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Via Electronic Filing

Mr. Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
Saint Paul, MN 55101-2147

Re: ***In the Matter of the Petition of Northern States Power Company, dba Xcel Energy, for Approval of its Community Solar Garden Program*, Docket No. 13-867**

Dear Mr. Seuffert:

Enclosed for filing, please find United States Solar Corporation's Request for Reconsideration in the above matter.

If you have any questions concerning this filing, please do not hesitate to contact me.

Respectfully submitted,

Stinson LLP

/s/ Micah J. Revell

Micah J. Revell

STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of Northern States Power Company, dba Xcel Energy, for Approval of its Community Solar Garden Program	MPUC Docket No. 13-867 **UNITED STATES SOLAR CORPORATION'S REQUEST FOR RECONSIDERATION**

Pursuant to Minn. Stat. § 216B.27 and Minn. R. 7829.3000, United States Solar Corporation ("US Solar") respectfully requests rehearing and reconsideration of the Minnesota Public Utilities Commission's ("Commission") May 30, 2024 *Order Approving Community Solar Garden Program Rate-Transition Proposal With Modifications* ("Transition Order"), which transitions ARR-era community solar gardens ("CSGs") from the Applicable Retail Rate ("ARR") to the Value of Solar rate ("VOS").[1] US Solar acknowledges the complexity inherent in this decision and appreciates the Commission's efforts to balance myriad interests in its oversight of Minnesota's pioneering community solar program. However, reconsideration is necessary to revisit conclusions that are affected by errors of law and are otherwise inconsistent with the record in two broad respects.

First, the Commission's determination that it has authority to transition ARR-era CSGs to VOS is inconsistent with Minn. Stat. § 216B.1641 (the "CSG Statute") and the Commission's prior orders. Specifically, the plain text of the CSG Statute incorporating Minn. Stat. § 216B.164, subd. 10 (the "VOS Statute"), conflicts with the Transition Order's directive to move CSGs from ARR to VOS. In fact, comments filed by the Minnesota Department of Commerce ("Department") raised this point precisely, but the Transition Order did not address this issue.[2] Indeed, the Commission orders that preceded the Transition Order reflect a holistic understanding of the VOS and CSG Statutes—authorizing VOS only prospectively and repeatedly affirming that position—consistent with the comments from the Department and other stakeholders. The Transition Order is a significant departure from the Commission's prior orders and approach.

[1] Commission Order Approving Community Solar Garden Program Rate-Transition Proposal with Modifications, May 30, 2024, eDockets Doc. ID No. 20245-207232-01.

[2] Public Comment from Department of Commerce, January 8, 2024, eDockets Doc. ID No. 20241-201996-02, at 4–6. Nor was this argument discussed at the February 15, 2024 agenda meeting where the Commission heard limited remarks from a few developer representatives.

Second, even assuming, *arguendo*, that the Commission has statutory authority to change ARR-era CSGs from ARR to VOS, the Commission lacks a reasonable basis for doing so. The Transition Order depends on misconceptions regarding both the mechanics of CSG financing and whether circumstances have changed since the Commission's prior orders on the CSG program.

I. The Commission's determination that it has authority to transition ARR-era CSGs to VOS is inconsistent with the CSG Statute and the Commission's prior orders.

Although the Transition Order considers whether the Commission has the authority to transition ARR-era CSGs to VOS, its statutory analysis is incomplete. Specifically, the Transition Order fails to address how VOS can be retroactively applied to CSGs that interconnected prior to its approval when Minn. Stat. § 216B.164, subdivision 10(b) expressly limits this transition to prospective application. As highlighted in arguments raised by commenters in this docket, US Solar respectfully maintains that under both the plain statutory text and prior Commission orders, VOS only applies to those CSGs that interconnect after its approval.[3]

A. Under the plain text of the CSG Statute, VOS only applies to CSGs that interconnect after the approval of VOS for the CSG program.

Importantly, the Transition Order stakes the Commission's authority to transition ARR-era CSGs to VOS almost entirely on subdivision 1(d) of Minn. Stat. § 216B.1641 (the CSG Statute), which ostensibly established the ARR as a temporary rate until VOS was approved. However, the Transition Order's analysis of subdivision 1(d) omits a key legislative cross reference—incorporation of "the rate calculated under section 216B.164, subdivision 10." Indeed, the Transition Order overlooks this key legislative cross reference entirely, substituting "[VOS]" for the statutory reference even though the two are not interchangeable based on the specific timing and application provisions set forth in the statutory text.[4] Read together, the statutes clearly preclude the type of midstream compensation change effected by the Transition Order.

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[3] The Commission is a state agency of statutory origin and, therefore, "has only those powers given to it by the legislature." *Great Northern Ry. Co. v. Pub. Serv. Comm'n*, 169 N.W.2d 732, 735 (Minn. 1969); Minn. Stat. § 216A.01. A Commission decision rendered either without statutory authority or in excess of the authority granted is void. *State ex rel. Spurck v. Civil Service Board*, 32 N.W.2d 583, 586 (Minn. 1948); *see Peoples Natural Gas Co. v. Minnesota PUC*, 369 N.W.2d 530, 534 (Minn. 1985).

