Community Solar Gardens: Minnesota Appellate Court Allows Public Utility Commission to Implement Caps on Usage

Arkansas Environmental, Energy, and Water Law Blog

Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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Co-Author: Rachel Hildebrand

The State of Minnesota enacted in 2013 a statute whose intent was to provide individual customers and communities the opportunity to work together to have a community solar resource. Minn. Stat. § 216B.1641.

The Minnesota Court of Appeals in a May 31st opinion addressed an issue that arose from the implementation of this statute. *See In re Northern States Power Co*, 2016 WL 3043122.

The decision considered an appeal from an administrative order in which the Minnesota Public Utilities Commission ("PUC") placed co-location caps on community solar gardens ("CSGs"), or facilities in which businesses rent space for solar energy.

The intent of the CSG statute was to promote solar growth. This was to be accomplished by providing individual customers and communities the opportunity to work together.

The opinion references barriers to non-utility-scale customers. This class of customer was stated to be impeded by economic barriers to participate in solar programs. These customers would be provided the opportunity to purchase or lease subscriptions at central solar installations. A bill credit for the electricity generated in proportion to the size of their subscriptions would be provided. See Minn. Stat. § 216B.1641(a)-(b).

Northern States Power Company d/b/a Xcel Energy ("Xcel"), a utility, filed a plan with the PUC outlining its proposed CSG program. The plan was rejected after the PUC received "voluminous comments from stakeholders in the solar industry". Xcel's modified CSG plan was subsequently approved.

The PUC order approving the modified plan permitted co-location of CSGs. However, it was silent on the topic of co-location caps, which would have limited the amount of megawatts ("MW") available to each customer at Xcel's CSG.

The response to Xcel's CSG program was more positive than anticipated. Co-location caps were therefore deemed necessary. Relator Sunrise Energy Ventures, a developer of solar-energy facilities, is cited as an example. It submitted 100 applications in the first hour of Xcel's CSG program.

Xcel became concerned that utility-scale producers were taking advantage of the benefits provided by the program. It argued that permitting large-scale operations like Sunrise to participate in the program:

- was counter to legislative intent
- was not consistent with what the PUC intended when approving the Xcel's program
- negatively affected rates for non-participating customers

Xcel urged the PUC to place limitations on solar gardens in the CSG program, stating that "the majority of subscribed production capacity was being marketed to large commercial and industrial customers and that there is potential for residential or small business customers to be largely excluded from participation."

The PUC responded to Xcel's request by issuing an order imposing CSG co-location caps. These caps limited the aggregate capacity of CSGs to 5–MW for applicants already in the approval queue and 1–MW for applications submitted after September 25, 2015. The order allowed Xcel to unilaterally scale down any larger CSGs.

In opposition to the co-location caps, Sunrise filed a petition for reconsideration with the PUC on August 26, 2015. The PUC, denying the petition, reiterated that its order to include caps was based on its determination that allowing unlimited megawatt usage by large-scale utilities would "undermine the legislative intent to foster small, widely distributed solar gardens rather than utility-scale solar developments, and create a risk of significant rate increases to ratepayers." Sunrise appealed to the Minnesota Court of Appeals.

The Court affirmed PUC's decision to implement caps. It held that the order was consistent with the legislature's intent to provide communities and individuals historically foreclosed from cost-prohibitive solar energy the opportunity to take advantage of benefits previously unavailable to them.

Sunrise also argued that the Public Utility Regulatory Policies Act of 1978 ("PURPA") does not permit caps such as the one imposed by the PUC. The court rejected this argument holding that the parties were governed by Minnesota's CSG statute, and not by PURPA. Therefore, the PUC could lawfully place limitations on participation without violating state and federal law.

A copy of the decision can be downloaded here.