

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Hwikwon Ham	Commissioner
Valerie Means	Commissioner
Joseph Sullivan	Commissioner
John Tuma	Commissioner

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

**INITIAL COMMENTS OF
NATIONAL GRID RENEWABLES**

January 8, 2024

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

**INITIAL COMMENTS OF NATIONAL GRID
RENEWABLES DEVELOPMENT, LLC**

National Grid Renewables Development, LLC (“NG Renewables”) submits these comments in response to the Minnesota Public Utilities Commission’s (“Commission”) Notice of Comment period¹ in the above-titled docket opposing Northern States Power Company dba Xcel Energy’s (“Xcel”) petition to place all applicable retail rate (“ARR”) community solar gardens (“CSG”) on 2017 value-of-solar (“VOS”) vintage.² NG Renewables is concerned that Xcel’s Petition is contrary to the initial intent of the CSG program, misconstrues the potential negative

¹ Notice of Comment Period (Oct. 9, 2023) (eDocket No. 202310-199443-01) (the “Notice”). The Notice sets forth four topics for comment by stakeholders: “(1) Should the Commission approve Xcel’s proposal? (2) Is Xcel’s proposal in the public interest? (3) If the Commission is to move the ARR-era gardens to the value-of-solar [(“VOS”)], should all gardens be placed on the 2017 VOS vintage beginning April 1, 2024 as Xcel has proposed? And (4) Are there any other issues or concerns related to this matter?” After various procedural requests, initial comments are now due on January 8, 2024, and reply comments are due on January 22, 2024. Notice of Extended Comment Period (Nov. 29, 2023) (eDocket No. 202311-200806-01).

² Compliance Filing by Xcel (Sept. 25, 2023) (eDocket No. 20239-199127-01) (“Petition” or “Proposal”).

impacts of maintaining the existing ARR program structure, and will detrimentally impact future CSG and general energy investment in the state.

NG Renewables urges the Commission to consider the following factors as it conducts its public interest analysis. First, when enacted, Minn. Stat. § 216B.1641 (the “CSG Statute”) was part of sweeping legislation designed to promote the solar industry and increased solar generation in Minnesota, including the creation of the CSG program. Due to the desire to advance CSGs in short order, the legislature determined that the ARR should be used to compensate early subscribers while the Commission and other stakeholders worked to create a realistic VOS rate. Xcel’s Petition now seeks to harm early subscribers and other participants who relied upon the Commission’s guidance via orders and other assurances when determining to invest in solar technology.

Second, though Xcel continues to emphasize impacts to ratepayers, these impacts should be contextualized by a comparison to Xcel’s other investments impacting ratepayers. NG Renewables is sensitive to ratepayer concerns and understands the impact that electricity costs have on ratepayers. While NG Renewables understands that Xcel projects \$63 million in ratepayer savings from this proposed change, those savings should be considered amongst various other factors, including but not limited to: (a) the relatively small percentage these savings achieve in comparison to Xcel’s overall rate base; and (b) other potential impacts of granting the Petition. On balance, these factors weigh in favor of denying Xcel’s Petition as contrary to the public interest.

Third, if granted, Xcel’s Petition will likely chill future investment in Minnesota. The CSG Statute charges the Commission to implement a program that “reasonably allows for the creation, financing, and accessibility of community solar gardens.” In recognition of that charge, the

Commission determined that the ARR was appropriate for the pre-2017 CSGs. Now, Xcel's Petition undermines these foundational assumptions that investors relied upon when investing in ARR-era CSGs in the state. Reaching back and devaluing these investments will erode confidence and negatively impact future solar investment in the state. This is contrary to the CSG Statute and the public interest.

For the reasons highlighted above and fully analyzed herein, the Petition has the potential to cause meaningful harm to the state. NG Renewables respectfully requests that the Commission reject Xcel's proposal, finding that shifting the ARR gardens to the 2017 VOS is contrary to the public interest.

