

January 8, 2024

VIA ELECTRONIC FILING

Will Seuffert, Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

Re: In the Matter of Petition for Approval of Northern States Power Company, dba Xcel Energy, for Approval of its Community Solar Garden Program

Dear Mr. Seuffert,

Clean Energy Economy Minnesota (CEEM) respectfully submits these comments for PUC Docket Number E002/M-13-867. Our mission at CEEM is to provide educational leadership, collaboration, and policy analysis that accelerates clean energy market growth and smart energy policies. We work to support and expand clean energy jobs and the economic opportunities provided by clean, reliable, and affordable energy on behalf of all Minnesotans.

Please feel free to contact us with any questions that you may have. We hope that the comments below provide you with useful insights.

Regards,



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State of Minnesota
Before the
Minnesota Public Utilities Commission

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

In the Matter of Petition for Approval of
Northern States Power Company, dba
Xcel Energy, for Approval of its
Community Solar Garden Program

CLEAN ENERGY ECONOMY
MINNESOTA'S INITIAL COMMENTS

Docket No. E002/M-13-867

INTRODUCTION

Clean Energy Economy Minnesota ("CEEM"), an industry led, nonpartisan, non-profit organization representing the business voice of energy efficiency and clean energy in Minnesota, respectfully submits the following initial comments in response to the Minnesota Public Utilities Commission's ("Commission") Notice of Comment Period issued on October 9, 2023.

TOPICS OPEN FOR COMMENT

Issue: Should the Commission approve Xcel Energy's proposal to place all Applicable Retail Rate (ARR) Community Solar Gardens (CSGs) on the 2017 Value-of-Solar (VOS) vintage as found in Xcel's September 25, 2023 compliance filing?

1. Should the Commission approve Xcel's proposal?
2. Is Xcel's proposal in the public interest?
3. If the Commission is to move ARR-era gardens to the VOS, should all gardens be placed on the 2017 VOS vintage beginning April 1, 2024 as Xcel has proposed?
4. Are there any other issues or concerns related to this matter?

TOPICS AND COMMENTS

CEEM supports policies that empower consumers and provide efficient pathways that expand business opportunities for clean energy resources to benefit consumers. With a focus on economic development in Minnesota, and for the benefit of consumers in Minnesota, CEEM respectfully requests that the Commission find that:

- it should *not approve* Xcel Energy's proposal to place all Applicable Retail Rate (ARR) Community Solar Gardens (CSGs) on the 2017 Value-of-Solar (VOS) vintage as found in Xcel's September 25, 2023 compliance filing,
- Xcel's proposal is not in the public interest,
- the Commission should not move ARR-era gardens to the VOS as Xcel has proposed, and
- there are other issues or concerns related to this matter.

1. Should the Commission approve Xcel's proposal?

The Commission should not approve Xcel Energy's proposal to place all Applicable Retail Rate (ARR) Community Solar Gardens (CSGs) on the 2017 Value-of-Solar (VOS) vintage as found in Xcel's September 25, 2023 compliance filing since approval will have a chilling effect on CSG business development in Minnesota.

An effective contract between parties requires mutual agreement on essential elements. The parties need to have a meeting of the minds with respect to, for instance, the type of product and/or service to be delivered as well as the duration or term of the contract and an agreed upon price for the product and/or service. While contract law is complex, a basic but key contract concept pertinent to this Initial Comment is expectation interest.¹ Generally, the party taking action to, for example, deliver a product or supply a service acts in reliance on the contract terms with the expectation the party will be paid per the terms within the contract. A party who performs its

¹ See, e.g., E. Allan Farnsworth, *Contracts*, 840 (2d ed. 1990) [hereinafter Farnsworth] (explaining in detail the formation and elements of contracts and how courts encourage reliance on contract terms) and Minn. Stat. § 336.1-305 (2023) (supporting reliance on contract terms given the manner in which the Uniform Commercial Code is to be administered in Minnesota).

contractual duties can do so in reliance on the contract terms because courts protect the expectation of the party who acted in reliance on the agreed upon contract terms.²

Xcel, via its proposal, is asking the Commission to reject established contract law and to unilaterally modify CSG contracts during their operative terms. Parties to a contract may, for instance, have a meeting of the minds and agree to a contract provision that allows for the modification of the contract upon mutual consent of the parties, but that is not the situation at issue here before the Commission. CSG developers, and their respective subscribers, acted, and continue to act, in reliance on the contract terms, including the required payment for capturing and converting solar energy to electricity. As evidence for how CSG developers and subscribers have acted in reliance on the contracts, see, for example, the 869 MW of CSG operating capacity installed in Minnesota over the last ten years.³

