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September 14, 2015

—Via Electronic Filing—

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

RE: REPLY COMMENTS
COMMUNITY SOLAR GARDENS PROGRAM
DOCKET NO. E002/M-13-867

Dear Mr. Wolf:

Northern States Power Company, doing business as Xcel Energy, submits these Reply Comments to the Minnesota Public Utilities Commission in response to the Commission's August 10, 2015 Notice of Comment Period.

We have electronically filed this document with the Minnesota Public Utilities Commission, and copies have been served on the parties on the attached service list. Please contact me at aakash.chandarana@xcelenergy.com or (612) 215-4663 if you have any questions regarding this filing.

Sincerely,

/s/

AAKASH CHANDARANA
REGIONAL VICE PRESIDENT
RATES AND REGULATORY AFFAIRS

Enclosure
c: Service List

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner
Betsy Wergin	Commissioner

IN THE MATTER OF THE PETITION OF
NORTHERN STATES POWER COMPANY
FOR APPROVAL OF ITS PROPOSED
COMMUNITY SOLAR GARDENS PROGRAM

DOCKET No. E002/M-13-867

REPLY COMMENTS

INTRODUCTION

Northern States Power Company, doing business as Xcel Energy, submits these Reply Comments to the Minnesota Public Utilities Commission in response to Comments filed by Parties on August 31, 2015, and the Commission's August 10, 2015 Notice of Comment Period.

We file in support of the investigation and contested case process proposed jointly by the signatories to the Partial Settlement Agreement on July 24, 2015. We believe a contested case process at the Office of Administrative Hearings (OAH) is an appropriate procedure for arriving at a recommendation on the best path forward for the program.

The Partial Settlement Agreement established a bridge between the state of the program from the present through the end of 2016. Going forward, however, important questions remain unresolved. These questions include, for example, how to set the program pricing and whether to allow aggregate projects greater than 1 MW on a prospective basis. We believe these key issues – price and size - and other issues are fundamentally intertwined, such that a thorough examination through a focused process is necessary. We believe a contested case would allow for global recommendations to be made to the Commission.

In this Reply, we assert the Commission's authority to refer the case and ultimately decide it, we offer input on the appropriate scope of the case and the relative priority of issues, and we conclude that the resources of the Commission are best used by initiating and referring a contested case to the OAH, and then receiving an organized

and thorough record. The Commission would then be in the best position possible to decide unresolved programmatic issues involving fact, law, and public policy, and to shape the Solar*Rewards Community program going forward.

A. Commission has Broad Discretion

The Commission has broad discretion to refer any matter within its jurisdiction to a contested case proceeding. Multiple parties suggested in Initial Comments that referring a contested case would be improper where issues were not purely factual and instead also involved law or policy. To the contrary, the Commission's powers are not somehow curtailed such that only disputed fact issues may be the subject of a contested case.

The Commission is vested with both legislative and quasi-judicial authority and “may make such investigations and determinations, hold such hearings, prescribe such rules, and issue such orders” on any matter within its jurisdiction.¹ The Commission's rules grant a party the right to a contested case hearing if there are contested material facts, AND there is a right to a hearing pursuant to law or rule.

On its face, the community solar garden statute does not grant any party the right to a contested case hearing. However, Minnesota Rules specifically vest the Commission with the authority to refer any matter to a contested case if it finds that “all significant issues have not been resolved to its satisfaction”.² This grant of authority does not qualify or limit the Commission's authority to only refer disputed fact issues to a hearing. Instead, it states “all significant issues” not resolved to the Commission's satisfaction may be sent to a contested hearing. This broad authority is essential to the Commission's ability to exercise its quasi-legislative authority to make legislatively delegated policy decisions.

The Commission frequently uses contested cases to require disparate parties interested in important topics to appear and focus on such issues as the Commission may determine within its jurisdiction. The contested case record and Administrative Law Judge's (ALJ) report and findings provide a rational record on both factual and policy disputes from which the Commission, in turn, may make a final decision. A current example is the Commission's order for a contested case on the issue of updating environmental externalities³. The current proceeding is, in turn, an update of

¹ Minn. Stat. Section 216A.05, Subd. 1 and 5

² Minn. Rule 7829.1000

³ Docket No. E999/CI 14-643.

a 1993 contested case proceeding which the Commission used to form a record and the basis of its original environmental externalities program.⁴

In short, the Commission's authority to refer this case, as it does others, is unassailable.

B. Commission Retains Full Authority

The Commission would retain complete authority on all issues in this matter, were it to refer a contested case. The contested case process would result in an ALJ Report with findings, conclusions, and recommendations. The matter would then return to the Commission for ultimate decision-making. Following the delivery of a complete record on disputed issues, the Commission would be well-situated to make key decisions and shape the program going forward.

C. Bill Credit Rate is in Scope

The Commission opted to make no adjustments to the bill credit rate as part of its deliberations on June 23 and June 25 and its Order dated August 6. Instead, the Commission directed the Company to propose a means of addressing the bill credit rate prospectively.

