


Staff Briefing Papers

Meeting Date	December 22, 2021	Agenda Item 5**
Company	Northern States Power Company d/b/a Xcel Energy	
Docket No.	E002/M-21-433	
	In the Matter of the Petition for a Proposed Tariff Modification for a Nonstandard Provision to the Uniform Statewide Contract for Cogeneration and Small Power Production	
Issues	Should the Commission approve Xcel Energy’s proposed tariff modification to Section 9- 12.1 to allow a customer who is not the landlord and Distributed Energy Resource owner to receive net metering benefits for applicable onsite DER projects without signing a Uniform Statewide Contract?	
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 Relevant Documents	Date
Xcel Energy, Initial Petition	Jun. 29, 2021
Department of Commerce – Division of Energy Resources, Initial Comments	Aug. 13, 2021
Xcel Energy, Reply Comments	Aug. 23, 2021
Department of Commerce – Division of Energy Resources, Reply Comments	Nov. 16, 2021
PUC Staff, Ex Parte Report	Nov. 24, 2021

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

I. Statement of the Issues

Should the Commission approve Xcel Energy's proposed tariff modification to Section 9- 12.1 to allow a customer who is not the landlord and Distributed Energy Resource owner to receive net metering benefits for applicable onsite DER projects without signing a Uniform Statewide Contract?

Additionally, the Commission asked:

1. Is the proposed tariff modification language appropriate and sufficient?
2. Is a rule variance for Minn. R. 7835.9910 Uniform Statewide Contract warranted? If so, what is the appropriate duration for this rule variance?
3. Are there other issues or concerns related to this matter?

II. Background

On June 29, 2021, Xcel Energy (Company) filed its petition requesting the Commission approve proposed tariff modifications related to the Uniform Statewide Contract (USC) to allow for non-Distributed Energy Resource (DER) owner/non-Interconnection Customer, such as a tenant, to obtain net metering and PV demand credit benefits.

On August 13, 2021, the Department of Commerce – Division of Energy Resources (Department) filed initial comments requesting additional information from Xcel Energy: 1) revised tariff language clarifying the tariff does not apply to master-metered buildings; and 2) a copy of the customer notice and information on how the notice will be provided to customers.

On August 23, 2021, Xcel Energy replied with the additional information requested.

On November 16, 2021, the Department replied to Xcel Energy's Reply and requested Commission approval of the revised, proposed tariff modifications.

On November 24, 2021, PUC staff filed the ex parte report with an email exchange initiated by PUC staff regarding whether the proposed tariff modifications sufficiently clarified responsibilities for the DER and whether a separate assignment of net metering benefits could be used instead of the USC.

III. Parties' Comments

Xcel Energy Petition and Revised Tariff Modification

According to Xcel Energy, a tariff modification is needed because the current tariff does not allow a tenant to benefit from net metering nor the PV Demand Credit Rider where the DER

system is owned by the commercial property owner. The low-income portion of the Company's Solar*Rewards program is a current exception. The Company describes the proposal:¹

In order to assist customer participation in onsite DER in these types of scenarios, the Company proposes to modify our tariff to allow for a non-DER owner/non-Interconnection Customer, such as a tenant, to obtain net metering benefits. The DER owner / Interconnection Customer, such as a landlord, would sign the Interconnection Agreement. The terms and conditions, and benefits and responsibilities, set forth in the Uniform Statewide Contract shall then apply to the tenant without the need for the tenant to sign the Uniform Statewide Contract.

To accomplish this, Xcel Energy proposes the following tariff modification at Sec. 9, Sheet No. 12.2:²

Where a landlord owner of a premises is the owner of a *non-Solar*Rewards* DER system that is the subject of a Section 10 tariff Interconnection Agreement or MN DIA, and that DER system is connected to the meter where a tenant is the named Customer receiving retail electrical service, then the tenant (and any subsequent tenant) who is receiving electrical service at that premise shall be entitled to the net metering benefits as set forth in the Uniform Statewide Contract without the need for that tenant to sign the Uniform Statewide Contract. The terms and conditions, and benefits and responsibilities, set forth in the Uniform Statewide Contract shall apply to the then-current tenant. In the absence of an affirmative selection by the tenant, then the A50 net metering rate code shall apply provided that the tenant would otherwise qualify for that rate code. The then-current tenant can contact Northern States Power Company by telephone or other reasonable means mutually agreed upon at any time to change this selection from among the available net metering rate codes for that premise. Northern States Power Company shall provide written notice to the then-current tenant of the applicability of the Uniform Statewide Contract and of the applicable net metering rate code. The monthly metering charges associated with the QF DER system would be applied to the tenant. *This tariff provision only applies where the DER system is physically connected to the meter where a tenant is the named Customer receiving retail electric service. Accordingly, in the case of multi-tenant apartment buildings, this tariff provision only applies where the DER system is physically connected to the meter where a tenant is the named Customer receiving retail electric service.*

