iDEAL ENERGIES
A GREEN² COMPANY

September 17, 2018

VIA ELECTRONIC FILING

Minnesota Public Utilities Commission
121 7th Place East
Suite 350
Saint Paul, MN 55101-2147

Re: Comments of the Ideal Energies, LLC on Xcel Energy's Proposed Tariff Rates to Solar*Rewards and Solar*Rewards Community Customer Contracts

PUC Docket No: E002/M-18-381: In the Matter of Solar*Rewards Program and Community Solar Garden Program Tariff Updates

Dear Commissioners:

iDEAL Energies, LLC, ("iDEAL Energies") hereby submits comments in response to the Notice of Supplemental Comment Period issued by the Minnesota Public Utilities Commission ("Commission") on August 27, 2018 in the above-referenced docket. Xcel Energy's ("Xcel") proposed tariff revisions to Solar*Rewards and Solar*Rewards Community Customer Contracts provided in its August 14, 2018 Reply comments are premised on an incorrect interpretation of the statute authorizing the Solar Rewards Program, Minn. Stat. § 116C.7792, as recently amended. Accordingly, iDEAL Energies requests that the Commission decline to adopt the proposed tariff revisions and order Xcel to submit modified tariff revisions consistent with the actual and intended requirements of the revised § 116C.7792, as described in these comments.

1. **Do the proposed tariff revisions in Xcel Energy's August 14, 2018 Reply comments comply with the revised Minn. Stat. § 116C.7792?**

No. Xcel's proposed tariff revisions are premised on an interpretation of revised § 116C.7792 that would render customers ineligible for *any* solar rewards incentive if the total aggregate capacity of all systems in place on the customer's premises is greater than 40 kilowatts ("kW"). This interpretation (1) does not comport with the plain language of the revised § 116C.7792, (2) is entirely inconsistent with the purpose underlying the revisions to § 116C.7792, (3) would disincentive expanded solar energy production, (4) would render many customers previously receiving Made in Minnesota incentives ineligible for the solar rewards incentive, and (5) would render those who are currently installing systems of more than 40 kW and who

secured funding prior to June 1 based on anticipated receipt of solar rewards ineligible for the incentive, thus creating a cascade of defaults under existing agreements and leaving customers without funding to complete projects.

a. Plain Language.

In assessing whether Xcel's proposed tariff revisions comport with revised Minn. Stat. § 116C.7792, the Commission should begin with the plain language of the statute.[1] In short, the revised statute simply means that the owner of a solar energy system or systems can receive the solar rewards incentive for up to 40 kW at the particular service address that receives that incentive.

The relevant portion of Minn. Stat. § 116C.7792 is as follows, with the recent revisions effective June 1, 2018 indicated in underlined text for new language and ~~strikethrough text~~ for deleted language:

> The utility subject to section 116C.779 shall operate a program to provide solar energy production incentives for solar energy systems of no more than a total aggregate nameplate capacity of ~~20~~ 40 kilowatts direct current per premise. The owner of a solar energy system installed before June 1, 2018, is eligible to receive a production incentive under this section for any additional solar energy systems constructed at the same customer location, provided that the aggregate capacity of all systems at the customer location does not exceed 40 kilowatts.[2]

Prior to the 2018 revisions, the first sentence of § 116C.7792 permitted solar energy system owners to receive a solar rewards incentive for up to 20 kW of direct current. The 2018 revisions to that first sentence simply increased the total kilowatts eligible for the solar rewards incentive from 20 to 40, and clarified that such limits apply "per premise." No one disputes that the first sentence of § 116C.7792, as revised, accomplishes the straightforward goal of "increase[ing] the eligible capacity for Solar*Rewards incentive to 40 kW for photovoltaic systems at a Service Address."[3]

When read in context with the first sentence, the plain language of the second added sentence merely clarifies the revised limitation in the first: owners can obtain the solar rewards incentive for up to 40 kilowatts at a particular service address. The second sentence specifically applies to owners of systems installed before the revisions to § 116C.7792 went into effect, and provides that such owners are "eligible to receive a production incentive under this section for any additional solar energy systems constructed at the same customer location, *provided that the*

