February 10, 2025

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

Re: In the Matter of the Impacts of the "Capacity" Definition in Minn. Stat. §216B.164 and Associated Rules on Net Metering Eligibility for Rate-Regulated Utilities, Docket No. E002, E111, E017, E015/CI-24-200

Executive Secretary Seuffert,

Pursuant to Minn. Stat. § 216B.27 and Minn. R. 7829.3000, please find attached the Petition/Application for Rehearing, Amendment or Vacation of the Minnesota Solar Advocates in the above-referenced docket. This application/petition reflects the views of the Minnesota Solar Energy Industries Association, Solar United Neighbors, Institute for Local Self Reliance, and other interested members related to the order issued on January 23, 2025, in the above-referenced docket.

Pursuant to Minn. R. 7829.0400, this document has been filed electronically for service on the parties and participants in this proceeding as required by Minn. R. 7829.0300, subp. 3.

Sincerely,

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STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

Katie Sieben	Chair
Hwikwon Ham	Commissioner
John Tuma	Commissioner
Joseph Sullivan	Commissioner

In the Matter of the Impacts of the "Capacity" Definition in Minn. Stat. §216B.164 and Associated Rules on Net Metering Eligibility for Rate-Regulated Utilities.	APPLICATION/PETITION FOR REHEARING, AMENDMENT OR VACATION OF THE MINNESOTA SOLAR ADVOCATES
February 10, 2025	Docket No. E002/M-24-200

Pursuant to Minn. Stat. § 216B.27 and Minn. R. 7829.3000, the Minnesota Solar Energy Industries Association ("MnSEIA"), Solar United Neighbors ("SUN"), and Institute for Local Self Reliance ("ILSR"), (collectively, the Minnesota Solar Advocates ("MSA")), hereby submit this Application/Petition for Rehearing, Amendment or Vacation of the Minnesota Public Utilities Commission's January 23, 2025, Order Initiating Rulemaking Proceeding ("January 23 Order") in the above-referenced docket.

MnSEIA is a nonprofit association that represents Minnesota's solar and storage industry, with over 170 members, ranging from rooftop installers to non-profit organizations, manufacturers, utilities, and many others, which employ over 5,000 Minnesotans. SUN is a non-profit organization dedicated to creating a clean, equitable, resilient energy system that benefits everyone. Nationally, SUN has helped 9,367 homes and businesses add more than 78 MW of solar combined. In Minnesota, SUN has run 22 solar co-ops to help neighbors learn about solar and go solar together at a group price. SUN has also educated thousands of Minnesotans about

solar and storage, and has helped homes and small businesses install over 2 MW of solar combined. ILSR is a nonprofit organization and advocacy group that was founded in 1974. ILSR provides technical assistance to communities about local solutions for sustainable community development in areas such as banking, broadband, energy, independent business, and waste.

INTRODUCTION

It is important to remember that this docket started as an objection to Dakota Electric's ("DE") updates to its Technical Specifications Manual ("TSM"), which misstated the law regarding how the capacity of a distributed generation system/qualifying facility was measured for the purposes of determining its eligibility to receive the average retail utility energy rate. MnSEIA argued that Minn. Stat. § 216B.164 required that capacity be measured at the point of interconnection between the interconnection customer's system and the utility's system, which ONLY occurs at the bi-directional meter.[1] DE argued that nameplate rating is "commonly used" and established the "criteria or threshold to reasonably tied a system's size and interconnection to the requirements for retail net metering."[2] In that proceeding, the Commission required DE to delete the "aggregate Nameplate Rating" language that MnSEIA has objected to as inconsistent with the law, and opened this proceeding into the "application of the definition of 'capacity' in Minn. Stat. § 216B.164, subd. 3(d), and associated rules without creating reliability problems related to net-metering rate eligibility for Dakota Electric, Minnesota Power, Otter Tail Power

[1] *In the Matter of Updating the Generic Standards for the Interconnection and Operation of Distributed Generation Facilities Established Under Minn. Stat. § 216B.1611*, Dkt. 16-521, MnSEIA, OBJECTION OF MNSEIA TO PORTION OF DAKOTA ELECTRIC ASSOCIATION'S TSM RELATED TO QUALIFIED FACILITIES WITH CAPACITY LESS THAN 40 KW, p. 2 (Oct. 2, 2023).

[2] *In the Matter of Dakota Electric Association's Distribution Interconnection Process and Agreement,* Dkt. No. 18-711, Dakoka Elec. Assoc., COMMENTS, p, 3 (Jan. 12, 2024).

Company, and Xcel."[3] As Commissioner Ham noted at the April 11 hearing, "The definition [of capacity] is already there in the statute, and is very clear."[4] He goes on to say:

> *We cannot redefine what is defined in statute. The definition of capacity is already defined in the statute. This is a matter of how we are going to enforce it without jeopardizing reliability. If there is any issue with reliability the utility has to bring it up so we can either ask the legislature to change the definition or if they do not present good information they have to abide by the statute*.[5]

However, despite the clear language of the statute with regard to where capacity is measured, the language of the rule which basically parrots this language,[6] and Commissioner's Ham's recognition of this clarity, the Commission, in its January 23 Order initiated a rulemaking to change, not clarify, the location where capacity is measured. While there is language in the order[7] indicating that the rulemaking was being initiated to open a discussion about whether the rules needed to be amended, the actual language of the Decision Option that the Commission voted on and approved on April 11 already determines the outcome of the rulemaking. It states,

> The Commission hereby delegates authority to the Executive Secretary to open a new rulemaking proceeding to clarify that "capacity," as defined under Minn. Stat. § 216B.164, subd. 2a (c), for purposes of eligibility for net-metering in Minn. Stat. § 216B.164, subd. 3(d), *is determined by*, *and measured at*, the qualifying facility's inverter or a power control system or supplemental device

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[3] *In the Matter of Dakota Electric Association's Distribution Interconnection Process and Agreement,* Dkt. No. 18-711, Minn. Pub. Util. Comm., ORDER INITIATING PROCEEDING INTO DEFINITION OF "CAPACITY," p, 4 (May 22, 2024).

[4] *In the Matter of Dakota Electric Association's Distribution Interconnection Process and Agreement,* Dkt. No. 18-711, Minn. Pub. Util. Comm., HEARING, at 1:27:45 (April 11, 2024) (emphasis added).

[5] *Id,* at 1:46:30

[6] The definitions found in the MN DIP and TIIR, along with diagrams provided in those documents, also support that the Point of Common Coupling is located at the service point/bi-directional meter.

[7] In its order the stated, "The Commission will consider whether to amend the definition, as shown above or as otherwise determined, in the course of the rulemaking proceeding with input from stakeholders after opportunities for public comment from potentially interested and affected persons. A final decision on any rule change will be determined by the Commission after culmination of the separate rulemaking proceeding based on the record developed."

> that controls production at the qualifying facility before the net-metered customer's load.[8]

This language is clear and does not leave the issue open for any further discussion. This understanding is bolstered by statements made by the Minnesota Department of Commerce ("Commerce") to MnSEIA regarding the intent of this language.[9] MnSEIA had supported Commissioner Tuma's Decision Option or, in the alternative, a Decision Option that simply initiated a rulemaking to clarify any language in the rule that was inconsistent with the statute.[10] To which, MnSEIA was told by Commerce that the utilities did not want to leave the issue open for discussion in the rulemaking.[11]

If, in fact, the Commission expects the issue to remain open for discussion during the rulemaking it has initiated, then it must amend its January 23 Order as follows:

> The Commission hereby delegates authority to the Executive Secretary to open a new rulemaking proceeding to <u>discuss whether it is necessary to</u> clarify ~~that~~ <u>the term</u> "capacity," as defined under Minn. Stat. § 216B.164, subd. 2a (c~~), for purposes of eligibility for net-metering in Minn. Stat. § 216B.164, subd. 3(d).~~ <u>.</u> ~~, is determined by, and measured at, the qualifying facility's inverter or a power control system or supplemental device that controls production at the qualifying facility before the net-metered customer's load.~~

If the Commission does not amend its January 23 Order as noted above, or something similar to it striking the language that determines where capacity is measured, then it seems likely that some will argue in the rulemaking that the decision about changing where capacity is measured has already been made by the Commission and cannot be challenged. And if the Commission

