

September 17, 2024

Via Electronic Filing

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

RE: NOTICE OF COMMENT PERIOD, DOCKET NO. E015/CI-24-200

Dear Mr. Seuffert:

Nokomis Energy respectfully submits to the Minnesota Public Utilities Commission these Reply Comments in response to the Notice of Comment Period issued by the Commission on June 4, 2024, as extended on July 30, 2024.

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

Regards,



Matthew D. Melewski
General Counsel

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

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Valerie Means	Commissioner
Hwikwon Ham	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

IN THE MATTER OF THE IMPACTS OF THE
“CAPACITY” DEFINITION IN MINN. STAT.
§216B.164 AND ASSOCIATED RULES ON NET
METERING ELIGIBILITY FOR RATE-
REGULATED UTILITIES

DOCKET No. E015/CI-24-200

NOKOMIS ENERGY REPLY COMMENTS

September 17, 2024

This proceeding began with an objection to Dakota Electric Association’s technical specification manual about net-metering eligibility. At a hearing on the matter, Dakota Electric and MREA insisted on a definition of “Capacity” that was rejected by the Commission as incompatible with the statute.¹ The Commission then Ordered Dakota Electric Association to remove the incorrect reference.²

Simultaneously, the Commission opened this proceeding on how to apply the definition of “Capacity” without creating reliability problems related to net-metering rate eligibility. Interested stakeholders held a series of meetings on this topic, where, despite requests, no “reliability problems” were raised. Then, Dakota Electric, Minnesota Power, Xcel Energy, Otter Tail Power and Minnesota Rural Electric Association (collectively the “Utilities”), dedicated their Comments almost exclusively to attacking the definition of “Capacity” as it appears in the statute and as upheld by the Commission in its Order.

These Reply Comments briefly summarize the issue at the heart of this proceeding, and then explain why the only option available to the Commission is to apply the statute as written.

I. Summary of the Issue

Net-metering compensates customers for the amount of electricity exported to the grid over time. Some of the Utilities reference this in their comments, at times writing about “the amount of

¹ E.g. Minnesota Public Utility Commission, *In the Matter of Dakota Electric Association’s Distribution Interconnection Process and Agreement*, Hearing, Doc. No. 18-711, at 1:46:30 (April 11, 2024) (Commissioner Ham: “We cannot redefine what is defined in statute. The definition of capacity is already defined in the statute. This is a matter of how we are going to enforce it without jeopardizing reliability.”).

² Minnesota Public Utility Commission, *Order*, Doc. No. 16-521 (May 22, 2024).

energy exported to the grid,”³ or “how much the facility exports to the grid”⁴ or “net input into the utility’s system,”⁵ or “capacity as net export,”⁶ or “the “net export” to the grid.”⁷

The subject at issue here, however, is *eligibility* for net-metering, which is based on an instantaneous maximum limit, *i.e.* the amount of electricity at a single point in time. The amount of electricity exported to the grid over time is not relevant to this determination.

The fundamental disagreement in this proceeding is: where is the instantaneous limit measured? As will be explained in more detail below, the limit created by the definition of “Capacity” in MINN. STAT. § 216B.164 is measured “at the point of interconnection between a distributed generation facility and a utility’s electric system,” which the Commission has further defined as “the point of common coupling.”⁸ The Utilities, on the other hand, argue that the limit created by the definition of “Capacity” in MINN. STAT. § 216B is measured at the output setting of the system’s inverter(s).⁹

II. Applicable Legal Standard of Review

The Minnesota Supreme Court has explained that when the words of a statute are clear and unambiguous, the plain language of the statute controls. *See, e.g., State v. Cummings*, 2 N.W.3d 528, 533 (Minn. 2024); *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019); *Walgreens Specialty Pharmacy, LLC v. Comm’r of Revenue*, 916 N.W.2d 529, 533 (Minn. 2018); *State v. Boecker*, 893 N.W.2d 348, 351 (Minn. 2017).

To determine whether a statute is unambiguous, the Commission should analyze the statute’s text, structure, and punctuation using the canons of interpretation. *See, e.g., Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 170 (Minn. 2021); *State v. Riggs*, 865 N.W.2d 679, 682–83 (Minn. 2015) (distinguishing between the canons of interpretation and the canons of construction). The canons of interpretation include the (i) ordinary or plain-meaning canon, (ii)

³ Minnesota Rural Electric Association, *Comments*, Doc. No. 24-200 at 2-3 (Sept. 3, 2024) (hereinafter “MREA Comments”); *see id.* at 5 (“the portion of electricity that gets exported to the grid”).

