COMMERCE DEPARTMENT

January 8, 2024 **PUBLIC DOCUMENT**

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **PUBLIC Comments of the Minnesota Department of Commerce, Division of Energy Resources In the Matter of 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

Dear Mr. Seuffert:

On October 9, 2023, The Minnesota Public Utilities Commission (Commission) issued a Notice of Comment Period seeking comment on the filing from Northern States Power Company, dba Xcel Energy (Xcel or the Company) of September 25, 2023. The Commission solicited the filing in its June 27, 2023, Order.

The Minnesota Department of Commerce (Department) offers the attached **PUBLIC** comments regarding Xcel's filing. The Department recommends **rejection of Xcel's proposal** and is available to answer any questions the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ Louise Miltich
Assistant Commissioner of Regulatory Analysis

LM/ar
Attachment, Xcel Response to Department Information Request 41, Public and Non-Public.

COMMERCE DEPARTMENT

Before the Minnesota Public Utilities Commission

PUBLIC Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E002/M-13-867

I. INTRODUCTION

The threshold issue in this proceeding is whether the Commission is compelled by law to place all Applicable Retail Rate (ARR) Community Solar Gardens (CSGs or gardens) on the 2017 Value-of-Solar (VOS) vintage as found in Xcel's September 25, 2023 compliance filing. That is, does the statute require the Commission to apply the VOS to ARR-era gardens?

Minnesota law does not. The Department reaches this conclusion through statutory analysis and a survey of the procedural history.

Furthermore, while the Commission may revisit past orders, it must have a reasonable basis to do so, lest its rulings be deemed arbitrary and capricious. The Department does not find a reasonable basis to make the proposed change. The Commission's previous orders made a reasonable decision to keep the ARR-era gardens in that framework, and garden operators and subscribers have relied on that decision. Changing course based on concerns about ratepayer impact alone is not compelling enough to warrant the subsequent regulatory uncertainty, public mistrust in government and state-led clean energy programs, unjust outcomes for good-faith subscribers, and contradictions to the public policy goals of Minnesota.

II. PROCEDURAL BACKGROUND

When Minnesota Statutes § 216B.1641 was initially passed in 2013, it required Xcel to propose a plan to the Commission for a CSG program. An approved plan required that Xcel purchase all electricity generated by CSGs and required that the purchase "be at the rate calculated under section 216B.164, subdivision 10, or, until that rate for the public utility has been approved by the commission, the applicable retail rate."[1] The "distributed solar value methodology" (the "value of solar" or "VOS") was to be established by the Commission and the Department by January 31, 2014.[2]

[1] 2013 Minn. Laws ch. 85, art. 10, sec. 2(a) (now codified at Minn. Stat. § 216B.1641, subd. 1 as the "legacy program").
[2] 2013 Minn. Laws. Ch. 85, art. 9, sec. 10, subd. 10(e).

The question of whether ARR gardens should be moved to the VOS once it was established was a question in some form in this docket early in its extensive history.[3] In 2013 and 2014, before the VOS methodology was approved, the Department took the position in this docket that ARR gardens should be given a one-time option to switch to the VOS once established.[4] In Reply, Xcel interpreted the statute to mean that ARR gardens *were prohibited from switching*, but suggested—in the event that the Commission's interpretation differ—that ARR gardens be given an option to "switch to the VOS on a one-time basis only within a designated period of time."[5]

In April of 2014, the Commission required Xcel to revise its CSG plan, and required Xcel to file a VOS tariff and rate for CSGs within 30 days of the VOS approval, or to show cause as to why the rate should not be implemented for solar gardens.[6] On May 1, 2014, in lieu of filing a VOS tariff, Xcel filed a motion to show cause why its calculated VOS should not be used for CSGs.[7] Xcel argued that the VOS rate should not be used, in part, because "there is no clear mechanism under which the Commission could review the methodology underlying that rate to determine if it remains appropriate" and "there is likely less flexibility to make adjustments, if warranted, as we move forward."[8] "If the market evolves differently than anticipated by the Commission's Order, we believe the discretion to adjust applicable retail rate pricing, may prove to be the lowest cost means of making the CSG offering."[9] Xcel also asserted its belief "that the VOS and CSG statute, when read together, allow for the continued use of the 'applicable retail rate,'" and "we do not believe a migration from the 'applicable retail rate' to the VOS rate is statutorily required."[10]

