Attachment A: Department of Commerce, Resolution of Co-Location Dispute (May 31, 2024)

Public Document – Not Public Data Has Been Excised

COMMERCE DEPARTMENT

May 31, 2024

VIA ELECTRONIC MAIL

Ingrid Bjorklund
Counsel for Enterprise Energy LLC
1675 AT&T Tower
901 Marquette Ave
Minneapolis, MN 55402

Jessica Peterson
Manager, Program Policy North
Xcel Energy
414 Nicollet Mall
Minneapolis, MN 55401

RE: **Resolution of a Co-location Dispute**
Docket Nos. E002/CI-23-335 & E002/M-13-767

Dear Ms. Bjorklund & Ms. Peterson:

Attached please find the decision of the Minnesota Department of Commerce (Department) on the request for dispute resolution of the co-location of seventeen Community Solar Garden (CSG) applications under development by Enterprise Energy LLC.

The Department finds that the projects at issue are co-located at five project sites. We are available to answer any questions you may have.

Sincerely,

/s/ Michelle Gransee
Deputy Commissioner, Division of Energy Resources

MG/ar
Attachment

I. BACKGROUND INFORMATION

The Minnesota Public Utilities Commission's (Commission) August 6, 2015 *Order Adopting Partial Settlement as Modified* allows representatives of community solar gardens (CSGs) in the Solar*Rewards Community program operated by Northern States Power Company, d/b/a Xcel Energy (Xcel) that have been found by Xcel to be impermissibly co-located to appeal the decision to the Minnesota Department of Commerce (Department). In the event parties disagree with the Department's determination, disputes may be appealed to the Commission.[1]

On April 17, 2024, Xcel issued a Notice of Co-Location[2] (Notice) regarding seventeen CSG applications in five groups from Enterprise Energy LLC (Enterprise).

On May 1, 2024, Enterprise filed a Notice of Co-Location Appeal (Appeal) to the Department.[3]

On May 8, 2024, Xcel provided a Response to Co-Location Dispute, Enterprise Energy (Response) to the Department.[4]

II. DEFINITION OF CO-LOCATION

In accordance with the Commission's August 6, 2015 Order, applications to Xcel's Solar*Rewards Community program filed after September 25, 2015 are limited to 1 MW.[5]

In its December 15, 2015, Order,[6] the Commission defined "co-located" CSGs as:

> Community Solar Gardens shall be considered "Co-Located" if they exhibit characteristics of a single development, such as:
>
> 1. Common ownership structure;
> 2. An umbrella sale arrangement;
> 3. Shared interconnection;
> 4. Revenue-sharing arrangements; and
> 5. Common debt and equity financing.
>
> Community Solar Gardens will not be considered co-located solely because the same person or entity provided tax-equity financing for the garden or garden project.

---

[1] Order Adopting Partial Settlement as Modified, In the Matter of the Petition of Northern States Power Company, dba Xcel Energy for Approval of its Community Solar Garden Program, Docket No. E002/M-13-867 (August 6, 2015).
[2] *See* Notice of Co-Location (April 17, 2024).
[3] *See* Appeal of Xcel Energy Notice of Co-Location by Enterprise Energy LLC (May 1, 2024); *hereinafter* Enterprise Appeal.
[4] *See* Response to Co-Location Dispute, Enterprise Energy (May 8, 2024).
[5] Order Adopting Partial Settlement as Modified *supra* note 1.
[6] Order Approving Tariffs as Modified and Requiring Filing, In the Matter of the Petition of Northern States Power Company, dba Xcel Energy for Approval of its Proposed Community Solar Garden Program, Docket No. E002/M-13-867 (December 15, 2015).