All language above is new, Xcel Energy's underlined, italicized additions are in response to the Department's request to clarify that multi-tenant, master-metered buildings would not be subject to this tariff language. The Company further explains the proposed tariff changes would allow net metering benefits to a single tenant whose meter is connected to the DER or a customer in a multi-tenant building where the DER is connected to that single customer's

¹ Xcel Energy Initial, p. 4

² Xcel Energy Reply, p. 3. Staff Note: All language shown would be new to the tariff. Xcel added language to the proposed tariff modification in Reply shown in red, italicized underline. Xcel in initial shows this modification at Sec. 9; Sheet No. 12.1; however, Xcel Reply states the modification would be on Sheet No. 12.2.

meter. According to Xcel Energy, without the new tariff language, the PV system on the roof is owned by a landlord, but the tenants who pay for electric service are unable to receive net metering benefits even where this is an arrangement between the tenant and landlord. Xcel Energy further clarifies the landlord does not have discretion on the net metering benefit assignment; rather, the proposed tariff change would grant the net metering benefits (and USC terms and conditions, benefits and responsibilities) to the named customer receiving retail electric service at the meter where the DER is physically attached.³

Lastly, Xcel replied to the Department's request for additional information on how a customer (tenant) would be informed. The Company proposes to issue a notice via email when a tenant customer who initiates the start/stop/transfer electric service process becomes enrolled in net metering if a DER is present. If an email address is not on file, the Company will mail the notification to the address where the DER is connected to the meter. If the customer calls, similar language to the notice is relayed to the customer over the phone. Xcel Energy notes notification may change based on the Company's experience over time.

Department Comments

The Department describes the intent of Xcel Energy's proposed tariff modification as "permit[ting] a tenant to receive net metering and the PV demand credit for solar DG projects installed by the property owner at the building in which the tenant resides."⁴ To accomplish this, the tariff modification allows for the Landlord/Interconnection Customer to sign a separate Interconnection Agreement. The net metering benefit in the USC would then be available to both residential and commercial customers where the DER installed was connected to the meter where the tenant was the named customer for retail electric service. The default net metering rate would be the averaged retail energy rate. The tenant would pay a monthly metering charge associated with the DER. The tenant would need to separately apply for the PV Demand Credit Rider.

The Department issued several information requests to clarify the initial proposed tariff language. First, the tariff proposal was unclear on whether access to net metering for the tenant was applied for an individual unit meter or master meter for the building. Xcel clarified net metering would only apply to the meter where the distributed generation is connected, and the tenant is the named Customer receiving retail electric service; so, in a multi-tenant unit with individual apartment meters, the net metering would only be connected to "a single unit's meter or the meter to the common areas and not the meters of all tenants."⁵ The Department requested clarification in the proposed tariff language "to reflect the lack of availability in multi-tenant master-metered properties"⁶, and was satisfied with Xcel Energy's revised tariff language submitted in its August 23, 2021 Reply.

³ Xcel Reply, p. 2

⁴ Dept Initial, p. 1

⁵ Dept Initial, p. 2

⁶ Dept Initial, p. 2

Second, the proposed tariff states “the terms and conditions, and benefits and responsibilities, set forth in the [USC] shall apply to the then-current tenant.” The Department requested information on how the Company would notify the tenant and enforce these requirements if tenants have not signed the USC. The Company replied that the default net metering rate would be the average retail energy rate but could be changed upon mutual agreement between the customer and the Company. According to the Department, the Company stated:⁷

“the additional provisions of the [USC] that could apply to tenants are consistent with the terms, conditions and responsibilities of all retail electric customers. These terms include a provision that rates may change over time, access to the property and the jurisdiction of the PUC. Xcel further notes the filed rate doctrine applies to its tariff and its application to the Company’s customers.”