Based on the totality of the situation, an arbitrary modification of CSG contracts by the Commission, as proposed by Xcel, would have a significant chilling and detrimental effect on CSG developers and subscribers who acted in reliance on their respective agreements. An arbitrary and unilateral modification of contracts by the Commission would signal to CSG developers, subscribers, and third-party capital providers that Minnesota is a high risk market in which to do business or participate in CSGs. Consequently, developers would exit Minnesota to conduct business in states with more-reliable standard contracts. By helping to create an inhospitable business environment for renewable energy, the Commission would adversely impact CSG developers and, in turn, block consumer access to clean energy resources.

As typical in other markets, CSG developers, project capital providers, and long-term subscribers all rely on enforceable contract terms to do business and provide the products and services necessary to serve subscribers and to decarbonize Minnesota in accordance with the law.⁴ Acting in reliance on enforceable contract terms, CSGs

² Farnsworth at 840.

³ Institute for Local Self-Reliance [hereinafter ILSR], *Community Solar Tracker*, (December 2023), <https://ilsr.org/community-solar-tracker/> (explaining the role of community solar and using an interactive map with community solar operating capacity among other factors).

⁴ Minn. Stat. § 216B.1691, Subd. 2g (2023) (noting additional requirements whereby electric utilities must generate or procure electricity from carbon-free energy technologies equivalent to at least 80 percent for public utilities by 2030, 90 percent for all utilities by 2035, and 100 percent for all utilities by 2040).

provide economic benefits far greater than the up-front construction costs.⁵ CSGs also provide environmental benefits, including through the displacement of dirty, non-renewable energy sources.⁶ To ensure the continuation of the economic and environmental benefits derived from CSG in Minnesota, the Commission should respect the rule of law and not approve Xcel Energy's proposal.

The Commission should not approve Xcel Energy's proposal since approval will run counter to the precedent this Commission set with its 2014 Order regarding CSG.

Xcel Energy is now asking the Commission to adopt a position that Xcel itself rejected at the start of the CSG program in Minnesota. On May 1, 2014, Xcel filed a "Motion to Show Cause" providing a calculation of the value-of-solar rate and explaining why the Company believes that the rate should not be implemented for community solar gardens.⁷ The Commission, in its Findings and Conclusions, set a two-prong precedent. The Commission found "it is not in the public interest to approve a value-of-solar rate for solar gardens at this time and that Xcel should continue to use the applicable retail rate..."⁸ The Commission also went on to require Xcel to modify its solar-garden plan to use "a 25-year contract term".⁹

The Commission order is unequivocal about the significance associated with providing certainty, predictability to aid solar-garden developers in, for instance, securing third-party financing. In particular, the Commission approved the solar-garden program with clarifications that included factors involving the REC price and the ARR at the time of energy generation, both factors understood to take place in the context of 25-year contracts. The Commission went on to further clarify: "any

⁵ ILSR, *Report: Designing Community Solar Programs that Promote Racial and Economic Equity*, (2020), <https://ilsr.org/report-designing-community-solar-programs-that-promote-racial-and-economic-equity/> (including research and findings applicable to programs nationwide and citing a particular case study wherein the construction phase for a potential community solar program of 10 MW would generate economic impacts of \$21 million which is twice the upfront construction costs).

⁶ ILSR, *Minnesota's Solar Gardens: Factsheet* (reporting, with only 208 projects across Minnesota in 2018, the displacement of 400 tons of sulfur and nitrogen oxide emissions and a reduction of global warming emissions by approximately one million tons per year).

⁷ Minnesota Public Utilities Commission, *Order Approving Solar-Garden Plan With Modifications*, Docket No. E-002/M-13-867, at 1 (September 17, 2014).

⁸ *Id.* at 6.

⁹ *Id.* at 4.

adjustment to REC prices made by the Commission in later years should only apply to new community-solar-garden project applications.”¹⁰

The Commission fully intended for certain contract factors to be locked in for the duration of the 25-year contract. In keeping with Commission precedent in this matter, the Commission should not approve Xcel’s proposal to curtail contracts nor to substitute unintended provisions. To do otherwise would undermine Commission precedent, undermine the rule of law, and create a risky and uncertain regulatory environment that would discourage further development of CSGs and other types of grid-supply solar projects in Minnesota. The Commission should reject Xcel’s proposal.