On September 17, 2014, the Commission found that it was not in the public interest to approve a VOS rate for CSGs.[11] The Commission determined that while the VOS rate may have greater predictability over time, it was far lower than the ARR. The Commission noted that "to the extent the applicable retail rate changes over time, it is likely to increase" and "concerns about predictability do not appear to seriously undermine the merits of the applicable retail rate and REC [Renewable Energy Credit] value as appropriate compensation under the applicable statute."[12] The Commission required that Xcel clarify in

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[3] *See* Notice of Comment Period on Xcel Energy's Plan for a Community Solar Garden Program (October 4, 2013) (eDocket No. 201310-92125-01); Notice of Comment Period on Xcel Motion to Show Cause (May 5, 2014) (eDocket No. 20145-99173-01); Notice of Comment Period (March 13, 2015) (eDocket No. 20153-108173-01); Notice of Comment Periods (February 26, 2016) (eDocket No. 20162-118684-01).
[4] Department of Commerce Comments at 9-10 (Nov. 6, 2013) (eDocket No. 201311-93405-01).
[5] *See* Xcel Reply Comments at 5-6 (Dec. 17, 2013) (eDocket No. 201312-94697-01).
[6] Docket No. E002/M-13-867, Order Rejecting Xcel's Solar-Garden Tariff Filing and Requiring the Company to File a Revised Solar-Garden Plan at 2 (Apr. 7, 2014) (eDocket No. 20144-98041- 01).
[7] Xcel Motion to Show Cause (May 1, 2014) (eDocket No. 20145-99117-01).
[8] *Id*. at 2.
[9] *Ibid*.
[10] *Id*. at 4.
[11] Order Approving Solar Garden Plan with Modifications (Sept. 17, 2014) (eDocket No. 20143-103114-02).
[12] *Id*. at 9.

its tariff that CSGs "under the applicable retail rate should be credited at the applicable retail rate in place at the time of energy generation *for the duration of the 25-year contract*."[13]

That order required Xcel to file a tariffed version of its Standard Contract for Solar*Rewards Community;[14] that contract included the term that "Once a Standard or Enhanced Bill Credit applies, that Bill Credit Type applies for the term of the Contract."[15] The Contract defines "Term of the Contract" as beginning "when the contract is signed and end[ing] twenty-five (25) years after the Date of Commercial Operation unless otherwise provided below."[16] However, the Standard Contract also provided that "The rates for sales and purchases of Subscribed Energy shall be changed annually or otherwise as provided by order of the MPUC."[17] And the Standard Contract provided, "In the event of any conflict between the terms of this Contract and Company's electric tariff, the provisions of the tariff shall control."[18]

Two years later, on September 6, 2016, the Commission approved the VOS as the "solar-garden bill-credit rate for all solar-garden applications filed after December 31, 2016."[19] That order also required Xcel to file a VOS rate for the following year (2017) and subsequent years.[20] In determining a change to using the VOS was appropriate, the Commission stated: "Parties unanimously recommended that any change to the bill-credit rate be applied prospectively so as not to undermine the viability of existing applications. The Commission concurs and will require that the value-of solar rate apply *only* to applications filed after December 31, 2016."[21]

On June 27, 2023, the Commission ordered modifications to the ARR methodology and required Xcel to "develop and file a detailed proposal for Commission consideration for switching ARR-era gardens to the appropriate VOS rate."[22]

On September 25, 2023, Xcel filed its proposal, in which the Company proposes to, on April 1, 2024, move all ARR-era gardens to the 2017 VOS vintage rate, beginning with year seven of that vintage.[23] Xcel estimates that this change would reduce approximately $63 million in fuel clause costs annually. In its plan, Xcel now states that Minn. Stat. § 216B.1641, subd. 1(d) "specifically authorizes the use of the VOS rate" and the public interest supports the change to reduce the large cross-subsidy from non-CSG subscribers to subscribers.[24] Xcel also incorporated legal arguments from its April 10, 2023 comments. In

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[13] *Id*. at 19 (emphasis added).
[14] *Id* at 20.
[15] Xcel Compliance Filing at Tariff Sheet 9-69 (Sept. 29, 2014) (eDocket No. 20149-103417-02).
[16] *Id*. at Tariff Sheet 9-72
[17] *Id.* at Tariff Sheet 9-73.
[18] *Ibid*.
[19] Order Approving Value-of-Solar Rate for Xcel's Solar-Garden Program, Clarifying Program Parameters, and Requiring Further Filings at Order Point 1 (Sept. 6, 2016) (eDocket No. 20169-124627-01).
[20] *Id*. at Order Point 3.
[21] *Id*. at 14 (emphasis added).
[22] Order Adopting 2023 ARR and Requiring Additional Filing, Order Point 4 (June 27, 2023) (eDocket No. 20236-196933-01).
[23] Xcel Compliance Filing at 1-2 (September 25, 2023) (eDocket No. 20239-199127-01).
[24] *Id*. at 7

those comments, Xcel argued that its Standard Contract provide that the rates for sales and purchases may be changed by the MPUC and any language in its standard contract could be amended if they conflict with the tariff.[25]