The Department agreed with the Company that tenants do not have to sign the USC and further noted “the responsibilities contained within the Contract [USC] largely fall upon the property owner, and that the terms that apply to tenants also apply in the tenant’s role as an electric service customer.”⁸ The Department requested Xcel provide a copy of the notice to tenants detailing the net metering arrangement and an explanation of how the Company will notify customers. As described above, the Company provided this information in Reply.

The Department is satisfied with Xcel Energy’s responses to the Department’s request in initial comments and recommends approval of the revised tariff modification included in Xcel Energy’s August 23, 2021 Comments (**Decision Option 1**).⁹

The Department also flags issues like the 120 percent of customer’s annual energy generation and states the Department’s understanding is the usage would be based on the individual tenant to which the net metering benefit is assigned. According to the Department, a property owner (Interconnection Customer) would receive the net metering benefits as the named customer for the given meter/bill. The Department proffers that because the landlord/Interconnection Customer, not Xcel Energy, is choosing the net metering beneficiary the Company “does not run afoul of Minn. §216B.07 regarding discriminatory treatment.”¹⁰

IV. Staff Analysis

Staff supports Xcel Energy’s intent to offer an option for net metering benefits to be assigned to a customer other than the Interconnection Customer; specifically, where the DER is connected to the customer’s meter. That said, staff remains concerned that the proposed tariff modification does more than is intended and unnecessarily complicates the issue.

Staff filed a permissible ex parte report in the record to further flesh out the responsibilities of the tenant (named retail customer at the meter) and the landlord (Interconnection Customer)

⁷ Dept Initial, p. 2

⁸ Dept Initial, p. 2

⁹ Dept Reply, p. 1

¹⁰ Dept Initial, p. 2

initially flagged in the Department’s Initial Comments.¹¹ As described below, the USC contains terms and conditions beyond those highlighted by Xcel Energy’s response to the Department. The Department’s summary of Xcel Energy’s response only mentions USC par. 3 (net metering rate), par. 6 (rates change), par. 13 (property access), and par. 18 (PUC jurisdiction).

A. Is the proposed tariff language sufficient and appropriate?

1) The Uniform Statewide Contract contains paragraphs related to terms and conditions and responsibilities related to the ongoing operation of the DER.

Xcel Energy states that the Interconnection Customer (landlord or building owner) has signed a separate Interconnection Agreement that assigns the ongoing responsibility to operate the DER consistent with technical requirements to the Interconnection Customer and therefore the tenant is not under contract for the operation of the DER system. Staff believes this is Xcel Energy’s intent; however, the language in the tariff and USC contradict this point. Specifically, the Company’s proposed tariff modification includes:

The terms and conditions, and benefits and responsibilities, set forth in the Uniform Statewide Contract shall apply to the then-current tenant.

The Uniform Statewide Contract identifies the non-utility party as “QF”¹² and sets responsibilities for the QF related to the operation of “electric generating facilities” at pars. 9 and 11.¹³ The USC at par. 16 also requires the QF to keep in force liability insurance against personal and property damage due, in part, to operation of the electric generating facility.¹⁴

Staff recommends, at a minimum, deleting the proposed tariff language highlighted above to avoid contradiction in who is responsible for the operation and insurance of the DER and replace it with the following: **(Decision Option 2)**

The benefits (but not the responsibilities) of net metering set forth in the Uniform Statewide Contract shall flow to the named customer whose meter is connected to DER, subject to offset for metering charges. The named customer remains responsible for terms, conditions and responsibilities of all retail electric customers that may also be identified as responsibilities in the USC.

2) The metering costs are a responsibility under the MN DIA or Interconnection Agreement.

¹¹ PUC, Ex Parte Communication (Nov. 24, 2021)

¹² Minn. R. 7835.9910 and Xcel Energy Rate Book, Sec. 9, Sheet No. 10

¹³ *Id.*, Sheet No. 11

¹⁴ *Id.*, Sheet No. 12

Xcel Energy's proposal includes language that the tenant/customer at the meter is responsible for monthly metering charges:

The monthly metering charges associated with the QF DER system would be applied to the tenant.

