

Staff Briefing Papers

Meeting Date June 13, 2019 Agenda Item 1 *

Company Xcel Energy (Xcel or the Company)

Docket No. **E-002/M-13-867**

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

E-002/M-18-714

In the Matter of Xcel Energy's Tariff Revisions Updating Interconnection Standards for Distributed Generation Facilities Established under Minn. Stat. §216B.1611

E-002/M-13-1015

In the Matter of Xcel Energy's Application for Approval of Solar*Rewards Tariffs

E-002/M-16-222

In the Matter of Xcel Energy's Petition for Tariff Modifications Implementing Rules on Cogeneration and Small Power Production

Issues Should the Commission reconsider its decisions in the May 9, 2019 *Order Approving Revised Tariffs with Modifications and Requiring Compliance Filings*, in the above-cited matter?

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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.



Relevant Documents

Date

Staff briefing papers for the March 28, 2019 agenda meeting	March 19, 2019
<i>Order Approving Revised Tariffs with Modifications and Requiring Compliance Filings</i>	May 9, 2019
MnSEIA Motion to Reconsider	May 22, 2019
Xcel Energy Answer	May 30, 2019

I. Statement of the issues

Should the Commission reconsider its decisions in the May 9, 2019 *Order Approving Revised Tariffs with Modifications and Requiring Compliance Filings*, in the above-cited matter?

II. Background

On May 9, 2019, the Commission issued its *Order Approving Revised Tariffs with Modifications and Requiring Compliance Filings*, in Docket Nos. E-002/M-18-714, E-002/M-13-1015, E-002/M-16-222, and E-002/M-13-867 (“the May 9 Order”). In this Order, the Commission approved revisions to Xcel’s tariffs, including Section 9, to reflect the updating of standards for interconnection and the operation of distributed generation facilities, in Docket No. E-999/CI-16-521.¹

On May 22, 2019, the Minnesota Solar Energy Industries Association (MnSEIA) filed a Motion to Reconsider Xcel’s Energy’s Section 9 Tariff Revisions approved by the Commission in the May 9 Order.²

On May 30, 2019, Xcel filed its Answer in response to MnSEIA’s petition, recommending it be denied.

Petitions for reconsideration are subject to Minn. Stat. § 216B.27 and Minn. R. part 7829.3000. They are denied by operation of law unless the Commission takes action within sixty days of the request being filed at the Commission.

Minn. Stat. § 216B.27, subd. 1, provides that the Commission may grant a rehearing if it believes sufficient reason exists. Subd. 2 requires that the application for a rehearing shall set forth specifically the grounds on which the applicant contends the decision is unlawful or unreasonable. Subd. 3 provides that if after rehearing it appears that the original decision, order, or determination is in any respect unlawful or unreasonable, the Commission may reverse, change, modify, or suspend the original action accordingly.

III. Petitions for reconsideration and clarification

Minnesota Solar Energy Industries Association (MnSEIA)

In the request for reconsideration, MnSEIA asked the Commission to review the approval of CSG program tariff revisions in the May 9 Order. MnSEIA asserted that Xcel’s ongoing delays in meeting interconnection deadlines have had significant financial impacts on its members.

¹ *In the Matter of Updating the Generic Standards for the Interconnection and Operation of Distributed Generation Facilities Established Under Minn. Stat. § 216B.1611*, in Docket No. E-999/CI-16-521, issued August 13, 2018.

² MnSEIA initially filed its Motion in Docket No. E-002/M-13-867, but subsequently, on May 24, 2019, it filed the Motion in Docket Nos. E-002/M-18-714, E-002/M-13-1015, and E-002/M-16-222.

First, MnSEIA claimed that Xcel's lack of adherence to interconnection deadlines did not receive much discussion at the hearing and warrants further consideration.

Second, MnSEIA argued that this lack of adherence to the interconnection deadlines has had negative financial impacts for the industry and warrants review. It argued that in the past, Xcel has not been held to account for its delays and there is no real recourse from a missed tariff, in contrast to the deadlines that have been imposed on MnSEIA's members.³

Although study delays have become less frequent, according to MnSEIA they are now again an issue. MnSEIA cited significant study delays with little explanation from Xcel. It also noted that projects completed in 2019 are being assigned build-out dates in 2020, leading to a lower Federal Investment Tax Credit (ITC).⁴

Importantly, MnSEIA noted that the contingency that Xcel might fail to meet deadlines results in a significant liability for developers. Without Xcel's attention to its own interconnection deadlines, CSGs cannot develop within a predictable timeframe and can suffer financial harm as a result.