[4] In interpreting statutes, "[b]asic canons of statutory construction instruct that" the Commission must "construe words and phrases according to their plain and ordinary meaning." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). "A statute should be interpreted, whenever possible, to give effect to all of its provisions; 'no word, phrase, or sentence should be deemed superfluous, void, or insignificant.'" *Id.* (quoting *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999)). Likewise, the Commission "must not read into a statute language that the legislature omitted." *State by Comm'r of Transportation v. Schneider*, 934 N.W.2d 140, 143 (Minn. Ct. App. 2019). Instead, the Commission must "read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations." *KSTP-TV v. Ramsey Cnty.*, 806 N.W.2d 785, 788 (Minn. 2011).

The relevant provision of the CSG Statute—subdivision 1(d)—provides:

> The public utility must purchase from the community solar garden all energy generated by the solar garden. The purchase shall be at the rate calculated under section 216B.164, subdivision 10, or, until that rate for the public utility has been approved by the commission, the applicable retail rate.[5]

But where the Transition Order quotes and analyzes the CSG Statute, it substitutes the following language:

> The public utility must purchase from the community solar garden all energy generated by the solar garden. The purchase shall be at [VOS], or, until that rate for the public utility has been approved by the commission, the applicable retail rate.[6]

Importantly, the omitted cross-reference—Minn. Stat. § 216B.164, subdivision 10 (the VOS Statute)—provides the mechanism by which the Commission may approve an "alternative tariff," otherwise known as VOS.[7] It does not provide a fixed rate, but rather a robust statutory subsection describing the alternative tariff methodology. It also provides the requirements such an alternative tariff must meet to be approved,[8] as well as requirements for the proper application of the tariff after approval, including that, "[i]f approved, the alternative tariff shall apply to customers' interconnections occurring after the date of approval."[9] Moreover, the Commission's rule implementing subdivision 10(b) of the VOS Statute reiterates the requirement: "If a public utility has received commission approval of an alternative tariff for the value of solar under Minnesota Statutes, section 216B.164, subdivision 10, the tariff applies to new solar photovoltaic interconnections effective after the tariff approval date."[10]

By substituting the shorthand "[VOS]" for the full text of "the rate calculated under section 216B.164, subdivision 10," the Transition Order fails to incorporate a key legislative limitation of the VOS Statute: VOS only applies to interconnections occurring after the Commission approves it. Indeed, the CSG Statute and VOS Statute must be read together to obtain a complete picture of how the community solar rate transition was supposed to (and in fact did) work. ARR applies for the contract term of CSGs that submitted complete applications prior to the effective date for the Commission's approval of VOS; VOS applies to CSGs that submitted complete applications after

[5] Minn. Stat. § 216B.1641, subd. 1(d) (emphasis added).
[6] Transition Order at 23 (underline emphasis added) (brackets in original).
[7] Minn. Stat. § 216B.164, subd. 10(a).
[8] *See id.*, subdivision 10(c).
[9] *Id.*, subdivision 10(b) (emphasis added).
[10] Minn. R. 7835.4023 (emphasis added).

that date.[11] Accordingly, the ARR is only temporary insofar as it was the only available rate for CSGs that interconnected within a limited window of time. ARR is not temporary in the sense that the rate would cease to be available to those projects at some future uncertain date.

Because the Transition Order omits any analysis of Minn. Stat. § 216B.164, subdivision 10 and the plain limitations related to interconnection timing, the Commission's resulting decision to terminate the ARR constitutes an error of law that warrants reconsideration.

B. The Commission's prior orders reflect a holistic understanding of the VOS and CSG Statutes, authorizing VOS only prospectively and repeatedly affirming that position.

The Transition Order's oversimplification of VOS in the CSG Statute departs from the Commission's prior orders, which clearly and consistently construe the ARR as the applicable rate for the contract term of CSGs that were deemed complete before VOS was approved. While the Transition Order characterizes the relevant prior orders as merely atmospheric and providing general context for the Transition Order itself, a faithful reading of those orders shows that they unequivocally directed and reaffirmed that ARR-era CSGs would receive the ARR for the duration of their contract term.

1. The April 2014 Order

The Commission's rejection of Xcel's initial CSG program proposal by order dated April 7, 2014 ("April 2014 Order") demonstrates that from the inception of Xcel's CSG program the Commission has interpreted the CSG Statute as incorporating the VOS Statute and authorizing only a prospective application of VOS. In rejecting Xcel's initial program proposal, the Commission ordered "Xcel to calculate a value-of-solar rate for its system using the Department's methodology and to file a value-of-solar tariff for the Commission's review. The statute"—referring to the VOS Statute—"does not provide a timeframe for Xcel's tariff filing."[12] The April 2014 Order concluded by providing that, "[a]t such time as the Commission may issue an order approving a value-of-solar rate for solar gardens, the applicable retail rate and the solar REC value will expire according to the schedule set forth in that order."[13]

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[11] As discussed in more detail in the following section, the Commission approved VOS relative to application dates of CSGs: "The Commission approves the value-of-solar rate for use as the solar-garden bill-credit rate for all solar-garden applications filed after December 31, 2016. The value-of-solar rate that is in place at the time an application is deemed complete will be the subscriber bill-credit rate for the term of that solar garden." Commission Order Approving Value-of-Solar Rate for Xcel's Solar-Garden Program, Clarifying Program Parameters, and Requiring Further Filings, September 6, 2016, eDockets Doc. ID. No. 20169-124627-01, at 23, ordering para. 1.