On October 9, 2023, the Commission issued a Notice of Comment period on the matter, with the following topics open for Comment:

1) Should the Commission approve Xcel's proposal?
2) Is Xcel's proposal in the public interest?
3) If the Commission is to move ARR-era gardens to the VOS, should all gardens be placed on the 2017 VOS vintage beginning April 1, 2024 as Xcel has proposed?
4) Are there any other issues or concerns related to this matter?

III. DEPARTMENT ANALYSIS

A. MINNESOTA LAW DOES NOT REQUIRE XCEL'S PROPOSED CHANGE.

As the Department has maintained since 2013, statute does not prohibit moving ARR-era gardens to the VOS.[26] Nor, however, does statute *require* that a switch be made. The Department's 2013 position—that gardens be given a one-time voluntary *option* to switch to VOS—is consistent with statute.

Minn. Stat. § 216B.1641, subd. 1(d), governing the Legacy program, states that the rate at which Xcel must purchase energy generated by a CSG shall be "calculated under section 216B.164, subd. 10, or, until that rate for the public utility has been approved by the commission, the applicable retail rate." Minn. Stat. § 216B.164, subd. 10 generally provides utilities the option to file an alternative tariff that credits customers at the value of solar and provides related requirements for those alternative tariffs. Under Minn. Stat. § 216B.164, subd. 10(b), if an alternative tariff is approved, "the alternative tariff shall apply to customers' interconnections occurring *after the date of approval* [of the alternative tariff]" (emphasis added) and that an owner of a solar generation device receiving the alternative tariff rate must be paid the same rate per kilowatt-hour generated each year.[27] Section 216B.164, subdivision 10 also prohibits the Commission from authorizing "a utility to charge an alternative tariff rate that is lower than the utility's applicable retail rate until three years after the commission approves an alternative tariff for the utility."[28]

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[25] Xcel April 10, 2023 Comments at 4-5 (April 10, 2023) (eDocket No. 20234-194665-01).
[26] *See* Department of Commerce Comments at 9-10 (Nov. 6, 2013) (eDocket No. 201311-93405-01).
[27] Minn. Stat. § 216B.164, subd. 10(b), (l).
[28] Minn. Stat. § 216B.164, subd. 10(j). Several other parts of subdivision 10 are not particularly relevant to the present discussion: Subdivision 10(d) requires the utility to provide a meter that can provide service under the alternative tariff. Subdivision 10(h) requires the utility to recalculate the alternative tariff on an annual cycle. Subdivision 10(i) provides that RECs for solar energy credits are the property of the utility. Subdivision 10(k) requires a minimum 20-year term for contracts under alternative tariffs.

Statutes should be construed to give effect to all provisions of a law and, where possible, to harmonize any seemingly conflicting provisions. Minn. Stat. § 645.16; *Septran, Inc. v. Indep. Sch. Dist. No. 271, Bloomington, Minn.*, 555 N.W.2d 915, 919 (Minn. Ct. App. 1996). If two provisions are irreconcilable, a special provision will govern over a general provision. Minn. Stat. § 645.26, subd. 1.

The interplay between section 216B.1641 (the CSG statute) and section 216B.164, subd. 10 (the VOS statute), includes provisions that may initially appear contradictory in practice due to the ARR and VOS rates. While any garden that interconnected under an alternative VOS tariff has a locked-in VOS rate for their vintage year,[29] gardens under ARR do not appear to have the same right to the ARR under the statute for the full duration.

Importantly, however, the CSG statute and the VOS alternative-tariff statute can be read in harmony. ARR-era CSGs were approved before an alternative tariff using the VOS was established. Section 216B.164, subdivision 10 only became applicable to CSGs once a rate was established by the Commission under an alternative tariff, thus the provisions in subdivision 10 do not apply to ARR-era gardens. Because ARR-era gardens do not have a right to a specific rate under section 216B.164, subdivision 10 for the term of the contract, their rates instead fall under the general ratemaking principles and must be just and reasonable.

