

STATE OF MINNESOTA
MINNESOTA PUBLIC UTILITIES COMMISSION

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

Docket Nos. E002/CI-23-335
E002/M-13-867

In the Matter of Northern States Power
Company, dba Xcel Energy, for Approval
of Its Proposed Community Solar Garden
Program

**Appeal of Co-Location Determination
for Enterprise Energy LLC**

I. INTRODUCTION

Enterprise Energy LLC (Enterprise) respectfully submits this appeal to the Public Utilities Commission (Commission) regarding the Department of Commerce's (Department) May 31, 2024 determination that seventeen of its interconnection applications for community solar garden (CSG) projects are co-located because these projects are intended for the Low and Moderate-Income Accessible Community Solar Garden Program (LMI-Accessible CSG Program) and should not have been reviewed for co-location under the Solar*Rewards Community program (i.e., Legacy program) by Xcel Energy (Xcel). The Department reviewed the co-location disputes under its limited role based on precedential Commission orders and concluded it lacked jurisdiction to review the arguments made by Enterprise regarding Xcel's compliance with the CSG statute and the Minnesota Distributed Energy Resources Interconnection Process (MN DIP).¹

These projects are less than five (5) megawatts (MWs) in aggregate, each with its own 1 MW point of interconnection, in compliance with the LMI-Accessible CSG Program. Enterprise is a Minnesota-based, minority-owned small business, with a singular mission to reduce the energy

¹ Department of Commerce, Resolution of Co-Location Dispute at 10 (May 31, 2024). The Department's letter is provided as Attachment A.

burden for disadvantaged communities across the country. Communities are looking forward to these community solar projects, which have essentially received all required nonministerial permits from local governmental authorities.

The central issue in this appeal is not whether these projects are co-located under Xcel's Legacy program, but whether the Legacy program co-location test should have been applied in the first place. Enterprise requests that the Commission review this appeal in light of the transition from the Legacy program to the new LMI-Accessible CSG Program and allow these projects to continue to proceed in the interconnection process without losing their respective queue positions by dismissing the co-location determinations (regardless of whether these projects move to a different interconnection application portal).

II. BACKGROUND

In anticipation of the new CSG legislation enabling the LMI-Accessible CSG Program, Enterprise began securing site control and nonministerial permits for new CSG projects. Landowners who signed agreements are eager for these projects to be built and Enterprise looks forward to providing electric bill savings to low-to-moderate income subscribers. Significant expense was spent to secure the nonministerial permit and related environmental requirements, such as decommissioning plans, stormwater management plans, vegetation management plans, wetland delineations, and land use permits, among other things. This work continued throughout the summer of 2023 under the assumption that Enterprise could apply for interconnection shortly after passage of the new law and waited for Xcel to instruct developers on how to apply for interconnection. Instead, Xcel announced it would not accept interconnection applications for the

LMI-Accessible CSG Program until January 2024.² After making significant investments for a small startup, Enterprise began applying for interconnection for twenty 1 MW projects in Xcel's CSG portal. Local governmental authorities approved these projects as co-located 1 MW projects (Xcel determined seventeen projects were co-located under its co-location criteria). Enterprise paid Xcel a \$100,000 deposit in cash for each 1 MW interconnection application, totaling \$2 million; a significant expense for a small company (the employees raised this money on their own prior to securing a loan, which is accruing interest).

Enterprise was transparent with Xcel staff during bi-weekly meetings regarding its intentions to apply to the LMI-Accessible CSG Program. Nevertheless, Xcel sent Enterprise a questionnaire regarding co-location on February 8, 2024. Enterprise responded that these projects were intended for the LMI-Accessible CSG Program and do not exceed the system size limit for the LMI-Accessible CSG Program.³ Enterprise added that each 1 MW project would have its own point of interconnection and would not be materially modified to aggregate into a single multi-megawatt project.⁴

On April 17, 2024, Xcel issued a Notice of Co-Location (Notice) to Enterprise for seventeen of its interconnection applications, which were deemed complete on or between October 16, 2023, and December 11, 2023, and in various stages of study at the time the Notice was issued. The Notice is provided as Attachment B. A timeline for the projects at issue are provided as Attachment C. By the time it received the Notice, Enterprise paid **[TRADE SECRET DATA BEGINS . . . TRADE SECRET DAT ENDS]** in study fees in addition to application fees. In its

² *In the Matter of Northern States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program and In the Matter of Implementation of 2023 Legislative Changes to Xcel Energy's Community Solar Garden Program*, PUC Docket Nos. E-002/M-13-867 and E-002/CI-23-335, Xcel Energy's Response to Commission's July 26, 2023 Notice at 6 (Aug. 28, 2023).

