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In the Matter of Implementation of 2023
Legislation Changes to Xcel Energy's
Community Solar Garden Program

Docket No. E-002/CI-23-335

**INITIAL COMMENTS OF THE
MINNESOTA DEPARTMENT
OF COMMERCE**

INTRODUCTION

The Minnesota Department of Commerce respectfully submits the following initial comments in response to the Commission's October 11, 2024 comment period notice. In its notice, the Commission sought comment on proposed changes to the community solar garden program's low- to moderate-income-accessible ("LMI") standard contract. While Xcel Energy and stakeholders agreed on some changes, the Commission identified three substantive areas where disputes remain: (a) whether to use the term "nameplate capacity" or "capacity" in the contract; (b) whether to incorporate a "battery energy storage system" definition in the contract; and (c) how to describe the relationship between the LMI standard contract and Xcel's electric service tariff. The Commission also invited parties to identify additional issues.

The Commission should approve the de minimis consensus changes proposed by Xcel and the stakeholders.¹ For the reasons discussed below, the Commission should (a) use the term "capacity" in the contract; (b) incorporate a "battery energy storage system" definition into the contract; and (c) reject proposed language that would purport to make the contract a free-standing

¹ Xcel Comment Period Request at 2-3 (Sept. 26, 2024) (eDocket no. 20249-210507-01).

or independent agreement. In addition to these issues, the Commission should reject one of the proposed revisions to the “Bill Credit Rate” definition.

BACKGROUND

In December 2023, the Commission issued an order implementing legislatively directed changes to the community solar garden program.² In its order, the Commission addressed several program implementation issues and directed Xcel to review and update all tariff pages associated with the solar garden program within 30 days.³ The Commission further directed that interested parties file any objections within 20 days of Xcel’s tariff filing.⁴

Xcel filed its proposed tariff in January 2024.⁵ Later that month, interested parties timely filed objections to Xcel’s tariff filing. In May, the Commission issued an order resolving these objections. As part of the order, the Commission directed Xcel and interested stakeholders to develop an LMI standard contract governing the terms and conditions for purchase of electricity exported to Xcel under the community solar garden program.⁶

In August, Xcel and stakeholders met to discuss potential changes to the contract. They reached agreement on some, but not all issues.⁷ Given its broad role as a public interest advocate, the Department carefully monitored but did not actively participate in these stakeholder discussions. Although the LMI standard contract should be evaluated for consistency with the public interest, the Department took the view that an arms-length negotiation between Xcel and

² ORDER IMPLEMENTING NEW LEGISLATION GOVERNING COMMUNITY SOLAR GARDENS at 24 (Dec. 28, 2023) (eDocket No. 202312-201621-01).

³ *Id.*

⁴ *Id.*

⁵ Xcel Energy Tariff Filing (Jan. 5, 2023) (eDocket Nos. 20241-201889-01) (“Legacy CSG Tariff”); Xcel Energy Tariff Filing (Jan. 5, 2023) (eDocket No. 20241-201888-01) (“Non-Legacy CSG Tariff”).

⁶ ORDER IMPLEMENTING NEW LEGISLATION GOVERNING COMMUNITY SOLAR GARDENS at 6 (May 30, 2024) (eDocket No. 20245-207236-01).

⁷ See Xcel Comment Period Request at 2-5.

stakeholders would generally produce the best results given their unique understanding of the relevant commercial and technical considerations.

In September, Xcel requested that the Commission notice a comment period to address disputed issues.⁸

ANALYSIS

The Commission should use the term “capacity” in the LMI standard contract in lieu of the term “nameplate capacity” because “capacity” is consistent with applicable law, technical considerations, and relevant public policy goals. In addition, the Commission should incorporate a “battery energy storage system” definition into the contract because it will facilitate the creation of meaningful system benefits and create a more level regulatory playing field. Next, the Commission should find that the LMI standard contract is part of Xcel’s electric service tariff as a matter of law. Last, the Commission should reject one of the proposed revisions to the “Bill Credit Rate” definition.

I. THE COMMISSION SHOULD USE THE TERM “CAPACITY” IN THE LMI STANDARD CONTRACT.

The Department recommends that the Commission direct Xcel to use the term “capacity” in lieu of “nameplate capacity” in the LMI standard contract because it is consistent with statute and public policy goals, and the way that solar garden projects operate from a technical perspective.

