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TRADE SECRET DATA EXCISED

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

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IN THE MATTER OF THE PETITION OF NORTHERN STATES POWER COMPANY, D/B/A XCEL ENERGY, FOR APPROVAL OF ITS PROPOSED COMMUNITY SOLAR GARDEN PROGRAM	PUC DOCKET NO. E-002/M-13-867

PETITION FOR RECONSIDERATION
SUBMITTED BY STANDARD SOLAR, INC.

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EXHIBIT B

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In its May 30, 2024, Order Approving Community Solar Garden Program Rate-Transition Proposal with Modifications (the "Order")[1], the Minnesota Public Utilities Commission ("Commission") approved Xcel Energy's ("Xcel") compliance filing and "authorize[d] a transition from the applicable retail rate (ARR) to the value of solar rate (VOS) for all existing [Community Solar Gardens or] CSGs."[2] The impetus for the Order is the very item the Commission regularly reviews and approves – the panoply of retail rates and charges assessed by Xcel that, in total, comprise the ARR. In sidestepping this critical point, the Order reaches simultaneously inconsistent conclusions that while the rates comprising the ARR are just and reasonable for CSG subscribers to pay Xcel, the ARR is an unjust and unreasonable credit for those very same CSG subscribers to receive from Xcel. To be clear, the ARR is a statutory rate applicable to CSGs deemed complete prior to approval of VOS. And if the ARR is unjust and unreasonable, then retail rates paid by consumers to Xcel are by definition also unjust and unreasonable. In concluding otherwise, and directing existing CSG contracts to transition from ARR to VOS, the Order (1) is in excess of the Commission's statutory authority and violates the plain language of Minn. Stat. § 216B.164, which provides that any transition to VOS shall be prospective and effective only for those CSGs whose interconnections occur after the date of approval of the VOS; (2) violates Article I, Section 11, of the Minnesota Constitution and Article 1, Section 10, Clause 1 of the United States Constitution, each of which prohibits the passage of any law impairing the obligations of contracts; (3) violates Article I, Section 13, of the Minnesota Constitution and the Fifth Amendment to the United States Constitution, each of which prohibits the taking of private

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1 *In the Matter of Xcel Energy's Plan for a Community Solar Garden Program Pursuant to Minn. Stat. § 216B.1641*, PUC Docket No. E-002/M-13-867, Order Approving Community Solar Garden Program Rate-Transition Proposal with Modifications (May 30, 2024).

2 *Id.* at 2.

property without just compensation; and (4) arbitrarily and capriciously fails to adequately explain the Commission's decision to reverse the course it clearly charted in prior decisions, where the Commission explained it would not implement VOS for pre-existing CSGs. Moreover, the Commission's determination that a contested case proceeding was not required is contrary to law. For these reasons, Standard Solar, Inc. ("Standard Solar") respectfully seeks reconsideration of the Order ("Petition"). Standard Solar further requests in this Petition, pursuant to Minn. Stat. § 216B.53, that the Commission stay operation of the Order pending appeal given the significant negative financial impacts on Standard Solar and its subscribers alone, the Commission's novel statutory interpretation, and the constitutional implications of the Order.

I. INTRODUCTION

A. CSG Program Background and History

Enacted in 2013, the CSG program was "inten[ded] to give the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public."[3] The program was aimed at "promot[ing] solar growth in the state by providing individual customers and communities to work together to have a community solar resource," and provided an avenue for "non-utility scale customers who typically face economic barriers to participation in a solar program" to "purchase or lease a subscription at a central solar installation and receive a bill credit for the electricity generated in proportion to the size of their subscription."[4]

Pursuant to the CSG statute, Minn. Stat. § 216B.1641, Xcel was required to file a plan with

[3] Minn. Stat. § 216B.164, subd. 1.

[4] *In re N. States Power Co.*, No. A15-1831, 2016 WL 3043122, at *1 (Minn. Ct. App. May 31, 2016) (citing Minn. Stat. § 216B.1641(a)-(b)).

the Commission outlining its proposed CSG program.[5] The statute provided that the Commission could approve, disapprove, or modify a CSG program, but "any plan approved by the commission **must**: (1) reasonably allow for the creation, financing, and accessibility of community solar gardens; […and…] (4) be consistent with the public interest."[6]

The CSG statute was amended in 2020 pursuant to a Revisor's bill to make miscellaneous technical corrections, and in 2023 was substantially amended as part of the Environment, Natural Resources, Climate, and Energy Finance and Policy Bill.[7] The 2023 amendments to the CSG program "[i]ncrease[d] the maximum capacity of a community solar garden…, remove[d] the requirement that the facility be located in the same county as, or a county contiguous to, its subscribers," and "[c]reate[d] a new type of solar garden in which at least 50 percent of the facility's capacity is subscribed by residential users that must receive the retail rate from the utility for any electricity exported to the utility."[8]

The 2023 amendments to the CSG statute provided that CSGs approved prior to January 1, 2024, were to be referred to as "Legacy program[s]," and that the provisions of Minn. Stat. § 216B.1641, subd. 1, would apply to those legacy programs.[9] The 2023 amendments provided definitions relevant to all CSGs, and provided that "Subdivisions 2 to 13 apply to community solar gardens approved for the program beginning January 1, 2024."[10] Importantly, the 2023 amendments did not alter subdivision 1(d) of the CSG statute, which provides, in full:

> The public utility must purchase from the community solar garden all energy generated by the solar garden. The purchase shall be at

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5 Minn. Stat. § 216B.1641, subd. 1(a).
6 Minn. Stat. § 216B.1641, subd. 1(e) (emphasis added).
7 H.F. 2310 (2023).
8 Minnesota House Bill Summary, H.F. 2310, at 54 (2023), https://www.house.mn.gov/-hrd/bs/93/HF2310.pdf.
9 H.F. 2310 (2023).
10 *Id.*

> 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. A solar garden is eligible for any incentive programs offered under section 116C.7792. A subscriber's portion of the purchase shall be provided by a credit on the subscriber's bill.[11]

Thus, at all relevant times for projects subject to this Petition, Xcel is required to purchase "all energy generated by the solar garden … 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."[12] In turn, Minn. Stat. § 216B.164, subd. 10 (the "VOS statute"), provides that

> [a] public utility may apply for commission approval for an alternative tariff that compensates customers through a bill credit mechanism for the value to the utility, its customers, and society for operating distributed solar photovoltaic resources interconnected to the utility system and operated by customers primarily for meeting their own energy needs.[13]

Critically, "[i]f approved, the alternative tariff shall apply to customers' **interconnections occurring after the date of approval**."[14]

The CSG statute and VOS statute each granted the Commission authority to regulate the CSG program and rates paid for energy generated by CSGs. To that end, in 2014, the Commission promulgated Minn. R. 7835.4023, which, consistent with the unambiguous language of Minn. Stat. § 216B.164, subd. 10, provides that "[i]f a public utility has received commission approval of an alternative tariff for the value of solar under Minnesota Statutes, section 216B.164, subdivision 10, the tariff applies to **new solar photovoltaic interconnections effective after the tariff**

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11 Minn. Stat. § 216B.1641 (2014). *Compare* Minn. Stat. § 216B.1641 (2014), *with* Minn. Stat. § 216B.1641 (2023).
12 Minn. Stat. § 216B.1641.
13 Minn. Stat. § 216B.164, subd. 10(a).
14 Minn. Stat. § 216B.164, subd. 10(b) (emphasis added).

approval date."[15]

Thus, from its inception and continuing unmodified despite substantial amendments to the CSG program, the Legislature and Commission have, by statute and rule, provided that the VOS authorized by Minn. Stat. § 216B.1641, subd. 1(d), and governed by Minn. Stat. § 216B.164, subd. 10(B), is to apply on a prospective basis only for new CSGs. That is, the VOS applies to "interconnections occurring after the date of approval"[16] of the VOS, or, in other words, "new solar photovoltaic interconnections effective after the tariff approval date."[17] All of the Standard Solar projects subject to this Petition pre-date approval of the VOS.[18] As a result, none of these projects are subject to the VOS.

B. Commission Action Regarding CSG Program

As fully described in the section below, until it issued its Order in this matter, at every opportunity since the inception of the CSG program the Commission has decided that the CSGs that began with ARR-based bill credits should operate with those same bill credits for the entire initial 25-year term of those projects. This approach is consistent with applicable law. As required by the CSG statute,[19] Xcel filed its CSG Petition on September 30, 2013.[20] The Commission issued a Notice of Comment Period[21] and, after extending the comment period,[22] accepted public comments through December 17, 2013. On April 7, 2014, the Commission issued its Order

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15 Minn. R. 7835.4023 (emphasis added).
16 Minn. Stat. § 216B.164, subd. 10(b).
17 Minn. R. 7835.4023.
18 *See* Affidavit of Trevor Laughlin ("Laughlin Aff."), ¶6.
19 Minn. Stat. § 216B.1641, subd. 1(a).
20 *In the Matter of Xcel Energy's Plan for a Community Solar Garden Program Pursuant to Minn. Stat. § 216B.1641*, PUC Docket No. E-002/M-13-867, Initial Filing – Community Solar Gardens Petition (Sept. 30, 2013).
21 *Id.*, Notice of Comment Period on Xcel Energy's Plan for a Community Solar Garden Program (Oct. 4, 2013).
22 *Id.*, Notice of Extended Comment Period (Nov. 5, 2013).

Rejecting Xcel's Solar-Garden Tariff Filing and Requiring the Company to File a Revised Solar-Garden Plan (the "Order Rejecting Xcel's Proposal").[23]

In analyzing the CSG statute and assessing the appropriate rate until the VOS was established (while rejecting Xcel's proposed "average retail utility rate" proposal), the Commission in its Order Rejecting Xcel's Proposal concluded an adder was necessary to meet the statutory requirement for financeability of CSGs. In particular, the Commission "conclude[d] that **the statutory 'applicable retail rate' is a solar-garden subscriber's full retail rate**."[24] The Commission determined that "Xcel's proposed 'average retail utility energy rate' [was] not an applicable retail rate but rather a power-purchase rate for excess generation from net-metered facilities."[25] The Commission further rejected all "of the various solar-industry proposals to calculate a new 'applicable retail rate' for solar gardens based on specific adders, since 'applicable retail rate' denotes an existing rate applicable to a particular customer."[26]

Thus, rather than accepting any of the proposals, the Commission determined that, "in the absence of an approved value-of-solar rate, the Commission [would] require Xcel to credit each subscriber's portion of the solar-garden production at **the applicable retail rate, which is the full retail rate, including the energy charge, demand charge, customer charge, and applicable riders, for the customer class applicable to the subscriber receiving the credit**."[27] But the Commission's analysis did not end there. Rather, the Commission recognized that "[t]he solar-

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23 *In the Matter of Xcel Energy's Plan for a Community Solar Garden Program Pursuant to Minn. Stat. § 216B.1641*, PUC Docket No. E-002/M-13-867, Order Rejecting Excel's Solar-Garden Tariff Filing and Requiring the Company to File a Revised Solar-Garden Plan (Apr. 7, 2014).

24 *Id.* at 15 (emphasis added).

25 *Id.*

26 *Id.*

27 *Id.* (emphasis added). This full retail rate is reviewed regularly and approved by the Commission through various rate rider filings and general rate-case filings.

garden statute mandates that any plan approved by the Commission reasonably allow for the creation, financing, and accessibility of solar gardens."[28] Because "[t]he record in this case demonstrate[d] that the full retail rate, approximately $0.12 per kWh, is too low to reasonably allow for the creation and financing of community solar gardens," the Commission accepted "developers' uncontroverted statements [that] indicate[d] that a rate of approximately $0.15 per kWh is the conservative minimum needed to secure financing and make solar gardens attractive to subscribers."[29] Accordingly, the Commission decided to "allow the garden operator or developer to transfer the solar [Renewable Energy Credits] RECs to Xcel at a compensation rate of $0.02 per kWh for solar gardens with a capacity greater than 250 kW and $0.03 for solar gardens with a capacity of 250 kW or less."[30] Going further, the Commission went so far as to recognize that inflation could, and likely would, devalue solar-garden energy if not accounted for, and therefore "[t]o ensure that solar-garden energy is **not devalued over time** by inflation, the applicable retail rate and solar REC value will be reviewed annually and adjusted accordingly."[31]

Following the Order Rejecting Xcel's Proposal, Xcel submitted its revised CSG program on May 7, 2014, and a corrected revised CSG program on May 30, 2014.[32] The Commission again received comments and briefing on Xcel's revised proposal, and on September 17, 2014, the Commission issued its Order Approving Solar-Garden Plan with Modifications.[33]

In this order, the Commission doubled down on its Order Rejecting Xcel's Proposal,

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28 Order Rejecting Xcel's Proposal at 15 (Apr. 7, 2014).
29 *Id.*
30 *Id.*
31 *Id.* (emphasis added).
32 *In the Matter of Xcel Energy's Plan for a Community Solar Garden Program Pursuant to Minn. Stat. § 216B.1641*, PUC Docket No. E-002/M-13-867, Compliance Filing – Tariffs (May 7, 2014); *id.*, Compliance Filing – Corrected (May 30, 2014).
33 *Id.*, Order Approving Solar-Garden Plan with Modifications (Sept. 17, 2014).

reaffirming that it would adopt the ARR approach with REC adder for Xcel's purchase of energy generated by CSGs. Specifically, the Commission determined that "solar-garden energy should be compensated at the applicable retail rate combined with REC value as set forth in its April 7, 2014 order, rather than the value-of-solar rate for now. As the Commission concluded in its April 7 order, the solar-garden statute requires that solar-garden rates be sufficient to support the creation and financing of community solar gardens. While the value-of-solar rate might provide greater predictability over time, it is much lower initially than the applicable retail rate and significantly below the level needed to support the financing and development of solar gardens as required by the applicable statute."[34]

The Commission plainly understood that the ARR was tied to the full retail rate paid by the specific customer[35] and would therefore increase over time. The Commission explained that "to the extent the applicable retail rate changes over time, **it is likely to increase**," and "[t]herefore, concerns about predictability do not seriously undermine the merits of the applicable retail rate and REC value as appropriate compensation under the applicable statute."[36]

Moreover, the Order Approving Solar-Garden Plan with Modifications expressly directed that the ARR should remain in effect for the time being and that "community-solar-garden projects filing complete applications under the applicable retail rate should be allowed to lock in the REC price for the duration of the 25-year contract;" that "**solar-garden projects approved under the**

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34 *In the Matter of Xcel Energy's Plan for a Community Solar Garden Program Pursuant to Minn. Stat. § 216B.1641*, PUC Docket No. E-002/M-13-867, Order Approving Solar-Garden Plan with Modifications at 9 (Sept. 17, 2014).