MnSEIA's requested the following relief: (1) the Commission should recognize the need for Xcel to meet tariffed timelines, and (2) it should consider late fees or other penalties for Xcel if the Company fails to meet its own tariffed timelines or sets building schedules that result in project delays.

IV. Replies to petitions for reconsideration

Xcel Energy (Xcel)

On May 30, 2019, Xcel filed an Answer in response to MnSEIA's petition for reconsideration. The Company recommended that the Commission deny MnSEIA's petition, arguing that the petition failed to meet the legal standard for reconsideration. Xcel noted that the Commission has stated it will reconsider an order when: (1) new issues not yet considered are raised, (2) new facts not yet in evidence are presented for consideration, (3) there are errors or ambiguities in the Commission's order, or (4) the Commission is otherwise persuaded to reconsider an order.⁵

Xcel argued that MnSEIA's assertion that there should be "real repercussions," including financial penalties, if Xcel fails to meet its interconnection timelines is not a new issue. MnSEIA raised this issue in its February 8, 2019 comments filed in Docket No. 13-867, as part of the

³ In support, MnSEIA pointed to an event in 2015 in which Xcel's long lead-time for telemetry equipment threatened project eligibility for the ITC.

⁴ For example, a 1 MW CSG project could stand to lose \$80,000 in tax savings.

⁵ *Order After Reconsideration*, 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, Docket No. E999/CI-03-869, issued August 13, 2004, p. 9.

record for the May 9 Order. However, it did not make any specific recommendations for penalties or tariff provisions. Staff Briefing papers of March 28, 2019 noted that the CSG Developer Group and MnSEIA provided only a request in concept for more specific deliverable timelines and possible penalties for Xcel Energy, but stated that "...[w]ithout more precise tariff language, it will be difficult to know how the Commission can implement their requests at this time."⁶ Xcel argued that MnSEIA's petition does not cure this, and lacks any specific language or proposal for the Commission to act upon.

Xcel added that the Commission's meeting summary for the MN DIP workgroup⁷ demonstrates that the issue of potential penalties when a utility does not meet timelines was considered. Xcel provided highlights from the meeting summary, as follows:

...The publication of the queue position and reporting was part of the package on the process timeline proposal the Joint Movants made valuing transparency/information over penalizing utilities on deadlines; whereas, the customer faces a large penalty (lost queue position for missing deadlines.) There is no penalty for utilities in the FERC SGIP for missing deadlines, but some states are adopting them (e.g. NY has financial penalties.) The queue position is a penalty on an individual customer, but benefits the rest of the customers by reducing delays in the queue.⁸

Next, Xcel argued that MnSEIA presented no new facts in its petition, but pointed instead to individual instances without detail or context, or to delays outside of the Company's control. For example, MnSEIA referenced a time when standard telemetry requirements included the need for communication companies to install a dedicated line to CSG sites. At that time, communication companies could not respond to installation requests in the timeline or at a cost the solar installers desired. The delay was not caused by the Company, nor was it under the Company's control. However, the Company worked towards a solution that reduced delays and substantially reduced developers' costs.⁹

MnSEIA also presented an example of a delayed study delivered on February 18, 2019, but due on September 5, 2018, asserting that the Company provided no explanation for the delay. In this instance, the Company initially studied the project in July 2018, and a restudy of the project was needed in September 2018 due to another restudy for the project ahead in queue. That project required multiple re-studies, and the developer was the same for both projects. The

⁶ Docket No. 13-867, p. 16.

⁷ Distributed Generation Workgroup (DGWG) for the Commission's statewide interconnection standards update, in Docket No. E-999/CI-16-521.

⁸ PDF page 43 of MN DIP Workgroup meeting summaries, filed September 29, 2017, (page 7 of Meeting Summary #4 from September 15, 2017).

⁹ Xcel Answer, p. 3. The solution eliminated the need for a dedicated line installation and used cell-phone based telemetry instead.

issues with the required restudies were well known to this developer and discussed in bi-weekly meetings.

