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January 22, 2024

Via eDocket and electronic submission

Mr. Will Seuffert, Executive Secretary
Minnesota Public Utilities Commission
121 East Seventh Place, Suite 350
Saint Paul, MN 55101

RE: ***In the Matter of the Petition for Approval of Northern States Power Company, d/b/a Xcel Energy for Approval of its Community Solar Garden Program***
MPUC Docket No. E-002/M-13-867

Dear Mr. Will Seuffert,

Please find attached Reply Comments from the Coalition for Community Solar Access and the Minnesota Solar Energy Industries Association, collectively referred to as the Joint Solar Associations, in response to the Public Utilities Commissions Notice of Comment Period issued on October 9, 2023, in Docket No. E-002/M-13-867.

Sincerely,

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In the Matter of the Petition of Northern States Power Company for Approval of its Proposed Community Solar Gardens Program

January 22, 2024

REPLY COMMENTS OF THE JOINT SOLAR ASSOCIATIONS

Docket No. E-002/M-13-867

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The Coalition for Community Solar Access[1] ("CCSA") and the Minnesota Solar Energy Industries Association[2] ("MnSEIA," together with CCSA, the "Joint Solar Associations") respectfully submit the following Reply Comments in response to the Minnesota Public Utilities Commission's October 9, 2023 Notice of Comment Period regarding Xcel's September 25, 2023 Proposal for Switching ARR-era Community Solar Gardens to Appropriate VOS Rate ("Xcel's Proposal").

As the Joint Solar Associations explained in their Initial Comments the Commission should reject Xcel's Proposal because it asks this Commission to reverse nearly a decade of Commission action without a reasonable basis and because it would harm the public interest.

INTRODUCTION

The vast majority of public and initial comments responding to Xcel's Proposal urge the Commission to reject it. That broad opposition illustrates the broad cross-section of Minnesotans that subscribe to applicable retail rate ("ARR") -era Community Solar Gardens ("CSGs"), with 70 percent of subscribed capacity flowing to a diverse group of residents, public schools, hospitals, clinics, churches, private schools, and governments.[3] ARR-era CSG subscribers and the CSG developers and operators that serve them have thrived because of the stable foundation for CSGs this Commission carefully crafted over the past decade. Adopting Xcel's Proposal would unreasonably reverse the Commission's past decisions—upending that careful and consistent

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[1] The Coalition for Community Solar Access is a 501(c)(6) non-profit organization and is the national trade organization specifically focused on the community solar industry. It represents more than 80 member companies with active operations in more than 20 states and at the federal level. CCSA's mission is to empower energy consumers, including renters, homeowners, businesses, and households of all socioeconomic levels, by increasing their access to reliable, clean energy. CCSA serves as the central voice for the community solar industry.

[2] The Minnesota Solar Energy Industries Association is a 501(c)(6) nonprofit trade association that represents Minnesota's solar and storage industry, with over 150 members, ranging from individuals, legal and engineering firms, government agencies, and non-profit organizations to manufacturers, installers, developers and utilities, and many others, which employ over 4,500 Minnesotans.

[3] Docket No. E-002/M-13-867, Commerce Initial Comment at 11-12 (reporting the results of a first-of-its kind analysis of actual, individualized CSG subscriber data).

approach—and violate settled, written contracts between Xcel and its CSG developer counterparties. Not only would this wreak havoc on existing and future CSGs, it would also chill developer and investor enthusiasm in Minnesota, calling into question Minnesota as a home for even commonplace clean energy policies. Simply put, Xcel's Proposal is a bad deal. And while the Joint Solar Associations appreciate the efforts of the Office of the Attorney General ("OAG") and Fresh Energy in seeking out alternative mechanisms to blunt some of the harms that will flow from Xcel's Proposal, their suggestions rely on flawed notions of the scope and structure of the CSG program. Thus, while well-intentioned, those alternative Proposals are similarly unacceptable.

The Joint Solar Associations join the vast majority of commenters and ask that the Commission reject Xcel's Proposal.

