



March 13, 2026

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

**Re: In the Matter of 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 enclosed the comments of the Coalition for Community Solar Access, the Minnesota Solar Energy Industries Association, and the Solar Energy Industries Association, collectively the Joint Solar Parties (JSP). The JSP respectfully submits these comments in response to the Notice of Comment Period issued by the Minnesota Public Utilities Commission on January 13, 2026.

The JSP looks forward to continued collaboration with the Commission, the Department of Commerce, the Attorney General, utilities, and all stakeholders on these and other issues to ensure the thoughtful deployment of distributed energy resources in Minnesota.

Sincerely,

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**STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION**

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Joseph Sullivan	Commissioner
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**In the Matter of Formal Complaint of  
Hennepin County, Minnesota, Against Xcel  
Energy Under Minn. Stat. 216B.164**

**INITIAL COMMENTS**

**March 13, 2026**

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

**EXECUTIVE SUMMARY**

The Solar Energy Industries Association (SEIA), Minnesota Solar Energy Industries Association (MnSEIA), and Coalition for Community Solar Access (CCSA), collectively the Joint Solar Parties (JSP), respectfully submit these Initial Comments in response to the Notice of Comment Period, issued by the Minnesota Public Utilities Commission (Commission or PUC) on January 13, 2026. The JSP support Hennepin County’s Complaint because we believe that Xcel cannot establish, implement or enforce significant rules or practices without the Commission’s prior approval and, even if Xcel requested Commission approval of the rule at issue in this docket, it should be rejected because Xcel’s application of this rule is inconsistent with Minnesota and Federal law. Xcel’s application would unquestionably limit the development of renewable energy resources in Minnesota, impairing Minnesotans’ ability to be part of the clean energy economy and Minnesota to meet its clean energy goals. Accordingly, the JSP believe that:

- The Commission has jurisdiction over the subject matter of the Complaint;

- There are reasonable grounds for the Commission to investigate the allegations in the Complaint;
- It is in the public interest for the Commission to investigate these allegations; and,
- The Commission should require Xcel to Answer the Formal Complaint and then initiate an expedited proceeding.

The JSP appreciate the opportunity to provide comments in this docket and the Commission's consideration of these important issues.

## **INTRODUCTION**

The Formal Complaint in this matter presents a straightforward legal issue for the Commission to determine. That issue is whether the incorporation of the Federal definition of a “qualifying facility” under Minn. R. 7835.0100, subp. 19, applies to a “net metered facility” under Minn. Stat. § 216B.164, subd. 3a, and Minn. R. 7835.4017. The Federal definition includes a provision that aggregates the generation of affiliated facilities if they 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” for the purpose of determining that their maximum size is 80 MWs or less.<sup>1</sup> This is commonly referred to as the “One-Mile Rule.” FERC adopted the One-Mile Rule to prevent qualifying facilities (QF) from “gaming” the 80 MW limitation by placing separate, but adjacent QFs owned by the same entity, which individually were under 80 MWs, but collectively exceeded 80 MWs.

With regard to compensation, the facilities at issue in this matter are considered “net metered facilities” under Minn. Stat. § 216B.164, subd. 3a, and Minn. R. 7835.4017, which receive “a kilowatt-hour credit on the customer’s energy bill carried forward and applied to subsequent energy bills,” with any excess energy at the end of that calendar year being compensated at an avoided cost

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<sup>1</sup> 18 C.F.R. § 292.204(a)(2)(i)(A).

rate. The definitions of a “net metered facility” under Minn. Stat. § 216B.164, subd. 2a(j), and Minn. R. 7835.0100, subp. 15a, do not use the term QF or otherwise incorporate the Federal definition of a QF. Accordingly, a simple reading of the plain language of the relevant law provides the clear answer, the One-Mile Rule does not apply to net metered facilities under Minnesota law.

Moreover, to the extent the Federal One-Mile Rule does apply to QFs under Minn. Stat. § 216B.164, Xcel is applying it improperly in violation of Minnesota law and policy. The Federal One-Mile Rule is not used to determine the capacity of the QF for purposes of determining what compensation rate the facility is entitled to under state law. Instead, it is used to determine whether the size of the facilities and all affiliated facilities within one mile are 80 MWs or less. The two facilities at issue in this matter are indisputably far under the 80 MW limit. As the Commission is well-aware, there are two compensation programs available to facilities in Minnesota.<sup>2</sup> One under Federal law, the Public Utility Regulatory Policies Act of 1978 (PURPA), and one under state law, Minn. Stat. § 216B.164.<sup>3</sup> 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.<sup>4</sup>

And although the incorporation of the Federal definition of a QF in Minnesota Rules does limit the aggregate size of all QFs within a mile to 80 MWs, the plain language of Minnesota law clearly determines the compensation rate for purchases from any particular QF by the capacity of the

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<sup>2</sup> 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.”).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

particular facility at its point of interconnection/common coupling.<sup>5</sup> 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.

