

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

Katie J. Sieben	Chair
Joseph K. Sullivan	Vice-Chair
Audrey Partridge	Commissioner
Hwikwon Ham	Commissioner
John Tuma	Commissioner

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

MPUC DOCKET NO. E-002/C-25-435

**INITIAL COMMENTS OF
ENVIRONMENTAL LAW & POLICY CENTER AND VOTE SOLAR**

I. INTRODUCTION

The Environmental Law & Policy Center (ELPC) and Vote Solar (together, ELPC/VS) file these comments in response to the Commission’s January 15, 2026 Notice of Comment Period regarding the Formal Complaint and Request for Relief by Hennepin County, Minnesota against Xcel Energy under Minn. Stat. § 216B.164 (“Complaint”). ELPC/VS recommend that the Commission investigate the Complaint. It raises critical questions related to Minnesota’s net metering rules and the Commission’s implementation and enforcement of those rules. Clarity regarding these questions will be important not just for Hennepin County but also for other distributed solar developers and host customers, and will impact the overall health of Minnesota’s solar market.

A core goal for both ELPC and Vote Solar is to promote clean distributed energy resources, including distributed solar generation. To this end, ELPC and Vote Solar have

worked, together and independently, on net metering policy and other solar market issues for nearly two decades, at utility commission and legislatures throughout the Midwest and (for Vote Solar) the United States. Both of our organizations are also deeply familiar with the Public Utility Regulatory Policies Act of 1978 (PURPA) and related rules for Qualifying Facilities (QFs). Net metering is a retail rate program under state jurisdiction, whereas PURPA and QF rules relate to wholesale transactions and are under federal jurisdiction. These two regimes—net metering and PURPA/QFs—are distinct, even if the same clean energy facilities may be eligible for both. Based on the Complaint, Xcel Energy appears to be conflating them improperly. ELPC/VS encourage the Commission to investigate and resolve the Complaint to clarify Minnesota’s net metering rules, not just for Hennepin County and Xcel Energy, but also for other solar developers and customers. We respond to the Commission’s specific topics open for comment below.

II. RESPONSES TO TOPICS OPEN FOR COMMENT

A. Does the Commission have jurisdiction over the subject matter of the Complaint?

Yes. The Commission has jurisdiction over net metering, which is the subject matter of the Complaint.

The Complaint concerns Hennepin County’s allegation that Xcel Energy plans to cancel two net metering contracts with the County. The contracts address two nearby but separately metered and separately interconnected solar arrays, each with capacities smaller than one-megawatt (MW). The contracts specify net-metering compensation via kilowatt-hour (kWh) credits on the County’s energy bill, pursuant to Xcel Energy’s net metering tariffs. According to the Complaint, Xcel Energy believes that the federal one-mile rule requires the Company to combine the capacity of both arrays into a single QF with a total capacity of greater than 1 MW,

making the arrays ineligible for net metering. Therefore, Xcel Energy intends to cancel its net-metering contracts with the County. The County asserts that the solar arrays are net-metered facilities under Minn. Stat. § 216B.164 and the federal one-mile rule does not apply to them. Therefore, the County requests that the Commission: (1) confirm each array’s net-metered status; and (2) bar Xcel Energy from applying the federal one-mile rule to deny net-metering rights and compensation under state law.

As the County’s Complaint indicates, Minn. Stat. § 216B.164 governs net metering in Minnesota. Specifically, Minn. Stat. § 216B.164, Subd. 5(a) 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. In any such determination, the burden of proof shall be on the public utility.” The Commission has promulgated rules to implement Minn. Stat. § 216B.164, namely Minn. R. Ch. 7835. Within those rules, Minn. R. 7835.4500 similarly 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. When the commission makes the determination, the burden of proof must be on the utility.”

As discussed below, although “qualifying facility” and “net metered facility” are two distinct terms, with distinct requirements and compensation, a net metered facility also meets the definition of qualifying facility. Therefore, these statutory and rule provisions make clear that the Commission has jurisdiction over net metering and any related disputes, including the Complaint.

B. Are there reasonable grounds for the Commission to investigate these allegations?

Yes. In addition to harming Hennepin County, Xcel Energy’s plan to cancel its net-metering contracts with the County has created confusion around Minnesota’s net metering rules

and whether the federal one-mile rule should apply to net-metered facilities. It is reasonable and essential for the Commission to investigate these allegations and resolve this confusion.

Minn. Stat. § 216B.164 and the Commission’s implementing rules, Minn. R. Ch. 4835, address both QFs and net metering. However, the net metering program is a state-jurisdictional, retail-rate program, distinct from the QF regime, which involves wholesale energy transactions under federal jurisdiction. The statute makes clear its intent for both the net metering and QF provisions “to give the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public.” Minn. Stat. § 216B.164, Subd. 1.

