



85 7TH PLACE EAST, SUITE 280
SAINT PAUL, MINNESOTA 55101-2198
MN.GOV/COMMERCE
651.539.1600 FAX: 651.539.1574
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May 22, 2017

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, Minnesota 55101

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E999/CI-17-284

Dear Mr. Wolf:

On April 17, 2017, the Minnesota Public Utilities Commission (Commission) issued a *Notice of Comment Period* in the above-referenced docket. Attached please find the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department).

In general, the Department is supportive of a potential Distributed Generation Subcommittee process, but concludes that further development and clarity of certain aspects of the process would enhance the Department's ability to assess the proposal's merits and provide constructive recommendations. The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ SUSAN L. PEIRCE
Energy Regulation & Planning

/s/ KEN BROWN
State Energy Office

SLP/KB/lt
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET No. E999/CI-17-284

I. BACKGROUND INFORMATION

On April 17, 2017, the Minnesota Public Utilities Commission (Commission) issued a *Notice of Comment Period on Possible Distributed Generation Subcommittee under Minn. Stat. §216A.03, Subd. 8*. The Commission's Notice stated that it was considering creating a Distributed Generation (DG) subcommittee to consider and address customer complaints related to DG.

The Commission sought comment on the following issues:

- Should the Commission establish a subcommittee as outlined in Attachment A that would more quickly move issues forward that are raised in customer complaints or other filings at the Commission?
- Is the intention and proposed process for the subcommittee reasonable?
- Are there other examples of types of issues that could be handled by the subcommittee?

II. DEPARTMENT ANALYSIS

A. SUMMARY OF SUBCOMMITTEE PROPOSAL

Minn. Stat. §216A.03, Subd. 8 permits the Commission to create and appoint members to standing or ad hoc subcommittees consisting of at least one Commissioner, and permits the Commission to delegate any of its legislative, administrative or quasi-judicial functions to such subcommittees. The statute further provides that "upon objection by a party, a participant, or a commissioner, a decision by a subcommittee must be referred to the full commission."

Under the proposal outlined in the Notice, the DG Subcommittee would address the following types of issues:

- Complaints filed with the Consumer Affairs Office or filed in formal dockets where it is fairly clear that a non-violation or a violation exists;

- Undisputed DG filings that would benefit from streamlined approval;
- Instances where high level policy issues do not need to be decided and where clarity to the broader utility/customer/solar community would be useful. Priority would be given to disputes that have come up repeatedly and are affecting multiple parties.

The Notice goes on to cite a number of possible examples of issues that could be considered by the DG Subcommittee.

B. DEPARTMENT INVOLVEMENT WITH DG COMPLAINTS

The Department has two points of contact for DG complaints. Formal docketed complaints are handled by the Energy Regulation and Planning (ERP) Unit, which investigates, analyzes and provides recommendations on docketed items before the Commission. In addition, State Energy Office (SEO) staff work with distributed generation technology and are often called upon to provide technical assistance with informal complaints that are made either directly to SEO staff or to the Commission's Consumer Affairs Office (CAO). In the past, the SEO, the ERP Unit and the CAO have had discussions on the best process for handling informal DG complaints. These comments reflect the thoughts and concerns of both Department units on the Commission's proposal.

The Department generally views the creation of a DG Subcommittee as a reasonable process for handling some DG complaints, but has some issues it wishes to see clarified.

- 1. Ensure that the process is equitable, accessible, and transparent for DG customers*

Currently, informal complaints are typically handled by the Commission's CAO, which attempts to resolve them through mediation. Such informal complaints do not require a consumer complainant to appear at a hearing, or hire legal representation or technical experts. A DG Subcommittee process should therefore be relatively simple and be clearly communicated to citizens. The Department recommends that the Commission clearly identify how a DG customer would interact with the DG Subcommittee to provide the customer's point of view, and ensure that any participation in the DG Subcommittee process would not require hiring legal counsel or technical experts.

The Department's experience with DG complaints is that they may have facts and circumstances specific to the complaint that do not easily fit into the existing statutes and rules regarding DG, and therefore would require some level of interpretation and judgement by the DG Subcommittee. Again, the Department recommends that any DG Subcommittee process be communicated in plain language so that an individual consumer without prior experience with the Commission can engage in the process, understand what to expect, and have a reasonable idea on how to prepare.

The Department recommends that a remote access option (via Skype or similar method) be provided in order to allow for greater equity for Greater Minnesota residents and businesses who may be disadvantaged by the distance to Saint Paul, as much as four or more hours one way, where travel distance and meeting time would reasonably require an overnight stay.

To facilitate tracking of dockets, the Department recommends that each complaint or, in the case that a number of complaints are received regarding the same issue, grouping of cases, be assigned a unique docket number.

Finally, the Department suggests that the Commission ensure that customers are aware of the process that would be used to determine which issues would be sent to the DG Subcommittee,

2. Investigation and Advocacy – Staff Roles

The Notice states that Commission Staff expect that “the Commission would delegate to the Subcommittee its administrative and quasi-judicial functions to provide record development, set deadlines, and in cases where statute, rule, order, or tariff can be easily interpreted, issue short decisions.” The proposed workflow includes steps for seeking additional information, comments and DG Subcommittee hearings. Typically, in formal complaints before the Commission, the ERP Unit undertakes the investigatory and advocacy functions of each case, and Commission Staff serve as advisors to the Commission. It is unclear at this point whether the DG Subcommittee may require any input from ERP, given the expectation that statutes, rules, orders or tariffs could be easily interpreted, or whether, Commission Staff may have this investigatory and advocacy roles, or whether there might be any other approach taken.

The Department recommends that the Commission clarify the expected membership of the DG Subcommittee, and the expected roles for the Department and Commission Staff in the DG Subcommittee process. If the DG Subcommittee determines after some investigation that a complaint is more complex than should be handled by the DG Subcommittee and refers the complaint to the full Commission, the Department recommends that the Commission clarify what the role(s) would be of Commission Staff involved with the earlier DG Subcommittee process in the full Commission process. Similarly, the Department requests clarity as to the roll of Commission Staff in cases in which a decision by the DG Subcommittee is appealed by one of the parties to the full Commission.

3. Technical Expertise and Assistance

The Department recognizes that parties often have differing interpretation of technical requirements. The Department recommends that the Commission clarify how the DG Subcommittee process would evaluate any technical disputes, or whether such decisions would be assigned to the full Commission. If the DG Subcommittee would handle such complaints, the Department recommends that the Commission indicate how the DG Subcommittee would ensure that it has expertise available to assist with decisions that are

objective, technically sound, and based on current industry standards, guidelines, and recommended practices.

