March 8, 2024

VIA ELECTRONIC FILING

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

Re: Application/Petition for Rehearing
In the Matter of Updating Generic Standards for Utility Tariffs for Interconnection and Operation of Distributed Generation Facilities Under Minn. Stat. § 216B.1611
Docket No. E-999/CI-16-521

In the Matter of the Formal Complaint and Request for Relief by the Minnesota Solar Advocates against Northern States Power Company dba Xcel Energy
Docket No. E-002/C-23-424

Dear Mr. Seuffert,

Pursuant to Minn. Stat. § 216B.27 and Minn. R. 7829.3000, the Minnesota Solar Advocates (Minnesota Solar Energy Industries Association, the Coalition for Community Solar Access, Cooperative Energy Futures, Minneapolis Climate Action, MN Solar, Solar United Neighbors, Luke and Layne Schmitz, David Crawford and Megan Clancy, Lorelle and Daniel Blezek, Dale Mossey, Roman and Mila Podrezov, Ryan Schaefer, Lori and Ken Byro, Michael Rynders, Wild Mountain, Inc., Nexamp, Innovative Renewable Energy, Inc., Vote Solar, SunShare, Rotochopper, Inc., Novel Energy Solutions, All Energy Solar, Blue Horizon Energy, LLC, Sunrise Energy Ventures, LLC, and the Institute for Local Self Reliance), hereby submit this Application/Petition for Rehearing in the above-referenced dockets.

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.

Respectfully Submitted,

Minnesota Solar Advocates

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

Katie Sieben	Chair
Valerie Means	Commissioner
Hwikwon Ham	Commissioner
Joseph K. Sullivan	Commissioner
John Tuma	Commissioner

In the Matter of Updating Generic Standards for Utility Tariffs for Interconnection and Operation of Distributed Generation Facilities Under Minn. Stat. § 216B.1611	**APPLICATION/PETITION FOR REHEARING by the MINNESOTA SOLAR ADVOCATES**
	Docket No. E-999/CI-16-521
In the Matter of the Formal Complaint and Request for Relief by the Minnesota Solar Advocates against Northern States Power Company dba Xcel Energy	**Docket No. E-002/C- 23-424**

March 8, 2024

INTRODUCTION

Pursuant to Minn. Stat. § 216B.27 and Minn. R. 7829.3000, the Minnesota Solar Advocates ("MSA," which include the Minnesota Solar Energy Industries Association, the Coalition for Community Solar Access, Cooperative Energy Futures, Minneapolis Climate Action, MN Solar, Solar United Neighbors, Luke and Layne Schmitz, David Crawford and Megan Clancy, Lorelle and Daniel Blezek, Dale Mossey, Roman and Mila Podrezov, Ryan Schaefer, Lori and Ken Byro, Michael Rynders, Wild Mountain, Inc., Nexamp, Innovative Renewable Energy, Inc., Vote Solar, SunShare, Rotochopper, Inc., Novel Energy Solutions, All Energy Solar, Blue Horizon Energy, LLC, Sunrise Energy Ventures, LLC, and the Institute for Local Self Reliance), respectfully submit this Application/Petition for Rehearing of the Minnesota Public Utilities Commission's ("Commission") Order Dismissing Complaint issued on February 27, 2024, in the above-referenced dockets.

The MSA represent a broad array of individuals and organizations who believe that Minnesota's clean energy future is dependent upon distributed energy resources ("DER"), from small rooftop installations, to commercial and industrial installations, community solar gardens ("CSGs"), and mid-scale (10 MW or less) projects, in addition utility scale solar projects. As noted in our complaint and comments, Xcel's Technical Planning Limit ("TPL"),[1] which reduces the capacity of Xcel's distribution system by approximately 2.6 gigawatts,[2] violates Minnesota law and is a threat to Minnesota's clean energy goal of 100 percent by 2040 and all of Minnesota's distributed generation ("DG") programs, from Solar Rewards to the new DG standard, that have been passed by the Minnesota Legislature to help meet that goal.

