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January 22, 2024

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

Docket No. E002/M-13-867

FRESH ENERGY REPLY COMMENTS

Fresh Energy submits these reply comments per the Commission's November 29, 2023 *Notice of Extended Comment Period* regarding Xcel Energy's ("Xcel" or "the Company") proposal, requested by the Commission, to transition the bill credit rate and rate schedule for a portion of the community solar gardens ("CSGs") on the Company's system that are credited at the Applicable Retail Rate[1] ("ARR") to the Value of Solar ("VOS") rate.

Regulatory Uncertainty

In initial comments, commenters from the solar industry and the Department of Commerce ("the Department") argued that Commission action on this proposal would risk creating regulatory uncertainty for project financing.[2] This risk is speculative, overstated, and should not prevent the

[1] For the purposes of these comments, we include the "enhanced" rate in our discussion of the ARR, which includes a $.02 per kwh increase to the bill credit as compensation for a renewable energy credit, as almost all ARR CSGs chose this enhanced bill credit.

[2] *See e.g.*, Department of Commerce ("Department"), *Initial Comments*, January 8, 2024 at 6-9; Joint Solar Associations, *Initial Comments*, January 8, 2024 at 17-18, 24-25; National Grid Renewables, *Initial Comments*, January 8, 2024 at 8-9; Next Era Energy Resources, LLC & United States Solar Corporation, *Initial Comments*, January 8, 2024 at 6-7.

Commission from exercising its authority over this program to protect the public interest. We recognize that the Commission exercising its authority to modify bill credits for ARR-era projects is a significant change that should not be taken lightly. However, we believe the unique circumstances underlying this proposal make any future uncertainty quite limited in scope, as a reasonable financial actor performing due diligence in the future will be able to see these unique circumstances and the logic for the Commission's action.

A key factor in these circumstances is that the modification at issue pertains only to the very first batch of community solar projects in Minnesota which were the first major community solar projects in the country. At the time the ARR with its REC enhancement was set, the Commission, Xcel, and stakeholders were working from very limited information and experience. It is reasonable to expect that ten years later the Commission would exercise its stated authority to modify the very first iteration of a program when faced with serious challenges, as is the case today.[3] Moreover, the action the Commission is considering is not a dramatic change of course to an unknown compensation structure—it is considering moving subscribers to *the rate explicitly named in the statute*.[4] As such, this is the very bill credit that is in place for the more than 200 other solar gardens in Xcel's program.[5] Solar financiers are sophisticated actors that should understand the unique circumstances surrounding the ARR gardens and the situation that is necessitating Commission action in this instance. Indeed, we think it is reasonable that financiers have the future expectation that in the case of a policy-driven program like CSGs where the Commission has

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[3] Office of the Attorney General – Residential Utilities Division, *Initial Comments*, January 8, 2024 at 7-8, 12 ("[ARR-era CSG] costs have now risen to the point where they threaten significant economic harm to nonparticipating ratepayers, particularly Xcel's most energy-burdened residential customers. The Commission should use all reasonable means available to reduce the impact of solar gardens on nonparticipating customers.").

[4] Minn. Stat. 216B.1641Subd. 1(d).

[5] Xcel Energy, *Quarterly Compliance Report*, Docket No. 13-867, October 27, 2023 Q3 CSG report at 2 (as of this report there were 198 VOS gardens).

continued oversight, that the Commission may step in to prevent significant customer harm. This is in keeping with the CSG statute's naming of "reasonabl[e]…financing."[6] The Commission affirming a common sense understanding that "if it seems too good to be true, it probably is," is not regulatory uncertainty, but rather good public interest regulation.

Solar industry commenters and the Department also argue that Commission action would not only create regulatory uncertainty for future CSGs, but would result in a litany of consequences: that it would impair all clean energy development in the state, drive up all clean energy costs, impact resource planning, raise Xcel's cost of capital and customer costs, and prevent the state from meeting its 100% carbon-free energy standard.[7] These arguments are speculative, unsupported by evidence, and not reasonable. No commenters presented any basis beyond an amorphous and speculative ripple effect as to how a Commission decision here would essentially halt clean energy progress in Minnesota and raise costs across the board. Reasonable and sophisticated financiers, utility capital markets, and clean energy developers will no doubt understand the difference between the first iteration of a major CSG program in the country—one created by a specific piece of program legislation with specific program oversight—and other clean energy development, including utility procurements, customer-sited projects, and other independent project types.[8]

<u>Fresh Energy's Recommended Modifications Address Many Concerns Raised by Commenters</u>

In our initial comments, we provided two modifications to Xcel's proposal that we continue to recommend. First, we recommend not including residential and small business CSG subscribers in