Staff does not oppose the intent of this language; rather, uses this language to highlight how Xcel's proposal creates confusion on responsibilities. The Interconnection Customer (landlord) must sign an Interconnection Agreement (MN DIA) which states metering costs are the responsibility of the Interconnection Customer whether paid upfront or in a monthly charge (MN DIA 1.9).

3) Other issues

DER Larger than 40 kW

The proposed tariff language appears focused on DER under 40 kW with the default average retail rate selection; however, the USC also applies to DER greater than 40 kW under 1 MW and includes an option for a kWh credit (USC par. 4 & 5). Staff is unclear what the default option would be in that situation.

Legal Terms

Staff is also concerned about the Company's tariff using language like "landlord" and "tenant" which carries legal definitions that may not apply to all situations the tariff is meant to enable.

Assignment of Net Metering Benefit and Metering Charge

The USC is meant to be signed by the Interconnection Customer as stated at the top of the form. The proposed tariff change does not appear to give the DER Owner/Interconnection Customer an option to opt-out from the DER being used to give net metering benefits to the customer (tenant) of the physically connected meter.

Staff asked Xcel Energy why an assignment of net metering benefits was not more appropriate and pointed to an example (e.g., the Solar Rewards Incentive Payment Assignment (Sec. 9, Sheet No. 62)) where the incentive payments for a specific DER are assigned to someone other than the original customer who signed the Solar Rewards contract. Xcel Energy response was: 1) the Solar Rewards Incentive Assignment itself could not be used for net metering benefit assignment; 2) the proposed tariff language in this docket is a simplified way; and 3) the Solar*Rewards assignment approach is a permanent transaction; whereas, the tariff language proposed in this petition is more fluid.

The Commission may wish to consult with legal counsel on which approach is more appropriate.

B. Is a rule variance for Minn. R. 7835.9910 Uniform Statewide Contract warranted? If so, what is the appropriate duration for this rule variance?

Minn. R. 7829.3200 sets the standard for a rule variance:

- 1) Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- 2) Granting the variance would not adversely affect the public interest; and
- 3) Granting the variance would not conflict with standards imposed by law.

Xcel argues the proposed tariff meets this standard, noting the change does not conflict with standards imposed by law since the Company's tariff is a contract with their customer.¹⁵ Xcel Energy does not suggest a duration/expiration for the proposed variance to Minn. R. 7835.9910 (USC). The Department did not address this question directly.

Minn. R. 7835.9920 allows for a utility to implement nonstandard provisions other than those included in the USC if authorized by the Commission and does not specify setting a duration for the nonstandard provision is required.

V. Decision Options

1. Approve the revised proposed tariff modification in Xcel Energy's August 23, 2021 Reply Comments. (Xcel Energy, Department)

[AND?]

2. Replace this sentence from the proposed tariff modification (Staff):

The terms and conditions, and benefits and responsibilities, set forth in the Uniform Statewide Contract shall apply to the then-current tenant.

With the following:

The benefits (but not the responsibilities) of net metering set forth in the Uniform Statewide Contract shall flow to the named customer whose meter is connected to DER, subject to offset for metering charges. The named customer remains responsible for terms, conditions and responsibilities of all retail electric customers that may also be identified as responsibilities in the USC.

[AND?]

3. Modify the proposed tariff modification as shown in red (Staff):

¹⁵ Xcel Initial, p. 5

Northern States Power Company shall provide written notice to the then-current tenant of the applicability of **certain provisions of** the Uniform Statewide Contract and of the applicable net metering rate code. The monthly metering charges associated with the QF DER system would be applied to the tenant.

[OR]

4. Reject the proposed tariff modification and request Xcel Energy propose new tariff language and a proposed USC with nonstandard provisions within ten days from the Order which (Staff):
 - a) Either avoids using legal terms “landlord” and “tenant” or describes customers other than tenants may qualify for the program;
 - b) makes clear the net metering benefits less monthly metering charges are the only terms being assigned by the Interconnection Customer to the named customer receiving retail service at the meter where the DER is interconnected;
 - c) requires the Interconnection Customer to facilitate participation in the program by all who qualify on a non-discriminatory basis (i.e. the Interconnection Customer may not choose one net metering beneficiary over another).
 - c) Addresses the default for greater than 40 kW DER under the USC.