[8] *In the Matter of Impacts of the "Capacity" Definition in Minn. Stat. § 216B.164 and Associated Rules on Net-Metering Eligibility for Rate-Regulated Utilities*, Dkt. 24-200, Minn. Pub. Util. Comm., ORDER INITIATING RULEMAKING PROCEEDING, p. 3 (Jan. 23, 2025).
[9] *See* Exhibit A – Declaration of Curtis Zaun.
[10] *Id*.
[11] *Id*.

refuses to amend its January 23 Order, then its order will violate the plain language of Minn. Stat. § 216B.164, subd. 2a(c), and existing Minn. R. 7835.0100, subp. 4, as well as Minn. Stat. § 216B.03. It will also be inconsistent with the Commission's past and present interconnection standards - the State of Minnesota Interconnection Process for Distributed Generation Systems ("Interconnection Process"), State of Minnesota Distributed Generation Interconnection Requirements ("Interconnection Requirements"), State of Minnesota Distributed Generation Interconnection Procedures ("MN DIP"), and the State of Minnesota Technical Interoperability and Interconnection Requirements ("TIIR") (collectively, "Interconnection Standards"). Accordingly, pursuant to Minn. Stat. § 216B.27 and Minn. R. 7829.3000, the MSA respectfully request that the Commission either amend it January 23 Order or vacate the order entirely because it is unlawful and unreasonable. Specifically, stating that capacity is "*determined by*, *and measured at*, the qualifying facility's inverter or a power control system or supplemental device that controls production at the qualifying facility before the net-metered customer's load," violates Minn. Stat. 216B.164, subd. 2a(c),[12] and Minn. R. 7835.0100, subp. 4.[13] It also violates Minn. Stat. 216B.03 because it does not, to "the maximum reasonable extent" . . . set rates to encourage energy conservation and renewable energy use and to further the goals of sections 216B.164." And it is unreasonable because it will discourage the installation of distributed energy resources ("DER") that benefit all ratepayers by reducing strain on the distribution system while providing the energy independence and freedom that the Minnesota

[12] "'Capacity' means the number of megawatts alternating current (AC) at the point of interconnection *between* a distributed generation facility and a utility's electric system." (Emphasis added).
[13] "'Capacity' means the capability to produce, transmit, or deliver electric energy, and *is measured by the number of megawatts alternating current at the point of common coupling between a qualifying facility and a utility's electric system*." (Emphasis added).

Legislature guaranteed to all Minnesotans, which could be especially beneficial for schools, churches, cities, counties and small business owners. Minnesota's clean energy future should be a democratic one where every Minnesotan meaningfully participates, not just monopoly utilities.

BACKGROUND

Dakota Electric TSM Inaccurately states that Capacity of Facility for Rate Eligibility Purposes is Measured by Nameplate Capacity.

As noted above, this matter began as an objection to DE's TSM. DE proposed to update its TSM to state:

> Dakota Electric is required to net-meter PURPA qualified DER systems that haves an aggregate Nameplate Rating of less than 40kW and are interconnected with the distribution system. Net- metering allows the member's DER to generate excess energy, greater than the local load requirements and push that energy back into the Area EPS and then later allows the member to draw the equivalent electrical energy from the grid for their on-site use. Over the course of a billing month, the excess energy generated and sent back into the distribution system (received by the utility) is metered by the main meter. This is instantaneously metered and recorded by the main meter. The energy delivered by the utility to the service (delivered usage) is separately metered by the main meter. Those two monthly register values are used to generate the monthly bill. Energy sent back into the grid and received by the utility is used to off-set energy delivered by the utility on the monthly billing. The sum of the two metering registers will be used to identify if a credit is available or payment assessed. TheThe energy flowing through the DER production meter is not used in the monthly billing calculation. generated by the DER is used to offset some or all the energy used by the member from the grid.
>
> Net metering requires the separate measurement of energy flow, both into and out of the electrical service. To support this type of interconnection, the main service meter will be replaced or reprogrammed to measure and record energy flow in both directions.

This provision is notable for both what is says and also what DE proposed to remove from it. First, DE states that it is required to provide the average retail utility energy rate if the "aggregate Nameplate Rating" is less than 40 kW. As the Commission recently explained to the Minnesota Court of Appeals, nameplate capacity/rating means "the maximum rated output of electric

generator equipment under specific conditions designated by the manufacturer."[14] So, nameplate capacity/rating is not what a facility/system actually exports to the distribution system some or even most of the time, especially with a solar generation facility/system. Nameplate capacity/rating is its maximum output under ideal conditions and is not measured at the Point of Interconnection/Common Coupling. In fact, what is called a behind the meter system will never have a capacity at the Point of Interconnection/Common Coupling equal to its nameplate capacity/rating because some portion of its generation will always be offset by some load. But, even though a system's nameplate capacity/rating will not be what impacts a utility's distribution system because it is not what will be exported to the utility's distribution system, Minnesota utilities have declared that "It is, and always has been, standard practice for a qualifying facility's generation capacity to be determined by the aggregated sum of the listed nameplate capacity of the qualifying facility's system."[15] They go on to say, "The nameplate AC ratings of the inverters establish the associated solar qualifying facility's usable production capability – hence it's capacity."[16]

Second, DE was removed the language stating "greater than then local load requirements," a clear recognition that ratepayer facilities/systems could generate more than necessary to simply offset their own load.

[14] *In the Matter of the Formal Complaint and Request for Relief by the Minnesota Solar Advocates,* Case No. A24-0845, Minn. Pub. Util. Comm., BRIEF OF RESPONDENT MINNESOTA PUBLIC UTILITIES COMMISSION, p. 12 (Sept. 25, 2024).
[15] *In the Matter of Impacts of the "Capacity" Definition in Minn. Stat. § 216B.164 and Associated Rules on Net-Metering Eligibility for Rate-Regulated Utilities*, Dkt. 24-200, Minn. Rural Elec. Assoc., DECLARATION 1 OF 2, p. 2 (Sept. 3, 2024).
[16] *Id*.

Because the use of "aggregate Nameplate Rating" to determine rate eligibility was not consistent with the plain language of the law or Minnesota's Interconnection Standards, MnSEIA objected to DE's TSM.

State Law Explicitly States that Capacity is Measured at the Point Where the Customer's System connects with the Utility's System.

In its objection, as in this petition, MnSEIA relied on the plain language of Minnesota law. Minnesota law applicable to small qualifying facilities is found at Minn. Stat. § 216B.164, subd. 3(d), and Minn. R. 7835.3300, subp. 1. Minn. Stat. 216B.164, subd. 3(d), states, in relevant part:

> Notwithstanding any provision in this chapter to the contrary, *a qualifying facility having less than 40-kilowatt capacity* may elect that the compensation for net input by the qualifying facility into the utility system shall be at the average retail utility energy rate.

(Emphasis added). Minn. R. 7835.3300, subp. 1, similarly states, "The average retail utility energy rate is available only to qualifying facilities with capacity of less than 40 kilowatts which choose not to offer electric power for sale on either a time-of-day basis or a simultaneous purchase and sale basis." Importantly, the definition of capacity under Minn. Stat. § 216B.164, subd. 2a(c), states that capacity "means the number of megawatts alternating current (AC) at *the point of interconnection between a distributed generation facility and a utility's electric system*." (Emphasis added). Minnesota Rule 7835.0100, subp. 4, provides even more clarity to where the capacity of a system is measured by stating:

> "Capacity" means the capability to produce, transmit, or deliver electric energy, *and is measured by the number of megawatts alternating current at the point of common coupling between a qualifying facility and a utility's electric system*.

(Emphasis added). The rule makes it clear that "the point of interconnection between a distributed generation facility and a utility's electric system," as stated in the statute, is also called the point of

common coupling, which is a more technical term that is used in the Commission's prior and current interconnection standards, and Commission decisions.[17]

Rule Defining Where Capacity is Measured Relies on Commission Interconnection Standards.

