

## Staff Briefing Papers

<b>Meeting Date</b>	<b>January 23, 2025</b>	<b>Agenda Item 3**</b>
<b>Company</b>	Northern States Power Co. d/b/a Xcel Energy	
<b>Docket No.</b>	<b>E002/CI-23-335</b>	
	<b>In the Matter of Implementation of 2023 Legislative Changes to Xcel Energy's Community Solar Garden Program.</b>	
<b>Issues</b>	Should the Commission approve the changes to the LMI Standard Contract agreed to by Xcel and Stakeholders, and what action should the Commission take regarding changes that did not have agreement?	
<b>Staff</b>	Nikki Brown-Huss	Nikki.brown-huss@state.mn.us 651-201-2255

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✓ Relevant Documents	Date
Xcel Energy – Request for Comment Period	September 26, 2024
MN Public Utilities Commission – Notice of Comment Period	October 11, 2024
<b><u>Initial Comments</u></b>	
Nokomis Energy	November 12, 2024
Xcel Energy	November 12, 2024
Department of Commerce	November 12, 2024
<b><u>Reply Comments</u></b>	
Nokomis Energy	November 26, 2024

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

✓ **Relevant Documents**  
MnSEIA  
Xcel Energy  
Department of Commerce

**Date**  
November 26, 2024  
November 26, 2024  
November 26, 2024

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## BACKGROUND

On May 24, 2023, the Legislature amended Minn. Stat. § 216B.1641, ending the existing Community Solar Garden (CSG) program (legacy program), and adding a new, non-legacy CSG program with different requirements. The amended statute directed the Department of Commerce (Department) to open and administer the new CSG program, called the Low- and Moderate-Income (LMI) Accessible Program, beginning January 1, 2024.

On July 26, 2023, the Commission issued a notice of comment period regarding what actions the Commission should take to implement the amended statute. Xcel filed a response on August 28, 2023, along with a proposed tariff modification implementing its response. On December 28, 2023, the Commission issued its order on the matter, including a requirement that Xcel submit an updated compliance tariff within 30 days.

The December 28, 2023 Order established that the updated tariff compliance filing would take effect 20 days after it was filed unless objections were filed before that time. Xcel submitted its updated tariff eight days after the order was issued, on January 5, 2024. By January 25, 2024, the Commission received objections to Xcel's amended tariff filing. These comments prevented the tariff revisions from taking effect. On April 4, 2024, the matter came before the Commission.

The May 30, 2024 Order on the matter stated in Order Point 3:

Xcel and interested stakeholders must develop and file a standard contract governing the terms and conditions for the purchase of power exported by the CSG operator to Xcel under the non-legacy CSG program for Commission approval within 30 days of this order.

Xcel filed a letter with the Commission on July 23, 2024, announcing a stakeholder meeting to be held on August 28, 2024, to discuss additional potential changes to the Standard Contract on some areas where the parties were not in agreement. Xcel also provided communication of this date via email which was sent to CSG developers and other interested participants.

The stakeholder meeting was held on August 28, 2024, with 53 participants attending. Based on the discussion, participants agreed to some changes to the LMI Standard Contract but did not reach agreement on other proposed changes. The participants agreed to recommend that the Executive Secretary open a comment period to address those potential changes to the LMI Standard Contract that were discussed during the stakeholder meeting but not agreed upon. This would allow additional information and feedback before the Commission makes a final decision.

On September 26, 2024, Xcel formally requested a comment period to address the LMI Standard Contract issues that were not agreed upon. The Commission issued a Notice of Comment on October 11, 2024 to address those issues and any others the parties had related

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to this matter.

## DISCUSSION

### Consensus Items

The following modifications to the LMI program Standard Contract were agreed to by Xcel and the various stakeholders.

Xcel Tariff Sheet No. 9-99.28

Page 1 – Adjust the definition for Bill Credit Rate as shown in redline: “The Average Retail Rate includes ~~all~~ compensation for all energy, capacity, and RECs associated with Subscribed Energy.”

Xcel Tariff Sheet 9-99.31

Page 3 – Adjust the definition of Subscriber Management System as shown in redline: “... the Company accepts and manages interconnection applications for the LMI Accessible Community...”

Xcel Tariff Sheet 9-99.32

Page 4 – Update the first sentence in 1.B as shown in redline: “A copy of the presently filed LMI Accessible Community Solar Garden Program associated tariff of the Company’s rate book is ~~incorporated by reference~~ attached to this contract.”

Xcel Tariff Sheet 99.37

Page 8 – Adjust C.3. as shown in redline: “The Company is under no obligation to audit, validate, or correct any information provided by the Subscriber Organization. In the event that the Subscriber Organization provides information, with a result that the Bill Credits provided were ~~too high~~ higher than would have been authorized had correct information been entered, then ~~the Subscriber Organization needs to promptly make payment to the Company within 30 days of demand of the overpayments~~ the Company shall provide the Subscriber Organization with a written Notice of the overpayment and upon receipt these amounts will be credited to the fuel clause. The Subscriber Organization shall have up to thirty (30) days to cure the overpayment of bill credits. If the overpayment is not cured within the thirty (30) days, the Company may utilize the procedures set forth in Section 15.

