

January 27, 2021

Comments by Tam Kemabonta

State of Minnesota
Representative James Long
The Minnesota House of Representatives
House Climate and Energy Committee
517 State Office Building
St. Paul, MN 55155

Dear Representative Long

Comments on the “100% Clean Energy Standard” Bill

I appreciate the opportunity to provide comments for the January 28th public hearing on the 100% Carbon Free Energy Standard initiative, where amendments to will be proposed.

First, I would like to applaud your efforts in taking leadership on increasing access of clean energy to Minnesotans. The state of Minnesota has seen an exponential increase in distributed energy resources (DERs) like solar PV in the past decade. In 2009 solar installed capacity was about 1.5 MW, today there is almost 1 GW of solar installed capacity in the state.¹ Minnesotans have become more conscious of where their energy comes from. It is the fifth most environmentally friendly state in the United States.² Hence, the rise in the demand for cleaner sources of energy. Hence legislatively speaking this initiative to pass the 100% Clean Energy Standard” bill into law is a step in the right direction.

To that effect, I respectfully submit the following amendments to the bill. I also list my justifications behind proposing said amendments. I state the current proposed bill amendment under the subheading of **current amendment** and where I propose an alternative I list under the subheading of **proposed amendment**.

1. In section 216B.1691, subdivision 1. Definitions (e) the proposed amendment goes thus:

Current amendment: "Area of concern for environmental justice" means an area in Minnesota ~~that, based on the most recent data published by the United States Census Bureau, meets one or more of the following conditions:~~

- ~~(1) 50 percent or more of the population is nonwhite;~~
- ~~(2) 40 percent or more of the households have an income at or below 185 percent of the federal poverty level;~~

¹ MnSEIA

² John S. Kiernan, “Greenest States,” Wallet Hub, April 15, 2019. <https://wallethub.com/edu/greenest-states/11987/>

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~~(3) is within Indian country, as defined in United State Code, title 18, section 1151.~~

Proposed amendment:

"Area of concern for environmental justice" means an area in Minnesota where an event of environmental injustice has taken place or is at the risk of taking place. This includes emissions, spills or dumping of any toxic substance deemed dangerous to the life and property of human beings by the Minnesota Pollution Control Agency, or relevant organization.

Justification: defining “an area of concern for environmental justice” by the racial demography may just be unconstitutional but it makes the dangerous implication that if the demography or median income of an area doesn’t meet the requirement as the current amendment states, they do not qualify as an area of environmental justice.

The Prairie Island Indian Community reservation is not “an area of concern for environmental justice” because of U.S. code title 18, section 1151, but because a nuclear generating plant with spent fuel on-site storage is located adjacent to the reservation. This is the same way that although Monticello is over 80% white, it is also an “area of concern for environmental justice,” because it is the location of a nuclear generating plants and on-stie spent fuel storage facilities.

2. Define **environmental justice**.

In the proposed bill the term “environmental justice” is use five times, without definition. It is important that a statement with legal, economic, and political ramifications be explicitly defined before this bill is passed into law.

The Department of Energy (DOE) defines energy justice as

“... the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no population bears a disproportionate share of negative environmental consequences resulting from industrial, municipal, and commercial operations or from the execution of federal, state, and local laws;

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regulations; and policies. Meaningful involvement requires effective access to decision makers for all, and the ability in all communities to make informed decisions and take positive actions to produce environmental justice for themselves.”³

Representative Long, I would like to bring your attention and that of the committee to the DOE’s definition that explicitly states that environmental justice requires “... the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income...”

But the currently proposed bill explicitly defines “areas of environmental justice” based on race and income. As a state that strives for the fair treatment of all its citizens, defining “areas of environmental justice,” based on race and income is explicitly making it possible for discrimination sanctioned by law. While the Twin cities is one of the most difficult places for Black Americans, sir, applying two “wrongs” to a situation does not make it “right.”⁴

I believe that you and your committee have the solemn duty to fight for all Minnesotans. To do this, it is imperative that your committee looks to repeal other laws that prevent a level playing field for all Minnesotans to succeed irrespective of race.

