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June 18, 2025

**Submitted via eDockets**

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

Re: *In the Matter of a Formal Complaint by the Upper Sioux Community Against Minnesota Valley Cooperative Light & Power Assn.; Docket No. E-123/C-25-219*

Executive Secretary Seuffert,

CURE submits these comments in response to the Public Utilities Commission's (Commission) amended notice of comment period<sup>1</sup> regarding the Formal Complaint filed by the Upper Sioux Community regarding its electric service provider, Minnesota Valley Cooperative Light and Power Association (Minnesota Valley). CURE agrees with the comments submitted by the Department of Commerce, Wolf River Electric, Alliance for Tribal Clean Energy, Midwest Tribal Energy Resource Association, Tribal Energy Alternatives, White Earth Tribal Utility Commission, and Bruno Zagar of the Fond du Lac Band of Lake Superior Chippewa. CURE will not repeat all of the valid points made by these commenters, but only to briefly note a few additional issues.

**I. Minnesota Valley's apparent position is contrary to Minnesota's energy conservation and renewable energy goals, and does not work to protect ratepayers or the public**

It is contrary to the letter and the spirit of Minnesota law to allow an electric utility to dictate to businesses and other customers what they can do behind the meter to reduce their electric consumption and pollution.

In the instant case, the Upper Sioux Community has existing diesel generators for off-grid backup power, and they seek to add clean energy backup that operates in the same manner.<sup>2</sup> Minnesota Valley's threat to deny them service is only in relation to the solar-plus-storage system, not the existing, less efficient, more polluting fossil-fuel-fired generators. The Commission cannot allow such a perverse policy to take hold in rural communities served by this and other rural cooperatives. Allowing Minnesota Valley to deny its customers the ability to generate and

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<sup>1</sup> *Amended Notice of Comment Period*, May 13, 2025, eDockets No. [20255-218891-01](#).

<sup>2</sup> *Initial Filing – Complaint*, at 77, May 6, 2025, eDockets No. [20255-218622-01](#).



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consume electricity behind the meter sets a dangerous precedent that would see utilities dictate to every business and home whether they can install energy efficient lighting, weatherization, or any of thousands of important new technologies that make lives better while conserving electricity.

The law that the cooperative appears to rely upon states a general purpose: “This section shall at all times be construed in accordance with its intent to give the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public.”<sup>3</sup> Instead of bolstering Minnesota Valley’s position against its customer, this overall purpose statement points strongly in favor of the Upper Sioux Community project going forward as planned. While the Tribe’s overall project may not even meet the standard for small power production under this section of law (because as the Tribe made clear, it will not be interconnected),<sup>4</sup> this project nevertheless is clearly a benefit to distributed generation, ratepayers, and the public, because it’s making our grid more resilient and hardened while also decreasing pollution (i.e. from running diesel generation, or from Basin Electric’s coal generation further away) and reducing peak demand that may harm other ratepayers through costs spikes or service disruptions.

Furthermore, Minnesota’s climate,<sup>5</sup> solar development,<sup>6</sup> renewable and carbon-free energy,<sup>7</sup> and energy conservation<sup>8</sup> goals and standards all argue in favor of this project. The Upper Sioux Community is putting in its own private funds to realize this renewable, solar-plus-storage project that will provide additional benefits to the grid and other ratepayers, as explained above. Clearly, this project is a win-win that is entirely consistent with our state’s climate and energy goals—it should not be left to the discretion of the utility whether it goes forward or not. By taking on this complaint and seeing it through to the end, the Commission can clarify how large customers (including existing refineries and mines, and new entities such as hyperscalers) can best help to co-create the carbon-free energy future that we must accomplish by 2040.

There is significant public interest in the Commission investigating this dispute and resolving it in favor of renewable energy, energy conservation, and the Tribe’s energy sovereignty.

## **II. Federal law suggests the Commission grapple with this issue even if it is not analogous to non-tribal situations**

The Commission should exercise its right to investigate and handle this complaint under Section 216B.17 because it is bound by the U.S. Constitution and federal trust duties—similar to any other

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<sup>3</sup> Minn. Stat. § 216B.164, Subd. 1.

<sup>4</sup> *Ex Parte Communication Report*, at 3, May 14, 2025, eDockets No. [20255-218930-01](#).

<sup>5</sup> Minn. Stat. § 216H.02, Subd. 1(a).

<sup>6</sup> Minn. Stat. § 216B.1691, Subd. 2f, 2h.

<sup>7</sup> Minn. Stat. § 216B.1691, Subd. 1(b), 2a, 2g.

<sup>8</sup> Minn. Stat. §§ 216B.24–216B.2412.

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unit of government in the United States. While the Commission does not regularly interpret federal treaties with Tribal Nations, it nonetheless is bound by the Constitution's Supremacy Clause, which puts such treaties and laws regarding Tribal Nations' rights above state law.<sup>9</sup> Even if this dispute did not obviously set precedent regarding other customers, due to its fairly unique parties and the fact that the project is on reservation lands held in trust,<sup>10</sup> important federal legal concepts apply, and the Commission should make all reasonable efforts to assist the Upper Sioux Community in seeking a positive outcome with a regulated Minnesota utility.

Because of the unique nature of the parties, it may be appropriate for the Commission to seek additional input from the Upper Sioux Community (and response from Minnesota Valley) before referring this matter to the Office of Administrative Hearings. The Department of Commerce's initial comment with a recommendation for that referral is justified, but if the Commission could better engage in consultation with the Tribe and reach a resolution more directly without referral, that could also prove to be a good procedure.

There is significant public interest in the Commission investigating this complaint and assuring that it is properly abiding by its duties to consult with, and preserve the legal rights of, Tribal Nations.

### III. Conclusion

In conclusion, CURE believes that this complaint raises important issues that the Commission must resolve in favor of distributed clean generation and energy sovereignty, consistent with overwhelming amounts of state policy as well as the Upper Sioux Community's reserved rights protected by the U.S. Constitution. The Commission should not leave it to the utility to decide whether customers can help decarbonize the overall energy system. CURE recognizes that this complainant has a unique legal status that merits extra consideration and legal responsibility for the Commission, and encourages the Commission to investigate this dispute using procedure that best aligns with tribal sovereignty.

/s/ Hudson Kingston  
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<sup>9</sup> U.S. Const., Art. VI, Cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

<sup>10</sup> *Initial Filing – Complaint*, at 2, May 6, 2025, eDockets No. [20255-218622-01](#).