BACKGROUND

NG Renewables has been and continues to be a supporter of the CSG program. Over the last decade, NG Renewables is proud of its work to develop, build, and secure financing for 71 solar gardens that provide 70.87 megawatts of carbon-free, renewable energy to the state on an annual basis³

The CSG Statute creates a structure for utility customers to subscribe to a CSG and be credited from the incumbent utility for energy, capacity and RECs generated by the CSG.⁴ In approving the CSG program, the Commission, among other things, must reasonably allow for the creation, financing, and accessibility of CSGs and ensure the public interest is satisfied.⁵ This legislative mandate requires the Commission to balance many, sometimes competing, factors, which create implementation challenges. For example, Xcel's initial petition for the CSG program

³ In addition, National Grid Renewables developed and subscribed 100 MW of CSGs that were sold to another project owner.

⁴ A CSG "must be designed to offset the energy use of not less than five subscribers in each community solar garden facility of which no single subscriber has more than 40 percent interest...CSGs are allowed a maximum nameplate capacity of one megawatt." Minn. Stat. § 216B.1641 (a)-(b).

⁵ Minn. Stat. § 216B.1641(e).

was rejected by the Commission, which determined that aspects of Xcel's filing were "contrary to the public interest, and that the proposed rate was not sufficient to allow for the financing and creation of gardens."⁶

When the CSG program was eventually approved by the Commission, the Commission debated the benefits of both the ARR and VOS, eventually determining that the ARR was the appropriate methodology for initial CSGs.⁷ In making that determination, the Commission made at least two key findings: first, that the ARR provided greater predictability, which supported the ability to finance CSGs; second, that the "solar-garden projects approved under the applicable retail rate *should be credited at the applicable retail rate in place at the time of energy generation for the duration of the 25-year contract.*"⁸ The Commission recognized that the contracted applicable retail rate, though subject to some amount of percentage change (based on commensurate changes in the retail rates to utility ratepayers from time to time) would provide stability for investments and would more likely increase rather than decrease over time. The CSG program eventually transitioned to the VOS for CSGs that were deemed complete after December 31, 2016. When making that conversion, the Commission determined that such changes should occur "prospectively" to avoid "undermin[ing] the viability of existing applications."⁹ Both the 2014 Order Accepting the ARR and the Order accepting the VOS indicate that the Commission intended that VOS should only be applied to solar gardens applying in 2017 or later.

Given the above, NG Renewables understands that the proposed transition from ARR to VOS would only apply prospectively. No new gardens are being built and compensated based on

⁶ Order Rejecting Xcel's Solar-Garden Tariff Filing and Requiring the Company to File a Revised Solar-Garden Plan at 7 (Apr. 7, 2014) (eDocket No. 20144-98041-01) ("2014 Order").

⁷ Order Approving Solar-Garden Plan with Modifications at 9 (Sept. 17, 2014) (eDocket No. 20149-103114-01) ("Initial Approval Order").

⁸ Id. (emphasis added).

⁹ Order Approving Value-of-Solar Rate for Xcel's Solar-Garden Program, Clarifying Program Parameters, and Requiring Further Filings at 14 (Sept. 6, 2016) (eDocket No. 20169-124627-01) ("2016 Order").

the ARR, and no ARR subscriber will be forced to pay back ARR-VOS rate differentials from years past. However, we believe that there should be a substantive discussion on the impact of a rate decision that significantly modifies the long-term expectations investors had when they made the decision to invest in the CSG program. NG Renewables notes that when gardens were constructed, Commission mandates and perceived regulatory stability around the applicable retail rate informed the construction, financing, and forecasted operations of the projects. The financing assumptions that were acted upon when these gardens were acquired and constructed were based on the information that these gardens would remain on the ARR for the duration of the 25-year contract.

ANALYSIS

A. Xcel's Petition is Not in the Public Interest and Should Be Rejected

1. Legislative Intent

In 2013, the Minnesota Legislature passed, and Governor Mark Dayton signed, sweeping legislation designed to jump start the solar industry in Minnesota.¹⁰ Solar, unlike many other generation technologies, is broadly scalable, from small rooftop panels to large solar farms comprised of hundreds of MW. The legislation touched on all potential size ranges of solar projects, from incentives for rooftop owners to a statewide mandate for large-scale solar farms. It also touched on manufacturing of solar panels in Minnesota, and it established Xcel's CSG program.

