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January 17, 2024

Via Electronic Filing

Will Seuffert
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RE: PETITION FOR RECONSIDERATION, DOCKET NO. E002/M-13-867

Dear Mr. Seuffert:

Nokomis Energy submits to the Minnesota Public Utilities Commission this Petition for Reconsideration of the Commission's December 28, 2023 Order.

We have electronically filed this document with the Minnesota Public Utilities Commission, and copies have been served on the parties on the attached service list. Please contact me at matthew@nokomisenergy.com or (612) 999-8600 if you have any questions regarding this filing.

Regards,

A handwritten signature in black ink, appearing to read "Matthew D. Melewski", with a long horizontal flourish extending to the right.

Matthew D. Melewski
General Counsel

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PUBLIC UTILITIES COMMISSION**

Katie J. Sieben	Chair
Valerie Means	Commissioner
Matt Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

IN THE MATTER OF IMPLEMENTATION OF
2023 LEGISLATIVE CHANGES TO XCEL
ENERGY’S COMMUNITY SOLAR GARDEN
PROGRAM & IN THE MATTER OF PETITION
FOR APPROVAL OF NORTHERN STATES
POWER COMPANY, DBA XCEL ENERGY, FOR
APPROVAL OF ITS COMMUNITY SOLAR
GARDEN PROGRAM

DOCKET NOS. E-002/CI-23-335 & E-
002/M-13-867

PETITION FOR RECONSIDERATION

January 17, 2024

Pursuant to MINN. R. 7829.3000, Nokomis Energy (“Nokomis”) respectfully submits this Petition for Reconsideration of the Public Utilities Commission’s (“Commission”) decision that a Community Solar Garden (“CSG”) under the new CSG program must be located within the utility’s service territory (the “Service Territory Restriction”). As explained in this Petition, the Commission’s decision is inconsistent with the governing statute. Nokomis Energy therefore requests that the Commission reconsider Order Point 7 in its December 28, 2023 Order and instead adopt decision option 23 in the compiled decision options.¹

I. BACKGROUND

A. The Legacy CSG Program

In 2013, the state legislature passed MINN. STAT. §216B.1641, creating the CSG program. Among the statutory requirements of the CSG Program was a restriction on the location of a CSG, specifically:

The solar generation facility must be located in the service territory of the public utility filing the plan.²

¹ PUC, *BRIEFING PAPERS--NOVEMBER 9, 2023 AGENDA - COMPILED DECISION OPTIONS*, Docket No. 13-867 (Nov. 9, 2023).

² MINN. STAT. §216B.1641 Subd. 1(c).

A few years later, an interested party sought clarification on the application of this provision. The Commission interpreted the statute and issued an order concluding that “the statute requires that the entirety of a solar-garden facility be located within the service territory of the utility administering the solar-garden program in order for the garden to be eligible for the program” (the “2016 Order”).³

B. The New CSG Program

Approximately ten years after the creation of the CSG program, on May 24, 2023, the legislature amended MINN. STAT. §216B.1641. The amended statute directed the end of the existing “Legacy” Program, and added new subdivisions 2-13, creating a “New” program with different requirements (the “Amended Statute”). The Amended Statute does not include a Service Territory Restriction for the New Program. Rather, the Amended Statute simply provides that a CSG in the New Program must “be connected to the utility’s distribution system.”⁴

The legislature also included several provisions to manage the transition from the Legacy Program to the New Program. One of them directed the Commission to apply Commission orders on the Legacy Program to the New Program “except as otherwise modified, replaced or superseded” by the Amended Statute.⁵

C. The Commission Proceeding

On July 26, 2023, the Commission sought comment on what actions the Commission should take to implement the Amended Statute, with respect to both the Legacy Program and the New Program. Northern States Power Company, d/b/a Xcel Energy (“Xcel”), filed a response to the Commission’s request for comments on August 28, 2023, as well as a proposed tariff modification implementing its response.⁶

The proposed tariff modification included the Service Territory Restriction from the Legacy Program.⁷ Xcel’s response also provided a list of previous Commission orders that might apply to the New Program. With respect to the 2016 Order, Xcel wrote “No – N/A” under the heading “Relevant to non-legacy Program,”⁸ suggesting – somewhat in tension with its proposed tariff modification – that the 2016 Order did *not* apply to the New Program.