35 In other words, and as noted above, the rate including the energy charge, demand charge, customer charge, and applicable riders. *See supra* at 6.

36 *In the Matter of Xcel Energy's Plan for a Community Solar Garden Program Pursuant to Minn. Stat. § 216B.1641*, PUC Docket No. E-002/M-13-867, Order Approving Solar-Garden Plan with Modifications, at 9 (Sept. 17, 2014) (emphasis added).

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;" and that "any adjustment to REC prices made by the Commission in later years should **only apply to new community-solar-garden project applications**."[37] Thus, the Commission ordered that REC prices would be locked in for the term of the contracts, ARR would be locked in for the term of the contracts at the rate in place at the time of energy generation, and any future adjustments to REC prices would apply only prospectively to new CSGs.[38] Xcel's compliance filing to the Order Approving Solar-Garden Plan with Modifications included in the Standard Form Contract between it and developers the Commission's definition of Applicable Retail Rate – namely that "[t]he Standard Bill Credit is based on **the applicable retail rate, which shall be the full retail rate**, including the energy charge, demand charge, customer charge and applicable riders, for the customer class applicable to the Subscriber receiving the bill credit."[39]

On August 16, 2015, the Commission issued its Order Adopting Partial Settlement Agreement as Modified.[40] As relevant here, the Commission in that order discussed its prior orders and explained that "subscriber bill credits are currently set at the applicable retail rate," which the Commission had determined to be "the rate that a subscriber pays Xcel for electricity, including the energy charge, demand charge, customer charge, and applicable riders."[41] The Commission further explained that, pursuant to its orders, "garden operators may elect to sell the renewable

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37 *In the Matter of Xcel Energy's Plan for a Community Solar Garden Program Pursuant to Minn. Stat. § 216B.1641*, PUC Docket No. E-002/M-13-867, Order Approving Solar-Garden Plan with Modifications, at 9 (Sept. 17, 2014) (emphasis added).

38 *Id.* at 19.

39 *Id.*, Xcel Energy Compliance Filing, Section No. 9 of Tariff, Original Sheet 69 (Sept. 29, 2014) (emphasis added).

40 *Id.*, Order Adopting Partial Settlement Agreement as Modified (Aug. 16, 2015).

41 *Id.* at 6.

energy credits (RECs) associated with garden production to Xcel for an additional two- or three-cent premium."[42] The Commission expressly noted that the rates were "not intended to reflect a market rate for RECs but rather are simply calculated to bring the total compensation for garden energy to a financeable level, as required by the statute."[43] And, as with RECs, the Commission acknowledged that, even at that time, "**the solar-garden rates are significantly higher than what Xcel would pay for power produced by a competitively procured, utility-scale project**."[44]

More than a year later, on September 16, 2016, the Commission issued its Order Approving Value-Of-Solar Rate for Xcel's Solar-Garden Program, Clarifying Program Parameters, and Requiring Further Filings (the "Order Approving VOS").[45] In this order, too, the Commission summarized its prior orders, explaining that "the Commission has recognized the importance of eventually transitioning to the value-of-solar rate, as contemplated by the solar-garden statute," but "[a]t the same time … the Commission expressed doubt as to whether the value-of-solar rate would provide sufficient compensation to reasonably allow for the creation and financing of solar gardens, as required by the same statute."[46] The Commission relayed that "[i]n its September 2014 order, the Commission concluded that it was not in the public interest to approve a value-of-solar rate for solar gardens at that time and directed Xcel to continue using the applicable retail rate with an optional REC payment. The Commission also directed the parties to engage in further discussions and to file comments on potential 'adders' to apply to a value-of-solar rate to ensure that the total effective rate would reasonably allow for the creation, financing, and accessibility of

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42 *In the Matter of Xcel Energy's Plan for a Community Solar Garden Program Pursuant to Minn. Stat. § 216B.1641*, PUC Docket No. E-002/M-13-867, Order Adopting Partial Settlement Agreement as Modified at 6 (Aug. 16, 2015).

43 *Id.*

44 *Id.* at 7 (emphasis added).

45 Order Approving Vos.

46 *Id.* at 8.

community solar gardens."[47] Concerning "its August 2015 order, the Commission concluded that changes to the bill-credit rate should wait until stakeholders had gained more experience with the program. And in its November 2015 order, the Commission directed stakeholders to file comments by April 1, 2016, addressing whether and how the Commission should modify the bill-credit rate, including switching to the value-of-solar rate."[48]

Ultimately, in the Order Approving VOS, the Commission determined that "adopting the value-of-solar rate … is consistent with the intent of the solar-garden statute. Accordingly, the Commission … approve[d] the value-of-solar rate for use as the solar-garden bill-credit rate," with certain conditions.[49] As relevant to this Petition, the conditions for approval of the VOS included the Commission's decision to apply the VOS "**only to applications filed after December 31, 2016**."[50] The Commission observed that this plan—to apply VOS on a prospective basis for new CSG applications only—was "unanimously recommended" by the parties.[51] Moreover, the Commission clarified that the VOS in effect at the time the CSG application is deemed complete "**will be the subscriber bill-credit rate for the term of the garden**."[52] In summary, the intention expressed by the Commission was to do the following: (i) retain the ARR for all CSGs with complete applications as of December 31, 2016; (ii) only apply VOS to CSG applications filed on and after January 1, 2017; and (iii) for those applications filed on and after January 1, 2017, the VOS rate in effect at the time the application was deemed complete would apply for the life of the CSG contract. In other words, to provide rate certainty to developers, investors, financiers,

47 Order Approving Vos at 9 (footnotes omitted).
48 *Id.* (footnotes omitted).
49 *Id.* at 13.
50 *Id.* at 14 (emphasis added).
51 *Id.*
52 *Id*. (emphasis added).

customers, and Xcel, the Commission specifically directed that the subscription rate was locked and defined by the time the application was deemed complete.

Consistent with this direction, and as Xcel argued nearly three years prior, in 2013, its "interpretation of the VOS statute (Minn. Stat. § 216B.164, subd. 10) [was] that **it does not allow the VOS rate to be applied to interconnections established prior to the approval of a VOS tariff**."[53] As Xcel explained, "[t]he CSG Statute states in pertinent part: 'The purchase [from the CSG] shall be at the rate calculated under section 216B.164, subdivision 10 [the VOS Rate], or, until that rate for the public utility has been approved by the commission the applicable retail rate.' However, the VOS statute states that if the alternative tariff implementing the VOS rate is approved, it '… shall apply to customers' interconnections occurring after the date of approval.'"[54]

For these reasons, Xcel's compliance filing to the Order Approving VOS contained a Standard Form Contract between it and developers that maintained ARR bill-credit structure and only referenced the VOS bill-credit structure on a going-forward basis. Specifically, the Standard Form Contract stated that "[t]he VOS Bill Credit Rate is applicable to those applications that on or after January 1, 2017, meet the requirements of [completeness] and that do not qualify for the Standard Bill Credit or Enhanced Bill Credit."[55] Xcel further clarified the distinction of which bill credit would apply when implementing the transition from the ARR bill-credit structure to the VOS bill-credit structure—Xcel reinforced its commitment that the ARR would be locked in for the term of the contract. In a compliance filing dated December 13, 2016, Xcel Energy specifically

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53 *In the Matter of Xcel Energy's Plan for a Community Solar Garden Program Pursuant to Minn. Stat. § 216B.1641*, PUC Docket No. E-002/M-13-867, Reply Comments of Xcel Energy, at 6 (Dec. 17, 2013) (emphasis added).

54 *Id.*

55 *Id.*, Xcel Compliance Filing, Section No. 9 of Tariff, Original Sheet No. 69.1 (Dec. 1, 2016).

stated:

> Based on stakeholder feedback, we developed a short-term transition plan to address concerns raised and to accommodate applications received near year-end. **The transition preserves the ability of an applicant to "lock in" an Applicable Retail Rate (ARR) bill credit structure and a REC price even if the application is deemed complete after December 31, 2016**, if certain conditions are met. **This "locking in" feature**, based on the date an application is deemed complete, **has been a mechanism in our program since its inception and was valued by participants early on for providing certainty for purposes of obtaining financing**.[56]

To facilitate all parties' intent to "lock in" the ARR, Xcel utilized a contract amendment attached to its compliance filing.[57]

Notwithstanding all of this evidence of Xcel's commitments and the universal understanding regarding when the ARR bill-credit rate would apply, and the application of the ARR bill-credit rate versus the VOS bill-credit rate during the transition to the VOS bill-credit rate, Xcel sought to transition ARR-era CSG contracts to the VOS bill-credit rate. On May 30, 2024, the Commission issued the Order. The Order reversed both Xcel's and the Commission's repeated and consistent position that the ARR and REC framework would remain in place for the term of ARR-era CSG contracts. Instead, on the premise that "circumstances have evolved since the CSG program rollout,"[58] the Commission determined that it both had the authority to, and would, "transition[] the CSG program to the VOS," including CSG programs operating under the Commission-approved and reapproved ARR-era framework.[59] The Commission explained that it

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56 *In the Matter of Xcel Energy's Plan for a Community Solar Garden Program Pursuant to Minn. Stat. § 216B.1641*, PUC Docket No. E-002/M-13-867, Supplement to Compliance Filing, at 1 (Dec. 13, 2016) (emphases added).

57 *Id*. at Attach. (Standard Contract Amendment).

58 Order at 15.

59 *Id.* at 31.

was "persuaded that the increasing and unknown future costs of perpetuating the ARR bill-credit framework warrant[ed]" such a departure from prior Commission action, and expressed that the "careful weighing of interests is paramount to achieving outcomes that are consistent with broader legislative policy objectives."[60] Accordingly, the Commission ordered that all ARR-era CSGs would be transitioned to VOS on April 1, 2025.[61]

C. Standard Solar's Interest in the Proceedings

In the Order, the Commission specifically comments on an affidavit from Standard Solar, asserting that it fails to contain "any reasonable economic justification for why ARR-era CSGs need to continue receiving ongoing subsidies that other forms of solar development can succeed without."[62] To be clear, state law does not contain (and the Order does not cite) any requirement that all parties to a contract with a utility bear the burden of continuing to demonstrate the reasonableness of the contract's provisions during each year of the contract's term. For the Commission to nonetheless assert such a requirement is necessary, or imply Standard Solar bears some burden, is simply beyond the pale. Notwithstanding the Commission's indefensible comments, Standard Solar takes this opportunity to further flesh out its interest in this proceeding.

