* 18 C.F.R. § 292.204.

power production facilities that are 1 MW or less. Which makes sense because PURPA is used for very large facilities that are exporting all of their energy to the transmission system, while state law is used to interconnect smaller facilities that are often offsetting their own to the distribution system.

It is also worth noting that the compensation rate under PURPA for all purchases is the avoided cost rate,[19] which is typically not sufficient to make a smaller project financeable. Thus, unlike Minnesota law, whether a system is 8 kW or 80 MWs, the compensation rate is the same under PURPA. Which is why Minnesota law, whose purpose is to "give the maximum possible encouragement" to small power production, provides compensation rates to facilities that are greater than the avoided cost rate.[20]

Thus, in order to be a qualifying facility (QF) under Minnesota law, a small power production facility must be under 80 MWs, including all facilities located within one of each other, and have a "primary energy source" that is, among other things, 75 percent renewable. And if its "net power production capacity" is 1 MW or less, it does not need to file anything or otherwise seek a qualification determination from FERC. Assuming a small power production facility meets that criteria including, if greater than 1 MW, filing the necessary paperwork, the next question is what is the capacity of the QF for purposes of determining what rate it is entitled to under Minnesota law.

The Capacity of a Facility under Minnesota Law is Measured at the Point of Interconnection/Common Coupling and Does Not Include the Capacity of other Facilities for the Purpose of its Compensation Rate.

After it has been determined that a small power production facility is a QF, one must determine the size of the particular QF so that it can determine the rate it is entitled to under Minnesota law. As noted above, in order to be entitled to the average retail utility energy rate, a QF must have a capacity of less than 40 kW. Minnesota law, Minn. Stat. § 216.164, subd. 2a(c), defines

[19] *See* 18 C.F.R. § 292.304(a)(2) ("Nothing in this subpart requires any electric utility to pay more than the avoided costs for purchases.").
[20] *See, e.g.,* Minn. Stat. § 216B.164, subds. 3, 3a, & 10, Minn. Stat. § 216B.1641, subds. 1(d) & 8.

"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." The statute uses the term distributed generation facility instead of qualifying facility. A distributed generation facility is defined as a facility that "(1) has a capacity of ten megawatts or less; (2) is interconnected with a utility's distribution system, over which the commission has jurisdiction; and (3) generates electricity from natural gas, renewable fuel, or a similarly clean fuel, and may include waste heat, cogeneration, or fuel cell technology."[21] Thus, the statutory definition of a distributed generation facility is narrower than the Federal definition of a qualifying facility because it is limited to facilities that are 10 MWs or less, rather than 80 MWs, and generate electricity entirely from a renewable fuel instead of 75 percent from a renewable energy source.

The definition of capacity under Minn. R. 7835.0100 is very similar. It states that capacity "means 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."[22] While the Commission used the term qualifying facility instead of distributed generation facility and point of common coupling instead of point of interconnection, the Commission Staff explained the wording changes stating, "[t]he draft uses the term 'qualifying facility' (instead of 'distributed generation facility') to make the rule applicable to all facilities. The draft also uses the term 'point of common coupling,' which is used in the Commission's interconnection standards as the point where the customer's electric power system connects to the utility's power system."[23]

[21] Minn. Stat. § 216.164, subd. 2a(h).
[22] Minn. R. 7835.0100, subp. 4.
[23] *In the Matter of Possible Amendments to Rules Governing Cogeneration and Small Power Production, Minnesota Rules, Chapter 7835,* Dkt. 13-729, Minn. Pub. Util. Comm., STAFF BRIEFING PAPERS, p. 5 (Oct. 30, 2014).

Notably, unlike Federal law for facilities greater than 1 MW, neither the statute nor the rule requires that facilities be combined with other facilities for the purpose of determining their compensation rate. The only situation where Minnesota law requires that systems be combined for any purpose is with regard to the imposition of a solar production tax. Under Minn. Stat. § 272.0295, the "nameplate capacity" of "solar energy generating systems" is combined if the systems: (1) were constructed within the same 12-month period, and, (2) "exhibit characteristics of being a single development."[24]

The only instance where the Commission has combined/co-located solar facilities for the purpose of determining their eligibility for a particular state compensation program is under the state's Community Solar Garden (CSG) program. In 2015, the Commission allowed individual community solar gardens to be combined based on an agreement between Xcel and developers, but it rejected the utility's attempt to include a proximity consideration. As the co-location issue was being discussed, which, like the One-Mile Rule, was about combining the capacity of solar facilities for the purpose of limiting their size, Xcel "included a reasonable one-mile spatial provision derived from federal law."[25] While the Commission accepted the settlement agreement's definition of co-location using the proposed multi-factor test because "[t]hese criteria are the same criteria used in Minn. Stat. § 216E.021 and Minn. Stat. § 272.0295 for determining the total size of separate yet related distributed solar generating systems,"[26] it rejected Xcel's One-Mile Rule proposal because a "geographical cutoff goes beyond the multi-factor test established in the August 6 order. That test