Conversely, attempting to apply section 216B.164, subdivision 10 to ARR-era gardens would create numerous problems because ARR-era gardens would then have a right to a "per kilowatt-hour generated each year for the term of the contract."[30] The Commission's determination that the ARR is the applicable retail rate in place at the time the energy is produced would conflict with statute, as would as any modification to the ARR. The more reasonable interpretation is that the Legislature intended the ARR to serve as a placeholder, or interim rate, until the VOS was established—and CSGs *could* switch over once the VOS was in-effect (the Department's 2013 position).

This understanding of Minn. Stat. §§ 216B.164, and 216B.1641 is consistent with the canons of statutory interpretation. In ascertaining the intention of the legislature, the Commission may be guided by the presumption that the legislature does not intend a result that is absurd, impossible of execution, or unreasonable; and the legislature intends the entire statute to be effective and certain. Minn. Stat. § 645.17. The legacy CSG program must "reasonably allow for the creation, financing, and accessibility of community solar gardens."[31] Moreover, the finance-ability requirement resolves any potential statutory uncertainty regarding the status of the ARR rate as a placeholder that *must* be replaced on the approval of the VOS. That is, it would be an absurd and unreasonable conclusion to reach that an approved VOS must replace the ARR upon its approval, regardless of the implications to finance-ability and accessibility.

[29] *See* Minn. Stat. § 216B.241, subd. 10(b), (h), (k), and (l).
[30] *Id*., subd. 10(l).
[31] Minn. Stat. § 216B.1641, subd. 1(e)(1).

Indeed, on approval of the program, the Commission, the Department, and all other parties interpreted the finance-ability requirement to mean that a transition to the VOS is *not* retroactive.[32]

In replacing the Legacy CSG program,[33] the Legislature required that "The cost of a subscriber's community solar garden subscription must not exceed the value of the subscriber's community solar garden bill credit." Minn. Stat. § 216B.1641, subd. 10(b). While this provision applies only prospectively to the program administered by the Department (and this provision provides no discovery or enforcement mechanism to the Legacy program), it nonetheless shows a clear intent as to financeability and accessibility. Community solar subscriptions are not intended to financially burden subscribers.

To reach the conclusion—that the cost of subscriptions retroactively exceeds the benefit of their bill credits—by way of a misinterpretation or reinterpretation of statutory requirements to retroactively apply the VOS to ARR gardens, is unreasonable and unjust.

To further illustrate this unreasonableness, suppose that the Commission were to find that it erred as a matter of law in September 2014 when it ordered that the VOS was not in the public interest,[34] and again in September 2016 when it ordered that garden applications after December 31, 2016 (but not before) be subject to the VOS?[35] In that case, how would it compensate ratepayers for overpayment in the Fuel Clause Adjustment (FCA)? From whom would ratepayers recover?

B. XCEL'S PROPOSED RATE CHANGE WILL CREATE REGULATORY UNCERTAINTY

The Department strongly urges the Commission to reject Xcel's proposal on the grounds that it will create regulatory uncertainty. That regulatory uncertainty will undermine faith in both government and new distributed energy resources (DER) at the same time in which the Department is tasked with standing up a new community solar garden program and multiple other clean energy and DER programs.

Regulatory uncertainty cuts against the public interest by imposing regulatory risk on other private investments, which are critical in decarbonizing Minnesota's electricity generation, and on the utility resource planning process. Additionally, the rate change would imperil existing clean-energy generation at a time when Minnesota is implementing statutory requirements to achieve 100% clean electricity by 2040.[36] The transition to 100% clean electricity by 2040 will require a broad suite of investments in both grid scale and distributed clean energy—beyond that which the Legislature has tasked the Department

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[32] Order Approving Solar Garden Plan with Modifications at 8, (Sept. 17, 2014) (eDocket No. 20143-103114-02).
[33] *See* Minn. Stat. § 216B.1641 and 2023 c 60 art 12 s 14.
[34] Order Approving Solar-Garden Plan with Modifications, Order Points 1 and 3.b (September 17, 2014) (eDocket No. 20143-103114-02).
[35] Order Approving Value-of-Solar Rate for Xcel's Solar Garden Program, Clarifying Program Parameters, and Requiring Further Filings, Order Point 1 (September 6, 2016).
[36] *See* Minn. Stat. § 216B.1691, subd. 2g.

with implementing directly or overseeing. The Department has significant concerns that regulatory uncertainty will create an insurmountable barrier to making these necessary investments.

The public interest is further imperiled through the financial impact this rate change will have on subscribers to the ARR-era gardens, which include many local governments, school districts, non-governmental non-profits, and residential subscribers.

