

Staff Briefing Papers

Meeting Date April 18, 2024 **Agenda Item 1****

Company Northern States Power Co. d/b/a Xcel Energy

Docket No. E002/C-23-424

In the Matter of the Formal Complaint and Request for Relief by the Minnesota Solar Advocates

Issues Should the Commission grant Minnesota Solar Advocates’¹ petition for reconsideration?

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✓ Relevant Documents

Date

Commission Order Dismissing MSA Complaint	February 27, 2024
Minnesota Solar Advocates – Petition for Rehearing	March 8, 2024
Xcel Energy – Answer to Petition for Rehearing	March 18, 2024

¹ The Minnesota Solar Advocates includes: Minnesota Solar Energy Industries Association, the Coalition for Community Solar Access, Cooperative Energy Futures, Minneapolis Climate Action, MN Solar, Solar United Neighbors, Luke and Layne Schmitz, David Crawford and Megan Clancy, Lorelle and Daniel Blezek, Dale Mossey, Roman and Mila Podrezov, Ryan Schaefer, Lori and Ken Byro, Michael Rynders, Wild Mountain, Inc., Nexamp, Innovative Renewable Energy, Inc., Vote Solar, SunShare, Rotochopper, Inc., Novel Energy Solutions, All Energy Solar, Blue Horizon Energy, LLC, Syncarpha Capital, LLC, Sunrise Energy Ventures, LLC, and the Institute for Local Self Reliance

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

BACKGROUND

On September 12, 2023, Minnesota Solar Advocates (MSA) filed a Formal Complaint against Xcel Energy (Xcel or the Company) opposing Xcel's use of its Technical Planning Standard (TPS).

On February 27, 2023, the Commission issued its Order dismissing the Complaint without prejudice based on a unanimous (4-0) decision made at the December 14, 2024, agenda meeting (Order). The Order also tasked Xcel with hosting informational stakeholder meetings with relevant and interested parties on the justification and decision-making behind the Company's implementation of the TPS, including options to apply the standard more granularly and set aside a smaller buffer.

On March 8, 2024, MSA filed a petition for rehearing regarding the Order dismissing the Complaint.

On March 18, 2024, Xcel filed an answer to the petition for rehearing.

Standard for Review

Both MSA and Xcel acknowledge petitions for reconsideration are governed by Minn. Stat. §216B.27 and Minn. R. 7829.3000. Xcel Energy cites a standard of review used in past Commission considerations for such petitions:²

... determine whether the petition (1) raises new issues, (2) points to new and relevant evidence, (3) exposes errors or ambiguities in the underlying order, or (4) otherwise persuades the Commission that it should rethink its decision.

DISCUSSION

Minnesota Solar Advocates

Minnesota Solar Advocates finds the Commission's Order to be unlawful and unreasonable and thus requests the Commission "grant its rehearing request and either initiate an investigation because Xcel's implementation of the TPL violates numerous provisions of Minnesota law or, at the very least, explicitly address the legal issues raised in the complaint so that the public, stakeholders and appellate courts understand how the current Commission believes it is required to perform its regulatory function."³ (**Decision Options 1, 1A, and 1B**)

MSA claims that the Order is unlawful because it allows Xcel to implement the TPS, which they

² Xcel, P. 1, Answer, 3/18/24, citing ORDER AFTER RECONSIDERATION at 9, Docket No. E999/CI-03-869 (Aug. 13, 2004) - *In the Matter of Detailing Criteria and Standards for Measuring an Electric Utility's Good Faith Efforts in Meeting the Renewable Energy Objectives Under Minn. Stat. § 216B.1691.*

³ Minnesota Solar Advocates, P. 3, Petition, 3/8/2024

claim is a “generic interconnection rule/practice/policy/standard that limits the capacity of its entire distribution system” which “appears to violate the plain language of Minn. Stat. §§ 216B.164, 216B.1641, 216B.1611, 216B.03, 216B.05, 216B.07, and 216B.16,” a reiteration of their arguments made in their initial complaint.⁴ MSA claims the Commission’s Order “recognizes all the statutory provisions that the MSA alleged Xcel has violated” but “did not explicitly address any of them.”⁵

MSA continues, saying that the Commission’s Order does not explain why the provision under Minn. Stat. § 216B.164, subd. 4b is either not applicable or is considered met.⁶ MSA also states that the Commission didn’t explain how the TPS is not prohibited under Minn. Stat. § 216B.1641, subd. 1. MSA claims that the Commission didn’t explain how Xcel can “change a generic interconnection rule/policy/practice/standard without establishing it met the requirements of Minn. Stat. § 216B.1611, subd. 2, followed the procedures of Minn. Stat. 216B.16, or was filed pursuant to Minn. Stat. § 216B.05.”⁷ MSA also requests an explanation for how the TPS doesn’t violate Minn. Stat. § 216B.03 or Minn. Stat. § 216B.07.