Several parties filed comments on Xcel’s proposal. US Solar, among other things, asked the Commission to reject Xcel’s proposal to apply the Service Territory Restriction to the New

³ PUC, *Order Denying Request For Clarification*, Docket No. 13-867, at 5 (June 21, 2016).

⁴ MINN. STAT. §216B.1641 Subd. 6(a)(1).

⁵ MINN. STAT. §216B.1641 Subd. 3(b) (“Except as otherwise modified, replaced, or superseded by subdivisions 2 to 13, any commission order that applies to the legacy program under subdivision 1 applies to subdivisions 2 to 13”).

⁶ See Xcel, Response to Commission’s July 26, 2023 Notice and Petition for Tariff Changes, Docket Nos. E002/M-13-867 & E002/M-23-335 (Aug. 28, 2023).

⁷ See Xcel Petition, Docket Nos. E002/M-13-867 & E002/M-23-335 at 186 (proposed Original Sheet No. 99.04) (August 28, 2023), (“‘Service Territory Requirement’ means that the solar electric generating facility located at the Community Solar Garden is entirely located in the service territory of the Company . . .”).

⁸ See Xcel Response, Docket Nos. E002/CI-23-335 & E002/M-13-867, Attachment B at row 144 (August 28, 2023).

Program.⁹ In its Reply Comments, Nokomis noted that Xcel’s proposal was contrary to the plain language of the Amended Statute.¹⁰

Nokomis and Xcel each proposed new decision options related to the Service Territory Restriction. Xcel proposed to change its initial response and apply the 2016 Order to the New Program.¹¹ Nokomis included two alternative decision options, intended to clarify “for purposes of Minn. Stat. § 216B.1641, subd. 3-12,” whether a CSG “must be located within the utility’s service territory.”¹²

The Commission held a hearing on the matter on November 9, 2023. The Commission did not discuss the Service Territory Restriction. Instead, the Commission voted to approve Xcel’s proposed decision option to “Approve Xcel Energy’s listing of the applicability, or non-applicability, of prior Commission Legacy CSG orders to the Non-Legacy program as set forth in Attachment B to Xcel Energy’s August 28, 2023 Response,” along with Xcel’s modified proposal for the 2016 Order.

The Commission issued an order on December 28, 2023.¹³ The Order did not mention the Service Territory Restriction, but adopted Xcel’s proposed decision option as Order Point 7.¹⁴ This had the effect of applying the 2016 Order, and the Service Territory Restriction, to the New Program.

II. STANDARD FOR GRANTING RECONSIDERATION

Petitions for reconsideration of Commission orders are governed by Minn. Stat. § 216B.27 and Minn. R. 7829.3000. Pursuant to Minn. Stat. § 216B.27, subd. 3, the Commission may reverse, change, modify, or suspend its original decision if, after rehearing, “it shall appear that the original decision, order, or determination is in any respect unlawful or unreasonable.” The Commission has granted reconsideration when a motion for reconsideration: (1) raises new issues; (2) points to new and relevant evidence; (3) exposes errors or ambiguities in the prior decision; (4) persuades the Commission to reconsider; or (5) where the prior decision was inconsistent with the facts, the law, or the public interest.¹⁵

⁹ United States Solar Corporation, *Comments*, Docket No. 13-867 at 8-9 (Sept. 28, 2023).

¹⁰ Nokomis Energy, *Reply Comments*, Docket No. 13-867 at 1-2 (Oct. 9, 2023).

¹¹ See Xcel, *Revised Decision Options*, Docket Nos. E002/CI-23-335 & E002/M-13-867 at 2 (Nov. 7, 2023) (“Xcel Energy’s comments to row 144 of Attachment B to the Response should be changed to: “Yes. Applies to the Non-Legacy Program.”).

¹² Nokomis Energy, *Proposed Decision Options*, Docket Nos. E002/CI-23-335 & E002/M-13-867 at 2 (Nov. 7, 2023).

¹³ PUC, *Order Implementing New Legislation Governing Community Solar Gardens*, Docket Nos. E002/CI-23-335 & E002/M-13-867 (Dec. 28, 2023).

¹⁴ *Id.* at 25.