1. Xcel's requested change will undermine faith in government at a crucial time.

The 2023 Legislative session laid out numerous clean energy mandates for the state: among others, a requirement that 100% of utilities' retail electric sales be from clean energy by 2040, a distributed solar standard, an expanded Solar for Schools program, a Solar on Public Buildings program, and the non-Legacy CSG program to be administered by the Department. The Department has a vested interest in the public reputation of clean energy development. The Legislature has given clear direction on this point. A Commission order in favor of this rate change could be perceived by the public as a bait-and-switch.

Indeed, if the tenor of public comments already in the record is at all indicative of public opinion, this proposal, if approved, would be poorly received by the public. Charges of illegality, greed, and bad faith run throughout public comments submitted to the Commission; at the time of this filing there is *not one* public comment in favor of the change. If, as noted by multiple commenters, 30% of the savings from a clean energy "investment" made in good faith can disappear, public interest in other clean energy programs will wane quickly.

This public environment creates additional challenges to several clean energy programs at a crucial time in the transition to 100% clean electricity by 2040.

2. Xcel's requested change will increase regulatory risk.

While the Department recognizes that the Commission is not bound by its previous orders,[37] the Department nonetheless urges the Commission to consider the effect an order contradictory to precedent in this case would have on Minnesota's regulatory environment.

Such an order may chill investment in new clean energy resources—not only the customer-facing programs as above, but also the stand-alone distributed generation investments contemplated by the Legislature. It can be reasonably ascertained that this chill may impact not only to solar, but also private investment in electric vehicle charging stations, distributed storage resources, merchant wind farms, and other emerging clean technologies.

[37] Minn. Stat. § 216B.25.

It is reasonable to surmise that even utility resource planning would bear additional regulatory risk, a risk that, when priced into the cost of capital, would ultimately be borne by the same ratepayers this change is meant to benefit.

CSG operators, like the CSG subscribers that have already made their opinion known to the record, reasonably relied on contracts that specified the ARR would be credited to their subscribers. The Department has no visibility into what contracts those CSG operators have with their subscribers, but the Standard Contract for Solar*Rewards Community is a matter of public record[38] that entered Xcel Energy's Rate Book as a result of a Commission order.[39] While that contract specifies that changes in the tariff would control in the event of a conflict,[40] no reasonable CSG developer, operator, or subscriber would have believed that that provision would take effect in precisely this way.

That surety in the ARR's permanence for these CSGs makes itself known through two routes: the record in this docket and what appear to be some of the subscriber contract provisions.

To the first, in its Order Approving Solar-Garden Plan with Modifications, the Commission noted that the anticipated change to the VOS:

> Commenters recommended several clarifications to improve the financeability of projects receiving the applicable retail rate. **There was broad agreement that any eventual transition to the value-of-solar rate should not be retroactive.** In other words, solar gardens that are approved and interconnect under the applicable retail rate should continue to receive that rate even after Xcel implements a value-of-solar rate for solar gardens.[41] [Emphasis added]

The Commission agreed with the commenters that the ARR should not be retroactive for reasons of financeability.[42] The CSG statute requires that the program be financeable.[43] The Commission recognized this in Order Point 3.b., which states that "Xcel shall clarify the following in its tariff with respect to the use of the applicable retail rate and REC payments: […] Community-solar-garden projects

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[38] Xcel Rate Book Section No. 9, 2nd Revised Sheet No. 69.
[39] Order Approving Solar Garden Plan with Modifications, (Sept. 17, 2014) (eDocket No. 20143-103114-02)
[40] Xcel Compliance Filing at Tariff sheet 9-73 (Sept. 29, 2014) (eDocket No. 20149-103417-02), *stating* "In the event of any conflict between the terms of this contract and Company's electric tariff, the provisions of the tariff will control."
[41] Order Approving Solar Garden Plan with Modifications at 8, (Sept. 17, 2014) (eDocket No. 20143-103114-02).
[42] *Ibid*.
[43] Minn. Stat. § 216B.1641, subd. 1(e)(1). "(e) The commission may approve, disapprove, or modify a community solar garden program. Any plan approved by the commission must: (1) reasonably allow for the creation, financing, and accessibility of community solar gardens."

under the applicable retail rate should be credited at the applicable retail rate in place at the time of energy generation *for the duration of the 25-year contract*."[44]

No reasonable CSG developer, operator, or subscriber would have read into that order any likelihood that a change to the VOS would be retroactive years into the future.