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 Commission has previously rejected the application of any geographic proximity for the purposes of determining a facility's size<sup>6</sup> and Minnesota law only allows facilities to be combined for the limited purpose of imposing a solar production tax and permitting.<sup>7</sup> But, even in these situations, it is done based on a temporal requirement and the application of a multi-factor test that does not have any irrebuttable presumptions. Accordingly, there is a reasonable basis and it is in the public's interest for the Commission to address this issue.

### **BACKGROUND**

On December 23, 2025, Hennepin County, Minnesota (County) filed a Formal Complaint against Xcel alleging violations of sections 216B.164, 216B.16, 216B.03, 216B.06, and 216B.07 of the Minnesota Statutes and parts 7835.1900, 7835.4011, and 7835.4014 of the Minnesota Rules regarding Xcel's illegal application of the "One-Mile Rule" to restrict the County's participation and compensation under Minnesota's net metering program.

The County seeks relief by requesting the Commission find the arrays in question are interconnected net metered facilities and order that the County is entitled to compensation for the

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<sup>5</sup> See Minn. Stat. § 216B.164, subd. 2a(c); Minn. R. 7835.0100, subp. 4.

<sup>6</sup> 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).

<sup>7</sup> See Minn. Stat. §§ 272.0295; 216I.04

arrays' net input to the Xcel's distribution system as provided for in the contracts executed by the County and Xcel. The County also requested that the Commission enjoin Xcel Energy from aggregating the generation capacity of the County's net metered facilities—which are separately metered, have distinct interconnect points, are located on non-contiguous properties, and for which the County has not requested account aggregation—for the purpose of determining net metering eligibility and compensation. The County is also requesting the Commission award reasonable costs, disbursements, and attorney's fees pursuant to Minn. Stat. § 216B.164, subd. 5 and Minn. R. 7835.4550.

On January 15, 2026, the Commission issued a Notice of Comment Period regarding whether the Commission should investigate the Formal Complaint and Request for Relief by the County against Northern States Power Company dba Xcel Energy and stated that the following topics were open for comment:

- Does the Commission have jurisdiction over the subject matter of the Complaint?
- Are there reasonable grounds for the Commission to investigate these allegations?
- Is it in the public interest for the Commission to investigate these allegations upon its own motion?
- If the Commission chooses to investigate the Complaint, what procedures should be used to do so?

### **COMMENTS**

The JSP provide the following comments regarding the topics that the Commission designated as open for comment.

#### **I. The Commission Has Jurisdiction over the Subject Matter of the Formal Complaint.**

The Commission has jurisdiction over the subject matter of the Complaint under Minn. Stat. § 216B.17, subd. 1. That subdivision provides that the Commission shall investigate a complaint by,

among other parties, the governing body of any political subdivision regarding, among other things, “any of the rates, tolls, tariffs, charges, or schedules or any joint rate or any regulation, measurement, practice, act, or omission affecting or relating to the production, transmission, delivery, or furnishing of natural gas or electricity or any service in connection therewith is in any respect unreasonable, insufficient, or unjustly discriminatory,” unless it is not in the public interest. This provides the Commission with jurisdiction over a broad range of utility actions, which would include and Xcel’s attempt to illegally aggregate two of the County’s net metered facilities to disqualify them from the rate they are legally entitled to receive under Minn. Stat. § 216B.164, subd. 3a, and Minn. R. 7835.4017. Minn. Stat. § 216A.05, subd. 1, also provides the Commission with the authority to “adjudicate all proceedings brought before it in which the violation of any law or rule administered by the Department of Commerce is alleged,” and Minn. Stat. § 216A.07, subd. 2, makes Commerce responsible for enforce of Chapter 216B.

