STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Katie Sieben	Chair
Hwikwon Ham	Commissioner
Valerie Means	Commissioner
Joseph K. Sullivan	Commissioner
John Tuma	Commissioner

In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of Its Proposed Community Solar Garden Program	PUC Docket No. E-002/M-13-867

PETITION FOR RECONSIDERATION OF THE AUGUST 16, 2024, ORDER DENYING REQUESTS FOR RECONSIDERATION OF THE MAY 30, 2024, ORDER AND CLARYIFYING THE MAY 30, 2024, ORDER

AND

PETITION FOR EXPEDITED RELIEF

SUBMITTED BY STANDARD SOLAR, INC.

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PETITION FOR RECONSIDERATION

On June 20, 2024, Standard Solar, Inc., timely petitioned pursuant to Minn. Stat. § 216B.27, subd. 1, for reconsideration of the Minnesota Public Utilities Commission's ("Commission") May 30, 2024, Order Approving Community Solar Garden Program Rate-Transition Proposal with Modifications (the "Order").[1] The Order approved Xcel Energy's ("Xcel") compliance filing and "authorize[d] a transition from the applicable retail rate (ARR) to the value of solar rate (VOS) for all existing [Community Solar Gardens or] CSGs."[2] On August 16, 2024, the Commission denied that petition, but clarified the May 30 Order.[3] Standard Solar feels compelled to petition pursuant to Minn. Stat. § 216B.27, subd. 1, for reconsideration of the August 16 Reconsideration Order because in a recent appellate brief the Commission has taken the view that parties must seek reconsideration from any Commission decision they seek to appeal, even if that decision is contained in an order denying reconsideration (despite the fact the Commission is precluded by Minn. Stat. § 216B.27, subd. 3, from granting such a rehearing request). In that appellate brief, the Commission has argued that failure to seek reconsideration of an order denying reconsideration effects a waiver under Minn. Stat. § 216B.27, subds. 2 and 5, and *Matter of N. States Power Co.*, 447 N.W.2d 614 (Minn. Ct. App. 1989) if the reconsideration order contains *any* modification of the earlier order.[4] Specifically, the Commission asserted that

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1 *In the Matter of Xcel Energy's Plan for a Community Solar Garden Program Pursuant to Minn. Stat. § 216B.1641*, PUC Docket No. E-002/M-13-867, Order Approving Community Solar Garden Program Rate-Transition Proposal with Modifications (May 30, 2024).

2 *Id.* at 2.

3 *In the Matter of Xcel Energy's Plan for a Community Solar Garden Program Pursuant to Minn. Stat. § 216B.1641*, PUC Docket No. E-002/M-13-867, Order Denying Requests for Reconsideration of May 30, 2024 Order (Aug. 16, 2024) (the "Reconsideration Order").

4 *See In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, Consolidated Appellate File Nos. A23-0867, A23-0871 & A23-1957 (Minn. Ct. App.) (the "*Minnesota Power* appeal"), Respondent Minnesota

continued on next page …

"[w]hile the Commission may not *grant* more than one rehearing request, that limit 'shall not be construed to prevent any party from filing a new application.'"[5] The appellant rejected the Commission's position on various grounds, but in the absence of an appellate decision on point, and in an abundance of caution, Standard Solar hereby files this second petition for reconsideration.

The Commission clarified in the Reconsideration Order that:

> to the extent the May 30 Order may be a departure from the 2014 and 2016 orders, the Commission has authority under § 216B.25 and relevant case law to depart from its past decisions and finds that it was in the public interest to do so based on how Xcel's CSG program has evolved and the nearly decade's worth of data related to the CSG program's operation. The May 30 order details the changed circumstances informing the Commission's consideration of Xcel's CSG program, particularly the significant and escalating costs of the ARR-gardens to non-subscribing ratepayers and the successful operation of CSGs under the VOS. As explained in the order, transitioning to the VOS is consistent with the Commission's fundamental and overarching duty to establish just and reasonable rates.[6]

In response to this clarification, Standard Solar seeks reconsideration on the same grounds as previously set forth in its June 20, 2024, Petition for Reconsideration (a copy of which is attached hereto as Appendix B and incorporated herein), specifically with respect to the arguments set forth on pages 22 through 53 thereof and further argues that:

(i) The Order, independently and as clarified in the Reconsideration Order, violates the unambiguous mandate in Minn. Stat. § 216B.1641, Minn. Stat. § 216B.164, and Minn. R. 7835.4023 that, once approved, the VOS can only be implemented on a prospective basis

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Public Utilities Commission's Brief at 16-19, 42, 49 (Apr. 22, 2024) (copy of relevant pages attached hereto as Appendix A).