REPLY COMMENTS

I. There is No Dispute that the Commission has Already Decided that CSGs that Began with an ARR-Based Bill Credit Should Continue with That Credit for the 25-Year Duration of their Contract with Xcel.

Initial Comments illustrate that, as the Joint Solar Associations explained, this Commission determined long ago that ARR-era CSGs would receive an ARR-based bill credit for the initial 25-year length of those projects. Xcel thus does not make its proposal against a blank slate; instead, the Commission cannot adopt Xcel's Proposal without simultaneously reversing nearly a decade of Commission action. In this instance, the record illustrates that such a reversal would be arbitrary and capricious because there has been no material change in fact or law justifying such a reversal.

a. This Commission has consistently decided that ARR-era CSGs would operate with ARR-based bill credits for the length of their initial contracts with Xcel.

CCSA agrees with Commerce, OAG, the City of Minneapolis, NextEra/US Solar and others that the Commission's prior decisions are clear.[4] The record establishes that the Commission decided in 2014 that ARR-era CSGs would operate with ARR-based bill credits for the full length of their initial contracts with Xcel, that the Commission consistently reaffirmed that decision, and that it reached those decisions deliberately and with the benefit of well-developed records. In sum, the record shows the following:

- The Commission approved Xcel's CSG Program on September 17, 2014.
  - In that Order, the Commission noted that commenters (including Commerce) "recommended several clarifications ***to improve the financeability*** of projects receiving the ARR" and that there was "broad agreement that any eventual transition to the [VOS] should not be retroactive."[5]
  - The Commission then concluded that "solar gardens that are approved and interconnect under the [ARR] should continue to receive that rate even after Xcel implements a [VOS] rate for solar gardens."[6]
  - The Commission ordered that Xcel clarify in its tariff that CSG "projects under the [ARR] should be credited at the [ARR] in place at the time of energy generation ***for the duration of the 25-year contract***."[7]
  - Consistent with that determination, the Commission did not require—indeed, had no reason to require—in its list of required CSG-operator disclosures that CSG operators provide their subscribers with notice that the fundamental nature of the bill credit was subject to change. Omitting such a mandate only makes sense with the understanding that the Commission never contemplated that this sort of switch would happen, since if such a switch did happen it would go directly to the "future costs and benefits" of a subscription and the Commission would have to ensure that it was disclosed under section 216B.1641, subd. 1(e)(5).[8]

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[4] *E.g.*, Docket No. E-002/M-13-867, Commerce Initial Comments at 2-3; Docket No. E-002/M-13-867, OAG Initial Comments at 5, 7; Docket No. E-002/M-13-867, Minneapolis Initial Comments at 2; Docket No. E-002/M-13-867, NextEra/US Solar Initial Comments at 2-5.
[5] Docket No. E-002/M-13-867, Order Approving Solar-Garden Plan with Modifications at 8 (Sept. 17, 2014) (emphasis added).
[6] *Id.*
[7] *Id.* at 19.
[8] *See id.* at 16-17 (affirming required disclosures listed in April 7, 2014 Order at 28-29, but adopting simplified language for use in the form Standard Contract).

- Xcel complied with the Commission's directive as evidenced by the fact that the form Standard Contract states plainly that "[o]nce a Standard or Enhanced Bill Credit applies, that Bill Credit Type applies for the term of the Contract."[9]

- In 2015, 2016, and 2017, as NextEra/US Solar explain, the record is clear that all parties understood the Commission's plain and straightforward conclusions. Minutes from Xcel's own stakeholder workgroups show that there was broad understanding that a CSG's rate structure would remain its rate structure for the duration of the 25-year contract, and that the stakeholders repeatedly expressed that understanding.[10]

  - The Commission's repeated affirmation of its 2014 conclusions was founded on a well-informed and engaged group of parties, as the stakeholder minutes illustrate.[11]

- In 2016, the Commission again reaffirmed its 2014 decision when it decided to shift only CSGs with post-January 1, 2017 application dates to a VOS-based bill credit. That 2016 decision followed the opinion of the parties, with the Commission noting that the parties "unanimously recommended that any change to the bill-credit rate be applied prospectively so as not to undermine the viability of existing applications."