In adopting this definition, the Commission stated that "the test allows consideration of geographical proximity, but neither proximity nor any other factor is dispositive of whether gardens are part of a single development."[7] In its February 21, 2017 Order regarding co-location, the Commission further stated "this list is not exclusive; any factor relevant to whether projects form a single development should be considered in the analysis. And no single factor is dispositive of whether gardens are part of one development; rather, a co-location determination is based on the totality of the circumstances in a particular case."[8] In its December 21, 2017 Order, the Commission further clarified "those five factors are merely illustrative of the kinds of information the Commission might consider when evaluating the general question of whether proximate developments have enough in common to justify treating the developments as part of a common plan."[9] The December 21, 2017 Order made a finding of co-location but established compliance filing requirements, including commitments from the developers to maintain financial, marketing, ownership, and operational independence.

The Commission established similar compliance filing requirements to ensure continued independence for projects which it determined were not co-located in its November 19, 2019 Order[10] and May 29, 2020 Order.[11]

III. SUMMARY OF CO-LOCATION FACTS

Xcel maintains that Enterprise "submitted seventeen interconnection applications at five sites on various dates between October and November of 2023."[12] These applications were submitted to Xcel via the Community*Solar Rewards or Legacy CSG program "portal" on Xcel's website.

A. ENTERPRISE ANSWERS TO THE CO-LOCATION QUESTIONNAIRES

Enterprise submitted answers to Xcel's co-location questionnaire for each of the five clusters of project applications, identified here by SRC #: [**TRADE SECRET DATA BEGINS . . . TRADE SECRET DATA ENDS**].

---

[7] *Ibid.* at 3.
[8] Order Denying Co-Location Appeals, In the Matter of the Petition of Northern States Power Company, dba Xcel Energy for Approval of its Proposed Community Solar Garden Program, Docket No. E002/M-13-867 (February 21, 2017).
[9] Order Finding Co-Location, But Granting Exception Subject to Conditions, In the Matter of the Petition of Northern States Power Company, dba Xcel Energy for Approval of its Proposed Community Solar Garden Program, Docket No. E002/M-13-867 (December 21, 2017).
[10] Order Affirming Decision of the Department of Commerce, In the Matter of the Petition of Northern States Power Company, dba Xcel Energy for Approval of its Proposed Community Solar Garden Program, Docket No. E002/M-13-867 (November 19, 2019).
[11] Order Affirming Department Decision and Requiring Compliance Filing, In the Matter of the Petition of Northern States Power Company, dba Xcel Energy for Approval of its Proposed Community Solar Garden Program, Docket No. E002/M-13-867 (May 29, 2020).
[12] Xcel Energy, Response to Co-Location Dispute Enterprise Energy (May 8, 2024), at 2.

The answers to those five questionnaires are the same:

- *Are the current developer(s)/owner(s)/operator(s) of the impacted solar gardens in any way affiliated with each other?*

"The sum of the projects does not exceed the system size limit for the LMI-Accessible CSG Program. Please see the Detailed Response section at the conclusion of this questionnaire."

- *Is there, or has there ever been, any full or partial common ownership or common debt or equity financing among the past or current developer(s)/owner(s) or any of their affiliates of the gardens at issue?*

"The sum of the projects does not exceed the system size limit for the LMI-Accessible CSG Program. Please see the Detailed Response section at the conclusion of this questionnaire."

- *Are there any umbrella sales agreements regarding the impacted solar gardens (e.g., an agreement to commonly market, enroll or sell to subscribers subscriptions to the two solar gardens; a master subscriber agreement that covers both solar gardens)?*

"No."

- *Are there any revenue-sharing arrangements regarding the impacted solar gardens?*

"No."

- *Are there any shared marketing efforts to obtain subscribers for the impacted solar gardens?*

"No."

- *Will the impacted solar gardens be wholly independent of one another with no plan to share subscribers?*

"No."

- *Are the impacted solar garden sites located adjacent to each other? If not, what is the estimated fence-to-fence distance between the impacted solar garden sites?*

"Yes."

- *Are the impacted solar garden sites on the same parcel of land?*

"Yes."

- *Are the land lease agreements or other site control arrangements for the impacted solar garden sites with the same third-party land owner?*

"Yes."

- *Will the impacted solar gardens share the same point of interconnection to the same pole?*

"No."

