


## Staff Briefing Papers

Meeting Date	March 7, 2024	Agenda Item 1**
Company	Northern States Power d/b/a Xcel Energy	
Docket No.	E002/CI-23-335 E002/M-13-867	
	<b>In the Matter of Implementation of 2023 Legislative Changes to Xcel Energy's Community Solar Garden Program</b>	
Issues	Should the Commission grant Nokomis Energy's Petition for Reconsideration of the Commission's December 28, 2023, Order?	
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 <b>Relevant Documents</b>	<b>Date</b>
Nokomis Energy Petition for Reconsideration	January 18, 2024
<b>Reply Comments</b>	
Xcel Energy	January 29, 2024
IUOE Local 49, NCSRCC, and LIUNA MN & ND	January 29, 2024
Minnesota Rural Electric Association	January 29, 2024

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## BACKGROUND

On May 24, 2023, the Legislature amended Minn. Stat. § 216B.1641. The amended statute directed the end of the existing “Legacy” Program, and added new subdivisions 2-13, creating a “New” program with different requirements (the “Amended Statute”). On July 26, 2023, the Commission issued a Notice of Comment regarding what actions the Commission should take to implement the Amended Statute, with respect to both the Legacy Program and the New Program. Northern States Power Company, d/b/a Xcel Energy (“Xcel” or “the Company”), filed a response to the Commission’s request for comments on August 28, 2023, as well as a proposed tariff modification implementing its response.<sup>1</sup>

On November 7, 2023, Xcel proposed to change its initial response and apply the Commission’s June 21, 2016 Order to the New Program.<sup>2</sup> The 2016 Order found that CSGs in Xcel’s CSG program must be located entirely within Xcel’s service territory. Nokomis Energy (“Nokomis”) filed reply comments which included two alternative decision options, intended to clarify “for purposes of Minn. Stat. § 216B.1641, subd. 3-12,” whether a CSG “must be located within the utility’s service territory.”<sup>3</sup>

The Commission held a hearing on the matter on November 9, 2023. The Commission did not discuss whether a CSG must be located within the utility’s service territory (the “Service Territory Restriction”). Instead, the Commission voted to “approve Xcel Energy’s listing of the applicability, or non-applicability, of prior Commission Legacy CSG orders to the Non-Legacy program as set forth in Attachment B to Xcel Energy’s August 28, 2023 Response,” as proposed by the Company, along with Xcel’s modified proposal for the 2016 Order.

The Commission issued an order on December 28, 2023.<sup>4</sup> The Order did not mention the Service Territory Restriction but adopted Xcel’s proposed decision option as Order Point 7.<sup>5</sup> This had the effect of applying the 2016 Order, and the Service Territory Restriction, to the New Program.

Nokomis filed a Petition for Reconsideration on January 17, 2024, specifically the Commission’s decision that a Community Solar Garden under the new CSG Program must be located within the utility’s service territory. Nokomis requested the Commission reconsider Order Point 7 of its

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<sup>1</sup> Xcel, Response to Commission’s July 26, 2023 Notice *and* Petition for Tariff Changes, Docket Nos. E002/M-13-867 & E002/M-23-335 (Aug. 28, 2023)

<sup>2</sup> Xcel, *Revised Decision Options*, Docket Nos. E002/CI-23-335 & E002/M-13-867 at 2 (Nov. 7, 2023) (“Xcel Energy’s comments to row 144 of Attachment B to the Response should be changed to: “Yes. Applies to the Non-Legacy Program.”).

<sup>3</sup> Nokomis Energy, *Reply Comments*, Docket No. 13-867 at 1-2 (Oct. 9, 2023).

<sup>4</sup> PUC, *Order Implementing New Legislation Governing Community Solar Gardens*, Docket Nos. E002/CI-23-335 & E002/M-13-867 (Dec. 28, 2023).

<sup>5</sup> *Id* at 25.

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December 28, 2023 Order and instead adopt decision option 23 in the previously compiled decision options.<sup>6</sup>

Xcel, Minnesota Rural Electric Association (“MREA”) and IUOE Local 49, NCSRCC, and LIUNA MN & ND (collectively “Labor”) submitted responses to Nokomis’ Petition for Reconsideration on January 29, 2024, stating the petition is without merit.