The CSG program passed by the legislature was unique in many ways. First, the program would be comprised of small solar projects, 1 MW or less, so somewhere on the lower end of size spectrum for solar. Second, it was to be connected directly to Xcel's distribution network,

¹⁰ MN Laws 2013, Chapter 85.

bypassing complex and expensive transmission interconnection processes, enhancing reliability, reducing interconnection costs, and placing the generation closer to the load. As such, the legislation also promoted a VOS rate that would reflect all of the benefits the project would bring to Xcel's customers. Further, the participation in the program would come through customer subscriptions, with the CSG output being delivered to Xcel Energy and Xcel providing payment to the subscribers in the form of bill credits. Because the legislature wanted this program to advance quickly, it determined that while the Department of Commerce and the Commission were working out the methodology for the VOS rate, subscribers would be compensated at the ARR, meaning, the retail rate established by the Commission for the subscriber's customer class.

Because the legislature understood that a longer term and price stability would be important to attracting investment in CSGs in the state, it stated that the length of the subscriber's contract for their CSG subscription would be at least 20 years (the Commission eventually set the contract term at 25 years). The framework of this legislation informed the Commission's implementation of the CSG program and the ARR.

The existence of so many mandates, incentives and programs built into this bill is also evidence that the legislators knew that the cost of CSGs and indeed, solar in general, was higher than the cost of other new power generation at the time. The intent of the law was, among other things, to incent the citizens and businesses in Minnesota and elsewhere to invest in solar in the state. Only with this initial investment in the industry would economies of scale for solar increase and prices decline. Therefore, the incentives in the bill, including the rates for CSGs, were carefully calculated to bring about growth in the nascent industry.

2. Xcel's Proposal Implicates Retroactive Ratemaking Concerns.¹⁰

NG Renewables is concerned that shifting ARR-era CSGs to the VOS constitutes retroactive ratemaking. NG Renewables is aware that the Commission has attempted to address this issue in previous proceedings in this docket; however, the facts presented in this instance are distinct from those previously analyzed by the Commission. The Commission previously stated:

the modified ARR calculation approved for 2023 does not constitute retroactive rate making because the changes only apply prospectively to bill credits for energy that will be produced and purchased after Xcel files updated tariffs that incorporate the modifications approved by this order. Similarly, the plain language of the tariffed Standard Contract specifically notes that the rates for subscribed energy shall be changed annually or as provided by order of the Commission.¹¹

While NG Renewables does not necessarily agree with the Commission’s finding above, there are important distinctions presented here that more strongly implicate retroactive ratemaking concerns. The Proposal seeks the complete overhaul of the bill credit metric (ARR to VOS), which was put in place years ago and which informed the basis of the financing, developing, and subscribing of these CSGs.¹² Though the Commission has previously taken the position that the Standard Contract allows it to change rates annually, it would be illogical to extend these changes to the complete shift contemplated here. Allowing these changes would violate retroactive ratemaking principles, and NG Renewables is concerned that these changes will have longer-term impacts in Minnesota and for future competitive generation for investor-owned utilities (“IOUs”), which are described below.

This change will also impact garden owners. Because their information at the time of investment was that the ARR would be available for the full 25-year contract, the potential reduced payments as a result of a change may make it more difficult for them to service their loans and

¹¹ Order Adopting 2023 ARR and Requiring Additional Filing at 9 (June 27, 2023) (eDocket No. 20236-196933-01).

¹² Initial Approval Order at 9. The “solar-garden projects approved under the applicable retail rate *should be credited at the applicable retail rate in place at the time of energy generation for the duration of the 25-year contract.*”

operate and maintain their CSGs. The result could mean bankruptcy, contract defaults, litigation and the shutting down of CSGs.

3. Transitioning ARR Gardens to the VOS May Chill Investment in the State

In approving and facilitating the CSG program, the CSG statute requires that any approved program “must reasonably allow for the creation, *financing*, and accessibility of community solar for securing financing.”¹³ When implementing the VOS, the Commission determined that such changes should occur “prospectively” to gardens deemed complete after December 31, 2016 to avoid “undermin[ing] the viability of existing applications.”¹⁴ Here, Xcel asks the Commission to defy that logic and shift existing ARR CSGs to the VOS. NG Renewables is deeply concerned that this request will have an immediate and detrimental impact on developers’ ability to secure financing for any future generation project in which output is being sold to a Minnesota IOU.

