

June 9, 2025

Minnesota Public Utilities Commission
121 7th Place E, Suite 350
Saint Paul, MN 55101-2147

RE: Before The Minnesota Public Utilities Commission Docket No. E-123/C-25-219. Comments Of The Alliance For Tribal Clean Energy In Support Of The Upper Sioux Community

To the Honorable Commissioners of the Minnesota Public Utilities Commission:

The Alliance for Tribal Clean Energy (“The Alliance”) respectfully submits these comments in response to the Notice of Comment Period issued on May 9, 2025, by the Minnesota Public Utilities Commission (“Commission”) in the matter of a formal complaint filed by the Upper Sioux Community (“Community”) against the Minnesota Valley Cooperative Light & Power Association (“Minnesota Valley”). The Alliance is a national, Native-led 501(c)(3) organization dedicated to advancing Tribal energy sovereignty, economic resilience, and environmental stewardship through accessible clean energy development. Our mission is to support Tribal Nations in achieving energy sovereignty through capacity building, technical assistance, and policy advocacy that centers Tribal values and governance systems.

The Alliance strongly supports the complaint filed by the Community and affirms the Community’s inherent sovereign authority to construct, operate, and benefit from energy infrastructure on its lands. We urge the Commission to assert jurisdiction over this matter under Minn. Stat. § 216B.17.

I. TRIBAL SOVEREIGNTY AND JURISDICTION

The Upper Sioux Community is a federally recognized Tribal Nation that possesses inherent sovereignty over its territory and internal affairs. Consistent with long-standing federal Indian Law principles and U.S. Supreme Court precedent, Tribes retain the right to govern activities occurring on Tribal lands unless expressly limited by Congress (see *Montana v. United States*, 450 U.S. 544 (1981)¹; *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982)²).

The Community’s solar and battery project is fully behind-the-meter, does not export electricity to the grid, and is not interconnected to Minnesota Valley’s infrastructure.³ As such, it is purely internal to the Community’s energy use and governance. There is no legal basis for Minnesota Valley to regulate or prohibit such activities, nor to condition continued service on their cessation.⁴

¹ *Montana v. United States*, 450 U.S. 544, 564 (1981).

² *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137–38 (1982).

³ See Pg. 11 in Upper Sioux Community Non-Confidential Mediation Statement submitted May 1, 2025.

⁴ Minn. Stat. § 216B.17 subd. 6a.

II. JURISDICTION OVER THE SUBJECT MATTER OF COMPLAINT AND REASONABLE GROUNDS

The Commission has jurisdiction over the complaint and should consult with the Community to consider next steps for the complaint against Minnesota Valley.⁵ Minnesota Valley's threat to terminate electric service to the Community includes terminating services to critical infrastructure, like hospitals and schools, and significant economic development facilities, such as the Prairie's Edge Casino. This termination of services constitutes an unreasonable and unduly utility practice subject to investigation under Minn. Stat. § 216B.17.⁶ The statute allows the Commission to investigate when an act, omission, or practice "relating to the furnishing of... electricity" is alleged to be "unreasonable, insufficient, or unjustly discriminatory."

The Department of Commerce correctly identifies that while cooperative associations are not generally public utilities, their "service standards and practices" are subject to Commission oversight when they affect the delivery of electricity in a discriminatory or harmful manner. The Community's complaint falls precisely into this category.⁷

III. PUBLIC INTEREST AND HARM TO TRIBAL WELLBEING

It is unequivocally in the public interest for the Commission to open an investigation and clarify the rights and obligations involved in this dispute. Access to safe, reliable electricity is not only a matter of convenience but one of public health, safety, and economic stability, especially for Tribal Nations who often face chronic infrastructure and service disparities.⁸

A power shutoff to the Community would have devastating consequences by disrupting healthcare delivery, loss of income and jobs, risks to food storage and clean water, and community-wide instability. These threats are disproportionate and unconscionable, particularly in response to the lawful exercise of self-determination through clean energy development.⁹

IV. THE CLEAN ENERGY TRANSITION MUST NOT REINFORCE HISTORICAL INJUSTICES

Tribal Nations across the U.S. are leading the way in clean energy development as a pathway to economic sovereignty and intergenerational sustainability. Threats such as those issued by Minnesota Valley are evident reminders that historical patterns of coercion and exclusion continue to play out in modern infrastructure disputes. This case has broader implications beyond the Community. Many Tribes are pursuing or have already installed similar

⁵ Minn. Stat. § 216B.17 subd. 1.

⁶ Ibid.

⁷ Minn. Stat. § 216B.17 subd. 6a.

⁸ National Indian Health Board, *Climate Ready Tribes Initiative: How Tribes Are Addressing the Health Effects of Climate Change* (Washington, D.C.: National Indian Health Board, 2021), 12–15.

⁹ U.S. Government Accountability Office, *Tribal Energy Development: Action Needed to Improve Accountability and Coordination of Federal Efforts*, GAO-15-502 (Washington, D.C.: U.S. Government Accountability Office, 2015), 6–8. <https://www.gao.gov/assets/680/671095.pdf>

behind-the-meter energy systems. The precedent set here could affect dozens of Tribal Nations and hundreds of future clean energy projects. It is critical that the Commission send a strong signal that cooperative utilities may not weaponize service access as leverage to block Tribal progress.¹⁰

CONCLUSION

The Alliance for Tribal Clean Energy fully supports the Community's complaint and urges the Minnesota Public Utilities Commission to assert jurisdiction under Minn. Stat. § 216B.17, the Commission to consult with the Tribe on preferred next steps, and initiate an investigation. The Commission should affirm that fully behind-the-meter renewable energy projects located on Tribal lands are not subject to cooperative utility regulation or interference.

These systems fall squarely within the sovereign authority of Tribal Nations and are essential tools for achieving energy self-determination and economic resilience. The ruling in this case will not only affect the Community but also have significant implications for other Tribal Nations pursuing similar clean energy solutions. As more Tribes invest in behind-the-meter solar and battery storage systems, it is critical that they be protected from utility retaliation and regulatory overreach. By honoring Tribal leadership and taking action, the Commission can set a true precedent for sovereignty-centered energy independence. The Alliance appreciates the opportunity to submit these comments and stands in support of the Community and all Tribal Nations seeking to shape their futures on their own terms.

Respectfully submitted,




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President & CEO
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¹⁰ U.S. Department of Energy, Office of Indian Energy Policy and Programs, *Accelerating Energy Development in Indian Country: Five-Year Strategic Roadmap 2021–2025* (Washington, D.C.: U.S. Department of Energy, 2021), 8–12. <https://docs.nrel.gov/docs/fy16osti/66101.pdf>

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