

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

In the Matter of the Amended and Restated
Elk Creek Solar Energy Purchase Agreement

ISSUE DATE: April 14, 2023

DOCKET NO. E-002/M-19-568

ORDER APPROVING REPLACEMENT
SOLAR POWER PURCHASE
AGREEMENTS SUBJECT TO
ADDITIONAL REQUIREMENTS AND
PRUDENCY REVIEW

PROCEDURAL HISTORY

On November 24, 2020, the Commission issued an order approving a solar power purchase agreement (PPA) between Northern States Power Company, d/b/a Xcel Energy (Xcel or the Company) and Elk Creek Solar, LLC for the Elk Creek solar project to supply solar power to Xcel's Renewable*Connect Program. Elk Creek Solar, LLC is now owned by National Grid Renewables Development, LLC (NGR).¹

On December 9, 2022, Xcel filed a petition for approval of two solar PPAs between Xcel and NGR to replace the Elk Creek PPA.

On December 20, 2022, the Commission issued a notice requesting comments on Xcel's petition.

On January 19, 2023, the Department of Commerce, Division of Energy Resources (the Department) filed comments recommending approval of the replacement solar PPAs with additional requirements.

On January 25, 2023, Xcel filed reply comments.

On March 14, 2023, Commission staff filed a letter that had been submitted by NGR in the Elk Creek permitting dockets.²

¹ On May 18, 2021, the Commission issued an order approving an amended and restated PPA between Xcel and Elk Creek Solar, LLC.

² *In the Matter of the Application of Elk Creek Solar, LLC for a Certificate of Need for the up to 80-Megawatt Elk Creek Solar Project in Rock County, Minnesota*, Docket No. IP-7009/CN-19-351; *In the*

On March 16, 2023, the Commission met to consider Xcel's petition.

FINDINGS AND CONCLUSIONS

I. Xcel's Petition

A. Elk Creek Project Delays

Xcel initially proposed the Elk Creek project to supply renewable energy to its newly expanded Renewable*Connect program, which permits subscribers to purchase electricity from wind and solar generators. Completion of the Elk Creek project has been delayed for various reasons, particularly due to delays in the Midcontinent Independent System Operator (MISO) generator-interconnection queue. The Commission approved an amended and restated PPA between Xcel and NGR to extend the commercial operation date for the Elk Creek project to December 31, 2022, and Xcel delayed the launch of the expanded Renewable*Connect program until NGR could demonstrate with confidence that the extended commercial operation date could be reached.

Xcel explained that industry disruptions have further impacted the Elk Creek project, including global supply chain shortages, rising commodity prices, transmission constraints, interconnection process delays, the war in Ukraine, an overall inflationary environment, and a major U.S. Department of Commerce antidumping investigation. Xcel maintained that these conditions are contributing to rapid and significant project cost increases, delays, and cancellations across the industry.

B. Proposed Replacement Projects

Xcel negotiated with NGR to replace the Elk Creek PPA with PPAs for two other solar projects: 1) the 50-MW Louise solar project in Mower County, Minnesota; and 2) a two-thirds share of the 45-MW Fillmore County solar project in Fillmore County, Minnesota, for a combined total of 80 MW, which is equal to the size of the Elk Creek project. Xcel argued that it cooperated with NGR to replace the Elk Creek project in order to enable the timely launch of the Renewable*Connect program. The Company maintained that the current state of the solar industry could make securing alternative projects difficult, prolonged, and uncertain.

Xcel acknowledged that the Louise and Fillmore PPAs (replacement PPAs) contain a higher price for energy than the Elk Creek PPA but argued that the new price is comparable to other similar PPAs currently entering the market and the replacement PPAs are stronger agreements that contain more favorable provisions than the Elk Creek PPA. Xcel noted that the replacement PPAs are based on the most current template model PPA, which reduces the development and performance risks facing the Company and ratepayers when compared to the Elk Creek PPA.

Xcel also touted the higher liquidated delay damages available to Xcel if either project fails to meet established construction milestones or the target commercial operation date of

Matter of the Application of Elk Creek Solar, LLC for a Site Permit for the up to 80-Megawatt Elk Creek Solar Project in Rock County, Minnesota, Docket No. IP-7009/GS-19-495.

December 15, 2024, as well as the increased security fund that the Company can draw from to collect any liquidated damages.

Unlike the Elk Creek PPA, Xcel would not be required to reimburse the Louise or Fillmore projects for curtailed energy, which Xcel argued would shift the uncapped financial risk of curtailment from ratepayers to the project companies and help ensure that customers get the full benefit of the negotiated rate. Xcel confirmed that both the Louise and Fillmore projects must also procure and provide the Company with the same replacement energy, replacement capacity, and replacement renewable energy credits (RECs) monthly until the projects meet their commercial operation date, which will allow the Company to start delivering the Renewable*Connect program to customers as soon as practical after Commission approval.