⁴ Minnesota Power, *Comments*, Doc. No. 24-200 at 2 (Sept. 3, 2024) (hereinafter “MP Comments”).

⁵ MP Comments at 3.

⁶ Dakota Electric Association, *Comments*, Doc. No. 24-200 at 7 (Sept. 3, 2024) (hereinafter “Dakota Comments”).

⁷ *Id.*; Otter Tail Power Company, *Comments*, Doc. No. 24-200 at 6 (Sept. 3, 2024) (hereinafter “Otter Tail Comments”). Some of the Utilities dedicate a portion of their comments to handwringing about how to “deal with a DER system that goes above the export limit of 40kW.” Otter Tail Comments at 7. This is not a scenario implicated by any proposed definition of “Capacity” in this proceeding. Everyone is in agreement that the limit is 40kW. We disagree about where to measure it.

⁸ This is also the position of the Department of Commerce and MNSIEA.

⁹ *E.g.*, MREA Comments at 4, Dakota Comments at 6; Otter Tail Comments at 6.

the whole-statute canon, and (iii) the canon against surplusage. *See State v. Thompson*, 950 N.W.2d 65, 69 (Minn. 2020); *Riggs*, 865 N.W.2d at 682-83.

To determine the plain meaning, the Commission should look to the rules of grammar and give “Capacity” its plain and ordinary meaning in the context of the statute. *See, e.g., State v. Khalil*, 956 N.W.2d 627, 634 (Minn. 2021); *City of Brainerd v. Brainerd Invs. P’ship*, 827 N.W.2d 752, 757 (Minn. 2013); *State v. Hayes*, 826 N.W.2d 799, 803–04 (Minn. 2013); *State v. Prigge*, 907 N.W.2d 635, 638 (Minn. 2018). The Commission should not review the provision in isolation, but in the context of the statute as a whole. *See, e.g., Pakhnyuk*, 926 N.W.2d at 920; *Riggs*, 865 N.W.2d at 683; *State v. Gaiovnik*, 794 N.W.2d 643, 647 (Minn. 2011). The Commission must avoid an interpretation that renders a word or phrase superfluous, and ensure that each word in the statute is given effect. *See, e.g., Thompson*, 950 N.W.2d at 69; *Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 170 (Minn. 2021); *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016); *Allan v. R.D. Offutt Co.*, 869 N.W.2d 31, 33 (Minn. 2015); *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999).

The Commission cannot add words to the statute, or modify the words in the statute. *See Christiansen v. Univ. of Minn. Bd. of Regents*, 733 N.W.2d 156, 159 (Minn. App. 2007); *City of Baxter v. City of Brainerd*, 932 N.W.2d 477, 483 (Minn. Ct. App. 2019). If the language in the statute is clear and unambiguous, the letter of the law may not be disregarded in pursuit of its spirit or policy, nor may the Commission look to extrinsic sources beyond the express language of the statute, or consult legislative history. *See, e.g., Citizens State Bank Norwood Young Am. v. Brown*, 849 N.W.2d 55, 60 (Minn. 2014); *Haghighi v. Russian-Am. Broad. Co.*, 577 N.W.2d 927, 929 (Minn. 1998); *Great N. Ins. Co. v. Honeywell Int’l, Inc.*, 911 N.W.2d 510, 518 (Minn. 2018); *Premier Bank v. Becker Dev., LLC*, 785 N.W.2d 753, 759 (Minn. 2010); *Hutchinson Tech., Inc. v. Comm’r of Revenue*, 698 N.W.2d 1, 8 (Minn. 2005); *State v. McKown*, 475 N.W.2d 63, 66 (Minn.1991).

III. The Canons of Interpretation Demonstrate That The Definition of “Capacity” Is Unambiguous

As the Department of Commerce noted in its Comments, the statute provides a clear definition of “Capacity” for purposes of determining net metering eligibility:¹⁰

“the number of megawatts alternating current (AC) at the point of interconnection between a distributed generation facility and a utility’s electric system.”¹¹

Where is the instantaneous limit measured, as we asked above? At “the point of interconnection between a distributed generation facility and a utility’s electric system.” This is clear and unambiguous. It is not, as the Utilities have proposed, “at the inverter”¹² nor “the facility’s AC output”¹³ nor the “output of the generating device(s)”¹⁴ nor “at the Point of DER

¹⁰ Minnesota Department of Comments, Comments, Doc. No. 24-200 at 4 (Sept. 3, 2024).