Xcel Tariff Sheet 99.38

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Page 9 – Adjust Remedies for Breach as shown in redline: “In the event of any breach of this Contract by ~~the Subscriber Organization~~ either Party, then the ~~Company~~ other Party shall have available to it any other remedy provided for in this Contract and any or all of the following remedies which can be used either singularly or cumulatively.”

All parties have agreed to these changes and deemed them fair and appropriate. Staff has no objections. **(Decision Option 1)**

### **Relationship between the Tariff and the LMI Standard Contract**

The tariff for the LMI CSG program is at Xcel Electric tariff sheets 9-99.01 through 9-99.44, with the LMI Standard Contract being at tariff sheets 9-99.32 through 9-99.42. There is a great deal of overlap between the general provisions of the LMI tariff and the tariffed LMI Standard Contract. Many of the provisions are carried over word for-word so that the tariffed contract matches the general tariff.

In Xcel’s September 26, 2024 filing, the tariff language states, in the event of any conflict between the terms of the LMI Standard Contract and the Xcel’s electric tariff, the tariff provisions would control.

The parties disagree over the following proposed tariff language as noted in the redline:

Page 1 - “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.<sup>1</sup>

Xcel states “the tariffed Legacy CSG Standard Contract is part of the Legacy CSG tariff, and putting the LMI Standard Contract in the tariff aligns with this historical practice for CSGs as set forth by prior Commission Orders. This practice further aligns with state statute that provides that except as otherwise modified, replaced, or superseded by specific LMI CSG statutory provisions, any Commission Order that applies to the Legacy CSG program also applies to the LMI CSG program. (Minn. Stat. §216B.1641, Subd. 3).”<sup>2</sup>

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<sup>1</sup> Xcel Energy Tariff Sheet 9-99.28

<sup>2</sup> Xcel Comments, page 6.

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The Department contends that the standard contract must be part of Xcel's tariff "as a matter of law." Nokomis argues that the new LMI-CSG Program is governed by statute and overseen by the Department, not Xcel, and the standard contract for the program, like contracts used by Xcel for other PPA situations, does not need to be in Xcel's tariff.<sup>3</sup> Additionally, Nokomis states that no authority cited by the Department "requires the standard contract to be included in, and made part of, Xcel's tariff."<sup>4</sup>

Nokomis argues "By including the contract in its tariff, Xcel wishes to be able to alter previously executed contracts by updating its tariff. This is incompatible with contract law and the expectations of the parties to not only the standard contract, but subscription contracts and financing contracts that are dependent on the standard contract."<sup>5</sup>

Nokomis does not provide specific examples of how this language would allow Xcel's tariff changes to alter existing contracts. Xcel does not address the possibility of the changes to existing contracts in its comments. Given that the LMI-CSG program is new, it is likely that the number of existing contracts is very small. However, going forward this may present more issues if the changes retroactively affect each contract.

The Department noted it is not aware of any current conflict between the LMI standard contract and Xcel's tariff. It did note that if Xcel or stakeholders are aware of any current conflicts the Commission should resolve those disputes as part of this notice-and-comment process or address future conflicts as they become made known.<sup>6</sup>

Currently Xcel would like to include the provision, "This Contract is part of the associated tariff." The Department agrees with Xcel. **(Decision Option 2)** Nokomis and CEF would like the provision to remain out of the tariff. **(Decision Option 3)**

## Battery Storage

Parties had differing views on the whether or not to include a definition of Battery Energy Storage System (BESS) in the LMI Standard Contract in initial comments. However, after discussions between Xcel and Nokomis all parties have agreed to add a definition for BESS through the following proposed addition to tariff Sheets 9-99.01 and 9-99.28: **(Decision Option 4)**

Battery Energy Storage System" or "BESS" shall mean a commercially available technology that uses chemical processes to store energy generated solely from

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<sup>3</sup> Nokomis Reply Comments, page 3.

<sup>4</sup> Id.

<sup>5</sup> Id at 4.

<sup>6</sup> Department Comments, page 8.

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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.<sup>7</sup>

Consistent with the addition of a BESS definition, Xcel has proposed to add BESS to the definition of PV system on tariff sheets 9-99.03 and 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.

The Department also recommended Xcel incorporate a BESS definition into its tariff language. The Department cited the benefits storage would bring to the system including “firming” solar generation to ensure a solar project operates smoothly during output fluctuations or improving the quality of power follow. The Department stated energy storage can also help balance electricity loads, and help defer energy to periods of higher demand.<sup>8</sup>

### **Use of the Term Capacity versus Nameplate Capacity**

In initial comments parties expressed concern with using the term “nameplate capacity” versus “capacity” in the LMI Standard Contract. Based on ongoing discussions between Xcel and stakeholders and the Commission’s recent vote regarding the interpretation of Minn. Stat. § 216B.164, subd 2a(c), Xcel modified its proposal to adjust this language as detailed in Attachment A of its reply comments.