³ The Co-Location Questionnaire responses are summarized on pages 3 through 6 in the Department's May 31, 2024 letter regarding the resolution of the co-location dispute, which is included as Attachment A.

⁴ *Id.*

Notice, Xcel argued that Enterprise applied to the Legacy program because it submitted its interconnection applications to its CSG portal, and these applications were “deemed complete” prior to January 1, 2024.⁵ Under the Legacy program, the Department determined that these projects are co-located but concluded that the arguments made by Enterprise are outside the Department’s scope of authority, which is limited to co-location determinations under the Legacy program.⁶

Enterprise questions the relevance of whether these projects are co-located under the Legacy program because they would not be considered co-located under the LMI-Accessible CSG Program. Enterprise is not able to submit applications for these projects to the Department for consideration under the LMI-Accessible CSG Program until it has secured interconnection agreements for its projects.⁷ Enterprise applied for interconnection through Xcel’s only available interconnection application portal to obtain the prerequisite interconnection agreements for application to the LMI-Accessible CSG Program. Enterprise attempted to apply for interconnection through Xcel’s Distributed Generation (DG) portal but that process requires a premise number to start the process, which CSG projects innately do not have. Enterprise also delivered paper interconnection applications to Xcel but were later notified by Xcel that it would not accept applications that would later be associated with the LMI-Accessible CSG Program.⁸

III. ANALYSIS

A. Applicable Law

⁵ Xcel Energy Response to Co-Location Dispute with Enterprise Energy before the Department of Commerce at 2 (May 8, 2024) (Hereinafter Xcel Co-Location Response). This document is provided in Attachment B without attachments and is marked Not Public in its entirety.

⁶ Department of Commerce, Resolution of Co-Location Dispute at 6 (May 31, 2024).

⁷ See Minn. Stat. § 216B.1641, subd. 5.

⁸ E-mail from Casey Anderson, Xcel Energy, to Solar Rewards Community MN (April 15, 2024). This E-mail is included as Attachment D.

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Due to the transition to the new CSG program created by the Legislature in 2023, the central decision before the Commission is whether Xcel’s tariff for its Legacy program applies to CSG projects in the queue that are intended for the LMI-Accessible CSG Program. In its December 28, 2023 Order Implementing New Legislation Governing Community Solar Gardens, the Commission explained that “the new program divides administrative roles between Xcel and the Department; Xcel will continue to evaluate the applicant’s interconnection, while the Department will evaluate an applicant’s qualifications to join the LMI-Accessible CSG Program according to the criteria set forth in the new legislation.”⁹ Xcel applied the Legacy program’s co-location test knowing these projects were intended for the LMI-Accessible CSG Program. Further, Xcel applied the co-location test well after the applications were deemed complete indicating its intent to thwart Enterprise’s projects from proceeding in the interconnection process.¹⁰

In its Notice, Xcel claims that these seventeen interconnection applications must comply with its Legacy program because they were submitted and “deemed complete” prior to January 1, 2024.¹¹ To the contrary, from May 25, 2023, to December 31, 2023, CSG developers had the option to choose between the Legacy program and the LMI-Accessible CSG Program. Section 216B.1641, subdivision 14 states:

(a) From May 25, 2023, to the date the commissioner begins allocating capacity under subdivision 7, but no later than December 31, 2023, a subscriber organization may submit a community solar garden project application to the utility for the legacy program under subdivision 1 *or* to the commissioner for the program under subdivisions 3 to 12.