[12] *Id.*

[13] *Id.* at 15.

The Transition Order relies upon the April 2014 Order for the idea that the Commission has always anticipated the ARR as applicable to ARR-era CSGs would one day expire: "At such time as the Commission may issue an order approving a value-of-solar rate for solar gardens, the applicable retail rate and the solar REC value will expire according to the schedule set forth in that order."[14] But the Transition Order ignores the operative language in that sentence from the April 2014 Order: "the applicable retail rate and the solar REC value will expire according to the schedule set forth in that order."[15] As explained below, "according to the schedule set forth in" the Commission's eventual VOS approval order in September 2016, the ARR would continue to apply to ARR-era CSGs for the duration of those CSGs' 25-year contracts.[16]

2. The September 2014 Order

The Commission's approval of Xcel's revised CSG program proposal by order on September 17, 2014 ("September 2014 Order") confirms and reiterates that ARR would apply for the contract term of CSGs that applied to the program prior to the approval of VOS.[17] Commenters, including the Department, "recommended several clarifications to improve the financeability of projects receiving the [ARR]," and noted the "broad agreement that any eventual transition to the [VOS] should not be retroactive. In other words, 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."[18] The Commission thus found "that Xcel should continue to use the [ARR]" because "further discussions" were necessary "to ensure that the solar-garden program reasonably allows for the creation, financing, and accessibility of community solar gardens" under VOS, "as required by statute." Based on these compelling factors and interests, and in direct response to the comments received and summarized in the September 2014 Order, the Commission unambiguously ordered that "solar-garden projects approved 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."[19]

The Transition Order ignores this clear mandate, instead characterizing the September 2014 Order as merely "requir[ing] Xcel to continue to provide CSG bill credits based on the ARR" and "recogniz[ing] that any transition of the CSG program from the ARR to the VOS may ultimately require an adder to increase VOS-based compensation rates to achieve reasonable CSG development."[20] That characterization is at odds with the plain language of the September 2014 Order ordering the ARR apply for the duration of an ARR-era CSG's contract. The Commission

[14] Transition Order at 19 (citing April 2014 Order at 28, ordering para. 11) (emphasis in Transition Order).
[15] April 2014 Order at 15 (emphasis added).
[16] Commission Order Approving Solar-Garden Plan with Modifications, September 17, 2014, eDockets Doc. ID No. 20149-103114-01, at 19, ordering para. 3.
[17] *Id.*
[18] *Id.* at 8.
[19] *Id.* at 19, ordering para. 3 (emphasis added).
[20] Transition Order at 7.

directly considered the proper temporal scope of "any eventual transition to the [VOS]" and agreed such a transition "should not be retroactive."[21] As raised in US Solar's initial comments, subscribers, developers, and program advisors reasonably and understandably read the September 2014 Order to entitle ARR-era gardens to the ARR for the contract term of those gardens and made investment-backed decisions based on that mandate.[22]

3. The September 2016 Order

On September 6, 2016, the Commission issued an order adjudicating when to transition the available rate for Xcel's CSG program to VOS ("September 2016 Order"), again demonstrating its consistent interpretation of the CSG Statute as authorizing such a change only prospectively.[23] The September 2016 Order has two important implications for the Transition Order and this Request for Reconsideration.

First, the September 2016 Order considered the CSG program in its entirety, confronting whether and to what extent the CSG program should migrate to VOS. In the Commission's own words:

> The solar-garden statute requires Xcel to purchase all energy generated by a garden at the value-of-solar rate or, until that rate has been approved by the Commission, at the applicable retail rate. . . . The issue before the Commission is whether the time has come to transition Xcel's program to the value-of-solar rate."[24]

Accordingly, the September 2016 Order adjudicated this question with respect to the entire CSG program, not merely pre- or post- order projects. In other words, the September 2016 Order was not—nor can it be recast as—a placeholder decision, leaving the door open for a second migration of CSGs from ARR to VOS. The September 2016 Order approved VOS and effectuated the change contemplated under the CSG Statute.

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[21] September 2014 Order at 8, 19.

[22] Joint Public Comment from US Solar and NextEra Energy Resources, January 8, 2024, eDocket Doc. ID No. 20241-201988-01, at 2–5; US Solar and NextEra Energy Resources Letter in Support of Alternative Decision Option Filed by the Department of Commerce, February 13, 2024, eDockets Doc. ID. No. 20242-203383-01 (attaching Clean Energy Resource Teams community solar garden subscriber questions brochure).