- Each year after approving Xcel's CSG program, the Commission has approved the ARR for use in ARR-era CSGs, implicitly reaffirming its 2014 and 2016 conclusions each time.

Taken together, this history shows that there can be no doubt about what this Commission decided. As Commerce notes, Xcel, CSG developers, operators, and subscribers knew what the Commission ordered and they structured their arrangements around those stable and consistent decisions.[12] Indeed, in Commerce's view, "[n]o reasonable CSG developer, operator, or subscriber would have read into [the Commission's 2014] order any likelihood that a change to the VOS would be retroactive years into the future."[13] The Joint Solar Associations agree. Joint Solar Association members with ARR-era CSGs uniformly (and reasonably) expected that the ARR would remain the root of their bill credits for the entirety of their 25-year contracts with Xcel.[14]

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[9] Docket No. E-002/M-13-867, Joint Solar Associations Initial Comments, Attachment A at 1.
[10] Docket No. E-002/M-13-867, NextEra/US Solar Initial Comments at 4, n.14, n.15 (citing workgroup minutes from 2015, 2016, and 2017).
[11] *See id.*
[12] Docket No. E-002/M-13-867, Commerce Initial Comments at 9.
[13] *Id.*
[14] *See, e.g.*, Docket No. E-002/M-13-867, Joint Solar Associations Initial Comments, Attachment B, Affidavit of DenHerder-Thomas at ¶ 6 (stating that "[b]ased on the Commission's prior orders and the clear language of each

The overwhelming public comment opposing Xcel's Proposal shows that CSG subscribers had the same expectation.[15]

With those reasonable expectations and with the Commission's consistent regulatory approach, no party can dispute—indeed, no party does dispute—that the Commission has already decided that ARR-era CSGs should receive an ARR-based bill credit "for the duration of the 25-year contract."[16] Nonetheless, Xcel makes its Proposal, effectively asking the Commission to reverse itself. But Xcel provides no changed law or facts that would justify such a reversal, and thus Xcel's proposal is an invitation for arbitrary and capricious decision making.

b. *The Commission fulfilled its statutory obligations in its prior CSG decisions and reversing those decisions now would be arbitrary and capricious.*

While the Commission has some latitude to reverse its prior decisions, any such reversal must be reasoned and the result of the Commission's judgment rather than its will.[17] The Commission cannot satisfy that standard here because there has been no material change in law or fact justifying a reversal of its prior decisions that the ARR-based bill credit would remain in place for the duration of ARR-era CSG contracts.

Begin with the law. As was the case in 2014, section 216B.1641, subd. 1(e), still requires that the Commission structure Xcel's CSG program to ensure the financeability of CSGs. And that financeability ***requirement*** dictates that the Commission allow ARR-based bill credits to continue, just as it did in 2014. Section 216B.1641, subd. (1)(e)(1)'s financeability requirement was the key

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project's signed Solar*Rewards Community contract, CEF expected that Xcel would provide subscribers with bill credits based on the ARR for the entire 25-year term of the contract"), Attachment C, Affidavit of Dobbs at ¶ 5, Attachment D, Affidavit of LeBlanc at ¶ 5, Attachment E, Affidavit of Kuflik at ¶ 5, Attachment F, Affidavit of Desplechin at ¶ 5.

[15] Docket No. E-002/M-13-867, Commerce Initial Comments at 9.

[16] Docket No. E-002/M-13-867, Order Approving Solar-Garden Plan with Modifications at 8 (Sept. 17, 2014).