⁹ *Solar Garden Program and In the Matter of Implementation of 2023 Legislative Changes to Xcel Energy’s Community Solar Garden Program*, PUC Docket Nos. E-002/M-13-867 and E-002/CI-23-335, PUC Docket Nos. E-002/M-13-867 and E-002/CI-23-335, Order Implementing New Legislation Governing Community Solar Standards at 3 (Dec. 28, 2023).

¹⁰ Xcel applied the co-location test in February 2024. The timeline shown in Attachment C, which is trade secret in its entirety, contains the dates each project was deemed complete.

¹¹ Notice of Co-Location from Xcel Energy to Enterprise Energy at 2 (Apr. 17, 2024). This document is included as Attachment B.

(b) The utility administering the legacy program under subdivision 1 *must act in good faith* to continue processing applications for the legacy program until December 31, 2023. *An application for the legacy program that is approved on or before December 31, 2023, is eligible to become a community solar garden under subdivisions 3 to 12*, provided the proposed community solar garden complies with subdivisions 3 to 12. (Emphasis added.)

The plain language of subdivision 14(a) provides a subscriber organization the choice of whether to submit a CSG project application to the Legacy program or the LMI-Accessible CSG Program between May 25, 2023, and December 31, 2023. Subdivision 14(b) further clarifies that an application for the Legacy program approved prior to December 31, 2023, is eligible for the LMI-Accessible CSG Program. All seventeen of the projects identified by Xcel in its Notice comply with the size limitation of subdivision 6, which limits project size to 5 MW. Enterprise's interconnection applications were deemed complete prior to December 31, 2023, and it was up to Enterprise whether to submit its projects in the Legacy program or the new CSG program. Enterprise did not choose the Legacy program simply because it applied for interconnection.

B. Xcel Had a Duty to Accept Interconnection Applications

The Legislature did not intend for Xcel to act as a gatekeeper to determine who can and who cannot apply for interconnection after the new CSG legislation went into effect on May 25, 2023. Between May 25, 2023 and May 16, 2024 (when Xcel opened its DG portal to all CSG developers), Xcel was required to comply with the Minnesota Distributed Energy Resources Interconnection Process (MN DIP), which allows for Distributed Energy Resource (DER) projects no larger than 10 MW to apply for interconnection. Xcel repeatedly prohibited interconnection requests by CSG developers unless those requests were 1 MW or less. In an October 11, 2023 e-mail sent to the community solar community regarding the CSG program transition, Xcel stated:

This means that developers cannot submit a non-CSG DER interconnection application (which is not submitted through the CSG Application Portal, and which is not submitted as a Non-Legacy CSG) and later attempt to transfer that non-CSG DER interconnection application (or its queue position) to a Non-

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Legacy CSG application (Page 6, Response). Our Application Portal cannot accommodate this type of transfer. All stakeholders have been apprised that we will not allow this, and most developers have relied on this communication and followed this procedure. It would be unfair and inconsistent to make exceptions.¹²

In its response to this co-location dispute before the Department (Response), Xcel described that it “consistently communicated to the solar developer community throughout the fall of 2023 and early 2024 that applications to the LMI Accessible CSG program must be submitted through a separate portal and cannot be submitted through the Legacy CSG portal.”¹³ Nevertheless, Xcel allowed some interconnection applications for CSG projects intended for the LMI-Accessible CSG Program to proceed because the Department approved over 42 MWs of projects within the first three batches of applications it processed, which would not be possible unless queue positions were secured prior to 2024.¹⁴ It is assumed these projects were 1 MW or less in size and were not found to be co-located. Xcel created its own rules.

In its Response, Xcel reiterated that it would not be fair for it to make exceptions to its directive that interconnection applications submitted to the CSG portal and deemed complete prior to January 1, 2024, will be required to follow the rules of the Legacy program even if these projects will be considered under the LMI-Accessible CSG Program.¹⁵ Xcel further stated that if the Department determines these projects are co-located, then it will reduce the size of the co-located projects to 1 MW by allowing only the first in queue of each of the five clusters to continue, which would reduce Enterprise’s seventeen 1 MW projects to five 1 MW projects.¹⁶ To be clear, the

¹² E-mail from Casey Anderson, Xcel Energy, to Solar Rewards Community MN (October 11, 2023). This E-mail is included as Attachment D.

