



Minnesota Solar Energy Industries Association

We Move Minnesota Solar + Storage Forward

November 25, 2024

Pete Wyckoff
Deputy Commissioner
Minnesota Department of Commerce
85 Seventh Place East, Suite 500
St. Paul, MN 55101

**Re: In the Matter of the Implementation of the New Distributed Solar Energy Standard
Pursuant to 2023 Amendments to Minnesota Statutes, Section 216B.1691
Docket No. E002/M-23-403**

Deputy Commissioner Wyckoff;

On June 26, 2024, the Minnesota Public Utilities Commission (“Commission”) filed an order in the above-referenced docket requiring the utilities subject to that order to issue Requests for Proposal (“RFP”) by November 1, 2024, to implement the new Distributed Solar Energy Standard under Minn. Stat. § 216B.1691, which the utilities did. This order also required the Minnesota Department of Commerce (“Commerce”) to affirmatively approve these filings within 30 days of filing, which would be December 2, 2024.

The Minnesota Solar Energy Industries Association (“MnSEIA”), has reviewed these filings and has several concerns regarding their inconsistency with Minn. Stat. § 216B.1691, subd. 2h. Specifically, the RFPs impose an illegal minimum size requirement, misstate where and how capacity is determined for purposes of this program, and impose illegal location limitations.

First, on page 5 of its RFP, Otter Tail states:

Each RFP Project must provide to OTP new incremental nominal AC electrical output equal to or exceeding 1 MWac at each site location and POI (i.e., not the result of aggregated smaller projects at different sites/locations). OTP is designating a minimum RFP Project size to increase efficiency and minimize ratepayer and shareholder costs in achieving DSES compliance. Per Minn. Stat. § 216B.1691, the maximum RFP Project size is 10 MW.

Minn. Stat. § 216B.1691, subd. 2h, does not contain any minimum size requirement, only a maximum size requirement. *See* Minn. Stat. § 216B.1641, subd. 2h(c). Moreover, Minn. Stat. §

216B.1691, subd. 2h(d), states, that a “solar energy generating system with a capacity of 100 kilowatts or more does not count toward compliance with the standard established in paragraph (a) unless the public utility verifies that construction trades workers who constructed the solar energy generating system were all paid no less than the prevailing wage rate.” As such, it is clear that the statute envisions that projects under 1 MW will be eligible to participate in this program.

Second, Minn. Stat. § 216B.1691, subd. 2h(a)(1), specifically states that “capacity,” for purposes of this standard, “has the meaning given in section 216B.164, subdivision 2a.” None of the utilities use or incorporate the definition found in Minn. Stat. § 216B.164, subd. 2a. Instead, they appear to limit capacity in a way that is not only inconsistent with Minnesota law, the MN DIP and the TIIR, it is even inconsistent with the position they recently took in docket 24-200 regarding how capacity is determined.¹ Minnesota Power’s RFP, for example, states, “For the avoidance of doubt, a solar project that is AC-coupled with an energy storage addition will not be considered as a valid option if the combined inverter nameplate ratings exceed a total of 10 MWAC, even if the controls system is designed to limit total instantaneous generation to 10 MWAC.” The Minnesota Technical Interconnection and Interoperability Requirements (“TIIR”) specifically allow a system’s export capacity to be limited for tariff reasons.² The TIIR further states:

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.³

The MN DIP and MN DIP Application also explicitly recognize that system size can be limited.⁴

Limiting the size of a system or eliminating its ability to incorporate batteries reduces its capacity factor and its reliability, which would appear to be inconsistent with maximizing small power production,⁵ and is inconsistent with the definition of capacity found in Minn. Stat. § 216B.164, subd. 2a.

¹ While that decision in that docket will be appealed so the outcome is not yet legally binding, MnSEIA believes it is relevant to note this inconsistency.

² See TIIR 11.1, which states, “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.”

³ See TIIR 11.2.

⁴ See MN DIP 5.14.3; Attachment 3, Interconnection Application Form, p. 3 (Export Capacity Limitation section).

⁵ See Minn. Stat. § 216B.164, subd. 1.

Finally, some utilities propose combining systems, for purposes of state law eligibility, using FERC's 1 mile and 10 mile rules.⁶ While one might not question the necessity of ensuring that each project was a qualifying facility under state law, which incorporates federal law, see Minn. R. 7835.0100, subp. 19, the federal limitation for a qualifying facility is 80 MWs, and only counts the net export of the system, not its nameplate capacity.⁷

Thus, while ensuring that each qualifying facility is less than 80 MWs when combined with other qualifying facilities under FERC's rules may be appropriate under state law, using FERC's standard for purposes eligibility under Minn. Stat. § 216B.1691, subd. 2h, is not. If the Legislature had wanted to include such a co-location limitation, it would have explicitly stated so, which it did not. Moreover, it is likely worth noting that Minn. Stat. § 216B.1691, subd. 2h, does not use the term qualifying facility, but rather "solar energy generating system," which is defined, under a provision that has been repealed, as "a set of devices whose primary purpose is to produce electricity by means of any combination of collecting, transferring, or converting solar-generated energy."⁸ Thus, the reasonableness of applying any FERC rule may be questionable.

MnSEIA is, therefore, requesting that Commerce direct the utilities to amend these filings in order for them to comply with Minnesota law, the MN DIP and the TIIR.

Sincerely,

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⁶ See Xcel Energy Draft RFP at 19. "**FERC 1- and 10-Mile Rule Clarification:** Project capacities will be aggregated under the 1 Mile Rule for both individual project bids and portfolio bids. The 10 Mile Rule will be applied for those projects within a portfolio bid that are within 10 miles of one another. The FERC 1- and 10-Mile Rules were established as mechanisms to implement PURPA and determine whether small power production facilities are considered to be located "at the same site". The rules aggregate the capacity of generating facilities that use the same energy resource, are owned by the same persons or their affiliates, and are located within 1 mile, or 10 miles if under the same off-take agreement, of each other. The implication of this rule for this RFP is with regard to ensuring projects are under the 10 MWac threshold determined in statute and remain eligible to count towards the DSES obligation. The eligibility of a bid will be assessed by taking into account both existing and potential projects at the time of RFP evaluation as described further below. **Potential projects include all projects in the MN DIP queue.**" (Emphasis added)

See Minnesota Power Draft RFP at 14. "Generating facilities proposed as separate projects and sites must follow the appropriate FERC rules for qualifying small power productions facilities".

⁷ See *SEIA v. FERC*, 59 F.4th 1287 (D.C. Cir. 2023), where FERC argued that FERC's longstanding "send-out approach was the best interpretation because it takes into account all of the facility's components working together, not just the maximum capacity of one subcomponent, and focuses on grid-usable AC power," (p. 1291) and "that 'capacity' has an industry-specific definition meaning the maximum amount of power that can be supplied to the power grid, i.e., for end-user demand." (p. 1292).

⁸ See Minn. Stat. § 216E.01, subd. 9a.