[17] *In re Review of the 2005 Annual Automatic Adjustment of Charges for All Elec. & Gas Utils.*, 768 N.W.2d 112, 119-120 (Minn. 2009) (explaining that while an agency can ignore its own precedents, it can only do so if it provides a reasoned explanation).

motivator behind the Commission's original 2014 ruling that the ARR-based bill credit would apply for the duration of ARR-era CSG contracts. As the Commission explained, the "broad agreement"—which the Commission adopted—that "solar gardens that are approved and interconnect under the applicable retail rate should continue to receive that rate even after Xcel implements a value-of-solar rate for solar gardens" was aimed directly at "improv[ing] financeability of projects receiving the applicable retail rate."[18] Nothing has changed today. The Joint Solar Associations' members explained that the stability the Commission instituted in its 2014 decision to ensure financeability ***then***, is still necessary to ensure financeability of CSGs ***now***.[19]

Xcel's Proposal would have such a negative impact on financeability that one CSG expects that its revenues will fall to the point that it "would be unable to service the debt on its community solar gardens and would default on its loan obligations, resulting in foreclosure on its eight community solar gardens."[20] Other CSG developers and operators fear similar repercussions,[21] and expect that those repercussions will ripple to VOS-era CSGs, future CSGs, and the solar industry more broadly.[22] Upending the stable foundation this Commission has laid over the past decade by adopting Xcel's Proposal will therefore violate section 216B.1641, subd. 1(e), just like it would have in 2014, 2016, and each year the Commission approved Xcel's ARR for use with ARR-era CSGs. Nothing in law or the facts regarding financeability has changed that would justify a reversal of Commission policy.

[18] Docket No. E-002/M-13-867, Order Approving Solar-Garden Plan with Modifications at 8 (Sept. 17, 2014).
[19] Docket No. E-002/M-13-867, Joint Solar Associations Initial Comments, Attachment B, Affidavit of DenHerder-Thomas at ¶¶ 8-11, Attachment C, Affidavit of Daniel C. Dobbs, ¶¶ 7-9, Attachment D, Affidavit of LeBlanc at ¶¶ 7-14, Attachment E, Affidavit of Kuflik at ¶¶ 6-8, Attachment F, Affidavit of Desplechin at ¶¶ 7-11.
[20] Docket No. E-002/M-13-867, Joint Solar Associations Initial Comments, Affidavit of DenHerder-Thomas at ¶ 10.
[21] *E.g.*, Docket No. E-002/M-13-867, Joint Solar Associations Initial Comments, Attachment D, Affidavit of LeBlanc at ¶¶ 12-13, Attachment E, Affidavit of Kuflik at ¶ 8.
[22] Docket No. E-002/M-13-867, Joint Solar Associations Initial Comments, Attachment C, Affidavit of Dobbs at ¶ 9, Attachment F, Affidavit of Desplechin at ¶¶ 9-11.

Nor has there been any material change related to the "costs" of the CSG program. While framing the CSG as a "cost" is problematic on its own, the reality is that the Commission made its past decisions with full knowledge of the impacts of ARR-based bill credits. The ARR-based bill credit ***today***[23] is on the extreme low-end of the forecast range the Commission evaluated when it first adopted its stable, consistent approach to ARR-era CSG bill credits.[24] Parties in this docket also repeatedly reminded the Commission of the supposed costs of the CSG program. OAG makes this point clear, noting that OAG raised concern over the "costs" of the CSG program early and often. While OAG raises that past advocacy to argue that costs have always been a concern, and that the Commission should adopt a version of Xcel's Proposal, OAG's past complaints leads to the opposite conclusion. The fact that advocates like OAG doggedly raised concerns regarding apparent costs before this Commission, but that this Commission opted not to adopt OAG's past recommendations, shows that the Commission considered those very cost concerns and found them outweighed when it decided that ARR-based bill credits would apply to ARR-era CSGs for the life of their 25-year contract.[25] The concerns OAG raised and this Commission rejected in years past are the exact same concerns that animate Xcel's Proposal today. Again, nothing has changed, and neither should the result.