¹³ Xcel Co-Location Response at 2.

¹⁴ DEPARTMENT OF COMMERCE, COMMUNITY SOLAR GARDENS, [https://mn.gov/commerce/energy/consumer/energy-programs/community-solar-gardens.jsp#:~:text=Individual%20garden%20may%20now%20be,electric%20rates%20\(A50%20rates\)](https://mn.gov/commerce/energy/consumer/energy-programs/community-solar-gardens.jsp#:~:text=Individual%20garden%20may%20now%20be,electric%20rates%20(A50%20rates)) (last visited Apr. 29, 2024).

¹⁵ Xcel Co-Location Response at 2.

¹⁶ *Id.*

Commission did not give Xcel the authority to prohibit interconnection applications for CSG projects between 1 and 5 MW.

In the Department's co-location determination letter, the Department explained its concerns regarding Xcel's interconnection process that it submitted into the record in the above-mentioned proceedings. Specifically, the Department stated in its letter:

The Department objected to Xcel's tariff filing of January 5, 2024, which would have required interconnection applications for the LMI-accessible program to apply through a portal on Xcel's website, for the reason that Xcel had impermissibly interfered with the existing MN DIP process governing interconnection and may interfere with or complicate the Department's CSG program management. In its objection filed before the Commission, the Department reasoned further that it would be premature to have developers complete CSG applications with Xcel when the only prerequisite for an application with the Department is an interconnection agreement. The Commission agreed with the Department's reasoning at its April 4, 2024 Agenda Meeting, and verbally adopted a decision option that requires Xcel to revise its tariff so that its Distributed Generation Application Portal is used for interconnection applications. No decision option regarding *prior* violations of MN DIP by Xcel was considered or adopted.¹⁷ (Citations omitted.) (Internal quotation marks omitted.)

The Department noted that the Commission has jurisdiction over the interconnection process in accordance with Minnesota Statutes section 216B.1611 and MN DIP.¹⁸ The Commission concluded that Xcel is no longer the administrator of the program and interconnection applicants should not be required to use an application portal specific for CSG projects.¹⁹ Indeed, it was nonsensical to require developers to apply for interconnection in a CSG portal prior to applying to the Department to be approved as a CSG to participate in its LMI-Accessible CSG

¹⁷ Department of Commerce, Resolution of Co-Location Dispute at 10 (May 31, 2024).

¹⁸ *Id.*

¹⁹ *In the Matter of Northern States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program* and *In the Matter of Implementation of 2023 Legislative Changes to Xcel Energy's Community Solar Garden Program*, PUC Docket Nos. E-002/M-13-867 and E-002/CI-23-335, Order Implementing New Legislation Governing Community Solar Gardens at 3 (May 30, 2024).

Program but that is just what Xcel intended to do.²⁰ The Commission’s May 30, 2024 Order said it best – “This process is not consistent with the plain language of the amended statute.”²¹ Instead, the Commission ordered Xcel to accept all DER interconnection applications through its DG portal.²²

C. Enterprise Acted in Good Faith

Enterprise had biweekly meetings with Xcel staff regarding each of these projects starting from the first date of application submission. Enterprise was transparent and Xcel staff were aware of its intent to submit these projects to the LMI-Accessible CSG Program once it secured the interconnection agreements. In several of these conversations, Xcel staff agreed with Enterprise’s assessment that this pathway was feasible.²³ To that end, Xcel batched the projects into 3- to 5-MW clusters for study, some of which have been active in the study process for more than six months.

It is questionable whether Xcel acted in good faith by applying the co-location test applicable to its Legacy program well after the projects were deemed complete. Xcel’s tariff states that it will check for compliance with co-location size on or about the time of the determination of the “Initial Application Completeness” and on or before the “Date of Commercial Operation.”²⁴

²⁰ See *id.* at 3 (summarizing Xcel’s argument “that if it was not permitted to use its existing and separate portal for CSG projects, it would need to fully redesign its online portal technology” causing significant delays in its ability to process interconnection applications).

²¹ *Id.* at 3 (reasoning that “[c]ontinuing with Xcel’s current application portal design would functionally require non-legacy CSG applicants to apply and receive approval as non-legacy projects through Xcel before apply to the Department” is not consistent with the statute).