The Staff Briefing Papers from when this rule was amended highlight this point. They start by noting that the draft rule language, which is the language that is ultimately adopted, "incorporates much of the statutory language while retaining existing rule language" and then provides the amendments as:

> **Capacity.** "Capacity" means the capability to produce, transmit, or deliver energy and is measured by the number of megawatts alternating current at the point of common coupling between a qualifying facility and a utility's electric system.[18]

They then state that "[t]he draft uses the term 'qualifying facility' (instead of 'distributed generation facility') to make the rule applicable to all facilities. The draft also uses the term 'point of common coupling,' *which is used in the Commission's interconnection standards as the point where the customer's electric power system connects to the utility's power system*."[19] The Statement of Need and Reasonableness issued by the Commission reiterated where capacity is measured, stating:

> It is also reasonable to use the term "point of common coupling," which is used in the Commission's interconnection standards as the point where the customer's electric power system connects to the utility's power system. *Although the "point of interconnection" and the "point of common coupling" are commonly used interchangeably*, the proposed rule's use of "point of common coupling" is consistent with earlier Commission decision.[20]

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[17] *In the Matter of Possible Amendments to Rules Governing Cogeneration and Small Power Production, Minnesota Rules, Chapter 7835,* Dkt. 13-729, Minn. Pub. Util. Comm., STAFF BRIEFING PAPERS, p. 5 (Oct. 30, 2014).
[18] *In the Matter of Possible Amendments to Rules Governing Cogeneration and Small Power Production, Minnesota Rules, Chapter 7835*, Dkt. 13-729, Minn. Pub. Util. Comm., STAFF BRIEFING PAPERS, p. 5 (Oct. 30, 2014).
[19] *Id*. (Emphasis added).
[20] *In the Matter of Possible Amendments to Rules Governing Cogeneration and Small Power Production, Minnesota Rules, Chapter 7835*, Dkt. 13-729, Minn. Pub. Util. Comm., STATEMENT OF NEED AND REASONABLENESS, p. 4 (Dec. 29, 2014) (citations omitted) (emphasis added).

The Commission again reiterated the location of where capacity is measured in its order adopting the rule changes stating:

> To address the issue raised, however, the Commission will separately define "point of common coupling." Use of this term is consistent with recent Commission decisions, including the Commission's decision establishing interconnection standards, which define "point of common coupling" *as the point where the local area electric power system (the customer's system) is connected to an area electric power system (the utility's system)*.[21]

In summary, it was repeated so many times that there can be no mistake about what was intended that, consistent with the Commission's interconnection standards, the capacity of a system is measured at the point where the customer's system is connected to the utility's system, which is referred to as the Point of Common Coupling or the point of interconnection.

Nameplate Capacity Only Relevant if Bi-Directional Meter not Installed.

With regard to retaining the existing language in the rule, the Staff Briefing Papers noted,

> The capability to produce, transmit, or deliver electric energy is existing rule language and *is relevant if the number of megawatts (output) cannot be measured, such as in situations where the customer's metering system reads only net input*. Retaining the existing language ensures that capacity can be determined by using nameplate capacity, i.e., the system's capability.[22]

In other words, retaining the existing rule language was only meant to allow nameplate capacity to be used in situations where a bi-directional meter was not present because it would not be possible to measure a system's capacity at the point of interconnection/common coupling between the customer's system and the utility's system. In situations where a bi-directional meter is present, the point of interconnection/common coupling between the customer's system and the utility's system is where the capacity of the customer's system is measured. Or, to put it another

[21] *In the Matter of Possible Amendments to Rules Governing Cogeneration and Small Power Production, Minnesota Rules, Chapter 7835*, Dkt. 13-729, Minn. Pub. Util. Comm., ORDER ADOPTING RULES, p. 4 (July 17, 2015).
[22] *In the Matter of Possible Amendments to Rules Governing Cogeneration and Small Power Production, Minnesota Rules, Chapter 7835*, Dkt. 13-729, Minn. Pub. Util. Comm., STAFF BRIEFING PAPERS, p. 4 (June 15, 2015) (emphasis added).

way, it is the customer's system's capability to produce, transmit and deliver electric energy to the utility's system, which, with a bi-directional meter, can only be measured at the point of interconnection/common coupling between the customer's system and the utility's system.

The Staff Briefing Papers also note that "[t]he statute defines capacity as the number of megawatts alternating current at the point of interconnection between a facility and a utility's electric system. And although this requires measuring capacity *(rather than using nameplate capacity),* the statute does not prescribe whether capacity is measured over standard 15-minute intervals or in some other manner, such as using a daily or monthly average. Some committee members suggested a definition, or multiple definitions, that measure capacity based on standard 15-minute time intervals. Others suggested measuring capacity based on net input."[23] Staff noted that they did not incorporate a 15-minute interval for measuring capacity, "in part because a 15-minute standard is not applicable to all rule parts where the term is used and because it raises compliance issues that are not addressed in the draft. Further, industry practice is to specify in tariffs that standard 15-minute intervals are used for measuring capacity to determine applicable billing rates."[24] This discussion, of course, highlights, that capacity is measured as net output, in some time interval, not as nameplate capacity or the system's maximum capability.

Minnesota Law Promotes Installing DER and Being a Small Power Producer.

Minn. Stat. § 216B.164, subd. 1, states, "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." (Emphasis added). The Staff Briefing Papers also recognized that "[t]he statute's policy objective is to encourage

[23] *In the Matter of Possible Amendments to Rules Governing Cogeneration and Small Power Production, Minnesota Rules, Chapter 7835*, Dkt. 13-729, Minn. Pub. Util. Comm., STAFF BRIEFING PAPERS, p. 3-4 (Oct. 30, 2014).
[24] *Id*. at p. 4.

customers to offset their energy use by generating their own energy, *but the statute does not require that a facility be sized to match generation to load*."[25] In its comments, Commerce noted that limiting "the capacity of small power cogeneration by aggregating the nameplate capacity of each DER system component to calculate the capacity of that system, *rather than calculating the DER capacity as the export capacity at the point of common coupling* . . . runs contrary to Minn. Stat. § 216B.164, subd. 1), Minn. Stat. § 216B.1611, subd. 1 (5), and Commission Order."[26]

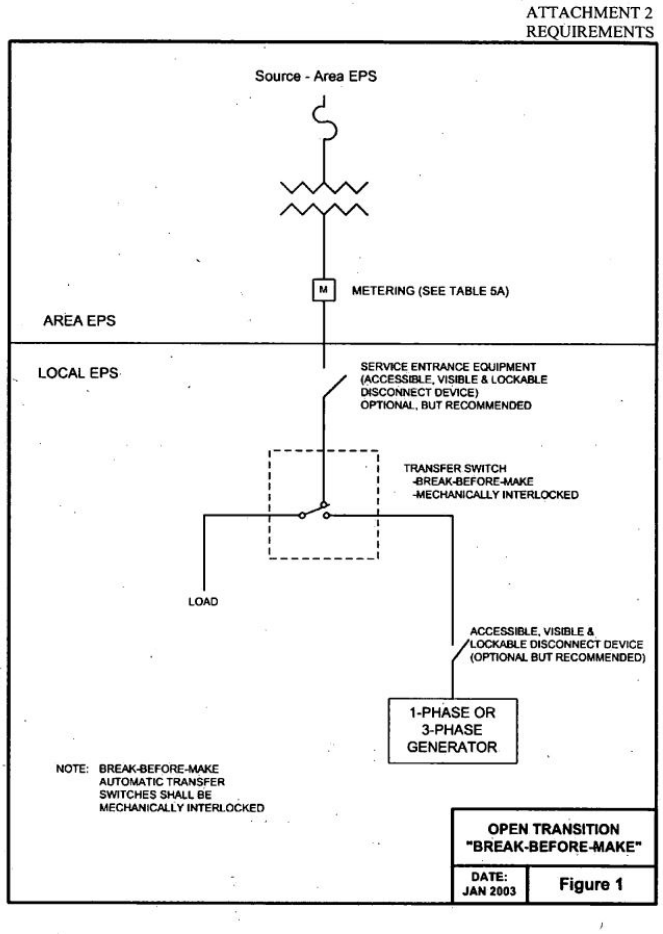
The Commission's Interconnection Standards Provide Additional Clarity to the Point of Common Coupling.

As noted above, when the Commission updated its rules it relied on both the statutory language and its interconnection standards. The Interconnection Standards in effect at the time the rules were changed were adopted on September 28, 2004 in docket 01-1023.[27] While the prior Interconnection Standards do not provide the level of detail and clarity that the current standards do, they provide more than enough clarify and are consistent with the current standards and Minnesota Rules.