Commission action changing the result here would be even more problematic since (i) Xcel failed to provide notice of its proposal to cities or municipalities,[26] as Minnesota law requires,[27] or

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[23] Of course, it is worth noting that to the extent the ARR-based bill credit has increased in dollar value, that increase is due to corresponding increases ***in Xcel's own rates***; any such increase is not the doing of CSG developers or operators. *See, e.g.*, Docket No. E-002/M-13-867, Fresh Energy Initial Comments at 4 (noting that the ARR "tracks customer rates").
[24] Docket No. E-002/M-13-867, Briefing Papers, Attachment B at 5-6 (Feb. 11, 2014).
[25] Docket No. E-002/M-13-867, OAG Initial Comments at 6-8 (noting that the Commission "did not, however, adopt the OAG's recommendations for limiting nonparticipant impacts").
[26] Docket No. E-002/M-13-867, Minneapolis Initial Comments at 2; Docket No. E-002/M-13-867, University of Minnesota Initial Comments at 1.
[27] Minn. Stat. § 216B.16, subd. 1.

subscribers,[28] as logic should require; and (ii) the record today is far less robust than it was when the Commission was erecting its stable, consistent approach to ARR-era bill credits. The City of Minneapolis and the University of Minnesota explain the harms flowing from Xcel's lack of notice.[29] Minneapolis notes that it only learned of Xcel's Proposal due to its own efforts, not through any notice from Xcel (despite section 216B.16's mandate) or the Commission, and that this is not just a formality. Instead, Xcel's failure to provide adequate notice likely means that there are "many more" affected cities, municipalities, and subscribers who are unaware of Xcel's Proposal.[30] In short, there may be many voices missing from the Commission's consideration of Xcel's Proposal.

That reality is compounded by the fact that the Commission is considering Xcel's Proposal with only limited opportunity for affected parties to weigh in.[31] The data Commerce relied on to persuasively establish the broad beneficiaries of ARR-era CSGs illustrates that limited opportunity. Those data, for example, are available in full[32] only to Commerce, Xcel, and the Commission. No other party has access to the full identities of ARR-era CSGs subscribers, which severely limits the parties' ability to understand and explain the impacts of Xcel's Proposal. Thus, the Commission may well not hear the full story. In contrast, the Commission's prior decisions, in many different orders, benefitted from robust stakeholder input, as NextEra/US Solar illustrate.[33]

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[28] Docket No. E-002/M-13-867, OAG Initial Comments, OAG IR No. 206 (confirming that Xcel does not believe that it is obligated to notify subscribers of its Proposal and that Xcel does not intend to notify subscribers of its Proposal or a change in bill credit formula).
[29] Docket No. E-002/M-13-867, Minneapolis Initial Comments at 2; Docket No. E-002/M-13-867, University of Minnesota Initial Comments at 1.
[30] Docket No. E-002/M-13-867, Minneapolis Initial Comments at 2.
[31] *See* Docket No. E-002/M-13-867, Minneapolis Initial Comments at 3 (identifying just some of the many details missing from the Commission's consideration of Xcel's Proposal).
[32] Commerce included a redacted version of CSG subscriber data with its initial comments. That version does not include the identity of CSG subscribers. The Joint Solar Associations are unaware of any law or regulation which would prohibit the disclosure of those entities to the parties in this docket for the limited purpose of better understanding the impacts of Xcel's Proposal.
[33] Docket No. E-002/M-13-867, NextEra/US Solar Initial Comments at 4-5 (explaining role of stakeholder meetings in development of Xcel's CSG program).

A reversal of nearly a decade of Commission decisions surely warrants at least an equally robust—if not ***more*** robust—process than the initial process the Commission relied on.

Xcel's Proposal is an invitation to a Commission decision that reverses nearly a decade of precedent, with no supporting change in law or fact, and with a limited and underdeveloped record. The Commission should reject that invitation.

II. The Commission is Not Obligated to Adopt Xcel's Proposal, or One Like It, as Commerce and the Joint Solar Associations Explained.