In addition, Minn. Stat. § 216B.164, subd. 5, would also provide the Commission with jurisdiction over this dispute because the County’s facilities also fall under this provision. This subdivision states, “In the event of disputes between a public utility and a qualifying facility, either party may request a determination of the issue by the commission.”<sup>8</sup> Minn. R. 7835.4500 also states, “In case of a dispute between a utility and a qualifying facility or an impasse in the negotiations between them, either party may request the commission to determine the issue.” As discussed below, the County’s facilities meet the definition of a qualified facility and filing a complaint would qualify as a dispute between the parties.

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<sup>8</sup> Minn. Stat. § 216B.164, subd. 5.

## **II. There are Reasonable Grounds for the Commission to Investigate the Allegations in the Formal Complaint.**

There is no dispute that Xcel is implementing a rule that will lower the compensation Xcel has agreed by contract to the County. The County asserts, and the JSP agree, that this action is inconsistent with Minnesota law. Thus, there are reasonable grounds for the Commission to investigate the allegations in the Complaint.

### **The applicability of any specific provision of Minnesota law depends on the plain language of the relevant law.**

As the Commission is well aware, to determine the applicability of any particular provision of Minnesota law, one must look at the language of the relevant law. To determine the compensation that a small power production facility is entitled to under Minnesota law, one must review the relevant language of Minn. Stat § 216B.164 and Minn. R. Ch. 7835, 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.<sup>9</sup>

The Minnesota Legislature adopted Minn. Stat. § 216B.164 to implement Minnesota's energy policy and PURPA.<sup>10</sup> 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."<sup>11</sup>

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<sup>9</sup> Minn. Stat. § 645.16.

<sup>10</sup> 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")

<sup>11</sup> Minn. Stat. § 216B.164, subd. 1.

Thus, the Commission must look at the relevant 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 language and purpose of the relevant statute.<sup>12</sup>

The County is requesting compensation from Xcel under Minn. Stat. § 216B.164, subd. 3a, and Minn. R. 7835.4017.

**Compensation for Facilities Under Minn. Stat. § 216B.164, subd. 3a, and Minn. R. 7835.4017.**

Compensation under Minn. Stat. § 216B.164 is divided into three subdivisions. Compensation under subdivision 3 is for small facilities. Compensation under subdivision 3a is for net metered facilities interconnected to a public utility. And compensation under subdivision 4 is for both qualifying facilities and net metered facilities. Each has different compensation structures, applies to different types of electric utilities, and has different requirements.

As noted above, the County is requesting compensation from Xcel under Minn. Stat. § 216B.164, subd. 3a, and Minn. R. 7835.4017. Minn. Stat. § 216B.164, subd. 3a(a), which only applies to public utilities, 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.”

And, consistent with this statutory language, Minn. R. 7835.4017 states:

Subpart 1. **Kilowatt-hour credit.** A customer with a net metered facility can elect to be compensated for net input into the utility's system in the form of a kilowatt-hour credit on the customer's bill, subject to Minnesota Statutes, section 216B.164, subdivision 3a, and the following conditions:

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<sup>12</sup> See Minn. Stat § 14.05, subd. 1.

- A. the customer is not receiving a value of solar rate under Minnesota Statutes, section 216B.164, subdivision 10;
- B. the customer is interconnected with a public utility; and
- C. the net metered facility has a capacity of at least 40 kilowatt capacity but less than 1,000 kilowatt capacity.

Subp. 2. **Notification to customer.** A public utility must notify the customer of the option to be compensated for net input in the form of a kilowatt-hour credit under subpart 1. The public utility must inform the customer that if the customer does not elect to be compensated for net input in the form of a kilowatt-hour credit on the bill, the customer will be compensated for the net input at the utility's avoided cost rate, as described in the utility's tariff for that customer class.

Subp. 3. **End-of-year net input.** A public utility must compensate the customer, in the form of a payment, for any net input remaining at the end of the calendar year at the utility's avoided cost rate, as described in the utility's tariff for that class of customer.

Because the County is only requesting compensation as a net metered facility under Minn. Stat. § 216B.164, subd. 3a, and Minn. R. 7835.4017, the other compensation schemes provided for under Section 164 and Chapter 7835 are not relevant to this dispute.