[23] On November 16, 2015, the Commission denied Xcel's request for a formal investigation into potential changes to the CSG program ("November 2015 Order") and instructed stakeholders to submit comments addressing whether and how the Commission should modify the payment rate, including whether the Commission should replace the ARR with the VOS rate. Commission Order Denying Petition for Contested Case and Establishing Procedures for Further Comments, November 16, 2015, eDockets Doc. ID. No. 201511-115725-01, at 4, ordering para. 2. In response, stakeholders submitted comments that "differed as to whether and how to transition to a value-of-solar rate." Commission Order Approving Value-of-Solar Rate for Xcel's Solar-Garden Program, Clarifying Program Parameters, and Requiring Further Filings, September 6, 2016, eDockets Doc. ID No. 20169-124627-01.

[24] *Id.* at 6. (emphasis added).

Second, in light of the question posed and answered by the September 2016 Order, the ARR to VOS transition mandated by the CSG Statute can only apply prospectively to CSGs that submitted applications beginning in 2017. Specifically, the question before the Commission was "whether and how the Commission should modify the payment rate, including whether the Commission should replace the applicable retail rate with the value-of-solar rate."[25] Stakeholders submitted comments that "unanimously recommended that any change to the bill-credit rate be applied prospectively so as not to undermine the viability of existing applications."[26] Based on those comments and the record before the Commission, the September 2016 Order answered the question in the affirmative with a qualification: it "[a]pprove[d] the value-of-solar rate apply" but "only to applications filed after December 31, 2016." Put differently, the answer to whether to replace ARR with VOS was: "yes," and the answer to how was: "prospectively to CSGs that submit applications 2017 onwards." The Commission understood the transition to VOS would not and could not apply retroactively to ARR-era CSGs under the CSG Statute and made its approval of VOS contingent on it being applied only to CSGs with applications submitted after December 31, 2016.

Similar to its treatment of the September 2014 Order, the Transition Order misconstrues the September 2016 Order. Contrary to the Transition Order, the Commission did not simply "elect[] to maintain the ARR-based bill credit rates for CSGs filing completed applications before 2017" in the September 2016 Order.[27] As described above, the Commission instead acted in accordance with and reaffirmed its prior orders that ARR-era CSGs would not and could not be transitioned to VOS, consistent with the holistic interpretation of the CSG Statute.[28] Moreover, the September 2016 Order's limitation of its VOS approval to CSGs that submitted applications after December 31, 2016 further precludes the Transition Order's purported approval of VOS for ARR-era CSGs, as those gardens have all interconnected under ARR.[29]

4. Taken together, the prior orders are irreconcilable with the Transition Order.

The prior orders show that the Commission has never before understood a transition to VOS as applying retroactively to ARR-era CSGs. Instead, consistent with a faithful interpretation of the CSG Statute, the prior orders demonstrate the Commission has always expressly considered the transition to VOS in the context of Xcel's program prospectively, not individual CSGs retroactively. The only sense in which the ARR is temporary is that the rate could only be available to projects interconnected before VOS was approved. At that time, ARR would continue to apply

[25] *Id.* at 2.
[26] *Id.* at 14.
[27] Transition Order at 8 (discussing but providing no citation to the September 2016 Order).
[28] *Id.*
[29] *See infra* section I.A.

to those projects that interconnected to date, but projects interconnected after VOS approval could no longer utilize the ARR.[30] Moreover, because the Commission limited its approval of VOS to CSGs with applications submitted after December 31, 2016, ARR must apply to ARR-era CSGs for the life of their contracts.

The Transition Order's framing of ARR as temporary cannot be squared with the thoughtful policy and practice of the Commission's past orders, as such a reading leaves no room for some CSGs to remain on ARR and others to be transitioned to VOS. By the interpretation contained in the Transition Order, all CSGs in the program should have been converted at the time of the September 2016 Order. Yet, that is neither what the legislature intended nor what the September 2016 Order accomplished. It converted the overall program to VOS, while explicitly acknowledging that CSGs with applications deemed complete prior to 2017 were to remain on ARR. Put another way, the move to VOS was directional—a maturation of the overall program—and need not do violence to the contracts executed by the early adopters to date. Reconsideration is necessary to avoid plain conflict with the relevant statutes and related Commission precedent.

II. Even if the Commission has statutory authority to change ARR-era CSGs from ARR to VOS, the Commission should reconsider the Transition Order and reject Xcel's proposal because there is no reasonable basis for adopting it.

The Transition Order lacks a reasonable basis for three reasons. First, it depends on misconceptions of important aspects of CSG financing and therefore fails to comply with the CSG Statute's requirement that any plan approved by the Commission must "reasonably allow for the creation, financing, and accessibility of community solar gardens."[31] Second, and regardless, the circumstances the Commission previously relied on to justify ARR-era CSGs receiving the ARR have not changed. Third, the Transition Order will have immense negative policy impacts throughout Minnesota and runs afoul of various legal principles. Reconsideration is therefore warranted.[32]

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[30] Minn. Stat. § 216B.1641, subd. 1(d).

[31] Minn. Stat. § 216B.1641, subd. 1(e).

