Minnesota Solar Energy Industries Association
We Move Minnesota Solar + Storage Forward

June 25, 2025

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

Re: In the Matter of a Formal Complaint by the Upper Sioux Community Against Minnesota Valley Cooperative Light & Power Assn.
Docket No. E123/C-25-219

Executive Secretary Seuffert,

Please find here the Reply Comments of the Minnesota Solar Energy Industries Association. These comments reflect the views of our organization and interested members related to the issue raised and the topics open for discussion in the Minnesota Public Utilities Commission's Amended Notice of Comment Period issued on May 13, 2025, in the above-referenced docket, with the Reply Comment deadline extended on June 20, 2025, until June 25, 2025.

Sincerely,

/s/ Curtis P. Zaun, Esq.
Director of Policy and Regulatory Affairs
MnSEIA
651-677-1607
czaun@mnseia.org

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

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In the Matter of a Formal Complaint by the Upper Sioux Community Against Minnesota Valley Cooperative Light & Power Assn.

REPLY COMMENTS of MnSEIA

June 25, 2025

Docket No. E123/C-25-219

INTRODUCTION

The Minnesota Solar Energy Industries Association (MnSEIA) is a nonprofit association of over 170 members that represents Minnesota's solar and storage industry. Our broad membership ranges from rooftop installers to non-profit organizations, manufacturers, developers, and many others, all of whom collectively employ over 5,000 Minnesotans. MnSEIA submits these Reply Comments in response to Amended Notice of Comment Period filed by the Minnesota Public Utilities Commission (Commission) on May 13, 2025, in the above-referenced docket, with the deadline to file Reply Comments extended to June 25, 2025, pursuant to the notice issued on June 20, 2025.

MnSEIA supports the right of the Upper Sioux Community (Community) and all tribal nations to be part of the clean energy economy, and is concerned that the actions of Minnesota Valley Cooperative Light & Power Association (Minnesota Valley) demonstrate either a fundamental misunderstanding of the law or an intentional violation of it. Contrary to the

statements made by Minnesota Valley, Minnesota[1] and Federal[2] law require Minnesota Valley to allow the interconnection and parallel operation of distributed energy facilities the size of the one proposed by the Community. While the size of a facility determines the compensation rate a facility is entitled to receive for any exported energy under Minnesota law, and facilities with a capacity of under 40 kW are entitled to receive the average retail utility energy rate,[3] no reasonable person could argue that either Minnesota or Federal law prohibit the interconnection and parallel operation of a 2.5 MW distributed energy facility. Accordingly, MnSEIA supports an investigation into this dispute, which within the jurisdiction of the Commission pursuant to the explicit language of Minn. Stat. § 216B.17.

BACKGROUND

According to the Initial Comments filed in this matter, Minnesota Valley "was aware of the Upper Sioux Community's solar project well before it entered formal development."[4] Minnesota Valley "informed Wolf River Electric that a similar project had previously been proposed but ultimately abandoned because the Cooperative was unwilling to accept or purchase excess generation."[5] Because of Minnesota Valley's refusal to purchase excess generation, Wolf River Electric (Wolf River) designed the Community's solar project to be a non-exporting system and was told by Minnesota Valley "there would be no reason it could not proceed" as such.[6]

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[1] *See* Minn. Stat. § 216B.164, subd. 8(a) ("Utilities shall be required to interconnect with a qualifying facility that offers to provide available energy or capacity and that satisfies the requirements of this section.").
[2] *See* 16 U.S.C. § 824a-3(a) (FERC shall prescribe rules for the sale and purchase of electricity to and from qualifying small power production facilities of not more than 80 megawatts); 18 C.F.R. § 292.303 (requiring utilities to allow the interconnection and parallel operation of small power production facilities, and the sale and purchase of energy from and to those facilities); Federal Energy Regulatory Commission, PURPA Qualifying Facilities, available at https://www.ferc.gov/qf, visited on June 17, 2025 (("QFs may enjoy benefits under Federal, State, and local laws." The benefits conferred upon QFs by Federal law include the "right to sell energy or capacity to a utility.").
[3] *See* Minn. Stat. § 216B.164, subd. 3(d) ("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.").
[4] *In the Matter of a Formal Complaint by the Upper Sioux Community Against Minnesota Valley Cooperative Light & Power Association*, Dkt. 25-219, Wolf River Electric, INITIAL COMMENTS, p. 6 (June 9, 2025).
[5] *Id*.
[6] *Id*.

Wolf River was directed by Minnesota Valley to submit a pre-application, which was reviewed by Minnesota Valley's engineering firm, Power System Engineering, Inc. (PSE), who found "no substantial issues."[7] After Wolf River submitted the Community's interconnection application, it learned that PSE had conducted a System Impact Study based on how the system was designed, which, to date, has not been provided to the Community or Wolf River.[8] Wolf River was then contacted by PSE to inform them that the Community's project was being re-studied based on the assumption that it would export 100 percent of its energy.[9] Despite being directed by Minnesota Valley to use an assumption that was inconsistent with the project's design and would have a significantly greater impact on Minnesota Valley's distribution system, PSE determined that "no significant technical issues exist, and all required upgrades are manageable within standard DER practices."[10]

After the second System Impact Study was completed showing no significant issues with the operation of the Community's solar project, the only communication from Minnesota Valley was "a statement that the utility planned to issue a legal notice to the Upper Sioux Community, expressing its opposition to the solar project."[11] "When Wolf River Electric attempted to follow up, it was informally told that the Cooperative was upset because the tribe had historically received favorable electricity rates, and the utility did not want to see its revenues reduced due to on-site energy generation."[12]

[7] *Id*. at 7.
[8] *Id*. at 7-8.
[9] *Id*. at 7.
[10] *Id*. at 8.
[11] *Id*. at p. 8.
[12] *Id*.