4. *Appeals of Subcommittee Decisions*

Minn. Stat. §216A.03 Subd. 8 (b) states that a subcommittee decision will be referred to the full Commission upon an objection by a party, participant, or a commissioner. While the Department is guardedly optimistic that a DG Subcommittee process for handling DG complaints could streamline the process, the Department cautions that a faster process may not occur, at least for the initial complaints handled by the DG Subcommittee. The Department's experience with the use of an independent engineer to investigate and resolve engineering disputes for Xcel Energy's community solar garden (CSG) program, and the Department's involvement in resolving co-location disputes suggests that disputes would frequently be appealed to the full Commission. The initial complaints may take more, rather than less time as procedural issues are worked out and Commission precedent in the resolution of certain complaints is established.

III. SUMMARY OF DEPARTMENT RECOMMENDATIONS

The Department recommends that the Commission clarify the following before any decision to establish a DG Subcommittee be made:

1. How the process will ensure that individual customer complainants can have their complaints heard without requiring them to hire an attorney or technical assistance.
2. Whether there would be options for remote participation to facilitate access by consumers in Greater Minnesota.
3. What the criteria and process will be to determine which issues to send to the DG Subcommittee or the full Commission.
4. What the composition (Commissioners, Commission Staff, citizens, technical experts) and size of the DG Subcommittee will be.
5. What the Department and Commission Staff's roles will be in investigating and recommending solutions to complaints, and how those roles would impact any hearings of the complaint before the entire Commission.
6. If complaints involving technical concerns are assigned to the DG Subcommittee, how the DG Subcommittee would obtain objective expertise to resolve technical concerns.