[32] "[A]lthough an agency is not bound to follow its past decisions, it must provide a reasonable basis for departure from precedent." *In re Detailing Criteria and Standards for Measuring an Elec. Util.'s Good Faith Efforts in Meeting Renewable Energy Objectives under Minn. Stat. 216B.1691*, 700 N.W.2d 533, 539 (Minn. App. 2005); *see also In re Rev. of 2005 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utilities*, 768 N.W.2d 112, 120 (Minn. 2009). Indeed, "where evidence in the record differs from previous cases, results may differ as well." *Petition of N. States Power Gas Util.*, 519 N.W.2d 921, 925 (Minn. App. 1994). But importantly, where nothing in the record has changed, the Commission's departure from a prior decision is improper. *Peoples Nat. Gas Co., a Div. of InterNorth, Inc. v. Minn. Pub. Utils. Comm'n*, 342 N.W.2d 348, 352–53 (Minn. App. 1983).

A. The Transition Order mischaracterizes CSG financing, improperly dismissing the impact that program changes have on existing financing agreements.

The Transition Order's assertion that the retroactive revocation of the ARR will not impact the financing and financeability of ARR-era CSGs is at odds with the mechanics of CSG financing. The Transition Order states:

> Although the Commission implemented a residential adder to increase the accessibility of CSGs receiving the VOS, no additional compensation beyond the VOS has been necessary to enable the financing or development of VOS-era solar gardens. The existence of willing participants in Xcel's CSG program since January 1, 2017, demonstrates that solar gardens in Minnesota can be reasonably financed and developed when their energy is purchased at the VOS. Previous doubts that a compensation rate below the ARR plus REC purchase level set by the Commission in 2014 would reasonably allow for the creation and financing of solar gardens no longer exist.

This misunderstands how CSG are financed. Developers financed ARR-era CSGs in reasonable and justified reliance on the Commission's prior orders unequivocally ordering that those CSGs would receive the ARR for the duration of their 25-year contracts. In financing a project, developers consider myriad factors, including the revenue a project is anticipated to recoup. That revenue number is dependent on the terms of the Standard Contract for Solar*Rewards Community (the "Standard CSG Contract") between Xcel and a CSG operator, as well as the subscriber bill-credit rate at which the sale of energy from the project will be compensated. To secure capital financing to build the ARR-era solar gardens, CSG developers executed contracts with financiers based and in reliance on the Commission's order that those projects would receive the ARR for the duration the projects' 25-year contract. Transitioning ARR-era CSGs to VOS would fundamentally alter the revenue streams of those projects, and could thus threaten projects with insolvency in addition to directly and negatively impacting the value of credits paid to the ARR subscribers. Moreover, project equipment costs have generally decreased over time. Accordingly, a higher compensation rate for earlier vintage projects directly corresponds to those higher development costs. For these reasons, the Transition Order's observation that VOS-era CSGs are financeable through the VOS rate is not a reasonable basis to conclude that ARR-era CSGs are likewise financeable on the VOS rate. Projects from each era have been financed on their respective unique terms, which are not interchangeable.

The Commission understood this financing complexity when it issued its September 2016 Order, rejecting application of the VOS rate to ARR-era applications submitted prior to January 1,

2017, so as not to compromise those pending applications.[33] That accommodation clearly was necessary, as it took developers roughly a year from the issuance of the September 2016 Order to retool their approaches and begin filing applications for CSGs under the significantly reduced VOS rate.[34] Yet the Transition Order disregards that concern, effectively revoking the ARR that the Commission determined was necessary for financing those projects—and upon which they did obtain financing—only a few short years into those financing terms.

Additionally, the Transition Order contradicts itself on the contents and veracity of the record. On the one hand, despite hundreds of comments from developers, local governments, municipalities, businesses, and other subscribers, the Transition Order claims that CSG developers failed to provide "any reasonable economic justification for why ARR-era CSGs need to continue receiving" the ARR or any "persuasive data to substantiate their claims, including, for example, how subscription contracts allocate the ARR-based bill credit benefits between themselves and subscribers."[35] These cursory dismissals wholly disregard unrebutted representations made by multiple developers and subscribers in the record regarding direct financial harm, including several sworn statements.[36] On the other hand, the Transition Order denies a developer's request for a contested case proceeding to determine "who will be harmed and the degree of harm created if the Commission approves the transition proposal" based on the Commission's conclusion that "[t]he current record is thorough and persuasive."[37] The Transition Order goes on to state that "the disputes among the parties largely center on the reasonableness of transitioning to the VOS rather

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[33] September 2016 Order at 14.

[34] *See* Xcel Compliance Filing – Stakeholder Meeting Minutes, October 18, 2017, eDockets Doc. ID No. 201710-136586-01, at Attachment A, p. 18. (reporting only two VOS project applications submitted in the first seven months following the opening of the VOS-rate program on January 1, 2017).

[35] Transition Order at 32.