Use of the term “capacity” is required by state law. Section 216B.1641 provides that a community solar garden must have a “capacity” of less than 5 MW as defined by section 216B.164.⁹ Section 216B.164, in turn, defines “capacity” to mean “the number of megawatts

⁸ *Id.*

⁹ Minn. Stat. § 216B.1461, subd. 6.

alternating current at the point of interconnection between a distributed generation facility and a utility's electric system.”¹⁰

Even if statute did not dictate use of the term “capacity,” the Commission should still use it as a matter of good public policy. Use of the term “nameplate capacity” would create arbitrary regulatory outcomes. In contrast to the statutory “capacity” definition, “nameplate capacity” is an industry term describing the theoretical maximum amount of electricity a generator can produce as rated by the manufacturer.¹¹ Using “nameplate capacity” in the LMI standard contract would mean that the same project’s “capacity” would be measured differently depending on whether the developer seeks compensation under section 216B.164 or section 216B.1641. This is an unreasonable outcome because it fails to measure like projects by the same metrics or draw distinctions based on meaningful engineering differences.

Use of “capacity” also makes the most sense from a technical perspective. A solar project must have an inverter that converts direct current (“DC”) electricity, which is what the photovoltaic (“PV”) system generates, to alternating current (“AC”) electricity which the grid uses.¹² Developers may equip these inverters with a “limiter,” a power control system, or other supplemental device that prevents a project from sending excess power to the distribution system. Developers may, as a result, right-size a project with an excessive name-plate capacity to meet LMI-program rules and distribution engineering requirements. The Commission should leave it to

¹⁰ Minn. Stat. § 216B.164, subd. 2a(c).

¹¹ See generally U.S. Energy Information Administration, Generator nameplate capacity, [www.eia.gov/tools/glossary/index.php?id=Generator%20nameplate%20capacity%20\(installed\)](http://www.eia.gov/tools/glossary/index.php?id=Generator%20nameplate%20capacity%20(installed)) (last visited Oct. 28, 2024).

¹² U.S. Dep’t of Energy - Solar Energy Technologies Office, *Solar Integration: Inverters and Grid Services Basics*, www.energy.gov/eere/solar/solar-integration-inverters-and-grid-services-basics (last visited Oct. 28, 2024).

a developer’s discretion to build such a project based on the relevant technical and commercial considerations.

II. THE COMMISSION SHOULD INCORPORATE A “BATTERY ENERGY STORAGE SYSTEM” DEFINITION INTO THE LMI STANDARD CONTRACT.

The Commission should direct Xcel to incorporate a “Battery Energy Storage System” (“BESS”) definition into the LMI standard contract. As commercial-scale storage becomes cost competitive, solar projects coupled with storage can create meaningful benefits without running afoul of LMI program or technical requirements. This, however, requires the Commission to adopt the term “capacity” as opposed to “nameplate capacity” as recommended above.

As previously discussed, under the section 216B.164 “capacity” definition, developers may use inverters to prevent excess electricity from being sent to the distribution system in violation of the LMI program rules or technical requirements. In contrast, “nameplate capacity” would unreasonably aggregate the theoretical maximum production of both the PV system and battery storage, even if an inverter, power control system, or other device precluded both systems from exporting their nameplate capacities concurrently.

With this caveat that a project must continue to meet LMI-program rules and engineering requirements, combining solar and energy storage can benefit the system. These benefits can include “firming” solar generation to ensure a solar project operates smoothly during output fluctuations (e.g., due to passing clouds) or improving the quality of power flow.¹³ Energy storage also can help to balance electricity loads and avoid situations where a solar project must be

¹³ U.S. Dep’t of Energy - Solar Energy Technologies Office, *Solar Integration: Solar Energy and Storage Basics*, www.energy.gov/eere/solar/solar-integration-inverters-and-grid-services-basics (last visited Oct. 28, 2024).

curtailed to avoid grid reliability issues.¹⁴ Storage further may permit a solar project to transmit excess electricity during the evening when it is needed or during periods of peak demand.¹⁵

Beyond creating these benefits, permitting developers to incorporate storage technology into their solar garden projects would create a more level regulatory environment. The Commission, for example, requires utilities to score “storage” when evaluating projects proposed to meet the Distributed Solar Energy Standard (“DSES”) under section 216B.1691, subd. 2h.¹⁶ It would be unreasonable to permit a utility’s self-build project intended to help meet the DSES standard to include storage, but bar similarly situated community solar garden projects proposed by independent developers from doing the same thing.

Coupling battery storage with distributed solar can create meaningful benefits. Market and technical considerations – not the regulatory pathway – should determine those instances where it is appropriate.