On November 15, 2024, Minnesota Valley's attorney, Matthew Haugen, sent the Community a letter regarding its solar project.[13] In the letter Minnesota Valley stated, "MN Valley has a defined service territory in which it has the exclusive right under Minnesota and Federal law to provide electric power to individuals and entities located within that defined service territory."[14] The letter did not cite the Minnesota or Federal law Minnesota Valley was relying on. Minnesota Valley goes on to state that it has entered into a contract with Basic Electric Power Cooperative (Basin Electric) that does not allow it to purchase power from any facility with a capacity of 40 kW or greater.[15] Minnesota Valley then claimed that "[p]ursuant to Minn. Stat. § 216B.164, subd. 3, a cooperative electric association, such as MN Valley, is not required to allow any member (or entity or individual) located in MN Valley's service territory to build and operate a power generating solar array (facility) of 40-kilowatt capacity or more."[16] Minnesota Valley later stated that "a representative of MN Valley explained to a representative of Wolf River Electric (as Application Agent for Upper Sioux), that the proposed facility was more than the 40-kilowatt capacity allowed under Minnesota and Federal Law, and MN Valley's board policies."[17] While the letter appeared to rely on Minn. Stat. § 216B.164, subd. 3, for its claim that Minnesota law prohibits solar facilities with a capacity of 40 kW or greater from being interconnected, it does not cite what Federal law it was relying on.

Minnesota Valley then threatened to disconnect the Community from the electric service Minnesota Valley is required to provide under Minn. Stat. § 216B.37, again claiming to rely on Minnesota and Federal law, stating:

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[13] *In the Matter of a Formal Complaint by the Upper Sioux Community Against Minnesota Valley Cooperative Light & Power Association*, Dkt. 25-219, Upper Sioux Community, MEDIATION STATEMENT, Exhibit D, p. 1 (filed May 6, 2025).
[14] *Id*.
[15] *Id*. at p. 2.
[16] *Id*. at p. 2.
[17] *Id*. at p. 3.

> If construction and/or operation of what appears to be a power generating solar array in MN Valley's service territory continues without following the proper steps, Upper Sioux risks being disconnected from electric power service from MN Valley for violating Minnesota and Federal Law, and MN Valley Board Policies. MN Valley fully intends to adhere to Minnesota and Federal Law, and it Board Policies, and Upper Sioux risks having its power service from MN Valley disconnected if the power generating solar array attempts to provide power to Upper Sioux or 40-kilowatt or more capacity, and/or without following the requirements and taking the required actions required by Minnesota and Federal Law, and MN Valley's Board Policies for a facility of less than 40-kilowatt capacity.[18]

It is also worth noting that Minnesota Valley stated in its letter that "[m]any members of MN Valley in the past have requested to build a power generating solar array of 40-kilowatt or more capacity in Minnesota Valley's service territory and were denied because it is inconsistent with Minnesota Law and MN Valley's Board Policy."[19] Minnesota Valley's Policy 323, Interconnection of Consumer Owned Distributed Generation, which has been in effect since at least 2019, confirms that Minnesota Valley prohibits the interconnection and parallel operation of qualifying facilities with a capacity of 40 kW or larger.[20]

After some additional communication, a mediation appears to have been conducted on February 12, 2025. When that failed to resolve the dispute, the Community filed its mediation statement with the Commission on May 1 and May 6, 2025. The Commission considered the mediation statement a formal complaint under Minn. Stat. § 216B.17, noting that Minn. Stat. § 216B.164 also addresses certain distributed energy resource disputes. The Commission issued a Notice of Comment Period on May 9, and then amended it on May 13, 2025. The stated issue is, "Should the Commission investigate the Formal Complaint by the Upper Sioux Community Against Minnesota Valley Cooperative Light and Power Association?" To address this issue, the Commission listed the following topics open for comment:

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[18] *Id*. at p. 3-4.
[19] *Id*. at p. 4.
[20] Upper Sioux Community Mediation Statement, Exhibit H, p. 1 (Revised June 27, 2019).

1. Does the Commission have jurisdiction over the subject matter of the Complaint? Please address which statutes or rules should be applied or considered.

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

3. Is it in the public interest for the Commission to investigate these allegations?

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

All the parties, which included the Minnesota Department of Commerce (Commerce), the Environmental Specialist/Energy Projects Manager for the Fond du Lac Band of Lake Superior Chippewa, Wolf River, Tribal Energy Alternatives, White Earth Tribal Utility Commission, Alliance for Tribal Clean Energy and the Midwest Tribal Energy Resources Association, Inc., that filed Initial Comments on or about June 9, 2025, supported a Commission investigation into this dispute. Minnesota Valley filed its comments on June 18, 2025, mostly restating the position it took in its letters to the Community, but adding that "because MN Valley does not meet the definition of a public utility and because the Complaint is not brought under Section 216B.172, the Commission is without jurisdiction to investigate the Complaint.[21] On June 18, 2026, CURE also filed Reply Comments recognizing the importance of this matter and supporting an investigation.[22]