MSA continues to dispute that the TPS is based on sound engineering and cites Xcel’s engineer during the March 14, 2024 agenda meeting stating that the TPS is not based on detailed information or analysis and that the judgement was based on engineering observations. MSA reiterates that the record does not support the TPS and that it is not based on industry standards or good utility practice.⁸ MSA accuses the Commission that it will agree with a utility as long as a utility “simply claims any decision it makes is based on its engineering judgment, no matter how unsubstantiated that claim is” and that the Commission is “[refusing] to fulfil their responsibilities to protect the public.”⁹

MSA states that Minnesota needs and relies on a strong Commission but allowing Xcel to make

⁴ Minnesota Solar Advocates, P. 10, Petition, 3/8/2024

⁵ Minnesota Solar Advocates, P. 9, Petition, 3/8/2024

⁶ Minn. Stat. § 216B.164, subd. 4b states “The commission may limit the cumulative generation of net metered facilities under subdivisions 3 and 3a. A public utility may request the commission to limit the cumulative generation of net metered facilities under subdivisions 3 and 3a upon a showing that such generation has reached four percent of the public utility’s annual retail electricity sales. The commission may limit additional net metering obligations under this subdivision only after providing notice and opportunity for public comment. In determining whether to limit additional net metering obligations under this subdivision, the commission shall consider:

- (1) the environmental and other public policy benefits of net metered facilities;
- (2) the impact of net metered facilities on electricity rates for customers without net metered systems;
- (3) the effect of net metering on the reliability of the electric system;
- (4) technical advances or technical concerns; and
- (5) other statutory obligations imposed on the commission or on a utility.

The commission may limit additional net metering obligations under clauses (2) to (4) only if it determines that additional net metering obligations would cause significant rate impact, require significant measures to address reliability, or raise significant technical issues.”

⁷ Minnesota Solar Advocates, P. 11, Petition, 3/8/2024

⁸ Minnesota Solar Advocates, P. 13, Petition, 3/8/2024

⁹ Minnesota Solar Advocates, P. 11 and P. 13, Petition, 3/8/2024

policies and procedures, like the TPS, without Commission approval diminishes the Commission's authority and ability to regulate Minnesota's electric monopolies. MSA reiterates its request for a rehearing and to either investigate the allegations in the complaint or explicitly address the legal issues raised in the complaint.

Xcel Energy Answer

Xcel states that the petition has not raised any new relevant issues or presented any new relevant facts and that the February 27, 2024 Commission Order contains no ambiguities. Xcel states that given these findings, the Commission should deny the Petition for Rehearing (**Decision Option 2**).¹⁰

Xcel claims that MSA appears to be conflating the roles of the Department of Commerce and the Commission. Xcel cites the September 2002 Minnesota House Research Report which addresses the roles of the Commission, the Department, and the Office of the Attorney General in the regulation of utilities. The citation reiterates the Commission has legislative, quasi-judicial, and administrative functions.

Regarding the MSA's claims that Xcel has violated Minn. Stat. §§ 216B.164, 216B.1641, 216B.1611, 216B.03, 216B.05, 216B.07, and 216B.16, Xcel states that this issue has been extensively addressed and rebutted throughout the Company's October 20, 2023 comments in this proceeding. Regarding Minn. Stat. § 216B.05, Xcel states that their comments are clear that not every detail of the utility practices or engineering standards must be committed to tariff, a concept that is reflected in MN DIP.¹¹

Xcel also refutes MSA's claim that the Company applies the TPS differently to certain types of solar projects to favor some over others.¹² Xcel offers that MSA may be confusing this TPS with another proceeding in Docket No. E999/CI-16-521 on queue priority and Xcel's proposal to modify the TPS. Xcel notes that the Commission heard this item on March 14, 2024, and denied Xcel's proposal to modify the TPS.

Regarding MSA's claims that the TPS violates the TIIR and the Company's TSM, Xcel states that this has already been refuted in their October 20, 2023, comments.¹³ Xcel also claims that MSA's arguments that the Company violated the March 31, 2022, Commission Order has been extensively addressed and rebutted. Regarding the DGWG not supporting the TPS, Xcel states that the DGWG cannot override Commission Orders – that it provides feedback and input on interconnection issues but does not have decision-making authorities.¹⁴

¹⁰ Xcel Energy, P. 2, Answer, 3/28/2024

¹¹ Xcel Energy, P. 4, Answer, 3/28/2024

¹² Xcel Energy, P. 4, Answer, 3/28/2024

¹³ Xcel cites pages 26-27 and in Attachment A at pages 8-9 in its October 20, 2023 comments.

¹⁴ Xcel Energy, P. 5, Answer, 3/28/2024

The Company states that MSA has mischaracterized the Commission’s deliberations at the December 14, 2023 agenda meeting by claiming the Commission “does not believe that its regulatory responsibilities require it to review Xcel’s decisions if they are technical in nature [or that] the TPL was a policy choice more than a safety and reliability issue.”¹⁵ The Company reiterates the Complaint was focused on whether the TPS violated the Commission’s past Order and Minnesota Statute. Xcel states that the Commission is not obligated to investigate every complaint that is filed and that under state law, the Commission is to proceed with a complaint if there are “reasonable grounds” to do so or is in the public interest.