---

[1] *State v. R.H.B.*, 821 N.W.2d 817, 820 (Minn. 2012) ("Interpretation of a statute begins with the statute's plain language.").
[2] 2018 Minn. Laws Chapter 193 – H.F. No. 3232, *available at*: https://www.revisor.mn.gov/laws/2018/0/193/%5E(%3FPlaws.0.1.0%5B0-9%5C.a-zA-Z%5Cs/%5C/%5D+)$#laws.0.1.0.
[3] *See* Xcel Reply Comments at 2.

aggregate capacity of all systems at the customer location does not exceed 40 kilowatts."[4] The second sentence was included as part of the 2018 revisions to clarify a straightforward question: how will the increased incentive cap apply to those eligible to receive or already receiving an incentive under the prior statutory language? Without clarification on this question, owners of previously installed systems may have sought to stack an additional 40-kilowatt incentive for a newly-constructed system on top of the up to 20 kilowatts for which they were already receiving an incentive. In order to avoid confusion about § 116C.7792's application to existing owners, the second sentence of revised § 116C.7792 clarifies that the same 40-kilowatt aggregate limit will apply to each customer location regardless of how many separate systems exist on that location or when they were installed.

Contrary to Xcel's position, the clause "provided that the aggregate capacity of *all systems* at the customer location does not exceed 40 kilowatts" at the end of the second sentence does not render owners ineligible for an incentive if their total solar capacity at the service address exceeds 40 kilowatts. Rather, when read in its proper context, it's clear that "all systems at the customer location" refers to all systems at the customer location *that receive the incentive*. Again, the operative sentence provides:

> The owner of a solar energy system installed before June 1, 2018, is eligible to receive a production incentive under this section for any additional solar energy systems constructed at the same customer location, provided that the aggregate capacity of all systems at the customer location does not exceed 40 kilowatts.[5]

Critically, the meaning of the phrase "all systems" is informed by the context of this second sentence as a whole. The first clause of this sentence refers to two types of solar energy systems—those "installed before June 1, 2018" and "and any additional solar energy systems constructed at the same customer location," and the plain language of that clause makes clear that both types of systems may receive the incentive. When read in conjunction with the first clause, the term "all systems" in the second clause of the sentence is a clear and unambiguous shorthand reference to the systems described in the first clause, both of which, again, are systems that are "eligible to receive a production incentive." As such, read as a whole, the second sentence simply provides that solar energy systems at the same customer location constructed before or after June 1 are "eligible to receive a production incentive" with the simple caveat that "all systems" in those categories (i.e., receiving the incentive) cannot exceed 40 kilowatts, consistent with the general requirement in the first sentence of revised § 116C.7792. To arrive at

---

[4] 2018 Minn. Laws Chapter 193 – H.F. No. 3232, *available at*: https://www.revisor.mn.gov/laws/2018/0/193/%5E(%3FPlaws.0.1.0%5B0-9%5C.a-zA-Z%5Cs/%5C/%5D+)$#laws.0.1.0.

[5] 2018 Minn. Laws Chapter 193 – H.F. No. 3232, *available at*: https://www.revisor.mn.gov/laws/2018/0/193/%5E(%3FPlaws.0.1.0%5B0-9%5C.a-zA-Z%5Cs/%5C/%5D+)$#laws.0.1.0.

Xcel's restrictive interpretation of "all systems" would require a reading of the final clause of the second sentence contrary to its plain meaning, in isolation, and out of context.[6]

b. The Purpose of the Revisions and the Consequences of Xcel's Interpretation.

If the Commission determines that the revised § 116C.7792 is ambiguous as to whether "all systems" refers to all systems receiving the incentive or all solar capacity now or ever installed, it should look to codified tools of statutory interpretation to ascertain legislative intent, including the purpose of the revisions, the legislative history of the revisions, and the drastic consequences of Xcel's misguided interpretation.[7] These tools point to one unequivocal result: the Legislature's intent in adopting the revisions was to expand solar incentive eligibility to comport with the prior kilowatt limitations of the Made in Minnesota Program.