The second piece of evidence that CSG operators relied on the permanence of the ARR bill credit comes from the public comments that fear being under water—where the difference between bill credits and subscription payments moves from a net positive to a net negative—if the switch to VOS would be undertaken. If these predictions reflect the terms of subscription contracts, then the contracts must not contemplate a condition where the rate structure changes; therefore, the subscription contracts and their drafters (the CSG operators) must have relied on the permanence of the ARR.

CSG operators are hardly the only stakeholder that relies on, and benefits from, a stable regulatory environment. Even within the CSG ecosystem, the reliance on regulatory certainty does not stop with the developer, or the operator, or the subscriber. The CSG creditor and equity holder—often banks that may otherwise lend to other energy projects in Minnesota—both bear and determine the price of regulatory risk. Simply, greater regulatory risk increases the cost of capital. There is no guarantee that that risk will not contaminate *other energy markets* in Minnesota. In an era where the cost of capital is rising generally because of tight monetary policy, additional capital costs in Minnesota would make the state uniquely uncompetitive.

3. Stranding solar assets contradict public policy.

The Department is concerned that this rate change will result in bankrupting at least a portion of these existing solar gardens, which will result in adverse impacts to both ratepayers and the carbon footprint of the state, as the state finds itself awash in stranded solar assets. It is too far afield to speculate where the ownership of a bankrupt CSG operating entity might land, but it is reasonable to assume that some of these CSGs might be taken offline. These ARR-era CSGs make up the vast majority of the CSGs in Xcel's Solar*Rewards Community program, and a plurality of the total solar fleet operating in Minnesota.

To expose the bulk of the operating solar in the state to such a risk contradicts the state's goal to achieve net-zero emissions and the statutory requirement to decarbonize all electricity generation by 2040. The (unnecessary) failure of these gardens would create barriers to achieving the requirement of 100% clean energy by 2040 by *decreasing* already-online clean generation.

C. THE SUBSCRIBER IMPACT OF THIS TARIFF CHANGE IS NOT IN THE PUBLIC INTEREST.

[44] Order Approving Solar Garden Plan with Modifications at 8, (Sept. 17, 2014) (eDocket No. 20143-103114-02) (emphasis added).

Approving the proposed change will cause reputational damage to government, chill the market for clean energy projects, and stimy Minnesota's ability to meet public policy goals.

In addition, previously unreleased, individualized Xcel data, summarized by the Department in order to ensure a transparent and public conversation about the subscribers, as noted below, reveals that the large majority of ARR-era subscribers that would be financially harmed are public interest subscribers. Furthermore, the Department believes that the outcry in public comments over this proposed rate change would have been of a substantially larger magnitude if all of the impacted subscribers would have been noticed by Xcel of the proposed change.

The punch will land squarely on the subscribers whose participation in community solar the Legislature has sought to incent. That is, the current mix of subscribers in the ARR fleet *already* resembles the proportion of "public-interest" subscribers required by the new program. Governments, public school districts, hospitals and clinics, churches, private schools, and residential subscribers comprise a supermajority—*70 percent* of subscribed capacity and *72 percent* of the bill credit—of the subscribed capacity to the ARR-era gardens.[45] This percentage is substantially more than the 55 percent requirement in the non-Legacy CSG program.

Table 1. Summary of CSG Subscribers Under the ARR

	Subscribed capacity (%)	**Percentage of total bill credits, September, 2023**
Government	25%	25%
Public Schools	17%	16%
Hospitals, clinics, churches, private schools	13%	13%
Residents	16%	17%
Private Business/Other	30%	28%
Total	100%	100%

1. *Public interest subscribers will bear a particular burden.*

[45] Derived from Xcel Answer to Department IR 41 TRADE SECRET.

Minnesota cities, counties, and other governmental entities account for a quarter of the subscribed capacity to ARR-era gardens. Public schools, 17%. Other non-profits, 13%.

Fifty-eight public school districts and the **[TRADE SECRET DATA HAS BEEN EXCISED]** alone accounts for over 57 MW of subscriptions and would incur millions in unplanned energy costs if this bill-credit rate change were to go into effect.

Some communities will be hit particularly hard, including those with a strong, early interest in participating in the clean energy transition. These communities host an outsized proportion of Minnesota's clean energy generation—and are likely anchor tenants in many of these gardens. **[TRADE SECRET DATA HAS BEEN EXCISED]**

Eighty-two churches, private schools, hospitals, and other non-profits lean on ARR gardens to keep costs down and deliver more services.