Standard Solar builds, owns, and operates CSGs in Minnesota.[63] Currently, Standard Solar owns and operates 39 CSGs in Minnesota, 11 of which are ARR-era CSGs and 28 of which are VOS-era CSGs.[64] Prior to developing each of these CSGs, Standard Solar secured investments and financing from lenders based on the understanding, consistent with the Commission's prior orders, that Xcel would purchase energy from these CSGs at the ARR or VOS rate, as applicable

60 Order at 31.
61 *Id.*
62 *Id.* at 32.
63 Laughlin Aff., ¶2.
64 *Id.* at ¶¶3-4.

and depending on the timing of project development.[65] In electing to pursue CSG development in Minnesota, Standard Solar relied on the Commission's orders and specifically the Commission's direction that the subscription rate would remain in effect over the life of the projects.[66]

Relying on these statements in Commission orders, over 450 subscription agreements for the ARR-era projects were negotiated with a variety of municipal entities, public entities, businesses, and roughly 375 residential customers. Specifically, the non-residential customers include **[TRADE SECRET DATA BEGINS…** [redacted] **…TRADE SECRET DATA ENDS]**.[67] Standard Solar and the subscribers to the ARR-era CSG projects will suffer significant damages if the Commission does not reconsider the Order.[68] The Affidavit from Trevor Laughlin states that, for ARR-era CSG projects, the Order will damage Standard Solar in three principal ways. First, some of the ARR-era CSG projects have a subscription rate structure where a change from the ARR to VOS will detrimentally impact Standard Solar.[69] For these projects, Standard Solar estimates its damages over the remaining life of the subscription agreements to be in excess of **[TRADE SECRET DATA BEGINS…** [redacted] **…TRADE SECRET DATA ENDS]**.[70] Second, some of the ARR-era CSG projects have a subscription rate structure where a change from the ARR to VOS will detrimentally impact the subscribers.[71] For

65 Laughlin Aff., ¶6.
66 *Id.* at ¶¶5, 8.
67 *Id.* at ¶9.
68 *Id.* at ¶10.
69 *Id.* at ¶11.
70 *Id.*
71 *Id.*

these projects, Standard Solar estimates its subscribers' damages over the remaining life of the subscription agreements to be in excess of **[TRADE SECRET DATA BEGINS…** [redacted] **…TRADE SECRET DATA ENDS]**.[72] Finally, there are damages to Standard Solar directly associated with renegotiated and lost subscriptions (e.g., cost and expense of trying to find and subscribe new CSG customers).[73] Given the significant negative impact on the subscription rate directly resulting from the Commission's decision in the May 30, 2024, Order to transition the bill credit from ARR to VOS, subscribers would either terminate their subscription or demand to renegotiate it.[74] Under a renegotiated or terminated contract, the subscription rate would be significantly less than the revenue Standard Solar earns from these CSGs.[75] **[TRADE SECRET DATA BEGINS…** [redacted] **…TRADE SECRET DATA ENDS]**.[76] And where renegotiation is not feasible and subscribers cancel their subscription, Standard Solar would need to expend resources to try to obtain new subscribers, whose subscriptions would also be significantly less than the

72 Laughlin Aff., ¶11.
73 *Id*.
74 *Id*. at ¶12
75 *Id*. at ¶13.
76 *Id.*

existing rates.[77] For these reasons, Mr. Laughlin's affidavit concludes that the Order threatens viability of existing CSGs and

> therefore destabilizes the contractual foundation of the community solar market, which jeopardizes the operational viability and financial planning of participants. This hampers our refinancing capability, as the diminished revenue stream puts pressure on the viability of the agreements we have with subscribers for these projects, and the associated customer savings, and adversely impacts the amount of financing proceeds Standard Solar will be able to receive for these projects.[78]

II. ANALYSIS

A. Standard and Introduction

"A petition for rehearing, amendment, vacation, reconsideration, or reargument must set forth specifically the grounds relied upon or errors claimed."[79] The Commission typically reviews petitions 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.[80] Based on this standard, and incorporating the additional evidence contained in the Laughlin Affidavit showing the factual assertions in the Order are incorrect, Standard Solar respectfully requests that the Commission reconsider the Order. Xcel requested that the Commission reverse years of prior decisions with no reasonable justification, other than it believes the CSG program is too costly.[81] Ironically, this assertion is directly related

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77 Laughlin Aff., ¶¶12-13.

78 Laughlin Aff., ¶¶14-15.

79 Minn. R. 7823.3000, subp. 2.

80 *See, e.g.*, *In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, PUC Docket No. E-002/M-13-867, Order Denying Petitions for Reconsideration and Clarification, Clarifying August 6 Order on Own Motion, Denying Stay, and Requiring Compliance Filing, at 2 (Oct. 15, 2015).

81 *See In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for*

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to the ARR, which by definition includes the base rates and rider-recovery mechanisms applicable to all of Xcel's customers, including CSG subscribers."[82] There is no evidence in the record to support the Commission's conclusion that the ARR is simultaneously just and reasonable as a consumer rate payable by CSG customers but unjust and unreasonable as a consumer credit to be received by those same CSG customers.

In any event, it is uncontroverted that Xcel has recovered from ratepayers all of the costs of the CSG program from its inception. And yet, despite the fact that it is a party to each of the underlying contracts for CSG subscriptions (which contracts clearly reflect Xcel's and developers' intentions to "lock-in" the ARR),[83] it advocates for a change in the CSG program that will severely reduce the compensation paid to each subscriber with which Xcel has a contractual relationship. The Commission should reverse its decision and avoid Xcel's mischaracterizations—which could result in ongoing district and appellate court litigation for years—that are meant to reduce the costs (a pass-through for Xcel), presumably so they can shift costs to other investments for which they will earn a return.[84] Xcel's claim that the CSG program results in detrimental rate impacts ignores the fact that the ARR is a function of **Xcel's** retail rates and the actions **Xcel** has taken that caused

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Approval of Its Proposed Community Solar Garden Program, PUC Docket No. E-002/M-13-867, Initial Comments, NextEra Energy, at 7 (Jan. 1, 2023) ("[A]s the sole justification for the Proposal, Xcel emphasizes that the burden of recovering CSG program costs from all customers should be reduced[.]" (quoting Xcel Proposal for Switching ARR-era Community Solar Gardens to Appropriate VOS Rate at 1, 6 (Sept. 25, 2023))).

82 *In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, PUC Docket No. E-002/M-13-867, Order Rejecting Excel's Solar-Garden Tariff Filing and Requiring the Company to File a Revised Solar-Garden Plan at 15 (Apr. 7, 2014).

83 *See supra* at 13.

84 *See In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, PUC Docket No. E-002/M-13-867, Comments, CCSA and MnSEIA, at 8 (Jan. 8, 2024) ("Xcel's Proposal is thus an invitation for arbitrary and capricious Commission action and the Commission should refuse it[.]").

increases in customer rates. When placed in the context of **Xcel's** overall rate base and customer rates, there is absolutely no evidence in the record to support an assertion that the potential non-subscriber savings outweigh the harm the Commission's decision will cause.[85] To be sure, the Commission did not even begin to quantify this harm and the plethora of evidence supporting the harm that will ensue (with more than 500 public comments urging the Commission to reject the proposal).[86] For example, a coalition of local governments stated that "the impacts borne by residential and public interest subscribers and the people they serve could lead to a loss of jobs, increased local taxes, reduced school services, and added difficulty in meeting the State's clean energy goals. Indeed, the impacts would extend beyond Xcel's Minnesota customers."[87] The Order's silence on this point demonstrates that the Commission did not event attempt to engage in any weighing of evidence to support its public-interest determinations. Consistent with this framing, Standard Solar respectfully requests the Commission to reconsider its Order for four primary reasons.

First, the Order is in excess of the Commission's statutory authority (both express and implied); conflicts with the plain language of Minn. Stat. § 216B.1641, Minn. Stat. § 216B.164, and Minn. R. 7835.4023; violates the statutory prohibition against retroactive ratemaking in Minn. Stat. § 216B.23; renders the statutory direction on "financeability" and "accessibility" in Minn. Stat. § 216B.1641 meaningless; ignores direction in the *Mobile-Sierra* doctrine; and is unsupported

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85 *See In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, PUC Docket No. E-002/M-13-867, Initial Comments, National Grid Renewables, at 11 (Jan. 8, 2024) (noting Xcel's claim that the proposal will save ratepayers approximately $63 million amounts to approximately 0.6% of Xcel's overall rate base).

86 *See id.*, Initial Comments, NextEra Energy, at 5 (Jan. 8, 2023).

87 *See id.*, Reply Comments, Local Government Coalition, at 2 (Jan. 22, 2024) (citations omitted).

by claims invoking the just and reasonable standard set out in Minn. Stat. § 216B.03. Put simply, state law provides that when the Commission sets the rate, that rate applies "to new solar photovoltaic interconnections effective **after the tariff approval rate**."[88] Because the Order purports to apply a *new* rate (VOS) to *pre-existing* CSGs, the Order is contrary to law and should be reconsidered.

Second, the Order violates provisions of both the Minnesota Constitution and the United States Constitution. Both constitutions prohibit the passage of any law impairing the obligations of contracts and the taking of private property without just compensation. Because the Order substantially impairs contracts between Standard Solar (and other similarly situated CSG developers) and Xcel, Standard Solar and third-party financiers, and Standard Solar and its subscribers, the Order violates Article I, Section 11, of the Minnesota Constitution and Article I, Section 10, Clause 1 of the United States Constitution. Furthermore, by so substantially undermining these contracts, the Order effects a constructive taking of Standard Solar's property without just compensation, in violation of Article I, Section 13, of the Minnesota Constitution and the Fifth Amendment to the United States Constitution. The Commission's decision shreds the integrity of contracts, promotes instability in transactions, constitutes an unlawful taking of significant interests from developers and subscribers, and should be reversed.

Third, the Order is arbitrary and capricious in that it fails to adequately justify its departure from the Commission's prior orders, in which the Commission refused to apply the VOS to pre-existing CSGs and affirmed (and reaffirmed) that the VOS would be implemented on a going-forward basis only. Nothing has changed in law or fact that would support a decision reversing the Commission's prior decisions. The Commission's prior orders accurately projected and

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88 Minn. R. 7835.4023; Minn. Stat. § 216B.164, subd. 10(b) (emphasis added).

predicted the circumstances existing today, such that the Order's reliance on purported "changed circumstances" to justify the change of course is misplaced.

Finally, the Order is arbitrary and capricious because the Commission inexplicably acts to reduce the contractual rate for only one subset of Xcel's energy-purchase contracts.[89] Certainly, Xcel maintains many contracts for renewable and other energy supply, some of which would be less expensive if they were negotiated now instead of years ago. Still, no one expects that Xcel will (or could) abandon those higher-cost contracts to account for the changing marketplace, or attempt to undercut its counterparties without their assent, or attempt to invite the Commission to intercede on its behalf to lower prices to a range within Xcel's liking.[90] But here, the Company is asking the Commission to intercede with respect to a program Xcel has never fully supported and has actively sought to thwart.[91] Xcel should not be able to chart a different course here, particularly

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89 *See* Order at 5-6 (randomly noting the Commission can allow utilities to automatically adjust charges to reflect changes in fuel costs).

90 *See In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, PUC Docket No. E-002/M-13-867, Initial Comments, National Grid Renewables, at 12 (Jan. 8, 2024):

> Over time, Xcel has signed many power purchase agreements, which are at various times both higher and lower than the prevailing market price. These are understood to be long- or short-term arrangements to ensure the availability of capacity and/or energy, and rate stability, to serve customers over the long term. The Commission does not evaluate those purchases mid-contract and change the price Xcel is allowed to recover simply because market conditions have changed. In this case, CSG subscribers are causing power to be sold to Xcel over a 25-year period, and those arrangements, which were put in place by the Minnesota Legislature and Governor, should be treated like any other purchased power contract.

91 *See id.*, Order Implementing New Legislation Governing Community Solar Standards, at 6-7 (May 30, 2024) (requiring Xcel to comply with 2023 legislative changes to CSG programming); and Commissioner Sullivan Comments to Xcel during the hearing on the

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when the costs borne by non-subscribers are precisely those this Commission anticipated and deemed reasonable, and the Commission should realize it cannot support its decision to exercise its will (as opposed to its judgment) and reduce the cost of Xcel's unilateral CSG contracts when it lets other costly contracts continue to exist unaltered.

B. The Order Violates State Law and Is in Excess of the Commission's Statutory Authority

"[I]t is elementary that the Commission, being a creature of statute, has only those powers given to it by the legislature. The legislature states what the agency is to do and how it is to do it. While express statutory authority need not be given a cramped reading, any enlargement of express powers by implication must be fairly drawn and fairly evident from the agency objectives and powers expressly given by the legislature."[92] "Neither agencies nor courts may under the guise of statutory interpretation enlarge the agency's powers beyond that which was contemplated by the legislative body."[93] The rule is to "resolve any doubt about the existence of an agency's authority against the exercise of such authority."[94]

(1) Minn. Stat. § 216B.1641, Minn. Stat. § 216B.164, and Minn. R. 7835.4023 Unambiguously Mandate That, Once Approved, the VOS Only Be Implemented on a Prospective Basis for New CSGs

The Commission's authority in setting rates for the purchase of energy from CSGs arises out of and is governed by Minn. Stat. § 216B.1641. There, the legislature provided that "[t]he

matter on April 4, 2024 ("I don't understand why the Company is so opposed to transitioning to the new distributed generation portal; I don't understand where the Company is coming from").

92 *Peoples Nat. Gas Co. v. Minn. Pub. Utils. Comm'n*, 369 N.W.2d 530, 534 (Minn. 1985) (quoting *Great N. Ry. Co. v. Pub. Serv. Comm'n*, 169 N.W.2d 732, 735 (Minn. 1969)); *see also In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010) ("Administrative agencies are creatures of statute and they have only those powers given to them by the legislature." (quoting *Great N. Ry. Co.*, 169 N.W.2d at 735)).

