

ENVIRONMENT

# Minnesota regulators bash electric co-op for threatening to cut tribal casino's power

The state Public Utilities Commission said it would investigate and possibly punish a rural electric cooperative after it opposed the Upper Sioux Community's solar project.

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Commissioner John Tuma speaks to attorneys representing the Upper Sioux Community and the Minnesota Valley Cooperative Light and Power Association at the Minnesota Public Utilities Commission meeting on Thursday. (Jerry Holt/The Minnesota Star Tribune)

Minnesota utility commissioners castigated a rural electric cooperative this week for threatening to cut power to the Upper Sioux Community's casino if the tribe turns on a solar array.

The state Public Utilities Commission (PUC) voted 4-0 to investigate a complaint from the tribal community, which maintains that the threat by the Minnesota Valley Cooperative Light and Power Association is illegal and discriminatory.

The commission said it might resort to the extraordinary step of taking away Minnesota Valley's right to serve the tribe with power and giving it to another provider, such as nearby Xcel Energy. The commissioners then asked state attorneys to take legal action if necessary to prevent a shutoff.



Commissioner Audrey Partridge, right, at the Minnesota Public Utilities Commission meeting on Thursday. At left is Commissioner Hwikwon Ham. (Jerry Holt/The Minnesota Star Tribune)


“I am not sure if you’re being discriminatory, but you sure are being unreasonable,” DFL commissioner Audrey Partridge told Minnesota Valley.

“I think you have lost your tether to the purpose of an electric utility,” Partridge said. “You have a privilege to serve your members, not be adversarial and unreasonable to them, not inflict or threaten harm, whether that’s physical or financial.”

It was a decisive win for Upper Sioux, whose solar array near Granite Falls in Western Minnesota is at the heart of a conflict that has pitted assertions of tribal sovereignty against claims that the project breaks state and federal utility laws.

## Dispute over solar array powering casino

The Upper Sioux Community's electric utility says a solar project would break policy and laws by operating inside its service area. Upper Sioux says those laws don't apply to a tribe and its solar farm is legal.

 Minnesota Valley Cooperative Light and Power Association service area



Upper Sioux built the solar array to save money on electricity and support renewable energy. The tribe says it would meet about 30% of the casino complex's energy needs.

Minnesota Valley, a nonprofit based in Montevideo with about 5,200 members, says its own policies are aligned with state and federal law. State law and the co-op's policies cap the size of a solar array a customer can hook up to their system, Minnesota Valley argues.

The Upper Sioux Community proposed a 2.5-megawatt solar project, more than 62 times larger than the limit Minnesota Valley set. Upper Sioux has argued the solar power would go directly to the casino and not onto the power grid.

Minnesota Valley believes the solar array would still be connected to its system because the co-op and the panels would simultaneously provide electricity to the casino.

Either way, the tribe says state laws and policy don't apply on tribal lands.

"Our opinion is that as a tribal nation with inherent sovereign rights, we don't need to engage [the cooperative] in any discussions," tribal chairman Kevin Jensvold told the Minnesota Star Tribune earlier this year.

After a failed attempt at mediation, Upper Sioux asked the PUC to intervene and tell Minnesota Valley it cannot cut power.

Matthew Haugen, an attorney for Minnesota Valley, said the cooperative would be giving Upper Sioux preferential treatment if it allowed a solar array bigger than 40 kilowatts, and that other members have asked to clear that threshold.

“Each time Minnesota Valley has provided its board policy and specifically stuck to what the statute specifically allows,” Haugen said.

The commission said it could only examine state law and could not judge the question of tribal sovereignty. The board was highly skeptical, however, that Minnesota Valley could block the tribe’s solar array or cut off power downtown St. Paul on Thursday, Minnesota Valley argued the PUC does not have the authority to investigate an Independent Commissioner Hwikwon Ham pressed Haugen on whether the co-op’s concerns were financial or related to the safety of its infrastructure or electrical workers. Minnesota Valley said it was an issue of money, that “embedded” costs would have to be shouldered by other members of the cooperative.

Ham said losing electricity can hurt people who rely on air conditioning or health devices.

Haugen said Minnesota Valley would only cut power to what the solar array is connected to, primarily the casino resort and a fueling station, not the broader community.

Republican Commissioner John Tuma questioned whether Minnesota Valley’s policies are reasonable, and therefore allowed under state law. He drew a parallel to a large solar array operated by Flint Hills Resources at its oil refinery in Rosemount, which supplies energy to the facility but not to the grid. In the jargon of the energy world, this makes it “behind the meter.”

“I don’t have a right to tell them what to do on their own property with their behind-the-meter generation,” Tuma said.

“Do you have a patent on electricity? Do you own all electricity in your area?” Tuma asked Haugen. “That’s what it sounds like, you have this patent on electricity, and if these guys go ahead and produce some electricity behind the scene, they can’t do it unless they come and ask your blessing to use it. No, you have a duty to serve.”

Partridge asked Haugen if Minnesota Valley would hold off on disconnecting Upper Sioux while the issue was hashed out at the PUC. When Haugen said no, Partridge asked the state to take legal action to forbid the cooperative from moving ahead.

Joe Sullivan, a DFL commissioner, said the threat to cut power is “outrageous.”

“Utilities don’t shut people off – that’s a last-ditch thing,” Sullivan said.

After the hearing, Minnesota Valley general manager Pat Carruth declined to comment. Leif Rasmussen, an attorney for Upper Sioux, said that “we agree with the direction [the PUC is] going in.”