[6] Minn. Stat. 216B.1641Subd. 1(e)(1).
[7] *See e.g.*, Department, *Initial Comments*, January 8, 2024 at 6-9; Joint Solar Associations, *Initial Comments*, January 8, 2024 at 22, 24-25; National Grid Renewables, *Initial Comments*, January 8, 2024 at 9-10; Next Era Energy Resources, LLC & United States Solar Corporation, *Initial Comments*, January 8, 2024 at 7.
[8] For example, independent project types like transmission-connected merchant or bi-laterally contracted Independent Power Producer projects, PURPA projects, etc.

the proposal. Second, we recommend the option of using an “adder” to the 2017 VOS rate for the General Service class, which would put the new bill credit slightly above the five-year average of the ARR between 2018-2022 and would escalate the bill credit annually at 2.3 percent.

The solar industry and Department comments, the Office of the Attorney General, and the majority of public comments raise concerns about impacts from Xcel’s proposal to residential (and to some extent small business) customers. Our recommendation to keep residential and small business subscribers on the ARR would completely address these concerns and still achieve cost reductions and cost certainty for the approximately 80 percent of ARR-era CSG capacity and costs.[9]

Our second proposed modification to use a $0.01/kWh “adder” for large customers similarly addresses concerns raised by the Department about potential “rate shock” and change for public entities in the General Service class.[10] The proposal is also intended to help prevent these entities from having a net cost on their ARR subscriptions. Based on their comments, it appears that public entities’ *savings* would be reduced under Xcel’s proposal, but that many public entity subscribers who have commented would still see a net savings from their ARR subscriptions.[11] Our adder proposal would lessen the reduction to savings, change some situations from net losses to even or net savings, and would therefore at least somewhat mitigate budget concerns for these customers. Moreover, we believe that a bill credit at or above the average level in place from 2018-2022, and with a 2.3% escalator, as under our proposal, is reasonable. It is hard to imagine any reasonable contracts that would not provide continued savings at this bill credit level.

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[9] Fresh Energy, *Initial Comments*, January 8, 2024 at 3-4.

[10] Department, *Initial Comments*, January 8, 2024 at 11.

[11] *See e.g.*, City of St. Cloud, City of Burnsville, City of Minnetonka, City of Oakdale, City of Winona, Sibley County, and Rocori Public Schools.

It is also important to note that reducing the cost of the community solar program will reduce fuel costs paid by CSG subscribers, as well as all non-subscribers. While CSG subscribers' bill credits would go down slightly under our proposal, so would their underlying bills. Nonetheless, we acknowledge that in addition to limiting windfall returns for CSG owners, Xcel's proposal with our modification may reduce bill savings for public entity subscribers whose contracts do not provide a minimum savings level. As the Department states, if public entities' budgets need to adjust to accommodate new energy bill forecasts, "[w]hatever the specific effects might be in each municipal, county, or school district budget, this tariff change will shift a financial burden from ratepayers to taxpayers."[12] The Department implies that this situation is undesirable and should be avoided. However, we believe this is a reasonable, even preferrable public interest outcome. It is much fairer for taxpayers to pay for local services through their taxes than it is for *all* of Xcel's ratepayers, no matter where they live, to pay well above the value of CSG generation in order to fund public services in select jurisdictions that subscribed to ARR gardens.[13] This is especially true when considering the fact that utility rates are far more regressive than property taxes. We understand, of course, that public entities have many important services competing for revenue and we are sympathetic to the fact that changes to the CSG bill credit may require budget adjustments or other work for local governments, school districts, universities, and others. However, we believe the overall public interest clearly weighs on the side of reducing bill impacts for all customers (including CSG subscribers) through a measured approach, as we have proposed.

For these reasons, we continue to recommend the Commission approve Xcel's proposal with our

[12] Department, *Initial Comments*, January 8, 2024 at 11.
[13] Fresh Energy, *Initial Comments*, January 8, 2024 at 5-7; *see also*, City of Maple Grove, *Initial Comments*, January 3, 2024 at 2 ("We understand the concern about the recent escalation of the ARR over the last two years (noting that 2017-2021 saw significantly lower increases in the ARR). We agree that 7% and 10% increases **would not be sustainable moving forward, despite being financially beneficial to the City of Maple Grove**." (emphasis added)).

modifications, as doing so is a justifiable and necessary use of its authority, and the public benefits far outweigh the limited risks of regulatory uncertainty.

Recommendations

1. Adopt Xcel's proposal with modifications:
    a. Apply Xcel's proposal to General Service ARR subscribers; and
    b. For the General Service ARR subscribers, apply a $0.01 per kWh adder to the 2017 VOS year 7 rate for 2024 and adjust the 2017 VOS rate schedule escalation for years 8-25 accordingly.

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