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

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

**REPLY COMMENTS OF THE
MINNESOTA DEPARTMENT
OF COMMERCE**

INTRODUCTION

The Minnesota Department of Commerce respectfully submits the following reply comments in response to the Commission's October 11, 2024 comment period notice. Having reviewed initial comments and met with interested stakeholders on November 15, the Department continues to recommend that the Commission: (1) direct Xcel Energy to use the term "capacity" in the low- to moderate-income-accessible ("LMI") standard community solar garden ("CSG") contract; (2) incorporate a "battery energy storage system" definition in the contract; (3) treat the contract as an addendum or component of Xcel's electric service tariff; and (4) reject one of the proposed revisions to the "Bill Credit Rate" definition.

ANALYSIS

I. THE LMI STANDARD CONTRACT SHOULD USE "CAPACITY" IN THE RELEVANT SECTIONS.

In initial comments, the Department recommended that the Commission direct Xcel to use the term "capacity" in the relevant sections of the LMI standard contract.¹ Based on a November

¹ DOC Initial Cmts. at 3-5 (Nov. 12, 2024) (eDocket No. [202411-211819-01](#)).

15 meeting with stakeholders, the Department understands that there is a general consensus among stakeholders that “capacity” as opposed to “nameplate capacity” is the appropriate term to use in the contract. Based on that discussion, the Department recommends the following changes to the contract and associated tariff:

Sheet 9-99.02:

“Community Solar Garden Allocation” or “CSG Allocation” shall mean the monthly allocation, stated in Watts direct current (DC) as a portion of the total DC nameplate capacity of the PV generating portion of the Community Solar Garden, applicable to each Subscriber’s Subscription reflecting each Subscriber’s allocable portion of photovoltaic electricity produced by the Community Solar Garden in a particular Production Month.

Sheet 9-99.08

9. Disclosure of Community Solar Garden Information. The Company may publicly disclose the Community Solar Garden Location, Subscriber Organization, ~~nameplate~~ capacity and generation data of the Community Solar Garden. . . .

Sheet 9-99.17

f. The Company may publicly post the following information about each interconnection application submitted by projects whose interconnection application was submitted in the area of the Company’s portal for Community Solar Garden applications: Community Solar Garden location (city and county), name of the owner of the Community Solar Garden, ~~Nameplate~~ Capacity, application identification number, then-current estimated in-service date as of date of posting information if one has been derived, feeder name, whether or not a feeder upgrade is expected to be required for the specific application, initial indicative cost estimate as set forth in the interconnection agreement, date of signed interconnection agreement, and whether or not the application is in commercial operation. . . .

Sheet 9-99.28

The Subscriber Organization is the operator of a Community Solar Garden with an established or planned solar photovoltaic electric generating facility with a ~~nameplate~~ capacity of _____ kilowatts of alternating current (AC), on property located at _____ (“Community Solar Garden”). . . .

Sheet 9-99.29

“Community Solar Garden Allocation” or “CSG Allocation” shall mean the monthly allocation, stated in Watts direct current (DC) as a portion of the total DC nameplate capacity of the PV generating portion of the Community Solar Garden, applicable to each Subscriber’s Subscription reflecting each Subscriber’s allocable portion of photovoltaic electricity produced by the Community Solar Garden in a particular Production Month.

Sheet 9-99.35

9. Disclosure of Community Solar Garden Information. The Company may publicly disclose the Community Solar Garden Location, Subscriber Organization, nameplate capacity and generation data of the Community Solar Garden. . . .

Sheet 9-99.43

A Standard Contract for LMI Accessible Community Solar Garden Program, including any amendments thereto approved by the Minnesota Public Utilities Commission (“Contract”) having been made as of [insert date of underlying Contract] (a copy of which is attached hereto), by and between Northern States Power Company, a Minnesota corporation, having its principal office and place of business located at 414 Nicollet Mall, Minneapolis, Minnesota, 55401, hereinafter referred to as the Company, and [insert name of current party to the Contract _____] (“Assignor”) for a Community Solar Garden with a nameplate capacity of ____ kW (AC) located at [_____] insert address _____]; and

As shown above, the Department largely recommends removing references to nameplate capacity except in connection with the “Community Solar Garden Allocation” definition. The Department understands that Xcel’s system is designed to measure monthly allocations in Watts direct current (“DC”). The statutory definition of “capacity,” however, is measured in alternating current (“AC”).² As a result, using “capacity” in the definition of “Community Solar Garden Allocation” would create an incongruity between the definition and Xcel’s system. To resolve any

² Minn. Stat. § 216B.164, subd. 2a(c) (2024).

confusion, the Department recommends inserting “DC” into the phrase “total nameplate capacity” and clarifying it is only a measurement of the “PV generating portion” of the garden.