[36] *See, e.g.*, Public Comment from Joint Solar Associations, January 8, 2024, eDockets Doc. ID No. 20241-201991-01, at Attachment B (affidavit of Timothy Denherder-Thomas, General Manager of Cooperative Energy Futures, swearing and affirming to various impacts changing ARR-era CSGs to VOS would have, including "[i]n such circumstances, I expect that CEF 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"), Attachment C (affidavit of Daniel C. Dobbs, Chief Strategy Officer of Standard Solar, Inc.), Attachment D (affidavit of Nicole LeBlanc, Vice President and Chief Operating Officer of PureSky Community Solar Inc.), Attachment E (affidavit of Jason Kuflik, Manager of Green Street Power Partners LLC), Attachment F (affidavit of Olivier Desplechin, Director of Commercial and Asset Management of ENGIE); *see also* Public Comment from the Department of Commerce, January 8, 2024, eDockets Doc. ID No. 20241-201996-02, at 8–9 (describing, explaining, and expressing concern regarding the financial impact of transitioning to VOS for ARR-era CSGs); Joint Public Comment from US Solar and NextEra Energy Resources, January 8, 2024, eDocket Doc. ID No. 20241-201988-01, at 5–6 (likewise describing the financial impact of transitioning to VOS for ARR-era CSGs and summarizing stakeholder comments on the same); Public Comment from Solar Energy Advocates, January 8, 2024, eDockets Doc. ID No. 20241-201961-01, at 3–9 (explaining the financial impacts of changing ARR-era CSGs to VOS and noting the numerous other comments expressing similar concern); Public Comment from Winona County Board of Commissioners, January 2, 2024, eDockets Doc. ID No. 20241- 201722-01 (stating it subscribed to an ARR-era CSG "with an understanding of how the program worked and would work for the 25 years of the contracts [it] entered" and its "residents will lose about $2 million in savings over the duration of [their CSG] contracts" if the Proposal is approved).

[37] Transition Order at 34.

than on the factual accuracy of the filings themselves."[38] Although US Solar agrees that the "reasonableness of transitioning to the VOS" depends in large part on "the factual accuracy of the filings themselves," the accuracy of the facts underpinning the Transition Order is indeed in dispute.[39]

B. Circumstances have not changed since the Commission's prior orders on the CSG program.

The Transition Order also mistakenly concludes that ARR-era CSGs should be transitioned to VOS because circumstances surrounding Xcel's CSG program have changed. Specifically, the Transition Order points to "the escalating rate impact of maintaining the ARR bill-credit framework" as its main—if not sole—justification for ordering the transition of ARR-rate CSGs and their subscribers to the (much lower) 2017 VOS structure.[40] But that escalating rate impact is not a changed circumstance. It has been at the center of stakeholder discussion and the Commission's prior orders since the inception of Xcel's CSG program.

When the Commission approved VOS for the CSG program, it fully understood both the large volume of CSGs applying to the program under the ARR and the associated cost impacts. Even after multiple developers voluntarily withdrew ARR-era applications in light of co-location limitations, "by July 2016 there were 855 MW of active applications in the program."[41] Xcel "estimated that for each 100 MW of community solar gardens that comes online at current rates, ratepayers will bear an incremental fuel-cost increase of $17 million annually" and "stated that as many as 400 MW of solar gardens could be built in the next year, leading to a customer bill impact of approximately 1.8 percent for nonparticipating ratepayers."[42] Yet, with those concerns fully in view, the Commission declined to reduce the ARR and, instead, instructed that VOS apply only "prospectively so as not to undermine the viability of existing applications."[43] It considered those volumes and costs and ordered "the value-of-solar rate apply only to applications filed after December 31, 2016."[44] Critically, and contrary to inferences of the Transition Order, the total

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[38] *Id*.

[39] *See, e.g.*, Public Comment from the Department of Commerce, January 8, 2024, eDockets Doc. ID No. 20241-201996-02, at 8–9; Joint Public Comment from US Solar and NextEra Energy Resources, January 8, 2024, eDocket Doc. ID No. 20241-201988-01, at 6 (both describing and explaining the financial impact of transitioning to VOS for ARR-era CSGs); Public Reply Comment from Fresh Energy, January 22, 2024, eDockets Doc. ID No. 20241-202475-01, at 3 ("These arguments are speculative, unsupported by evidence, and not reasonable.").

[40] Transition Order at 16.

[41] September 2016 Order at 6 (emphasis added). The Commission also confronted the size and cost of the ARR pool in evaluating the CSG co-location dispute in 2015. *See* Commission Order Adopting Partial Settlement as Modified, August 6, 2015, eDockets Doc. ID No. 20158-113077-01, at 2, 8–10 (recounting comments and discussing this issue). Notably, the application pool reached nearly 2000 MW by October 2015, prior to the implementation of the co-location cap adopted by the Commission. September 2016 Order at 6.

[42] September 2016 Order at 10.

[43] *Id.* at 14.

