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June 17, 2025



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

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

Minnesota Public Utilities Commission,

I represent Minnesota Valley Cooperative Light & Power Association ("MN Valley") which has been named in a Complaint filed with the Minnesota Public Utilities Commission ("Commission"), asking the Commission to exercise jurisdiction and initiate a formal investigation into MN Valley's position regarding Upper Sioux Community's ("Upper Sioux") ability to construct a Solar Array of 40 kilowatt or excess capacity is in violation of Minnesota Law and MN Valley's Board Policies. This letter is submitted on behalf of MN Valley in response to Upper Sioux's Complaint, the Amended Notice of Comment Period, and the prior comments that have been filed into the above referenced docket as of June 16, 2025.

I. The Commission does not have jurisdiction over the subject matter of the Complaint.

The Commission is statutorily authorized under Minnesota Statute § 216B.17, upon a complaint made against any public utility, or by complaint under Section 216B.172, to make an investigation, with notice, as it may deem necessary. Minnesota Statute § 216B.02, defines a "Public Utility" and specifically states that a public utility "does not include (1) a municipality or cooperative electric association, organized under the provisions of Chapter 308A, producing or furnishing natural, manufactured, or mixed gas or electric service...". MN Valley is a cooperative electric association organized under Minnesota Chapter 308A and furnishes electric service. MN Valley does not meet the definition of a public utility.

Further, the Complaint made by Upper Sioux is not brought under Section 216B.172. Minnesota Statute § 216B.172, provides under subdivision 1(c) that a "Complaint" means an allegation

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submitted to the consumer affairs office by a complainant that a public utility's or a landlord's actions or practice regarding billing or terms and condition of service." Minnesota Statute § 216B.172, subd. 1(i) states that the term "public utility" has the same meaning given in Section 216B.02, subdivision 4. Minnesota Statute § 216B.172, subd. 1(g) defines the term "Landlord" to mean an owner of a shared metered residential building, a contract for deed vendee, receiver, executor, trustee, lessee, agent, or other person directly or indirectly in control of the shared-metered residential building that bills separately for natural gas or electricity, or both. MN Valley does not meet the definition of "public utility" and/or "landlord" under Minnesota Statute § 216B.172, therefore a Complaint cannot be brought against MN Valley under that Section.

Therefore, because MN Valley does not meet the definition of a public utility and because the Complaint is not brought under Section 216B.172, the Commission is without jurisdiction to investigate the Complaint. The Commission should decline to investigate this matter any further, should not hold any hearings on this Complaint, or take any further action beyond dismissing the Complaint.

II. There are no reasonable grounds for the Commission to investigate these allegations.

Generally, the Upper Sioux Complaint alleges that because Upper Sioux is a federally recognized Indian nation and is a distinct, independent political entity that retains sovereign authority, that it should not be subject to Minnesota Law, MN Valley's Articles of Incorporation and Bylaws, and MN Valley's Board Policies.

MN Valley is a non-profit electrical cooperative organized under the Laws of the State of Minnesota. Pursuant to Minn. Stat. § 308A.301, MN Valley is governed by a board of directors elected by its members, and under Minn. Stat. § 308A.305, MN Valley has Seven (7) board members. Consistent with Minn. Stat. § 308A.311, the board members of MN Valley are elected at its annual meeting pursuant to MN Valley's Articles of Organization and Bylaws. MN Valley Board has hired Patrick Carruth as its General Manager. MN Valley has a defined service territory in which it has the exclusive right under Minnesota and Federal Law to provide electric power to individuals and entities located within that defined service territory. Upper Sioux including Prairie's Edge Casino Resort is located entirely in MN Valley's statutorily defined service territory.

The MN Valley Board of Directors has established Board Policies regarding interconnection of and limits on energy production that is connected to MN Valley's electrical service or produced in MN Valley's service territory. Upper Sioux's proposed solar array is located entirely within MN Valley's

statutorily authorized service territory. MN Valley's Board Policies are intended to provide guidelines for the interconnection with and purchase of electricity from small power generation and alternate energy Qualifying Facilities. These policies are established to provide the application procedure and qualification criteria for Cooperative Members for the delivery, interconnection, metering, energy credit and purchase of electricity from inverter connect QF rate less than 40-kilowatt alternating current (AC) at the point of common coupling. Further, these policies help provide safeguards from electric shock and other hazards that protect the generating system owner, the general public and the Cooperative's line personnel.