Shifting ARR CSGs to the VOS will likely make financing future projects difficult and expensive. When CSGs were developed, the capital costs were paid with 25-year investments that are premised upon the use of the ARR throughout the life of the garden.¹⁵ Financers, tax equity investors and buyers of CSGs relied on these assumptions to determine lending rates, sizing of investments and appropriate purchase prices. Changing these fundamental assumptions mid-contract could alienate these participants, who may assess that they cannot reasonably rely on Commission Orders when trying to develop or fund a new generation project for Minnesota IOUs.¹⁶ In other words, stakeholders will not know how to assess or finance potential projects

¹³ 2016 Order at 8; *citing* 2014 Order at 15.

¹⁴ 2016 Order at 14; *see also* Initial Approval Order at 9.

¹⁵ *See* Initial Approval Order at 9.

¹⁶ To be clear, retroactively changing the ARR gardens to the VOS does not equate to the annual adjustments made to the ARR year-over-year. Transitioning to the VOS represents a paradigm shift that will fundamentally change transform the economics of these CSGs.

because there will be little certainty that the underlying terms will not change during the payback period. Additionally, by injecting added uncertainty into the regulatory approval of new generation projects, new projects could be forced into higher-rate, more costly financing arrangements. These changes will likely result in increased rates for utility ratepayers and could eventually eliminate future projects. The Commission should exercise extreme caution when potentially making a decision that could erode confidence in the competitive generation market longer term. Speaking in terms of typical regulatory decisions, Xcel's proposed change would be similar to the Commission disallowing 20% of the cost of a utility's generating plant in rate base, several years after it had been approved. The impact of such a move on the IOU's share price and future financing options would be immediate and severe.

Again, the CSG Statute requires that the Commission approve a program that allows CSGs to be financeable. Xcel's proposal runs afoul of this statutory mandate and could erode future construction of competitive generation, including any additional CSGs. Further, this degree of uncertainty could also cause Xcel's cost of capital to increase, thus reducing or even reversing the purported \$63 million of ratepayer savings. NG Renewables urges the Commission to maintain the status quo by refraining from disturbing existing CSGs and the underlying finance agreements. As the Commission is aware, renewable energy projects, including CSGs are eligible to claim federal income tax credits and accelerated depreciation benefits. These tax incentives have spurred the growth of renewable energy across the country as most projects would not have been economical to construct without the tax benefits. Developers generally are not able to take advantage of these tax benefits and must partner with a third-party tax equity investor to invest in the project and claim the credits. Competition for this investment is fierce, and these investors

require certainty around contracted project revenues. Therefore, it is unlikely that they would choose to deploy capital in Minnesota under such an environment.

4. Xcel's Proposal Will Harm Early Subscribers to the CSG Program

Minnesota is in the midst of its energy transition. In 2023, the Minnesota Legislature updated Minnesota's carbon-free electricity standard, requiring that 100% of electricity generation be generated by a carbon-free technology by 2040.¹⁷ This impressive goal was made possible by initiatives like the CSG program, which provided various stakeholders with their first experience with renewable electricity. While credit is due to the developers and the utility, oftentimes subscribers are overlooked, and moving the existing ARR CSGs to the VOS will harm early adopters of the CSG program, undercutting the state's encouragement of renewable electricity.

CSG subscribers are a diverse group with many participants, all of whom took risks to participate in the early CSG program. Xcel pushes the narrative that CSGs are solely utilized by large commercial customers; however, NG Renewables' ARR CSGs' subscribers include cities, counties, schools, churches, and other non-profit organizations. These subscribers signed 25-year agreements with the expectation that bill credits would be close to their existing electricity bills. Xcel's Proposal will alter these already-stretched budgets, forcing these organizations to potentially cut other supplies, staff, and/or services investments. NG Renewables understands that many of these subscribers have or will submit comments describing their experiences and the potential impacts of Xcel's Proposal. The Commission should carefully consider their perspectives.

5. The Impacts to Non-Subscribers Should Be Analyzed Within the Context of Xcel's Overall Rate Structure and Rate Base

¹⁷ Minnesota 2023 Session Laws, Ch. 7, H.F. No. 7 ("2023 Legislation").