The story underlying the 2018 revisions to § 116C.7792 began with the Legislature's adoption of the omnibus supplemental budget bill during the 2017 regular session. In that bill, the Legislature eliminated the Made in Minnesota Program[8] and placed additional funds into the Solar Rewards Program established under § 116C.7792. That transfer of funds, however, did not account for a key discrepancy in eligibility between the Made in Minnesota Program (up to a 40 kW incentive) and the Solar Rewards Program (up to a 20 kW incentive) where the new funds would be housed. To resolve this discrepancy and align the programs' eligibility caps, Representative Marion O'Neill introduced H.F. 3232 during the 2018 regular session to increase the eligibility cap for the existing Solar Rewards Program to 40 kilowatts through technical amendments to § 116C.7792.

Three key pieces of legislative history surrounding adoption of H.F. 3232 underscore that the central purpose of the bill was to broaden eligibility requirements for solar rewards incentives by doubling the kW-cap for the incentive.

- Testimony of the Representative Marion O'Neill, the author of H.F. 3232: "House Bill 3232 amends the Solar Rewards Program for Xcel Energy, and specifically it

---

[6] *R.S. v. State*, 459 N.W.2d 680, 687 (Minn. 1990) (explaining that a statute must be "interpreted by its plain language and in the context of the act and its purposes"); *Chiodo v. Bd. of Educ.*, 215 N.W.2d 806, 808 (Minn. 1974) (explaining that "words of a statute are to be viewed in their setting, not isolated from their context").

[7] Minn. Stat. § 645.16 (2018) ("When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters: (1) the occasion and necessity for the law; (2) the circumstances under which it was enacted; (3) the mischief to be remedied; (4) the object to be attained . . . (6) the consequences of a particular interpretation; [and] (7) the contemporaneous legislative history . . . .").

[8] 2017 Minn. Laws Chapter 94 – S.F. No. 1456, art. X, § 22 (May 30, 2017), *available at*: https://www.revisor.mn.gov/laws?id=94&doctype=Chapter&year=2017&type=0.

increases the amount from 20 to 40 kw of a project that's available for the program."[9]

- Testimony of Reid LeBeau on behalf of iDEAL Energies in Support of H.F. 3232: "What this bill seeks to address is last year at the end of session in the supplemental budget bill, the legislature eliminated the Made in Minnesota Program, and in doing so took money from the Made in Minnesota Program and put additional funds into the Solar Rewards Program. In doing that, what we didn't realize at the time during the end of session, was that Made in Minnesota had a cap on the projects of 40 kilowatts, where Solar Rewards had a cap on the projects of 20 kilowatts, so we're just trying to have the policy follow the money that is intended to fund projects within that program. **That's all the bill does.**"[10]

- H.F. 3232 House Research Bill Summary (April 30, 2018): "House File 3232 amends Xcel Energy's Solar Rewards program, which provides production incentives for the installation of solar energy systems. First, **it broadens eligibility for the incentive by increasing the maximum capacity of one or more solar energy systems operating at the same location from 20 kW to 40 kW**. Second, it allows systems up to 40 kW to be counted toward Xcel's solar energy standard, which requires that 0.15 percent of the utility's retail electric sales be generated from solar energy systems at or below that capacity by the end of 2020."[11]

The interpretation of revised § 116C.7792 advanced by iDEAL Energies in Part (A)(1) of these comments is fully grounded in H.F. 3232's purpose of *expanding* solar rewards eligibility as evidenced by the contemporaneous legislative history. Under that interpretation, the revisions to § 116C.7792 effectuate the straightforward goal of revising solar rewards eligibility to match eligibility requirements in the former Made in Minnesota Program. And the second sentence of revised § 116C.7792 simply provides that solar systems at the same location constructed before and after June 1 are "eligible to receive a production incentive" with the caveat that "all systems" receiving the incentive cannot exceed 40 kilowatts. This interpretation is not only grounded in the purpose underlying H.F. 3232, it is the *only interpretation* that ensures fidelity to that purpose.