The Commission’s decision in this matter will send one of two signals to the marketplace:

(1) The rule of law does not apply in matters before the Commission and CSG developers, subscribers, and third-party capital providers should not rely on contracts in Minnesota

OR

(2) The Commission respects the rule of law and Commission precedent, and CSG contract terms are honored in Minnesota.

Only signal (2) is consistent with well established contract law and the 2014 Commission Order. Respecting the rule of law, following Commission precedent, and honoring CSG contract terms sends the correct and proper message to CSG developers and subscribers. Respecting the rule of law and the already-approved-and-executed CSG contract terms will provide the type of certainty that can accelerate the growth of lower-cost clean energy resources in Minnesota and boost the economy. Toward these ends, to maintain the integrity of well established contract law, to retain a high degree of business contract certainty for CSG developers and subscribers, to move forward with projects to boost the clean energy economy and help decarbonize Minnesota,¹¹ CEEM respectfully asks the Commission to reject Xcel’s proposal.

¹⁰ *Id.* at 9.

¹¹ See, e.g., Minnesota Commerce Department, News, *Governor Walz Signs Bill Moving Minnesota to 100 Percent Clean Energy by 2040*, (February 7, 2023), <https://mn.gov/commerce/news/?id=17-563384> (quoting Chris Clark, now retired president of Xcel Energy - Minnesota: “We are excited for Minnesota to continue to lead the clean energy transition with its new goal to provide 100% carbon-free electricity by

2. Is Xcel's proposal in the public interest?

Xcel's proposal is not in the public interest. The Commission should not approve Xcel's proposal because the proposal presents significant adverse environmental and economic risks to the public.

At a time when significantly more clean renewable energy is urgently needed, Xcel is proposing a plan that would have a chilling effect on the further development of CSGs and renewable energy projects more broadly. Most specifically, adoption of Xcel's proposal would have the natural and foreseeable consequence of undermining capital providers' confidence in supporting the new CSG program focused on lower-income subscribers that the Minnesota legislature recently passed into law.

Meanwhile at the highest level, the economic losses and damages caused by climate change is becoming so massive, in the billions of dollars, that insurance companies are raising premiums by significant amounts and actually exiting some markets.¹² Minnesota is not immune to the effects from the ongoing emissions of greenhouse gases and the concomitant social, economic and environmental challenges posed by those emissions.

2040". "This legislation [referring to the carbon-free law] will provide opportunities to innovate, create jobs, incorporate new technologies into the grid and work closely with the communities that are home to our employees and power plants on a successful transition." And quoting Governor Walz regarding the carbon-free electricity standard: "Climate change impacts lives and livelihoods in every corner of our state, Minnesota will continue to lead the way on combatting climate change and we'll create clean energy jobs in the process. This bill is an essential investment in our future that will continue to pay off for generations to come.").

¹² See, e.g., Scientific American, *Climate Change is Destabilizing Insurance Industry*, (March 23, 2023), <https://www.scientificamerican.com/article/climate-change-is-destabilizing-insurance-industry/> (raising premiums, pulling out of markets); see, also, Council on Foreign Relations, *Climate Change and U.S. Property Insurance: A Stormy Mix*, (August 17, 2023), <https://www.cfr.org/article/climate-change-and-us-property-insurance-stormy-mix> (explaining the linkage between fossil fuel use and climate change and the damage and ongoing threats to people and property); and State of Minnesota, *Minnesota's Climate Action Framework*, <https://climate.state.mn.us/sites/climate-action/files/Climate%20Action%20Framework.pdf> (last visited January 5, 2024) (presenting the science around climate change and outlining the present and future harms to Minnesotans).

According to the Minnesota Department of Health, “[f]rom extreme heat to ecosystem threats, real changes in Minnesota’s climate are impacting the health of Minnesotans.”¹³ According to the Minnesota Department of Natural Resources,

Substantial warming during winter and at night, increased precipitation, and heavier downpours already have affected our natural resources, and how we interact with and use them. The decades ahead will bring even warmer winters and nights, and even larger rainfalls, along with the likelihood of increased summer heat and the potential for longer dry spells.¹⁴

In short, to mitigate the economic and environmental harms to the public from climate change, significantly more clean renewable energy is needed for Minnesotans.¹⁵ Rejecting the Xcel proposal will enable the clean energy economy, for all the reasons outlined in our comments to topic 1, to grow in Minnesota.