The Interconnection Process provides a list of definitions. "Area EPS is defined "as an electric power system (EPS) that serves Local EPS's."[28] "Local EPS" is defined as "an electric power system (EPS) contained entirely within a single premises or group of premises."[29] And "Point of Common Coupling" is defined as "the point where the Local EPS is connected to an Area EPS."[30] The definitions found in the Interconnection Requirements mirror those found in

[25] *Id*.
[26] *Id*., p. 5-6 (emphasis added) (citation omitted).
[27] *See In the Matter of Establishing Generic Standards for Utility Tariffs for Interconnection and Operation of Distributed Generation Facilities under Minnesota Laws 2001*, Chapter 212, Dkt. 01-1023, Minn. Pub. Util. Comm., ORDER ESTABLISHING STANDARDS (Sept. 28, 2004).
[28] *Id*., Attachment 1, p. 2 (PDF p. 31).
[29] *Id*.
[30] *Id*., p. 3 (PDF p. 32).

the Interconnection Process.[31] The Interconnection Requirements, however, provide a useful figure[32] that can illustrate exactly where the Point of Common Coupling is located.

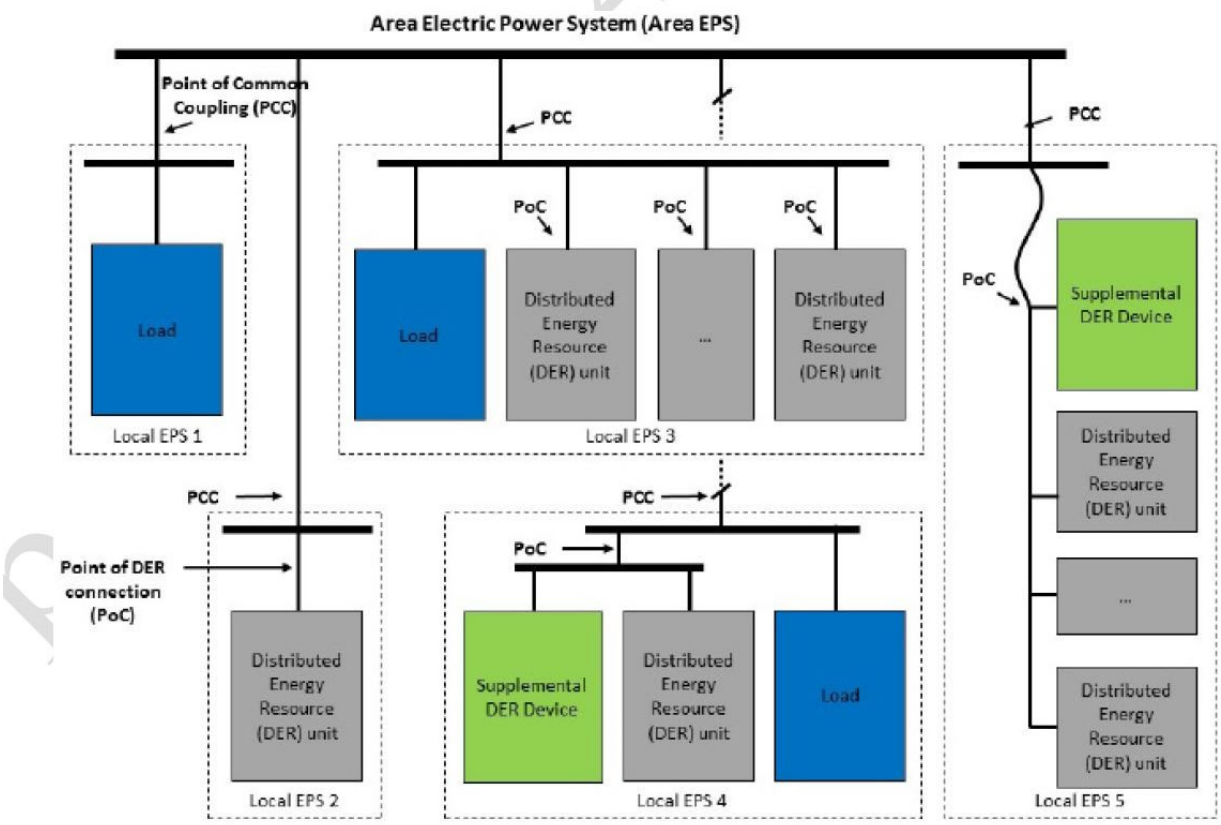


This figure shows that where the Area EPS connects with the Local EPS is after Load. But, most importantly, the box with the M inside it refers to Table 5A, and Table 5A states, "Bi-Directional metering at the point of common coupling."[33] This clearly shows that the Point of Common Coupling, as the Commission understood it when they amended the rules, is at the bi-directional meter

[31] *Id*., p. 4 (PDF p. 54)
[32] *Id*. p. 25 (PDF p. 75)
[33] *Id*.

And if the Commission's prior interconnection standards were not clear enough, the current Interconnection Standards can provide additional clarity. The MN DIP has a Glossary of Terms.[34] It defines Area EPS as "the electric power distribution system connected at the Point of Common Coupling."[35] It defines the Point of Common Coupling, or PCC, as the "The point where the Interconnection Facilities connect with the Area EPS Operator's Distribution System. See figure 1. Equivalent, in most cases, to "service point" as specified by the Area EPS Operator and described in the National Electrical Code and the National Electrical Safety Code."[36] The service point is where the bi-directional meter would be installed. It also defines Point of DER Connection, or PoC, stating, in part, "When identified as the Reference Point of Applicability, the point where an individual DER is electrically connected in a Local EPS and meets the requirements of this standard *exclusive of any load present* in the respective part of the Local EPS (e.g. terminals of the inverter when no supplemental DER device is required.)."[37] And it defines Distributed Energy Resource, or DER, as a source of electric power that is not directly connected to a bulk power system. DER includes both generators and energy storage technologies capable of exporting active power to an EPS. An interconnection system or a supplemental DER device that is necessary for compliance with this standard is part of a DER."[38] Figure 1, below, once again, shows that the Point of Common Coupling is located after Load.

[34] MN DIP, p. 1.
[35] *Id*.
[36] *Id*., p. 4.
[37] *Id*., p. 5 (emphasis added).
[38] *Id*., p. 1



Like the prior interconnection standards, this figure clearly demonstrates that the Point of Common Coupling is located after Load, where the customer's system (aka, the Local EPS), connects to the utility's system (aka, the Area EPS). It also shows that where the customer's inverter or supplemental DER device connects to his or her electrical system is the Point of Connection, which is before the Load. This point does not connect to the utility's system.

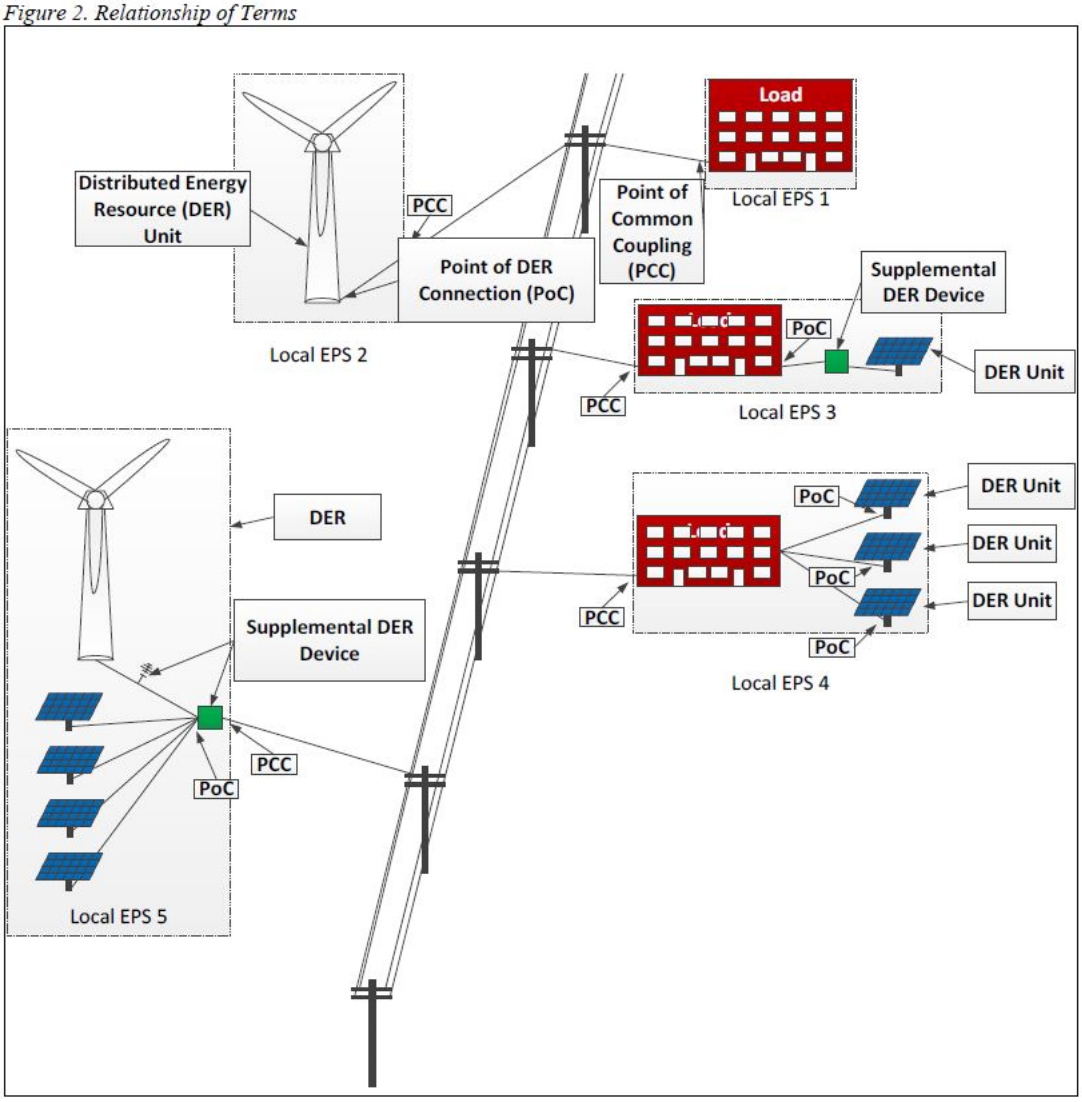
The relevant definitions in the TIIR are found in Section 3.2. "Area EPS" is defined as the "electric power distribution system connected at the Point of Common Coupling."[39] "Local EPS" is defined as an "EPS contained entirely within a single premises or group of premises."[40] The "Point of Common Coupling" or PCC is defined as the "point of connection between the Area EPS

