

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 SEVENTH PLACE EAST, SUITE 350
ST. PAUL, MINNESOTA 55101-2147**

Katie Sieben	Chair
Joseph Sullivan	Vice Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
John Tuma	Commissioner

**In the Matter of Xcel Energy's Petition for
Approval of a Resiliency Service Program**

Docket No. E002/M-22-170

**MINNESOTA DEPARTMENT OF
COMMERCE'S ANSWER TO
RECONSIDERATION PETITIONS**

The Department of Commerce, Division of Energy Resources, answers the reconsideration petitions of Sunnova Energy International, Inc., Blue Horizon Energy LLC, and All Energy Solar (Petitioners) regarding the Public Utilities Commission's approval of Xcel Energy's Resiliency Service Program.¹ Although the Department shares Petitioners' concerns of the potential for unfair competitive advantages when utilities engage in competitive industries, the Department believes the Commission assessed these concerns and appropriately modified the Program to address them. The Department, therefore, recommends the Commission deny the reconsideration petitions.

ANSWER

The Commission generally reconsiders decisions only when it finds there are "new issues, new and relevant evidence, errors or ambiguities in the prior order, or when the Commission is otherwise persuaded it should rethink the decisions set forth in its order."²

¹ Sunnova Recon. Pet.; Blue Horizon Recon. Pet.; All Energy Solar Recon. Pet. The Department submits this answer pursuant to Minn. R. 7829.3000, subp. 4.

² *In re Appl. Minn. Power for Auth. to Increase Rates for Elec. Serv. in Minn.*, E015/GR-16-666, ORDER GRANTING RECONSIDERATION IN PART, REVISING MARCH 12 2018 ORDER, AND OTHERWISE DENYING RECONSIDERATION PETITIONS at 2 (May 29, 2018).

Here, the Commission was well-aware of the concerns raised by Petitioners regarding (1) the Program's scale, (2) the Program's utility ownership structure, (3) the potential for the utility to exercise unfair competitive advantages, and (4) monitoring potential anti-competitive behavior.³ The Commission took care in evaluating the Program and requiring modifications and reporting to alleviate these concerns. As approved, the Program's scale is sufficiently limited, and the Commission's additional reporting requirements ensure that the Program is in the public interest without being limited to a pilot. Additionally, the structure of the program differs from standard utility ownership in ways that mitigate concerns about anti-competitive conduct. Moreover, the Commission's appropriately modified the Program to prevent anti-competitive use of utility data. Last, there are methods available to report any alleged violation of the Commission's order or other concerns with Xcel's administration of the Program.

Petitioners first raise concerns that because the Program is not specifically limited in scale,⁴ with Blue Horizon requesting that the Program be limited to approximately a dozen participants.⁵ The Program is of an appropriate scale, and the Commission has tools to stem expansion beyond the contemplated scale.⁶ Xcel is anticipating only 15 projects over six years in its Minnesota service territory.⁷ The Commission required Xcel to report annually on the number of new customers participating, the assets of each new customer, and the cost.⁸ This reporting allows the

³ See Sunnova Recon. Pet.; Blue Horizon Recon. Pet.; All Energy Solar Recon. Pet.

⁴ All Energy Solar Recon. Pet. at 1; Blue Horizon Recon. Pet. at 2.

⁵ Blue Horizon Recon. Pet. at 2.

⁶ See ORDER APPROVING RESILIENCY SERVICE PROGRAM WITH MODIFICATIONS AND REQUIRING ANNUAL REPORTS at 5 (Mar. 15, 2023) (Commission Order).

⁷ See Dep't Reply Cmts. at 8; Xcel Initial Pet., Attach. B at 1 (listing 15 Total Incremental Projects).

⁸ Commission Order at 7, Order Point No. 2.a.

Commission and Department to monitor the scale of the program and step in if it grows to an unforeseen size.

Second, Sunnova expresses concerns that Xcel's ability to rate base the cost of equipment divorces the Program's actual costs from the Program customer. While the Department shares Sunnova's general concerns about the potential of undercutting prices in the private market by socializing costs to ratepayers, Sunnova is incorrect that Xcel can spread "the largest portion of a project's cost among all Xcel's customers."⁹ Unlike other utility ownership, all Program costs including the rate of return are covered by the participating customer.¹⁰ Participating customers must also pay for the full cost of the asset if they exit the Program early.¹¹ And Xcel agreed that its shareholders would absorb any costs of default by participating customers.¹² Xcel must also report "[a]ll costs, allocated costs, and revenues to show that non-participant customers are not paying for the costs of the Resiliency Services Program."¹³ Xcel, therefore, cannot cross-subsidize the costs to other ratepayers and the costs of the Program are directly tied to participating customers.

Third, Petitioners raise concerns about the potential for unfair competitive advantages when utilities operate in competitive markets.¹⁴ The Department shares many of these concerns. And the Commission expressed sensitivity to these concerns.¹⁵ However, the Department believes that the Commission's modification of the Program ensures that Xcel cannot abuse its monopoly power in administering the Program. Specifically, the Commission ordered that Xcel may not use

⁹ Sunnova Recon. Pet. at 1.

¹⁰ Dep't Initial Cmts., Attach. A (Xcel Response to DOC IR No. 5).

¹¹ Dep't Initial Cmts., Attach. A (Xcel Response to DOC IR No. 15).

¹² Dep't Initial Cmts., Attach. A (Xcel Response to DOC IR No. 6).

¹³ Commission Order at 7.

¹⁴ See All Energy Solar Recon. Pet. at 3.

¹⁵ Commission Order at 6.

“customer energy usage or grid data, that is not available to customers and third parties seeking to implement similar services outside of the resiliency services program, to market the program.”¹⁶

Last, Petitioners raise concerns about their ability to adequately raise specific concerns about Xcel’s administration of the Program and request a specific complaint process.¹⁷ The Department does not believe a specific complaint resolution process is needed for the Program. There are available avenues for raising concerns about Xcel’s administration of the Program or other actions by public utilities through current processes. Petitioners and others can file complaints with the Commission or contact the Department if Xcel is not adhering to the Commission’s requirements or with other concerns about anti-competitive behavior.

CONCLUSION

The Commission correctly found that with modifications, the Program “contains sufficient protections for non-participating ratepayers and is structured to prevent unfair competitive advantages.”¹⁸ The Department recommends that the Commission deny the reconsideration petitions.

[SIGNATURE ON NEXT PAGE]

¹⁶ Commission Order at 7, Order Point No. 1.b.

¹⁷ Blue Horizon Recon. Pet. at 1; All Energy Solar Recon. Pet. at 3.

¹⁸ Commission Order at 6.

Dated: April 14, 2023

Respectfully submitted,

KEITH ELLISON
State of Minnesota
Attorney General

/s/ *Katherine Hinderlie*

KATHERINE HINDERLIE
Assistant Attorney General
Atty. Reg. No. 0397325

445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 757-1468 (Voice)
(651) 297-1235 (Fax)
katherine.hinderlie@ag.state.mn.us

*Attorneys for Minnesota Department of Commerce,
Division of Energy Resources*