REPLY COMMENTS

In response to the issue presented, yes, MnSEIA agrees with the parties that filed Initial Comments and CURE that the Commission should investigate the dispute between the Community and Minnesota Valley. MnSEIA appreciates and supports the Initial Comments filed by numerous parties and Reply Comments filed by CURE. Tribal nations should not be prohibited or restricted from exercising their energy sovereignty. As the Alliance for Tribal Clean Energy notes, "Access to safe, reliable electricity is not only a matter of convenience but one of public health, safety, and

[21] *In the Matter of a Formal Complaint by the Upper Sioux Community Against Minnesota Valley Cooperative Light & Power Association*, Dkt. 25-219, Minnesota Valley, COMMENTS, p. 2 (June 18, 2025).
[22] *In the Matter of a Formal Complaint by the Upper Sioux Community Against Minnesota Valley Cooperative Light & Power Association*, Dkt. 25-219, CURE, REPLY COMMENTS (June 18, 2025).

economic stability, especially for Tribal Nations who often face chronic infrastructure and service disparities."[23] In addition, Minnesota Valley appears to be violating Minnesota and Federal law with regard to the interconnection of solar facilities with a capacity of 40 kW or more, and should be directed to change its policies and actions to be consistent with the law.

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

Yes. MnSEIA agrees with Commerce that Minn. Stat. § 216B.17 provides the Commission with authority to investigate this dispute.[24] This law explicitly provides the Commission with authority to investigate any cooperative "service standard" or "practice" that "is in any respect unreasonable, insufficient, or unjustly discriminatory."[25] The information provided by the Community sufficiently alleges that Minnesota Valley's service standards or practices are unreasonable, insufficient or unjustly discriminatory. Moreover, Minnesota Valley explicitly admits to violations of Minnesota and Federal law by stating that it refuses to allow the interconnection and parallel operation of facilities with a capacity 40 kW or greater and, as such, has refused to allow other cooperative members to interconnect in addition to the Community. So, even if the Commission does not believe it has jurisdiction over the subject matter of the complaint because the Community is a sovereign nation, it would have jurisdiction over other Minnesota Valley cooperative members who have also been harmed by Minnesota Valley's position.

In its Reply Comments, Minnesota Valley argues that the Commission does not have jurisdiction because Minnesota Valley is not a public utility.[26] It is unclear whether Minnesota Valley failed to read subdivision 6a of Minn. Stat. § 216B.17 and/or the Initial Comments drafted by

[23] *In the Matter of a Formal Complaint by the Upper Sioux Community Against Minnesota Valley Cooperative Light & Power Association*, Dkt. 25-219, Alliance for Tribal Clean Energy, INITIAL COMMENTS, p. 2 (June 10, 2025).
[24] *In the Matter of a Formal Complaint by the Upper Sioux Community Against Minnesota Valley Cooperative Light & Power Association*, Dkt. 25-219, Minn. Dept. of Commerce, INITIAL COMMENTS, p. 1 (June 9, 2025).
[25] *See* Minn. Stat. § 216B.17, subds. 1, 6a.
[26] *See In the Matter of a Formal Complaint by the Upper Sioux Community Against Minnesota Valley Cooperative Light & Power Association*, Dkt. 25-219, Minnesota Valley, COMMENTS, p. 1 (June 18, 2025).

the Minnesota Attorney General's Office for the Minnesota Department of Commerce, or is intentionally misrepresenting the law to the Commission. As the Commission is aware, Minn. R. 7829.0250, requires that every "person who signs a pleading, motion, or similar filing, or enters an appearance at a commission meeting, by doing so represents that the person is authorized to do so, has a good faith belief that statements of fact made are true and correct*, and that legal assertions are warranted by existing law or by a nonfrivolous argument for the extension or reversal of existing law or the modification or establishment of rules*." Emphasis Added. Because the argument made by Minnesota Valley does not appear to meet this standard, it should be rejected.

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

Yes, there are reasonable grounds for the Commission to investigate this matter. In the comments filed on June 18, 2025, Minnesota Valley reiterated the position it stated to the Community in the letters and the policy attached as exhibits to the Community's mediation statement.[27] This position appears to violate both Minnesota and Federal law. Minn. Stat. § 216B.164, subd. 8, requires all utilities, including electric cooperatives, "to interconnect with a qualifying facility that offers to provide available energy or capacity and that satisfies the requirements of this section." Federal law similarly requires that electric utilities allow the interconnection and parallel operation of qualifying facilities so that the utility to which the facility is interconnected can purchase any energy and capacity made available from the facility.[28] Minn. R. 7835.0100, subp. 19, incorporates the Federal definition of a qualifying facility, and notes that "[t]he initial operation date or initial installation date of a cogeneration or small power production facility must not prevent the facility from being considered a qualifying facility for the purposes of this chapter if it otherwise satisfies all stated conditions." Federal law limits the size of a

[27] *Compare* Upper Sioux Community Mediation Statement, Exhibits D, F, and H with Minnesota Valley Comments.
[28] *See* 18 C.F.R. § 292.303(a),(c) & (e).

Qualifying Facility to 80 MW and, among other types of facilities, includes facilities that produce 75 percent or more of their power from renewable resources, which include solar generating systems.[29] Minnesota law limits the size of projects subject to state law to 10 MWs.[30] Thus, any facility producing at least 75 percent of its energy by solar panels that has a capacity of 80 MWs or less is a qualifying facility under both Minnesota and Federal law. And, if it is under 10 MWs, it can elect to be interconnected and operated under Minnesota law. The Community's solar and battery storage project appears to be well under the 10 MW limit found in Minnesota law.