I would like to call you attention and the attention of the committee to the exclusive service territory laws for public utilities that have continued to increase the incidence of energy poverty in the state of Minnesota over the past two decades.

3. The bill currently seeks to amend Minnesota Statutes 2020, sections 216B.1691; 216E.03, subdivision 10; 216F.04; In addition to these, I recommend the Minnesota Statues 2020 216B.37; 216B.40; 216B.02, subdivision 4; 216B.1641 be amended. I list these Statutes below:

- a. 216B.37 ASSIGNED SERVICE AREA; ELECTRIC UTILITY; LEGISLATIVE POLICY.
It is hereby declared to be in the public interest that, in order to **encourage the development of coordinated statewide electric service at retail, to eliminate or avoid**

³ Department of Energy (DOE), Office of Legacy Management, “What is Environmental Justice?” <https://www.energy.gov/lm/services/environmental-justice/what-environmental-justice#:~:text=Environmental%20justice%20is%20the%20fair,laws%2C%20regulations%2C%20and%20policies.>

⁴ WCCO4, CNS Minnesota, “Twin Cities Ranked As 4th Worst Place For Black Americans,” <https://minnesota.cbslocal.com/2019/11/06/twin-cities-ranked-as-4th-worst-place-for-black-americans/>

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unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public, the state of Minnesota shall be divided into geographic service areas within which a specified electric utility shall provide electric service to customers on an exclusive basis.

b. 216B.40 EXCLUSIVE SERVICE RIGHT; SERVICE EXTENSION.

Except as provided in sections 216B.42 and 216B.421, each electric utility shall have the exclusive right to provide electric service at retail to each and every present and future customer in its assigned service area and no electric utility shall render or extend electric service at retail within the assigned service area of another electric utility unless the electric utility consents thereto in writing; provided that any electric utility may extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area.

c. 216B.02 DEFINITIONS. Subd. 4. Public utility. "Public utility" means persons, corporations, or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured, or mixed gas or electric service to or for the public or engaged in the production and retail sale thereof but does not include (1) a municipality or a cooperative electric association, organized under the provisions of chapter 308A, producing or furnishing natural, manufactured, or mixed gas or electric service; (2) a retail seller of compressed natural gas used as a vehicular fuel which purchases the gas from a public utility; or (3) a retail seller of electricity used to recharge a battery that powers an electric vehicle, as defined in section 169.011, subdivision 26a, and that is not otherwise a public utility under this chapter. Except as otherwise provided, the provisions of this chapter shall not be applicable to any sale of natural, manufactured, or mixed gas or electricity by a public utility to another public utility for resale. In addition, the provisions of this chapter shall not apply to a public utility whose total natural gas business consists of supplying natural, manufactured, or mixed gas to not more than 650 customers within a city pursuant to a franchise granted by the city, provided a resolution of the city council requesting exemption from regulation is filed with the commission. The city council may rescind the resolution requesting exemption at any time, and, upon the filing of the rescinding resolution with the commission, the provisions of this chapter shall apply to the public utility. No person shall be deemed to be a public utility if it furnishes its services only to tenants