Lastly, reducing bill credits as proposed by Xcel is not in the public interest. Xcel states its proposal would reduce annual bill credits paid out by approximately \$63 million.¹⁶ With more than 10 years remaining in the CSG contracts at issue, the proposed \$630 million comes at a cost to subscribers who entered into 25-year subscription agreements in reliance and based on the ARR and Commission-approved

¹³ Minnesota Dept of Health, *Climate and Health in Minnesota*, <https://www.health.state.mn.us/communities/environment/climate/climate101.html> (last visited January 5, 2023) (explaining the link between climate change and direct and indirect effects on air pollution, extreme heat, floods and drought, and ecosystem threats).

¹⁴ Minnesota Department of Natural Resources, *Climate trends*, at https://www.dnr.state.mn.us/climate/climate_change_info/climate-trends.html (last visited January 5, 2024).

¹⁵ Fifth National Climate Assessment, Chapter 2, *Climate Trends*, (November 14, 2023), <https://nca2023.globalchange.gov/> (offering a key message: The more the planet warms, the greater the impacts – and the greater the risk of unforeseen consequences (very high confidence). The impacts of climate change increase with warming, and warming is virtually certain to continue if emissions of carbon dioxide do not reach net zero (very high confidence). **Rapidly reducing emissions would very likely limit future warming (very high confidence) and the associated increases in many risks (high confidence** [emphasis added]). While there are still uncertainties about how the planet will react to rapid warming and catastrophic future scenarios that cannot be ruled out, the future is largely in human hands.”).

¹⁶ Minnesota Public Utilities Commission, Docket No. E-002/M-13-867, Xcel filing, Sept 25, 2023, p.4.

25-year standard program contract. Indeed, the Commission-approved standard ARR program contract explicitly states that subscribers are legal third-party beneficiaries to the standard contract.¹⁷ To change contract terms at this time would impose a significant burden on CSG subscribers, have a chilling effect on future CSG development, and exacerbate the harms from climate change.

3. If the Commission is to move ARR-era gardens to the VOS, should all gardens be placed on the 2017 VOS vintage beginning April 1, 2024 as Xcel has proposed?

For the reasons stated above, CEEM respectfully requests the Commission not move ARR-era gardens to the VOS.

4. Are there any other issues or concerns related to this matter?

VOS, with a full and proper accounting for externalities, is the proper valuation method for estimating the benefits that CSGs provide to Xcel, its ratepayers, and its Minnesota electric system. But the Xcel proposal to unilaterally modify all existing ARR standard contracts is misplaced, out-of-touch with normal business practices in the private sector, and is counterproductive to efforts aimed at boosting the use of distributed, clean renewable energy in Minnesota.

CONCLUSION

Time is of the essence with respect to meeting or exceeding Minnesota's carbon-free electricity requirements for 2030, 2035 and 2040. To timely meet the clean energy law requirements, one of the cost-effective and readily available energy options is the rapid deployment of additional clean renewable energy via CSGs. CSGs are an effective means by which to equitably address Minnesota's clean energy requirements. The amount of megawatts CSGs will actually be able to provide, as well as the concomitant amount of carbon emissions displaced by CSG, however, hinges on the Commissions actions and decision in this docket matter.

¹⁷ See standard contract in Xcel Section 9 tariff, at Sheet No. 83 (stating "There are no third-party beneficiaries of any Company duty under this Contract *other than the Company's duty to Subscribers to issue Bill Credits as set forth in this Contract*, and the duty to a financing party under Section 10.d. of this Contract." [emphasis added]).

To maintain the integrity of CSG contracts in Minnesota and provide a business milieu conducive for economic development while rapidly expanding consumer access to clean renewable energy, CEEM respectfully requests the Commission find:

(a) it should *not approve* Xcel Energy's proposal to place all Applicable Retail Rate (ARR) Community Solar Gardens (CSGs) on the 2017 Value-of-Solar (VOS) vintage as found in Xcel's September 25, 2023 compliance filing,

(b) Xcel's proposal is not in the public interest,

(c) the Commission should not move ARR-era gardens to the VOS as Xcel has proposed, and

(d) VOS is the proper accounting tool to quantify CSG benefits to the utility system, but the Xcel proposal to radically modify existing contracts is flawed.