**A Net Metered Facility Must Be Interconnected with Public Utility, With a Capacity More than 40 kw, but Less than 1 MW.**

Because the County is requesting compensation under Minn. Stat. § 216B.164, subd. 3a, and Minn. R. 7835.4017, the Commission must determine whether the facilities at issue in this matter are net metered facilities. 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.”<sup>13</sup>

It is important to recognize that this definition imposes a constraint on a net metered facility that is not imposed on a QF. A net metered facility must be “constructed for the purpose of offsetting energy use,” while a QF does not contain a similar limitation. Thus, a QF could be constructed for

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<sup>13</sup> Minn. Stat. § 216B.164, subd. 2a(j); Minn. R. 7835.0100, subp. 15a.

the purpose of exporting the majority of its energy and only offset a small fraction or none of its energy use. This distinction explains the difference in compensation. Under Minn. Stat. § 216B.164, subd. 3(b), a QF between 40 kW and 1 MW receives only the avoided cost rate for all its net output. There is no annual kilowatt-hour credit, with only the annual excess generation receiving the avoided cost rate. A net metered facility of the same size is treated more favorably under Minn. Stat. § 216B.164, subd. 3a, receiving a kilowatt-hour credit throughout the year, with only the excess generation at the end of the year being compensated at the avoided cost rate. And, notably, the net metered definition does not incorporate the Federal definition of a QF.

In addition, both statute and rule require that the facility be interconnected to a public utility and have a capacity of at least 40 kW, but less than 1 MW.<sup>14</sup> Because it appears to be undisputed that the relevant facilities were constructed for the purpose of offsetting energy use through the use of renewable energy and that they are interconnected to a public utility, the only issue left for the purpose of determining their compensation rate is the capacity of the net metered facilities.

**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.**

Minnesota law measures the capacity of every QF or net metered facility at the single point where it connects to the utility's distribution system. Minn. Stat. § 216.164, subd. 2a(c), 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." The statute uses the term distributed generation facility instead of QF. 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,

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<sup>14</sup> See Minn. Stat. § 216B.164, subd. 3a(a); Minn. R 7835.4017, subp. 1.

renewable fuel, or a similarly clean fuel, and may include waste heat, cogeneration, or fuel cell technology.”<sup>15</sup> Thus, the statutory definition of a distributed generation facility is narrower than the Federal definition of a QF 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.”<sup>16</sup> 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.”<sup>17</sup> This definition of capacity applies to both QFs and net metered facilities.

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. Minnesota law combines facilities in only two narrow contexts, neither of which is compensation eligibility. Systems may be combined to determine the imposition of a solar production tax and for permitting purposes. Minn. Stat. § 272.0295 requires combining the “nameplate capacity” of “solar energy generating systems” for the purpose of the solar production tax

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<sup>15</sup> Minn. Stat. § 216.164, subd. 2a(h).

<sup>16</sup> Minn. R. 7835.0100, subp. 4.

<sup>17</sup> *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).

if the systems: (1) were constructed within the same 12-month period, and, (2) “exhibit characteristics of being a single development.”<sup>18</sup> Minn. Stat. § 216I.04, subd. 1, applies the same temporal and multi-factor test for permitting purpose, stating in relevant part, “the alternating current nameplate capacity of one solar energy generating system, wind energy conversion system, or energy storage system must be combined with the alternating current nameplate capacity of any other solar energy generating system, wind energy conversion system, or energy storage system that: (1) is constructed within the same 12-month period; and (2) exhibits characteristics of being a single development.”<sup>19</sup>

The only instance that the JSP are aware of 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 determination. 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.”<sup>20</sup> 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<sup>21</sup> and Minn. Stat. § 272.0295 for determining the total size of separate yet related distributed solar generating systems,”<sup>22</sup> it rejected Xcel’s One-Mile Rule proposal

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<sup>18</sup> 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.

<sup>19</sup> Minn. Stat. § 216I.04, subd. 1 (characteristics of being a single development include, but are not limited to, “ownership structure, an umbrella sales arrangement, shared interconnection, revenue-sharing arrangements, and common debt or equity financing”).

<sup>20</sup> *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).

<sup>21</sup> Minn. Stat. § 216E.021 was amended and re-codified to Minn. Stat. § 216I.04.