[39] TIIR, p. 10.
[40] *Id.*, p. 13.

and the Local EPS."[41] It references the MN DIP Glossary of Terms and Figure 2, which is provided below.[42] It also states, like the MN DIP, that it is "[e]quivalent in most cases, to 'service point' as specified in the National Electrical Code and the National Electrical Safety Code."[43] And it defines the "point of DER connection" or PoC as the point where a DER unit is electrically connected in a Local EPS and meets the requirements of this standard exclusive of any load present in the respective part of the Local EPS."[44] It also references the MN DIP Glossary of Terms and Figure 2.[45] To help visualize what these words describe, the TIIR provides the best figure of all of them demonstrating the difference between the PCC and the PoC in relation to Load. The examples in Local EPS 3 and Local EPS 4 provide the best examples of the most relevant configurations.

[41] *Id*., p. 15.
[42] *Id*.
[43] *Id*.
[44] *Id*.
[45] *Id*.

Figure 2. Relationship of Terms



What is evident from this figure is that Load, which is the big red building in the upper right-hand side of the figure, is part of the Local EPS and that the PCC is located after it, while the PoC is before it. Which means, consistent with Minnesota law and the Commission's interconnection standards, capacity, for the purposes of the average retail utility energy rate, is measured at the point of interconnection/common coupling between the customer's system (aka, Local EPS) and the utility's system (aka, Area EPS). It is not nameplate capacity or any other capability or rating that is measured before Load. Commission staff agreed with this analysis stating:

> Staff believes **Figure 2** is intended to communicate that the point of common coupling and the point of DER connection are different locations in both MN DIP and in Minnesota law. That the point of common coupling (the PCC in Figure 2) is where the qualifying facility is interconnected with the utility's electric system and that the customer's load is behind the point of common coupling. Further, Staff understands that **Figure 2** is consistent with the proposed interpretation with the application of a power control system which can limit the export capacity of multiple DERS at the point of common coupling to less than 40 kW and, therefore, making the DERs eligible for net-metering compensation.[46]

And this is reasonable because it is the electricity that is actually exported to the utility's distribution system that has both a physical and financial impact on the utility. Which is why MnSEIA objected to DE's TSM that misstated how capacity was determined for the purpose of determining a system's eligibility for the average retail utility energy rate.

Commerce and Commissioner Ham Agree the Law is Clear.

In the both the prior docket addressing DE's TSM and this docket, Commerce agreed that the law clearly measured capacity at the point of interconnection or common coupling. In its Initial Comments in the prior docket, docket 16-521, Commerce stated, "The plain language of Minn. Stat. § 216B.164 and Minnesota Rule 7835.0100, comports with MnSEIA's assertion that a DER or DER system comprising a QF with less than 40kW alternating current at the point of interconnection or the point of common coupling is eligible for net metering."[47] Commerce then goes on to say, "The wording of a sentence in the TSM, which is not tariffed, belies a larger problem: it is apparently the common practice of DEA to limit the capacity of small power cogeneration by aggregating the nameplate capacity of each DER system component to calculate the capacity of that system, *rather than calculating the DER capacity as the export capacity at the*

[46] *In the Matter of Impacts of the "Capacity" Definition in Minn. Stat. § 216B.164 and Associated Rules on Net-Metering Eligibility for Rate-Regulated Utilities*, Dkt. 24-200, Minn. Pub. Util. Comm., STAFF BRIEFING PAPERS, p. 19 (Oct. 30, 2024).

[47] *In the Matter of Updating the Generic Standards for the Interconnection and Operation of Distributed Generation Facilities Established Under Minn. Stat. § 216B.1611*, Dkt. 16-521, Minn. Dept. of Commerce, INITIAL COMMENTS, p. 4 (Jan. 12, 2024).

point of common coupling. Such limitation runs contrary to Minn. Stat. § 216B.164, subd. 1), Minn. Stat. § 216B.1611, subd. 1 (5), and Commission Order."[48]

Commissioner Ham agreed at the hearing in docket stating, "The definition [of capacity] is already there in the statute, and is very clear."[49] He goes on to say:

> *We cannot redefine what is defined in statute. The definition of capacity is already defined in the statute. This is a matter of how we are going to enforce it without jeopardizing reliability. If there is any issue with reliability the utility has to bring it up so we can either ask the legislature to change the definition or if they do not present good information they have to abide by the statute*.[50]

He even changed the wording of the Decision Option adopted by the Commission from one that questioned the definition of capacity to one that focused on its application because the definition was so clear. The original Decision Option proposed by Commission staff stated:

> Open a Commission proceeding *to interpret* the definition of "capacity" as it relates to net metering rate eligibility for Dakota Electric, Minnesota Power, Otter Tail Power, and Xcel Energy. Delegate authority to the Executive Security to modify deadlines, schedules, and procedures throughout this proceeding.[51]

Commissioner Ham proposed changing the word "interpret" to "enforce" because, "we cannot redefine what is defined in statute, so that definition of capacity is already defined in the statute. So it is a matter of how we are going to enforce it without jeopardizing reliability."[52] After concern was raised by other commissioners about the term "enforce," Commissioner Ham stated, "The statute clearly defines this term in the definitions section. So, I don't know how we can interpret

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[48] *Id*., p. 5-6 (emphasis added) (citation omitted).
[49] *In the Matter of Dakota Electric Association's Distribution Interconnection Process and Agreement,* Dkt. No. 18-711, Minn. Pub. Util. Comm., HEARING, at 1:27:45 (April 11, 2024) (emphasis added).
[50] *Id,* at 1:46:30
[51] *In the Matter of Dakota Electric Association's Distribution Interconnection Process and Agreement,* Dkt. No. 18-711, Minn. Pub. Util. Comm., APRIL 11, 2024 AGENDA – REVISED DECISION OPTIONS (April 10, 2024) (emphasis added).
[52] *In the Matter of Dakota Electric Association's Distribution Interconnection Process and Agreement,* Dkt. No. 18-711, Minn. Pub. Util. Comm*., HEARING*, at 1:46:52 to 1:47:09 (April 11, 2024).

that one. It is a more practical issue about how you apply it without jeopardizing reliability."[53] Commissioner Sullivan then suggested the word apply and the Decision Option was changed to read:

> The Commission hereby opens a proceeding *into application of the definition of "capacity" in Minn. Stat. § 216B.164, subd. 3(d) and associated rules* without creating reliability problems related to net-metering rate eligibility for Dakota Electric, Minnesota Power, Otter Tail Power Company, and Xcel. The docket number of the new proceeding is E-002, E-111, E-017, E-015/CI-24-200.[54]

And it is this Decision Option that was adopted by the Commission.