It should not be considered inflammatory or controversial to recognize that monopolies are inherently detrimental to an economy and society.[3] In no aspect of one's life would any person want to be told that they had no choice regarding a decision they wanted to make, much less regarding an important or significant decision such as how one provides for the basic necessities of life like how they obtain the electricity that, among other things, provides light, warms and cools their housing, and stores and cooks their food. Monopolies eliminate customer choice, reducing the monopoly's incentive to innovate and keep costs down. Moreover, as the Minnesota Department of Commerce ("Commerce") has previously recognized, "Electric IOUs have a fiduciary responsibility to their shareholders to maximize their profitability."[4] And the way they maximize their investor's profits is generally to spend as much money as possible. Thus, there is an inherent conflict between what is best for investors and what is best for ratepayers. Which is why they are disfavored in a free-market democratic society.[5] The

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[1] Xcel changed the name of its Technical Planning Limit to Technical Planning Standard in an apparent attempt to make the intent of this generic interconnection rule/practice less obvious. It is worth noting that if you go to the page provided in the Notice of Comment Period where the updated version is found and save the document, the file name still comes up as "Engineering Practice-DER Technical Planning Limit_March 1."

[2] IREC, MN Interconnection Ruling Contains Some Wins and a Major Threat (Aug. 8, 2022) (https://irecusa.org/blog/irec-news/mn-interconnection-ruling-contains-some-wins-and-a-major-threat/) (visited on Aug. 25, 2023).

[3] *See In the Matter of a Petition of Northern States Power Company for Approval of a Public Charging Network, and Electric School Bus Pilot, and Program Modifications*, Department of Commerce, DIRECT TESTIMONY AND ATTACHMENTS OF MATHEW LANDI ON BEHALF OF THE DIVISION OF ENERGY RESOURCES OF THE MINNESOTA DEPARTMENT OF COMMERCE, Docket No. E002/CI-22-432, p. 110 (Feb. 7, 2023), (stating that allowing a for-profit electric utility into a competitive marketplace "risks that the private sector will face unfair competition from monopoly utilities"); and, Ohio Attorney General, https://www.ohioattorneygeneral.gov/Media/Newsletters/Competition-Matters/October-2020/The-Effects-of-Monopolies-are-No-Laughing-Matter (Oct. 26, 2020) (Noting that "with a monopoly, there can be little incentive for innovation or improvement on a product/service. Monopolies can also make it difficult for new and innovative companies to enter the market").

[4] Commerce, LANDI TESTIMONY, p. 110-111.

[5] *See* Federal Trade Commission, The Antitrust Laws (noting that Congress passed a law in 1890 as a "comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade" and noting that "for over 100 years, the antitrust laws have had the same basic objective: to protect the process of competition for the benefit of consumers, making sure there are strong incentives for businesses to operate efficiently, keep prices down, and keep quality up.") https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws.

exception to that principle is when the perceived benefits of a monopoly outweigh its inherent threat to society. Minnesota decided that the benefits of allowing monopolies to provide electric service outweigh the harm to the public that necessarily results from limiting the publics' freedom to choose who provides that service.[6] While the wisdom of that choice was likely clearer when that decision was originally made, the energy industry has changed dramatically in the last 10 years.

Regardless of the wisdom of that decision today, an absolute necessity of preventing harm to the public is that the monopoly be regulated. The Minnesota Legislature made that clear when it declared that it "is in the public interest that public utilities be regulated."[7] And it placed the responsibility to regulate electric utilities like Xcel on the Commission and Commerce. That authority is provided in Chapter 216A, where, among other things, it states that the Commission "may adjudicate all proceedings brought before it in which the violation of any law or rule administered by the Department of Commerce is alleged."[8] And Chapter 216A makes it clear that Commerce "is responsible for the enforcement of chapters 216A, 216B and 237 and the orders of the commission issued pursuant to those chapters."[9] In short, the regulation of electric monopolies in Minnesota is effectuated by the Commission making legislative and quasi-judicial decisions, while Commerce enforces the provisions of Chapter 216B and the orders the Commissions issues pursuant to that law.

