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September 8, 2015

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VIA E-FILING

Mr. Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place Street, Suite 350
St. Paul, MN 55101

**Re: 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**

Dear Mr. Wolf:

We are submitting this short letter on behalf of SoCore Energy, LLC; Sun Edison LLC; and SunShare, LLC (the "Solar Garden Community" or "SGC");¹ in response to the recent requests for clarification and reconsideration of the Commission's August 6, 2015, order in this Docket ("August Order") filed by both the Minnesota Department of Commerce - Division of Energy Resources (the "Department") and Sunrise Energy Ventures, LLC, respectively. Although SGC did not submit such a petition, the members strongly support the Department's petition. SGC remains acutely aware of the delays that have long plagued this program and the concern SGC has expressed on multiple occasions in this docket; namely, the pending step-down in federal tax credits. Any course of action the Commission wishes to take, we request that the Commission do so as quickly as possible. With that said, the Commission may want to consider a very specific stay tailored narrowly to items such as the release of Xcel's tariff compliance filing as well as the scaling back of facilities to comply with the Commission's August Order.²

¹ Sunrise Energy Ventures, LLC, which submitted its own petition for reconsideration in this Docket, does not join this filing by the Solar Garden Community. BHE Renewables, LLC, also does not join this filing.

² Ordinarily, the interplay between MINN. STAT. §§ 216B.26 and .27 would automatically impose a stay. Unfortunately, the Commission made the August Order effective as of August 6, 2015. *August Order*, ordering para. 11. Therefore, it is not clear that the petitions for reconsideration imposed a stay on the effectiveness of the August Order under MINN. STAT. § 216B.27 subd. 3.



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With the August Order directing Xcel Energy and developers to take immediate actions, which started on the first of September with the project viability demonstrations, the Department's job for which it is seeking clarification becomes significantly more difficult if Xcel Energy is allowed to move forward in advance of the Commission's determination.

SGC deliberated and discussed at length whether to request reconsideration or clarification of the August Order. To be sure, SGC is troubled by the Commission's decision in the August Order to adopt a portion of a settlement agreement that fails to fairly and uniformly impact solar developers. Furthermore, as aptly noted by the Department, the terms of the August Order raise significant legal and practical implementation issues. But, as previously stated, members of the SGC have struggled to bear the already long-delayed timelines and are very cautious of further delays that may risk taking advantage of the current federal tax benefits. After weighing the options, the SGC members ultimately decided to try and work in good faith through the SR*C Implementation Working Group ("Working Group") to avoid the time delays associated with a request for reconsideration. Given the recent developments in the Working Group, SGC feels compelled to support the Department and respectfully requests prompt resolution by the Commission to limit any risks of additional delay.

Since its decision to refrain from submitting a petition for clarification, members of the SGC have struggled in the Working Group to effectuate even those terms of the August Order that appeared unambiguous. For example, the Commission's direction with respect to interconnection is clear. The August Order states:

The Parties agree that for purposes of interconnecting Co-Located Community Solar Gardens to Xcel Energy's distribution system, Section 10 of the Company's Minnesota Electric Rate Tariffs do not require the Company to undertake any material upgrades in its distribution system to accommodate interconnection of Community Solar Garden applications. For purposes of this Agreement, material upgrades include, but are not limited to, the addition of substation transformers, the upgrading of existing substation transformers, the installation of new feeder bays, new overhead feeders, or new underground feeders, and re-conductor and pole line work, *where* the cost of such upgrades exceeds one million dollars. If the Company does not undertake material upgrades, where such upgrades would otherwise be needed for safety, reliability, or prudent engineering practice, then the



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Community Solar Garden will not be interconnected to the Company's distribution system.³

The one-million dollar cap on “material upgrades” to the distribution system is the limiting factor. Unfortunately, the last three Working Group meetings have largely been an exercise in debating whether the “where” highlighted above actually means “or.” In other words, Xcel Energy maintains that it has complete discretion to determine the materiality of an upgrade and rule it as off-limits under the August Order. In addition to the legal concerns raised by the Department's petition for reconsideration, Xcel Energy's interpretation renders the one-million dollar qualifier meaningless while simultaneously creating a new limitation on non-material upgrades. SGC fails to see how Xcel Energy's reading can be reconciled with the plain language of the August Order. In any event, SGC urges the Commission to grant the Department's petition to resolve the present dispute.