Minnesota Valley claims that "[p]ursuant to Minn. Stat. § 216B.164, subd. 3, a cooperative electric association, such as MN Valley, is not required to allow any member (or entity or individual) located in MN Valley's service territory to build and operate a power generating solar array (facility) of 40-kilowatt capacity or more."[31] That is simply not true. This subdivision requires the cooperative to compensate its customers at a per kilowatt hour rate determined under paragraphs (c), (d), or (f), with paragraph (d) being the average retail utility energy rate. Nothing in this paragraph prohibits a cooperative from allowing any member to build and operate a system with a capacity 40 kW or greater. It simply does not allow systems 40 kW or larger to receive the average retail utility energy rate or any other compensation provided by subdivision 3.

And while Minnesota Valley recognizes that "Minn. Stat. § 216B.164 regulates cogeneration and small power production for cooperative electric associations, municipal utilities and public utilities,"[32] it appears to ignore subdivision 4 of this section, which explicitly applies to all utilities, including cooperatives, and "all qualifying facilities having 40-kilowatt capacity or more," requiring

[29] *See* 18 C.F.R. § 292.203; *see also* 16 U.S.C. § 824a-3(a) (FERC shall prescribe rules for the sale and purchase of electricity to and from qualifying small power production facilities of not more than 80 megawatts).
[30] *See* Minn. Stat. § 216B.1611, subd. 2.
[31] Upper Sioux Community Mediation Statement, Exhibit D, p. 2.
[32] *Id*.

them to "purchase all energy and capacity made available by the qualifying facility."[33] Thus, not only does Minn. Stat. § 216B.164 not prohibit the interconnection and operation of systems with a capacity of 40 kW or more, it explicitly recognizes them and requires their interconnection and operation.

Moreover, it is reasonable to investigate this matter because Minnesota Valley is threatening to refuse to provide electricity to the Community because the Community is exercising its rights. While Minnesota Valley recognizes its right to provide electric service to customers within its service territory,[34] that right creates an obligation to do so as well.[35] Federal law also requires electric utilities to provide electricity to any qualifying facility that requests it.[36]

As such, Minnesota Valley's statements that Minnesota and Federal law prohibit it from allowing the interconnection and parallel operation of a system 40 kW or larger are completely incorrect. Minnesota and Federal law actually require the complete opposite. Thus, its actions and the policy that it adopted appear to violate Minnesota and Federal law. Its threats to not provide electricity to the Community also appear to be violations of Minnesota and Federal law. For these reasons, and the other reasons provided by other parties, there are reasonable grounds to investigate this matter.

3. Is it in the public interest for the Commission to investigate these allegations?

Yes, it is in the public interest for the Commission to investigate this matter. As noted above, not only does it appear that Minnesota Valley is violating the Community's rights to interconnect and operate its solar and battery storage project, in its letter to the Community Minnesota Valley stated that it had violated other cooperative member's rights as well, saying,

[33] Minn. Stat. § 216B.164, subd. 4.
[34] *See* Minn. Stat. § 216B.40.
[35] *See* Minn. Stat. § 216B.17.
[36] *See* 18 C.F.R. § 292.303(b).

"Many members of MN Valley in the past have requested to build a power generating solar array of 40-kilowatt or more capacity in Minnesota Valley's service territory and were denied because it is inconsistent with Minnesota Law and MN Valley's Board Policy."[37] In addition, Minnesota Valley's Policy 323, Interconnection of Consumer Owned Distributed Generation, confirms that Minnesota Valley prohibits the interconnection and parallel operation of qualifying facilities 40 kW or larger.[38]

It is in the public interest, and especially the interests of the cooperative's members, which include the Community, for electric cooperatives to comply with the law. It is also in the public interest for the rights of the Community and all tribal nations to be protected. As the Alliance for Tribal Clean Energy notes, "A power shutoff to the Community would have devastating consequences by disrupting healthcare delivery, loss of income and jobs, risks to food storage and clean water, and community-wide instability. These threats are disproportionate and unconscionable, particularly in response to the lawful exercise of self-determination through clean energy development."[39] Tribal Energy Alternatives echoed this point stating, "Utility services are critically important to Tribal communities in regards to their economy, the overall welfare of the Tribe, and the health and safety of its citizens through essential services. The response from the Cooperative to shut-off power to the Community is a serious threat to the welfare of the Community."[40] And the White Earth Tribal Utility Commission pointed out that this matter "is of significant interest to the other Tribes in Minnesota, who struggle to implement behind the meter and renewable energy projects due to preventive actions and procedures maintained by Rural MN Cooperatives."[41] It went on to say, "This project will be a great example of how other Tribes will be

[37] Upper Sioux Community Mediation Statement, Exhibit D at p. 4.
[38] Upper Sioux Community Mediation Statement, Exhibit H, p. 1 (Revised June 27, 2019).
[39] *In the Matter of a Formal Complaint by the Upper Sioux Community Against Minnesota Valley Cooperative Light & Power Association*, Dkt. 25-219, Alliance for Tribal Clean Energy, INITIAL COMMENTS, p. 2 (June 10, 2025).
[40] *In the Matter of a Formal Complaint by the Upper Sioux Community Against Minnesota Valley Cooperative Light & Power Association*, Dkt. 25-219, Tribal Energy Alternatives, INITIAL COMMENTS, p. 2 (June 9, 2025).
[41] *In the Matter of a Formal Complaint by the Upper Sioux Community Against Minnesota Valley Cooperative Light & Power Association*, Dkt. 25-219, White Earth Tribal Utility Commission, Initial Comments, p. 2 (June. 9, 2025).

stymied in their efforts to help MN achieve the Zero by 2040 Law, adopted in 2023.[42] On this point, MnSEIA agrees with Wolf River and others that the Minnesota Legislature wants the tribal nations located in Minnesota to part of Minnesota's clean energy future,[43] helping it to reach its 2040 goal. MnSEIA also agrees with the White Earth Tribal Utility Commission, which stated, "The actions of Minnesota Valley Cooperative bring to light the need for a larger conversation in Minnesota for Rural Electric Cooperatives to have centralized and consistent regulatory oversight by the MN PUC,"[44] that this matter likely raises larger issues that should be discussed.