The Department provides the Detailed Response below [emphasis original]:

> Detailed Response:
>
> In its December 28th filing of the *Order Implementing New Legislation Governing Community Solar Gardens* the Commission concluded that … "for purposes of Minn. Stat. § 216B.1641, subd. 1(i), a CSG was "approved" before January 1, 2024, if it had an application deemed complete before that date." These projects were "deemed complete" in 2023.
>
> State statute (Minn. Stat. § 216B.1641) clearly outlines that applications "approved" before December 31, 2023 are eligible to become a community solar garden under the new LMI-Accessible CSG Program:
>
> *[Subd 14 (b)] An application for the legacy program that is approved [deemed complete] on or before December 31, 2023, is eligible to become a community solar garden under subdivisions 3 to 12 [the LMI-Accessible CSG Program], provided the proposed community solar garden complies with subdivisions 3 to 12.*
>
> There was clear legislative intent to increase the eligible system size from 1 to 5 megawatts AC:
>
> *[Subd 6 (2)] have a capacity, as defined under section 216B.164, subdivision 2a, paragraph (c), of no more than five megawatts[.]*
>
> Any Commission order, including the Commission's *Order Adopting Partial Settlement As Modified*, is modified, replaced, or superseded by updates to subdivisions 2 to 13 of Minn. Stat. § 216B.1641 [and specifically Subd 6(2) as outlined above]:
>
> *[Subd 3 (b)] Except as otherwise modified, replaced, or superseded by subdivisions 2 to 13, any commission order that applies to the legacy program under subdivision 1 applies to subdivisions 2 to 13.*

Attachments:
Minn. Stat. § 216B.1641
Order Implementing New Legislation Governing Community Solar Gardens
Order Adopting Partial Settlement As Modified

IV. DEPARTMENT ANALYSIS

A. THE ACTUAL CO-LOCATION OF THE PROJECTS IS NOT DISPUTED.

The actual co-location of the projects is not in dispute. Enterprise does not disagree that its seventeen projects are co-located in five geographic clusters. Rather, Enterprise contends that Xcel thwarted its attempt to apply for interconnection to the LMI-Accessible CSG Program by applying Xcel's co-location screen for the Legacy program to applications eligible under the LMI-Accessible CSG Program in violation of Minn. Stat. § 216B.1641, subd. 14. Enterprise further alleges that Xcel violated its own tariffs by applying the co-location screen outside allowable timeframes under its Legacy program tariff.

B. THE SCOPE OF THE DEPARTMENT'S AUTHORITY TO DETERMINE CO-LOCATION IS LIMITED TO THE LEGACY CSG PROGRAM.

These projects applied to the Legacy Program, rather than the LMI-accessible CSG program administered by the Department because they applied through the Legacy Program portal and because they do not have a signed interconnection agreement, which is required for participation. Therefore, the Department considers this Appeal in the context of the Legacy Program, and acts in its fact-finder role in that context to make a co-location determination based on the criteria applicable to the Legacy Program.[13]

V. DEPARTMENT FINDING REGARDING CO-LOCATION

The Department reviews co-location disputes to determine, based on the totality of the circumstances, whether the projects exhibit characteristics of separate unrelated developments, rather than a single development. The Department's focus is on whether the developer or developers are attempting to circumvent the co-location limitation imposed by the Commission for the Legacy Program. In making its determination, the Department relies on the guidance provided by the Commission, the intent of the co-location limitation, and the statutory directive that "there shall be no limitation on the number

[13] *Id*. *See also*, Minn. Stat § 216E.021, which delegates authority to the Department to determine whether a combination of solar energy generating systems meets the definition of large electric power generating plant and is subject to the commission's siting authority jurisdiction; *and* Minn. Stat. § 272.0295, which delegates authority to the Department to determine the size of a solar energy generating system used for the purposes of whether the system is subject to the solar energy production tax. These statutory authorities use the same criteria as those enumerated by Order, but are delineated for purposes distinct from the issue at hand.

or cumulative generating capacity of community solar garden facilities other than the limitations imposed by Minnesota Statutes section 216B.164, subdivision 4c, or other limitations provided in law or regulation."[14]

Here, there is no dispute that Enterprise's projects are co-located under the Legacy CSG Program rules and Enterprise applied for interconnection through Xcel's Legacy CSG Program portal. Whether it was reasonable for Xcel to require developers to use the legacy application process for projects intended for the LMI-Accessible CSG Program is beyond the scope of this appeal. For the foregoing reasons and analysis, the Department affirms Xcel's finding that the projects are co-located.