93 *In re Hubbard*, 778 N.W.2d at 318 (quoting *People's Nat. Gas*, 369 N.W.2d at 534).

94 *In re Qwest's Wholesale Serv. Quality Standards*, 702 N.W.2d 246, 259 (Minn. 2005).

public utility must purchase from the community solar garden all energy generated by the solar garden," and that "[t]he purchase shall be at the rate 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."[95] Minn. Stat. § 216B.164, subd. 10—the VOS statute expressly referenced in Minn. Stat. § 216B.1641, subd. 1(d)—plainly provides that "the [VOS] shall apply to customers' **interconnections occurring after the date of approval**" of the VOS.[96] Consistent with these statutory provisions, Minn. R. 7835.4023 provides that "[i]f a public utility has received commission approval of an alternative tariff for the value of solar under Minnesota Statutes, section 216B.164, subdivision 10, **the tariff applies to new solar photovoltaic interconnections effective after the tariff approval date**."[97]

There is no ambiguity in the meaning of the statutes and rule: if the Commission approves a VOS rate, it applies to "interconnections occurring **after** the date of approval,"[98] or, in other words, "**new** solar photovoltaic interconnections **after** the tariff approval date."[99] Accordingly, pursuant to the plain language of the CSG statute, the VOS statute, and the relevant rule concerning the VOS, the Commission's authority in approving a VOS extends only as far as approving the VOS on a *prospective* basis for *new* CSGs interconnected *after* approval of the VOS.

The Order therefore violates Minn. Stat. § 216B.1641, Minn. Stat. § 216B.164, and Minn. R. 7835.4023 in that it applies the VOS on a *retrospective* basis, for *existing* CSGs, interconnected *before* VOS approval. The Order simply cannot be squared with the plain language of the statutes that provide the Commission with the authority to set rates for the purchase of energy from CSGs.

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95 Minn. Stat. § 216B.1641, subd. 1(d).
96 Minn. Stat. § 216B.164, subd. 10(b) (emphasis added).
97 Minn. R. 7835.4023 (emphasis added).
98 Minn. Stat. § 216B.164, subd. 10(b) (emphasis added).
99 Minn. R. 7835.4023 (emphases added).

Because the legislature gave the Commission authority only to set and incorporate VOS into new CSG interconnections on a prospective basis, the Order plainly exceeds the Commission's authority, in violation of *Peoples*, *In re Hubbard*, and *In re Qwest*.[100]

In determining that the Commission did have authority to apply the VOS retroactively for pre-existing CSGs, the Order references only the CSG statute, Minn. Stat. § 216B.1641, subd. 1(d).[101] Reading that provision in isolation, the Order reasoned that Minn. Stat. § 216B.1641 "expressly contemplates the ARR will be used as a temporary, [*sic*] placeholder rate that is only available until such time as the Commission determines that the best approach is to transition the program to the VOS."[102] But this interpretation of Minn. Stat. § 216B.1641, subd. 1(d), fails to recognize that, pursuant to the VOS statute itself, the VOS only "**shall** apply to customers' interconnections occurring **after the date of approval**."[103] Thus, any interpretation of Minn. Stat. § 216B.1641, subd. 1(d), must be read in light of the necessary context that the VOS can apply *only* to interconnections occurring *after* the VOS is approved.[104] The Order therefore relies on an unreasonable interpretation of Minn. Stat. § 216B.1641, subd. 1(d), because that statute cannot provide the Commission authority to impose the VOS on pre-existing CSGs when the VOS statute itself prohibits such an application of the VOS rate. This is true even if the CSG statute or VOS statute were ambiguous, which they are not.[105]

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100 *Peoples*, 369 N.W.2d at 534; *In re Hubbard*, 778 N.W.2d at 318; *In re Qwest*, 702 N.W.2d at 259.

101 Order at 23-24.

102 *Id.* at 23.

103 Minn. Stat. § 216B.164, subd. 10(b) (emphases added).

104 Indeed, that the VOS may only be applied prospectively makes sense as "the Public Utility Act expressly prohibits retroactive ratemaking" by providing that "'the commission shall by order fix reasonable rates *to be imposed, observed and followed in the future*.'" *Peoples*, 369 N.W.2d at 533 (emphasis in original) (quoting Minn. Stat. § 216B.23, subd. 1).

105 *See, e.g.*, *Apple Valley Red-E-Mix, Inc. v. State by Dep't of Pub. Safety*, 352 N.W.2d 402,

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Accordingly, because the CSG statute, VOS statute, and agency rule each unambiguously provide that the VOS shall apply only *prospectively* and only to *new* interconnections occurring *after* the VOS is approved,[106] the Order exceeds the Commission's authority by imposing the VOS on pre-existing CSGs whose interconnection has already been established. For this reason, Standard Solar respectfully requests that the Commission reconsider and correct the Order in a manner consistent with the Commission's limited statutory authority.

(2) The Order Violates the General Prohibition Against Retroactive Ratemaking

The Order recognized, but did not meaningfully address, arguments that the transition from ARR to VOS implicates retroactive-ratemaking concerns.[107] It is well established that "the Public Utility Act expressly prohibits retroactive ratemaking."[108] In particular, the Act provides that the Commission "shall determine and by order fix reasonable … service to be furnished, imposed, observed and followed **in the future**."[109] Indeed, the Act expressly provides that it "must not be construed as allowing … retroactive ratemaking."[110] Moreover, the Commission's authority under Minn. Stat. § 216B.23 is in part tied directly to whether the "regulations, measurements, practices, acts, or services" have been found to be "unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise unreasonable or unlawful."[111] It is only upon such a finding that the

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(Minn. 1984) ("Statutes 'in pari materia' are those relating to the same person or thing or having a common purpose" and "should be construed together."); *Gilder v. Auto-Owners Ins. Co.*, 659 N.W.2d 804, 807 n.1 (Minn. Ct. App. 2003) (explaining statutes in pari materia "should be construed in light of one another").

106 Minn. Stat. § 216B.1641, subd. 1(d); Minn. Stat. § 216B.164, subd. 10(b); Minn. R. 7835.4023.

107 Order at 21.

108 *Peoples*, 369 N.W.2d at 533.

109 Minn. Stat. § 216B.23, subd. 2 (emphasis added).

110 Minn. Stat. § 216B.23, subd. 1a(b)(1).

111 *Id.*

Commission "shall determine and by order fix reasonable … service to be furnished, imposed, observed and followed in the future *in lieu of* those found to be unreasonable, inadequate, or otherwise unlawful."[112]

Here, the Order constitutes unlawful retroactive ratemaking, in violation of the Chapter 216B of the Minnesota Statutes, because the Order is **not** aimed at setting a just and reasonable rate going forward. Rather, the Order modifies a program by altering existing CSG contracts that were, themselves, premised on the Commission's prior determinations (*i.e.*, the ARR). Put another way, the effect of the Order is not to set just and reasonable rates on a prospective basis, but rather to cast aside previously-approved 25-year rates for ARR-era CSGs after the negotiation of 25-year contracts based on such prior approvals. "The CSG program has changed over time, with the move from the ARR to the VOS and with new legislation enacted in 2023. However, the legislature has not authorized retroactively changing previously agreed to 25-year contracts and causing economic harm to subscribers who sought to do their part to address climate change."[113]

As detailed above, the Commission has reaffirmed on multiple occasions that, for ARR-era CSGs, the rate for the **entire 25-year contract period** would be the ARR-plus-REC model.[114] This remained the Commission's position even **after** the Commission first approved VOS in 2016.[115] Thus, while the Order purports to have only prospective effect, the only effect it actually has is to retroactively change existing contracts between CSGs, Xcel, subscribers, and financiers, impacting CSG investors and future refinancings.[116] That is, for all CSGs where the application

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112 Minn. Stat. § 216B.23, subd. 1a(b)(1) (emphasis added).

113 *In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, PUC Docket No. E-002/M-13-867, Public Comments, Speaker Melissa Hortman *et al.*, at 3 (Jan. 22, 2024, filed Jan. 23, 2024).

114 *See supra* § I.A.

115 Order Approving VOS at 14.

116 Laughlin Aff., ¶¶14-15.

was deemed complete after VOS first went into effect in 2016, the Order has no impact whatsoever; those CSGs were already operating under VOS, and all future CSGs would be developed and operated under VOS consistent with the Commission's 2016 order. Notably, for those VOS-era CSGs, the VOS in effect at the time the solar garden application is deemed complete "will be the subscriber bill-credit rate for the term of the garden."[117]

The Order's only impact, therefore, is to change the rates for ARR-era CSGs. But the Commission already set rates for ARR-era CSGs, and expressly determined that those rates would be in effect for a set duration (in much the same way as the Order Approving VOS locks in certain rates for VOS-era CSGs).[118] Again, in 2014 the Commission unambiguously stated that

- "community-solar-garden projects filing complete applications under the applicable retail rate should be allowed to lock in the REC price for the duration of the 25-year contract;"
- "solar-garden projects approved 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;" and
- "any adjustment to REC prices made by the Commission in later years should only apply to new community-solar-garden project applications."[119]

Thus, in setting rates for ARR-era CSGs, the Commission did not set an open-ended rate to be changed at any time; rather, it approved a tariff that set a 25-year rate for ARR-era CSGs, which the Order now retroactively reverses. This is unlawful under the plain language of the VOS statute, as described above, and also under the prohibition on retroactive ratemaking in Minn. Stat.

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117 Order Approving VOS at 14.
118 *Id*.
119 Order at 9 (emphasis added).

§ 216B.23, subd. 2.

Moreover, the Commission failed to make the required findings to justify such a retroactive change, even if it had authority to do so. As noted, the retroactive-ratemaking statute provides that "[w]henever the commission **shall find** any regulations, measurements, practices, acts, or service to be unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise unreasonable or unlawful," the Commission shall determine and fix just and reasonable rates and services "**in lieu of those found to be unreasonable, inadequate, or otherwise unlawful**."[120] Thus, before changing the ARR framework, the Commission was required by statute to first find that the framework was "unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise unreasonable or unlawful."[121] The Commission did not do so anywhere in the Order. Nor could it, because such a finding would require the Commission to concede that Xcel's rates and rate framework are unjust and unreasonable.

Rather, the Order explained that "the Commission is persuaded that the most reasonable course of action at this juncture is to transition all ARR-era solar gardens to the VOS[.]"[122] In other words, the Commission determined that transitioning to VOS was reasonable, but did not find that the ARR framework was unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise unreasonable or unlawful. The statute expressly requires that if the Commission (first) finds regulations, measurements, practices, acts, or services to be "unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise unreasonable or unlawful," the Commission must then determine and fix just and reasonable rates and services "in

120 Minn. Stat. § 216B.23, subd. 2 (emphases added).
121 *Id.*
122 Order at 33.

lieu of those found to be unreasonable, inadequate, or otherwise unlawful."[123] Because the Order did not (first or ever) find the ARR framework to be unreasonable, inadequate, or otherwise unlawful, the Commission lacked authority to cast it aside in favor of a purportedly more reasonable VOS framework.

Even if the Commission had determined that the ARR framework was unreasonable, inadequate, or otherwise unlawful, there was no prospective change to make to the ARR framework because that framework had already been replaced by VOS for all applications deemed complete after December 31, 2016. In other words, as of the year 2024, there are no new CSGs that can submit applications and be eligible for the ARR bill-credit rate. This undisputed fact underscores that, via the Order, the Commission is retroactively modifying a prior version of the CSG tariff in direct contradiction to Minn. Stat. § 216B.23, subd. 2.

Because the Order constitutes retroactive ratemaking in that it retroactively changes a tariff that set a fixed-term rate, and because the Order fails to make the required findings to support changing that rate, the Order exceeded the Commission's statutory authority. Standard Solar therefore requests that the Commission reconsider the Order and reissue a new order consistent with its limited statutory authority.

(3) The Order Exceeds the Commission's Authority by Imposing a Rate on Pre-existing CSGs That Undermines the Financeability Requirement, Negatively Impacts Accessibility, and Is Contrary to the Public Interest

Even if the Commission had statutory authority to retroactively modify the rates for pre-existing CSGs—and it does not—the Order is directly at odds with the enabling statute. The CSG statute provides that "[a]ny plan approved by the commission **must**: (1) reasonably allow for the creation, financing, and accessibility of community solar gardens; … [and] (4) be consistent with

123 Minn. Stat. § 216B.23, subd. 2.

the public interest."[124] Retroactively implementing VOS for pre-existing CSGs denigrates the financeability of current and future CSGs, detrimentally impacts the accessibility of pre-existing CSGs, and is contrary to the public interest.