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Comments**

Docket No. E999/CI-17-284

Dated this 22nd day of May 2017

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Ross	Abbey	rabbey@mnsolarconnection.com	Bright Green Consulting	345 St. Peter Street Suite 1600 St. Paul, MN 55102	Electronic Service	No	OFF_SL_17-284_Official
Michael	Allen	michael.allen@allenergysolar.com	All Energy Solar	721 W 26th st Suite 211 Minneapolis, Minnesota 55405	Electronic Service	No	OFF_SL_17-284_Official
Janet	Anderson	jainstp@q.com	-	1799 Sargent St. Paul, MN 55105	Electronic Service	No	OFF_SL_17-284_Official
Christopher	Anderson	canderson@allete.com	Minnesota Power	30 W Superior St Duluth, MN 558022191	Electronic Service	No	OFF_SL_17-284_Official
Mark	Anderson	manderson@southcentralelectric.com	South Central Electric Association	PO Box 150 71176 Tiell Drive St. James, MN 56081	Electronic Service	No	OFF_SL_17-284_Official
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_17-284_Official
Christine	Andrews	christineandrewsjd@gmail.com		792 Goodrich Ave St Paul, Minnesota 55105	Electronic Service	No	OFF_SL_17-284_Official
John	Bailey	bailey@ilsr.org	Institute For Local Self-Reliance	1313 5th St SE Ste 303 Minneapolis, MN 55414	Electronic Service	No	OFF_SL_17-284_Official
Sara	Baldwin Auck	sarab@irecusa.org	Interstate Renewable Energy Council, Inc.	PO Box 1156 Latham, NY 12110	Electronic Service	No	OFF_SL_17-284_Official
Laura	Beaton	beaton@smwlaw.com	Shute, Mihaly & Weinberger LLP	396 Hayes Street San Francisco, CA 94102	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Peter	Beithon	pbeithon@otpco.com	Otter Tail Power Company	P.O. Box 496 215 South Cascade Street Fergus Falls, MN 565380496	Electronic Service	No	OFF_SL_17-284_Official
Sara	Bergan	sebergan@stoel.com	Stoel Rives LLP	33 South Sixth Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_17-284_Official
Derek	Bertsch	derek.bertsch@mrenergy.com	Missouri River Energy Services	3724 West Avera Drive PO Box 88920 Sioux Falls, SD 57109-8920	Electronic Service	No	OFF_SL_17-284_Official
William	Black	bblack@mmua.org	MMUA	Suite 400 3025 Harbor Lane North Plymouth, MN 554475142	Electronic Service	No	OFF_SL_17-284_Official
William A.	Blazar	bblazar@mnychamber.com	Minnesota Chamber Of Commerce	Suite 1500 400 Robert Street North St. Paul, MN 55101	Electronic Service	No	OFF_SL_17-284_Official
Becky	Bradburn	b.bradburn@bcrea.coop	Brown County Rural Electric Assn.	PO Box 529 Sleepy Eye, MN 56085	Electronic Service	No	OFF_SL_17-284_Official
Kenneth	Bradley	kbradley1965@gmail.com		2837 Emerson Ave S Apt CW112 Minneapolis, MN 55408	Electronic Service	No	OFF_SL_17-284_Official
Jon	Brekke	jbrekke@grenergy.com	Great River Energy	12300 Elm Creek Boulevard Maple Grove, MN 553694718	Electronic Service	No	OFF_SL_17-284_Official
Kathleen M.	Brennan	kmb@mcgrannshea.com	McGrann Shea Carnival, Straughn & Lamb, Chartered	N/A	Electronic Service	No	OFF_SL_17-284_Official
Mark B.	Bring	mbring@otpco.com	Otter Tail Power Company	215 South Cascade Street PO Box 496 Fergus Falls, MN 565380496	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000 Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_17-284_Official
Michael J.	Bull	mbull@mncee.org	Center for Energy and Environment	212 Third Ave N Ste 560 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_17-284_Official
Jessica	Burdette	jessica.burdette@state.mn.us	Department of Commerce	85 7th Place East Suite 500 St. Paul, MN 55101	Electronic Service	No	OFF_SL_17-284_Official
Joel	Cannon	jcannon@tenksolar.com	Tenk Solar, Inc.	9549 Penn Avenue S Bloomington, MN 55431	Electronic Service	No	OFF_SL_17-284_Official
Douglas M.	Carnival	dmc@mcgrannshea.com	McGrann Shea Carnival Straughn & Lamb	N/A	Electronic Service	No	OFF_SL_17-284_Official
Pat	Carruth	N/A	Minnesota Valley Coop. Light & Power Assn.	501 S 1st St. PO Box 248 Montevideo, MN 56265	Paper Service	No	OFF_SL_17-284_Official
Kenneth A.	Colburn	kcolburn@symbioticstrategies.com	Symbiotic Strategies, LLC	26 Winton Road Meredith, NH 32535413	Electronic Service	No	OFF_SL_17-284_Official
Curtis	Cordt	ccordt@mvec.net	Minnesota Valley Electric Cooperative	125 Minnesota Valley Electric Drive Jordan, MN 55352	Electronic Service	No	OFF_SL_17-284_Official
George	Crocker	gwillc@nawo.org	North American Water Office	PO Box 174 Lake Elmo, MN 55042	Electronic Service	No	OFF_SL_17-284_Official
Carl	Cronin	Regulatory.records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Art	Crowell	acrowell@sundialsolarenergy.com	Sundial Solar	not provided	Electronic Service	No	OFF_SL_17-284_Official
Arthur	Crowell	Crowell.arthur@yahoo.com	A Work of Art Solar	14333 Orchard Rd. Minnetonka, MN 55345	Electronic Service	No	OFF_SL_17-284_Official
Leigh	Currie	lcurrie@mncenter.org	Minnesota Center for Environmental Advocacy	26 E. Exchange St., Suite 206 St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_17-284_Official
Stacy	Dahl	sdahl@minnkota.com	Minnkota Power Cooperative, Inc.	1822 Mill Road PO Box 13200 Grand Forks, ND 58208-3200	Electronic Service	No	OFF_SL_17-284_Official
David	Dahlberg	davedahlberg@nweco.com	Northwestern Wisconsin Electric Company	P.O. Box 9 104 South Pine Street Grantsburg, WI 548400009	Electronic Service	No	OFF_SL_17-284_Official
Patrick	Dalton	patrick.l.dalton@xcelenergy.com	Xcel Energy	N/A	Electronic Service	No	OFF_SL_17-284_Official
Lisa	Daniels	lisadaniels@windustry.org	Windustry	201 Ridgewood Ave Minneapolis, MN 55403	Electronic Service	No	OFF_SL_17-284_Official
James	Darabi	james.darabi@solarfarm.com	Solar Farm, LLC	2355 Fairview Ave #101 St. Paul, MN 55113	Electronic Service	No	OFF_SL_17-284_Official