## DISCUSSION

### PETITION FOR RECONSIDERATION

Nokomis argued the amended statute does not contain the Service Territory Restriction. Therefore, Xcel nor the Commission can insert the Service Territory Restriction since the legislature has omitted those words. Nokomis stated:

The Amended Statute does not contain the Service Territory Restriction. And the plain language of the Amended Statute makes clear that the Service Territory Restriction that applies to the Legacy Program does not apply to the New Program. The Commission’s Order Point 7 nonetheless effectively reads the Service Territory Restriction into the Amended Statute. This contravenes the intent of the legislature, and violates the text of the statute, and should therefore be reversed.<sup>7</sup>

Nokomis stated the legislature had previously been explicit in its intentions when creating a Service Territory Requirement. They noted that in the statute creating the Legacy Program, the Legislature wrote that each CSG “must be located in the service territory of the public utility filing the plan.”<sup>8</sup> In the Amended Statute, the Legislature wrote that each CSG *subscriber* “must be located within the Minnesota service territory of the utility.”<sup>9</sup> But in the same law that created the Amended Statute, Nokomis argued the Legislature made an intentional distinction when creating a new distributed solar energy standard, in which all generating facilities must “be located in the Minnesota service territory of the public utility.”<sup>10</sup>

Therefore, Nokomis argued, the omission of language creating the Service Territory Restriction prohibits such a restriction from being applied to the New Program. Nokomis states:

The object of statutory interpretation is to ascertain and give effect to the intent of the legislature. A statute must be interpreted to give effect to all its provisions.

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<sup>6</sup> PUC, *Briefing Papers--November 9, 2023 Agenda - Compiled Decision Options*, Docket No. 13-867 (Nov. 9, 2023).

<sup>7</sup> Nokomis Energy, Petition for Reconsideration, at 4.

<sup>8</sup> Minn. Stat. §216B.1641 Subd. 1(c)

<sup>9</sup> Minn. Stat. §216B.1641 Subd. 6(b)

<sup>10</sup> Minn. Stat. §216B.1691 Subd. 2(h)(c)(3)

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No court or agency interpreting a statute can add words to a statute that the legislature has omitted.<sup>11</sup>

Nokomis requested the Commission reverse Order Point 7 in its December 28, 2023, Order to the extent it applies the 2016 Order to the New Program. Additionally, Nokomis requested the Commission adopt decision option 23 presented in Staff Briefing Papers which stated:

Clarify that, for purposes of Minn. Stat. § 216B.1641, subd. 3-12, a community solar garden must be connected to the utility's distribution system, but does not otherwise need to be located within the utility's service territory.<sup>12</sup>

### REPLIES TO PETITION

First, Xcel stated the Petition was not filed timely. The Petition was brought under Minn. R. 7829.3000, which specifies a 20-day period from the Commission Order to file such a petition. Similarly, Minn. Stat. § 216B.27 also has a 20-day deadline to file a Petition for Rehearing. By Commission rule, a document is only considered to be filed on a certain date if it is received during the Commission's regular business hours on that day. Minn. R. 7829.0400, Subp.5a, states in part:

**Service and filing; completion.**

*... Filings are filed with the commission when received during regular business hours. ...*

This rule was last amended in 2015 in Docket No. U999/R-13-24. At that time, the Commission rejected the Office of Attorney General's (OAG) proposal for a midnight deadline, and instead kept the "regular-business-hours" deadline in its June 3, 2015, Order that referenced 4:30 pm as the business hour deadline.<sup>13</sup>

Nokomis made the filing in the E002/M-13-867 docket (for the Legacy CSG program) a few minutes prior to midnight on the due date. Nokomis made the same filing in the E002/CI-23-335 docket (for the new program) a little after 2 pm the next day. The Commission's e-dockets filing system also reflects that each was filed on January 18, 2024.

Secondly, Xcel stated the Petition also fails to set forth and meet the legal standard for reconsideration. Minn. Stat. § 216B.27, Subd. 3 provides that: "If in the Commission's judgment . . . it shall appear that the original decision, order, or determination is in any respect unlawful or unreasonable, the Commission may reverse, change, modify, or suspend the original action

<sup>11</sup> Nokomis Energy, Petition for Reconsideration, at 4.