In addressing financeability, the Order explains that the Commission previously determined that "[i]mplementing the ARR-based bill credit system provided reasonable compensation to incentivize early CSG program participation from developers and subscribers, and the resulting increases in retail rates were consistent with the public interest and necessary to enable success of the CSG program."[125] The Order recognizes that the Commission was "unpersuaded by arguments that potential ratepayer impacts justified elimination, reduction, or modification of the ARR-era bill-credit framework, and it determined that the framework should remain unchanged at those times" and that "maintaining the existing ARR-framework would avoid undermining the viability of existing applications."[126] Recognizing that the Commission set up a "dual-track bill-credit system with CSGs receiving either the ARR or the VOS based on when they submitted completed applications," the Order states that "[t]he CSGs receiving bill credits under either framework have demonstrated economic viability and operational success,"[127] and that "the higher ARR is not required to ensure continuation of a successful program."[128] But the record is entirely lacking in evidence to support such an assertion. The ARR-era CSGs have only demonstrated their success under the ARR framework, and there is nothing in the record to support the idea that they will remain successful after the Commission's decision here. To the contrary, every piece of evidence in the record shows that these ARR-era CSGs will be detrimentally

124 Minn. Stat. § 216B.1641, subd. 1(e)(1), (4) (emphasis added).
125 Order at 29.
126 Order at 29.
127 *Id.*
128 *Id*. at 15.

affected.[129] There is no evidence to support the Commission's determination that CSGs are successful under both rate structures.

By forcing CSGs that began operation under an ARR-based bill-credit rate to switch years later to a VOS-based bill-credit rate, the Commission will undermine their continued financeability and refinancing capabilities.[130] The reality is that it will have direct and immediate impacts on the operations of ***existing*** CSGs and CSGs as an enterprise more broadly. The record is replete with CSG developers' reports that undoing their settled expectations will hinder or eliminate their ability to service the debt they used to finance their existing CSGs, likely resulting in steep penalties, defaults, or early repayment obligations.[131] In some cases, the impact will be so severe that Xcel's proposal will result in the foreclosure of existing CSGs.[132] The Order's consideration of financeability fails to recognize that early CSGs were much less financeable than more recent CSGs for the simple fact that the CSG program as a whole was new and untested. Thus, developers took on more risk in developing CSGs, while financiers accounted for that risk by providing less favorable, and more stringent, financing terms. New CSGs, however, are developed in the wake of the success of the CSG program, and only because developers and financiers have a better understanding of the program, how it works, and the risks associated with developing a CSG under the statutory framework in place.

The Order misinterprets comments that "[t]he CSGs receiving bill credits under either framework have demonstrated economic viability and operational success,"[133] as showing that

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129 Laughlin Aff., ¶¶14-15.

130 *Id.*

131 *See, e.g., In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, PUC Docket No. E-002/M-13-867, Comments, CCSA and MnSEIA at 24 (Jan. 8, 2024).

132 *Id.*

133 *Id.*

ARR-era CSGs would have been viable and successful under the VOS model prior to January 1, 2017, and can be viable under the VOS model on a going-forward basis. In fact, as the Commission previously found in numerous orders, the ARR was a critical component in establishing the foundation of the CSG program—ARR-era CSGs are successful **because of the ARR**. To acknowledge that a subsequent iteration of the CSG program (*i.e.*, under VOS) was also successful is not proof that the untested and then new CSG program would have succeeded at the outset under VOS. Ignoring this fact, the Order does not and cannot explain how the success of VOS-era CSGs—which were financed and developed based in part on the experience and success of ARR-era CSGs—shows that ARR-era CSGs—which were financed and developed under wholly different circumstances with much higher risk for developers, investors, and financiers—would remain viable and accessible under the VOS regime. Again, CSG programs "**must** … reasonably allow for the … financing … of community solar gardens."[134] There is no legal analysis and no evidence in the record to support the Commission's implication that compliance with this unambiguous statutory provision is achieved by approving one rate (*i.e.*, the ARR) to facilitate the financing of CSGs through December 31, 2016, while retroactively modifying a critical component of that financing (*i.e.*, switching the ARR to VOS) in May 2024.

Furthermore, the retroactive change to the bill-credit rate in the ARR-era CSGs will undeniably impact subscribers' accessibility to those CSGs. As stated in the Laughlin Affidavit, the damage to subscribers by changing the subscription rate from ARR to VOS exceeds **[TRADE SECRET DATA BEGINS…[redacted]…TRADE SECRET DATA ENDS]**. There is no evidence in front of the Commission that would support an assertion that accessibility to CSGs is preserved via limiting subscribers' benefits or forcing subscribers to pay a premium for CSG

134 Minn. Stat. § 216B.1641, subd. 1(e)(1) (emphasis added).

subscriptions. In fact, such an assertion would defy common sense.

Moreover, the Order adversely affects the public interest, contrary to the plain language of Minn. Stat. § 216B.1641, subd. (1)(e)(4). The Order states that "[m]inimizing CSG program costs borne by non-subscribers is a primary factor contributing to the Commission's assessment of the public interest that weighs in favor of transitioning the CSG program to the VOS."[135] While the impacts to non-subscribers is undoubtedly a factor in determining the public interest, the Order does not reckon with the fact that **70% of subscribers to ARR-era CSGs** are governments, public schools, hospitals, clinics, churches, private schools, and residential customers.[136] This statistic is consistent with the subscriber makeup for Standard Solar's ARR-era CSGs.[137]

The Order rightfully does not suggest that these subscribers' interests are not aligned with the public interest, nor does the Order suggest that converting ARR-era CSGs to VOS and decreasing rates paid to these public and residential subscribers will somehow further the public interest. Rather, the Order attempts to minimize these subscribers' interests by categorizing the government, public school, hospital, clinic, church, and private school subscribers as merely "large general service subscribers."[138] The Order fails to consider that these early-adopting subscribers' interests **are** the public interest the statutory scheme sought to promote, and fails to address comments asserting that "any reduction of anticipated savings [for these subscribers] would be detrimental to the public interest as these entities would need to reduce services or generate revenue from other sources, such as increasing property taxes."[139]

Any fulsome consideration of the public interest must recognize and address the concern

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135 Order at 31.
136 *Id.* at 28 (Figure 4).
137 Laughlin Aff., ¶9.
138 Order at 28.
139 *Id.*

that transitioning ARR-era CSGs to VOS is only in those non-subscribers' interest if the savings for non-subscribers is not outweighed by an increase in taxes to account for the loss of revenue for ARR-era subscribers. Put simply, if transitioning to VOS saves non-subscribers $12 annually, but increases their taxes by $12 per year or more, the transition to VOS is not in the non-subscribers' interests. The Order's failure to grapple with the fact that 70% of subscribers to ARR-era CSGs are entities or individuals who are themselves in the public interest (or are the public themselves) is contrary to the statutory directive that any CSG program "**must** … be consistent with the public interest."[140]

(4) The Order Incorrectly Interprets the *Mobile-Sierra* Doctrine

The Order fails to account for the long-term damage resulting from an unreliable regulator when promises to early adopters are summarily breached mid-program, despite the fact the Commission acknowledges that those early adopters rightfully understood the CSG program to contain a 25-year fixed ARR term.[141] As the Supreme Court observed in announcing the *Mobile-Sierra* doctrine,[142] the long-term investments and commitments necessary to usher in the widespread adoption of a new technology required stability and certainty.[143] The same is true for CSGs in Minnesota, a fact this Commission recognized when it agreed in 2016 with the unanimous recommendation of the parties to this docket that the shift to a VOS-based bill credit should apply

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140 Minn. Stat. § 216B.1641, subd. 1(e)(4) (emphasis added).

141 Order at 28, citing Comments of the Office of Attorney General, at 19 (January 8, 2024) ("The folks who signed onto these solar gardens entered into this agreement with Xcel Energy with the understanding that these rates were locked in for the full terms of their 25-year contract").

142 The *Mobile-Sierra* doctrine was established in two Supreme Court cases: *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956), and *Fed. Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956).

143 *Mobile Gas*, 350 U.S. at 344 ("By preserving the integrity of contracts, it permits the stability of supply arrangements which all agree is essential to the health of the natural gas industry.").

only to CSG applications filed after December 31, 2016.[144] CSG subscribers have noted for the Commission that savings on energy, paired with their reasonable expectation that those savings would continue at the ARR for the entire length of the contract, were key motivating factors behind their support for Minnesota's then-unproven CSG program.[145] The Commission's decision will have a chilling effect on Minnesota's CSG program, and the future downfall of the program and its benefits need to be taken into account in determining the public interest. In this regard, the Department of Commerce aptly noted its concern

> 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.[146]

The Commission's attempt to assert that the *Mobile-Sierra* doctrine is inapplicable is without basis and ignores the fact that both it, and Xcel, made very specific statements and approved contractual terms to clearly establish the ARR as applicable to certain pre-January 1, 2017, CSG projects and VOS as applicable to certain post-January 1, 2017 CSG projects. Again, in a compliance filing dated December 13, 2016, Xcel specifically stated:

> Based on stakeholder feedback, we developed a short-term transition plan to address concerns raised and to accommodate applications received near year-end. **The transition preserves the ability of an applicant to "lock in" an Applicable Retail Rate (ARR) bill credit structure and a REC price even if the application is deemed complete after December 31, 2016**, if certain conditions are met. **This "locking in" feature**, based on the date an application is deemed complete, **has been a mechanism in our program since its inception and was valued by participants**

144 *Mobile Gas*, 350 U.S. at 344.

145 *See In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, PUC Docket No. E-002/M-13-867, Comments, CCSA and MnSEIA, at 19 (Jan. 8, 2024) (citations omitted).

146 *Id.*, Initial Comments, Department of Commerce, at 9 (Jan. 8, 2024).

> **early on for providing certainty for purposes of obtaining financing**.[147]

Nothing in *Mobile-Sierra* provides the Commission and the utility authority to modify terms in form contracts executed with clear statements that those terms would remain unchanged. Not surprisingly, the Order fails to point to any authority supporting its assertion that its decision "to replace contractually-set" rates is supported by *Mobile-Sierra*.

(5) There Is No Evidence in the Record to Support the Assertion That the Order Results in Net Customer Savings

There is a very reasonable chance that the Order will result in discriminatory, unjust, and unreasonable rates, in contravention of Minn. Stat. § 216B.03. Xcel claims its proposal results in a net customer savings, but this is unsupported in the record. Instead, Xcel's proposal merely redistributes customer cost savings from subscribing customers, who contracted for those savings, to non-subscribing customers.[148] The record shows that some of the subscribers impacted by this

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147 *In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, PUC Docket No. E-002/M-13-867, Supplement to Compliance Filing, at 1 (Dec. 13, 2016) (emphases added).

148 *See In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, PUC Docket No. E-002/M-13-867, Initial Comments, NextEra Energy, at 8 (Jan. 1, 2023), noting

> such a change would unfairly and disproportionately impact those subscriber customers, forcing them to relinquish contracted cost savings that many have appropriately relied upon for the duration of their 25-year subscription contracts. Indeed, this dramatic impact to CSG subscribers is even more alarming when compared to the *de minimis* benefit to non-subscribers, when spread across the larger group. Redistributing the costs of the CSG program is not a reasonable basis for approving the Proposal, and Xcel has not provided any other justification for doing so.

(Internal citations omitted.)

decision will pay more for energy than they would without being part of a CSG program.[149] And yet the Commission does not even know the magnitude of that rate increase on this subset of Xcel customers.[150] Like other renewable-energy programs, the CSG program was designed to recover its costs from all customers, which is a common method for addressing renewable-energy program costs where all customers, regardless of participation status, benefit from the environmental attributes of renewable and carbon-free energy. By focusing on this one renewable program, simply because the utility earns no return on the program costs, the Commission has discriminated against CSG subscribers, a group of 40,000 customers the Commission should instead reward.[151] Indeed, as Speaker Melissa Hortman and other legislators note: "[C]ommunity solar is one of the most effective tools in reaching diverse communities that often experience the harshest impacts of climate change, but rarely see the full economic benefits accompanying the clean energy transition."[152] Imposing an unknown rate on CSG subscribers is discriminatory, unjust, and unreasonable. "They will be punished for being early movers in the clean energy transition and for relying on the 25-year guarantee they were given by the Commission. Xcel's desired outcome would result in unforeseeable, unfair, and substantial budget disruption to subscribers."[153] These

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149 *See, e.g.*, *In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, PUC Docket No. E-002/M-13-867, Initial Comments, Solar Equity Advocates, at 3, 4 (Jan. 8, 2024) (noting that the proposed bill-credit switch "would affect over 700 member-subscribers [of Cooperative Energy Futures], about half of them low income," who "would be paying more for energy than they would without being part of a community solar garden").

150 *See, e.g.*, *id.* at 12 (noting there are material facts that are in dispute regarding this issue including who is actually being harmed and how much harm is being done if this proposal is approved).

151 *In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, PUC Docket No. E-002/M-13-867, Public Comments, Speaker Hortman *et al.*, at 3 (Jan. 22, 2024, filed Jan. 23, 2024).

152 *Id.* at 2.

153 *Id.* at 3.

remarks from Speaker Melissa Hortman, who authored the bill containing the language establishing the CSG program, should be given weight by the Commission and not be overlooked in favor of accepting Xcel's self-interested arguments.