Jeffrey A.	Daugherty	jeffrey.daugherty@centerpointenergy.com	CenterPoint Energy	800 LaSalle Ave Minneapolis, MN 55402	Electronic Service	No	OFF_SL_17-284_Official
James	Denniston	james.r.denniston@xcelenergy.com	Xcel Energy Services, Inc.	414 Nicollet Mall, Fifth Floor Minneapolis, MN 55401	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Curt	Dieren	curt.dieren@dgr.com	L&O Power Cooperative	1302 S Union St Rock Rapids, IA 51246	Electronic Service	No	OFF_SL_17-284_Official
Ian	Dobson	ian.dobson@ag.state.mn.us	Office of the Attorney General-RUD	Antitrust and Utilities Division 445 Minnesota Street, 1400 BRM Tower St. Paul, MN 55101	Electronic Service	No	OFF_SL_17-284_Official
Ian	Dobson	Residential.Utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_17-284_Official
Robin	Doege	rdoege@toddwadana.coop	Todd Wadena Electric Cooperative	550 Ash Ave NE Wadena, MN 56482	Electronic Service	No	OFF_SL_17-284_Official
Kristin	Dolan	kdolan@meeker.coop	Meeker Cooperative Light & Power Assn	1725 US Hwy 12 E. Ste 100 Litchfield, MN 55355	Electronic Service	No	OFF_SL_17-284_Official
Steve	Downer	sdowner@mmua.org	MMUA	3025 Harbor Ln N Ste 400 Plymouth, MN 554475142	Electronic Service	No	OFF_SL_17-284_Official
Renee	Doyle		Doyle Electric Inc.	PO Box 295 Amboy, MN 56010	Paper Service	No	OFF_SL_17-284_Official
Kelly	Dybdahl	kdybdahl@llec.coop	Lyon-Lincoln Electric Cooperative, Inc.	205 W. Hwy. 14 Tyler, MN 56178	Electronic Service	No	OFF_SL_17-284_Official
Kristen	Eide Tollefson	N/A	R-CURE	28477 N Lake Ave Frontenac, MN 55026-1044	Paper Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
R. Neal	Elliot		American Council for an	Energy-Efficient Economy 529 14th Street, NW, 600 Washington, DC 20045	Paper Service Suite	No	OFF_SL_17-284_Official
Nadav	Enbar	nenbar@epri.com	EPRI	1117 Quince Ave Boulder, CO 80304	Electronic Service	No	OFF_SL_17-284_Official
Betsy	Engelking	betsy@geronimoenergy.com	Geronimo Energy	7650 Edinborough Way Suite 725 Edina, MN 55435	Electronic Service	No	OFF_SL_17-284_Official
Oncu	Er	oncu.er@avantenergy.com	Avant Energy, Agent for MMPA	220 S. Sixth St. Ste. 1300 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_17-284_Official
Larry	Fagen	N/A	-	15236 880th Ave Sacred Heart, MN 56285	Paper Service	No	OFF_SL_17-284_Official
John	Farrell	jfarrell@ilsr.org	Institute for Local Self- Reliance	1313 5th St SE #303 Minneapolis, MN 55414	Electronic Service	No	OFF_SL_17-284_Official
Emma	Fazio	emma.fazio@stoel.com	Stoel Rives LLP	33 South Sixth Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_17-284_Official
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_17-284_Official
Cathy	Fogale	cfogale@otpc.com	Otter Tail Power Company	215 South Cascade Street PO Box 496 Fergus Falls, MN 56537	Electronic Service	No	OFF_SL_17-284_Official
Mike	Franklin	mfranklin@mncef.com	MN Conservative Energy Forum	235 E 6th St Fifth Floor St. Paul, MN 55101	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Nathan	Franzen	nathan@geronimoenergy.com	Geronimo Energy	7650 Edinborough Way Suite 725 Edina, MN 55435	Electronic Service	No	OFF_SL_17-284_Official
David	Freestate	dfreestate@epri.com	EPRI	942 Corridor Park Blvd Knoxville, TN 37932	Electronic Service	No	OFF_SL_17-284_Official
Scott	Froemming	sfroemming@kpcoop.com	Kandiyohi Power Cooperative	8605 47th St NE Spicer, MN 56288-4617	Electronic Service	No	OFF_SL_17-284_Official
Katelyn	Frye	kfrye@mnpower.com	Minnesota Power	30 W Superiot St Duluth, MN 558022093	Electronic Service	No	OFF_SL_17-284_Official
Karen	Gados	karen@mysunshare.com	SunShare, LLC	1441 18th Street Suite 400 Denver, CO 80202	Electronic Service	No	OFF_SL_17-284_Official
Hal	Galvin	halgalvin@comcast.net	Provectus Energy Development llc	1936 Kenwood Parkway Minneapolis, MN 55405	Electronic Service	No	OFF_SL_17-284_Official
Elaine	Garry	egarry@peoplesrec.com	Peoples Energy Cooperative	1775 Lake Shady Ave S Oronoco, MN 55960-2351	Electronic Service	No	OFF_SL_17-284_Official
Edward	Garvey	garveyed@aol.com	Residence	32 Lawton St Saint Paul, MN 55102	Electronic Service	No	OFF_SL_17-284_Official
Allen	Gleckner	gleckner@fresh-energy.org	Fresh Energy	408 St. Peter Street Ste 220 Saint Paul, Minnesota 55102	Electronic Service	No	OFF_SL_17-284_Official
Bryan	Gower	bgower@apx.com	APX, Inc.	N/A	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Sarah	Groebner	sgroebner@redwoodelectri c.com	Redwood Electric Cooperative	60 Pine St Clements, MN 56224	Electronic Service	No	OFF_SL_17-284_Official
David	Gruenes	dgruenes@stearnselectric. org	Stearns Electric Association	PO Box 40 Melrose, MN 56352	Electronic Service	No	OFF_SL_17-284_Official
Timothy	Gulden	info@winonarenewableene rgy.com	Winona Renewable Energy, LLC	1449 Ridgewood Dr Winona, MN 55987	Electronic Service	No	OFF_SL_17-284_Official
Tom	Guttormson	Tom.Guttormson@connexu senergy.com	Connexus Energy	14601 Ramsey Blvd Ramsey, MN 55303	Electronic Service	No	OFF_SL_17-284_Official
Tony	Hainault	anthony.hainault@co.henn epin.mn.us	Hennepin County DES	701 4th Ave S Ste 700 Minneapolis, MN 55415-1842	Electronic Service	No	OFF_SL_17-284_Official
James	Haler	jhaler@southcentralelectr .com	South Central Electric Association	71176 Tiell Dr P. O. Box 150 St. James, MN 56081	Electronic Service	No	OFF_SL_17-284_Official
Laura	Hannah	hannah@fresh-energy.org	Fresh Energy	408 St. Peter Street Ste 220 St. Paul, MN 55102	Electronic Service	No	OFF_SL_17-284_Official
Donald	Hanson	dfhanson@ieee.org	Solar Photovoltaic Systems	P. O. Box 44579 Eden Prairie, MN 55344	Electronic Service	No	OFF_SL_17-284_Official
John	Harlander	john.c.harlander@xcelener gy.com	Xcel Energy	N/A	Electronic Service	No	OFF_SL_17-284_Official
Duane	Hebert	duane.hebert@novelenerg y.biz	Novel Energy Solutions	1628 2nd Ave SE Rochester, MN 55904	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