Thus, if the Commission agrees that Minnesota Valley is violating the law, it should direct Minnesota Valley to comply with it, both now and in the future. This would likely require the Commission to direct Minnesota Valley to: 1) allow the interconnection and parallel operation of the Community's solar and battery storage project; 2) change its Policy 323 to allow the interconnection and parallel operation of other member systems with a capacity of 40 kW and larger, consistent with Minnesota law; and, 3) contact the prior Minnesota Valley members whose interconnection requests had been denied to inform them that they may be able to proceed with their projects.

Operation of the Community's project does not violate Minnesota Valley's contract with Basin Electric or its own policy.

Minnesota Valley's concerns that allowing the interconnection and parallel operation of the Community's project will violate its contract with Basin Electric are unwarranted. While Minnesota Valley's contract with Basin Electric has not been provided for review, if Minnesota Valley's contract with Basic Electric requires Minnesota Valley to purchase all of its electricity from

[42] *Id*.
[43] *In the Matter of a Formal Complaint by the Upper Sioux Community Against Minnesota Valley Cooperative Light & Power Association*, Dkt. 25-219, Wolf River Electric, INITIAL COMMENTS, p. 10 (June 9, 2025) (citing Minn. Stat. § 216C.09(12) and stating, "The Minnesota Legislature has specifically directed the Commission and other state agencies to develop and support indigenous energy resources, including solar energy.").
[44] White Earth Tribal Utility Commission Initial Comments, p. 2.

Basic Electric as claimed, the interconnection of parallel operation of the Community's solar and battery storage project would not appear to violate such a provision because the Community's project has been designed not to export any energy to Minnesota Valley.[45] If the Community is not exporting any energy, then Minnesota Valley is not purchasing any energy. It is simply selling less energy to the Community. As discussed in detail below, Minnesota law makes it clear that capacity of a system is measured at the point of interconnection/common coupling, which is where the utility's electric system connects with the customer's electric system, commonly referred to as the "service point."[46] Thus, the capacity of a non-exporting system at the point of interconnection/common coupling is zero. Accordingly, if the Commission affirms the application of the plain language of Minnesota law to this dispute, that should avoid any claim by Basic Electric that Minnesota Valley is violating its contract. In addition, the capacity of the system even under Minnesota Valley's illegal policy would be less than 40 kW.

Minnesota law generally determines the capacity of a system at the point of interconnection/common coupling.

A plain reading of Minnesota law benefits both the Community and Minnesota Valley because it allows the Community's project to operate without violating Minnesota Valley's contract. The capacity of the Community's system is central to this resolution and Minnesota law explicitly determines the capacity of a system at the point of interconnection, which is also referred to as the point of common coupling. 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*

[45] *See* Upper Sioux Community Mediation Statement, Exhibit E, p. 2 (the Community's attorney confirmed in its November 15, 2024 response to Minnesota Valley that "the Tribe is not going to sell any generated electricity to MN Valley and as a result the Solar Array will not breach MN Valley's all-requirement contract with Basin Electric Power Cooperative"); Exhibit F, p. 1 (In a second letter sent on November 26, 2024, after Minnesota Valley apparently refused to meet with the Community to discuss the issue, the attorney stated, "One misunderstanding that has hopefully been made clear to your client is that the Tribe does not intend to sell power to Minn Valley.").
[46] MN DIP, p. 4 (this is where the meter is installed).

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). Thus, 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.[47]

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.[48]

The Commission Staff 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*."[49] 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

[47] *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).
[48] *Id.*
[49] *Id*. (Emphasis added).

> 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 decisions.[50]

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)*.[51]

In summary, Minnesota law, both the statute and the rule, make it clear that the capacity of a system is measured at the point of interconnection/common coupling, which is where the customer's electric system connects with the utility's electric system.

Minnesota's Interconnection Standards, both past and present, clearly define where the point of interconnection/common coupling is located consistent with Minnesota law.