5 *Minnesota Power* Appeal, Commission Brief at 42 (quoting Minn. Stat. § 216B.27, subd. 3) (emphasis in original).

6 Reconsideration Order at 1-2.

for new Community Solar Gardens ("CSGs"). Minn. Stat. "§ 216B.25 and relevant case law" cannot overcome this mandate.

(ii) The Order, independently and as clarified in the Reconsideration Order, (1) violates the general prohibition against retroactive ratemaking, (2) did not find that the ARR framework was unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise unreasonable or unlawful, all of which would be needed to change the 2014 and 2016 orders "under [Minn. Stat.] § 216B.25 and relevant case law," and (3) made no prospective change to the ARR framework, because that framework had already been replaced by VOS for all applications deemed complete after December 31, 2016.

(iii) The Order, independently and as clarified in the Reconsideration Order, exceeds the Commission's authority by imposing a rate on pre-existing CSGs that undermines the financeability requirement, negatively impacts accessibility, and is contrary to the public interest, rendering the Order (independently and as clarified) at odds with the enabling statute, Minn. Stat. § 216B.1641. Minn. Stat. "§ 216B.25 and relevant case law" cannot overcome the enabling statute, while the summary "public interest" finding referenced in the Reconsideration Order conflicts with the record.

(iv) The Order, independently and as clarified in the Reconsideration Order, incorrectly interprets the *Mobile-Sierra* Doctrine. Minn. Stat. "§ 216B.25 and relevant case law" cannot overcome *Mobile-Sierra*'s limitations.

(v) There is no evidence in the record to support the assertion that the Order, independently or as clarified in the Reconsideration Order, results in net customer savings, instead merely redistributing customer cost savings from subscribing customers, who contracted for those savings, to non-subscribing customers. Accordingly, the summary "public interest" and alleged "significant and escalating costs of the ARR-gardens to non-subscribing ratepayers

and the successful operation of CSGs under the VOS" findings referenced in the Reconsideration Order conflict with the record and ignore critical evidence, as set forth in Standard Solar's June 20, 2024, petition for reconsideration.

(vi) The Commission does not have implied authority to retroactively impose the VOS on ARR-era CSGs, and even if, *arguendo*, the Commission had implied authority to retroactively apply the VOS for ARR-era CSGs (it does not), the Commission cannot have implied authority to do so if the application of VOS for those pre-existing CSGs results in rates that are inconsistent with the public interest or do not allow for the accessibility of those CSGs. Contrary to the blanket assertions in the Reconsideration Order, Minn. Stat. "§ 216B.25 and relevant case law" cannot overcome these statutory requirements.

(vii) The Order, independently and as clarified in the Reconsideration Order, violates article I, section 11, of the Minnesota Constitution and article I, section 10, clause 1 of the United States Constitution by (1) substantially impairing CSG developers' (including Standard Solar's) contracts and (2) effecting a constructive taking of CSG developers' (including Standard Solar's) property without just compensation. Minn. Stat. "§ 216B.25 and relevant case law" cannot overcome constitutional limitations on the Commission's authority, nor does the Reconsideration Order address the substantial evidence submitted by Standard Solar in support of the damages it will suffer in transitioning from ARR to VOS. *See* Minn. Stat. § 14.69(a).