John	Helmerts	helmerts.john@co.olmsted.mn.us	Olmsted County Waste to Energy	2122 Campus Drive SE Rochester, MN 55904-4744	Electronic Service	No	OFF_SL_17-284_Official
Jared	Hendricks	hendricksj@owatonnautilities.com	Owatonna Public Utilities	PO Box 800 208 S Walnut Ave Owatonna, MN 55060-2940	Electronic Service	No	OFF_SL_17-284_Official
Annete	Henkel	mui@mutilityinvestors.org	Minnesota Utility Investors	413 Wacouta Street #230 St. Paul, MN 55101	Electronic Service	No	OFF_SL_17-284_Official
Ryan	Hentges	ryanh@mvec.net	Minnesota Valley Electric Cooperative	125 Minnesota Valley Electric Dr Jordan, MN 55352	Electronic Service	No	OFF_SL_17-284_Official
Carrie	Hitt	carrie.hitt@nexteraenergy.com	NextEra Energy Resources	700 Universe Blvd Juno, CA 33408	Electronic Service	No	OFF_SL_17-284_Official
Jim	Horan	Jim@MREA.org	Minnesota Rural Electric Association	11640 73rd Ave N Maple Grove, MN 55369	Electronic Service	No	OFF_SL_17-284_Official
Ronald	Horman	rhorman@redwoodelectric.com	Redwood Electric Cooperative	60 Pine Street Clements, MN 56224	Electronic Service	No	OFF_SL_17-284_Official
Lori	Hoyum	lhoyum@mnpower.com	Minnesota Power	30 West Superior Street Duluth, MN 55802	Electronic Service	No	OFF_SL_17-284_Official
Jan	Hubbard	jan.hubbard@comcast.net		7730 Mississippi Lane Brooklyn Park, MN 55444	Electronic Service	No	OFF_SL_17-284_Official
Barb	Jacobs	jaco0270@umn.edu	University of Minnesota	Institute on the Environmen ,	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Casey	Jacobson	cjacobson@bepc.com	Basin Electric Power Cooperative	1717 East Interstate Avenue Bismarck, ND 58501	Electronic Service	No	OFF_SL_17-284_Official
Ralph	Jacobson	ralphj@ips-solar.com		2126 Roblyn Avenue Saint Paul, Minnesota 55104	Electronic Service	No	OFF_SL_17-284_Official
John S.	Jaffray	jjaffray@jirpower.com	JJR Power	350 Highway 7 Suite 236 Excelsior, MN 55331	Electronic Service	No	OFF_SL_17-284_Official
Robert	Jagusch	rjagusch@mmua.org	MMUA	3025 Harbor Lane N Minneapolis, MN 55447	Electronic Service	No	OFF_SL_17-284_Official
Chris	Jarosch	chris@carrcreekelectricservice.com	Carr Creek Electric Service, LLC	209 Sommers Street North Hudson, WI 54016	Electronic Service	No	OFF_SL_17-284_Official
Sarah	Johnson Phillips	siphillips@stoel.com	Stoel Rives LLP	33 South Sixth Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_17-284_Official
Nate	Jones	njones@hcpd.com	Heartland Consumers Power	PO Box 248 Madison, SD 57042	Electronic Service	No	OFF_SL_17-284_Official
Camille	Kadoch	ckadoch@raponline.org	Regulatory Assistance Project	50 State Street Suite 3 Montpelier, VT 05602	Electronic Service	No	OFF_SL_17-284_Official
Michael	Kampmeyer	mkampmeyer@a-e-group.com	AEG Group, LLC	260 Salem Church Road Sunfish Lake, Minnesota 55118	Electronic Service	No	OFF_SL_17-284_Official
John	Kearney	jmkearney@MnSEIA.org	MnSEIA	2512 33rd Ave S Minneapolis, MN 55406	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Kevin	Keene	kevin.keene@cummins.com		N/A	Electronic Service	No	OFF_SL_17-284_Official
Jack	Kegel	jkegel@mmua.org	MMUA	3025 Harbor Lane N Suite 400 Plymouth, MN 55447-5142	Electronic Service	No	OFF_SL_17-284_Official
Jim	Kennerly	BADEMAIL-jdkenne2@ncsu.edu	North Carolina Solar Center	Campus Box 7401 NC State University Raleigh, NC 27695	Paper Service	No	OFF_SL_17-284_Official
Julie	Ketchum	N/A	Waste Management	20520 Keokuk Ave Ste 200 Lakeville, MN 55044	Paper Service	No	OFF_SL_17-284_Official
Tom	Key	tkey@epri.com	EPRI	942 Corridor Park Blvd Knoxville, TN 37932	Electronic Service	No	OFF_SL_17-284_Official
Ted	Kjos	tkjos@mienergy.coop	MiEnergy Cooperative	31110 Cooperative Way Rushford, MN 55971	Electronic Service	No	OFF_SL_17-284_Official
Brad	Klein	bklein@elpc.org	Environmental Law & Policy Center	35 E. Wacker Drive, Suite 1600 Suite 1600 Chicago, IL 60601	Electronic Service	No	OFF_SL_17-284_Official
Madeleine	Klein	mklein@socoreenergy.com	SoCore Energy	225 W Hubbard Street Suite 200 Chicago, IL 60654	Electronic Service	No	OFF_SL_17-284_Official
John	Kluempke	BADEMAIL-jwkluempke@winlectric.com	Elk River Winlectric	12777 Meadowvale Rd Elk River, MN 55330	Paper Service	No	OFF_SL_17-284_Official
Frank	Kornbaum	fkornbaum@mnpower.com	Minnesota Power	30 West Superior St Duluth, MN 55802	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Steve	Korstad		Korridor Capital Investments, LLC	20 Red Fox Road St. Paul, MN 551276331	Paper Service	No	OFF_SL_17-284_Official
Steve	Kosbab	skosbab@meeker.coop	Meeker Cooperative Light and Power	1725 US Hwy 12 E Litchfield, MN 55355	Electronic Service	No	OFF_SL_17-284_Official
Jon	Kramer	sundialjon@gmail.com	Sundial Solar	3209 W 76th St Edina, MN 55435	Electronic Service	No	OFF_SL_17-284_Official
Michael	Krause	michaelkrause61@yahoo.com	Kandiyo Consulting, LLC	433 S 7th Street Suite 2025 Minneapolis, Minnesota 55415	Electronic Service	No	OFF_SL_17-284_Official
Michael	Krikava	mkrikava@briggs.com	Briggs And Morgan, P.A.	2200 IDS Center 80 S 8th St Minneapolis, MN 55402	Electronic Service	No	OFF_SL_17-284_Official
Jeffrey L.	Landsman	jlandsman@wheelerlaw.com	Wheeler, Van Sickle & Anderson, S.C.	44 E. Mifflin Street, 10th Floor Madison, WI 53703	Electronic Service	No	OFF_SL_17-284_Official
Joel	Larson	jl Larson@minnkota.com	Minnkota Power Cooperative, Inc.	1822 Mill Road Grand Forks, ND 58203	Electronic Service	No	OFF_SL_17-284_Official
Mark	Larson	mlarson@meeker.coop	Meeker Coop Light & Power Assn	1725 Highway 12 E Ste 100 Litchfield, MN 55355	Electronic Service	No	OFF_SL_17-284_Official
Douglas	Larson	dlarson@dakotaelectric.com	Dakota Electric Association	4300 220th St W Farmington, MN 55024	Electronic Service	No	OFF_SL_17-284_Official