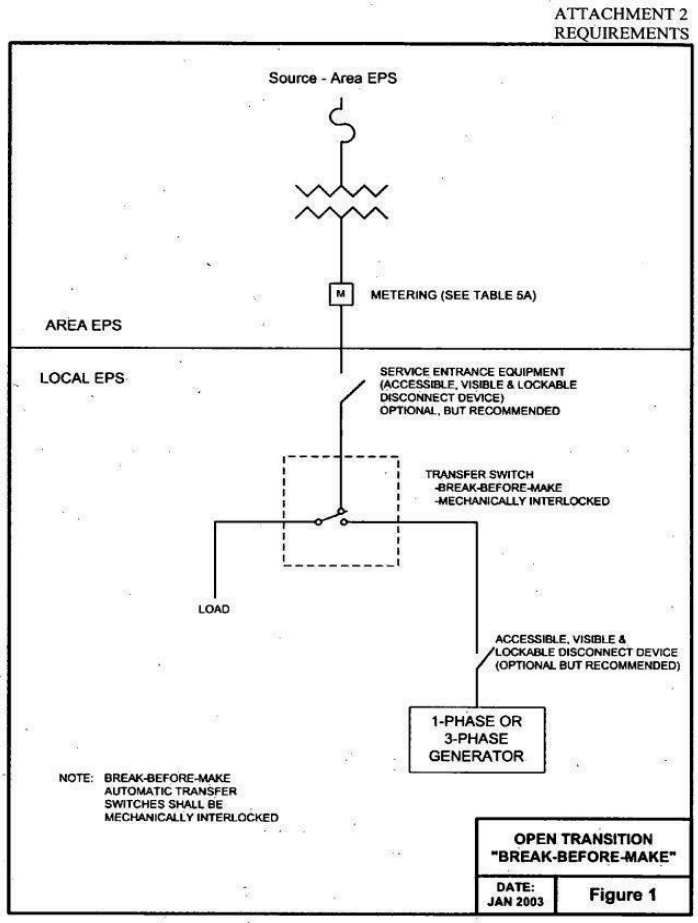
The Commission's Interconnection Standards, which include the State of Minnesota Interconnection Process for Distributed Generation Systems ("Interconnection Process"), State of Minnesota Distributed Generation Interconnection Requirements ("Interconnection Requirements"), State of Minnesota Distributed Generation Interconnection Procedures ("MN DIP"), and the State of Minnesota Technical Interoperability and Interconnection Requirements ("TIIR") (collectively, "Interconnection Standards"). provide additional clarity on where the capacity of a facility is measured. 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

[50] *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).
[51] *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).

changed were adopted on September 28, 2004, in docket 01-1023.[52] While the prior Interconnection Standards do not provide the level of detail and clarity that the current standards do, they provide enough clarity 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."[53] "Local EPS" is defined as "an electric power system (EPS) contained entirely within a single premises or group of premises."[54] And "Point of Common Coupling" is defined as "the point where the Local EPS is connected to an Area EPS."[55] The definitions found in the Interconnection Requirements mirror those found in the Interconnection Process.[56] The Interconnection Requirements, however, provide a useful figure[57] that can illustrate exactly where the Point of Common Coupling is located.

[52] *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).
[53] *Id*., Attachment 1, p. 2 (PDF p. 31).
[54] *Id*.
[55] *Id*., p. 3 (PDF p. 32).
[56] *Id*., p. 4 (PDF p. 54)
[57] *Id*. p. 25 (PDF p. 75)

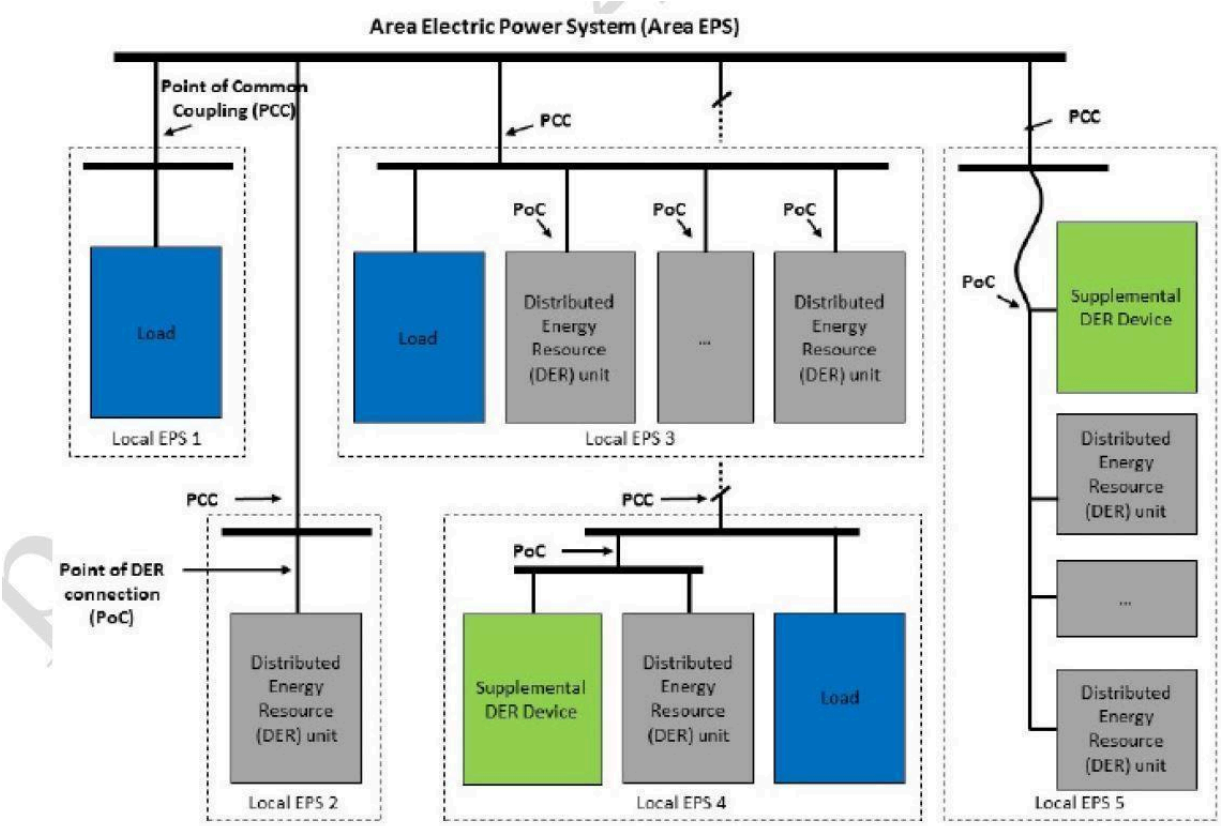


This figure shows where the Area EPS connects with the Local EPS. Most importantly, the box with the M inside it refers to Table 5A, and Table 5A states, "Bi-Directional metering at the point of common coupling."[58] This clearly shows that the Point of Common Coupling, as the Commission understood it when they amended the rules, is at the bi-directional meter.