II. The Department's Comments

The Department explained that it reviews a PPA to determine if it is in the public interest based on the reasonableness of the energy price, the ratepayer protections from financial and operational risks, and the curtailment payment provisions. The Department noted that although the replacement PPAs have a higher price than the Elk Creek PPA, the price is lower than other previously approved solar PPAs and will likely be similar cost to those in Xcel's RFP filing.³ The Department stated that the price for the replacement PPAs is reasonable.

The Department also stated that ratepayers would be reasonably protected from financial and operational risks under the replacement PPAs based on several provisions. The Department noted that Xcel will be able to withdraw from the security fund to cover liquidated damages arising from any default by NGR, and the PPAs restrict the sale or transfer of the solar facilities. Lastly, the Department determined that NRG's acceptance of curtailment risk is appropriate and represents a possible cost savings compared with the Elk Creek PPA.

Based on the above analysis, the Department asserted that the Louise and Fillmore PPAs are reasonable and recommended that the Commission approve the replacement PPAs subject to the additional requirements listed below:

- Xcel cannot recover the costs of unsubscribed portions of the Renewable*Connect resources through the fuel clause adjustment (FCA) without Commission approval in the FCA proceeding.
- No party may transfer the proposed replacement PPAs without the consent of the Commission if that transfer would cause any material change to the terms and conditions of the existing agreement.
- Xcel may not purchase the replacement PPA facilities or equity ownership interest in Seller⁴ without the consent of the Commission.

³ *In the Matter of Xcel Energy's 2022 Solar and Solar-Plus-Storage Request for Proposals (RFP)*, Docket No. E002/M-22-403.

⁴ In the replacement PPAs, the term "Seller" refers to Louise Solar Project, LLC and Fillmore County Solar Project, LLC. These are the project companies that own the respective solar projects and are each owned by NGR.

- Upon exercising its option to purchase the facility or all equity ownership interest in Seller, Xcel shall file with the Commission its plan to recover the costs of purchasing the facility or equity ownership interest in Seller.

In reply comments, Xcel stated that it generally agreed with the Department's recommended requirements.

III. Commission Action

The Commission agrees with the Department that the replacement PPAs are priced comparably to other pending solar projects and contain certain more favorable provisions than the Elk Creek PPA, such as the curtailment provisions and security fund. The Department's recommended additional requirements will further protect ratepayers from financial and operational risk under the replacement PPAs. The Commission also acknowledges the importance of supplying the Renewable*Connect program in a timely fashion. The Commission concludes that the Louise and Fillmore PPAs are reasonable and will therefore approve them subject to the additional requirements recommended by the Department.

However, the Commission notes that on February 15, 2023, NGR filed a letter in the Elk Creek permitting dockets stating that it learned in December 2022 that it does in fact have power injection rights into the MISO system. Xcel did not discuss this information in any of its filings in this docket.

Given the lower price of the Elk Creek PPA compared to the replacement PPAs, this information regarding the Elk Creek injection rights calls into question the prudence of Xcel's decision to substitute the Louise and Fillmore PPAs for the Elk Creek PPA. Xcel has agreed to submit a filing detailing its prudence analysis justifying its decision to replace the Elk Creek PPA with the Louise and Fillmore PPAs, and the Department has agreed to review and comment on this analysis. The Commission will therefore allow Xcel to recover the costs for the replacement projects and interim replacement energy, RECs, and capacity from Renewable*Connect customers, subject to review of the prudence of the cancellation of the Elk Creek PPA and any appropriate adjustment of recovery.

ORDER

1. The Commission approves the proposed replacement PPAs with the following requirements:
 - a. Xcel cannot recover the costs of unsubscribed portions of the Renewable*Connect resources through the fuel clause adjustment without Commission approval in the fuel clause adjustment proceeding.
 - b. No party may transfer the proposed replacement PPAs without the consent of the Commission if that transfer would cause any material change to the terms and conditions of the existing agreement.

- c. Xcel may not purchase the replacement PPA facilities or equity ownership interest in Seller without the consent of the Commission.
 - d. Upon exercising its option to purchase the facility or all equity ownership interest in Seller, Xcel shall file with the Commission its plan to recover the costs of purchasing the facility or equity ownership interest in Seller.
2. Xcel Energy may recover the costs for the replacement projects and interim replacement energy, renewable energy credits, and capacity from Renewable*Connect customers, subject to review of the prudence of cancellation of the Elk Creek PPA and any appropriate adjustment of recovery.
3. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Will Seuffert
Executive Secretary



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CERTIFICATE OF SERVICE

I, Robin Benson, hereby certify that I have this day, served a true and correct copy of the following document to all persons at the addresses indicated below or on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same enveloped with postage paid in the United States mail at St. Paul, Minnesota.