(6) The Commission Does Not Have Implied Authority to Retroactively Impose the VOS on ARR-era CSGs

Courts are "reluctant to find implied statutory authority," and will "look closely at the statutory scheme created by the legislature" and "the necessity and logic of the situation."[154] Implied authority will only be found where such authority is "fairly drawn and fairly evident from the agency's objectives and powers expressly given by the legislature,"[155] and when considering whether an agency has implied authority, courts look to standards for ascertaining legislative intent set forth in Minn. Stat. §§ 645.16-.17.

Here, the Commission does not have implied authority to retroactively implement VOS for ARR-era CSGs because, as explained above, the CSG statute, VOS statute, and VOS rule each expressly state that the VOS shall be applied for interconnections occurring *after* the VOS is approved,[156] making it unreasonable and illogical to conclude that the Commission has implied authority to impose the VOS rate on interconnections occurring *before* the VOS was approved. Such a conclusion directly conflicts with the statutory scheme, cannot be "fairly drawn" from the statutes granting the Commission authority to approve the VOS, and cannot be said to be "fairly evident from the [Commission's] objectives and powers expressly given by the legislature."[157]

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154 *In re Hubbard*, 778 N.W.2d at 321; *Peoples*, 369 N.W.2d at 534 ("We have no ambiguous language to construe, unless perhaps the ambiguity of silence. Consequently, we must look at the necessity and logic of the situation.").

155 *In re Hubbard*, 778 N.W.2d at 321.

156 Minn. Stat. § 216B.1641, subd. 1(d); Minn. Stat. § 216B.164, subd. 10(b); Minn. R. 7835.4023.

157 *In re Hubbard*, 778 N.W.2d at 321.

Moreover, even if the Commission had implied authority to retroactively apply the VOS for ARR-era CSGs, the Commission cannot have implied authority to do so if the application of VOS for those pre-existing CSGs results in rates that are inconsistent with the public interest or do not allow for the accessibility of those CSGs, because the CSG statute itself directs that the Commission may only approve CSG programs that "reasonably allow for the … accessibility … of community solar gardens" and that are "consistent with the public interest."[158] For the same reasons, Xcel's argument that because "the overall solar energy goal is set," "even if there were no CSGs, the overall solar energy production for Xcel Energy in Minnesota would remain basically the same as it is today, only it would be at a markedly lower cost"[159] is inapposite, because the Legislature in Minn. Stat. § 216B.1641, subd. 1, determined that access to **community** solar gardens is important, which is a requirement over and above, and different from, solar-energy production requirements. Because applying the VOS for ARR-era CSGs adversely impacts subscribers whose interests are plainly aligned with the public's interest—including residential subscribers who **are members of the public**—any supposed implied authority to do so would be illogical and could not be fairly drawn from the CSG statute. Accordingly, the Commission does not have implied authority to retroactively apply the VOS for ARR-era CSGs.

C. The Order Violates the Minnesota Constitution and the United States Constitution

The Order violates both the Minnesota Constitution and the United States Constitution by (1) substantially impairing CSG developers' (including Standard Solar's) contracts and (2) effecting a constructive taking of CSG developers' (including Standard Solar's) property without just compensation. Accordingly, Standard Solar respectfully requests that the Commission

158 Minn. Stat. § 216B.1641, subd. 1(e)(4).
159 Order at 26.

reconsider the Order and issue a new order consistent with the developers' constitutional rights.

(1) The Order Impairs the Obligations of Contracts Between Xcel and Standard Solar, in Violation of Article I, Section 11, of the Minnesota Constitution and Article I, Section 10, Clause 1 of the United States Constitution

Both the Minnesota and United States Constitutions prohibit the passage of laws that impair the obligations of pre-existing contracts.[160] "The sound and true rule is, that if the contract when made was valid by the laws of the State as then expounded by all departments of government, and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent action of the legislature, or decision of its courts altering the construction of the law."[161] Under both constitutions, a law unconstitutionally impairs a contract if it substantially impairs a contractual relationship, and does not serve a significant and legitimate public purpose or is not reasonably appropriate to accomplish that purpose.[162] Thus,

> [t]he threshold issue is whether the state law has "operated as a substantial impairment of a contractual relationship." In answering that question, [courts] ha[ve] considered the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights. If such factors show a substantial impairment, the inquiry turns to the means and ends of the legislation. In particular, [courts] ha[v]e asked whether the state law

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160 Minn. Const. art. I, § 11 ("No … law impairing the obligation of contracts shall be passed."); U.S. Const. art. I, § 10, cl. 1 ("No State shall … pass any … Law impairing the Obligation of Contracts."). Ratemaking orders of state administrative agencies constitute "laws" subject to application of these provisions. *Louisville & Nashville R.R. Co. v. Garrett*, 231 U.S. 298, 318 (1913) ("The order of the Railroad Commission in fixing rates was a legislative act, under its delegated power. It had the same force as if made by the legislature. It is for this reason that it is a law passed by the state, within the meaning of the contract clause." (internal quotation marks and citations omitted)).

161 *Havemeyer v. Iowa County*, 70 U.S. 294, 298 (1865).

162 *Greene v. Dayton*, 806 F.3d 1146, 1150 (8th Cir. 2015) (citing *Jacobsen v. Anheuser-Busch, Inc.*, 392 N.W.2d 868, 872 (Minn. 1986); *Energy Reserves Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 411-13 (1983)).

> is drawn in an "appropriate" and "reasonable" way to advance "a significant and legitimate public purpose."[163]

Here, the Order's reversal of course and *ex post facto* imposition of VOS for pre-existing CSGs constitute a "substantial impairment" of the contractual bargain between CSG developers (including Standard Solar) and subscribers.[164] This impairment "interferes with [the contracting parties'] reasonable expectations" concerning the rate at which Xcel would purchase energy produced by CSGs, and entirely "prevents the [developers] from safeguarding … [their] rights."[165] Because the Order substantially impairs those contracts, it can only stand if it is "drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose."[166] Because it is not so drawn, Standard Solar requests that the Commission reconsider its Order and draw it in accordance with the developers' rights under the Minnesota and United States Constitutions.

i. The Order substantially impairs contracts between CSG developers (including Standard Solar) and subscribers

The Order constitutes a substantial impairment of developers' (including Standard Solar's) CSG contracts. CSG developers (including Standard Solar), Xcel, subscribers, and financiers were operating in reliance on the fact that the ARR was locked in for the entirety of the 25-year contract

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163 *Sveen v. Melin*, 584 U.S. 811, 820 (2018) (citations omitted); *see also Clark v. City of Saint Paul*, 934 N.W.2d 334, 345 (Minn. 2019) ("First, we consider whether the challenged legislation operates as a substantial impairment of a contractual obligation. Second, if a substantial impairment is found, we consider whether there is a significant and legitimate public purpose behind the legislation. Finally, we review the legislation in light of the identified public purpose to see whether the adjustment of the rights and liabilities of the contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the law's adoption." (internal quotation marks and citations omitted)).

164 Laughlin Aff., ¶11.

165 *Sveen*, 584 U.S. at 819.

166 *Id.*

period. By switching tack nearly 10 years into the contract term, the Order substantially impairs the relevant contracts by undermining a premise central to the negotiation and execution of those contracts.[167]

Section 1.B of the applicable Standard Form Contract states that "[i]n the event of any conflict between the terms of this Contract and Company's electric tariff, the provisions of the tariff shall control."[168] But it does not state that Xcel or the Commission has the authority to unilaterally change the definition of "Bill Credit Rate" in fully executed contracts to eliminate the fact that "[o]nce a Standard or Enhanced Bill Credit applies, that Bill Credit Type applies ***for the Term of the Contract***."[169] This contractual provision also does not grant Xcel or the Commission the right to use the tariff filing process to create conflicts that have the effect of amending key terms of executed contracts without the agreement of Xcel's counterparties.[170] Utilities should be bound by the terms of their bargained-for contracts, just like any other company.[171] In this instance, Xcel's proposal is plainly contrary to the terms of the signed contracts it entered into with CSG developers across the state, and the Commission should not condone its unilateral attempt to reduce its costs at the expense of developers and their subscribers; nor should it encourage the

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167 Laughlin Aff., ¶11.

168 *In the Matter of Xcel Energy's Plan for a Community Solar Garden Program Pursuant to Minn. Stat. § 216B.1641*, PUC Docket No. E-002/M-13-867, Xcel Compliance Filing, Section No. 9 of Tariff, Original Sheet No. 73 (Dec. 1, 2016).

169 *In the Matter of Xcel Energy's Plan for a Community Solar Garden Program Pursuant to Minn. Stat. § 216B.1641*, PUC Docket No. E-002/M-13-867, Xcel Compliance Filing, Section No. 9 of Tariff, Original Sheet No. 69.

170 *See Mobile Gas*, 350 U.S. 332; *Sierra Pac.*, 350 U.S. 348; *Richmond Power & Light v. Fed. Power Comm'n*, 481 F.2d 490, 493 (D.C. Cir. 1973); *Warrick v. Graffiti, Inc.*, 550 N.W.2d 303, 308 (Minn. Ct. App. 1996) (acknowledging that meeting of the minds and mutual agreement is required to amend contract).

171 *Mobile Gas*, 350 U.S. at 339; *Sierra Pac.*, 350 U.S. at 353.

utility behavior demonstrated here, which treats their counterparties so unjustly.[172] If developers knew Xcel would propose, and the Commission would approve, the unilateral change in rates at the time the contract was executed, developers would never have agreed to the proposed terms. No party would.

In this regard, the contracting parties were relying not just on the Commission's express words, but also on the express language of Minn. Stat. § 216B.1641, subd. 1(d), Minn. Stat. § 216B.164, subd. 10(b), and Minn. R. 7835.4023. As discussed above, those statutes and that rule provide in no uncertain terms that, once approved, the VOS would apply on a prospective basis for new interconnections only, and could not be applied to pre-existing CSGs operating under the ARR-era regulatory framework. By imposing VOS on ARR-era CSGs, the Order therefore not only impairs CSG contracts by reversing the Commission's prior determinations, but also impairs those contracts by effectively amending state law retroactively.[173]

The Order substantially impairs CSG contracts by preventing CSG developers from safeguarding their rights because ARR-era CSGs forced to accept VOS rates will be unprofitable or far less economically viable.[174] That is, even if the Commission might otherwise have authority

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172 *See In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, PUC Docket No. E-002/M-13-867, Initial Comments CCSA and MnSEIA, at 17 (Jan. 8, 2024) (noting past practices between the parties required both parties' agreements and written amendments or revisions to the Standard Form Contract).

173 As discussed above, the Commission does not have statutory authority to do so.

174 *Laughlin Aff*., ¶¶11-13; *see also In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, Order rejecting Xcel's Solar-Garden Tariff Filing and Requiring the Company to File a Revised Solar-Garden Program, at 15 (Apr. 7, 2014) ("The record in this case demonstrates that the full retail rate, approximately $0.12 per kWh, is too low to reasonably allow for the creation of financing of community solar gardens. Rather, developers' uncontroverted statements indicate that a rate of approximately $0.15 per kWh is the conservative minimum needed to secure financing and make solar gardens attractive to subscribers.").

to impose VOS on ARR-era CSGs, it cannot do so here without compensating the developers for their significant loss because such a drastic change to the regulatory scheme particularly undermines the contracts between CSGs and subscribers. Minn. Const. art I, § 13 ("Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured."); U.S. Const. amend. 5 ("[N]or shall private property be taken for public use, without just compensation.").

ii. The Order is inappropriately and unreasonably drawn in a manner that does not advance a significant and legitimate public purpose

Because the Order substantially impairs pre-existing contracts, it can survive constitutional scrutiny only if it is "drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose."[175] Because the Order is inappropriate, is unreasonable, and does not advance any significant or legitimate public purpose, the Commission should reconsider the Order and correct it to pass constitutional muster.

First, as discussed in Section B(1), above, the Order is inherently inappropriate and unreasonable because it is made in excess of the Commission's statutory authority to set rates for the purchase of energy from CSGs. The CSG and VOS statutes, as well as the rule governing imposition of the VOS, all unambiguously provide that the VOS shall apply only to new interconnections occurring after approval of VOS.[176] Despite these clear directions, the Order purports to apply VOS retroactively to pre-existing interconnections. It is self-evidently unreasonable and inappropriate for any agency to exceed its statutory authority, and therefore the Order violates Article I, Section 11, of the Minnesota Constitution and Article I, Section 10, Clause

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175 *Sveen*, 584 U.S. at 820 (internal quotation marks omitted).

176 Minn. Stat. § 216B.1641, subd. 1(d); Minn. Stat. § 216B.164, subd. 10(b); Minn. R. 7835.4023.

1, of the United States Constitution by substantially impairing CSG contracts in an inappropriate and unreasonable manner.[177]

The Order additionally and alternatively violates these constitutional provisions because it does not "advance a significant and legitimate public purpose."[178] The CSG statute unambiguously requires that CSG programs "reasonably allow for the creation, financing, and accessibility of community solar gardens" and "be consistent with the public interest."[179] This provision plainly requires that the rate at which Xcel purchases energy from CSGs must allow for the accessibility of CSGs *and* be in the public interest. The Order fails to advance these purposes.