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.[59] It defines Area EPS as "the electric power distribution system connected at the Point of Common Coupling."[60] It defines the Point of Common Coupling, or PCC, as the "The point where the

[58] *Id*.
[59] MN DIP, p. 1.
[60] *Id*.

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."[61] The service point is where the bi-directional meter would be installed. 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."[62]



Like the prior interconnection standards, this figure clearly demonstrates that the Point of Common Coupling is where the customer's system (aka, the Local EPS), connects to the utility's system (aka,

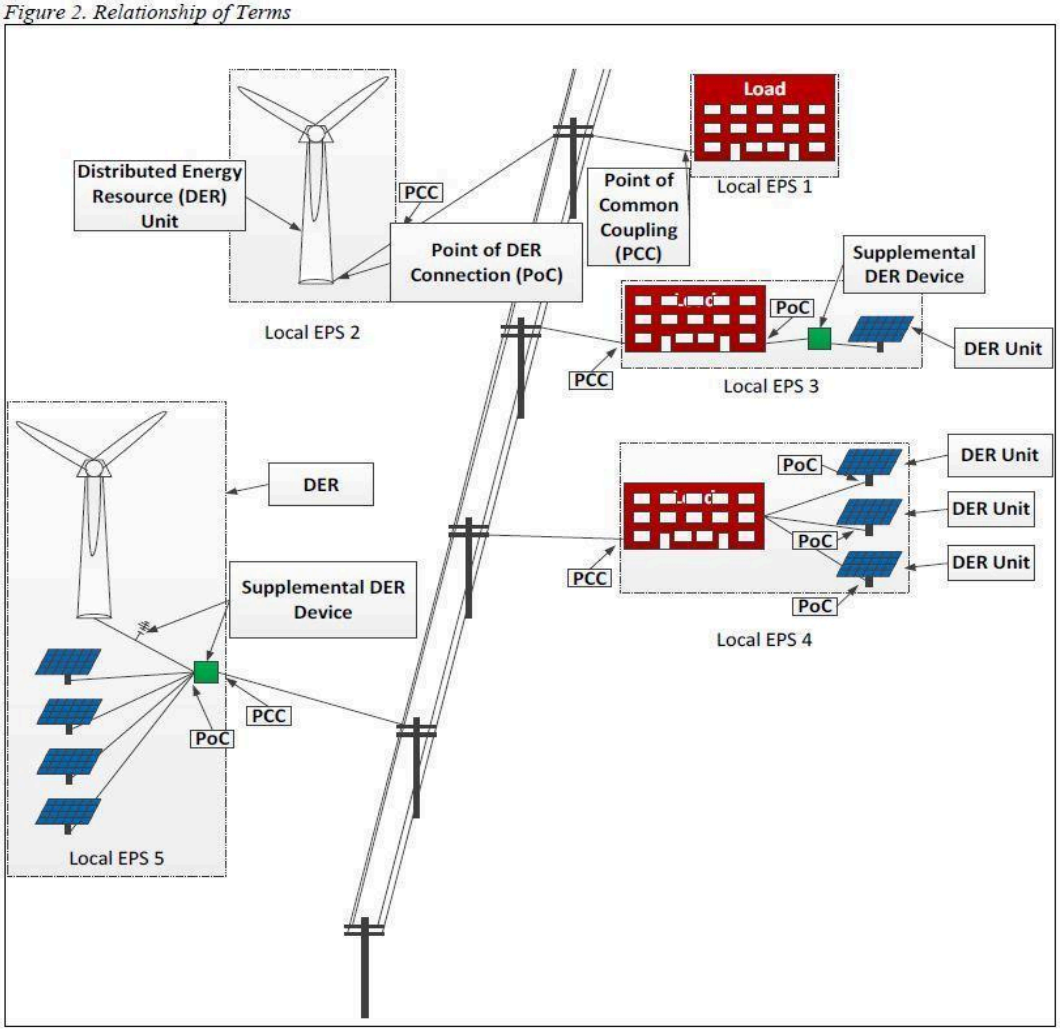
[61] *Id*., p. 4.
[62] *Id*., p. 1

the Area EPS). The Community's project would appear to be most similar to the Local EPS 3 example.

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."[63] "Local EPS" is defined as an "EPS contained entirely within a single premises or group of premises."[64] The "Point of Common Coupling" or PCC is defined as the "point of connection between the Area EPS and the Local EPS."[65] It references the MN DIP Glossary of Terms and Figure 2, which is provided below.[66] 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."[67] It also references the MN DIP Glossary of Terms and Figure 2.[68] To help visualize what these words describe, the TIIR provides the best figure of all of them demonstrating where the Point of Common Coupling is located. The examples in Local EPS 3 and Local EPS 4 are likely most similar to the Community's project.

[63] TIIR, p. 10.
[64] *Id*., p. 13.
[65] *Id*., p. 15.
[66] *Id*.
[67] *Id*.
[68] *Id*.

Figure 2. Relationship of Terms



Minnesota law protects Minnesota Valley from any claim it is violating its contract with Basic Electric by allowing the Community's project to operate consistent with Minnesota's clean energy goals.