Truly, a map of public interest ARR subscribers would read like a map of Northern States Power Company Minnesota service territory. **[TRADE SECRET DATA HAS BEEN EXCISED]** it is a wide-ranging, diverse, and representative list.

Those entities are exactly the sort that the Legislature has seen fit to prioritize in recent legislation, not only with the non-Legacy CSG program, but also with the Solar for Schools and the Solar on Public Buildings programs.

This raises the question of which of these public interest subscribers will take up those programs in 2024 after they end up underwater on their CSG subscription from 2016? Which of their peers?

These entities develop and approve budgets on a long timeframe; energy costs are a significant portion of their budgets. The proposed change to the VOS bill credit rate April 1, 2024 will impact these budgets in a timeframe that is shorter than an annual budgetary process, creating chaos. If a 30% increase in *general rates* were to occur over an equivalently short period, the effect might be described as "rate shock," which is generally accepted as not in the public interest. The Department cannot predict how exactly those budgetary shifts will impact individual government entities, but it is reasonable to deduce that that impact will be felt in a combination of reduced public services and/or higher taxes over the long term. Whatever 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.

The Department finds that this shift is not in the public interest, for two reasons. The first reason stems from the relatively short timeframe this shift will have occurred in, when compared to annual budgetary processes. That short planning window is likely to create chaos, where shortfalls will be filled with reductions in public services or increased short-term debt—and then backfilled with tax increases and/or further reductions in public services. The second reason reflects the policy posture

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of the Legislature, which passed bills for an expanded Solar for Schools program[46] and a new Solar on Public Buildings program[47] in the 2023 session. These new programs signal a legislative willingness to direct further ratepayer funds *toward* local governments and schools—not the other way around.

2. Residential subscribers will be hardest hit.

Residential and Small General Service class subscribers would see the greatest financial impact in relative terms from the proposed tariff change. This change also contradicts public policy.

In its compliance filing proposal, Xcel compares the rates for the 2023 ARR to the 2017 vintage VOS in year seven (2024) to illustrate the rate changes proposed for different classes of customers.

Table 2: Bill Credit Rates ($/kWh)[48]

	ARR	VOS	Rate Change
	Enhanced CSG > 250 KW (2023)	2017 Vintage, Year 7 (2024)	
Residential	$0.17252	$0.11850	-$0.05402
Small General Service	$0.17969	$0.11850	-$0.06119
General Service	$0.15186	$0.11850	-$0.03336

The Commission has consistently encouraged residential participation in the Solar*Rewards Community program, including through a residential adder to VOS vintages 2019-2022. The Commission declined to extend the residential adder to the 2023 VOS vintage on the grounds that the upcoming Department-led CSG program will be required to cater to residential and low- and moderate-income subscribers, and "the VOS is no longer the appropriate bill-credit rate for energy produced by CSGs operating in the new program."[49] The Department supported the end of the

[46] *See* Minn. Laws Ch. 60, Art. 11, Sec. 2, Subd. 12 ("$14,310,000 the first year is transferred to the solar for schools program account established under Minnesota Statutes, section 216C.375, to provide financial assistance to schools to purchase and install solar energy generating systems under Minnesota Statutes, section 216C.375. The appropriations under this paragraph must be expended on schools located within the electric service territory of the public utility that is subject to Minnesota Statutes, section 116C.779. This is a onetime appropriation.")
[47] *See* Minn. Laws Ch. 60, Art. 11, Sec. 2, Subd. 7 ("$5,000,000 the first year is transferred from the renewable development account to the solar on public buildings grant program account for the grant program described in Minnesota Statutes, section 216C.377. The appropriation in this subdivision must be used only to provide grants to public buildings located within the electric service area of the electric utility subject to Minnesota Statutes, section 116C.779.")
[48] Xcel Compliance Filing, Table 3 at 4 (September 25, 2023) (eDocket No. 20239-199127-01).
[49] Order—Declining to Extend the Residential Adder to the 2023 Value of Solar at 4, (December 8, 2023) (eDocket No. 202312-201075-01).

residential adder for the 2023 VOS on similar grounds.[50] Support from the Commission and the Department for the residential adder ended, but *not* because public policy had turned away from the goal of greater residential participation—rather, because greater residential participation is defined within the core of the program design.

The Department raises the concern that this outsized impact on residential and small general service subscribers will have on residential participation in the legacy CSG program. It is reasonable to conclude that this greater impact on residential subscribers will lead to a greater flight from the program. In the best case, where these CSGs do not become stranded assets, that subscribed capacity will be replaced; it is unlikely that those replacement subscribers will be other residential subscribers, whose cost of recruitment is high, and who stand to benefit less from the 2017 vintage VOS, which does not include a residential adder. As discussed above, the Department is concerned that those residential subscribers will be reluctant to participate in the non-legacy Department-administered program, or, for that matter, any customer-choice clean energy program at all.