For the reasons outlined in this application/petition, the MSA believe that the Commission's February 27, 2024, Order is unlawful and unreasonable and, accordingly, respectfully request that the Commission grant its rehearing request and either initiate an investigation because Xcel's implementation of the TPL violates numerous provisions of Minnesota law or, at the very least, explicitly address the legal issues raised in the complaint so that the public, stakeholders and appellate courts understand how the current Commission believes it is required to perform its regulatory function.

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[6] *See* Minn. Stat. § 216B.37 (declaring that it is in the public interest to allow monopolies to provide electric service "in order to encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public").

[7] *See* Minn. Stat. § 216B.01.

[8] *See* Minn. Stat. § 216A.05, subd. 1.

[9] Minn. Stat. § 216A.07, subd. 2. It is worth noting that Chapter 216A does not make the Commission responsible for the enforcement of Chapter 216B, but, rather, limits its responsibilities to legislative and quasi-judicial functions

The Complaint

The Complaint filed by the MSA on September 12, 2023, in docket 16-521[10] listed numerous violations of Chapter 216B and the Commission's order. These include violations of sections 216B.164, 216B.1641, 216B.1611, 216B.03, 216B.05, 216B.07, and 216B.16 of the Minnesota Statutes, along with the Commission's order issued on March 31, 2022. Specifically, the MSA stated that they believe that Xcel is in violation of Minnesota law by unreasonably limiting the capacity of its entire distribution system by implementing a rule/policy/practice/standard without the approval of the Commission. First, Minn. Stat. § 216B.164, subd. 4b, does not allow Xcel to limit the cumulative generating capacity of net metered facilities, which are defined as facilities that are constructed for the purpose of offsetting energy use through distributed energy resources ("DER"), until they have reached four percent of the public utility's annual retail electricity sales, and the Commission has found that "additional net metering obligations would cause significant rate impact, require significant measures to address reliability, or raise significant technical issues." Second, Minn. Stat. § 216B.1641 states, "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." Third, pursuant to Minn. Stat. § 216B.16, Xcel cannot legally change a rate, which is broadly defined to include any rules or practices, without the approval of the Commission. Notably, "The burden of proof to show that the rate change is just and reasonable shall be upon the public utility seeking the change." It also must file with the commission schedules showing all rates, tolls, tariffs, and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection therewith or performed by any public utility controlled or operated by it," pursuant to Minn. Stat. § 216B.05, which it has not done. And finally, limiting the capacity of its distribution system is unjust, unreasonable, prejudicial and discriminatory in violation of Minn. Stat. § 216B.03 and Minn. Stat. § 216B.07 because it is wasting a ratepayer resource and unnecessarily increasing the costs to interconnect DER, which does not promote the use and development of DER as required by Minnesota law.[11]

The MSA also alleged that Xcel violated its March 31, 2022, Order by implementing the TPL on March 1, 2022, without the approval. The Complaint noted that prior to implementing its limitation on the cumulative generating capacity of its distribution system, Xcel proposed this change to the Distributed Generation Workgroup ("DGWG"). Because of the broad opposition to this proposal by stakeholders and Xcel's stated intent to unilaterally implement

[10] The complaint was originally filed in docket 16-521 because Xcel's violations related to its interconnection rules/policies/practices and the Commission's March 31, 2022, Order, which was filed in this docket. The Commission, however, removed the complaint from this docket, put it in docket 23-424, and did not return it to docket 16-521 until September 29, 2023, at the request of the MSA.