In Initial Comments, the Joint Solar Associations explained that section 216B.1641, subd. 1(d) does not force the Commission's hand since such an interpretation would read out of the statute section 216B.1641, subd. 1(e),[34] a result barred by Minnesota law.[35] Commerce agrees with the Joint Solar Associations and rightly noted that this conclusion is reinforced when reading section 216B.164 and section 216B.1641 in harmony.[36] No party rebuts these straightforward interpretations of the Commission's statutory obligations. In fact, in 2013 Xcel went even further, arguing that once ARR-era CSGs interconnected under an ARR-based bill credit, Minnesota law "does not allow the VOS rate to be applied" to those gardens.[37] Xcel's Proposal now ten years later is a direct reversal of that prior position, illustrating that Xcel doesn't make this Proposal as a faithful interpretation of Minnesota law, but because it is in Xcel's interests.

Yet Xcel's interests should not dictate the scope of Minnesota law. Instead, the Commission should read section 216B.1641 and 216B.164 in harmony, giving meaning to all of

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[34] Docket No. E-002/M-13-867, Joint Solar Associations Initial Comments at 4-8.
[35] *Kollodge v. F. & L. Appliances, Inc.*, 80 N.W.2d 62, 64 (Minn. 1956); Minn. Stat. § 645.17(2) ("[T]he legislature intends the entire statute to be effective and certain."); *Am. Fam. Ins. Group v. Schroedel*, 616 N.W.2d 273, 277 (Minn. 2000).
[36] Docket No. E-002/M-13-867, Commerce Initial Comments at 6.
[37] Docket No. E-002/M-13-867, Dec. 17, 2013 Xcel Reply Comments at 5-6.

section 216B.1641 in the process, and conclude—as it did in its past decisions[38]—that section 216B.1641(d) does not require that the Commission adopt Xcel's Proposal (or one like it). The Commission's hands are not tied.

III. The Commission Should Reject OAG's and Fresh Energy's Suggestions that the Commission Can Adopt a Modified Version of Xcel's Proposal to Avoid Significant Harm to the Public Interest.

OAG and Fresh Energy are part of the near-unanimous chorus of parties urging the Commission not to adopt Xcel's Proposal as written. However, they suggest that the Commission should adopt a revised version of Xcel's Proposal after making certain changes that, in their views, will protect certain groups from the harm inherent in Xcel's effort to undo its settled agreements. While the Joint Solar Associations appreciate OAG's and Fresh Energy's separate efforts to find a middle ground, their alternative proposals begin from false premises, ignore the broad benefits and structure of the CSG program, and rest on a flawed understanding of this Commission's authority. The Joint Solar Associations thus respectfully recommend that the Commission reject OAG's and Fresh Energy's alternatives.

OAG and Fresh Energy make their recommendations from the premise that the current, ARR-based CSG bill credits are a gift to large business interests, at the expense of nonsubscribers.[39] But OAG and Fresh Energy are wrong, notably making their proposals without support from other consumer-minded commenters like the Solar Equity Advocates.[40] Far from being a gift only to a few, powerful business interests, CSGs broadly—and early, ARR-era CSGs

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[38] *See* Docket No. E-002/M-13-867, Order Approving Value-of-Solar Rate for Xcel's Solar Garden Program at 6, 13 n.25 ("The Commission has not yet approved the value-of-solar rate for use in Xcel's solar-garden program, and the Company therefore offers solar-garden subscribers the applicable retail rate.") (Sept. 6, 2016); Docket No. E-002/M-13-867, Order Adopting Partial Settlement as Modified at 23 (Aug. 6, 2015) ("The applicable retail rates and REC-payment amounts were to be reviewed and adjusted annually and continue in effect until such times as the Commission approved a value-of-solar rate for solar gardens.").

[39] *E.g.*, Docket No. E-002/M-13-867, OAG Initial Comments at 7-8; Docket No. E-002/M-13-867, Fresh Energy Initial Comments at 8.

[40] *See* Docket No. E-002/M-13-867, Solar Equity Advocates Initial Comments.

specifically—serve the public in the fullest sense. Cities, counties, residents, universities, non-profits, religious organizations, and small businesses all subscribe to ARR-era CSGs, as the Joint Solar Associations explained.[41] Critically, the hard data back up the story public comment tells. Using "previously unreleased, individualized Xcel data" Commerce conducted a first-of-its kind review of CSG subscribers. According to Commerce, "[g]overments, public school districts, hospitals and clinics, churches, private schools, and residential subscribers comprise a supermajority—***70 percent*** of subscribed capacity and ***72 percent*** of the bill credit—of the subscribed capacity to the ARR-era gardens."[42] That leaves only 30 percent of subscribed, ARR-era CSG capacity flowing to private businesses, which of course are key to the health of Minnesota's economy, too.[43] The data thus belie any suggestion that ARR-era CSGs are merely a gift to the moneyed and powerful with no broader public benefit.