VI. SUMMARY OF ENTERPRISE'S POSITION AS TO OTHER ISSUES

A. ENTERPRISE ASSERTS THAT IT APPLIED FOR INTERCONNECTION THROUGH THE ONLY AVAILABLE MEANS TO DO SO.

Between October 1, 2023 and November 26, 2023, Enterprise submitted seventeen interconnection applications to Xcel, via Xcel's online "portal" to the Solar*Rewards Community program. Enterprise asserts that it "used the only available interconnection application portal to obtain the prerequisite interconnection agreements for application to the LMI-Accessible CSG Program."[15] Enterprise further asserts that it attempted to apply for interconnection through other means but was prevented from doing so.[16] Enterprise maintains that "Xcel staff were aware of Enterprise's intent to submit these projects to the LMI-Accessible CSG Program once it secured the interconnection agreements" and that Xcel staff verbally told Enterprise that that path was a viable one.[17]

B. ENTERPRISE ASSERTS THAT THE PROJECTS ARE ELIGIBLE FOR THE LMI-ACCESSIBLE CSG PROGRAM.

Enterprise asserts that these projects are eligible for the LMI-Accessible CSG program because none of the projects in close proximity to others collectively exceeds the 5 MW limit for projects in that program, citing Minn. Stat. § 216B.1641, subd. 6.[18] Enterprise cites Minn. Stat. § 216B.1641, subd. 14(b) to support the assertion that its "projects are eligible to become CSGs under the LMI-Accessible CSG Program provided they comply with subdivisions 3 through 12."[19] Enterprise further asserts that

---

[14] Minn. Stat. § 216B.1641, Subd. 1(a).
[15] Enterprise Appeal at 4.
[16] *See* Enterprise Appeal at 4, stating, "Please note that Enterprise attempted to apply for interconnection through Xcel's Distributed Generation Application Portal but did not have the required premise number to start the process (Xcel requires a premise number because Xcel designed this portal for behind-the meter distributed energy resources). Enterprise subsequently delivered paper interconnection applications to Xcel in accordance with the Minnesota Distributed Energy Resources Interconnection Process (MN DIP) but were later notified by Xcel that it would not accept such applications."
[17] *Ibid*.
[18] *Id*., at 6.
[19] *Ibid*.

"Xcel's co-location test is designed to prevent projects from exceeding the capacity limit, but it applied a size limitation of 1 MW instead of 5 MWs."[20]

Enterprise also asserts that "after its applications were deemed complete, Enterprise may choose between the Legacy program and the LMI-Accessible CSG Program."[21]

Lastly, Enterprise claims that it "has no intention to aggregate these applications into larger projects. Rather, each 1 MW project will be submitted for approval under the LMI-Accessible CSG Program. It is the Department's role to determine whether Enterprise's projects are in compliance with the size limitation under the LMI-Accessible CSG Program."[22]

C. ENTERPRISE CONTENDS THAT XCEL VIOLATED ITS OWN PROCEDURES FOR ITS LEGACY PROGRAM.

Enterprise asserts that the timing of Xcel's co-location review was inappropriate and inconsistent with the company's tariff: the co-location review took place after the projects were deemed complete but well before the date of commercial operation.[23] Enterprise cites Xcel Tariff Sheet 9-68.2, where Xcel "will check for compliance with Co-Location size at two times: 1.) in addition to the notices sent on August 18, 2015, on or about the time of the determination of the Initial Application Completeness; and 2.) on or before the Date of Commercial Operation."[24]