In contrast, Xcel's restrictive interpretation of revised § 116C.7792 fundamentally undermines the purpose of H.F. 3232 and leads to drastic consequences for many relying on the

---

[9] Testimony of Rep. Marion O'Neill on H.F. 3232, Minnesota House Ways and Means Committee Hearing at 152:44-153:17 (Mar. 26, 2018) (emphasis added), *audio available at*: http://ww2.house.leg.state.mn.us/audio/mp3ls90/ways03262018a.mp3.

[10] Testimony of Reid LeBeau on H.F. 3232, Minnesota House Ways and Means Committee Hearing at 153:20-154:02 (Mar. 26, 2018) (emphasis added), *audio available at*: http://ww2.house.leg.state.mn.us/audio/mp3ls90/ways03262018a.mp3.

[11] H.F. 3232 (Second Engrossment) House Research Bill Summary (April 30, 2018), *available at*: http://www.house.leg.state.mn.us/hrd/bs/90/HF3232.pdf.

incentive.[12] Under Xcel's interpretation, the term "all systems" in the phrase "provided that the aggregate capacity of all systems at the customer location does not exceed 40 kilowatts" refers to all solar capacity now or ever installed at the particular service location. In other words, any owner with 41 or more kilowatts of total solar capacity at a particular location is completely ineligible for the incentive. Xcel's interpretation, if accepted, would drastically eliminate *all* incentive eligibility for (1) any owner who chooses to expand solar system capacity in the future such that their aggregate capacity becomes more than 40 kilowatts or (2) the *many* customers previously receiving the Made in Minnesota incentive who have an aggregate system capacity of more than 40 kW at their location. Xcel thus interprets revisions aimed at "broaden[ing] eligibility for the incentive"[13] to penalize and thereby disincentivize owners from expanding solar operations, and at the same time render ineligible scores of customers. Simply put, Xcel's interpretation would turn the purpose of the revised § 116C.7792 on its head.

Xcel's interpretation will also pull the rug out from under customers who received funding for a project prior to June 1 based on anticipated solar rewards eligibility, but who are still in the process of installation. Customers in that position who are installing systems of more than 40 kW will be ineligible for the incentive relied upon in their economic transaction, notwithstanding Xcel's agreement to provide that incentive without any of the restrictions it now imposes at the eleventh hour. As such, it is certain that Xcel's interpretation will put such customers in default of their agreements with installers and lenders, and without the funding they relied upon to pursue their solar project.

The crippling economic consequences resulting from Xcel's interpretation cannot be understated. The restrictions on eligibility for current and future customers will no doubt affect the tax basis for the transaction relied upon by the parties to solar projects, affect depreciation and tax credit recapture, and violate financial covenants with financers. The detriment to the installer community and Xcel customers would be immense and would in all likelihood compromise the viability of the entire solar industry in Minnesota. Xcel should not be permitted to use a statute intended by all parties to eliminate barriers to solar energy production to thwart that very purpose.

c. <u>The Legislative Compromise</u>.

Finally, the interpretation proffered by Xcel runs contrary to the representations Xcel made during the negotiations of the language contained in H.F. 3232. As with all legislative enactments, parties propose language, advance position, and make policy concession to reach an agreement on a particular matter. In this case, the language of H.F. 3232 was crafted specifically with the understanding that the current tariff language in effect would be operative and that no additional changes to those underlying rules would be necessary. That was the entire reason for

---

[12] Minn. Stat. § 645.16 (2018) ("When the words of a law are not explicit, the intention of the legislature may be ascertained by considering . . . (6) the consequences of a particular interpretation . . . .").

[13] H.F. 3232 (Second Engrossment) House Research Bill Summary (April 30, 2018), *available at*: http://www.house.leg.state.mn.us/hrd/bs/90/HF3232.pdf.

the language contained on lines 2.4 to 2.8 of H.F. 3232 (4th Engrossment),[14] which provides that Xcel would not be required to file a plan with the Commissioner to effectuate the amendments to § 116C.7792. Now, sensing an opportunity to impose rules that are contrary to the bill it negotiated, Xcel seeks to do just that.