On November 7, 2024, the Commission voted to adopt the following Decision Option in the context of interpreting the meaning of “Capacity” under Minn. Stat. § 216B.164, subd 2a(c):

Delegate authority to the Executive Secretary to open a new rulemaking proceeding to clarify that “capacity,” as defined in Minn. Stat. 216B.164, subd. 2a(c), for purposes of eligibility for net metering in Minnesota Stat. 216B.164, subd. 3(d), is determined by and measured at the qualifying facility’s inverter or a power control system or supplemental device that controls production at the QF before the net-metered customer’s load.

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<sup>7</sup> Xcel Reply Comments, page 4.

<sup>8</sup> Department Comments, page 4-5.

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Given the decision by the Commission, Xcel has proposed to add a definition of capacity to the LMI CSG tariff that aligns with the verbal Commission decision. Xcel also plans to remove and replace the term “nameplate capacity” with “capacity” in the LMI CSG tariff, the LMI Standard Contract, and its Assignment Form.<sup>9</sup>

The Department and Nokomis agree with the change from “nameplate capacity” to “capacity”.  
**(Decision Option 5)**

### **Non-Consensus Item**

#### **“Bill Credit Rate” Definition Change**

Xcel stated in their original filing that stakeholders requested the following redline changes, which is reflected in **Decision Option 6**:

“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. The Average Retail Rate includes compensation for all energy, capacity and RECs associated with Subscribed Energy. Accordingly, Average Retail Rate will change over ~~time the term of this Contract~~ and the Bill Credit Rate will be based on the then current Bill Credit as provided for in ~~the associated tariff for the LMI Accessible Community Solar Garden program Minn. Stat. §216B.1641 Subd. 8. Once a bill credit applies, that Bill Credit applies for the term of the Contract.~~<sup>10</sup>

In addition, Nokomis suggested adding the following language at the end of the “Bill Credit Rate” section indicated above: **(Decision Option 7)**

Upon execution of the Contract, the methodology used to calculate the Average Retail Rate shall not change for the term of the Contract.<sup>11</sup>

However, both Xcel and the Department recommended the Commission reject the changes to the “Bill Credit Rate” definition. **(Decision Option 8)** Xcel stated that the proposed language would create a new provision that is not found in the existing LMI-CSG Tariff, and that the Commission should retain control of any future changes impacting the Bill Credit Rate.<sup>12</sup>

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<sup>9</sup> Xcel Reply Comments, page 6.

<sup>10</sup> Id page 5.

<sup>11</sup> Nokomis Comments, page 4.

<sup>12</sup> Xcel Reply Comments, page 4.



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The Commission addressed the compensation rate for LMI program in its December 28, 2023 Order. Order Point 8 stated:

On or about February 1 of every year, Xcel shall propose changes to its tariffed Bill Credit Rate Table for the LMI-Accessible CSG Program Average Retail Rate based on the A50 rate workpapers. If no objections are filed within 30 days, Xcel shall file an updated tariff reflecting the new rates, which shall take effect for production beginning on April 1 of that year.

By having the Bill Credit Rates updated annually, it is presumed that the Bill Credit Rate for the LMI program may change and the rate was not intended to be fixed in time. However, if parties object to the filed rates or the methodology used to compute the rates (A50 workpapers) the parties do have recourse by filing an objection with the Commission.

Nokomis has requested the Bill Credit Rate remained unchanged throughout the life of the contract through the addition of their proposed language. The Department argues that Nokomis' addition "appears to be an attempt to challenge the Commission's authority to adjust the CSG compensation rate" despite the statute being highly specific in regard to LMI-CSG compensation.<sup>13</sup>

Staff notes that in previous comments addressing the LMI-CSG Program, Nokomis stated their desire "that a 25-year contract is the best way to implement a statutorily guaranteed 25-year compensation and bill credit mechanism."<sup>14</sup> The Commission considered and rejected that suggestion in its December 23, 2023 Order. The Commission can make a similar decision with **Decision Option 8.**

### DECISION OPTIONS

1. Approve the consensus changes identified in Xcel's initial Comments on November 12, 2024. (Xcel, Department, Nokomis)
2. Deny the proposed edits that would purport to make the LMI standard contract a free-standing or independent agreement. (Department and Xcel)

**OR**

3. Approve the proposed edits that would make the LMI standard contract a free-standing or independent agreement. (Nokomis)
4. Approve Xcel's proposed edits that incorporate a "Battery Energy Storage System"

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<sup>13</sup> Department Reply Comments, page 8.

<sup>14</sup> [Nokomis Reply Comments, October 9, 2023, page 2.](#)

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definition into the LMI standard contract. (Xcel, Department, Nokomis)

5. Approve Xcel's proposed edits which change "nameplate capacity" to "capacity" in the LMI standard contract. (Xcel, Department, Nokomis)
6. Approve the inclusion of "once a bill credit applies, that Bill Credit applies for the term of the Contract." (Nokomis)

**OR**

7. Approve the inclusion of "Upon execution of the Contract, the Average Retail Rate shall not change for the term of the Contract." (Nokomis)

**OR**

8. Deny 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. (Xcel and Department)

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