In fact, the broad benefit of CSGs—including ARR-era CSGs—goes even a step further. Because so many ARR-era CSG subscribers are public entities or otherwise serve the public, the cost-savings those subscribers receive flow directly to all members of the public, whether subscribed to CSGs or not. Even the minority of CSG subscriptions by private businesses have benefits that accrue to the broader public, since business success can enable lower prices, added jobs, or increased tax revenues. Any change to ARR-era CSGs—whether resulting in reduced savings or increased costs for subscribers—will thus similarly flow to members of the public, broadly. For instance, the University of Minnesota notes that if the Commission devalues its subscription, those new costs "would in turn reflect as additional costs to students and state

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[41] Docket No. E-002/M-13-867, Joint Solar Associations Initial Comments at 21 (citing public comment).
[42] Docket No. E-002/M-13-867, Commerce Initial Comments at 10 (emphasis in original).
[43] *Id.*

taxpayers."[44] Xcel's Proposal overlooks this broad impact ***to all ratepayers***, as do the comments of others that raise concerns regarding supposed costs to non-subscribers."[45]

On top of that reality, if the Commission were to try and craft a revised version of Xcel's Proposal that only affected certain types of CSG customers (as OAG and Fresh Energy suggest), the Commission would quickly find that it was tugging at the string of a much larger tapestry. Indeed, if the Commission forced, say, a county who subscribed to a CSG to a VOS-based bill credit, thus rendering that subscription "underwater," but not a resident-subscriber to the same CSG, the Commission would quickly see that the harm to the county flowed to the resident.[46] Similarly, undoing subscriber-level agreements will threaten each and every agreement upstream, all of which are necessary to sustain continued CSG operations. OAG and Fresh Energy provide no support for the notion that CSGs can survive if only some of their subscribers find themselves underwater, overlooking that CSGs are indeed communal and rise and fall as a unit.

Finally, while OAG's and Fresh Energy's proposals are replete with vague references to "reasonableness," their suggestions are largely untethered to Minnesota law. OAG and Fresh Energy ignore that Minnesota law prohibits "unreasonably preferential, unreasonably prejudicial, or discriminatory rates,"[47] and they fail to explain how the infirmities of Xcel's Proposal are avoided by simply keeping the ARR label but changing its components to something wholly different or introducing a VOS "adder."[48] Even more problematic is the fact that OAG provides no explanation of the authority this Commission could draw on to require that "subscribers be

[44] Docket No. E-002/M-13-867, University of Minnesota Initial Comments at 1.
[45] This includes the comments of a small number of elected officials. Further, while the Joint Solar Associations welcome input from Minnesota's elected leaders and appreciate their collaboration, the Joint Solar Associations note that individual legislators do not speak on behalf of the legislature, which speaks instead through legislation.
[46] In addition, some CSG developers/operators coordinate CSGs as a single portfolio, meaning that financing risk that impacts a portion of a single CSG could have wide-ranging impacts.
[47] Minn. Stat. § 216B.03.
[48] Of course, such a step would be a reversal of prior Commission decisions, too.

allowed to cancel their subscriptions without penalty unless the garden operator reduced the subscription fee such that the subscriber continues to realize the same net benefit as before the change."[49] Xcel has made clear its view that it has no role in the CSG developer/operator-subscriber relationship[50] and there is no basis in Minnesota law for the Commission exercising a role there, either. If the Commission concludes otherwise, the Joint Solar Associations are confident that the harm will be significant since it will illustrate that the Commission is willing to invade private, non-utility contracts to achieve its will. That sort of improper Commission action would have significant chilling effects throughout the CSG program—and the renewable energy sector more broadly—as those who develop and finance renewable energy projects find themselves operating in an environment no longer afforded the protections of basic contract law.