²² *Id.* at 6. Prior to the Commission’s May 30, 2024 Order, the Department’s website stated that it “requires a signed interconnection agreement but does not require that a project enter through a particular interconnection portal.” DEPARTMENT OF COMMERCE, COMMUNITY SOLAR GARDENS, KEY PROGRAM DETAILS, INTERCONNECTION AGREEMENT REQUIRED, <https://mn.gov/commerce/energy/consumer/energy-programs/community-solar-gardens.jsp> (last visited June 7, 2024); *id.* FREQUENTLY ASKED QUESTIONS, at Question 32, https://mn.gov/commerce-stat/pdfs/csg_frequently-asked-questions-v5.pdf (last visited June 7, 2024).

²³ These conversations between Xcel and Enterprise were oral and not written communications.

²⁴ Xcel Energy Minnesota Electric Rate Book—MPUC No. 2, Community*Solar Rewards Community Program at Tariff Sheet 9-68.2 (May 9, 2019).

At the time Xcel issued its co-location Notice, the majority of the projects were in the system impact study phase. Xcel pointed out in its Response to the Department that at the time it sent the co-location questionnaire to Enterprise, on February 8, 2024, it was prior to the projects being studied.²⁵ However, it was still months after the applications were deemed complete. The timing is suspect given Xcel’s continued assertions that it would not accept interconnection applications for projects intended for the LMI-Accessible CSG Program.

After Xcel came to believe that “some developers have submitted several 1 MW Legacy CSG applications that could be considered co-located, with an intent to later transfer them to the Non-Legacy CSG project that allows larger, 5 MW size gardens,” Xcel threatened that it would “not allow co-located Legacy CSG projects to be aggregated into a single Non-Legacy CSG or site.”²⁶ Xcel continues to raise the issue of fairness to other developers and that it should not make exceptions; however, Xcel had no authority to prohibit interconnection applications for CSGs above 1 MW. Enterprise should not be penalized because Xcel arbitrarily refused interconnection applications for CSG projects between 1 MW and 5 MW in size. Enterprise and the communities for whom these projects are intended to benefit would be harmed if Xcel reduced the size of the co-located projects to 1 MW each.

IV. CONCLUSION

The Department considered the appeal in the context of the Legacy program rather than the LMI-Accessible CSG Program because executed interconnection agreements are required to apply to the LMI-Accessible CSG Program and Enterprise applied for interconnection in Xcel’s

²⁵ Xcel Co-Location Response at 5-6.

²⁶ *In the Matter of Northern States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program* and *In the Matter of Implementation of 2023 Legislative Changes to Xcel Energy’s Community Solar Garden Program*, PUC Docket Nos. E-002/M-13-867 and E-002/CI-23-335, Xcel Comments on Objections to Compliance Tariff Filing at 12 (Feb. 21, 2024).

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CSG portal.²⁷ Xcel created this Catch-22 situation by forcing developers to apply for interconnection in Xcel's CSG portal or not applying for interconnection at all. Yet developers are entitled to apply for interconnection under MN DIP.

Xcel created this conundrum and then applied a co-location test long after the projects were deemed complete to penalize Enterprise's initiative to apply for interconnection so that it can apply to the LMI-Accessible CSG Program. Enterprise has made significant investments in these projects, communities are eager to host these projects, and low-to-moderate income subscribers are looking forward to bill savings. Enterprise respectfully requests the Commission to dismiss these co-location determinations and allow these projects to continue the interconnection process without losing their queue positions in accordance with the Commission's May 30, 2024 Order.

Dated: June 7, 2024

Respectfully submitted,

/s/ Ingrid Bjorklund

Ingrid E. Bjorklund

Minnesota Attorney License No. 0350850

Avisen Legal, P.A.

901 Marquette Avenue South, Suite 1675

Minneapolis, MN 55402

Phone: (612) 584-3407

Email: ibjorklund@avisenlegal.com

Attorney for Enterprise Energy LLC

²⁷ Department of Commerce, Resolution of Co-Location Dispute at 5 (May 31, 2024).