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Burnell	Lauer	blauer.sundial@gmail.com	Sundial Solar	3209 W. 76th St #305 Edina, MN 55435	Electronic Service	No	OFF_SL_17-284_Official
Dean	Leischow	dean@sunriseenergyventures.com	Sunrise Energy Ventures	601 Carlson Parkway, Suite 1050 Minneapolis, MN 55305	Electronic Service	No	OFF_SL_17-284_Official
Annie	Levenson Falk	annie.lf@citizensutilityboard.org	Citizens Utility Board	332 Minnesota Street, Suite W1360 St. Paul, MN 55101	Electronic Service	No	OFF_SL_17-284_Official
Amy	Liberkowski	amy.a.liberkowski@xcelenergy.com	Xcel Energy	414 Nicollet Mall 7th Floor Minneapolis, MN 554011993	Electronic Service	No	OFF_SL_17-284_Official
Carl	Linville	clinville@raponline.org	Regulatory Assistance Project	50 State Street Suite #3 Montpelier, VT 05602	Electronic Service	No	OFF_SL_17-284_Official
Phillip	Lipetsky	greenenergyproductsllc@gmail.com	Green Energy Products	PO Box 108 Springfield, MN 56087	Electronic Service	No	OFF_SL_17-284_Official
Michael	Loeffler	mike.loeffler@nngco.com	Northern Natural Gas Co.	CORP HQ, 714 1111 So. 103rd Street Omaha, NE 681241000	Electronic Service	No	OFF_SL_17-284_Official
William	Lovelace	wlovelace@minnkota.com	Minnkota Power Cooperative	1822 Mill Rd Grand Forks, ND 58203	Electronic Service	No	OFF_SL_17-284_Official
Liz	Lucente	llucente@mNSEIA.org	MnSEIA	N/A	Electronic Service	No	OFF_SL_17-284_Official
Richard	Macke	macker@powersystem.org	Power System Engineering, Inc.	10710 Town Square Dr NE Ste 201 Minneapolis, MN 55449	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Alex	Magerko	amagerko@epri.com	EPRI	942 Corridor Park Blvd Knoxville, TN 37932	Electronic Service	No	OFF_SL_17-284_Official
Pam	Marshall	pam@energycents.org	Energy CENTS Coalition	823 7th St E St. Paul, MN 55106	Electronic Service	No	OFF_SL_17-284_Official
Ralph	Martin	rmartin@stearnselectric.org	Stearns Cooperative Electric Association	PO Box 40 Melrose, MN 56352	Electronic Service	No	OFF_SL_17-284_Official
Michael	McCarty	mmccarty@solarcity.com	Energy Freedom Coalition	3055 Clearview Way San Mateo, CA 94402	Electronic Service	No	OFF_SL_17-284_Official
Erica	McConnell	mcconnell@smwlaw.com	Shute, Mihaly & Weinberger LLP	396 Hayes St San Francisco, California 94102-4421	Electronic Service	No	OFF_SL_17-284_Official
Sara G	McGrane	smcgrane@felhaber.com	Felhaber Larson	220 S 6th St Ste 2200 Minneapolis, MN 55420	Electronic Service	No	OFF_SL_17-284_Official
Natalie	McIntire	natalie.mcintire@gmail.com	Wind on the Wires	570 Asbury St Ste 201 Saint Paul, MN 55104-1850	Electronic Service	No	OFF_SL_17-284_Official
Dave	McNary	David.McNary@hennepin.us	Hennepin County DES	701 Fourth Ave S Ste 700 Minneapolis, MN 55415-1842	Electronic Service	No	OFF_SL_17-284_Official
John	McWilliams	jmm@dairy.net	Dairyland Power Cooperative	3200 East Ave SPO Box 817 La Crosse, WI 54601-7227	Electronic Service	No	OFF_SL_17-284_Official
Thomas	Melone	Thomas.Melone@AllcoUS.com	Minnesota Go Solar LLC	222 South 9th Street Suite 1600 Minneapolis, Minnesota 55120	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Tim	Mergen	tmergen@meeker.coop	Meeker Cooperative Light And Power	1725 US Hwy 12 E. Suite 100 PO Box 68 Litchfield, MN 55355	Electronic Service	No	OFF_SL_17-284_Official
Stacy	Miller	stacy.miller@state.mn.us	Department of Commerce	State Energy Office 85 7th Place East, Suite 500 St. Paul, MN 55101	Electronic Service	No	OFF_SL_17-284_Official
Alan	Miller	N/A		2210 20th St NE Stewartville, MN 55976	Paper Service	No	OFF_SL_17-284_Official
Darrick	Moe	darrick@mrea.org	Minnesota Rural Electric Association	11640 73rd Avenue North Maple Grove, MN 55369	Electronic Service	No	OFF_SL_17-284_Official
David	Moe	momentums@aol.com		2825 28th Ave S Minneapolis, MN 55406	Electronic Service	No	OFF_SL_17-284_Official
David	Moeller	dmoeller@allete.com	Minnesota Power	30 W Superior St Duluth, MN 558022093	Electronic Service	No	OFF_SL_17-284_Official
Dalene	Monsebroten	dalene@mncable.net	Northern Municipal Power Agency	123 2nd St W Thief River Falls, MN 56701	Electronic Service	No	OFF_SL_17-284_Official
Michael	Monsrud	mmonsrud@itasca-mantrap.com	Itasca-Mantrap Coop. Electric Assn.	PO Box 192 Park Rapids, MN 56470	Electronic Service	No	OFF_SL_17-284_Official
Andrew	Moratzka	andrew.moratzka@stoel.com	Stoel Rives LLP	33 South Sixth St Ste 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Martin	Morud	mmorud@trunorthsolar.com	Tru North Solar	5115 45th Ave S Minneapolis, MN 55417	Electronic Service	No	OFF_SL_17-284_Official
Michael	Murtaugh	mmurtaugh@fmcs.coop	Freeborn-Mower Cooperative Services	2501 Main Street East Albert Lea, MN 56007	Electronic Service	No	OFF_SL_17-284_Official
Ben	Nelson	benn@cmpasgroup.org	CMPMA	459 South Grove Street Blue Earth, MN 56013	Electronic Service	No	OFF_SL_17-284_Official
Tony	Nelson	tnelson@itasca-mantrap.com	Itasca-Mantrap Coop. Electric Assn.	PO Box 192 Park Rapids, MN 56470	Electronic Service	No	OFF_SL_17-284_Official
David	Niles	david.niles@avantenergy.com	Minnesota Municipal Power Agency	220 South Sixth Street Suite 1300 Minneapolis, Minnesota 55402	Electronic Service	No	OFF_SL_17-284_Official
Will	Nissen	nissen@fresh-energy.org	Fresh Energy	408 St. Peter Street Ste 220 Saint Paul, MN 55102	Electronic Service	No	OFF_SL_17-284_Official
Michael	Noble	noble@fresh-energy.org	Fresh Energy	Hamm Bldg., Suite 220 408 St. Peter Street St. Paul, MN 55102	Electronic Service	No	OFF_SL_17-284_Official
Rolf	Nordstrom	rnordstrom@gpisd.net	Great Plains Institute	2801 21ST AVE S STE 220 Minneapolis, MN 55407-1229	Electronic Service	No	OFF_SL_17-284_Official
Samantha	Norris	samanthanorris@alliantenergy.com	Interstate Power and Light Company	200 1st Street SE PO Box 351 Cedar Rapids, IA 524060351	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Logan	O'Grady	logrady@cleanenergyecon omymn.org	Clean Energy Economy Minnesota	168 Winifred Street West St. Paul, Minnesota 55107	Electronic Service	No	OFF_SL_17-284_Official