III. AN EXECUTED LMI STANDARD CONTRACT IS AN ADDENDUM TO XCEL’S ELECTRIC SERVICE TARIFF.

The LMI standard contract is an addendum or component of Xcel’s electric service tariff that governs the unique aspects of LMI-program participation. As a result, the Commission should reject proposed edits to the contract that would purport to make the contract a free-standing agreement independent of the tariff. To the extent that LMI standard contract and tariff conflicts arise in the future, the Commission should resolve those disputes using basic legal interpretation principles.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See In re New Distributed Solar Energy Standard Implementation*, Docket No. E-002,E-015,E-017/CI-23-403, ORDER CLARIFYING IMPLEMENTATION at 12 (June 26, 2024) (eDocket no. 20246-207978-01).

As a matter of law, the LMI standard contract is an addendum or provision of Xcel's electric service tariff. The entirety of a utility's regulated service offerings must be detailed in its tariff.¹⁷ A tariff is a contract approved by a regulator that establishes public obligations carrying the force and effect of law.¹⁸ The tariff's purpose is to ensure uniformity of utility rates and prevent a utility from discriminating based on price or service.¹⁹ Utilities must file the entirety of their service tariffs along with all applicable service rules with the Commission.²⁰ If a utility wishes to offer a customer unique rates, terms, or service conditions not already contained in the approved tariffs or rules, the utility must file the electric service agreement and obtain Commission approval.²¹ These contracts are all subject to ongoing Commission oversight and approval.²²

The LMI program is a regulated service offering. The terms and conditions governing LMI program participation, as a result, should be codified in Xcel's electric tariff or treated as an addendum to it. Given that the law is clear, the Commission should reject proposed LMI standard contract language that would purport to make the LMI standard contract a free-standing or independent agreement. While this proposed contract language cannot ultimately change the legal relationship between the tariff and contract, it would unnecessarily confuse the issue.

To the extent that a conflict arises between the LMI standard contract and Xcel's electric tariff in the future, specific provisions should govern over general provisions addressing the same matter regardless of where they appear.²³ While Xcel noted this issue in its September filing, it

¹⁷ Minn. Stat. § 216B.05.

¹⁸ 64 Am. Jur. 2d Public Utilities § 51.

¹⁹ *Id.*

²⁰ Minn. Stat. § 216B.05, subds. 1-2.

²¹ *Id.*, subd. 3.

²² *See Peoples Nat. Gas Co., a Div. of Inter-N. v. Minn. Pub. Utils. Comm'n*, 369 N.W.2d 530, 535 (Minn. 1985) ("Public regulation of utility rates is an intricate, ongoing process.").

²³ *See, e.g., Info Tel Commc'ns, LLC v. Minn. Pub. Utilities Comm'n*, 592 N.W.2d 880, 884 (Minn. Ct. App. 1999) ("Tariffs are interpreted no differently than any other contract."); *Burgi v. Eckes*,

currently appears speculative. The Department is not currently aware of any express conflicts between the LMI standard contract and Xcel's electric tariff. If Xcel or stakeholders are aware of any current conflicts, the Commission should resolve those disputes as part of this notice-and-comment process. Should a conflict arise in the future, the Commission can address it at that time.

IV. OTHER ISSUES.

In addition to the issues discussed above, the Department recommends that the Commission reject a proposed change to the "Bill Credit Rate" definition. Specifically, the Commission should not adopt the proposed language stating: "Once a bill credit applies, that Bill Credit applies for the term of the Contract."²⁴ This proposed language appears to conflate the "Bill Credit" with the "Bill Credit Rate." The actual "Bill Credit" received by each subscriber will fluctuate depending on production and the then applicable "Bill Credit Rate." The proposed language, however, would attempt to fix the "Bill Credit" for the term of the Contract. The Commission should reject this proposal.

CONCLUSION

To be consistent with applicable law and further relevant policy goals, the Department recommends that the Commission:

- (a) Adopt the term "Capacity" in the LMI standard contract;
- (b) Incorporate a "Battery Energy Storage System" definition into the LMI standard contract;
- (c) Reject proposed language that would purport to make the LMI standard contract a free-standing or independent agreement; and

354 N.W.2d 514, 519 (Minn. Ct. App. 1984) ("[T]he specific in a writing governs over the general.").

²⁴ Xcel Comment Period Request, Attach. C at 1.

- (d) Reject the inclusion of “Once a bill credit applies, that Bill Credit applies for the term of the Contract” language in the “Bill Credit Rate” definition.

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Respectfully submitted,

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