Minnesota Statute § 216B.164 regulates cogeneration and small power production for cooperative electric associations, municipal utilities and public utilities. Under Minnesota Law, MN Valley is a cooperative electric association, not a municipal utility or a public utility. Under Minnesota Statute § 216B.164, cooperative electric associations, municipal utilities and public utilities are treated differently. Pursuant to Minnesota Statute § 216B.164, subd. 3, a cooperative electric association, such as MN Valley, is not required to allow any member (or entity or individual) located in its service territory to build and operate a power generating solar array (facility) of 40-kilowatt capacity or more. Minnesota Statute § 216B.164, subd. 3 provides that any member (or entity or individual) located in MN Valley's service territory can build a "facility" of less than 40-kilowatt capacity, and if it does so the "customer" (member) shall be billed for the net energy supplied by the utility according to the applicable rate schedule for sales to that class of customer. It further provides that "a cooperative electric association or municipal utility may charge an additional fee to recover the fixed costs not already paid for by the customer through the customer's existing billing arrangement." MN Valley adheres to this law and MN Valley's Board Policies are consistent with it.

MN Valley's primary power supplier is Basin Electric Power Cooperative ("Basin Electric") in Bismarck, ND. MN Valley entered into an All-Requirements Contract that requires MN Valley to purchase all of its electric power needs from Basin Electric until the year 2075. The All-Requirements Contract requires Basin Electric to supply electric power to MN Valley until the year 2075. Because of the All-Requirements Contract, MN Valley is not allowed to purchase power, except from a facility having less than 40-kilowatt capacity, from any individual and/or entity other than Basin Electric until the year 2075.

MN Valley explained numerous times in writing and orally to Upper Sioux that it may be possible to work with MN Valley's power supplier, Basin Electric, to see if they would be willing to purchase the power from Upper Sioux's proposed solar array, but that the power produced by any solar array in excess of 40-kilowatts could not be used by Upper Sioux and could not be generated and sold to

any other entity in MN Valley's service territory. It was explained to Upper Sioux and Wolf River Electric (contractor for Upper Sioux) that if Upper Sioux wished to explore an option to have Basin Electric purchase their power, that the costs associated with doing so would need to be paid by Upper Sioux (to MN Valley), and to determine if there was even a viable option, that an interconnection study would need to be completed by Power Systems Engineering, Inc. (PSE). MN Valley's engineer is PSE and is located in Arden Hills, MN. A representative of MN Valley explained the cost of the study would need to be borne by Upper Sioux and the process that it would take. A representative of MN Valley explained that until the study is completed by PSE, the next steps including (but not limited to) completing the interconnection plan for operation and entering into a written contract with MN Valley could not be completed. An Interconnection Study Process Offer was provided by MN Valley to Upper Sioux, and was signed by Wolf River Electric which provided for a payment of \$11,000.00 for the interconnection study to be completed by PSE and other terms. Payment of \$11,000.00 to PSE has been received. A copy of the Interconnection Study was provided to Upper Sioux by MN Valley once it was completed.

MN Valley treats all of its members equally and does not discriminate against or for any individual member. MN Valley would be giving Upper Sioux preferential treatment if it allowed Upper Sioux to build and operate a power generating solar array of 40-kilowatt or more capacity in MN Valley's service territory (or to receive power in MN Valley's service territory from an entity other than MN Valley). MN Valley would also be violating its all-requirements contract with Basin Electric if it allowed Upper Sioux to build and operate a power generating solar array of 40-kilowatt or more capacity in MN Valley's service territory (or to receive power in MN Valley's service territory from an entity other than MN Valley). It would also redistribute costs that MN Valley has incurred to create and operate its electric distribution network to other members of MN Valley. Many members of MN Valley in the past have requested to build a power generating solar array of 40-kilowatt or more capacity in Minnesota Valley's service territory and were denied because it is inconsistent with Minnesota Law, MN Valley's Articles of Incorporation and Bylaws, and MN Valley's Board Policies. This is both fair and consistent with MN Valley's Board Policies.