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- or cooperative or condominium owners in buildings owned, leased, or operated by such person. No person shall be deemed to be a public utility if it furnishes service to occupants of a manufactured home or trailer park owned, leased, or operated by such person. **No person shall be deemed to be a public utility if it produces or furnishes service to less than 25 persons.**
- d. 216B.03 REASONABLE RATE. Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. **Rates shall not be unreasonably preferential, unreasonably prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to a class of consumers.** To the maximum reasonable extent, the commission shall set rates to encourage energy conservation and renewable energy use and to further the goals of sections 216B.164, 216B.241, and 216C.05. Any doubt as to reasonableness should be resolved in favor of the consumer. For rate-making purposes a public utility may treat two or more municipalities served by it as a single class wherever the populations are comparable in size or the conditions of service are similar.
- e. 216B.1641 COMMUNITY SOLAR GARDEN.
- (a) The public utility subject to section [116C.779](#) shall file by September 30, 2013, a plan with the commission to operate a community solar garden program which shall begin operations within 90 days after commission approval of the plan. Other public utilities may file an application at their election. The community solar garden program must be designed to offset the energy use of not less than five subscribers in each community solar garden facility of which no single subscriber has more than a 40 percent interest. **The owner of the community solar garden may be a public utility or any other entity or organization that contracts to sell the output from the community solar garden to the utility under section [216B.164](#).** There shall be no limitation on the number or cumulative generating capacity of community solar garden facilities other than the limitations imposed under section [216B.164, subdivision 4c](#), or other limitations provided in law or regulations.
- (c) The solar generation facility **must be located in the service territory of the public utility filing the plan. Subscribers must be retail customers of the public utility located in the same county or a county contiguous to where the facility is located.**

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Analysis and justification behind the proposed amendments of Minnesota Statutes 2020 216B.37; 216B.40; 216B.02, subdivision 4.

Currently there is no retail choice or competitive retail electricity market in Minnesota. This has led to Minnesota having one of the highest residential electricity rates on average in the country. Currently Minnesota ranks 35.⁵ Many Minnesotans experience high energy burden (EB). Energy burden is defined as the percentage of household income that is spent on energy expenses. Most American researchers agree that an EB greater than 6% is high and greater than 10% is severe.⁶ According to the Minnesota Department of Commerce (MN DOC) there are almost 500,000 households that struggle to pay utility bills⁷, and most of these households spend between 20% to 30% of their income on energy.⁸ While there are many energy assistances programs to support these households in energy poverty the fundamental problem is the legally sanctioned utility monopoly business model that the state currently operates.

MN 2020 Statutes 216B.40, gives the utilities exclusive right over specific territories in the state of Minnesota. This means that whatever rates the public utilities charge benefits them and not the customer. When customers have options, they can make good decisions around their energy bills. For example, if you live in Minneapolis, you have no choice but to pay Xcel Energy their energy charge of \$0.10 per kWh between June and September and \$0.08 per kWh on other months.⁹ This also includes a customer charge in addition to the energy charge between \$8 and \$10 for overhead service and \$10 to \$12.00 for underground service. This lack of consumer choice violates the principle of energy democracy, a core tenet in the foundations of a just energy transition. In Houston Texas, if you wanted to buy electricity you have over 15 retail electric providers (REPs) to choose from, and a wide price range between \$0.05 per kWh and \$0.15 per kWh.

There are many independent renewable energy (RE) developers in Minnesota like All Energy Solar, Cedar Creek Energy, Impact Power Solutions (IPS), among many others. Many of these companies remain small and as long as Minnesota remains their core market they are prevented

⁵ Electricity Rates By States, Choose Energy: <https://www.chooseenergy.com/electricity-rates-by-state/>

⁶ Drehobl, A., Ross, L. & Ayala, R., 2020. *How High Are Household Energy Burdens: An Assessment of National and Metropolitan Energy Burden across the United States*, Washington DC: ACEEE

⁷ Citizens Utility Board, "Energy poverty" What is it and how do we understand it.
<http://cubminnesota.org/energy-poverty-what-is-it-and-how-do-we-understand-it/>

⁸ CERTs, Reducing the Energy Burden for all Minnesota families:
<https://www.cleanenergyresourceteams.org/under5>

⁹ Northern States Power Company, Minnesota Electric Rate Book – MPUC NO. 2:
https://www.xcelenergy.com/staticfiles/xn/Regulatory%20&%20Resource%20Planning/Minnesota/Me_Section_5.pdf

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from growing because of MN 2020 Statute 216B.02 DEFINITIONS. Subd. 4., which states among other things that:

“No person shall be deemed to be a public utility if it produces or furnishes service to less than 25 persons”

This has been colloquially called the “25 persons” rule.