(viii) The Order, independently and as clarified in the Reconsideration Order, arbitrarily and capriciously fails to adequately explain the Commission's decision to reverse prior orders on which stakeholders relied and on which the Commission intended stakeholders to rely, and fails to provide a "reasoned explanation" for the decision to "disregard[] facts and circumstances that underlay or were engendered by the prior policy." *C.C. v. Fox*

Television Stations, Inc., 556 U.S. 502, 515 (2009). The conclusory statements in the Reconsideration Order that the Commission "finds that it was in the public interest to do so based on how Xcel's CSG program has evolved and the nearly decade's worth of data related to the CSG program's operation"[7] and that the Commission considered "the significant and escalating costs of the ARR-gardens to non-subscribing ratepayers and the successful operation of CSGs under the VOS"[8] do not permit appellate review, are inadequate, and are contrary to the record evidence. Minn. Stat. "§ 216B.25 and relevant case law" do not authorize actions that are directly contrary to the record. *See* Minn. Stat. § 14.69(e). And as set forth above and in Standard Solar's Petition for Reconsideration, the explanation that "transitioning to the VOS is consistent with the Commission's fundamental and overarching duty to establish just and reasonable rates" lacks a factual basis in the absence of the prerequisite foundational finding under Minn. Stat. § 216B.23, subd. 2, that the ARR framework was "unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise unreasonable or unlawful" and is contrary to the record evidence. Furthermore, any attempt by the Commission to leverage Minn. Stat. § 216B.25 as an after-the-fact justification for its myriad legal violations fails as a matter of law because any application of Minn. Stat. § 216B.25 is constrained by, *inter alia*, the requirements set forth in Minn. Stat. §§ 216B.1641 and 216B.23.

Each of these arguments individually supports reversal of the Order and the Reconsideration Order.

In addition, the Commission denied Standard Solar's request for stay. Standard Solar respectfully submits that the Commission did not address Standard Solar's concerns, and reiterates

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7 Reconsideration Order at 1-2.

8 *Id.*

its prior arguments in support of a stay of the Order, and now Reconsideration Order, as contained on pages 54-55 of its Petition for Reconsideration.

PETITION FOR EXPEDITED RELIEF

Standard Solar seeks expedited resolution of its Petition for Reconsideration in light of the fact that while the Petition is being filed in response to the Commission's arguments in the *Minnesota Power* appeal, the Commission has already acknowledged in its brief in that appeal that "the Commission may not *grant* more than one rehearing request."[9] Thus, Standard Solar submits — and the *Minnesota Power* appellant argued in its reply brief — that even if there was merit to the Commission's claim that a second petition for reconsideration is implied under state law (and Standard Solar submits there is not under either subdivisions 3 or 5[10] of Minn. Stat. § 216B.27), the Commission effectively conceded in the *Minnesota Power* appeal that the futility exception to exhaustion of remedies applied.[11]

"Informal or expedited proceedings may be used when contested case proceedings are not required."[12] "In expedited proceedings, the commission shall require that factual allegations be made under oath or by affirmation and that documents filed in the proceeding be verified."[13] Here, no factual allegations or documents are at issue, and the Commission has itself already admitted it

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9 *See Minnesota Power* appeal, Commission Brief at 42 (quoting Minn. Stat. § 216B.27, subd. 3) (emphasis in original).

10 Minn. Stat. § 216B.27, subd. 5 provides that "[i]t is hereby declared that the legislative powers of the state, insofar as they are involved in the issuance of orders and decisions by the commission, have not been completely exercised until the commission has acted upon *an* application for rehearing." (Emphasis added.)

11 *See City of Richfield v. Local No. 1215, Intern. Ass'n of Fire Fighters*, 276 N.W.2d 42, 51 (Minn. 1979) (noting that the exhaustion of remedies rule "is not absolute; it is tempered by practicality. The doctrine of exhaustion of administrative remedies is not applicable where it would be futile to seek such redress.") (quoting *State Bd. of Med. Exam'rs. v. Olson*, 206 N.W.2d 12, 17 (Minn. 1973)).

12 Minn. R. 7829.1200, subp. 1.

13 *Id.*, subp. 2.

is required to deny the petition.[14] So as not to delay appellate proceedings, Standard Solar respectfully submits that expedited resolution of this Petition is appropriate, and requests that the Petition be addressed in an expedited manner pursuant to Minn. R. 7829.1200.

Respectfully submitted,

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[14] *See Minnesota Power* appeal, Commission Brief at 42 (quoting Minn. Stat. § 216B.27, subd. 3).