Commerce and the Commission Change their Position, Moving the Point where Capacity is Measured.

At the November 7 hearing in the current docket the positions of Commerce and the Commission changed for reasons that are unclear from the public record. While the Commission's position appeared to start changing when the Notice of Comment Period was issued, Commerce's position did not change until the eve of the hearing. Such a change is inconsistent with Minnesota law and policy, and the Commission's prior and current interconnection standards.

The Commission's position appeared to start changing when the Notice of Comment Period was issued. Although the Decision Option adopted by the Commission in the prior docket was focused on whether the application of the statutory definition created any safety or reliability issues, the issues opened for comment went far beyond that. They included, "How should the Commission consider the "capacity" definition in Minn. Stat. § 216B.164 and associated rules on net metering eligibility for rate-regulated utilities?"[55] This question not only went beyond the Decision Option

[53] *In the Matter of Dakota Electric Association's Distribution Interconnection Process and Agreement,* Dkt. No. 18-711, Minn. Pub. Util. Comm., HEARING, at 1:49:45 to 1:49:58 (April 11, 2024).
[54] *In the Matter of Dakota Electric Association's Distribution Interconnection Process and Agreement,* Dkt. No. 18-711, Minn. Pub. Util. Comm., ORDER INITATING PROCEEDING INTO DEFINITION OF "CAPACITY", p. 4 (May 22, 2024) (emphasis added).
[55] *In the Matter of Impacts of the "Capacity" Definition in Minn. Stat. § 216B.164 and Associated Rules on Net-Metering Eligibility for Rate-Regulated Utilities*, Dkt. 24-200, Minn. Pub. Util Comm., NOTICE OF COMMENT PERIOD (June 4, 2024).

adopted by the Commission, it went beyond the title of the docket. And, interestingly, in the Staff Briefing Papers, none of the Decision Options addressed the impacts of the capacity definition. Instead, they focused on either clarifying the definition of capacity, referring the battery storage issue to the DGWG, opening a new rulemaking to amend the definition of the point of common coupling, opening a new proceeding to further develop the record, or opening "a new proceeding to discuss the rate impacts if capacity, for purposes of eligibility for the net-metering rate in Minn. Stat. § 216B.164, subd. 3(d), is measured at the utility's bi-directional meter."[56] Which is why MnSEIA proposed the following Decision Option:

> The record does not demonstrate that any reliability problems will be created by applying the definition of "capacity" in Minn. Stat. § 216B.164 instead of the nameplate capacity that some Minnesota utilities have used to determine rate eligibility. Future reliability problems, if they arise, may be addressed through a separate proceeding that will evaluate possible solutions consistent with Minnesota law.[57]

On the eve of the November 7 hearing Commission Tuma filed a revision to Decision Option 2, which was the Commission staff's proposed Decision Option supported by Commerce, MnSEIA, Nokomis Energy and Clean Energy Economy Minnesota. His revisions were as follows:

> Delegate authority to the Executive Secretary to open a new rulemaking proceeding to clarify that "capacity," as defined in Minn. Stat. § 216B.164, subd. 2a(c), for purposes of eligibility for the net-metering rate in Minn. Stat. § 216B.164, subd. 3(d), is measured at the utility's bidirectional meter. In addition to the rulemaking proceeding, a separate proceeding in this docket shall develop the record on impacts to rates, interconnection agreements, and how the utility will limit export capacity of a qualifying facility to 40kW if capacity, for purposes of eligibility for the net-

[56] *In the Matter of Impacts of the "Capacity" Definition in Minn. Stat. § 216B.164 and Associated Rules on Net-Metering Eligibility for Rate-Regulated Utilities*, Dkt. 24-200, Minn. Pub. Util. Comm., STAFF BRIEFING PAPERS, p. 44 (Oct. 30, 2024).
[57] *In the Matter of Impacts of the "Capacity" Definition in Minn. Stat. § 216B.164 and Associated Rules on Net-Metering Eligibility for Rate-Regulated Utilities*, Dkt. 24-200, MnSEIA, ADDITIONAL DECISION OPTION REGARDING RELIABILITY (Nov. 6, 2024).

metering rate in Minn. Stat. §216B.164, subd. 3(d), is measured at the utility's bi-directional meter.[58]

And despite the Commission's apparent attempt to change the focus of the docket, Commerce affirmed its previous position on the law, stating, in its Initial Comments in this docket, "The governing statute, Minn. Stat. § 216B.164, provides a clear definition of capacity for the purposes of determining eligibility."[59] It goes on to state:

> The definition of capacity under Minn. Stat. § 216B.164 and the associated rules in Minn. R. Ch. 7835 provide clear guidance that capacity is defined at the point of interconnection, also called the point of common coupling, with the utility system. For purposes of net-metered rates, then, capacity at the point of interconnection determines eligibility rather than nameplate capacity. Unlike in the context of interconnection requirements—discussed further below, and in which capacity is, at times, explicitly defined as nameplate capacity—Minn. Stat. § 216B.164 and Minn. R. Ch. 7835 consistently utilize the point of interconnection for purposes of defining capacity in the context of net-metered rate eligibility. In this context, then, utilities should abide by the definition of capacity provided in the governing statute.[60]

Commerce goes on to state:

> The implication of applying the definition of capacity at the point of interconnection for purposes of net-metered rate eligibility allows systems with nameplate capacity higher than the statutory capacity limits to remain eligible, provided they limit capacity at the point of interconnection below the relevant threshold. DEA and other parties raised concerns with this outcome, as it would incentivize larger DER systems to access the more lucrative average retail rate, shifting distribution costs to other ratepayers.
>
> The Department recognizes this concern. Nonetheless, Minn. Stat. § 216B.164 sets net-metered rate eligibility and, therefore, systems with capacity at the point of interconnection below the statutory limit—namely 40 kWac for purposes of the average retail rate under Minn. Stat. § 216B.164, Subd. 3(d)—remain eligible. The statute does not exclude the outcomes contemplated by commenters during the previous proceeding, but the concerns remain hypothetical and unquantified. It is

[58] *In the Matter of Impacts of the "Capacity" Definition in Minn. Stat. § 216B.164 and Associated Rules on Net-Metering Eligibility for Rate-Regulated Utilities*, Dkt. 24-200, Minn. Pub. Util. Comm., MODIFICATION OF DECISION OPTION 2 (Nov. 6, 2024).
[59] *In the Matter of Impacts of the "Capacity" Definition in Minn. Stat. § 216B.164 and Associated Rules on Net-Metering Eligibility for Rate-Regulated Utilities*, Dkt. 24-200, Minn. Dept. of Commerce, INITIAL COMMENTS, p. 4 (Sept. 3, 2024).
[60] *Id*., p. 5.

> not clear to the Department the extent of the potential problem caused by such systems retaining net-metered rate eligibility.[61]

In its Reply Comments Commerce reiterated its position stating:

> The Department maintains its position from initial comments that the governing statute is clear that capacity is defined at the point of interconnection with the utility system with respect to net-metered rate eligibility. The Department wishes to clarify its recommendation from initial comments to read that utilities should apply the definition of capacity for purposes of net-metered rate eligibility as the maximum export capacity of the DER system at the point of interconnection, consistent with the governing statute.[62]

Commerce then goes on to explain:

> The location at which the definition of capacity applies is relevant to the consideration of customer load. The inherent variability of customer load impacts the amount of energy exported to the utility system at the PCC. Multiple parties raised concerns with the inclusion of customer load in determining capacity for purposes of net-metered rate eligibility due to the impractical outcome and administrative challenges of determining eligibility based on an ever-changing value. The Department agrees that a variable capacity would be impractical to determine eligibility and would be an absurd outcome. Determination of eligibility requires a fixed value for capacity.
>
> The Department observes, however, that this concern may arise from different interpretations among parties of export capacity. Utilities appear to interpret MnSEIA's position as export capacity at the PCC on a variable basis with fluctuations in customer load. In the Department's review of MnSEIA's comments filed in this proceeding, it is not clear that fluctuations in customer load are relevant to MnSEIA's position regarding the definition of capacity for purposes of net-metered rate eligibility. . . .
>
> The Department offers that it is helpful to differentiate between the maximum export capacity and the amount of energy exported to the utility's system at a moment in time. While the amount of energy exported may fluctuate, the capacity, or the maximum capability to do so remains fixed. Fluctuations in customer load should not factor into net-metering eligibility. In essence, when customer load is zero, the DER system would be at its maximum export capacity, as there is no customer load to offset the DER system production. Thus, customer load does not impact the maximum export capacity, and the maximum export capacity of the system would be the same regardless of the point of measurement, whether at the

[61] *Id*. at p. 5-6 (citations omitted).
[62] *In the Matter of Impacts of the "Capacity" Definition in Minn. Stat. § 216B.164 and Associated Rules on Net-Metering Eligibility for Rate-Regulated Utilities*, Dkt. 24-200, Minn. Dept. of Commerce, REPLY COMMENTS, p. 1 (Sept. 3, 2024).