The Company believes the rate must be revisited, as the market response strongly signals that the program pricing is too rich. Indeed, the Company has extensively commented on the program's impact on customers, who directly pay for the bill credits that flow to garden operators and subscribers. The Minnesota Office of Attorney General (OAG) has similarly been a close observer of potential cost impacts of the program.

On April 30, 2015, the OAG provided an extensive analysis to the customer cost impacts of Solar*Rewards Community. It concluded the following.

Due to the CSG's current structure, the level of harm to non-participants is directly related to the bill credit rate set by the Commission. In economic terms, CSG developers will propose CSG developments as long as they anticipate profits—and the profitability of projects is determined in a large part by the bill credit rate, because a higher bill credit rate will allow developers to demand

⁴ Docket No. E-999/CI-93-593.

higher subscription fees. In other words, the higher the bill credit rate, the more costs that will be shifted from CSG participants to non-participants. Given the number of applications submitted by CSG developers, it appears that the CSG program could lead to rate increases for non-participants that could be inequitable. For that reason, the Commission should reevaluate whether the current bill credit rate is set at the appropriate level and by use of the appropriate methodology.

Similarly, the OAG highlighted the potential for disparate impacts of the program by customer class.

The CSG program's current structure creates an incentive for large energy consumers to fully offset their energy use and shift their energy costs onto Xcel's remaining customers, and for CSG developers to cater their programs to those large energy consumers. This does not appear to be consistent with the intention of the CSG program.

The Commission's decision to adopt the Partial Settlement Agreement and to place limits on the size of community solar projects was made in part to protect customers from boundless cost increases. We believe that is an important first step in returning the program to its intended purpose – a community-supported solar program. The next step is to explore any needed course corrections on the pricing issue.

The Commission's Notice seeks input on the relative priority of issues for a contested case. For reasons in line with the OAG's analysis, the Company believes that in addition to a forward-looking exploration of appropriate project sizing, an exploration of appropriate pricing and equitable treatment of customers by class are the top priorities for a contested case.

D. Other Issues are Appropriately in Scope

The Company supports an exploration of any and all disputed programmatic issues through the proposed contested case proceeding. Recognizing that an ALJ will not have unlimited resources to address myriad issues, particularly on the Settlement Parties' proposed timeline, it is paramount that the scope of a contested case be defined carefully. For this reason, the Settlement Parties included a thorough, though non-exhaustive, list of issues we believe are appropriate for a contested case. We note that in addition to size and price, these include distribution system upgrades, and inclusivity rules. Recognizing the breadth of interests at stake, however, we remain open to the inclusion of additional issues.

E. Issues Should not be Treated in Isolation

As the Commission considers the appropriate scope for a contested case, we caution against breaking apart the central issues that animate the disputes in this program. We believe it is critical for the prospective program design issues – especially program size and price – to be handled in concert. We believe that some of the challenges in the introduction of this program have been due to isolating certain decisions – namely the establishment of the Applicable Retail Rate formula separate and apart from other critical program design features. We believe sending the primary prospective issues (size, price, system upgrades, and inclusivity, for example) to a contested case will allow for the record to develop thoroughly and efficiently.

F. Sufficiency of Additional Comment Periods

We have no doubt that the Commission can issue Notice opening up additional comment periods on prospective program design considerations and ultimately decide the fate of the program based on the resulting record. The question is whether it is a better use of the Commission's time to first allow a sister agency to develop the issues, and then to re-engage following the delivery of a complete record. We believe this procedure would drive satisfying results, as it would enable an ALJ to focus exclusively on these complex issues and offer cohesive recommendations. In turn, the Commission could examine a full set of findings at one time – rather than attempting to collate a piecemeal record supplied by parties with fluctuating levels of engagement. Given that the trajectory of the docket to date has resulted in two years of comment periods, which now are circling back to the very bedrock issues we began with, we believe the Commission may be interested in a new course.

G. Costs

Finally, while the Company is indeed sympathetic to the concern of some stakeholders that a contested case would be too expensive and might prohibit their participation, we believe the issues require resolution through this process, for all the reasons stated here.⁵

⁵ SunShare's concern about the cost of litigating in a contested case forum should be given no weight, given that they have initiated litigation by filing a formal complaint. *See* Docket No. E-002/M-15-786.

CONCLUSION

Xcel Energy appreciates the opportunity to submit these Reply Comments and respectfully requests that the Commission consider these comments when it deliberates on this matter. A contested case for Solar*Rewards Community is the most efficient and effective method available to the Commission to transparently explore and ultimately decide prospective program issues.

Dated: September 14, 2015

Northern States Power Company

CERTIFICATE OF SERVICE

I, Carl Cronin, hereby certify that I have this day served copies of the foregoing document on the attached list of persons.

xx by depositing a true and correct copy thereof, properly enveloped with postage paid in the United States mail at Minneapolis, Minnesota

xx electronic filing

Docket No. E002/M-13-867

Dated this 14th day of September 2015

/s/

Carl Cronin
Regulatory Administrator

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