¹⁵ *In the Matter of the Application of Minnkota Power Cooperative, Inc. for a Route Permit for the MPL- Laporte 115 KV Transmission Line Project in Clearwater and Hubbard Counties*, Docket No. ET-6/TL-16- 327, Order Denying Reconsideration at 1 (Aug. 11, 2017); *In re Application of Minn. Power for Auth. to Increase Rates for Electric Serv. in Minn.*, Docket No. E015/GR-16-664, Order Granting Reconsideration In Part, Revising March 12, 2018 Order, And Otherwise Denying Reconsideration Petitions at 2 (May 29, 2018); *In the Matter of a Formal Complaint and Petition for Expedited Relief by Sunrise Energy Ventures LLC Against Northern States Power Company d/b/a Xcel Energy*, Docket No. E002/C-21-160 Order Denying Reconsideration (Oct. 11, 2021) (denying

In this instance, reconsideration should be granted because Order Point 7 in the Commission’s Order is inconsistent with the statute.

III. THE COMMISSION’S ORDER IS INCONSISTENT WITH THE STATUTE

The Amended Statute does not contain the Service Territory Restriction. And the plain language of the Amended Statute makes clear that the Service Territory Restriction that applies to the Legacy Program does not apply to the New Program.¹⁶ The Commission’s Order Point 7 nonetheless effectively reads the Service Territory Restriction into the Amended Statute. This contravenes the intent of the legislature, and violates the text of the statute, and should therefore be reversed.

A. The Legislature Omitted The Service Territory Restriction

The object of statutory interpretation is to ascertain and give effect to the intent of the legislature. A statute must be interpreted to give effect to all its provisions.¹⁷ No court or agency interpreting a statute can add words to a statute that the legislature has omitted.¹⁸

The plain language of the Amended Statute does not contain the Service Territory Restriction. Instead, the legislature only required that a CSG must “be connected to the utility’s distribution system.”¹⁹ The Commission cannot add the Service Territory Restriction to the statute, and to the extent Order Point 7 of the Commission’s December 28, 2023 Order adds a Service Territory Restriction to the New Program, it must be reversed.

B. The Legislature Knows How To Create A Service Territory Restriction

The legislature has created a Service Territory Restriction at least three separate times in related contexts. Most obviously, in the statute creating the Legacy Program, the legislature wrote that each CSG “must be located in the **service territory of the public utility** filing the plan.”²⁰ Second, in the Amended Statute, the legislature wrote that each CSG *subscriber* “must be located within the Minnesota **service territory of the utility**.”²¹ And finally, in the same law that created

reconsideration after concluding decision “is consistent with the facts, the law, and the public interest.”); *In the Matter of Detailing Criteria and Standards for Measuring an Electric Utility’s Good Faith Efforts in Meeting the Renewable Energy Objectives Under Minn. Stat. § 216B.1691*, Docket No. E999/CI-03-869, Order After Reconsideration at 9 (Aug. 13, 2004).

¹⁶ MINN. STAT. §216B.1641 Subd. 1(i) (“This subdivision applies to a community solar garden that was approved before January 1, 2024.”).

¹⁷ See MINN. STAT. 645.16.

¹⁸ See, e.g., *In re Minn. Power for Auth. to Increase Rates for Elec. Serv. in Minn.*, 838 N.W.2d 747, 755 (Minn. 2013); see *State v. Carufel*, 783 N.W.2d 539, 545 (Minn.2010) (“[T]he court cannot add words to a statute not supplied by the legislature.”); see also *Hibbing Taconite Co. v. Comm’r of Revenue*, 958 N.W.2d 325, 330-31 (Minn. 2021) (“Such an interpretation would require us to add words to the statute, which we cannot do.”); *Schneider v. Children’s Health Care*, 980 N.W.2d 827, 831 (Minn. Ct. App. 2022) (“We cannot add language that the legislature has omitted.”).

¹⁹ MINN. STAT. §216B.1641 Subd. 6(a)(1).

²⁰ MINN. STAT. §216B.1641 Subd. 1(c) (emphasis added).