At the federal level, PURPA requires utilities to purchase power from qualifying cogeneration and small power production facilities in wholesale transactions at an avoided-cost rate. 16 U.S.C. §§ 824a-3(a)-(d). In addition to these “must-buy” provisions, PURPA also grants these facilities exemptions from certain federal and state utility regulations. 16 U.S.C. §§ 824a-3(e). Within its rules implementing PURPA, the Federal Energy Regulatory Commission (FERC) specifies that a smaller power production facility is a “qualifying facility” when it has a capacity less than 80 MW and its “primary energy source” is renewable resources, biomass, waste, or geothermal resources. 18 C.F.R. §§ 292.203, 292.204. To prevent developers from artificially dividing one large project into multiple small projects to qualify as QFs, FERC also adopted the “one-mile rule.” Under this rule, generating facilities located within one mile of each other are presumed to be part of the same facility when determining a QF’s size. 18 C.F.R. § 292.204(a)(2). In other words, the one-mile rule is an anti-circumvention rule for QF eligibility under federal law, to prevent “gaming” QF eligibility. However, FERC also allows a QF to apply for a waiver of the one-mile rule for “good cause.” 18 C.F.R. § 292.204(a)(3).

Minnesota’s statute and the Commission’s rules reference PURPA. Minn. Stat. § 216B.164, Subd. 2; Minn. R. 7835.0200. The Commission’s rules also incorporate a separate definition of “qualifying facility,” referencing FERC’s rules implementing PURPA. Minn. R. 7835.0100, Subp. 19. Both the statute and rules contain provisions addressing “purchases” from “qualifying facilities.” *See, e.g.*, Minn. Stat. § 216B.164, Subd. 3; Minn. R. 7835.3400. At least twice, however, the statute refers to “net metered facilities or qualifying facilities,” Minn. Stat. § 216B.164, Subds. 3(e), (f), making clear that these are two distinct categories.

Furthermore, both the statute and rules separately define a net metered facility as “an electric generation facility constructed for the purpose of offsetting energy use through the use of renewable energy or high-efficiency distributed generation sources.” Minn. Stat. § 216B.164, Subd. 2a(j); Minn. R. 7835.0100, Subp. 15a. And both the statute and rules contemplate a separate retail bill-credit paradigm to compensate participating facilities, which must be between 40 kW and 1 MW in capacity. Minn. Stat. § 216B.164, Subd. 3a; Minn. R. 7835.4017.

Although net-metered systems by definition meet the federal eligibility requirements for a QF—a net metered facility is smaller than 80 MW and relies on renewable resources—neither Minnesota’s net metering statute nor the Commission’s net metering rules require QF status to participate in net metering. Despite being addressed in the same section of the statute and same chapter of the rules, the PURPA/QF program and net metering program are separate regimes with different compensation formulas. And notably, the state net metering provisions do not incorporate PURPA’s federal one-mile rule, nor is there any concern about small net-metered systems “circumventing” PURPA’s 80 MW size limit for QFs.

Moreover, courts and regulators have consistently treated wholesale sales and retail sales as distinct jurisdictional domains. For example, in *Niagra Mohawk Power Corp. v. FERC*, the

court explained: “Jurisdiction over this sale and delivery of electricity is split between the federal government and the states on the basis of the type of service being provided and the nature of the energy sale. Under section 201(b)(1) of the Federal Power Act, 16 U.S.C. § 824(b)(1), FERC has jurisdiction over both the interstate transmission of electricity and the sale of electricity at wholesale in interstate commerce. States retain jurisdiction over retail sales of electricity and over local distribution facilities.” 452 F.3d 822, 824 (D.C. Cir. 2006). Net metering concerns retail sales under state jurisdiction. The federal one-mile rule applies to QF wholesale sales under federal jurisdiction.

In addition, FERC has consistently distinguished state net metering programs from federally jurisdictional “sales” of electricity under the Federal Power Act (FPA). For example, *Sun Edison, LLC*, addressed a request for a waiver from QF self-certification requirements for third-party-owned net-metered solar facilities. 129 FERC § 61,146. In that case, FERC found that “such sales do not constitute the sale of electric energy at wholesale in interstate commerce or the transmission of electric energy in interstate commerce under the FPA, nor do they involve jurisdictional rates under PUHCA 2005.” *Id.* at ¶ 2. FERC also went on to find that “because qualifying facilities (QFs) are already exempt from those provisions of our regulations for which SunEdison seeks waiver, and because QF status for facilities like those at issue here is easy to establish, we see no need to grant the waiver requested.” *Id.* This second determination further demonstrates the overlapping but distinct categories of federal-jurisdictional QFs and state-jurisdictional net-metered facilities.