[11] *See* 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.").

it, Xcel's TPL proposal went to the Commission for approval. The Commission rejected the proposal stating:

> At this time, the Commission believes that the DML issue deserves further study and will require Xcel Energy to raise specific issues with DML in its quarterly compliance filings. While the commenters opposing Xcel Energy's change to the technical planning limit have valid concerns, the limitation may have a foundation in sound engineering practice. **The Commission, however, cannot make that determination at this time based on the limited information in the record**. **Instead of making a change now, the Commission will require Xcel Energy to provide information which will help all parties in the future.**[12]

And it was clear from the Commission's order that it rejected the TPL because the first sentence of the next paragraph stated, "The Commission will also reject Xcel Energy's proposed 25% reservation for DER systems smaller than 40 kW and corresponding edit to the MN DIP."[13]

Comments Filed in Support of Complaint

Numerous parties filed comments in support of the MSA's complaint, including Commerce, the Minnesota Office of the Attorney General ("OAG"), Sierra Club, City of Minneapolis, Clean Energy Economy Minnesota, and numerous individual citizens. Commerce summarized the basis for its support stating:

> The Department believes MSA's allegations provide reasonable grounds to investigate Xcel's actions, which – without additional information – appear to have violated a direct Commission Order. The Department also notes that failing to investigate these kinds of allegations could have significant negative effects on the public interest. Most significantly, if public utilities like Xcel feel they can act unilaterally to implement significant changes like the TPS – particularly when those actions are apparently in direct violation of a legally binding Commission Order – that could create a very unpredictable regulatory environment and landscape for ratepayers.[14]

The OAG's comments recognized that the Commission's language quoted above did not approve the TPL stating:

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[12] *See* Minnesota Public Utilities Commission, ORDER MODIFYING PRACTICES AND SETTING REPORTING REQUIREMENTS, Dkt. 16-521, p. 7 (March 31, 2022) (emphasis added).
[13] *Id*.
[14] Minnesota Department of Commerce, COMMENTS, Dkt. 23-424, p. 3 (Oct. 13, 2023).

> The Commission's statement appears not to grant Xcel Energy authority to implement the revised TPL, but instead requests additional information for consideration by all parties. This interpretation is further supported by the beginning of the very next paragraph in the order, in which the Commission addresses a related Company proposal, stating that it "will also reject Xcel Energy's proposed 25% reservation for DER systems smaller than 40kW and corresponding edit to the MN DIP."19 The Commission's use of the phrase "also reject" in connection with this related proposal implies that it also rejected the proposed change to the TPL just discussed.[15]

However, because Fresh Energy and IREC, two parties who previously opposed the TPL, did not join the complaint, the OAG questioned whether the Commission had authorized the TPL. Accordingly, it stated, "Should the Commission clarify that it did, in fact, approve Xcel's implementation of the revised TPL, one of the OAG's primary concerns in this matter—that a Commission-regulated public utility would implement such a sweeping rule or practice without Commission approval - would be resolved."[16] The OAG went on to reiterate its concern about a regulated monopoly acting without Commission approval several more times. It stated:

> Thus, at the heart of this debate is the question of whether Xcel did or did not have independent authority to implement the revised TPL. Resolution of this question, which essentially asks the Commission to clarify the boundaries between the independent engineering judgment utilities are allowed and encouraged to exercise, and generic rules and interconnection policies which require Commission approval, may go a great distance to create predictability and prevent future complaints by ensuring that utility action in this realm remains within well-defined authority. Thus, resolution of this question creates reasonable grounds for the Commission to investigate MSA's allegations.[17]

The OAG then goes on to reiterate its concerns, stating, "Resolving whether Xcel had - or whether any other similarly situated utility would have - the authority to implement such a broad limitation is of vital importance to the future of DER in Minnesota."[18] It then concludes:

> Answering the question of whether Xcel had authority independent of the Commission to implement the revised TPL is of critical importance to ensuring that regulated utilities adhere to Minnesota law. The Commission's answer to the

[15] Minnesota Office of the Attorney General, COMMENTS, Dkt. 23-424, p. 4 (Oct. 20, 2023).
[16] *Id*.
[17] *Id*. at 5 (citations omitted).
[18] *Id*.