As discussed above, the Order's consideration of the financeability and accessibility questions are flawed in that it sets up an apples-to-oranges comparison of ARR-era CSGs and VOS-era CSGs to conclude that ARR-era CSGs will remain financeable and accessible even at the VOS rate. This comparison is misplaced because, as discussed above, ARR-era CSGs entered into contracts in a wholly different regulatory environment and relied upon clear statements from the Commission—as well as clear statutory and regulatory language—that the ARR would remain in effect for the duration of the 25-year contract periods.[180] The Order's failure to grapple with this critical factor in the financeability question undermines any suggestion that the Order furthers the purpose of "reasonably allow[ing] for the … financing … of community solar gardens."[181] Furthermore, the subscribers' ability to access CSGs is undeniably hindered when the anticipated

177 *Sveen*, 584 U.S. at 820; *Clark*, 934 N.W.2d at 345.
178 *Sveen*, 584 U.S. at 820; *Clark*, 934 N.W.2d at 345.
179 Minn. Stat. § 216B.1641, subd. 1(e).
180 *See, e.g.*, Minn. Stat. § 216B.164, subd. 10(b); Minn. R. 7835.4023; *In the Matter of Xcel Energy's Plan for a Community Solar Garden Program Pursuant to Minn. Stat. § 216B.1641*, PUC Docket No. E-002/M-13-867, Order Approving Solar-Garden Plan with Modifications, at 9 (Sept. 17, 2014).
181 Minn. Stat. § 216B.1641, subd. 1(e)(1).

benefits of CSGs are significantly (or even wholly) diminished.[182]

Moreover, rather than advancing the legitimate purpose of creating a CSG program "consistent with the public interest,"[183] the Order thwarts the public interest by drastically reducing revenues due to subscribers to ARR-era CSGs.[184] As the Order itself recognizes, **70%** of subscribers to ARR-era CSGs are governments, schools, hospitals, clinics, churches, and individuals. The Order improperly dismisses the interests of these public entities by lumping them together as "large general service subscribers,"[185] without considering that the continued receipt of revenue by these entities is undoubtedly in the public interest. What is more, the Commission dismissed out of hand the concern that, in the absence of budgeted-for revenue from these ARR-era CSGs, certain of these public entities may be required to reduce services, lay off personnel, or raise taxes to make up for the loss in CSG revenue.[186] The Order's failure to grapple with these factors undermines any attempt by the Commission to craft a CSG program "consistent with the public interest,"[187] and defeats any possibility that the Order might have been "drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose."[188]

At bottom, the Order's imposition of VOS on ARR-era CSGs constitutes a "substantial impairment" on the contracts between CSGs and Xcel, their subscribers, and their financiers, without compensation and without qualifying for the appropriate-and-reasonable-way-to-advance-a-significant-and-legitimate-public-purpose exception. Accordingly, Standard Solar requests that the Commission reconsider its Order and reissue an order consistent with the Minnesota and

182 Laughlin Aff., ¶11-13.
183 Minn. Stat. § 216B.1641, subd. 1(e)(4).
184 Laughlin Aff., ¶11-13.
185 Order at 28.
186 Order at 28.
187 Minn. Stat. § 216B.1641, subd. 1(e)(4).
188 *Sveen*, 584 U.S. at 820.

United States Constitutions.

(2) The Order Effects a Taking of Standard Solar's Property Without Just Compensation, in Violation of Article I, Section 13, of the Minnesota Constitution and the Fifth Amendment to the United States Constitution

Both the Minnesota and United States Constitutions prohibit the government from taking private property without just compensation.[189] "It is well established that the government need not directly appropriate or physically invade private property to effectuate a taking."[190] Rather, "[i]n the context of government regulation a taking may result when the government goes too far in its regulation, so as to unfairly diminish the value of the individual's property, thus causing the individual to bear the burden rightly borne by the public."[191] While "the determination of whether a taking has occurred is highly fact-specific, depending on the particular circumstances underlying each case," the United States "Supreme Court [has] identified 'several factors that have particular significance' in the takings analysis."[192] "Primary among those factors are '[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations.' In addition, the 'character of the governmental action' may be relevant in discerning whether a taking has occurred."[193]

Applying these considerations here, the Order effectuates a taking because the imposition

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189 Minn. Const. art. I, § 13 ("Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured."); U.S. Const. amend. 5 ("[N]or shall private property be taken for public use, without just compensation.").

190 *In re N. States Power Co.*, 2016 WL 3043122, at *5 (quoting *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623, 632 (Minn. 2007)).

191 *Wensmann Realty*, 734 N.W.2d at 632.

192 *Wensmann Realty*, 734 N.W.2d at 632 (quoting *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978)).

193 *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538-39 (2005) (quoting *Penn Cent.*, 438 U.S. at 124). The Minnesota Supreme Court "ha[s] used the *Penn Central* framework in other cases to analyze takings claims arising under the U.S. and Minnesota Constitutions." *Wensmann Realty*, 734 N.W.2d at 633.

of VOS for ARR-era CSGs has so "unfairly diminished the value of the" ARR-era CSGs as to cause developers, subscribers, and financiers "to bear the burden rightly borne by the public."[194] As a threshold matter, the Commission has understood since the inception of the CSG program that the public—*i.e.*, ratepayers—would bear some burden, in that Xcel would recoup the costs of purchasing energy from CSGs from both CSG subscriber and non-subscriber ratepayers.[195] This is, of course, an unavoidable outcome of the regulatory landscape. The Order, however, "goes too far in its regulation"[196] by overprioritizing the interests of non-subscribers, to the exclusive detriment of CSG developers and subscribers, including those subscribers whose interests are patently aligned with the public interest.

In prioritizing the interests of non-subscriber ratepayers, the transition from ARR to VOS for ARR-era CSGs will have a severe economic impact on CSG developers, their investors, and their subscribers, and will, for much the same reasons as discussed above, substantially interfere with the "distinct investment-backed expectations" of developers, investors, subscribers, and financiers.[197] In particular, transitioning to VOS will cost Standard Solar in excess of **[TRADE SECRET DATA BEGINS…** [redacted] **…TRADE SECRET DATA ENDS]**, and likely an additional **[TRADE SECRET DATA BEGINS…** [redacted]

194 *Wensmann Realty*, 734 N.W.2d at 632.

195 *See, e.g.*, *In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, PUC Docket No. E-002/M-13-867, Order Rejecting Xcel's Solar-Garden Tariff Filing and Requiring the Company to File a Revised Solar-Garden Program, at 24 (Apr. 7, 2014) (explaining that the Commission "tried to establish a bill-credit rate that will be workable for solar-garden developers and subscribers, as well as Xcel and its ratepayers").

196 *Wensmann Realty*, 734 N.W.2d at 632.

197 *Lingle*, 544 U.S. at 538-39 (quoting *Penn Cent.*, 438 U.S. at 124).

[redacted] **…TRADE SECRET DATA ENDS]**.[198]

And the Order unquestionably undermines the "distinct investment-backed expectations" of developers, investors, subscribers, and financiers. CSG developers, investors, and subscribers have deep reliance interests at stake, a fact the Commission has repeatedly recognized.[199] As explained above, when ARR-era CSGs were developed and financed, and when ARR-era developers sought out subscribers, all parties were rightfully operating with the expectation that the Commission meant what it said when it determined that "community-solar-garden projects filing complete applications under the applicable retail rate should be allowed to lock in the REC price for the duration of the 25-year contract;" "solar-garden projects approved 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;" and "any adjustment to REC prices made by the Commission in later years should only apply to new community-solar-garden project applications."[200]

Accordingly, because the Order severely diminishes the value of ARR-era CSGs to developers, investors, and subscribers, and directly and substantially interferes with stakeholders' investment-backed expectations and subscribers' credit expectations—expectations premised on the Commission's own orders and the words of state statutes and rules—the Order has effected a taking of private property, and improperly shifted the burden rightly borne by the public.[201] The Order therefore violates the Minnesota and United States Constitutions by taking private property

198 Laughlin Aff., ¶13.
199 *See* Order Approving VOS at 14.
200 *See, e.g.*, *In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, PUC Docket No. E-002/M-13-867, Order Approving Solar-Garden Plan with Modifications, at 9 (Sept. 17, 2014).
201 *Wensmann Realty*, 734 N.W.2d at 632.

without just compensation, and Standard Solar requests that the Commission reconsider the Order and issue a new order consistent with these constitutional mandates.

D. The Order Arbitrarily and Capriciously Fails to Adequately Explain the Commission's Decision to Reverse Prior Orders on Which Stakeholders Relied and on Which the Commission Intended Stakeholders to Rely

Finally, Standard Solar requests reconsideration of the Order because it arbitrarily and capriciously fails to adequately justify the decision to cast aside the Commission's prior orders and state law providing that VOS would be implemented on a prospective basis for new interconnections occurring after VOS was approved. An "agency need not always provide a more detailed justification [for change from prior order] than what would suffice for a new policy created on a blank slate. Sometimes it must—when, for example, its new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account. It would be arbitrary or capricious to ignore such matters. In such cases it is not that further justification is demanded by the mere fact of policy change; but that a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy."[202]

As detailed above, the Commission has repeatedly and consistently stated that, upon approval of VOS, VOS would be applied on a prospective basis for new interconnections. As a corollary, the Commission stated that "community-solar-garden projects filing complete applications under the applicable retail rate should be allowed to lock in the REC price for the duration of the 25-year contract" and that "solar-garden projects approved under the applicable retail rate should be credited at the applicable retail rate in place at the time of energy generation

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202 *C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

for the duration of the 25-year contract."[203] Consistent with these statements, Minn. R. 7835.4023 provides that "[i]f a public utility has received commission approval of an alternative tariff for the value of solar under Minnesota Statutes, section 216B.164, subdivision 10, the tariff applies to new solar photovoltaic interconnections effective after the tariff approval date."

Despite this clear rule and clear statements from the Commission that it intended to follow that rule going forward and lock in ARR-era CSG rates at the ARR for the 25-year contract terms, the Order undoes the rule and diverts from the Commission's prior position. The Order fails to provide a "reasoned explanation" for the decision to "disregard[] facts and circumstances that underlay or were engendered by the prior policy."[204]

First, the Order's determination that "circumstances have evolved since the CSG program rollout"[205] does not justify the imposition of VOS for ARR-era CSGs because any "evol[ution]" of the circumstances was thoroughly understood—and, indeed, were intended—by the Commission's prior related action. That is, the Order's statement that "the cost of ARR-era gardens paid for by non-subscribers have reached a magnitude that the Commission did not anticipate when setting the ARR in 2014"[206] is belied by the Commission's own recognition in 2014 that "the applicable retail rate … is likely to increase" over time.[207] In fact, from 2015 to 2023, the ARR compound annual growth rates for each subscriber class are lower than the rate of general consumer price index inflation over that same period, "meaning that the ARR has actually

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203 *See, e.g.*, *In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, PUC Docket No. E-002/M-13-867, Order Approving Solar-Garden Plan with Modifications, at 9 (Sept. 17, 2014).

204 *Fox Television Stations*, 556 U.S. at 515.

205 Order at 15.

206 *Id.*

207 *See, e.g.*, *In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, PUC Docket No. E-002/M-13-867, Order Approving Solar-Garden Plan with Modifications, at 9 (Sept. 17, 2014).

decreased in real dollar terms over the course of its lifetime."[208] Furthermore, if the pace of rate increases charged by Xcel is troubling to the Commission, that issue is squarely within the Commission's authority to address under Minn. Stat. § 216B.03. Yet steps taken by the Commission, even if well-intentioned, have accelerated (as opposed to maintained or decelerated) rate increases.[209]

Nor is it sufficient for the Order to point to the fact that 198 CSGs have been developed and financed at VOS; that is, of course, the entire point of the CSG program: to develop and finance CSGs. That the Commission has, through experience over time, approved a VOS that allows for the financing of new CSGs is not a changed or "evolved" circumstance; it **is** the circumstance. That is, the entire purpose of the CSG statute is to develop a CSG program that is sustainable, financeable, and in the public interest. That the CSG program is now sustainable, financeable, and in the public interest at VOS is therefore not a changed circumstance with respect to ARR-era CSGs; it is the intended and anticipated outcome of the CSG program as a whole, which includes ARR-era CSG programs developed and financed at ARR.

And, again, the Order fails to justify imposing VOS for ARR-era CSGs in light of the clear statutory and regulatory language providing that, once approved, VOS shall apply only for new

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208 *See In the Matter of the Petition of N. States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, PUC Docket No. E-002/M-13-867, Initial Comments, NextEra Energy, at 8 (Jan. 8, 2023) (citing US Solar Petition for Reconsideration and Clarification, at 8 (Sept. 27, 2023)).