[24] *See* Minn. Stat. § 272.0295, subd. 2(b). Previously, for the purpose of determining the Commission's siting jurisdiction, Minn. Stat. § 216E.021(a), repealed in 2024, used the same criteria.
[25] *In the Matter of the Petition of Northern States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, Dkt. 13-867, Xcel, REPLY COMMENTS, p. 4 (Nov. 3, 2015).
[26] *In the Matter of the Petition of Northern States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, Dkt. 13-867, Minn. Pub. Util. Comm., ORDER ADOPTING PARTIAL SETTLEMENT AS MODIFIED, p. 15 (Aug. 6, 2015).

allows consideration of geographical proximity, but neither proximity nor any other factor is dispositive of whether gardens are part of a single development."[27]

Thus, to determine whether a facility is entitled to receive the average retail utility energy rate under Minnesota law or any other rate under subdivisions 3 or 4, Minnesota law measures the capacity of the facility at the point where the facility interconnects with the utility's distribution system. That language, **unlike Federal law, does not include the capacity of any other facilities**, unless it is for the purpose of determining the solar production tax. And even in that instance there is no irrebuttable presumption that all facilities within one mile will be combined. Rather, there is a temporal requirement and a multi-factor test.[28] The Minnesota Legislature could have included language similar to the One-Mile Rule if it wanted to combine systems for the purpose of determining their compensation rate, but it did not do so.

Xcel's Arguments regarding the One-Mile Rule and FERC Order Misstate Minnesota Law.

In its Reply Comments, Xcel begins its discussion of the One-Mile Rule by misquoting Minn. Stat. § 216B.164 and arguing that it is the "Minnesota PURPA Implementation Statute."[29] As noted above, there are two programs available in Minnesota, one under state law, Minn. Stat. § 216B.164, and one under Federal law, PURPA. Minn. Stat. § 216B.164, subd. 2(a), explicitly recognizes this distinction stating,

> This section as well as any rules promulgated by the commission to implement this section **or** the Public Utility Regulatory Policies Act of 1978, Public Law 95-617, Statutes at Large, volume 92, page 3117, as amended, and the Federal Energy Regulatory Commission regulations thereunder, Code of Federal Regulations, title 18, part 292, as amended, shall, **unless otherwise provided in this section**, apply to

[27] *In the Matter of the Petition of Northern States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, Dkt. 13-867, Minn. Pub. Util. Comm., ORDER APPROVING TARIFFS AS MODIFIED AND REQUIRING FILING, p. 3 (Dec. 15, 2015).
[28] *See* Minn. Stat. § 272.0295, subd. 2. It is also worth noting that solar facilities 1 MW or less are exempt from the solar production tax under subdivision 3(b).
[29] *In the Matter of the Petition of Northern States Power Co. d/b/a Xcel Energy to Revise Its Net Metering Tariffs to Apply to Qualifying Facilities Up to 5 MW*, Dkt. 24-389, Xcel, REPLY COMMENTS, p. 11 (Feb. 28, 2025)

> all Minnesota electric utilities, including cooperative electric associations and municipal electric utilities. (Emphasis added).

In other words, Minn. Stat. § 216B.164, and its rules, **OR** PURPA, and its rules, "apply to all Minnesota electric utilities," unless Minn. Stat. § 216B.164 states otherwise. It is focused on who Minnesota law **OR** Federal law apply to, not a wholesale incorporation of Federal law. It would be unreasonable and inconsistent with the plain language of Minnesota law to argue that all Federal rules apply to facilities interconnecting under Minnesota law. Federal law only applies to facilities interconnected under Minnesota law to the extent the plain language of Minnesota law incorporates a Federal requirement. If a facility is seeking to interconnect under Minn. Stat. § 216B.164, then the requirements to interconnect and the rate to which the facility is entitled are determined by Minn. Stat. § 216B.164, including the rules, policies and procedures adopted by the Commission under Chapter 216B. If a facility is interconnecting under Federal law, then the requirements of Federal law apply. Citing a FERC order, the Court of Appeals, recognized this distinction, stating that "as long as a state provides QFs the opportunity to enter into long-term legally enforceable obligations at avoided cost rates, a state may also have alternative programs that QFs and electric utilities may agree to participate in."[30] And FERC, in another order explicitly noted the state versus Federal distinction, stating "Vermont's SPEED program, in contrast, is a voluntary program that Otter Creek and other QFs may choose to avail themselves of if they wish to do so, but it in no way replaces or supersedes the Rule 4.100 program. Instead, the SPEED program is simply an option offered by Vermont to QFs like Otter Creek in addition to, but not as a replacement for, the Rule 4.100 program.[31] In its Reply Comments, Xcel also recognizes this distinction[32] but then seeks to

[30] *See In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, p. 19-20 (Minn. Ct. App. May 31, 2016) (unpublished decision) (citing FERC's *Winding Creek Solar LLC, 151 FERC ¶ 61,103 at *1 (2015)*).

[31] *Otter Creek Solar LLC*, 146 FERC 61,192 at p. 3-4 (2014) (the Rule 4.100 program is Vermont's implementation of PURPA).