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

For the reasons discussed in the Department’s initial comments, the Commission should direct Xcel to incorporate a “Battery Energy Storage System” definition into the LMI standard contract.³ Again, based on a November 15 meeting with stakeholders, the Department understands there is some agreement that a battery storage definition should be incorporated into the contract. Below are the specific changes recommended by the Department:

Sheet 9-99.01

“Battery Energy Storage System” or “BESS” shall mean a commercially available technology that uses chemical processes to store energy generated solely from the Community Solar Garden, and deliver the stored energy for sale or use at a later time. The parties agree the stored energy in the BESS may not include utility system energy.

Sheet 9-99.03

“PV System” shall mean the solar electric generating facility to be located at the Community Solar Garden, including the photovoltaic panels, inverter, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, BESS, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the photovoltaic energy subject to this tariff.

Sheet 9-99.28

“Battery Energy Storage System” or “BESS” shall mean a commercially available technology that uses chemical processes to store energy generated solely from the Community Solar Garden, and deliver the stored energy for sale or use at a later time. The parties agree the stored energy in the BESS may not include utility system energy.

³ DOC Initial Cmts. at 5-6.

Sheet 9-99.30

“PV System” shall mean the solar electric generating facility to be located at the Community Solar Garden, including the photovoltaic panels, inverter, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, BESS, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the photovoltaic energy subject to this tariff.

This “Battery Energy Storage System” definition is slightly different than what Xcel included in its September 26 filing.⁴ These changes are necessary to preclude battery systems from storing electricity obtained from the grid as opposed to the solar garden. Allowing battery systems to store grid electricity would create several problems.

Grid-sourced electricity by definition has not been generated by the Department-approved LMI community solar garden (“CSG”). It, therefore, would not be eligible for the CSG compensation rate under state law.⁵ Even if the electricity could be sold through the LMI program, permitting grid-sourced electricity would allow developers to engage in energy arbitrage by purchasing electricity from the grid and then later re-selling it to the utility at the higher CSG program rate. Moreover, the LMI standard contract requires developers to convey the renewable energy credits (“RECs”) generated from the garden’s solar production to Xcel.⁶ Grid-sourced electricity, however, is unlikely to be REC-eligible because the electricity will not be exclusively

⁴ Xcel Cmt. Period Request at 3 (Sept. 26, 2024) (eDocket no. [20249-210507-01](#)) (“‘Battery Energy Storage System’ or ‘BESS’ shall mean a commercially available technology that uses chemical processes to store energy, including energy generated from renewable resources and energy that would otherwise be wasted, and deliver the stored energy for use at a later time.”).

⁵ Minn. Stat. § 216B.1641, subd. 8(a) (2024) (“A utility must purchase electricity *generated by* a community solar garden . . .”) (emphasis added).

⁶ See Sheet 9-99.06, .33 (“All RECs associated with the Subscribed Energy and Unsubscribed Energy produced before and during the Term of the Standard Contract for LMI Accessible Community Solar Garden Program shall be assigned to the Company.”).

derived from an eligible energy technology.⁷ The upshot is that permitting battery storage systems coupled to CSG projects to store grid energy would create a host of legal and public policy problems. The Commission can avoid those issues by directing Xcel to adopt a definition that precludes grid electricity storage.

III. THE LMI STANDARD CONTRACT IS PART OF XCEL'S ELECTRIC SERVICE TARIFF.

The Department continues to recommend that the Commission reject proposed edits to the LMI standard contract that would purport to make the contract a free-standing agreement independent of the tariff.⁸ Nokomis Energy and Cooperative Energy Futures, in contrast, jointly identify two reasons that the contract should not be incorporated into Xcel's tariff.⁹

First, Nokomis Energy and Cooperative Energy Futures assert that the contract should not be part of Xcel's tariff because the Department administers the LMI program and not Xcel.¹⁰ This argument misses the point. The LMI program is a regulated service offering. The terms and conditions governing the LMI program participation, as a result, should be codified in Xcel's electric tariff as a matter of law.¹¹ Far from inhibiting the Department (or the Commission), including the LMI standard contract in Xcel's tariff facilitates regulatory oversight of the program.¹²

Second, Nokomis Energy and Cooperative Energy Futures expressed concern that incorporating the LMI standard contract into Xcel's tariff could be commercially detrimental in

⁷ See Minn. Stat. § 216B.1691, subd. 4; *In re Comm'n Investigation into a Multi-State Tracking and Trading System for Renewable Energy Credits*, Docket No. E999/CI-04-1616, ORDER APPROVING MIDWEST RENEWABLE ENERGY TRACKING SYSTEM (Oct 9, 2007) (eDocket No. [4796099](#)).