Additionally, it was with the understanding that the current tariff would be the underpinning for the implementation of the changes to the Solar Rewards Program that the proponents of H.F. 3232 agreed to the language contained on lines 1.24-2.1 concerning distributed generation.[15] It was Xcel and Xcel alone that sought this advantageous language, which was a key piece of the bargained-for exchange between the parties. The bill's proponents received new statutory language with the current tariff in place and Xcel received an increase in its small-scale solar carve-out capacity requirements. Prior to this compromise, systems up to 20 kW met Xcel's small-scale carve-out requirements; under the negotiated revisions to § 116C.7792, systems up to 40 kW now count towards Xcel's compliance mandates. Xcel should not be permitted to upend this negotiated agreement with its opportunistic (and legally flawed) interpretation of revised § 116C.7792.

2. **Did the 2018 legislative change to Minn. Stat. § 116C.7792 establish an aggregate capacity limit of 40 kW for all solar systems or all solar systems receiving the Solar*Rewards at a customer's premise?**

For the reasons described in iDEAL Energies' response to Question 1 in these comments, the revisions to § 116C.7792 established an aggregate capacity limit of 40 kW for solar energy systems receiving a solar rewards incentive at a customer's premise. Interpreting the revised § 116C.7792 as disqualifying a customer with an aggregate solar system capacity of more than 40 kW from the incentive runs counter to the plain language of the statute and the purpose of the 2018 revisions, and would drastically cut eligibility for the incentive.

3. **Is a customer allowed to bifurcate a portion of a solar system larger than 40 kW to qualify for Solar*Rewards incentives?**

No. The revised § 116C.7792 states that the utility shall operate a program to provide solar energy production incentives for "solar energy systems of no more than a total *aggregate*

---

[14] H.F. 3232 (Fourth Engrossment) ("A change to the program to include projects up to a nameplate capacity of 40 kilowatts or less does not require the utility to file a plan with the commissioner. Any plan approved by the commissioner of commerce must not provide an increased incentive scale over prior years unless the commissioner demonstrates that changes in the market for solar energy facilities require an increase."), *available at*: https://www.revisor.mn.gov/bills/text.php?number=HF3232&version=latest&session=ls90&session_year=2018&session_number=0.

[15] H.F. 3232 (Fourth Engrossment) (qualifying the prior statutory requirement that "the solar system must be sized to less than 120 percent of the customer's on-site annual energy consumption" with the phrase "when combined with other distributed generation resources and subscriptions provided under section 216B.1641 associated with the premise").

nameplate capacity of 40 kilowatts direct current *per premise*." This language contemplates the possibility that a customer could have multiple "solar energy systems" at his or her location. In that circumstance, the statute is clear that the aggregate incentive cap of 40 kW applies "per premise," meaning that no customer can receive more than a 40 kW Solar Rewards incentive per service location, regardless of the amount and capacity of all solar systems at that location. In other words, a customer may bifurcate his or her systems in a particular location in any way the customer sees fit; however, that will do nothing to increase the 40 kW incentive cap per customer location.

Conclusion

Xcel's opportunistic and flawed interpretation of the revisions to Minn. Stat. § 116C.7792 is without merit. It is contrary to the unambiguous plain language of the statute. If the language is found to be ambiguous, Xcel's interpretation nonetheless fails as a matter of statutory construction in light of the legislative history of House File 3232 and the drastic negative consequences that would result from Xcel's position. Finally, Xcel's interpretation fails because it runs contrary to the representations made by Xcel in negotiating the language throughout the legislative process and would permit it to undo the bargain struck with the Legislature and the bill's proponents.

Respectfully submitted,

Ideal Energies, LLC

Braden Solum
VP Business Development

Ideal Energies, LLC

Chris Psihos, Esq.
President/CEO