[44] *Id.*

capacity of ARR gardens never reached the 855 MW contemplated in the September 2016 Order. Instead, 684 MWs of ARR projects were built and are in operation today, with no additional ARR projects in Xcel's study, design, and/or construction queues.[45]

Moreover, in approving VOS, the Commission acknowledged that the ARR is "updated annually to reflect changes in Xcel's retail rates and rate riders" but is "not adjusted annually for inflation using the CPI" and, on the other hand, ordered a "fixed escalator based on a 25-year average of CPI data" for VOS. Both stakeholders and the Commission understood and even anticipated that the ARR could and likely would increase over time in nominal terms (*i.e.*, to the extent that Xcel's retail rates increase). That the ARR has thus increased over time along with Xcel's retail rates and general inflation should be a surprise to no one. In fact, from 2015 to 2023, the ARR compound annual growth rates for each subscriber class are lower than the rate of general consumer price index inflation over that same period, meaning the ARR has actually decreased in real dollar terms over the course of its lifetime.[46]

C. The Transition Order conflicts with Minnesota energy policy and runs afoul of various legal principles.

First, as explained, the Transition Order invalidates the Commission's seminal guarantee that ARR-era CSGs would receive the ARR for the duration of their contracts. The uncertainty that such an action injects into Minnesota's renewable energy framework is contrary to the public interest, creating a chilling effect that cannot be overstated.[47] Similarly, in violation of the CSG Statute, the Transition Order runs afoul of the Commission's statutory mandate to "reasonably allow for the . . . accessibility" of ARR-era CSGs by decreasing the bill credit rate to a level no longer sustainable for subscribers, and specifically for the hundreds of subscribers commenting as much in the docket.[48] If Minnesota is to achieve its aggressive statutory decarbonization goals, participants in the state's clean energy economy must be assured that Minnesota has created a certain and predictable regulatory framework to support development toward—and participation in—achieving these goals.

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[45] *See* Xcel Compliance Filing on Proposal for Switching ARR-era Community Solar Gardens to Appropriate VOS Rate, September 25, 2023, eDockets Doc. ID. No. 20239-199127-01, at 2, fn. 2. The Commission is and has been aware of the CSG program capacity at the ARR and each VOS vintage because Xcel files annual reports with that information. *See, e.g.*, Xcel Solar*Rewards Community 2023 Annual Report, eDockets Doc. ID No. 20244-204867-01, at 17 (table 5 providing "Garden Capacity (MWac) By Bill Credit Vintage"); Xcel Solar*Rewards Community 2022 Annual Report, eDockets Doc. ID No. 20233-194410-01, at 18 (same).

[46] Public Comment from US Solar and NextEra Energy Resources, January 8, 2024, eDocket Doc. ID No. 20241-201988-01, at 7–8. Additionally, the Transition Order (at p. 2) finds that the ARR is likely to increase but ignores the fact that ARR rates actually had an annual decline from 2023 to 2024, and likely would decline from 2024 to 2025. *See* Xcel Response to MPUC Information Request 055, February 2, 2024, eDocket Doc. ID No. 20242-203055-02.

[47] Public Comment from the Department of Commerce, January 8, 2024, eDockets Doc. ID No. 20241-201996-02, at 8–9.

[48] Minn. Stat. § 216B.1641, subd. 1(e)(1).

Second, the Commission's prior orders that ARR-era CSGs receive the ARR for the duration of their contracts also ordered Xcel to include that same mandate in its Standard CSG Contract, which it in turn unambiguously did.[49] Thus the rate and term—ARR for 25 years—are enshrined in the plain text of the Standard CSG Contract that each ARR project executed with Xcel. Nevertheless, the Transition Order concluded the Commission has the authority to transition ARR-era CSGs to VOS because the Standard CSG Contract also provides: "In the event of any conflict between the terms of this Contract and Company's electric tariff, the provisions of the tariff shall control."[50] But this provision is simply a recognition that there may be unintended conflicts between the Standard CSG Contract and Xcel's tariff.[51] Specifying that the tariff controls in the event of any such inadvertent conflict does not mean that Xcel can abrogate the terms of signed contracts simply by proposing changes to its tariff. Moreover, as explained in US Solar's initial comments, the Commission lacks the statutory authority to modify the executed contracts between ARR-era CSG operators and either Xcel or subscribers; thus, to the extent the Transition Order purports to do just that, it improperly exceeds the Commission's statutory authority.[52]

Third, and relatedly, the Transition Order violates multiple constitutional and other legal principles relating to the sanctity of contract. Both the Federal and Minnesota Contract Clauses prevent the Commission from transitioning ARR-era CSGs to VOS here because those CSGs have executed agreements with Xcel guaranteeing the ARR as the bill credit rate for the duration of the contract term.[53] Likewise, because there is no statutory authority providing the Commission the power to transition ARR-era CSGs to VOS and the ARR does not conflict with the public interest,

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[49] Xcel Rate Book, Section No. 9, Sheet No. 87 (Standard CSG Contract section 15); Xcel Rate Book, Section No. 10, Sheet No. 125 (Xcel's Interconnection Agreement); *see* Xcel's Community Solar Garden Developer Resources (link) (under "Next Steps" menu, "Document and Contract Submission" drop-down ribbon).

[50] Transition Order at 20; Xcel Rate Book, Section No. 9, Sheet No. 73 (Standard CSG Contract section 1.B).

[51] Minnesota courts recognize that, "[w]here there is an apparent conflict between two clauses or provisions of a contract, it is the court's duty to find harmony between them and to reconcile them if possible." *Oster v. Medtronic, Inc.*, 428 N.W.2d 116, 119 (Minn. Ct. App. 1988) (declining to interpret contract in manner that would "render nugatory" one of two apparently conflicting provisions). *See also* Joint Public Comment from US Solar and NextEra Energy Resources, January 8, 2024, eDockets Doc. ID No. 20241-201988-01, at 3–4 (discussing other provisions of the Standard CSG Contract implicated by the transition to VOS); Joint Public Reply Comment from US Solar and NextEra Energy Resources, January 22, 2024, eDockets Doc. ID No. 20241-202477-01, at 2 (explaining subscriber reliance and understanding of Standard CSG Contract).