The Company also states that MSA selected quotes from Commissioner Schuerger from the December 14, 2023, agenda meeting that implied he dissented from the Commission ruling, when in fact it was his motion that led to the ruling. Additionally, Xcel cites Commissioner Schuerger’s explanation of his motion which indicated that the Commission does have the right to take specific action on a complaint like this one and may do so in the future as the record develops.¹⁶

In response to MSA’s claim that the TPS is not technically supported with adequate engineering analysis and that it does not align with applicable industry standards or with Good Utility Practice the Company responds saying that the TPS is more generous to interconnection customers than many other utilities and that they have already addressed how the TPS aligns with Good Utility Practice in prior comments.

STAFF ANALYSIS

Staff finds that MSA does not raise new issues or point to new and relevant evidence. MSA’s petition appears to focus on its claim that the Commission’s Order does not explicitly address the legal arguments it alleged in its Complaint, reiterates prior arguments, and seeks to persuade the Commission to rethink its decision.

The February 27, 2024, Order provides legal and factual basis to support the decision to dismiss the Complaint and reiterates the breadth of the Commission’s regulatory responsibilities, which include oversight that achieves utility compliance with all applicable law “without unduly prioritizing one policy objective at the risk of another in a manner that would jeopardize service to its customers.”¹⁷

Additionally, the Order emphasizes that Xcel’s reasonable application of the TPS to individual projects remains within the Commission’s purview and the Commission will continue to scrutinize the Company’s actions to ensure reasonable outcomes consistent with applicable law.¹⁸ Staff respectfully disagrees with MnSEIA’s claims and does not believe the Commission is

¹⁵ Xcel Energy, P. 6, Answer, 3/28/2024

¹⁶ Xcel Energy, P. 6, Answer, 3/28/2024

¹⁷ Commission Order, P. 5, 2/27/2024

¹⁸ Commission Order, P. 5, 2/27/2024

conceding regulatory oversight over technical matters as MSA suggests.

MSA argues that the TPS is in violation of Minn. Stat. § 216B.164, subd. 4b, which prohibits a utility from limiting cumulative generation of net metered facilities without first getting Commission approval and “showing that such generation has reached four percent of the public utility's annual retail electricity sales,” stating that the TPS prevents projects from interconnecting to the distribution grid. Staff notes that this argument has been brought up in several interconnection proceedings.

Staff would like to clarify that the TPS may limit the total available capacity for interconnecting projects to the distribution grid *in its current state*, but the TPS does not impact developers' ability to pay for upgrades to the distribution system, as is common practice, in order to create more capacity to interconnect more DER facilities. Therefore, the TPS does not “limit” the capacity of the interconnection grid, rather it sets the threshold at which upgrades are required. Developers are still free to pay for those necessary upgrades at constrained locations or locate their projects to other areas of the distribution system, the majority of which have capacity for more generation systems.¹⁹

Staff notes that part of the February 27, 2024, Commission Order included a requirement that Xcel host informational stakeholder meetings with relevant parties on the justification and decision-making behind the Company's implementation of the technical planning standard, including options to apply the standard more granularly and set aside a smaller buffer. Xcel held the first meeting on February 21, 2024 and accepted proposals regarding alternative TPS options on April 1, 2024. Xcel's second meeting is still being scheduled.

In light of the Commission's careful consideration of the record in its initial decision to dismiss the complaint, and the lack of additional information in the petition to reconsider, there does not appear to Staff to be a basis to reconsider the order.

Staff Note on Meeting Procedures

In accordance with the Commission's adopted meeting procedures, only a Commissioner voting on the prevailing side may move to reconsider. If the motion to reconsider passes, then the matter is again before the Commission. Commissioners Schuerger, Tuma, Means, and Sullivan were present at the December 14, 2023, agenda meeting and all four voted for the motion. Therefore, at the April 18, 2024, agenda meeting only Commissioners Tuma, Means, or Sullivan may move to reconsider this matter, but any Commissioner present may vote on the motion.

¹⁹ According to Xcel's October 1, 2023 DER Monthly Queue [Report](#) roughly 6.5% of feeders and 32% of substations have 1MW or less of available capacity, the rest of which have more than 1MW of available capacity for generation systems to interconnect.

DECISION OPTIONS

1. Grant the Minnesota Solar Advocates' Petition for Rehearing, reverse the February 27, 2024 order's dismissal of the complaint, and proceed with an investigation into the complaint under Minn. R. 7829.1900. Require Xcel, within 20 days of service of the complaint and order, to file an answer to the complaint and serve the answer on the complainant, the Department, and the Office of the Attorney General. *(Staff interpretation of MSA)*

[OR]

2. Deny Minnesota Solar Advocates' Petition for Rehearing. *(Xcel)*

[If the Commission denies rehearing, it may also select the following]

3. Clarify the rationale for the February 27, 2024 order, including the legal issues raised in the complaint. *(MSA alternative if rehearing is denied)*