> question is similarly vital to the predictability and capacity of DER in Minnesota's future.[19]

It is also probably worth noting that one of the decision options regarding the TPL, which was proposed by Xcel, was to "Approve Xcel's authority to implement the DER Technical Planning Limit."[20] It is undisputed that this decision option was not adopted by the Commission.[21]

The Hearing

At the hearing two themes emerged. First, that the Commission does not believe that its regulatory responsibilities require it to review Xcel's decisions if they are technical in nature. Commissioner Tuma stated, "It's clear everybody agrees we have jurisdiction here and everybody I think agrees that there is some leeway to 'let the railroad run the railroad.' We don't want a bunch of attorneys like us running the railroad."[22] He then later stated, "I think I do have a legislative add-on to be honest with you. I want to look at this and not get so bogged down on the judicial question. Because I think I want to give a lot of deference to the utility to make engineering calls**.** "[23]

And second, the TPL was a policy choice more than a safety and reliability issue. Only Commissioner Schuerger questioned the basis for the TPL and the response he received from Xcel's engineer are telling.

> **Commissioner Schuerger:** The last key area that I want to ask you about Mr. Shiro was this question of engineering judgment because I think it gets bandied about and gets misunderstood. *Engineering judgment can't simply be whatever you say it is, and I don't think you're claiming it is, but to me engineering judgment is a process by which you gather the available information and knowledge that you do have and you frame a problem and you support it as best you can with evidence and make a judgment within that. Would you agree or would you look at engineering judgment differently?*
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> **Xcel Engineer Shiro:** That is a fundamental part on the engineering judgment, is that we do take the information available and the data available and make determinations from that information and particularly how to best ensure that we are able to continue to serve all customers in a safe and reliable manner."

[19] *Id*. at 6.
[20] Minnesota Public Utilities Commission, STAFF BRIEFING PAPERS, Dkt. 16-521, p. 48 (Jan. 20, 2022).
[21] *See* Commission, March 31, 2022, Order, p. 10-12.
[22] Minnesota Public Utilities Commission, HEARING (Dec. 14, 2023)
[23] *Id*.

Commissioner Schuerger: Why 80%? Why not 60% or 90%?"

Xcel Engineer Shiro: One of the assessments looking at 80% was how that accounts for what we would anticipate to see for flow on the equipment. Recognizing the load and generation balance, also recognizing what we do on the load serving side, where we are planning the system on the load side, which is 75%. So looking at overall distributed generation connection we figured we should be within that same area. 80% was from the information we had at the time and seemed to be an appropriate area to operate in and it allows for essentially more generation than what we would have and what we would be planning for load to connect to these systems."

Commissioner Schuerger: ***I didn't find in your responses the assessments that framed it in the way you described it. The calculations that framed it, have those been done?***

Xcel Engineer Shiro: ***If you're looking for detailed spreadsheets and a full-on analysis - no, not necessarily to that point. But we were just dealing with engineering observations of where we thought the system would be best.***

Commissioner Schuerger: Okay. I hear what you're telling me and I read the record. *I'll just say I find it unsatisfying at this point and I'm not sure what else to do about it. I wanted to ask about a different point which is why you're applying this as a blanket to the entire system, which seems concerning to me.* I think I've read the explanation in your responses of why you're doing that and in your response is that you're looking at uniformity and fairness, but in fact when there are interconnection requests you evaluate each feeder in each project individually. We have a very small set of feeders that are heavily loaded. And in the company's response you cited the new statute 216b-378 that recognizes and defines a technical planning standard. But I would just note that that statute that you cited in your response says 'that a technical planning standard is an engineering practice that limits the total aggregate distributed energy resource capacity that may interconnect to a *particular* location on the utilities distribution system.' It seems to me you understand a statutory perspective of a granularity that we're not seeing in your proposal. I just would appreciate some response to that.[24]

Commissioner Tuma recognized the inconsistency of stating that engineering judgment was being used for a blanket rule/policy/practice rather than for a particular project stating:

[24] *Id*. (Emphasis added).