<sup>12</sup> PUC, *Briefing Papers--November 9, 2023 Agenda - Compiled Decision Options*, Docket No. 13-867 (Nov. 9, 2023).

<sup>13</sup> OAG's April 8, 2013 Comments and the Commission's June 3, 2015 Order (pages 6-7) in Docket No. U999/R-13-24.

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accordingly.” The Commission has stated that it will reconsider an Order when (1) new issues it has not yet considered are raised; (2) new facts not yet in evidence are presented for consideration; (3) there are errors or ambiguities in the Commission’s Order; or (4) the Commission is otherwise persuaded to reconsider an Order.<sup>14</sup>

Xcel argued Nokomis did not present new or updated facts or evidence for consideration and there are no ambiguities or errors in the Commission’s December 28, 2023 Order. Xcel also stated the tariff filing is consistent with that Order. Accordingly, Nokomis’ request for reconsideration/objection does not meet the legal standard for reconsideration or objection to the tariff filing that is compliant with the Commission Order and should be denied on those merits.

Xcel noted that although Nokomis stated that the Service Territory Restriction was not contained in the new CSG statute, it was necessary because of Subd. 3 of the Amended Statute. Subd. 3 of the new statute has a provision that governs the automatic carry-over of prior Commission Orders from the Legacy CSG program to the new CSG program, and states:

(b) Except as otherwise modified, replaced, or superseded by subdivisions 2 to 13, any commission order that applies to the legacy program under subdivision 1 applies to subdivisions 2 to 13.<sup>15</sup>

Xcel, based on the Subd. 3 provisions, compiled a list of prior Commission Orders in Docket No. E002/M-13-867, identifying whether each Order Point should or should not apply to the new program.<sup>16</sup> This included the Commission’s June 21, 2016 Order which found that CSGs in Xcel’s CSG program must be located entirely within Xcel’s service territory.<sup>17</sup> The Commission agreed and adopted Order Point 7 stating “The Commission hereby approves Xcel’s conclusions about the extent to which prior Commission orders regarding Legacy CSGs apply to the LMI-Accessible CSG Program as set forth in Attachment B to Xcel’s August 28, 2023 Response”.<sup>18</sup>

MREA and Labor also provided responses to the Nokomis Petition for Reconsideration. Both organizations urged the Commission to reject the petition based on the argument that Minn. Stat. § 216B.1641, subd. 3 maintains the Commission’s June 21, 2016 Order that found CSGs in Xcel’s CSG program must be located entirely within Xcel’s service territory.

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<sup>14</sup> *In the Matter of Detailing Criteria and Standards for Measuring an Electric Utility’s Good Faith Efforts in Meeting the Renewable Energy Objectives Under Minn. Stat. § 216B.1691*, ORDER AFTER RECONSIDERATION at 9, Docket No. E999/CI-03-869 (Aug. 13, 2004).

<sup>15</sup> Minn. Stat. §216B.1641 Subd. 3.

<sup>16</sup> The list was included in the August 28, 2023, Xcel Response as Attachment B, and modified in the October 9, 2023, Xcel Reply Comments. The final list was filed as Attachment B with the January 5, 2024 tariff compliance filing.

<sup>17</sup> PUC, *Order Denying Request For Clarification*, Docket No. 13-867, at 5 (June 21, 2016).

<sup>18</sup> PUC, *Order Implementing New Legislation Governing Community Solar Gardens*, Docket Nos. E002/CI-23-335 & E002/M-13-867 (Dec. 28, 2023).

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### **DECISION OPTIONS**

1. Grant Nokomis' Petition for Reconsideration and reverse Ordering Paragraph 7 of the December 28, 2023, Order, to the extent it conflicts with the clarification below. (Nokomis)

AND

2. Clarify that, for purposes of Minn. Stat. §216B.1641, subd. 3-12, a community solar garden must be connected to the utility's distribution system, but does not otherwise need to be located within the utility's service territory. (Nokomis)

OR

3. Deny Nokomis' Petition for Reconsideration. (Xcel, MREA and Labor)