The Department finds that this disproportionate rate impact on residential subscribers is likely to discourage residential participation in the transitioned fleet of ARR-era gardens, and further discourage residential participation in the upcoming CSG program and other customer-choice clean energy programs.

Which of these self-described early adopters—if we are to believe the torrent of public comments already on the record in this docket—will make another clean energy “investment?” Which of their neighbors?

The Department finds this result contrary to public policy.

IV. OTHER CONSIDERATIONS

The Department also recognizes the ratepayer impact of the legacy CSG program and the ARR-era subset of that program. As Xcel noted in its compliance filing for this proposal,[51] the non-Legacy CSG program creates a carve-out from the FCA for non-subscribing income-qualified ratepayers. Such an approach here may be a possible compromise between the ratepayer impact and the subscriber impact. While the proposed approach to overturn previous Commission orders would be detrimental, such an alternative approach could harmonize the legislative direction in the non-Legacy program.

V. CONCLUSION AND RECOMMENDATIONS

The Department concludes that the Commission should reject Xcel’s proposed change to move ARR-era gardens to year seven of the 2017 vintage VOS on April 1, 2024. Based on the evidence in the record and the Department’s analysis thereof, this change would be contrary to the public interest as contemplated by the Legislature, Commission, participants, and Administration.

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[50] Department of Commerce Comments (July 24, 2023) (eDocket No. 20237-197700-01).
[51] Xcel Compliance Filing at 8 (September 25, 2023) (eDocket No. 20239-199127-01).

☐ **Not-Public Document – Not For Public Disclosure**
☒ **Public Document – Not-Public Data Has Been Excised**
☐ **Public Document**

Xcel Energy		Information Request No.	41
Docket No.:	E002/M-13-867		
Response To:	Minnesota Department of Commerce		
Requestor:	Jamie MacAlister & Peter Teigland		
Date Received:	December 13, 2023		

Question:
Topic: Customer classes and bill credits
Reference(s): Proposal for Switching ARR-ERA Community Solar Gardens to Appropriate VOS Rate

Pursuant to Minn. Stat. § 216A.07, the Department is requesting that Northern States Power Company, d/b/a Xcel Energy, provide a Microsoft Excel spreadsheet containing the following information for each ARR era community solar garden subscriber:

a. Subscriber name
b. Street address
c. City
d. Zip code
e. Associated solar garden vintage
f. Solar garden ID
g. Tariff rate
h. Rate
i. Rate Class
j. Segment
k. Energy allocated in kWh
l. Monthly Production Allocation in kWh
m. Bill credit.

Please provide the requested data for each individual customer on a separate row. The Department is available to further define or clarify the requested information, if necessary.

Response:
Attachment A is provided in response to DOC-41.

Data pulled in response to DOC-40 (as provided in DOC-40, Attachment A) may differ from DOC-41 Attachment A as a new report was required to collect the data as requested in DOC-41. The information provided in DOC-41 Attachment A includes all ARR community solar garden subscribers as well as each subscriber's customer class for the month of September 2023. Subscription data is updated on a monthly basis and not aggregated across months, but rather provides a snapshot of a one-month timeline, specifically for September of 2023 production. Those gardens that may be offline during this month are not included.

Attachment A contains private customer information related to electric data and bill credits paid for the Solar*Rewards Community program. As individual customer information, this information is maintained by the Company as private customer data. We have marked as non-public the following information to avoid the risk of individual information being publicly identifiable: Subscriber Name, Premise Street Name, Premise City, Premise Zip Code, and Solar Garden ID. The information marked as protected data is not public and is accessible to individuals subject of those data. Pursuant to Minn. Stat. §13.37, subd. 1(b), the information is Trade Secret as the specific customer information derives independent economic value, actual or potential, to Xcel Energy, its customers, suppliers, and competitors, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. Disclosure of the trade secret provisions would have a detrimental effect by providing valuable information not otherwise readily ascertainable and from which could be obtained economic value.

Preparer:	Kristen Ruud
Title:	Case Specialist II
Department:	Program Policy and Strategy
Telephone:	612-321-7979
Date:	December 20, 2023

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

Minnesota Department of Commerce
Public Comments

Docket No. E002/M-13-867

Dated this **8th** day of **January 2024**

/s/Sharon Ferguson

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