BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

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
	PETITION FOR LEAVE TO FILE REPLY COMMENTS AND REPLY COMMENTS OF HENNEPIN COUNTY, MINNESOTA

Introduction

In these comments in reply to Xcel Energy's July 25, 2025 answer, Hennepin County explains (1) the Commission's June 25, 2025 order does not "clearly" adopt FERC's one-mile rule for state net metering facilities, (2) state law distinguishes between a qualifying facility and a net metered facility, (3) FERC precedent does not provide the Commission with authority to disregard state law, and (4) the county is not asking this Commission for a "variance." Because clarification of the Commission's order is important to the county and other industry stakeholders, Hennepin County respectfully requests leave to file these reply comments.[1]

Discussion

1. If the Commission adopted the one-mile rule, it should be explicit about it.

Xcel argues there is no need to amend the order because the Commission has "properly applied the one-mile rule."[2] The issue before the Commission in this docket was

[1] Minnesota Rules part 7829.3000, subp. 5 specifically allows the Commission to accept reply comments.

[2] Xcel Energy Answer, at 3.

Xcel's request for approval of tariff changes and a variance to Minn. R. 78354 to extend net metering under its Simultaneous Purchase and Sale A51 (non-Time of Day) and A52 (Time of Day) rate codes to QFs with capacity up to 5 MW. The Commission issued a notice of comment period, requesting input on the following:

• Should the Commission approve Xcel's requested changes to the net metering tariff to allow the tariff to apply to qualifying facilities up to and including 5 MW?

• Should the Commission approve the requested variance to Minn. R. 7829.3200.

• Are there other issues or concerns related to this matter?

Nowhere did Xcel assert in its petition that it was seeking to apply the one-mile rule; nor, unsurprisingly, did the Commission seek comment on something Xcel had not indicated was an issue in its request. Nor did the Department of Commerce address the one-mile rule in its comments. While it is true the Commission disagreed with United Health Group's arguments "for expanding the tariff changes to other net metering rate codes" based on unsupported allegations of "cross subsidizations," it is not clear the Commission adopted the one-mile rule in this docket. If it did, it would be purporting to change the way the capacity of wholly separate net metered facilities is measured under state law.

Hennepin County now finds itself at odds with Xcel in a dispute regarding an issue that was not directly raised in its petition. The county signed two separate metering contracts with Xcel which specifically provide the facilities will be separately metered and not aggregated; Xcel Energy later informed the county it was changing the terms of the contracts based on the Commission's adoption of the one-mile rule in a docket in which the county did not even participate, and that therefore the Commission *is requiring* the aggregation of the county's separate net metered facilities not only prospectively but also *retroactively*. Hennepin County does not believe that is what the Commission ordered. If that is indeed what the Commission ordered, then it is not unreasonable for the county to ask the Commission to be clear about what it did.

2. "Net metered facilities" need not be "qualifying facilities."

Xcel argues there is no distinction between a "qualifying facility" and a "net metered facility," and thus the county's decision not to seek federal QF status for its solar facilities is not only "illogical" but also *prevents* the county from receiving the very service Xcel signed written agreements to provide.[3] Because the argument is incorrect, the Commission should decline to follow it.

While developers owning and operating small power production facilities under 1 MW *may* seek to qualify their facilities with FERC as QFs, such facilities *need not* seek QF qualification or certification. On its face, the one-mile rule applies *only* to 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*."[4]

A "net metered facility" need not be synonymous with a QF and Minn. Stat. § 216B.164 regularly distinguishes between the two.[5] As the county acknowledged in its

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[3] Xcel Energy Answer, at 7.

[4] 18 C.F.R. § 292.204 (i.e., the "one mile rule")(emphasis supplied).

[5] "If the ***qualifying facility or net metered facility*** is interconnected with a nongenerating utility which has a sole source contract with a municipal power agency or a generation and transmission utility, the nongenerating utility may elect to treat its purchase of any net input under this subdivision as being made on behalf of its supplier and shall be reimbursed by its supplier for any additional costs incurred in making the purchase. ***Qualifying facilities or net metered facilities*** 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 may, at the customer's option, elect to be governed by the provisions of subdivision 4 (emphasis supplied). Minn. Stat. § 216B.164, subd. 3(e); "[a] customer with a ***qualifying facility or net metered facility*** having a capacity below 40 kilowatts that is interconnected to a cooperative electric association or a municipal 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." Minn. Stat. § 216B.164, 3(f)(emphasis supplied); "[a] public utility may not impose a standby charge on a ***net metered or qualifying facility;"*** Minn. Stat. § 216B.164, subd. 3a(b)(emphasis supplied); "(a) Except as otherwise provided in paragraph (c), this subdivision shall apply to all qualifying facilities having 40-kilowatt capacity or more as well as ***qualifying facilities as defined in subdivision 3 and net***

petition, there are several benefits under federal law for small power production facilities to register and qualify as a QF. Those benefits, however, are neither useful nor necessary for the county. To argue, as Xcel does, that a qualifying facility and net metered facility are synonymous *in every case* asks the Commission to ignore the plain words in the statute and thereby violate a fundamental rule of statutory construction: to avoid statutory interpretations that render a word or phrase superfluous, void, or insignificant.[6]