⁸ DOC Initial Cmts. at 6-7.

⁹ Jt. Initial Cmts. at 4 (Nov. 12, 2024) (eDocket No. [202411-211861-01](#)).

¹⁰ *Id.*

¹¹ DOC Initial Cmts. at 6-7.

¹² See generally Minn. Stat. §§ 216A.05, subd. 2(2), .07, subd. 2, 216B.05.

the event of tariff changes.¹³ Striking language that acknowledges the relationship between the LMI standard contract and Xcel's tariff will not make the LMI standard contract a free-standing agreement. As a matter of law, the contract is part of the tariff.¹⁴ The Commission should reject the proposal to excise the language "This Contract is part of the associated tariff" from the provisions below.

Sheet 9-99.01

"Community Solar Garden" or "LMI Accessible Community Solar Garden" program unless context indicates otherwise means the same as "Community solar garden" as defined in Minn. Stat. § 216B.1641, Subd 2(c), and the term associated tariff" shall mean the Company tariff associated with that program unless if context indicates otherwise. ~~This Contract is part of the associated tariff.~~ The associated tariff is part of the electric tariff of the Company.

Sheet 9-99.28

"Community Solar Garden" or "LMI Accessible Community Solar Garden" program unless context indicates otherwise means the same as "Community solar garden" as defined in Minn. Stat. § 216B.1641, Subd 2(c), and the term associated tariff" shall mean the Company tariff associated with that program unless if context indicates otherwise. ~~This Contract is part of the associated tariff.~~ The associated tariff is part of the electric tariff of the Company.

While the Department disagrees with Nokomis Energy and Cooperative Energy Futures about striking the language, the Department appreciates that developers need regulatory certainty to access capital, enter long-term agreements, and operate successfully. To that end, the Department believes the Commission should exercise caution in approving tariff changes that have significant financial consequences for any interested stakeholder, including non-participating ratepayers, subscribers, and project developers.

¹³ Jt. Initial Cmts. at 4.

¹⁴ Minn. Stat. § 216B.05, subds. 1-2.

IV. OTHER ISSUES – THE COMMISSION SHOULD REJECT A PROPOSED CHANGE TO THE “BILL CREDIT RATE” DEFINITION.

Finally, the Department continues to recommend that the Commission reject a proposed change to the “Bill Credit Rate” definition either as shown in Xcel’s initial filing or as revised in initial comments filed by Nokomis Energy and Cooperative Energy Futures.¹⁵

Xcel Initial Filing

“Bill Credit Rate” shall mean the then current applicable Average Retail Rate as found in the Company’s rate book applicable to the LMI Accessible Community Solar Garden Program, which is consistent with Minn. Stat. § 216B.1641, subd. 8. . . . Once a bill credit applies, that Bill Credit applies for the term of the Contract.

or

Nokomis Energy/Cooperative Energy Futures Alternative

“Bill Credit Rate” shall mean the then current applicable Average Retail Rate as found in the Company’s rate book applicable to the LMI Accessible Community Solar Garden Program, which is consistent with Minn. Stat. § 216B.1641, subd. 8. . . . Upon execution of the Contract, the Average Retail Rate shall not change for the term of the Contract.

This proposed change, as clarified by Nokomis Energy and Cooperative Energy Futures, appears to be an attempt to challenge the Commission’s authority to adjust the CSG compensation rate. The Commission should reject this language. Regardless of the contract’s contents, the contract can neither bind the Commission as a non-party to the agreement nor preclude it from exercising its statutory authority. Moreover, the language appears unnecessary given that Minn. Stat. § 216B.1641, subd. 8, is highly prescriptive, identifying the applicable rate by subscriber type. Although this language is unlikely to have a meaningful effect, its inclusion in the LMI standard contract could confuse contracting parties about the nature of their agreement.

¹⁵ Jt. Initial Cmts. at 4; Xcel Cmt. Period Request at 4.

CONCLUSION

In summary, the Department recommends that the Commission:

- (a) Direct Xcel to use the term “capacity” in the LMI standard contract as shown in the red-lines above;
- (b) Direct Xcel to incorporate a “Battery Energy Storage System” definition into the LMI standard contract as shown in the red-lines above;
- (c) Reject proposed edits that would purport to make the LMI standard contract a free-standing or independent agreement; and
- (d) Reject the inclusion of either “Once a bill credit applies, that Bill Credit applies for the term of the Contract” or “Upon execution of the Contract, the Average Retail Rate shall not change for the term of the Contract” in the “Bill Credit Rate” definition.

Dated: November 26, 2024

Respectfully submitted,

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