Any claim by Upper Sioux that it is not subject to Minnesota Law, and/or MN Valley's Articles of Incorporation and/or Bylaws, and/or MN Valley's Board Policies is clearly without merit based on the Three (3) agreements between the parties in which Upper Sioux specifically agreed to be bound by MN Valley's Articles of Incorporation, Bylaws, Rules, Regulations and Policies, and agreed that any lawsuit/action brought by either party has to be venued in a Minnesota State District Court

either in Chippewa County and/or Yellow Medicine County, and waived any sovereign immunity in this area.

MN Valley participated in mediation with Upper Sioux with attorney Leo Stern on February 11, 2025 in Minneapolis, Minnesota. Pursuant to Minnesota Statute § 216B.164, subd. 11(b), MN Valley paid Ninety Percent (90%) of the cost of mediation. Despite the day long mediation, no agreement was reached between the parties. As previously noted, MN Valley has identified a solution for Upper Sioux that would allow Basin Electric, MN Valley's primary power supplier, to purchase the power at market rate after any applicable direct costs and wheelage costs, produced by the proposed Upper Sioux's solar array of 40 kilo-watt or greater. MN Valley remains willing to work toward that solution.

MN Valley treats all of its members the same. In the past, members have asked MN Valley to be allowed to build solar arrays in excess of 40 kilo-watt or excess capacity, and each request to do so has been denied by MN Valley. MN Valley's position in this matter is consistent with its Articles of Incorporation, Bylaws and Board Policies, and does not discriminate in favor or against the Upper Sioux. As noted before, the Commission is without jurisdiction in this matter and there are no reasonable grounds for the Commission to investigate further.

III. There is no public interest served in the Commission investigating the Complaint.

As previously noted, the Commission only has the statutory authorization to investigate those matters specifically identified in Minnesota Statute § 216B.17. The Legislature has set what public interests should be served by the Commission through its investigation and hearing procedure. Upper Sioux's Complaint and the circumstances surrounding this case do not meet the statutorily authorized definitions, and therefore do not meet the public interest the Legislature identified in granting the Commission authority under Minnesota Statute § 216B.17.

IV. The Commission is without authority to act on this Complaint and should dismiss the Complaint, and not take any further action.

As previously noted, there are Three (3) agreements between the parties in which Upper Sioux specifically agreed to be bound by MN Valley's Articles of Incorporation, Bylaws, Rules, Regulations and Policies, and agreed that any lawsuit/action brought by either party has to be venued in a Minnesota State District Court either in Chippewa County and/or Yellow Medicine County, and waived any sovereign immunity in this area. If Upper Sioux believes it is entitled to any recourse

against MN Valley, said actions shall be venued in Minnesota State District Court either in Chippewa County and/or Yellow Medicine County, as has been agreed to by the parties.

Conclusion

MN Valley wants to work with Upper Sioux as it has done so since 1990. MN Valley appreciates Upper Sioux as a member of MN Valley and wants that prosperous relationship to continue into the future. However, MN Valley has a duty to treat all of its members equally and not discriminate against or for any individual member. MN Valley would be giving Upper Sioux preferential treatment if it allowed Upper Sioux to build and operate a power generating solar array of 40-kilowatt or more capacity in MN Valley's service territory (or to receive power in MN Valley's service territory from an entity other than MN Valley). It would also redistribute costs that MN Valley has incurred to create and operate its electric distribution network to other members of MN Valley. MN Valley would also be violating its all-requirements contract with Basin Electric if it allowed Upper Sioux to build and operate a power generating solar array of 40-kilowatt or more capacity in MN Valley's service territory (or to receive power in MN Valley's service territory from an entity other than MN Valley).

The allegations in the Complaint are not within the Commission's jurisdiction, and it is not in the public interest for the Commission to open an investigation. The Commission should decline to investigate this matter any further, should not hold any hearings on this Complaint, or take any further action beyond dismissing the Complaint.

Thank you,

NELSON OYEN TORVIK P.L.L.P.



Matthew Haugen