> Can I ask a quick follow up? If I understand correctly what you just articulated, the statute calls for a particular location. The TPS though, as Commissioner Schuerger has noted, is being applied like a blanket over the whole system. That seems inconsistent. If the TPS is applied as an engineering analysis that you look at over the entire system, that seems inconsistent with the statutory framework. But maybe I'm misunderstanding what you said.[25]

And in disputing Charles Sutton's characterization of the matter, Commissioner Schuerger stated, "I find it quite interesting that the company has proposed that for rooftop solar you could go to 100% of thermal limits. It really reinforces the interpretation that you put forward Commissioner Sullivan…that really it's a positioning for headroom for future decisions. It looks more like a policy decision than a reliability decision."[26] Which is consistent with Commissioner Tuma's line of questioning wherein he stated, "I mean it could be that the company's just trying to buy headroom so that they can do the other things, and I suppose if that's the case I'd like to know that," followed up with saying, "I don't think that's irresponsible to say we're trying to buy ourselves some headroom," and then specifically asked, "It wouldn't bother me if it was, but I'm just trying to understand, are the engineers that nervous that they need to create some headroom?"[27] To which Xcel's engineer eventually responded, "We have to be able to have that additional headroom and flexibility, reliability recognizing that there is a difference."[28] To which Commissioner Schuerger stated, "If I'm understanding what you're saying, we need the TPS as it is currently structured because that gives us the headroom."[29]

The Order

Although the order specifically recognizes all of the statutory provisions that the MSA alleged Xcel has violated, the Commission did not explicitly address any of them. Not a single one. Rather, it simply stated, "Based on the record, however, it appears that the practical limitations of Xcel's system are at issue - not the Company's compliance with the law."[30] It then goes on to say, "As a threshold matter, it is unreasonable to expect that Xcel could effectively, reliably, and safely operate its complex and vast distribution system without technical standards and engineering practices that are designed for that purpose."[31] That, of course, is true. It would be unreasonable for anyone to expect that Xcel could effectively, reliably, and safely operate its complex and vast distribution system without technical standards and engineering practices that are designed for that purpose. But that is not what the MSA or anyone else expects. The MSA and the public expect Xcel to have technical standards and engineering practices. They also

[25] *Id*.
[26] *Id*.
[27] *Id*.
[28] *Id*.
[29] *Id*.
[30] Feb. 27 Order, p. 4.
[31] *Id*.

expect those standards and practices to be reviewed and approved by the Commission and incorporated into the MN DIP, TIIR, and/or utility TSMs, like the recent change regarding advanced inverters.[32]

The Commission later states, "The Commission also concurs with Xcel that prior Commission approval was not required to implement its standard. Assertions that it is unlawful for Xcel to operate its distribution system in reliance on sound engineering practices is confounding."[33] This, of course, is the most important statement of the order because it establishes that Xcel, or presumably any other utility, can implement a generic interconnection standard that applies broadly to its entire distribution system without prior approval by the Commission. This is precisely the concern raised by both the OAG and Commerce and appears to contradict the plain language of the statutes cited by the MSA in their complaint and the Minnesota Legislature's desire that electric monopolies be regulated. The Commission, however, doesn't explain how this incredibly significant position is consistent with the Minnesota law cited by the MSA. In fact, what is most noteworthy about the Commission's analysis of this extremely significant issue, which both the OAG and Commerce appear to agree will affect the future of clean energy in Minnesota, is that it does not contain a single citation to any legal authority or precedent.

Application for Rehearing

Minnesota law allows any party to the proceeding or any other person, aggrieved by the decision and directly affected thereby, to apply to the Commission for a rehearing in respect to any matters determined in the decision.[34] The application for rehearing must "set forth specifically the grounds on which the applicant contends the decision is unlawful or unreasonable."[35]

The Commission's order is unlawful and unreasonable because it determined that a utility can implement a generic interconnection rule/practice/policy/standard that limits the capacity of its entire distribution system without the approval of the Commission. This appears to violate the plain language of Minn. Stat. §§ 216B.164, 216B.1641, 216B.1611, 216B.03, 216B.05, 216B.07, and 216B.16. For example, even if it was a sound engineering practice, which is in dispute especially in light of the Xcel engineer's admission at the hearing that no "detailed spreadsheets and a full-on analysis" was performed to support it, it is undisputed that net metered facilities have not reached four percent of Xcel's annual retail electricity sales as required by Minn. Stat. § 216B.164, subd. 4b. The Minnesota Legislature clearly gave utilities the ability to ask that the cumulative generation of net metered facilities be limited if certain conditions are met under