<sup>22</sup> *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).

because a “geographical cutoff goes beyond the multi-factor test established in the August 6 order. That test allows consideration of geographical proximity, but neither proximity nor any other factor is dispositive of whether gardens are part of a single development.”<sup>23</sup>

Thus, to determine the capacity of either a QF or net metered facility under Minnesota law, Minnesota law measures the capacity of the facility at the point where the facility interconnects with the utility’s distribution system, referred to as the point of interconnection or common coupling.<sup>24</sup> 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 or for permitting. 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.<sup>25</sup> The Minnesota Legislature could have included language similar to the One-Mile Rule in the definition of a net metered facility or stated that a net metered facility was a “qualifying facility constructed for the purpose of offsetting energy use through the use of renewable energy or high-efficiency distributed generation sources” if it wanted to combine systems for the purpose of determining their compensation rate, but it did not do so. It used the term “electric generation facility” instead and that decision cannot be ignored or re-written. The Legislature even made it clear that Minnesota law trumps FERC rules when it said that Section 164, “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

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<sup>23</sup> *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).

<sup>24</sup> See Minn. Stat. § 216B.164, subd. 2a(c); Minn. R. 7835.0100, subp. 4.

<sup>25</sup> 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).

to all Minnesota electric utilities, including cooperative electric associations and municipal electric utilities.”<sup>26</sup> As discussed above, Section 164, and Minnesota Rules, provide otherwise with regard to how capacity is measured for the purpose of determining what compensation rate a facility is entitled to.

Of course, as discussed below, to be a QF a facility must be less than 80 MWs when combined with other systems within one mile, but the capacity of any particular QF for purposes of compensation under Minnesota law, is determined, as discussed above, by its capacity at its point of interconnection/common coupling. To apply the One-Mile Rule as Xcel is doing would be re-writing the statutory definitions of a net metered facility and capacity in violation of Minn. Stat. § 645.16, and effectively invalidating the rules that the Commission established regarding these matters.

**A Solar Production Facility 80 MWs or Less is a QF for Purposes other than Compensation.**

It is also important to recognize and understand that while the relevant facilities are net metered facilities for purposes of compensation, they can also be QFs for other purposes. For example, they are QFs for purposes of disputes under subdivision 5 and interconnection under subdivision 8 of Section 216B.164.<sup>27</sup> But even though the relevant facilities are QFs for the purposes of interconnection and dispute resolution, that does not make them QFs for the purpose of compensation. Again, the language and purpose of the relevant statute must be considered.

Because neither Minn. Stat. § 216B.164, nor any other statute, define the term “qualifying facility,” the Commission defined it under Minn. R. 7835.0100, subp. 19, to mean:

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<sup>26</sup> Minn. Stat. § 216B.164, subd. 2(a) (emphasis added).

<sup>27</sup> The Uniform Statewide Contract established in Minn. R. 7835.9910 refers to facilities under the contract as QFs, but Minn. Stat. § 216B.164, subd. 6, makes it clear that the uniform statewide form of contract established by the Commission is “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.”

"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 QF. 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.”<sup>28</sup> 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).<sup>29</sup>

This is how the One-Mile Rule is incorporated into Minnesota law. However, it is important to recognize that this provision is only for the purpose of determining that the maximum size of the facility, along with affiliated QFs within one mile, is 80 MWs or less, not to determine the facility’s compensation rate.<sup>30</sup> Unlike Minnesota law, all purchases under PURPA are at the avoided cost rate,<sup>31</sup> which is typically not sufficient to make smaller projects financeable. Thus, unlike Minnesota law, whether a facility is 8 kW, 80 kW or 80 MW, the compensation rate is the same under PURPA. Which is why Minnesota law, whose purpose is to “give the maximum possible encouragement” to

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<sup>28</sup> See 18 C.F.R. §§ 292.203, 292.204.

<sup>29</sup> 18 C.F.R. § 292.204(a)(2)(i)(A).

<sup>30</sup> See 18 C.F.R. § 292.204(a).

<sup>31</sup> 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.”).

small power production, provides different compensation rates to different types of facilities that are greater than the avoided cost rate.<sup>32</sup>

It is probably also important to note the maximum size determination is used for “qualification or recertification.”<sup>33</sup> However, 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 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 energy use to the distribution system.

Thus, while the One-Mile Rule doesn’t even apply to facilities 1 MW and under, even if it did, it would only be for the purpose of determining the maximum size of the facility. Once it is determined that a facility, combined with affiliated facilities within one mile, total less than 80 MWs, the capacity of each facility for the purpose of compensation is determined under Minnesota law by the capacity of the particular qualifying at its point of interconnection/common coupling with the utility’s electric system. Obviously, two or more separate facilities up to a mile away from each other cannot have the same point of interconnection/common coupling with the utility’s distribution system. Moreover, applying the One-Mile Rule in such a way would discourage small power production in Minnesota, not “give the maximum possible encouragement” of it as required by Minnesota law. Thus, Xcel’s application of the Federal One-Mile Rule for the purpose of determining the compensation rate of particular facilities under Minnesota law violates the plain language of Minnesota law.