[32] *In the Matter of the Petition of Northern States Power Co. d/b/a Xcel Energy to Revise Its Net Metering Tariffs to Apply to Qualifying Facilities Up to 5 MW*, Dkt. 24-389, Xcel, PETITION, p. 3 (Nov. 20, 2024) ("Net metering 'is an

blur the distinction to incorporate the One-Mile Rule in a manner in which it is not incorporated into Minnesota law, applying it "for PURPA and net metering purposes."[33]

As discussed above, to determine the rate a facility that interconnects under Minn. Stat. § 216B.164 is entitled to, one must first determine under which subdivision the facility is seeking compensation. If the facility is seeking a kilowatt-hour credit under Minn. Stat. § 216B.164, subd. 3a, then the facility must be interconnected to a public utility and have a capacity at the point of interconnection/common coupling that is 40 kW or greater, but less than 1 MW. In this situation, the One-Mile Rule is not applicable because the relevant statute and rule do not require the facility to be a qualified facility or otherwise incorporate the One-Mile Rule. The Minnesota Legislature could have defined a "net metered facility" to be a qualified facility "constructed for the purpose of offsetting energy use through the use of renewable energy or high-efficiency distributed generation sources," but it did not. It said it is "*an electric generation facility* constructed for the purpose of offsetting energy use through the use of renewable energy or high-efficiency distributed generation sources."[34] And neither Xcel nor any other party can add or change the language of a statute or rule, especially when it is inconsistent with the purpose of Minn. Stat. § 216B.164, which is "to give the maximum possible encouragement" to small power production. Combining systems to limit their rate eligibility is clearly not giving "the maximum possible encouragement" to small power production. Smaller facilities need rates greater than the avoided cost rate to be financeable.

Now, of course, if a facility wants to receive compensation under a subdivision that requires it to be a qualified facility, then Xcel is correct that it must meet the Federal requirements to be a

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incentive mechanism that is outside the scope of PURPA.'"); *In the Matter of the Petition of Northern States Power Co. d/b/a Xcel Energy to Revise Its Net Metering Tariffs to Apply to Qualifying Facilities Up to 5 MW*, Dkt. 24-389, Xcel, REPLY COMMENTS, p. 10 (Feb. 28, 2025) ("There is no PURPA requirement to offer this type of net metering, and the Department has already explained that net metering is outside the scope of PURPA.").

[33] *In the Matter of the Petition of Northern States Power Co. d/b/a Xcel Energy to Revise Its Net Metering Tariffs to Apply to Qualifying Facilities Up to 5 MW*, Dkt. 24-389, Xcel, REPLY COMMENTS, p. 13 (Feb. 28, 2025)

[34] Minn. Stat. § 216B.164, subd. 2a(j); *see also* Minn. R. 7835.0100, subp. 15a. Emphasis added.

qualified facility, which includes the One-Mile Rule. Thus, if the facility was located within one-mile of another facility or facilities and the total capacity of those facilities exceeded 80 MWs, then that facility could not be considered a qualified facility. Or, if two or more facilities within 1 mile exceed 1 MW, then that facility could not be considered a qualified facility until it filed the relevant paperwork necessary to be a qualified facility. But, if those facilities did not exceed 1 MW, then no paperwork is required to be filed. That is the extent to which the One-Mile Rule is applicable under the plain language of Minnesota law-to determine whether a particular facility is a qualified facility. Once it is determined to be a qualified facility, as discussed above, the plain language of Minnesota law determines the capacity of that qualified facility at its point of interconnection/common coupling. The plain language of Minnesota law does not incorporate the One-Mile Rule to determine the capacity of a facility for the purpose of determining what compensation rate it is entitled to under Minnesota law.

Moreover, as discussed above, the One-Mile Rule is not used to determine various compensation rates under PURPA because PURPA only has one compensation rate, the avoided cost rate. Thus, even under Federal law, it is not used the way Xcel proposes it be used under Minnesota law. It is used to make sure facilities are not over 80 MWs and, as in the SunE B9 order cited by Xcel, determine whether or not the facility is required to file the necessary paperwork because facilities under 1 MW are exempt from PURPA's filing requirement. Thus, both the One-Mile Rule and the SunE B9 order are inapplicable for the purpose of determining the compensation rate that a facility is entitled to under Minnesota law.

CONCLUSION

Based on the Reply Comments filed in this matter by Xcel, the Petition filed by Hennepin County, and complaints that MnSEIA has received from its members, there is clearly a

misunderstanding by utilities about the applicability of the Federal One-Mile Rule under Minnesota law. This misunderstanding has caused and will continue to cause disputes between utilities and their customers, delaying the development of the renewable energy projects that Hennepin County and the State need to reach their clean energy goals, wasting time and, in the case of Hennepin County, taxpayer resources. In order to avoid these disputes from being brought to the Commission, the Commission should clarify that, under Minnesota law, the One-Mile Rule is limited to determining whether a facility is a qualified facility when that is a statutory requirement. It is not used to determine the capacity of a facility for the purpose of determining its compensation rate under Minnesota law.

Thank you for your time and consideration of the important issues raised in this matter.

Sincerely,

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