> PoC or the PCC. Customer load and its fluctuations impact the amount of energy exported to the utility's system at any moment in time. In turn, the cumulative amount of energy exported, the net input to the utility system, determines the compensation received by the system owner.[63]

However, on the eve of the hearing, for reasons that are unclear from the public record, Commerce completely changed its position. It filed an amendment to Decision Option 1 as follows:

> Clarify that "capacity," as defined in Minn. Stat. § 216B.164, subd. 2a(c), for purposes of eligibility for the net-metering rate in Minn. Stat. § 216B.164, subd. 3(d), is measured at the qualifying facility's inverter, <u>regardless of the aggregate direct current nameplate rating of all components of the DER system</u>.[64]

On the morning of the November 7 hearing, a Commerce representative discussed its revised Decision Option with MnSEIA.[65] While MnSEIA continued to insist that no clarification was necessary for the reasons discussed above and that it opposed Commerce's revised Decision Option 1 because it was inconsistent with the law, MnSEIA stated that it was open to Commissioner Tuma's revised Decision Option because it was consistent with the law.[66] The Commerce representative said Commissioner Tuma's Decision Option was not acceptable to the utilities because it was inconsistent with their position as summarized by Decision Option 1.[67] As a compromise, MnSEIA proposed simply opening a rulemaking to continue the discussions and arguments without the Commission making any final decision about where capacity is measured.[68] The Commerce representative said that was unacceptable to the utilities.[69]

With the support of Commerce and the utilities, the Commission adopted a revision to Decision Option 1, stating:

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[63] *Id*. at 4-5 (citations omitted).
[64] *In the Matter of Impacts of the "Capacity" Definition in Minn. Stat. § 216B.164 and Associated Rules on Net-Metering Eligibility for Rate-Regulated Utilities*, Dkt. 24-200, Minnesota Dept. of Commerce, MODIFICATION OF DECISION OPTION 1 (Nov. 5, 2024).
[65] *See* Exhibit A – Affidavit of Curtis Zaun.
[66] *Id*.
[67] *Id*.
[68] *Id*.
[69] *Id*.

> The Commission hereby delegates authority to the Executive Secretary to open a new rulemaking proceeding to clarify that "capacity," as defined under Minn. Stat. § 216B.164, subd. 2a (c), for purposes of eligibility for net-metering in Minn. Stat. § 216B.164, subd. 3(d), is determined by, and measured at, the qualifying facility's inverter or a power control system or supplemental device that controls production at the qualifying facility before the net-metered customer's load.[70]

Because this decision is unlawful and unreasonable, the MSA request that the Commission either amend or vacate its January 23 Order.

APPLICATION/PETITION TO AMEND OR VACATE JANUARY 23 ORDER

Pursuant to Minn. Stat. § 216B.27 and Minn. R. 7829.3000, the MSA respectfully request that the Commission either amend it January 23 Order or vacate the order entirely because language stating that capacity is "*determined by*, *and measured at*, the qualifying facility's inverter or a power control system or supplemental device that controls production at the qualifying facility before the net-metered customer's load," violates Minn. Stat. 216B.164, subd. 2a(c),[71] and Minn. R. 7835.0100, subp. 4.[72] It also violates Minn. Stat. 216B.03 because it does not, to "the maximum reasonable extent" . . . set rates to encourage energy conservation and renewable energy use and to further the goals of sections 216B.164." It is also unreasonable because it contradicts its prior decisions and discourages renewable energy use.

If the Commission wants the Rulemaking to Leave Open the Discussion Whether any Changes to the Capacity Definition are Necessary, it Must Amend its Decision.

If the Commission wants to leave any "final decision on any rule change" until "after culmination of the separate rulemaking proceeding based on the record developed," then it will

[70] *In the Matter of Impacts of the "Capacity" Definition in Minn. Stat. § 216B.164 and Associated Rules on Net-Metering Eligibility for Rate-Regulated Utilities*, Dkt. 24-200, Minn. Pub. Util. Comm., ORDER INITIATING RULEMAKING PROCEEDING, p. 3 (Jan. 23, 2025).
[71] "'Capacity' means the number of megawatts alternating current (AC) at the point of interconnection *between* a distributed generation facility and a utility's electric system." (Emphasis added).
[72] "'Capacity' means the capability to produce, transmit, or deliver electric energy, and *is measured by the number of megawatts alternating current at the point of common coupling between a qualifying facility and a utility's electric system*." (Emphasis added).

have to amend its order because, as noted above, the order already determines that the rule will be changed in a specific way. It states:

> The Commission hereby delegates authority to the Executive Secretary to open a new rulemaking proceeding to clarify that "capacity," as defined under Minn. Stat. § 216B.164, subd. 2a (c), for purposes of eligibility for net-metering in Minn. Stat. § 216B.164, subd. 3(d), *is determined by, and measured* at, the qualifying facility's inverter or a power control system or supplemental device that controls production at the qualifying facility before the net-metered customer's load.[73]

This language clearly determines the outcome of the rulemaking proceeding before it has even started, and the discussion in its January 23 Order presumably cannot change the explicit language of the decision voted on by the Commission on November 7, 2024. In fact, at the November 7 hearing Dan Lipschultz stated that because the Commission, "already knows what the policy is, you just need to codify it in your rule" (i.e., the decision has already been made), the rulemaking should be non-controversial.[74] Accordingly, the MSA respectfully request that the Commission's decision be amended to read:

> The Commission hereby delegates authority to the Executive Secretary to open a new rulemaking proceeding to discuss whether it is necessary to clarify ~~that~~ the term "capacity," as defined under Minn. Stat. § 216B.164, subd. 2a (c), for purposes of eligibility for net-metering in Minn. Stat. § 216B.164, subd. 3(d). ~~, is determined by, and measured at, the qualifying facility's inverter or a power control system or supplemental device that controls production at the qualifying facility before the net-metered customer's load.~~

If the Commission does not amend its decision as noted above or something similar that clearly states that the outcome of the rulemaking has not already determined, then that will confirm that

[73] *In the Matter of Impacts of the "Capacity" Definition in Minn. Stat. § 216B.164 and Associated Rules on Net-Metering Eligibility for Rate-Regulated Utilities*, Dkt. 24-200, Minn. Pub. Util. Comm., ORDER INITIATING RULEMAKING PROCEEDING, p. 3 (Jan. 23, 2025) (emphasis added).
[74] *In the Matter of Impacts of the "Capacity" Definition in Minn. Stat. § 216B.164 and Associated Rules on Net-Metering Eligibility for Rate-Regulated Utilities*, Dkt. 24-200, Minn. Pub. Util. Comm., HEARING, 3:28:59 to 3:29:09 (Nov. 7, 2025).

the Commission has determined the rulemaking will change the rule as directed in violation of Minnesota's law, policies and interconnection standards.

If January 23 Order Language is Confirmed, it Must be Vacated Because it Conflicts with Minnesota Law, and Past and Present Commission Interconnection Standards.

If the Commission confirms it January 23 Order, then, as discussed above it, will be a clear violation of both Minn. Stat. 216B.164, subd. 2a(c) and Minn. R. 7835.0100, subp. 4, which state that capacity is measured at the point of interconnection/common coupling between the customer's system (aka, Local EPS) and the utility's system (aka, Area EPS), and both the past and present Commission interconnection standards, which clearly demonstrate that the Point of Common Coupling is after the customer's load, not before. The change to the rules proposed by the Commission's January 23 Order moves where capacity is being measured from the Point of Common Coupling, to the Point of Connection. The decision explicitly states that capacity is measured before load and no reasonable person could argue that the Point of Common Coupling occurs before the customer's load. In fact, the Commission's January 23 Order is effectively adopting the nameplate capacity/rating argument that it moved away from when it updated the rules in 2015 because the capacity of the inverter at the Point of Connection is effectively its nameplate rating. As such, the change made by the Commission in its January 23 Order clearly conflicts with Minnesota law and its interconnection standards.