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<sup>32</sup> See, e.g., Minn. Stat. § 216B.164, subs. 3, 3a, & 10, Minn. Stat. § 216B.1641, subs. 1(d) & 8.

<sup>33</sup> See 18 C.F.R. § 292.204(a)(2)(i)(A).

### **III. It is in the Public Interest to Investigate the Allegations in the Formal Complaint.**

It is well known that energy demand is increasing faster than planned generation additions to the grid. While Minnesota long ago established the right of every Minnesotan to be a small power producer, now, more than ever, Minnesota needs to encourage everyone, at every scale to produce energy. And small-scale energy production can usually be added much faster than larger, utility scale projects.

The Federal One-Mile Rule was established for the narrow purpose of ensuring that affiliated facilities within one mile of each other totaled 80 MWs or less so that the owner of the facilities was not unfairly taking advantage of PURPA's mandatory requirement that utilities purchase energy from the facilities. In other words, it was meant to make sure that facilities were not too big. Minnesota law, on the other hand, is meant to encourage small power production. Application of the Federal One-Mile Rule to facilities under Minnesota law, which are already limited to 10 MWs, inverts its purpose entirely. It would transform a federal tool designed to prevent facilities from being too large into a state law barrier that penalizes Minnesotans for adding additional small-scale renewable generation to adjacent or nearby properties, which would discourage more widespread adoption of renewable energy resources, especially smaller resources. Such an approach will make it harder for businesses, schools, cities, counties and presumably the state government, from using renewable energy to stabilize their energy costs, which will jeopardize the reliability of the grid and make it harder for Minnesota to meet its clean energy goals. A business owner who has enjoyed the benefits of a solar energy generating facility on his retail store, would be financially disadvantaged to install it on his warehouse half a mile away. A farmer who has solar on his home would not be able to add it to his farm fields almost a mile away to move his farming operations into the next century with agrivoltaics. A city that has benefitted from the financial stability that solar provides on its city hall

will not be financially able to add another solar installation to its police station down the block. And a county will not be able to add solar to its Public Safety Services Headquarters without reducing or eliminating the financial stability that having it on its Adult Corrections Facility provided.

Based on the Complaint filed by the 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 the County and Minnesota need to reach their clean energy goals, wasting time and, in the case of the County and other public entities, taxpayer resources. Future disputes will also waste additional Commission and stakeholder time and resources. As such, it is clearly in the public interest for the Commission to once again determine that the Federal One-Mile Rule is not applicable for determining compensation eligibility under Minnesota law.

#### **IV. The Commission Should Proceed with an Expedited Proceeding as Requested.**

Because the Commission has jurisdiction, there are reasonable grounds to investigate the complaint, and an investigation is in the public interest, the Commission should require Xcel to Answer the Formal Complaint pursuant to Minn. R. 7829.1800, subp. 2. After the Answer is filed, because there are no material facts in dispute, an expedited proceeding is authorized by Minn. R. 7829.1900, subp. 1, and the County requested an expedited hearing, the Commission should conduct an expedited hearing pursuant to Minn. R. 7829.1200.

#### **CONCLUSION**

To determine the eligibility of a facility for a particular compensation structure, the specific language of the relevant Minnesota law must be examined because Minnesota law has different requirements for net metered facilities and qualifying facilities. However, regardless of whether it is

a net metered facility or qualifying facility, the capacity of the facility is measured at the facility's point of interconnection/common coupling with the utility's system for the purposes of compensation under Minnesota law. Facilities are not combined for the purposes of compensation under Minnesota law. They are combined for taxing and permitting purposes, but not compensation. Thus, application of the Federal One-Mile Rule for purposes of Minnesota's compensation schemes would be inconsistent with the plain language of Minnesota law and, in violation of statutory intent, discourage small power production.

To avoid disputes caused by the continued misapplication of the Federal One-Mile Rule from being brought to the Commission, the Commission should grant the County the relief that it has requested and, once again, confirm that a rigid geographic rule is not part of Minnesota law. Facilities are only combined in very limited situations. The Federal 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, especially a net metered 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,

*/s/ Curtis Zaun, Esq.*  
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