¹¹ MINN. STAT. § 216B.164 Subd. 2a.(c).

¹² MREA Comments at 4.

¹³ Dakota Comments at 6; Otter Tail Comments at 6.

¹⁴ Dakota Comments at 6; Otter Tail Comments at 6.

Interconnection,”¹⁵ nor “the facility’s output where connected,”¹⁶ nor “‘between’ the qualifying facility and the consumer.”¹⁷ The statute makes clear that for purposes of net metering the instantaneous limit is measured at “the point of interconnection between a distributed generation facility and a utility’s electric system.”

The Utilities have also explicitly proposed defining “Capacity” to mean “Nameplate Capacity.”¹⁸ This would violate the canons of interpretation, because the Commission cannot add words to the statute, regardless of the reason. Furthermore, looking at the statute as a whole, the Utility’s proposed definition would render all other uses of “nameplate” capacity superfluous. If “capacity” means the same thing as “nameplate capacity,” as the Utilities’ propose, of what use is the word “nameplate”? Multiple uses of “nameplate” in statute would no longer have any independent meaning if the Commission were to adopt the Utilities’ argument.¹⁹

IV. The Commission Cannot Rely On Extrinsic Sources To Interpret “Capacity”

The Supreme Court has specifically cautioned against using “extrinsic sources” to interpret an unambiguous statute. Several arguments advanced by the Utilities, however, do just that and seek to redefine “Capacity” by applying the concept to extrinsic courses.

For example, Xcel argues that since the statute was created to implement PURPA, and since FERC has a definition of capacity for determining a single facility, the Commission should use that definition instead of the plain language of the statute governing eligibility for net metering. Specifically, Xcel argues:

“Given this statute’s specific deference to PURPA and FERC, and given that this statute refers to the capacity of the QF for purposes of applying net metering and other related purposes, the FERC approach to determining the capacity of a QF should apply here.”²⁰

Xcel further claims that it “would make no sense” to use one definition for PURPA and another definition to determine whether a facility is eligible for net metering.²¹

This is unpersuasive. It is perfectly reasonable for a federal agency to determine what a single facility is under PURPA using one methodology, and a state to determine whether a customer is

¹⁵ Otter Tail Comments at 4.

¹⁶ Otter Tail Comments at 6.

¹⁷ MP Comments at 4.

¹⁸ See, e.g., Dakota Comments at 11; Otter Tail Comments at 4, 8; MREA Comments at 2.

¹⁹ E.g., Minn. Stat. § 216B.1611 Subd. 3a.(a)(1); Minn. Stat. §§ 216B.1691 Subd. 2f.(b), (c)(1); Minn. Stat. § 216B.1613; Minn. Stat. § 216B.1641 Subd 1(b); Minn. Stat. § 216B.243 Subd. 8; Minn. Stat. § 216C.41; Minn. Stat. § 216E.021(a); Minn. Stat. § 216E.01 Subd. 3a.; Minn. Stat. § 272.0295; Minn. Stat. § 16B.32 Subd. 1a.

²⁰ Northern States Power Company, d/b/a Xcel Energy, *Comments*, Doc. No. 24-200 at 6 (Sept. 3, 2024) (hereinafter “Xcel Comments”).

²¹ Xcel Comments at 6.

eligible for net metering under another methodology. That two entities pursuing different policy objectives ended up with different results is completely unsurprising.

Similarly, it makes sense that we might use different definitions or concepts to make interconnection determinations or classifications for IEEE standards.²² Different contexts, different policy objectives, different levels of government, all might have different reasons to use different definitions and concepts. This is completely ordinary. And regardless, as extrinsic sources, these things are irrelevant to the determination of the meaning of “Capacity” in the statute.

²² *See, e.g.*, Dakota Comments at 12-13 (“when capacity is referenced in the IEEE 1547 standard, it typically refers to capacity as nameplate rating or nameplate capacity of the DER or aggregate DERs.”).

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