[52] Joint Public Comment from US Solar and NextEra Energy Resources, January 8, 2024, eDocket Doc. ID No. 20241-201988-01, at 8–9.

[53] The Contract Clause "reach[es] every form in which the legislative power of a state is exerted, whether it be a constitution, a constitutional amendment, an enactment of the legislature, a by-law or ordinance of a municipal corporation, or a regulation or order of some other instrumentality of the state exercising delegated legislative authority." *Ross v. State of Oregon*, 227 U.S. 150, 162–63 (1913). Whether actions "are, in law and fact, an exercise of legislative power depends not on their form but upon whether they contain matter which is properly to be regarded as legislative in its character and effect." *INS v. Chadha*, 462 U.S. 919, 952 (1983). The Transition Order is such an exercise of delegated legislative power. "The Minnesota Constitution provides similar protections." *State ex rel. Hatch v. Emps. Ins. of Wausau*, 644 N.W.2d 820, 833 (Minn. Ct. App. 2002).

the *Mobile-Sierra* doctrine prevents the Commission from altering the contracted rate in Xcel's executed contracts with CSG operators.[54]

Next, the Commission is estopped from transitioning ARR-era CSGs to VOS because the Commission's prior orders, specifically the September 2014 Order and the September 2016 Order, constitute a clear and definite promise that ARR-era CSGs would receive the ARR for the duration of their contracts; the Commission intended for stakeholders to rely on that promise and stakeholders did indeed rely on it; and that promise must be enforced to prevent injustice in the form of ARR-era CSG insolvency, as explained above.[55] The Transition Order also constitutes a taking of US Solar's and other developers' property under both the Federal and Minnesota Takings Clauses for which US Solar and other developers are entitled to just compensation because their executed contracts with Xcel guaranteeing ARR for the duration of the contract term are a compensable property interest damaged by the Transition Order.[56]

Finally, US Solar acknowledges the Commission routinely entertains difficult issues and makes well-reasoned, fully-informed decisions promoting and advancing the public interest of all Minnesotans. In this respect, US Solar wishes to respectfully suggest to the Commission that the procedural history and facts here might risk the Transition Order being construed as an improper departure from that admirable standard practice.[57]

III. Conclusion

US Solar appreciates the Commission's attempt to balance multiple interests in reaching its determination in this proceeding. However, for the foregoing reasons, US Solar believes that reconsideration is necessary to correct conclusions that are affected by errors of law and are inconsistent with the record. Accordingly, US Solar respectfully requests that the Commission

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[54] *See 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). The contracted-to ARR does not conflict with the public interest for the same reasons there is no reasonable basis for the Commission to depart from its prior orders implementing the ARR in the first place.

[55] "Promissory estoppel, like equitable estoppel, may be applied against the state to the extent that justice requires." *Christensen v. Minneapolis Mun. Emps. Ret. Bd.*, 331 N.W.2d 740, 749 (Minn. 1983). Application of promissory estoppel requires a showing that (1) there was a clear and definite promise, (2) the promisor intended to induce reliance and such reliance occurred, and (3) the promise must be enforced to prevent injustice. *Olson v. Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 152 (Minn. 2001); *see Javinsky v. Comm'r of Admin.*, 725 N.W.2d 393 (Minn. Ct. App. 2007) (evaluating agency action under promissory estoppel doctrine).

[56] *Lynch v. United States*, 292 U.S. 571, 579 (1934) (holding valid contracts are property within meaning of the Taking Clause); *Minnesota Sands, LLC v. Cnty. of Winona*, 917 N.W.2d 775 (Minn. Ct. App. 2018) (quoting *Lynch* for the principle that "[v]alid contracts are property, whether the obligor be a private individual, a municipality, a state, or the United States"), *aff'd*, 940 N.W.2d 183 (Minn. 2020), *cert. denied*, 141 S. Ct. 1054 (2021).

[57] *Matter of Denial of Contested Case Hearing Requests*, 993 N.W.2d 627, 646–47 (Minn. 2023); *see also In re Rev. of 2005 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utilities*, 768 N.W.2d 112, 118 (Minn. 2009).

grant rehearing of its Transition Order and reject Xcel's proposal, leaving both ARR-era CSGs on the ARR for the duration of their 25-year contracts and the Commission's prior orders intact.

Dated: June 20, 2024

Respectfully submitted,

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STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of Northern States Power Company, dba Xcel Energy, for Approval of its Community Solar Garden Program	)))))	Docket No. 13-867 **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 20, 2024, a true and correct copy of **United States Solar Corporation's Request for Reconsideration** was electronically filed with the Minnesota Public Utilities Commission through its eDockets system and simultaneously served electronically on the individuals attached hereto.

Dated this 20th day of June, 2024.

s/ Marci A. Pikula
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