NG Renewables is sensitive to ratepayer interests and understands that the Commission takes customer rates seriously. While appreciative of the Commission’s awareness of customer impacts, it is necessary to provide additional context to the rate impacts outlined by Xcel in the Petition. Xcel’s portrayal of detrimental rate impacts fails to account for its contributions to increasing customer rates. NG Renewables respectfully asserts that, when placed into the context of Xcel’s overall rate base and customer rates regime, the potential non-subscriber savings associated with retroactively shifting ARR CSGs to the VOS do not outweigh the real public interest concerns outlined in this comment.

In comparison to Xcel-driven rate increases, the ARR CSGs have less of an impact on ratepayers. Xcel projects that the Proposal will save ratepayers approximately \$63 million annually through bill credits collected through the fuel adjustment clause.¹⁸ While NG Renewables does not seek to diminish these impacts, when placed into the context of Xcel’s recent rate case filing and overall rate base, the proposal does not significantly shift costs. In its last rate case, Xcel initially requested the following three-year incremental rate increases: \$395.97 million (2022); \$150.51 million (2023); and \$131.24 million (2024), for a total rate increase of more than 20% over those three years.¹⁹ Though Xcel did not receive 100% of the requested amounts, as proposed, Xcel’s total requested rate base was approximately \$10.931 billion.²⁰ For the sake of comparison, estimating Xcel’s current rate base as \$10 billion, the projected \$63 million of annual CSG savings are approximately 0.6% of Xcel’s overall rate base. Xcel further projects that the Proposal “could mean savings of over \$1 billion for non-subscribing customers” over the

¹⁸ Petition at 4.

¹⁹ *In the Matter of the Application of Northern States Power Company, dba Xcel Energy, for Authority to Increase Rates for Electric Service in State of Minnesota*, MPUC Docket No. E-002/GR-21-630, Findings of Fact, Conclusions, and Order at 1 (July 17, 2023).

²⁰ *In the Matter of the Application of Northern States Power Company, dba Xcel Energy, for Authority to Increase Rates for Electric Service in State of Minnesota*, MPUC Docket No. E-002/GR-21-630, OAH Docket No. 22-2500-37994, Direct Testimony of Nancy A. Campbell at 13 (Oct. 3, 2022).

remaining life of ARR CSGs;²¹ however, as Xcel's rate base will likely continue to increase, the ratio of CSG costs to overall rate base will likely decline over this projected time period as well. In other words, the rate increases described in the Petition are not driving increases to ratepayers.

Further, we believe that the "bill credits" that customers receive should be recognized for what they are: the cost of purchased power. The CSG structure is not simply the transfer of money from one Xcel ratepayer to another, rather, it is all ratepayers paying for the cost of Xcel purchasing the capacity, energy, and RECs from the CSGs. CSG subscribers may be Xcel ratepayers, but they are also power producers that are delivering power to Xcel. Over time, Xcel has signed many power purchase agreements, which are at various times both higher and lower than the prevailing market price. These are understood to be long- or short-term arrangements to ensure the availability of capacity and/or energy, and rate stability, to serve customers over the long term. The Commission does not evaluate those purchases mid-contract and change the price Xcel is allowed to recover simply because market conditions have changed. In this case, CSG subscribers are causing power to be sold to Xcel over a 25-year period, and those arrangements, which were put in place by the Minnesota Legislature and Governor, should be treated like any other purchased power contract.

To be clear, NG Renewables understands the Commission's desire to manage ratepayer impacts to achieve affordable rates for customers. There is no denying that Xcel's Proposal does reduce costs for non-subscribing ratepayers. However, to fully make a public interest determination, the Commission should also consider both the positive impact of the CSG program and accessible renewable electricity, the impact to ARR-era CSG subscribers, and the potential that retroactively upending the ARR CSGs capital structure may harm the ability to continue

²¹ Petition at 5.

operating current CSGs and to secure financing for future generation projects. On balance, the weight of these factors demonstrates that Xcel's Proposal is not in the public interest. Therefore, NG Renewables requests that the Commission deny the Petition to transition ARR-era gardens to the VOS.

CONCLUSION

NG Renewables is grateful for the opportunity to submit this initial comment. The evidence and arguments outlined in this comment demonstrate that Xcel's Proposal to shift ARR-era CSGs to the VOS is contrary to the public interest. NG Renewables, therefore, urges the Commission to reject Xcel's Petition.

Respectfully submitted,

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