Xcel goes even further, however, stating at page seven that ["i]n order to obtain the tariffed net metering service that Hennepin County seeks here under the A55/A56 net metering rate codes, any [distributed energy resource] system would *need to be a QF."* (Emphasis supplied). Such a requirement is plainly at odds with the applicable statute, which states that "a customer with 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 [participate in the utility's net metering program]."[7] Nowhere does the statute provide that a net metered facility *must be* a qualified facility. And nowhere does state law require the capacity of separate "net metered facilities" be combined because they are located within one mile of each other. In fact, as the county pointed out in its petition and MNSEIA

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." Minn. Stat. § 216B.164, subd. 4(a)(emphasis supplied); "(a) The commission shall promulgate rules to implement the provisions of this section. The commission shall also establish a uniform statewide form of contract 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." Minn. Stat. § 216B.164, subd. 6 (emphasis supplied).

6 *See, e.g., Hagen v. Scott Management, Inc.,* 963 N.W.2d 164, 171 (Minn. 2021)("The canon against surplusage advises us to avoid interpretations that would render a word or phrase superfluous, void, or insignificant, thereby ensuring each word in a statute is given effect.").

7 Minn. Stat. § 216B.164, subd. 3a.

noted in its answer, state law already unambiguously defines the term "capacity," and without resort to the one-mile rule.[8]

3. FERC's *SunE* decision does not support adoption of the one-mile rule here.

Xcel once again muddies the water with respect to what FERC has stated on the subject matter of the one-mile rule and state net metering programs: "[t]he distinctions that Hennepin County assert, that in *SunE* there was a sale of the energy to the utility under a PPA, did not weigh in the FERC's decision on applying the one-mile rule to determine the size of the QF."[9] With due respect, whether there was a sale from the small production facilities to the utility in that case "under a PPA" was irrelevant to FERC's decision. The reason FERC found the one-mile rule applicable in that case was not because the sales were "under a PPA" but rather because the sales constituted "sales for resale" – i.e., wholesale sales (i.e., interstate commerce) – over which FERC has *explicit* jurisdiction. Tellingly, Xcel has not attempted to distinguish the FERC decisions on which the county relies.[10] The county urges the Commission to read *SunE* and the FERC cases the county cited and determine which party is correct.

4. The county is not asking for a variance.

Strangely, Xcel argues the county failed to meet the requirements for a variance under Minn. R., pt. 7829.3200. The county is not asking the commission for a "variance" to rules which do not apply in the first instance.

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[8] "Capacity" is defined as "the number of megawatts alternating current (AC) at the point of interconnection between a distributed generation facility and a utility's electric system." In a slightly different context, Commissioner Ham, for one, seems to agree: "The definition [of capacity] is already there in the statute and is very clear." *In the Matter of Dakota Electric Association's Distribution Interconnection Process and Agreement*, Docket No. 18-711, Minn. Pub. Util. Comm. Hearing, at 1:27:45 (April 11, 2024).

[9] Xcel Energy Answer at 5.

[10] *Sun Edison LLC*, 129 FERC ¶ 61,146 (2009); *New England Ratepayers Ass'n,* 172 FERC ¶ 61,042 (2020); each of which are attached for convenience.

Conclusion

For the reasons stated in Hennepin County's June 15 petition and herein, the county respectfully requests the Commission clarify that its June 25, 2025 order did not adopt FERC's one-mile rule so as to combine the capacity of state net metered facilities.

Respectfully submitted,

KUTAK ROCK LLP

Dated: July 29, 2025

By: */s/ Todd J. Guerrero*

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CERTIFICATION OF SERVICE

I, Trudy Paulson, hereby certify that on July 29, 2025, I e-filed the foregoing Petition for Leave to File Reply Comments and Reply Comments of Hennepin County, Minnesota and served a true and correct copy of the same upon all parties listed in the attached service list via electronic filing.

Dated: July 29, 2025 By: */s/ Trudy Paulson*
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