It does not only take away the rights of these RE developers to grow their businesses, but it also deprives many Minnesotans from more job opportunities had these RE developers being allowed to grow. But the moment anyone extends their electric service beyond 24 persons, they become a public utility, and are barred from doing so by MN Statutes 216B.37 ASSIGNED SERVICE AREA; ELECTRIC UTILITY; and 216B.40 EXCLUSIVE SERVICE RIGHT; SERVICE EXTENSION. It is imperative the Minnesota Legislature, through the 100% CES bill either repeal or amend the exclusive service territory laws to create a just energy system for all Minnesotans.

It is also important for the 100% CES bill to direct the Public Utilities Commission (MN PUC) to interpret that “25 person rule” to provide clear direction for RE developers within the state.

I would also like to bring to the attention of the committee to MN 2020 Statute 216B.1641 COMMUNITY SOLAR GARDEN. This Statute goes against MN Statute 216B.37, which clearly states that “... in order to encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities...” The development of community solar gardens (CSG) within the retail electric market, could be argued, is duplication of electric utility facilities.

Due to the fact that the MN Statute 216B.1641 allows CSG subscribers to get a credit on their bill from the utility, it violates the MN Statute 216B.03 REASONABLE RATE, which clearly states “Rates shall not be unreasonably preferential, unreasonably prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to a class of consumers.” If CSG subscribers are still considered residential customers, then they are getting preferential treatment, which discriminates against non-CSG residential customers. In 2018 Xcel Energy estimated that the non-participating CSG customers are being charged between \$36 to \$39 to support the CSG programs.¹⁰ And in 2019, Assistant professor Gabe Chan estimate that the “the

¹⁰ Mike Hughlett, Star tribune, *Complicated Economics of Community Solar Gardens Subject of debate*, 2018: <https://www.startribune.com/complicated-economics-of-community-solar-gardens-subject-of-debate/503575142/>

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total net cost of the community solar program is less than \$7 per year for the average Xcel residential customer” going on to state that “The benefits of solar don’t all come back to Minnesotans through their electric bills.”¹¹ It is my hope that the 100% CES bill resolves this issue.

Conclusion

Finally, in the wake of George Floyd’s murder by Derek Chauvin on the 25th of May 2020, our state has become a ground zero in the global and national fight against racial injustice. And as we make important steps to creating an energy system that is just, we must seek to decentralize and democratize it, giving every Minnesotan a voice in deciding how they want to procure and consume energy. The 100% CES is good, but we must make it great, bold, and aggressive by repealing exclusive territory laws that give public utilities too much power in determining our destinies with respect to energy.

Sincerely,

Tam Kemabonta

Tam Kemabonta is Research Director at TEPRI. He has extensive experience in global energy poverty, renewable energy project development, substation engineering, energy policy and electricity markets. He has a masters in electrical engineering from the University of St. Thomas, Saint Paul, Minnesota. He has worked for Black and Veatch, Xcel Energy, Fresh Energy, Microgrid Institute, the Minnesota Public Utilities Commission (MN PUC) and Great Plains Institute. He was also a member of the MN PUC Distributed Generation Working Group (DGWG) Technical Subgroup (TSG) in 2018. He has published many papers, articles and has filed technical comments before the MN PUC. He was a 2017 Clinton Global Initiative University Fellow and a 2019 member of the Union of Concerned Scientist (UCS) Early Career Scientist (ECS) cohort.

¹¹ Gabriel Chan, Matthew Grimley, Kristen Peterson, “Minnesota’s opportunity to model community solar “done right”, May 14, 2019: <https://static1.squarespace.com/static/5b8032c35b409b4d9458387e/t/5d0a9041cboe860001bfb448/1560973377457/CSG+opinion+-+190514.pdf>