

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
SUITE 350
121 SEVENTH PLACE EAST
ST. PAUL, MINNESOTA 55101-2147**

Katie Sieben	Chair
Joseph Sullivan	Vice Chair
Hwikwon Ham	Commissioner
Audrey Partridge	Commissioner
John Tuma	Commissioner

**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

**INITIAL COMMENTS OF THE
MINNESOTA DEPARTMENT OF
COMMERCE**

INTRODUCTION

The Commission should open an investigation into the Upper Sioux Community's complaint against Minnesota Valley Cooperative Light and Power Association and refer the matter to the Office of Administrative Hearings for contested case proceedings.

I. THE COMMISSION HAS JURISDICTION OVER THE SUBJECT MATTER OF THE COMPLAINT.

The Commission can exercise jurisdiction over the subject matter of the complaint. Minn. Stat. § 216B.17 authorizes the Commission to investigate certain complaints made against "any public utility" upon its own motion or upon a complaint made by certain parties, such as other public utilities or the governing body of any political subdivision.¹ Complaints that a practice, act, or omission affecting the furnishing of electricity is unreasonable or unjustly discriminatory are among the complaints that can be brought under Minn. Stat. § 216B.17. The Commission has the discretion to dismiss a complaint without a hearing if the Commission determines that a hearing is not in the public interest.

¹ Minn. Stat. § 216B.17 subd. 1.

Although cooperative electric associations are generally not considered public utilities,² complaints regarding cooperative electric associations’ “service standards and practices” fall within the jurisdiction granted to the Commission under Minn. Stat. § 216B.17.³ The complaint alleges that Minnesota Valley has made an unlawful and discriminatory threat to shut off electricity to the Community and its Prairie’s Edge Casino if the Community continues to construct and operate a planned 2.5 megawatt solar generation facility. The alleged conduct therefore implicates Minnesota Valley’s “service standards and practices” rather than its rates, which are not subject to the Commission’s jurisdiction.⁴ The alleged conduct is subject to investigation under Minn. Stat. § 216B.17 because it is “affecting or relating to the production, transmission, delivery, or furnishing of ... electricity” in a way that would be “unreasonable, insufficient, or unjustly discriminatory.”⁵

The Upper Sioux Community is a federally recognized American Indian tribe with inherent sovereign authority. Tribes are not “political subdivisions,”⁶ nor are they among the other entities Minn. Stat. § 216B.17 authorizes to initiate an investigation by filing a complaint.⁷ However, the Commission has the authority to investigate the Community’s complaint upon its own motion. For reasons explained in more depth below, the Department recommends that the Commission do so here.

² See Minn. Stat. § 216B.02 subd.4 (exempting cooperative electric associations from the definition of “public utility”).

³ Minn. Stat. § 216B.17 subd. 6a.

⁴ Minn. Stat. § 216B.17 subd. 6a; *Taylor v. Beltrami Elec. Co-op., Inc.*, 319 N.W.2d 52, 56–57 (Minn. 1982).

⁵ Minn. Stat. § 216B.17 subd. 1.

⁶ *Cross v. Fox*, 23 F.4th 797, 802 (8th Cir. 2022) (noting that tribes are not political subdivisions).

⁷ See Minn. Stat. § 216B.17 subd. 1.

As noted in the Commission's May 13, 2025 Amended Notice of Comment Period, formal complaints are subject to Minn. Stat. § 216B.17, Minn. Rules 7829.1700 - .1900. Other statutes and rules that should be applied or considered include Minn. Stat. §§ 10.65, 216B.1611, and 216B.164.

II. THERE ARE REASONABLE GROUNDS FOR THE COMMISSION TO INVESTIGATE THE ALLEGATIONS.

There are reasonable grounds for the Commission to investigate the allegations. The complaint arises from a utility's threat to cut off the flow of electricity to a community within its service territory if the construction and operation of a 2.5 megawatt behind-the-meter solar generation and battery energy storage facility continues. The Commission is responsible for regulating utility service standards and practices, and the interconnection of on-site distributed generation. The Community and Minnesota Valley initially attempted to resolve the matter on their own. When those efforts were unsuccessful, the Community and Minnesota Valley then engaged in mediation, which also did not resolve the dispute. The Department therefore believes it is unlikely that the parties will be able to reach a resolution to this issue on their own.

III. IT IS IN THE PUBLIC INTEREST FOR THE COMMISSION TO INVESTIGATE THE ALLEGATIONS.

Given the parties' prior attempts at reaching a resolution, the significance of the issue to both parties, and the potential for similar issues to reoccur in the future, the Department believes that it is in the public interest to clarify what rights and obligations apply when a utility customer builds and operates a behind-the-meter, not-for-export renewable energy production facility.

IV. THE COMMISSION SHOULD USE A CONTESTED CASE PROCESS TO INVESTIGATE THE COMPLAINT.

The Department recommends that the Commission refer the matter to the Office of Administrative Hearings for contested case proceedings. There are multiple issues where further

record development may be beneficial to the Commission's decision making. As examples, it is unclear at this point what the relationship is between the Prairie's Edge Casino and the distributed generation facility, which entity or entities Minnesota Valley intends to cut off power to if the construction and operation of the facility continues, the terms of Minnesota Valley's contract with Basin Electric, and whether the design of the solar generation and battery energy storage facility adequately ensures it is a behind-the-meter, not-for-export system.

CONCLUSION

The allegations in the complaint are within the Commission's jurisdiction, and it is in the public interest for the Commission to open an investigation. The Commission should refer the matter to the Office of Administrative Hearings for contested case proceedings.

Dated: June 6, 2025

Respectfully submitted,

KEITH ELLISON
State of Minnesota
Attorney General

/s/ Katherine Arnold

KATHERINE ARNOLD
Assistant Attorney General
Atty. Reg. No. 0395767

445 Minnesota Street, Suite 600
St. Paul, MN 55101-2131
(651) 300-7971 (Voice)
(651) 297-4348 (Fax)
katherine.arnold@ag.state.mn.us

ATTORNEYS FOR MINNESOTA
DEPARTMENT OF COMMERCE