VII. SUMMARY OF XCEL'S POSITION AS TO OTHER ISSUES

A. XCEL ASSERTS THAT ENTERPRISE APPLIED FOR THE LEGACY PROGRAM, AND THAT LEGACY PROGRAM RULES APPLY.

Xcel maintains that "it is inaccurate to state that these CSG applications had the option to choose between the Legacy program and the LMI Accessible CSG program by just submitting an application to the Legacy CSG portal."[25] Xcel reasons that, "[w]hile it is possible for Legacy CSG projects to be transferred to the LMI Accessible program per Minn. Stat. §216B.1641 Subd. 14(b), the Minn. Stat. § 216B.1641 is clear that those projects approved prior to December 31, 2023 under the Legacy CSG program must follow the rules outlined for the Legacy CSG program," citing Minn. Stat. § 216B.1641, subd. 1 (h)(2)(i).[26] Xcel notes that it communicated to developers that, "since August 2023, the Company is not accepting applications intended to the LMI Accessible CSG program until the

---

[20] *Ibid*.
[21] *Ibid*.
[22] *Id*. at 7.
[23] *Id*., at 6-7.
[24] *Id*., at 6.
[25] Xcel Response at 6.
[26] *Ibid*. Minn. Stat. § 216B.1641, subd. 1 (h)(2)(i) states: "This subdivision applies to a community solar garden that was approved before January 1, 2024."

Company's Tariffs have been approved by the Commission."[27] Lastly, Xcel asserts a relationship between the 5 MW size limit for the LMI-Accessible CSG program, interconnection applications, the Commission hearing on the matter, and the Department's role in approving applications to that program:

> In its April 4, 2024 hearing in Docket No. E002/ CI-23-335, the Commission verbally approved a decision option that requires the Company to use its distributed generation portal for all interconnection applications, including those that will apply to the LMI Accessible CSG program. The Company believes this is relevant, considering Enterprise Energy's interpretation that we should apply a 5 MW size limit for co-location, applicable to LMI CSG projects. Furthermore, none of Enterprise Energy's projects subject to this dispute have been approved by the Department for participation in the LMI-Accessible CSG program. Instead, these projects were submitted to the Company's Legacy CSG program and therefore should follow the rules of that program.[28]

B. XCEL CONTESTS ENTERPRISE'S CLAIM THAT THE CO-LOCATION REVIEW WAS NOT TIMELY.

Xcel asserts that it sent Enterprise a co-location questionnaire on February 8, 2024, and that it received a response from Enterprise on February 22, 2024.[29] The Notice of Co-Location was provided to Enterprise and the Department on April 17, 2024. Xcel cites the same section of its Rate Book—Section 9 at Sheet 68.19—as Enterprise. But Xcel maintains that that timing was within the timeframe contemplated by tariff:

> At the time of our initial co-location check and review, which prompted us the [sic] send the Co-Location Questionnaire to Enterprise Energy in early February 2024, these applications were still in the Scoping phase of the engineering study review. [citation omitted] This was prior to being studied and prior to the date of commercial operation. Therefore, our first check on co-location took place before engineering study and about the time when the project applications were deemed complete.[30]

[27] *Ibid*.
[28] *Id*. at 7.
[29] *Id*. 5.
[30] *Id*. at 5-6.

C. XCEL ARGUES THAT IT IS IN THE INTEREST OF EQUITY THAT THESE PROJECTS BE FOUND TO BE CO-LOCATED.

Xcel argues that, "Enterprise Energy's intent in submitting these co-located Legacy CSG applications was to circumvent the rules and get ahead in the DER Queue."[31] Queue position matters in this instance, Xcel asserts, because earlier queue positions can fill the capacity of feeder lines without having to pay for needed equipment upgrades.[32] Xcel argues that, "[e]quity in the DER [distributed energy resource] process should be considered as part of the co-location analysis," and for this reason, "Enterprise Energy's appeal of the Notice of Co-Location should be denied."[33]

VIII. DEPARTMENT ANALYSIS OF OTHER ISSUES

As stated above, the Department acts as fact-finder in the resolution of co-location disputes. Certain other elements of this dispute, however, are within the jurisdiction of the Commission.