Xcel noted that this additional context shows the difficulty of systematically studying applications when projects or studies ahead in queue are cancelled or changed. Regardless of what is going on ahead in queue, a subsequent-in-queue project receives day-for-day extensions in its timelines and any required restudies are conducted at the expense of the Company.

Xcel maintained that the Commission's May 9 Order is clear and that MnSEIA did not point to any ambiguity or errors. Moreover, Xcel argued that the Commission does not have authority to award monetary damages, so the relief MnSEIA requests should be denied as a matter of law.

Xcel went on to argue that the purpose of the MN DIP is to have a uniform statewide process for distributed generation interconnections. If MnSEIA's request is considered, it should be considered as part of a state-wide process that includes all utilities.¹⁰

Last, Xcel argued that its tariffs filed on May 20, 2019 in compliance with the Commission's May 9, 2019 Order, are in effect, notwithstanding the pending petition. Xcel argued that Minn. Stat. § 216B.27 does not apply because MnSEIA did not file a petition for "rehearing" or file its petition pursuant to Minn. Stat. § 216B.27. Further, the essence of MnSEIA's petition is based on allegations that Xcel is delaying interconnections, and staying the effective day of the tariff revisions would create further delays.

V. Staff comment

After the Commission reviews the record, it will need to determine if there are sufficient grounds to reconsider the decisions in the May 9 Order. Staff provides the following comments to assist the Commission.

The tariff revision issues for which MnSEIA is seeking reconsideration were summarized in the staff briefing papers.¹¹ These briefing papers provided the Commission with a summary of the record, including a discussion of the issues raised by MnSEIA in its petition. The Commission reviewed the entire record and the arguments of the parties prior to making its decision. Given this, MnSEIA's argument that these issues were not discussed at the hearing is an insufficient basis for reconsideration. This does not suggest that the issues raised by MnSEIA surrounding delayed engineering studies, and possible financial harm to MnSEIA members, might not merit

¹⁰ In that case, MnSEIA should have filed its petition for reconsideration timely in the MN DIP docket applicable to all utilities (Docket No. E999/CI-16-521), instead of filing only under the caption of the CSG docket, and the other Xcel-only dockets.

¹¹ See Staff Briefing papers prepared for the March 28, 2019 agenda meeting, in Docket 13-867 etc., filed March 19, 2019, pp. pp. 13-17, and Decision Options 9-11, p. 23.

discussion by the Commission in the future.¹² Moreover, the Commission may on its own accord investigate this or any issue, or raise a topic in one of the distributed generation stakeholder groups for consideration.

As noted, Minn. Stat. § 216B.27, provides that the Commission may grant a rehearing if it believes sufficient reason exists. If after rehearing, it appears that the original decision, order, or determination is in any respect unlawful or unreasonable, the Commission may reverse, change, modify, or suspend the original action accordingly. As noted, in past cases, the Commission has reviewed petitions for reconsideration to determine whether they: (1) raise new issues, (2) point to new and relevant evidence, (3) expose errors or ambiguities in the underlying order, or (4) otherwise persuade the Commission that it should rethink its previous order.¹³ Staff believes MnSEIA's petition for reconsideration does not meet these tests.

Staff believes the Commission should grant or deny MnSEIA's petition within the 60-day timeline required under Minn. Stat. § 216B.27.¹⁴

VI. Decision options

1. Deny MnSEIA's petition for reconsideration.
2. Grant MnSEIA's petition for reconsideration and reconsider or clarify the issues raised.

¹² Staff notes that, in 2015, the Commission authorized the Department to investigate situations in which application-processing timelines are not reasonably met. *Order Adopting Partial Settlement as Modified*, in Docket No. E-002/M-13-867, issued August 6, 2015, Order Point 3.

¹³ *Order Denying Petitions for Reconsideration*, in Docket No. 13-868, issued July 13, 2015, p. 1.

¹⁴ Although MnSEIA did not formally petition under Minn. Stat. § 216B.27, its petition requests reconsideration of issues decided by the Commission in the May 9 Order, it was filed within the time period allowed for petitions for reconsideration, and MnSEIA itself refers to the petition as a "reconsideration request."