Despite these clear legal distinctions and history, the Complaint demonstrates that Xcel Energy is attempting to apply the federal one-mile rule to the County’s state-jurisdictional net-metered projects and associated contracts. In doing so, Xcel Energy has introduced confusion

into Minnesota’s net metering rules. And it seems likely that Xcel Energy will similarly misapply the one-mile rule to other net-metered projects and customers. Therefore, ELPC/VS suggest that it is both reasonable and essential for the Commission to clarify Minnesota’s net metering rules and the inapplicability of the federal one-mile rule to net-metered projects. If the Commission were to determine that Minnesota law implicitly incorporates the federal QF definition and associated one mile rule, then ELPC/VS suggest that the Commission should also incorporate the ability for a QF to seek a waiver of the one-mile rule for “good cause,” which Hennepin County meets in this case. Either way, it is essential for the Commission to clarify the net metering rules and resolve the confusion that Xcel has caused.

C. Is it in the public interest for the Commission to investigate these allegations upon its own motion?

Yes. It is in the public interest for the Commission to investigate these allegations because Minnesota has an affirmative, legislatively-mandated policy of encouraging distributed generation and clean energy development, and Xcel Energy’s misapplication of the federal one-mile rule directly undermines that policy—not just for Hennepin County, but for the broader class of Minnesota customers investing in distributed solar.

Minnesota Law Establishes a Strong Public Policy in Favor of Distributed Generation

As discussed above, the net metering statute’s core interpretive directive is that it “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.” Minn. Stat. § 216B.164, Subd. 1 (emphasis added). This is not merely a policy aspiration—it is a binding directive that governs how the Commission must approach every action taken under the statute, including the threshold question of whether to investigate a complaint that calls into question the statute’s implementation.

The Legislature has reinforced this mandate through a comprehensive framework of clean energy statutes. Minnesota’s Renewable Energy Standard, Minn. Stat. § 216B.1691, requires electric utilities to generate increasing percentages of retail electricity sales from eligible energy technologies, including solar, and as amended in 2023, commits the state to 100% carbon-free electricity by 2040. Minnesota’s “Clean Energy First” standard, Minn. Stat. § 216B.2422, further directs utilities to prioritize clean energy resources in resource planning before proposing new fossil generation. And Minn. Stat. § 216B.03 directs the Commission to “set rates to encourage energy conservation and renewable energy use and to further the goals of sections 216B.164, 216B.241, and 216C.05.” Together, these provisions reflect the Legislature’s consistent and affirmative judgment that deploying distributed clean energy resources is a public priority—and that the Commission bears responsibility for ensuring that utility practices do not frustrate that priority.

Net metering is one of the most critical tools available to realize these statutory goals at the customer level. It enables customers—including public entities such as counties, cities, and school districts—to invest in on-site solar generation by ensuring they receive fair compensation for the energy they produce and export to the grid. When the terms of net metering participation are clear, predictable, and honored, customers can invest with confidence. When a utility can unilaterally rewrite those terms after contracts are signed—as Xcel Energy is attempting to do here—the entire policy framework that induces that investment is undermined.

Xcel’s Position Chills Clean Energy Investment Statewide

The public interest harm from Xcel Energy’s conduct extends well beyond Hennepin County. Under Xcel’s theory, any customer with two or more solar installations located within one mile of each other—regardless of whether those facilities share meters, interconnection

points, or substations—could be deemed ineligible for net metering. Public entities, which frequently own multiple adjacent or proximate facilities such as government campuses, correctional institutions, service complexes, and school buildings, are particularly exposed to this interpretation.

Hennepin County invested approximately \$4.1 million in its two solar arrays, relying directly on its signed net metering contracts with Xcel Energy. The Legislature designed the net-metering statute to encourage exactly this kind of significant, good-faith investment in distributed solar. Xcel’s retroactive repudiation of those contracts sends a troubling signal to every other customer considering similar investments. If utilities can invoke inapplicable federal rules to cancel net metering contracts after customers have committed capital, they will undermine the contractual certainty that makes distributed solar investment viable.

Commission Investigation Is Necessary to Protect the Public Interest

The potential reach of Xcel Energy’s theory, and the confusion it has already introduced into Minnesota’s net metering market, makes Commission investigation not merely appropriate, but necessary. As the Commission is aware, Minn. Stat. § 216B.03 requires that utility rates and practices “shall be sufficient, equitable, and consistent in application to a class of consumers.” Selectively applying an inapplicable federal rule to deny standard net metering rates to some customers—while offering those same rates to others—is precisely the kind of unreasonable and discriminatory practice that the Commission must investigate and correct. A Commission order resolving this Complaint will provide clarity not only to Hennepin County, but to the broader market of distributed solar developers, host customers, municipalities, and project financiers who rely on Minnesota’s net metering framework to make clean energy investment decisions.

D. If the Commission chooses to investigate the Complaint, what procedures should be used to do so?

ELPC/VS have no comment at this time but may comment further in reply.

III. CONCLUSION

For the reasons discussed above, ELPC/VS reiterate our recommendation that the Commission investigate the Complaint.

Respectfully submitted,

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