Enterprise alleges that Xcel violated the requirements of Minn. Stat. § 216B.1641, the recently-revised CSG statute. Under the revised CSG statute, the Department has exclusive authority to collect and evaluate community solar garden applications, verify project eligibility, and allocate solar garden capacity up to the statutory cap.[34] At the time that these projects applied for interconnection agreements, an open proceeding to delineate the transition between the Legacy and LMI-accessible CSG programs was before the Commission.[35] That proceeding concluded, in part, with the Commission's interpretation of the roles of Xcel and the Department with regard to the LMI-Accessible CSG Program: "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 criteria set forth in the new legislation."[36] Furthermore, "[a]n application to the Department must include several items, including a copy of the signed interconnection agreement."[37]

---

[31] *Id*. at 8.
[32] *Id*.
[33] *Id*.
[34] The Department of Commerce's Objection to Xcel Energy's January 5 Tariff Filings, In the Matter of Implementation of 2023 Legislation Changes to Xcel Energy's Community Solar Garden Program, Docket No. E-002/CI-23-335 *and* In the Matter of the Petition of Northern States Power Company, dba Xcel Energy for Approval of its Proposed Community Solar Garden Program, Docket No. E002/M-13-867 (January 24, 2024) at 1. *Hereinafter*, "Department Objection."
[35] *See* Notice of Comment Period, Docket Nos. E002/CI-23-335 and E002/M-13-867 (July 26, 2023).
[36] Order Implementing New Legislation Governing Community Solar Gardens, In the Matter of Implementation of 2023 Legislation Changes to Xcel Energy's Community Solar Garden Program, Docket No. E-002/CI-23-335 and In the Matter of the Petition of Northern States Power Company, dba Xcel Energy for Approval of its Proposed Community Solar Garden Program, Docket No. E002/M-13-867 (December 28, 2023), at 5.
[37] *Id*. at 4.

The Commission has jurisdiction over the interconnection process as specified by Minn. Stat. § 216B.1611, as well as over MN DIP, which is the process established by the Commission for interconnecting distributed generation under the authority of that statute.

The Department also considers Enterprise's contention that Xcel violated MN DIP by refusing to accept interconnection applications for these projects outside of its CSG portal. 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."[38] 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."[39] The Commission agreed with the Department's reasoning at its April 4, 2024 Agenda Meeting, and verbally adopted a decision option[40] 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.

Lastly, Enterprise contended that Xcel's findings of co-location were not timely. Both Enterprise and Xcel cite Xcel's tariff but come to opposite conclusions. The question of a tariff violation by Xcel is a novel one in the context of a co-location dispute. The Commission has authority over utility tariffs.[41]

The Department's role in resolving co-location disputes is narrowly circumscribed by precedential Commission orders. The questions of whether Xcel violated statute, MN DIP, and/or its tariffs are beyond the scope of this co-location dispute and should be brought separately before the Commission.

---

[38] Department Objection at 3.
[39] *Ibid*.
[40] Decision Option 1b: "For non-legacy CSGs, Xcel must use its Distributed Generation portal for Interconnection Applications. Xcel may use or modify its existing CSG-specific portal once they are allocated capacity in the program by the Department." Minnesota Public Utilities Commission Agenda Meeting, MPUC Docket Nos. E002-CI-23-335 and E002/M-13-867, at 3:41 (Apr. 4, 2024). https://minnesotapuc.granicus.com/player/clip/2340?view_id=2&redirect=true, *See also*, Order Implementing New Legislation Governing Community Solar Gardens, In the Matter of Implementation of 2023 Legislation Changes to Xcel Energy's Community Solar Garden Program, Docket No. E-002/CI-23-335 *and* In the Matter of the Petition of Northern States Power Company, dba Xcel Energy for Approval of its Proposed Community Solar Garden Program, Docket No. E002/M-13-867 (May 30, 2024)
[41] Minn. Stat. § 216B.09.