Again, the Joint Solar Associations appreciate OAG's and Fresh Energy's efforts to uncover a middle ground. But any such effort must be based on an accurate understanding of the benefits and structure of the CSG program and the scope and limitations of Minnesota law. OAG's and Fresh Energy's separate alternative proposals fail to fulfill those threshold requirements and thus fall short of an appropriate replacement to the Commission's long-standing and well-supported approach to early CSGs.

IV. The Commission's Prior Decisions Enhanced Industry Stability and Honored Long-Term Agreements, the Commission Should Do the Same Here.

The Commission's past decisions regarding ARR-era CSGs recognized the importance of long-term stability, and thus made ordinary, bilateral agreements a central part of the CSG ecosystem. As the Joint Solar Associations and NextEra/US Solar explained,[51] those bilateral

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[49] Docket No. E-002/M-13-867, OAG Initial Comments at 21-22.
[50] *See* Docket No. E-002/M-13-867, OAG Initial Comments at IR 206.
[51] Docket No. E-002/M-13-867, Joint Solar Associations Initial Comment at 10-16; Docket No. E-002/M-13-867, NextEra/US Solar Initial Comment at 8-9.

agreements largely remain in place today, meaning that Xcel's Proposal does not exist in a pure regulatory vacuum.

Instead, as the United States Supreme Court instructed in cases like *Mobile*, *Sierra*, and *Morgan Stanley*, the fact that Xcel set rates by contract means that this Commission can only revise those contract-based rates after a finding that those rates "seriously harm the public interest."[52] There is no basis for such a finding here, where the record clearly shows that Xcel's Proposal will harm a broad swath of the public (including non-CSG-subscribers) and that ARR-era CSGs benefit the public at large.[53] Commerce explains the broad risks here, including that Xcel's Proposal would undermine faith in government, increase regulatory risk, and strand solar assets. Moreover, Xcel's Proposal would represent an asymmetrical policy shift, where Xcel is insulated from repricing energy contracts or PPAs it negotiated years ago, that may be cheaper if negotiated now, but where Xcel seeks precisely that sort of renegotiation solely for ARR-era CSGs. Surely Xcel would resist this sort of approach to its settled contracts more broadly, and the Commission should resist it in this instance, just as the vast majority of commenters—including the Joint Solar Associations—urge.

CONCLUSION

This Commission's approach to Minnesota CSGs has been methodical, deliberate, and consistent. At each step, it has encouraged the kind of stability necessary to usher in CSGs as Minnesota law requires, resulting in a program that benefits the public broadly. Xcel's Proposal seeks to undo that stable foundation, harming existing subscribers, risking the CSG program as a

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[52] *Morgan Stanley Cap. Group Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527, 533-535 (2008) (explaining that the heightened deference given to contract rates is the product of the "just and reasonable" standard, not a different standard); *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *Fed. Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956).

[53] *E.g.*, Docket No. E-002/M-13-867, Commerce Initial Comments at 10.

whole, and introducing significant regulatory uncertainty into the Minnesota market. While the Joint Solar Associations appreciate the efforts of the Commission to manage the CSG program and the investment of the diverse parties in this docket, the Commission should reject Xcel's wrong-headed Proposal because:

- The Commission long ago decided—and consistently reaffirmed—that ARR-era CSGs should receive an ARR based bill credit for the initial 25-year term of those projects, and nothing has changed in law or fact justifying a departure from those decisions;
- Minnesota law does not obligate the Commission to adopt Xcel's Proposal, or one like it;
- Minnesota's CSGs, including ARR-era CSGs, serve a broad cross-section of Minnesotans, delivering benefits to subscribers and non-subscribers alike; and
- Minnesota's existing approach to CSGs, respecting long-term bilateral agreements, is in the public interest, and Xcel's Proposal will harm the public interest.

Respectfully submitted on January 22, 2024.

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