Timothy	O'Leary	toleary@llec.coop	Lyon-Lincoln Electric Cooperative, Inc	P.O. Box 639 Tyler, MN 561780639	Electronic Service	No	OFF_SL_17-284_Official
Jeff	O'Neill	jeff.oneill@ci.monticello.mn .us	City of Monticello	505 Walnut Street Suite 1 Monticello, Minnesota 55362	Electronic Service	No	OFF_SL_17-284_Official
Russell	Olson	rolson@hcpd.com	Heartland Consumers Power District	PO Box 248 Madison, SD 570420248	Electronic Service	No	OFF_SL_17-284_Official
Wendi	Olson	wolson@otpc.com	Otter Tail Power Company	215 South Cascade Fergus Falls, MN 56537	Electronic Service	No	OFF_SL_17-284_Official
Gary	Olson		Cummins Power Generation	1400 73rd Ave NE Minneapolis, MN 55432	Paper Service	No	OFF_SL_17-284_Official
Bethany	Owen	bowen@mnpower.com	Minnesota Power	30 West Superior Street Duluth, MN 55802	Electronic Service	No	OFF_SL_17-284_Official
Dan	Patry	dpatry@sunedison.com	SunEdison	600 Clipper Drive Belmont, CA 94002	Electronic Service	No	OFF_SL_17-284_Official
Jeffrey C	Paulson	jeff.jcplaw@comcast.net	Paulson Law Office, Ltd.	4445 W 77th Street Suite 224 Edina, MN 55435	Electronic Service	No	OFF_SL_17-284_Official
Dean	Pawlowski	dpawlowski@otpc.com	Otter Tail Power Company	PO Box 496 215 S. Cascade St. Fergus Falls, MN 565370496	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Elizabeth Toba	Pearlman	epearlman@solarcity.com	Energy Freedom Coalition	3055 Clearview Way San Mateo, CA 94402	Electronic Service	No	OFF_SL_17-284_Official
Susan	Peirce	Susan.Peirce@state.mn.us	Department of Commerce	85 Seventh Place East St. Paul, MN 55101	Electronic Service	No	OFF_SL_17-284_Official
Mary Beth	Peranteau	mperanteau@wheelerlaw.com	Wheeler Van Sickle & Anderson SC	44 E. Mifflin Street, 10th Floor Madison, WI 53703	Electronic Service	No	OFF_SL_17-284_Official
Jeff M	Peters	jeff.peters@mrenergy.com	Missouri River Energy Services	3724 W Avera Dr PO Box 88920 Sioux Falls, MN 57109-8920	Electronic Service	No	OFF_SL_17-284_Official
Donna	Pickard	dpickardgsss@gmail.com	Genie Solar Support Services	1215 Lilac Lane Excelsior, MN 55331	Electronic Service	No	OFF_SL_17-284_Official
Mike	Pontius	mpontius@mnpower.com	Minnesota Power	30 W Superior St Duluth, MN 55802-2093	Electronic Service	No	OFF_SL_17-284_Official
David G.	Prazak	dprazak@otpc.com	Otter Tail Power Company	P.O. Box 496 215 South Cascade Street Fergus Falls, MN 565380496	Electronic Service	No	OFF_SL_17-284_Official
Gayle	Prest	gayle.prest@minneapolisn.gov	City of Mpls Sustainability	350 South 5th St, #315 Minneapolis, MN 55415	Electronic Service	No	OFF_SL_17-284_Official
Gregory	Randa	granda@lakecountrypower.com	Lake Country Power	2810 Elida Drive Grand Rapids, MN 55744	Electronic Service	No	OFF_SL_17-284_Official
Mark	Rathbun	mrathbun@grenergy.com	Great River Energy	12300 Elm Creek Blvd Maple Grove, MN 55369	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Michael	Reinertson	michael.reinertson@avantenergy.com	Avant Energy	220 S. Sixth St. Ste 1300 Minneapolis, Minnesota 55402	Electronic Service	No	OFF_SL_17-284_Official
John C.	Reinhardt		Laura A. Reinhardt	3552 26Th Avenue South Minneapolis, MN 55406	Paper Service	No	OFF_SL_17-284_Official
Kevin	Reuther	kreuther@mncenter.org	MN Center for Environmental Advocacy	26 E Exchange St, Ste 206 St. Paul, MN 551011667	Electronic Service	No	OFF_SL_17-284_Official
Darla	Ruschen	d.ruschen@bcrea.coop	Brown County Rural Electric Assn.	PO Box 529 24386 State Highway 4 Sleepy Eye, MN 56085	Electronic Service	No	OFF_SL_17-284_Official
Craig	Rustad	crustad@minnkota.com	Minnkota Power	1822 Mill Road PO Box 13200 Grand Forks, ND 582083200	Electronic Service	No	OFF_SL_17-284_Official
Robert K.	Sahr	bsahr@eastriver.coop	East River Electric Power Cooperative	P.O. Box 227 Madison, SD 57042	Electronic Service	No	OFF_SL_17-284_Official
Richard	Savelkoul	rsavelkoul@martinsquires.com	Martin & Squires, P.A.	332 Minnesota Street Ste W2750 St. Paul, MN 55101	Electronic Service	No	OFF_SL_17-284_Official
Larry L.	Schedin	Larry@LLSResources.com	LLS Resources, LLC	332 Minnesota St, Ste W1390 St. Paul, MN 55101	Electronic Service	No	OFF_SL_17-284_Official
Kenric	Scheevel	kjs@dairynet.com	Dairyland Power Cooperative	3200 East Avenue South PO Box 817 La Crosse, Wisconsin 54602	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Jacob J.	Schlesinger	jschlesinger@kfwlaw.com	Keyes & Fox LLP	1580 Lincoln St., Suite 880 Denver, CO 80203	Electronic Service	No	OFF_SL_17-284_Official
Jeff	Schoenecker	jschoenecker@dakotaelectric.com	Dakota Electric Association	4300 220th Street W Farmington, MN 55024	Electronic Service	No	OFF_SL_17-284_Official
Christopher	Schoenherr	cp.schoenherr@smmpa.org	SMMPA	500 First Ave SW Rochester, MN 55902-3303	Electronic Service	No	OFF_SL_17-284_Official
Ronald J.	Schwartau	rschwartau@noblesce.com	Nobles Cooperative Electric	22636 U.S. Hwy. 59 Worthington, MN 56187	Electronic Service	No	OFF_SL_17-284_Official
Rob	Scott Hovland	rob.scott-hovland@mrenergy.com	Missouri River Energy Services	3724 W Avera Dr PO Box 88920 Sioux Falls, SD 571098920	Electronic Service	No	OFF_SL_17-284_Official
Dean	Sedgwick	N/A	Itasca Power Company	PO Box 457 Bigfork, MN 56628-0457	Paper Service	No	OFF_SL_17-284_Official
David	Shaffer	DShaffer@MnSEIA.org	Minnesota Solar Energy Industries Project	1005 Fairmount Ave Saint Paul, MN 55105	Electronic Service	No	OFF_SL_17-284_Official
Doug	Shoemaker	dougs@mnRenewables.org	MRES	2928 5th Ave S Minneapolis, MN 55408	Electronic Service	No	OFF_SL_17-284_Official
Mrg	Simon	mrgsimon@mrenergy.com	Missouri River Energy Services	3724 W. Avera Drive P.O. Box 88920 Sioux Falls, SD 571098920	Electronic Service	No	OFF_SL_17-284_Official
