BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Petition of Northern States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program

ISSUE DATE: October 15, 2015

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

PROCEDURAL HISTORY

On August 6, 2015, the Commission issued its *Order Adopting Partial Settlement as Modified* in this docket.

On August 26, 2015, Sunrise Energy Ventures, LLC (Sunrise) filed a petition for reconsideration of the August 6 order and a motion to stay the order pending appeal.[1] On the same date, the Minnesota Department of Commerce (the Department) filed a request for clarification of the August 6 order.

On September 8, 2015, the following parties filed responses to Sunrise's petition and/or the Department's request for clarification:

- Xcel Energy
- Innovative Power Systems, Inc.; Minnesota Community Solar, LLC; Novel Energy Solutions, LLC; SolarStone Partners, LLC; and TruNorth Solar, LLC, filing jointly
- Solar Garden Community[2]

[1] Sunrise and Solar Garden Community requested that the Commission immediately stay its August 6 order pending a decision on the petition for reconsideration and the Department's request for clarification. The Commission will deny these requests as moot.

[2] An ad hoc group of solar developers filing jointly as the "Solar Garden Community": SoCore Energy, LLC; Sun Edison LLC; and SunShare, LLC.

- Fresh Energy
- Environmental Law and Policy Center
- Sunrise

On October 7, 2015, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Petitions for Reconsideration and Clarification Denied

The Commission has reviewed the entire record and the arguments of the parties. Based upon this review, the Commission finds that the petitions do not raise new issues, do not point to new and relevant evidence, do not expose errors in the August 6, 2015 order, and do not otherwise persuade the Commission that it should rethink the decisions set forth in its order.

The Commission concludes that its decision is consistent with the facts, the law, and the public interest, and will therefore deny the petitions for reconsideration and clarification. The Commission will, however, clarify its order in one respect, as explained in the following section.

II. Clarification on the Commission's Own Motion

The community-solar-garden statute, Minn. Stat. § 216B.1641, places several restrictions on individual garden size and subscribership. Among these restrictions is the requirement that each solar garden must have a nameplate capacity of no more than one megawatt (MW).

Xcel launched its solar-garden program in December 2014. Developers responded enthusiastically; within six months, Xcel had received applications representing over 900 MW of solar-garden capacity. In filings with the Commission, Xcel expressed concern that certain gardens, which individually complied with the statutory 1 MW limit, were co-located in groups that displayed characteristics of a single development, with aggregate capacities of as much as 50 MW.

The Commission determined that allowing unlimited co-location would render the 1 MW statutory limit superfluous, 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. Accordingly, the August 6 order established a 5 MW co-location cap on solar-garden applications submitted before September 25, 2015, and a 1 MW co-location cap on applications submitted from September 25, 2015, to September 15, 2016.

The Commission's order contemplates that Xcel will "scale down" noncompliant applications to the applicable cap level. In practice, this means that a developer must either voluntarily withdraw noncompliant applications or have them cancelled by Xcel. For example, if a developer had ten co-located 1 MW applications in queue as of September 25, 2015, the developer could withdraw five applications to comply with the 5 MW cap.

Some developers expressed a desire to transfer applications that exceed the co-location cap to another developer without those applications' losing their place in the queue. Xcel and several other developers argued that the Commission's order does not permit this practice.

The Commission clarifies that its August 6 order does not allow solar-garden applicants to transfer their queue position related to a solar-garden application to a different developer for that portion of the project that exceeds the caps established by the Commission. A developer resizing its solar-garden project to meet a cap is not prevented from selling assets—land rights, for example—that it can no longer use. However, if the transferee wishes to develop a solar garden with these assets, it must submit an application and begin the process anew.

Allowing developers with large co-located projects to transfer the surplus applications and associated queue positions to other developers would undermine the co-location caps and the ratepayer protections they were designed to ensure. Allowing transfer would risk the construction of utility-scale solar installations in this community-based program and jeopardize the rate stability normally assured by close regulatory scrutiny of large-scale resource acquisitions.

III. Stay Pending Appeal Denied

Sunrise requests that the Commission stay its August 6 order pending Sunrise's appeal to the Minnesota Court of Appeals.

The Public Utilities Act and the Administrative Procedure Act give the Commission the discretion to stay orders pending action by appellate courts.[3] The Commission grants a stay when it appears that a stay would provide the most equitable means of balancing the interests of the parties.

In balancing these interests, the Commission weighs factors such as the likelihood that denying the stay would cause irreparable harm, the likelihood that denying the stay would render the appeal meaningless, the gravity of any harm the stay would cause non-moving parties, the likelihood of reversal on appeal, and whether granting the stay would frustrate public policy.

Having considered these factors, the Commission concludes that a stay would not equitably balance the parties' interests.

Sunrise suggests that it may suffer irreparable harm in the absence of a stay. However, Sunrise has failed to make any affirmative showing to that effect. And a stay of the Commission's August 6 order is all but certain to delay construction of solar gardens, depriving Xcel's ratepayers of the opportunity to participate in community solar generation and frustrating state policy in favor of renewable generation. Further, the impending expiration of the federal Investment Tax Credit—which accounts for a substantial portion of many solar gardens' financing—means that any significant delay could put the success of the entire solar-garden program in jeopardy.

For the foregoing reasons, the Commission will deny Sunrise's request for a stay pending appeal.

IV. Compliance Filing

The Commission will require Xcel to file, within five days of this order, the compliance tariffs required by the August 6 order, including the Commission's clarification in this order. The Commission will order that the tariffs become effective seven days after filing unless the

[3] Minn. Stat. § 216B.53; Minn. Stat. § 14.65.

Department or another party files an objection or the Commission through its Executive Secretary issues a notice indicating otherwise.

ORDER

1. Sunrise Energy Ventures' petition for reconsideration is hereby denied.

2. The Department's request for clarification is hereby denied.

3. The Commission clarifies that its August 6 order does not allow solar-garden applicants to transfer their queue position related to a solar-garden application to a different developer for that portion of the project that exceeds the caps established by the Commission.

4. Sunrise's and Solar Garden Community's requests for an immediate stay are denied as moot.

5. Sunrise's motion for a stay pending appeal is denied.

6. Within five days of this order, Xcel shall file the compliance tariffs required by the August 6 order, including the Commission's clarification in this order. The tariffs shall become effective seven days after filing unless the Department or another party files an objection or the Commission through its Executive Secretary issues a notice indicating otherwise.

7. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary

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