The Commission's Change Discourages the Development of DERs by Small Power Producers in Violation of Minnesota Law and Policy.

As noted by Commission staff in their briefing papers when Minn. R. 7835.0100 was amended, and by Commerce in its comments, Minnesota law and policy encourage small power production by distributed energy resources. Limiting qualifying facilities to producing only 40 kW to receive the average retail utility energy rate will not further the Minnesota's policies and goals

to "encourage … renewable energy use,"[75] "give the maximum possible encouragement to … small power production consistent with protection of the ratepayers and the public,"[76] "provide cost savings and reliability benefits to customers,"[77] "enhance both the reliability of electric service and economic efficiency in the production and consumption of electricity,"[78] and "promote the use of distributed resources in order to provide electric system benefits during periods of capacity constraints."[79] Any ratepayer who needed a system larger than 40 kW to offset their own load would no longer be able to do so and receive the average retail utility energy rate. Instead, they would receive the avoided cost rate, which is significantly lower and would make it considerably more financially difficult to install a DER. This is surely not encouraging renewable energy use. Accordingly, it would also violate Minn. Stat. § 216B.03, which requires that the Commission set rates that, to "the maximum reasonable extent . . . encourage energy conservation and renewable energy use and to further the goals of sections 216B.164."[80]

Minnesota wants and needs all of its citizens to produce as much renewable energy as possible. A DER owner who only offsets their own load is not providing excess generation that can be used by their neighbors, which eliminates or reduces the need for their utility to generate electricity at a distant location and transport it through its transmission and distribution system. Generating electricity locally reduces the wear and tear on the utility's electric system, which should reduce the cost to maintain the electric system. It can also reduce congestion and the need to purchase expensive energy during peak times because the electricity is being generated and used

[75] Minn. Stat. § 216B.03
[76] Minn. Stat. § 216B.164, subd. 1.
[77] Minn. Stat. § 216B.1611, subd. 1.
[78] *Id*.
[79] *Id*.
[80] A rate is broadly defined by Minn. Stat. § 216B.02, subd. 5, to be, among other things, any rules or practices affecting a utility's compensation, charges, fares, tolls, rentals, tariffs, or classifications.

locally. In this way, distributed generation is very similar to energy conservation or demand response, which the United States Supreme Court noted reduces the need to buy expensive electricity during peak periods while simultaneously easing pressure on the grid and, "thus protecting against system failures."[81] Whether a customer is turning up their thermostat themselves, letting someone else do it, or generating the extra electricity necessary to run the A/C on a hot day, the result for the utility is the same – less demand for additional electricity from that customer, and maybe their neighbors.

The Minnesota Legislature has determined that allowing small amounts of generation by utility customers is in the public interest. Resources, both financial and spatial, will usually limit most DER owners' ability to install a system that can export anywhere near 40 kW, but that doesn't mean the legal rights that the Minnesota Legislature provided to DER owners should be limited by the Commission because utilities want them limited.

The TIIR Explicitly Recognizes that Small Power Producers Can Limit Power Export to Maintain Eligibility for Certain Rates.

In addition to defining where the Point of Common Coupling is located, as noted by Commerce,[82] the Commissions interconnection standards provide additional guidance regarding how small systems are handled for the purpose of determining rate eligibility. The TIIR explicitly recognizes that a customer who owns a DER may limit the export of the DER system to be eligible for certain rates, stating,

> The DER Operator may choose to limit the AC capacity of a DER system using Power Controls. Power Controls may also be used to limit DER system export levels to the Local EPS and/or the Area EPS. *There are many possible reasons for implementing Power Controls, including meeting specific tariff terms or to mitigate the maximum level of power which can flow on the Local or Area EPS*.[83]

[81] *See FERC v. Elec. Pwr. Supp. Assoc*., 577 U.S. 260, 270 (2016).
[82] Commerce, Reply Comments, p. 6.
[83] TIIR 11.1 (emphasis added).

The TIIR then goes on to state:

> Using Area EPS Operator's approved Power Control methods, the DER Operator may limit the DER AC capacity. *The limited DER AC capacity value may be used by the Area EPS Operator when performing impact studies if the means of limiting capacity is determined to be adequate by mutual agreement. Some of the reasons the DER Operator may choose to limit DER AC capacity include, to avoid system upgrades or to size the DER to be compatible with programs or tariffs*.[84]

Additionally, the footnote to this paragraph states, "The applicable programs or tariffs eligibility may be based on a nameplate capacity rather than a configured value. Consult the tariff or program rules of interest to determine if the nameplate capacity governs any aspects of the interconnection."[85] Thus, the TIIR explicitly recognizes that while the nameplate capacity of a DER may be relevant, one must consult the actual language of the relevant provisions to determine what should be used for impact studies and tariff eligibility. And, as discussed above, the plain language of the law uses the capacity of the system measured at the point of interconnection/common coupling between the DER and the Area EPS, not the nameplate rating of the DER.[86]

Broader Implications of Decision.

While the January 23 Order appears to attempt to limit the impact of it change to where capacity is measured by stating that the change is limited "for purposes of eligibility for net-metering in Minn. Stat. § 216B.164, subd. 3(d)," Minn. Stat. § 216B.164, subd. 2a(c), is a definition of general applicability, which applies equally to all sections of Minn. Stat. § 216B.164. Subdivision 2a explicitly states, "For the purposes of this section, the following terms have the meanings given them." So, just as putting any sort of time interval for measuring capacity in the

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[84] TIIR 11.2 (emphasis added).
[85] *Id*.
[86] *See* Minn. Stat. § 216B.164, subds. 2a(c) & 3(d); Minn. R. 7835.0100, subp. 4; Minn. R. 7835.3300, subp. 1; Minn. R. 7835.4013, subp. 1.

2015 rule changes would have broader effects, any change to the rules regarding the capacity definition in Minn. Stat. 216B.164, subd. 2a(c), will necessarily affect every other provision of section 164. A point that Lipschultz made at the November 7 hearing when he stated "that this definition, and this can be sorted out in the rulemaking, Commissioner Tuma, will apply to QFs with or without net metering."[87] The Commission cannot pick and choose which statutory provisions apply to which other statutory provisions. The Minnesota Legislature has already made its choice and that choice cannot be overridden by the Commission at the request of utilities.

Moreover, it would seem to be inconsistent with Minn. Stat. § 216B.03 and the public interest to change how capacity is measured for certain facilities, but not others. If there is a difference between classes of ratepayers based on their type of project, some would presumably be treated less favorably than others. And that treatment would be less favorable for customers who wanted to receive the average retail utility energy rate, which would discourage the adoption of renewable energy, rather than encouraging it.

Finally, it should be noted that Minn. Stat. § 216B.164, subd. 3(d), applies all qualifying facilities, not just ones that generate electricity through inverters. Many other types of qualifying facilities generate electricity without inverters. This inconsistency with Minnesota laws and interconnection standards further demonstrates how unreasonable the change proposed by the January 23 Order is.

CONCLUSION

Minnesota's clean energy future depends on everyone, at every scale, participating in it. The Commission's January 23 Order does not "clarify" the law, it changes it. And that change

[87] *In the Matter of Impacts of the "Capacity" Definition in Minn. Stat. § 216B.164 and Associated Rules on Net-Metering Eligibility for Rate-Regulated Utilities*, Dkt. 24-200, Minn. Pub. Util. Comm., HEARING, 3:25:22 to 3:25:28 (Nov. 7, 2025).

eliminates the ability of every ratepayer who needs a system over 40 kW to even offset their own load and receive the average retail utility energy rate, which is necessary for many, if not most, small power producers to install a small system. It also limits the ability of every ratepayer to be a small power producer. But most importantly, it is inconsistent with existing Minnesota law, policy and interconnection standards. As such, it is both unlawful and unreasonable.

Accordingly, the Commission should either: 1) amend its January 23 Order to eliminate the language that explicitly states how the rule will be changed; or 2) vacate its January 23 Order because it violates Minn. Stat. 216B.164, subd. 2a(c), and Minn. R. 7835.0100, subp. 4, and Minn. Stat. § 216B.03. The MSA thank the Commission for its time and attention to this important issue and appreciate the opportunity to participate in this proceeding.

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