Esther	Simon	esimon@itasca-mantrap.com	Itasca-Mantrap Cooperative	PO Box 192 Park Rapids, MN 56470	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Felicia	Skaggs	fskaggs@meeker.coop	Meeker Cooperative Light & Power	1725 US Highway 12 E Suite 100 Litchfield, MN 55355	Electronic Service	No	OFF_SL_17-284_Official
Trevor	Smith	trevor.smith@avantenergy.com	Avant Energy, Inc.	220 South Sixth Street Suite 1300 Minneapolis, Minnesota 55402	Electronic Service	No	OFF_SL_17-284_Official
Rafi	Sohail	rafi.sohail@centerpointenergy.com	CenterPoint Energy	800 LaSalle Avenue P.O. Box 59038 Minneapolis, MN 554590038	Electronic Service	No	OFF_SL_17-284_Official
Beth H.	Soholt	bsoholt@windonthewires.org	Wind on the Wires	570 Asbury Street Suite 201 St. Paul, MN 55104	Electronic Service	No	OFF_SL_17-284_Official
Marcia	Solie	m.solie@bcrea.coop	Brown County Rural Electric Assn.	24386 State Hwy. 4, PO Box 529 Sleepy Eye, Minnesota 56085	Electronic Service	No	OFF_SL_17-284_Official
Robyn	Sonstegard	robynnsec@wiktel.com	North Star Electric Cooperative, Inc.	PO Box 719 441 State Hwy 172 NW Baudette, MN 56623	Electronic Service	No	OFF_SL_17-284_Official
Sky	Stanfield	stanfield@smwlaw.com	Shute, Mihaly & Weinberger	396 Hayes Street San Francisco, CA 94102	Electronic Service	No	OFF_SL_17-284_Official
Mike	Steckelberg	msteckelberg@greenergy.com	Great River Energy	12300 Elm Creek Boulevard Maple Grove, MN 553694718	Electronic Service	No	OFF_SL_17-284_Official
David	Strom	dstrom@mncef.com	MN Conservative Energy Forum	235 E 6th St Fifth Floor St. Paul, MN 55101	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Eric	Swanson	eswanson@winthrop.com	Winthrop Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_17-284_Official
Sherry	Swanson	sswanson@noblesce.com	Nobles Cooperative Electric	22636 US Highway 59 PO Box 788 Worthington, MN 56187	Electronic Service	No	OFF_SL_17-284_Official
Thomas P.	Sweeney III	tom.sweeney@easycleanenergy.com	Clean Energy Collective	P O Box 1828 Boulder, CO 80306-1828	Electronic Service	No	OFF_SL_17-284_Official
Soria	Talbot	soria.talbot@nexteraenergy.com	NextEra Energy Resources	700 Universe Blvd Juno Beach, FL 33418	Electronic Service	No	OFF_SL_17-284_Official
Bryant	Tauer	btauer@whe.org	Wright-Hennepin	6800 Electric Dr Rockford, MN 55373	Electronic Service	No	OFF_SL_17-284_Official
Steve	Thompson	stevet@cmpasgroup.org	Central Minnesota Municipal Power Agency	459 S Grove St Blue Earth, MN 56013-2629	Electronic Service	No	OFF_SL_17-284_Official
Daniel	Tonder	d.tonder@mpower.com	Minnesota Power	PO Box 60 Little Falls, MN 56345	Electronic Service	No	OFF_SL_17-284_Official
Pat	Treseler	pat.jcplaw@comcast.net	Paulson Law Office LTD	4445 W 77th Street Suite 224 Edina, MN 55435	Electronic Service	No	OFF_SL_17-284_Official
Jeff	Triplett	triplettj@powersystem.org	MREA	10710 Town Square Dr NW St 201 Minneapolis, MN 55449	Electronic Service	No	OFF_SL_17-284_Official
Adam	Tromblay	atromblay@noblesce.com	Nobles Cooperative Electric	22636 US Hwy. 59 P.O. Box 788 Worthington, MN 56187-0788	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Lise	Trudeau	lise.trudeau@state.mn.us	Department of Commerce	85 7th Place East Suite 500 Saint Paul, MN 55101	Electronic Service	No	OFF_SL_17-284_Official
Craig	Turner	cturner@dakotaelectric.com	Dakota Electric Association	4300 - 220th Street West Farmington, MN 550249583	Electronic Service	No	OFF_SL_17-284_Official
Alan	Urban	alan.m.urban@xcelenergy.com	Xcel Energy	N/A	Electronic Service	No	OFF_SL_17-284_Official
Sam	Villella	sdvillella@gmail.com		10534 Alamo Street NE Blaine, MN 55449	Electronic Service	No	OFF_SL_17-284_Official
Sarah	Walinga	swalinga@solarcity.com	Energy Freedom Coalition	3055 Clearview Way San Mateo, MN 94402	Electronic Service	No	OFF_SL_17-284_Official
Robert	Walsh	bwalsh@mnvalleyrec.com	Minnesota Valley Coop Light and Power	PO Box 248 501 S 1st St Montevideo, MN 56265	Electronic Service	No	OFF_SL_17-284_Official
Roger	Warehime	warehimer@owatonnautilities.com	Owatonna Public Utilities	208 South WalnutPO Box 800 Owatonna, MN 55060	Electronic Service	No	OFF_SL_17-284_Official
Jenna	Warmuth	jwarmuth@mnpower.com	Minnesota Power	30 W Superior St Duluth, MN 55802-2093	Electronic Service	No	OFF_SL_17-284_Official
Elizabeth	Wefel	eawefel@fhaherty-hood.com	Missouri River Energy Services	3724 W Avera Drive PO Box 88920 Sioux Falls, SD 57109-8920	Electronic Service	No	OFF_SL_17-284_Official
Karlee	Weinmann	kweinmann@ilsr.org	Institute for Local Self- Reliance	1313 5th St SE #303 Minneapolis, MN 55414	Electronic Service	No	OFF_SL_17-284_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Paul	White	paul.white@prowind.com	Project Resources Corp./Tamarac Line LLC/Ridgewind	618 2nd Ave SE Minneapolis, MN 55414	Electronic Service	No	OFF_SL_17-284_Official
Jason	Willett	jason.willett@metc.state.mn.us	Metropolitan Council	390 Robert St N Saint Paul, MN 55101-1805	Electronic Service	No	OFF_SL_17-284_Official
Danielle	Winner	danielle.winner@state.mn.us	Department of Commerce	85 7th Place East Suite 500 Saint Paul, MN 55101	Electronic Service	No	OFF_SL_17-284_Official
Randi	Winter	rwinter@felhaber.com	Felhaber Larson	Felhaber Larson 220 South Sixth Street, Suite 2200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_17-284_Official
Cam	Winton	cwinton@mnchamber.com	Minnesota Chamber of Commerce	400 Robert Street North Suite 1500 St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_17-284_Official
Robyn	Woeste	robynwoeste@alliantenergy.com	Interstate Power and Light Company	200 First St SE Cedar Rapids, IA 52401	Electronic Service	No	OFF_SL_17-284_Official
Terry	Wolf	terry.wolf@mrenergy.com	Missouri River Energy Services	3724 W Avera Dr PO Box Sioux Falls, SD 571098920	Electronic Service	No	OFF_SL_17-284_Official
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_17-284_Official
Thomas J.	Zaremba	TZaremba@wheelerlaw.com	WHEELER, VAN SICKLE & ANDERSON	44 E. Mifflin Street, 10th Floor Madison, WI 53703	Electronic Service	No	OFF_SL_17-284_Official