²¹ MINN. STAT. §216B.1641 Subd. 6(b) (emphasis added).

the Amended Statute, Minn. Session Laws 2023, HF 2310, the legislature created a new distributed solar energy standard, in which all generating facilities must “be located in the Minnesota **service territory of the public utility.**”²²

Yet, when the legislature defined the requirements of the New Program, they did not include a Service Territory Restriction. Moreover, they explicitly stated that the requirements of the Legacy Program, including the Service Territory Restriction, did not apply to the New Program.²³ This distinction must be respected in order to effectuate the intent of the legislature and give meaning to each provision.²⁴

C. The Commission Cannot Create A Service Territory Restriction Where The Statute Does Not

The Amended Statute does not include the Service Territory Restriction in the requirements of the New Program. As a result, the Commission cannot, as a matter of law, adopt a conflicting rule adding the Service Territory Restriction to the New Program.²⁵ Even if that were not the case, the Amended Statute appears to have anticipated this scenario.

The Amended Statute provides that Commission orders from the Legacy Program are not applicable to the New Program where the statute has changed in such a way that would change the Commission order.²⁶ The Commission’s 2016 Order construed and applied the Service Territory Restriction in the original CSG statute. The provisions of the original CSG statute, however, no longer apply. The Amended Statute states explicitly that the provisions of the original CSG statute – including the Service Territory Restriction – do not apply to the New Program.²⁷ The Commission therefore cannot apply the 2016 Order to the Amended Statute.

In other words, Xcel was correct in its initial filing – the 2016 Order does not apply to the New Program because it purported to interpret the previous statute. Accordingly, the Commission should confirm the intent of the legislature to omit the Service Territory Restriction and clarify that the Commission’s 2016 Order only applied to the Legacy Program.

IV. CONCLUSION

For the reasons set forth herein, the Commission should reverse Order Point 7 in its December 28, 2023 Order to the extent it applies the 2016 Order to the New Program, and instead adopt

²² MINN. STAT. §216B.1691 Subd. 2(h)(c)(3) (emphasis added).

²³ See MINN. STAT. §216B.1641 Subd. 1(i) (“This subdivision applies to a community solar garden that was approved before January 1, 2024.”).

²⁴ MINN. STAT. 645.16; Minn. Stat. 645.17(2) (“the legislature intends the entire statute to be effective and certain”).

²⁵ See, e.g., *Billion v. Comm’r of Revenue*, 827 N.W.2d 773, 781 (Minn. 2013); *GH Holdings, LLC v. Minnesota Department of Commerce*, 840 N.W.2d 838, 842 (Minn. Ct. App. 2013).

²⁶ MINN. STAT. §216B.1641 Subd. 3(b) (“**Except as otherwise modified, replaced, or superseded by subdivisions 2 to 13**, any commission order that applies to the legacy program under subdivision 1 applies to subdivisions 2 to 13”) (emphasis added).

²⁷ See MINN. STAT. §216B.1641 Subd. 1(i) (“This subdivision applies to a community solar garden that was approved before January 1, 2024.”).

decision option number 23 in the revised Staff Briefing Papers. That decision option stated as follows:

Clarify that, for purposes of Minn. Stat. § 216B.1641, subd. 3-12, a community solar garden must be connected to the utility's distribution system, but does not otherwise need to be located within the utility's service territory.²⁸

²⁸ PUC, *Briefing Papers--November 9, 2023 Agenda - Compiled Decision Options*, Docket No. 13-867 (Nov. 9, 2023).

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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_13-867_Official
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Kristel	Porter	kristel@mnrenewablenow.org	MN Renewable Now	N/A	Electronic Service	No	OFF_SL_13-867_Official
Paula	Prahl	paula.prahl@dominiuminc.com	Dominium	2905 Northwest Blvd Ste 150 Plymouth, MN 55441	Electronic Service	No	OFF_SL_13-867_Official
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_13-867_Official

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Russ	Stark	Russ.Stark@ci.stpaul.mn.us	City of St. Paul	Mayor's Office 15 W. Kellogg Blvd., Suite 390 Saint Paul, MN 55102	Electronic Service	No	OFF_SL_13-867_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Pat	Treseler	pat.jcplaw@comcast.net	Paulson Law Office LTD	4445 W 77th Street Suite 224 Edina, MN 55435	Electronic Service	No	OFF_SL_13-867_Official
John	Vaughn	Nik@rreal.org	Rural Renewable Energy Alliance	3963 8th Street SW Backus, MN 55435	Electronic Service	No	OFF_SL_13-867_Official
Kevin	Walker	KWalker@beaconinterfaith. org	Beacon Interfaith Housing Collaborative	N/A	Electronic Service	No	OFF_SL_13-867_Official
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