Similarly, we underscore the Department's request for clarity on divestiture. Although this issue was squarely before the Commission during deliberations on June 25, 2015, the Commission may have specifically avoided clarifying this issue assuming the parties would work it out in the Working Group or between themselves.⁴ Given the Working Group's inability to apply clear language in the August Order on distribution upgrades, an issue that impacts all developers reasonably equally, it defies logic to think the Working Group could resolve a far more ambiguous issue that puts the interests of the first movers within the program at odds with those that came later. The issue will therefore be passed along to the Department in the form of a dispute on co-location. In its role as arbitrator of co-location disputes, the Department is bound to face the question as to whether there is any distinction to be made between 2 projects under different ownership but in close proximity to one another and another 2 projects similarly under different ownership but in close proximity to one another simply because they once were under common ownership under a different set of rules. For its part, Xcel has recorded this scenario in the July 29, 2015, Working Group Meeting Minutes this way:

³ IN THE MATTER OF THE PETITION OF NORTHERN STATES POWER COMPANY, DBA XCEL ENERGY, FOR APPROVAL OF ITS PROPOSED COMMUNITY SOLAR GARDEN PROGRAM, Docket No. M-13-867, *Order Adopting Partial Settlement as Modified* (Aug. 6, 2015), emphasis added.

⁴ During deliberations, Commissioner Lipschultz stated “Whether [divestiture] could happen under the settlement or not, I guess I don't know, it might be one of those many unknowns we're going to have to live with for now.” *Hearing Transcript*, June 25, 2016, 238:9-12.



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Question: What is Xcel Energy going to do if one developer parks next to another? Answer: Xcel Energy clarified that under the current language, that would be allowed, but a developer could not purchase part of another developer's current project.⁵

There is nothing anywhere in Xcel Energy's tariff or Commission orders that would otherwise preclude a sale of some or all of one party's assets or interests to another, save a requirement that once an interconnection agreement or CSG contract is executed it can only be assigned with Xcel Energy's consent.⁶ If anything, Xcel Energy's tariff implies the right to transfer via the right to cure.⁷ Given the Commission's decision to not clearly address this issue, which creates a situation where developers are forced into entrenched positions (e.g., those developers who need divestiture to recover at least some value for investments stranded by the August Order and those developers who need to prohibit divestiture to find room in the interconnection queue for their own projects to proceed), it is unreasonable to assume that either the Working Group will reach substantial agreement or that the Department will be able to resolve any co-location issues without further involvement and guidance from the Commission. SGC urges the Commission to grant the Department's petition for clarification on this issue and to expressly allow divestiture.

SGC greatly appreciates the Commission's attention to this docket and understands the difficulties the Commission has faced in attempting to fashion a workable community solar garden program. The issues to date have been enormously complex, the resolution of which have been difficult and time consuming. That said, SGC also appreciates the tasks before the Department. The appropriate balance among all interests in this docket must be found. We believe that balance can be reached by granting the limited relief sought by the Department. Furthermore, we respectfully request the Commission to narrowly stay its August Order to avoid any action from Xcel Energy that would have the effect of breaking apart the queue, only for the

⁵ IN THE MATTER OF THE PETITION OF NORTHERN STATES POWER COMPANY, DBA XCEL ENERGY, FOR APPROVAL OF ITS PROPOSED COMMUNITY SOLAR GARDEN PROGRAM, Docket No. M-13-867, *Compliance Filing - Stakeholder Meeting Minutes* (Filed Aug. 24, 2015).

⁶ Consent that cannot be unreasonably withheld. We also note that for a substantial number of projects under this program, this clause would never be triggered because the agreement would not be assigned but would rather remain with an LLC whose ownership may change.

⁷ Xcel Energy Tariff Book, Sec. 9, Orig. Sheet No. 67 ("Where the Company has timely rejected an application, the Company will allow the applicant to provide additional documents or information and the sixty (60) day timeframe will begin anew for the Company to accept or reject the application.").



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Department to potentially have the unenviable task of attempting to put all of the pieces back together again.

Very truly yours,

Stoel Rives LLP

/s/ Andrew P. Moratzka

Andrew P. Moratzka

APM:kap

cc: Service List
79905394.4 0055555-00001

CERTIFICATE OF SERVICE

I, Kathy Prestidge, hereby certify that I have this day served a true and correct copy of the following document to all persons at the addresses indicated below or on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same enveloped with postage paid in the United States Mail at Minneapolis, Minnesota.

**LETTER COMMENT OF
SOLAR GARDEN COMMUNITY**

In the Matter of the Xcel Energy's Plan for a Community
Solar Garden Program Pursuant to MINN. STAT. § 216B.1641
Docket No. E-002/M-13-867

Dated this 8th day of September, 2015.

/s/ Kathy Prestidge

Kathy Prestidge

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