In summary, the Commission has repeatedly stated that 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. Thus, the Point of Common Coupling or point of interconnection for the Community's solar and battery storage project is where Minnesota's Valley's electric system is connected to the Community's electric system. Because the Community's system is designed not to export any energy to Minnesota Valley's system, the capacity of the Community's system at that point of common coupling/interconnection will be zero.

As such, Minnesota Valley will not be buying any electricity from the Community. It will simply be selling less energy to the Community. That surely could not be a violation of Minnesota Valley's contract with Basin Electric, because it would be no different than the Community simply reducing its electricity demand by improving its energy efficiency or otherwise reducing its operations. Minnesota Valley surely cannot force the Community to buy more energy than it needs. Moreover, because the capacity of the Community's system is zero at the point of interconnection/common coupling, the system would not even be violating Minnesota Valley's own policy.[69] Thus, by affirming the plain language of Minnesota law and its prior statements regarding capacity, the Commission can resolve this dispute, allowing the Community's project to operate without any claim by Basin Electric that Minnesota Valley is violating its contract.

Minnesota has comprehensive and aggressive clean energy goals, including a net zero electrical grid by 2040. All technologies, demand-reduction strategies, and policies are needed to support these goals, as we move to a cleaner, more just energy economy. Distributed generation and small power production are a necessary part of this transition and are codified in Minnesota statute for that reason.[70] Distributed small power production aids in overall generation mix, and can significantly reduce peak usage. In fact, by reducing its demand, the Community is reducing the wear and tear on Minnesota's Valley's system, which should benefit all of the cooperative's members. Tribal nations and all others living within the State of Minnesota can and should be part of Minnesota's clean energy future.

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[69] One of the stated objectives of Minnesota Valley Policy 323, according to paragraph II.C, is "[t]o establish the application procedure and qualification criteria for Cooperative Members for the delivery, interconnection, metering, energy credit and purchase of electricity from inverter connected QF rated less than 40 KW alternating current (AC) at the point of common coupling." Minnesota Valley's comments on page 3 also state, "These policies are established to provide the application procedure and qualification criteria for Cooperative Members for the delivery, interconnection, metering, energy credit and purchase of electricity from inverter connect QF rate less than 40-kilowatt alternating current (AC) at the point of common coupling."

[70] Minn. Stat. § 216B.164, subd. 1 ("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).

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

If the Commission chooses to investigate this dispute, MnSEIA agrees with others that the Commission should consult with the Community and use whatever procedures they jointly believe are reasonable to resolve the dispute.[71]

CONCLUSION

This dispute raises important public interest concerns for the State of Minnesota, the Community, all other tribal nations located within the State of Minnesota, and the members of Minnesota's electric cooperatives. The Community and all other tribal nations located within Minnesota are entitled to not only their sovereignty as nations, but energy sovereignty. The right to provide energy to their people to support their health and well-being is essential to every nation. All people living within the State of Minnesota reasonably expect Minnesota Valley and all other electric cooperatives to comply with Minnesota law. The ability of electric cooperatives to self-regulate is a responsibility to ensure compliance with Minnesota law, not an option to ignore or violate it. When the Minnesota Legislature allowed electric cooperatives to regulate themselves it did so based on the belief that electric cooperatives are "effectively regulated and controlled by the membership under the provisions of chapter 308A."[72] That does not appear to be the case in this situation. Fortunately, the Legislature retained authority for the Commission[73] and Commerce[74] to ensure that cooperatives comply with Minnesota law without forcing their members to take on the burden of filing lawsuits under Chapter 308A or any other law. It is in everyone's interests that

[71] *See, e.g.*, MTERA Initial Comments, p 2 ("MTERA supports robust and engaged consultations between the State of Minnesota and the federally recognized Tribal Nations within the state on all energy-related matters, including those related to this complaint."); Alliance for Tribal Clean Energy Initial Comments, p. 3 (the Commission should "consult with the Tribe on preferred next steps"); and CURE Reply Comments, p. 3 ("the Commission could better engage in consultation with the Tribe and reach a resolution more directly without a referral").
[72] Minn. Stat. § 216B.01.
[73] *See, e.g.*, Minn. Stat. § 216B.17.
[74] *See* Minn. Stat. § 216A.07, subd. 2 (Commerce "is responsible for the enforcement of chapters 216A, 216B and 237 and the orders of the commission issued pursuant to those chapters").

disputes be resolved without having to resort to the courts, if possible. And the Commission appears to have the ability to do that in this dispute without impairing or harming the rights and privileges of the Community or Minnesota Valley.

Accordingly, the Commission should direct Minnesota Valley to comply with Minnesota law now and in the future, which should allow the Community to interconnect and operate in parallel its 2.5 MW solar and battery storage project. Providing it with the energy security and sovereignty it deserves and is entitled to. In addition, the Commission should direct Minnesota Valley to change Policy 323, and any other policies it has established, to be consistent with Minnesota law and Commission orders so that all of its members are protected and are able to exercise the renewable energy rights provided to them by Minnesota law.

Thank you for your time and consideration of the important issues raised in this matter.

Sincerely,

/s/ Curtis Zaun, Esq.
Director of Policy and Regulatory Affairs
MnSEIA
651-677-1602
czaun@mnseia.org

Sarah Whebbe
Senior Policy and Regulatory Affairs Associate
MnSEIA
651-470-0347
swhebbe@mnseia.org

David K. Moberg
Policy and Regulatory Affairs Associate
MnSEIA
651-280-0381
dmoberg@mnseia.org