**Minnesota Public Utilities Commission
ORDER APPROVING REPLACEMENT SOLAR POWER PURCHASE
AGREEMENTS SUBJECT TO ADDITIONAL REQUIREMENTS AND
PRUDENCY REVIEW**

Docket Numbers: **E-002/M-19-568**

Dated this **14th** day of **April, 2023**

/s/ Robin Benson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
David	Amster Olzweski	david@mysunshare.com	SunShare, LLC	1151 Bannock St Denver, CO 80204-8020	Electronic Service	No	OFF_SL_19-568_Official
Alison C	Archer	aarcher@misoenergy.org	MISO	2985 Ames Crossing Rd Eagan, MN 55121	Electronic Service	No	OFF_SL_19-568_Official
James J.	Bertrand	james.bertrand@stinson.com	STINSON LLP	50 S 6th St Ste 2600 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-568_Official
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000 Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_19-568_Official
James	Canaday	james.canaday@ag.state.mn.us	Office of the Attorney General-RUD	Suite 1400 445 Minnesota St. St. Paul, MN 55101	Electronic Service	No	OFF_SL_19-568_Official
Jack	Chandler	jack_chandler@yahoo.com	Citizen	978 5th Street SW New Brighton, MN 55112	Electronic Service	No	OFF_SL_19-568_Official
Steve W.	Chriss	Stephen.chriss@walmart.com	Wal-Mart	2001 SE 10th St. Bentonville, AR 72716-5530	Electronic Service	No	OFF_SL_19-568_Official
John	Coffman	john@johncoffman.net	AARP	871 Tuxedo Blvd. St. Louis, MO 63119-2044	Electronic Service	No	OFF_SL_19-568_Official
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-568_Official
Riley	Conlin	riley.conlin@stoel.com	Stoel Rives LLP	33 S. 6th Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-568_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
William	Crider	William.Crider@target.com	Target Corporation	33 S 6th St CC-2805 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-568_Official
George	Crocker	gwillc@nawo.org	North American Water Office	PO Box 174 Lake Elmo, MN 55042	Electronic Service	No	OFF_SL_19-568_Official
James	Denniston	james.r.denniston@xcelen ergy.com	Xcel Energy Services, Inc.	414 Nicollet Mall, 401-8 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_19-568_Official
John E.	Drawz	jdrawz@fredlaw.com	Fredrikson & Byron, P.A.	Suite 4000 200 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_19-568_Official
John R.	Dunlop, P.E.	JDunlop@RESMinn.com	Renewable Energy Services	Suite 300 448 Morgan Ave. S. Minneapolis, MN 554052030	Electronic Service	No	OFF_SL_19-568_Official
Catherine	Fair	catherine@energycents.org	Energy CENTS Coalition	823 E 7th St St Paul, MN 55106	Electronic Service	No	OFF_SL_19-568_Official
John	Farrell	jfarrell@ilsr.org	Institute for Local Self- Reliance	2720 E. 22nd St Institute for Local Self- Reliance Minneapolis, MN 55406	Electronic Service	No	OFF_SL_19-568_Official
Sharon	Ferguson	sharon.ferguson@state.mn .us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_19-568_Official
Lucas	Franco	lfranco@liunagro.com	LIUNA	81 Little Canada Rd E Little Canada, MN 55117	Electronic Service	No	OFF_SL_19-568_Official
Edward	Garvey	edward.garvey@AESLcons ulting.com	AESL Consulting	32 Lawton St Saint Paul, MN 55102-2617	Electronic Service	No	OFF_SL_19-568_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Janet	Gonzalez	Janet.gonzalez@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 55101	Electronic Service	No	OFF_SL_19-568_Official
Todd J.	Guerrero	todd.guerrero@kutakrock.com	Kutak Rock LLP	Suite 1750 220 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_19-568_Official
Adam	Heinen	aheinen@dakotaelectric.com	Dakota Electric Association	4300 220th St W Farmington, MN 55024	Electronic Service	No	OFF_SL_19-568_Official
S Mike	Holly	4358@brainerd.net	Sorgo Fuels and Chemicals, Inc.	34332 Sunrise Blvd Crosslake, MN 56442	Electronic Service	No	OFF_SL_19-568_Official
Michael	Hoppe	lu23@ibew23.org	Local Union 23, I.B.E.W.	445 Etna Street Ste. 61 St. Paul, MN 55106	Electronic Service	No	OFF_SL_19-568_Official
Alan	Jenkins	aj@jenkinsatlaw.com	Jenkins at Law	2950 Yellowtail Ave. Marathon, FL 33050	Electronic Service	No	OFF_SL_19-568_Official
Richard	Johnson	Rick.Johnson@lawmoss.com	Moss & Barnett	150 S. 5th Street Suite 1200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-568_Official