[32] *See, e.g.,* Minnesota Public Utilities Commission, NOTICE OF "READILY AVAILABLE" ADVANCED INVERTERS AND FULL IMPLEMENTATION OF TECHNICAL INTERCONNECTION AND INTEROPERABILITY REQUIREMENTS, Dkt. 16-521 (Oct. 6, 2023).
[33] Feb. 27 Order., p. 5.
[34] *See* Minn. Stat. § 216B.27, subd. 1.
[35] Minn. Stat. § 216B.27, subd. 2.

Minn. Stat. § 216B.164, subd. 4b, and the Commission does not explain why this provision is not applicable to the current situation or how, if it is, the factors the Commission is required to consider were met.

Further, Minn. Stat. § 216B.1641, subd. 1, states, "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." The Commission does not explain why this provision does not prohibit the limitations imposed by the TPL, which clearly limit both the number and cumulative generating capacity of CSGs. Presumably, the Minnesota Legislature would expect this specific provision to trump an electric monopoly's general responsibility to operate its system safely, reliably and efficiently.

Nor does the Commission explain how Xcel could change a generic interconnection rule/policy/practice/standard without establishing it met the requirements of Minn. Stat. § 216B.1611, subd. 2, followed the procedures of Minn. Stat. 216B.16, or was filed pursuant to Minn. Stat. § 216B.05.

And the Commission did not explain how a rule/policy/practice/standard that Xcel admitted was to provide "headroom" to favor some types of solar projects over other types of solar projects doesn't violate Minn. Stat. § 216B.03 or Minn. Stat. § 216B.07.

Even Xcel agrees that it is supposed to be regulated. It has stated:

> Under Minn. Stat. § 216B.08, it is the duty of the Commission to regulate every public utility. With the broad statutory definition of "rate" to include "any rules, practices, or contracts," every public utility must file with the Commission tariffs showing all rates and all rules that, in the judgment of the Commission, in any manner affect the service or product, as well as any contracts, agreements, or arrangements relating to the service or product or the rates to be charged for any service or product.[36]

Which is why it is interesting in this matter that it has argued that it has the authority to implement the most significant interconnection rule/practice/policy/stanard in the state without the approval of the Commission. The Commission has agreed with Xcel that as long as a utility simply claims any decision it makes is based on its engineering judgment, no matter how unsubstantiated that claim is, its decision is exempt from any of the legal requirements under Chapter 216B. Even Commissioner Schuerger recognized at the December 14 hearing that

[36] Xcel Energy, COMMENTS ON OBJECTIONS TO COMPLIANCE TARIFF FILING, Dkts. 13-867 / 23-335, p. 6 (Feb. 21, 2024) (citations omitted).

"[e]ngineering judgment can't simply be whatever" a utility says it is. If that is what Minnesota law allows, then it would appear that utilities are effectively unregulated in Minnesota because a utility could claim almost every decision it makes is based on some sort of engineering judgment, especially if it is not required to substantiate that claim.

It is likely also worth noting that the Commission's decision appears to be based on a misunderstanding of the allegations in the complaint. As noted previously, it states in its order, "Assertions that it is unlawful for Xcel to operate its distribution system in reliance on sound engineering practices is confounding."[37] The MSA do not assert that it is unlawful for "Xcel to operate its distribution system in reliance on sound engineering practices." As noted above, the MSA allege it is unlawful to implement a rule, policy, standard or practice without Commission approval and specifically question whether the TPL is a sound engineering practice, especially in light of the fact that Xcel admitted at the December 14 hearing that its purpose was to create "headroom" for other types of projects, including projects that could up to 100 percent of the distribution system equipment rating. The MSA want Xcel to operate its system based on sound engineering practices. The problem with the TPL is that while it was brought up in the DGWG as referenced by the Commission, it was opposed by the majority of the members because it was not considered a sound engineering practice. As Commissioner Schuerger got Xcel's engineer to admit at the December 14 hearing, the TPL is not based on detailed information or analysis, it was apparently based on "engineering observations," which would fall far short of what Commissioner Schuerger would expect and what the TIIR requires when it states, "The Area EPS Operator shall follow applicable industry standards and good utility practice when applying engineering judgment."[38] And, as the Commission knows, good utility practice is defined by the MN DIP as:

> Any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and act which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.[39]

[37] Feb. 27 Order., p. 5.
[38] Minnesota Technical Interconnection and Interoperability Requirements, p. 1 (Approved by Commission's Order dated Jan. 22, 2020).
[39] Minnesota Distributed Energy Resource Interconnection Process, MN DIP Glossary of Terms, p. 1 (Approved by Commission Order dated April 19, 2019).

This record does not support that the TPL is based on applicable industry standards or good utility practice. If it was, then the TPL would presumably be part of the TIIR, MN DIP or Xcel's Technical Specifications Manual, which is where all the other interconnection rules, policies, practices, standards, and procedures can be found. But it is not and that is the fundamental issue.

It is also important to remember that the MSA were not asking the Commission to determine that TPL was invalid at this point in the proceedings. The only issue at this stage of the proceedings was whether there are reasonable grounds to investigate the allegations in the complaint.[40] And not only did both the OAG and Commerce recommend investigating the allegations in the complaint because of the vital importance that the issues raised in the complaint had for "the predictability and capacity of DER in Minnesota's future," but Xcel's responses to Commissioner Schuerger's questions call into question the basis for and authority to unilaterally implement the most significant interconnection rule/policy/practice/stanard in the state. The Commission has previously determined that there was a reasonable basis to investigate allegations that were far less significant.[41]

CONCLUSION

The public is harmed when the actions of monopolies place the interests of their investors over the interests of the public. The public is also harmed when the public agencies whom the Minnesota Legislature has placed the power and responsibility to protect the public from those actions refuse to fulfill their responsibilities to protect the public. If the Commission believes that the laws the Minnesota Legislature passed to limit an electric monopoly's ability to limit the interconnection of net metered facilities or CSGs are not applicable to the current situation, then it should have the integrity to say so and explain the rationale for its position. If the Commission believes that a regulated monopoly can implement the most significant interconnection rule/policy/practice/standard in the state without the Commission's approval, then it should provide the legal rationale for its position. And if it believes that a policy choice that was made without any detailed analysis and opposed by a majority of the public, which limits the capacity of the monopoly's entire distribution system by more than double all of the distributed generation that is currently on the system, jeopardizing Minnesota's clean energy goals and programs, is reasonable, then it should explicitly say so and identify what in the record that determination is based on. The Commission's determination that a utility can implement the most significant interconnection rule/policy/practice/stadard in the state without its approval violates Minnesota law and is unreasonable. If a utility can circumvent regulatory oversight, and the public participation and scrutiny that is an essential part of that oversight, by simply uttering a few magic words, then that regulatory environment is compromised and those monopolies are no longer effectively regulated. Minnesota needs and relies on a strong Commission with the ability

[40] *See* Minn. R. 7829.1800, subp. 1.
[41] *See* Minnesota Public Utilities Commission, ORDER FINDING JURISDICTION, INITIATING INVESTIGATION, AND VARYING TIMELINES, Dkt. 21-126 (Sept. 2, 2021).

to ensure that Minnesota's laws, policies and goals are followed, implemented and met. So this matter is not just about Minnesota's ability to have a clean energy future, it is about the Commission's role in that future. Allowing Xcel to make policies and procedures without Commission approval diminishes the Commission's authority and ability to regulate Minnesota's electric monopolies. Accordingly, the MSA respectfully request that the Commission grant its rehearing request and either investigate the allegations in the complaint because they raise disputed legal and factual issues regarding numerous provisions of Minnesota law or, at the very least, explicitly address the legal issues raised in the complaint. Minnesota law requires the Commission to regulate electric monopolies and the public deserves to know how the Commission will perform its regulatory function.

Thank you for your time and consideration of this important issue.

Sincerely,

Minnesota Solar Advocates