209 *See, e.g.*, *In the Matter of and Inquiry into Utility Investments that May Assist in Minnesota's Economic Recovery from the COVID-19 Pandemic*, Docket No. E,G-999/CI-20-492; *In the Matter of a Proposal by Xcel Energy for Authorization to Recover Costs for Investments that May Assist in Minnesota's Economic Recovery from the COVID-19 Pandemic*, Docket No. E,G-002/M-20-716, Order Determining that Proposals Have the Potential to Be Consistent with COVID-19 Economic Recovery (Mar. 12, 2021).

interconnections occurring after approval of VOS.[210] The Commission's prior position that ARR-era CSGs would continue at the ARR, and not VOS, was consistent with those laws, and the Order rightfully does not suggest that those laws or regulations have changed. They have not, and the law remains that "[i]f approved, the [VOS] shall apply to customers' interconnections occurring after the date of approval."[211]

In light of the Commission's prior orders that ARR-era CSGs would not be transitioned to VOS for the 25-year term of those CSGs' contracts, the Order was required to "provide a more detailed justification" and a "reasoned explanation … for disregarding facts and circumstances that underlay or were engendered by the prior policy."[212] The Order failed to provide the required justification because circumstances have not evolved in a way unanticipated by the Commission previously, and state law remains clear that VOS is to be applied on a prospective basis for new interconnections only. For this reason, too, Standard Solar requests that the Commission reconsider the Order.

E. The Order's Determination That a Contested Case Hearing Was Not Required Is Contrary to Law

"If a proceeding involves contested material facts and there is a right to a hearing under statute or rule … the commission *shall* refer the matter to the Office of Administrative Hearings for a contested case proceeding."[213] In two sentences, the Order disregarded comments from CSG developers asserting that the application of VOS to ARR-era CSGs "may threaten the ongoing viability of their CSGs under the terms of their current agreements with financiers or

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210 Minn. Stat. § 216B.1641, subd. 1(d); Minn. Stat. § 216B.164, subd. 10(b); Minn. R. 7835.4023.

211 Minn. Stat. § 216B.1416, subd. 10(b).

212 *Fox Television Stations*, 556 U.S. at 515.

213 Minn. R. 7829.1000 (emphasis added).

subscribers."[214] The Order summarily concluded that the developers did not present "persuasive evidence that purchasing all CSG energy at the VOS fails to reasonably allow for the financing and development of solar gardens," and "[t]he Commission [was] satisfied that the detailed and extensive record developed … provides a sufficient basis on which to make a decision and that no further proceeding is warranted."[215] This aspect of the Order is inconsistent with Minn. R. 7829.1000, and should be reconsidered, and the Commission should refer this matter to the Office of Administrative Hearings for contested case proceedings. Standard Solar submits the attached affidavit of Trevor Laughlin to further underscore the significant impact of the Order to just Standard Solar and the subscribers to its CSGs.

Notably absent from the Order is any assertion that there are not "contested material facts."[216] Rather, the Order itself observes that the fact of financeability and viability of CSGs is expressly contested by developers.[217] In recognizing that developers claim their CSGs will very likely not be financially viable if transitioned to VOS,[218] the Commission was required to order a contested case hearing pursuant to Minn. R. 7829.1000.[219]

III. REQUEST FOR STAY

Standard Solar requests that the Commission stay implementation of the Order pursuant to Minn. Stat. § 216B.53. A stay of a Commission order is warranted where "great or irreparable damage would otherwise result to the party seeking the stay."[220] Here, a stay is warranted because

214 Order at 34.
215 *Id.*
216 Minn. R. 7829.1000.
217 Order at 34.
218 Laughlin Aff., ¶14-15.
219 Minn. R. 7829.1000 ("shall refer"); Minn. Stat. § 645.44, subd. 16 (stating, in context of statutory interpretation, "'[s]hall' is mandatory").
220 Minn. Stat. § 216B.53.

implementation of the Order will render ARR-era CSGs economically non-viable, and may result in public interest ARR-era CSG subscribers needing to reduce services and increase taxes to meet their budgets, which is inconsistent with the public interest.

First, concerning the economic viability of CSGs, the Order noted comments from developers that "a reduction of the bill credits their subscribers receive may threaten the ongoing viability of their CSGs under the terms of their current agreements with financiers or subscribers."[221] The Order's summary dismissal of these concerns[222] was unjustified, as evidence supports those concerns, in that a transition to VOS will decrease ARR-era CSGs' revenue by up to significant amounts,[223] and implicates constitutional rights.

Second, as pointed out by the Department in comments opposed to the Order, governments, municipalities, school districts, and other governmental entities subscribed to ARR-era CSGs have already budgeted based on the expectation that revenues from those CSGs would continue at the ARR. The Order will decrease those entities' revenues, such that "these entities would need to reduce services or generate revenue from other sources, such as increasing property taxes."[224] A lack of funding for, or a decrease in services provided by, these entities constitutes "great or irreparable damage," as these entities provide needed services to the State and individuals across the State. To avoid these damages, Standard Solar respectfully requests that the Commission stay implementation of the Order pending reconsideration and, if necessary, appeal.

IV. CONCLUSION

For the foregoing reasons, Standard Solar respectfully requests that the Commission

221 Order at 34.
222 *Id.*
223 Laughlin Aff., ¶13.
224 *Id.* at 28.

reconsider its Order, and issue a new order confirming that, consistent with state and federal law, the VOS will apply only to new interconnections occurring after approval of the VOS. Alternatively, Standard Solar requests that the Commission order a contested case hearing. Standard Solar further requests that the Commission stay implementation of the Order pending reconsideration or, if necessary, appeal.

Dated: June 20, 2024

Respectfully submitted,

STOEL RIVES LLP

/s/ Andrew P. Moratzka

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ATTORNEYS FOR STANDARD SOLAR, INC.

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PUBLIC DOCUMENT
TRADE SECRET DATA EXCISED

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of Its Proposed Community Solar Garden Program	PUC Docket No. E-002/M-13-867
	AFFIDAVIT OF TREVOR LAUGHLIN

STATE OF MARYLAND)
) **ss.**
COUNTY OF MONTGOMERY)

I, Trevor Laughlin, being first duly sworn upon oath, state as follows:

1. I am a Senior Analyst, Policy & Regulatory Affairs, of Standard Solar, Inc. ("Standard Solar"). My business address is 530 Gaither Rd. Ste. 900, Rockville, MD 20850.

2. Standard Solar builds, owns, and operates community solar gardens ("CSGs") across the United States, including in Minnesota.

3. In Minnesota, Standard Solar owns and operates thirty-nine community solar garden projects, all of which are in the service territory of Northern States Power d/b/a Xcel Energy ("Xcel") and participate in Xcel's Solar*Rewards Community Program ("Community Solar Program"). Therefore, and consistent with the Community Solar Program, each of these thirty-nine CSG projects has a 25-year Solar*Rewards Contract with Xcel.

4. Because the applications for these thirty-nine community solar gardens were submitted at different times, eleven of the community solar gardens entered the CSG Program under the applicable retail rate ("ARR") bill-credit construct and the remaining twenty-eight community solar gardens entered the CSG Program under the value of solar ("VOS") bill-

EXHIBIT B

credit construct.

5. In both instances, Standard Solar entered into subscription agreements with customers relying on statements and representations made by Xcel and the Minnesota Public Utilities Commission (the "Commission") that the applicable rate and program would remain in effect for the duration the Solar*Rewards Contract with Xcel and related subscription agreements with subscribers.

6. Prior to developing each of these CSGs, Standard Solar secured financing from lenders and investors based on the understanding that, consistent with the Commission's prior orders, Xcel would purchase energy from these CSGs at the ARR or VOS rate, as applicable and depending on the timing of project development.

7. I am offering details in my affidavit regarding the eleven CSG projects that became operational under the ARR bill-credit construct ("ARR-Era Projects").

8. For the ARR-Era Projects, Standard Solar relied on the following statements in Commission orders regarding the Community Solar Program:

    a. That the ARR would remain "the full retail rate, including the energy charge, demand charge, customer charge, and applicable riders, for the customer class applicable to the subscriber receiving the credit."[1]

    b. That "solar-garden projects approved under the applicable retail rate should be credited at the applicable retail rate in place at the time of energy

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1 *In the Matter of Xcel Energy's Plan for a Community Solar Garden Program Pursuant to Minn. Stat. § 216B.1641*, PUC Docket No. E-002/M-13-867, Order Rejecting Excel's Solar-Garden Tariff Filing and Requiring the Company to File a Revised Solar-Garden Plan (April 7, 2014) at 15.

generation for the duration of the 25-year contract."[2]

c. That the VOS would apply "only to applications filed after December 31, 2016."[3]

9. Relying on these statements in Commission orders, over 450 subscription agreements for the ARR-Era Projects were negotiated with a variety of municipal entities, public entities, businesses, and roughly 375 residential customers. Specifically, the non-residential customers include **[TRADE SECRET DATA BEGINS.. .** [redacted] **...TRADE SECRET DATA ENDS]**.

10. Standard Solar and the subscribers to the ARR-Era Projects will suffer significant damages if the Commission does not reconsider its May 30, 2024, order authorizing Xcel to transition ARR-Era Projects from the ARR to VOS ("May 30 Order").

11. After conducting an internal review of the ARR-Era Projects, the May 30 Order will damage Standard Solar's subscription agreements in three principal ways. First, some of the ARR-Era Projects have a subscription-rate structure where a change from the ARR to VOS will detrimentally impact Standard Solar. For these projects, Standard Solar estimates its damages over the remaining life of the subscription agreements to be in excess

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2 *In the Matter of Xcel Energy's Plan for a Community Solar Garden Program Pursuant to Minn. Stat. § 216B.1641*, PUC Docket No. E-002/M-13-867, Order Approving Solar-Garden Plan with Modifications (September 17, 2014) at 9.

3 *In the Matter of Xcel Energy's Plan for a Community Solar Garden Program Pursuant to Minn. Stat. § 216B.1641*, PUC Docket No. E-002/M-13-867, Order Approving Value-Of-Solar Rate for Xcel's Solar-Garden Program, Clarifying Program Parameters, and Requiring Further Filings (September 6, 2016) at 14.

of **[TRADE SECRET DATA BEGINS...** [redacted] **...TRADE SECRET DATA ENDS]**. Second, some of the ARR-Era Projects have a subscription-rate structure where a change from the ARR to VOS will detrimentally impact the subscribers. For these projects, Standard Solar estimates its subscribers' damages over the remaining life of the subscription agreements to be in excess of **[TRADE SECRET DATA BEGINS..** [redacted] **...TRADE SECRET DATA ENDS]**. Finally, there are damages to Standard Solar directly associated with renegotiated and lost subscriptions (e.g., cost and expense of finding and subscribing new CSG customers).

12. Given the significant negative impact on subscription rate directly resulting from the Commission's decision in the May 30, 2024, Order to transition the bill credit from ARR to VOS, subscribers are anticipated to either terminate their subscription[4] or demand to renegotiate it. Under a renegotiated contract, the subscription rate would be significantly less than the revenue Standard Solar earns from these CSGs. And where renegotiation was not feasible and subscriptions are terminated, Standard Solar would suffer immediate loss of revenue and would need to expend resources to try to obtain new subscribers, whose subscriptions would also generate significantly less revenue than the existing rates.

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[4] Although the Commission may assert other contractual provisions will help minimize subscription cancellation impacts faced by developers, the Minnesota Attorney General's Office has as recently as February 15, 2024, asserted that developers are unprotected from termination fees or charges that were negotiated and made part of the subscription agreements, and has instituted investigations and restitution demands with respect to early-termination fee arrangements in CSG contracts. (*See* https://www.ag.state.mn.us/Office/-Communications/2024/02/15_SolarGardenRefunds.asp.) In response to the Attorney General's demands, four CSG operators have refunded all early-termination fees charged, agreed to no longer enforce early-termination fee provisions, and agreed not to include such provisions in future contracts. (*Id.*)

13. It can be safely assumed that a significant number of subscribers will seek to renegotiate or terminate their contracts, and Standard Solar consequently estimates significant losses.

[TRADE SECRET DATA BEGINS... [redacted]

...TRADE SECRET DATA ENDS].

14. In light of the losses set forth above, there is the real potential that the viability of Standard Solar's ARR-Era Projects will be threatened as a direct result of the May 30 Order, which Standard Solar respectfully submits is contrary to both the statutory regime based on which Standard Solar made the investments in Minnesota's CSG infrastructure, Minnesota law, and Minnesota public policy.

15. The May 30 Order therefore destabilizes the contractual foundation of the CSG market, which jeopardizes the operational viability and financial planning of participants. This

hampers our refinancing capability, as the diminished revenue stream puts pressure on the viability of the agreements we have with subscribers for these projects, and the associated customer savings, and adversely impacts the amount of financing proceeds Standard Solar will be able to receive for these projects.

FURTHER YOUR AFFIANT SAYETH NOT.

Executed in Montgomery County, Maryland, this 20 day of June, 2024

Trevor Laughlin
Standard Solar, Inc.

Subscribed and sworn to before me

this 20 day of June 2024.

CHARDINAY N HINES
Notary Public - State of Maryland
Baltimore City
My Commission Expires Jan 4, 2026

Notary Public

My commission expires: 1/4/2026