Sarah	Johnson Phillips	sarah.phillips@stoel.com	Stoel Rives LLP	33 South Sixth Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-568_Official
Dan	Juhl	in.another.account.info@juhlenergy.com	Juhl Energy Inc.	1502 17th St SE Pipestone, MN 56164	Paper Service	No	OFF_SL_19-568_Official
Frank	Kohlasch	frank.kohlasch@state.mn.us	MN Pollution Control Agency	520 Lafayette Rd N. St. Paul, MN 55155	Electronic Service	No	OFF_SL_19-568_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Peder	Larson	plarson@larkinhoffman.com	Larkin Hoffman Daly & Lindgren, Ltd.	8300 Norman Center Drive Suite 1000 Bloomington, MN 55437	Electronic Service	No	OFF_SL_19-568_Official
Michael	Loeffler	mike.loeffler@nngco.com	Northern Natural Gas Co.	CORP HQ, 714 1111 So. 103rd Street Omaha, NE 681241000	Electronic Service	No	OFF_SL_19-568_Official
Ryan	Long	ryan.j.long@xcelenergy.com	Xcel Energy	414 Nicollet Mall 401 8th Floor Minneapolis, MN 55401	Electronic Service	No	OFF_SL_19-568_Official
Kavita	Maini	kmairi@wi.rr.com	KM Energy Consulting, LLC	961 N Lost Woods Rd Oconomowoc, WI 53066	Electronic Service	No	OFF_SL_19-568_Official
Thomas	Melone	Thomas.Melone@AllcoUS.com	Minnesota Go Solar LLC	222 South 9th Street Suite 1600 Minneapolis, Minnesota 55120	Electronic Service	No	OFF_SL_19-568_Official
Joseph	Meyer	joseph.meyer@ag.state.mn.us	Office of the Attorney General-RUD	Bremer Tower, Suite 1400 445 Minnesota Street St Paul, MN 55101-2131	Electronic Service	No	OFF_SL_19-568_Official
Stacy	Miller	stacy.miller@minneapolismn.gov	City of Minneapolis	350 S. 5th Street Room M 301 Minneapolis, MN 55415	Electronic Service	No	OFF_SL_19-568_Official
David	Moeller	dmoeller@allete.com	Minnesota Power	30 W Superior St Duluth, MN 558022093	Electronic Service	No	OFF_SL_19-568_Official
Andrew	Moratzka	andrew.moratzka@stoel.com	Stoel Rives LLP	33 South Sixth St Ste 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-568_Official
David	Niles	david.niles@avantenergy.com	Minnesota Municipal Power Agency	220 South Sixth Street Suite 1300 Minneapolis, Minnesota 55402	Electronic Service	No	OFF_SL_19-568_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Carol A.	Overland	overland@legalectric.org	Legaelectric - Overland Law Office	1110 West Avenue Red Wing, MN 55066	Electronic Service	No	OFF_SL_19-568_Official
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_19-568_Official
Kevin	Reuther	kreuther@mncenter.org	MN Center for Environmental Advocacy	26 E Exchange St, Ste 206 St. Paul, MN 551011667	Electronic Service	No	OFF_SL_19-568_Official
Amanda	Rome	amanda.rome@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 5 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_19-568_Official
Christine	Schwartz	Regulatory.records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	Yes	OFF_SL_19-568_Official
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th Pl E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-568_Official
Ken	Smith	ken.smith@districtenergy.com	District Energy St. Paul Inc.	76 W Kellogg Blvd St. Paul, MN 55102	Electronic Service	No	OFF_SL_19-568_Official
Byron E.	Starns	byron.starns@stinson.com	STINSON LLP	50 S 6th St Ste 2600 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-568_Official
James M	Strommen	jstrommen@kennedy-graven.com	Kennedy & Graven, Chartered	150 S 5th St Ste 700 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-568_Official
Eric	Swanson	eswanson@winthrop.com	Winthrop & Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_19-568_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Paul	White	paul.white@prwind.com	Project Resources Corp./Tamarac Line LLC/Ridgewind	618 2nd Ave SE Minneapolis, MN 55414	Electronic Service	No	OFF_SL_19-568_Official
Joseph	Windler	jwindler@winthrop.com	Winthrop & Weinstine	225 South Sixth Street, Suite 3500 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-568_Official
Kurt	Zimmerman	kwz@ibew160.org	Local Union #160, IBEW	2909 Anthony Ln St Anthony Village, MN 55418-3238	Electronic Service	No	OFF_SL_19-568_Official
Patrick	Zomer	Pat.Zomer@lawmoss.com	Moss & Barnett PA	150 S 5th St #1200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-568_Official