

# Minnesota Public Utilities Commission

## Staff Briefing Papers

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Meeting Date: October 29, 2015.....\*\*Agenda Item #1

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Company: Xcel Energy (Xcel or the Company)

Docket No. **E-002/M-13-867**

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

Issue: What action should the Commission take in response to Xcel’s compliance filing seeking a contested case in the Community Solar Garden (CSG) docket?

Staff: Susan Mackenzie.....651-201-2241

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### Relevant Documents

Xcel settlement compliance letter.....July 24, 2015  
PUC Notice of Comment Period..... issued August 10, 2015  
Sen. Marty letter and attachment..... August 14, 2015  
Kandiyo Consulting, LLC..... August 31, 2015  
Department of Commerce..... August 31, 2015  
Sundial Solar..... August 31, 2015  
Fresh Energy and Environmental Law & Policy Center ..... August 31, 2015  
SunShare, LLC..... September 1, 2015  
Xcel reply..... September 14, 2015  
SunShare, LLC reply ..... September 14, 2015

### ***PUC Orders issued in 13-867:***

*Order Rejecting Xcel’s Solar-Garden Tariff Filing and Requiring the Company to File a Revised Solar-Garden Plan*..... issued April 7, 2014  
*Order Approving Solar-Garden Plan with Modifications*..... issued September 17, 2014  
*Order Clarifying Solar-Garden Application Process*..... issued February 13, 2015  
*Order Denying Request for Clarification and Setting Public Information Requirements*..... issued February 13, 2015  
*Order Adopting Partial Settlement as Modified*..... issued August 6, 2015  
*Order Denying Petitions For Reconsideration and Clarification, Clarifying August 6 Order On Own Motion, Denying Stay, and Requiring Compliance Filing*..... issued October 15, 2015

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### ***Statement of the issue***

What action should the Commission take in response to Xcel's compliance filing seeking a contested case in the Community Solar Garden (CSG) docket?

### ***Background***

On July 24, 2015, Xcel and the co-signatories to the Partial Settlement Agreement (PSA) filed a proposal for "Prospective Program Design and Request For Investigation" in response to Section 2.3. (b) of the PSA.

On August 10, 2015, the Commission issued a notice seeking comments on Xcel's proposal, including answers to the following questions:

- Is Commission action necessary, and if so, in what time frame and why?
- What is the relative priority of the issues presented?
- Are there facts in dispute? If so, list the issues and what factual disputes exist within those issues. Please differentiate between issues that involve statutory requirements and those that address program design. Would a contested case assist the Commission in its statutory interpretation?
- Does the record-to-date contain adequate information for the Commission to make a decision? Would some issues benefit from greater experience with the CSG program? For what time period and why?
- What is the best way to develop additional information if needed---contested case, further comments, stakeholder meetings, additional time, other?
- What timelines are reasonable for developing additional information?
- For additional issues, describe the issue(s) and answer each of the questions above.

On August 31, 2015, the following parties filed comments in response to the notice: the Minnesota Department of Commerce (Department), Kandiyo Consulting, LLC (Kandiyo), Sundial Solar, and Fresh Energy filed jointly with the Environmental Law & Policy Center (Fresh Energy/ELPC). On September 1, 2015, SunShare, LLC (SunShare) filed comments.

On September 14, 2015, Xcel and SunShare filed reply comments.

### ***Commission's August 6, 2015 Order***

On July 24, 2015, Xcel and the co-signatories to the PSA filed a letter consistent with Section 2.3.(b) of the Settlement adopted by the Commission in its August 6, 2015 Order. The August 6 Order (at page 13) states:

Finally, the agreement provides that the parties will ask the Commission to determine whether co-location limits will be applied to solar-garden applications submitted after September 15, 2016, and will propose a schedule for addressing other prospective changes to the program:

## 2.3 Community Solar Garden Administration . . .

**b. Going Forward Community Solar Program Design.** The Parties shall request that the Commission determine whether further co-location limits shall be applied for applications submitted after September 15, 2016. Provided the Commission adopts and approves this Agreement, the Parties will submit a compliance filing within 30 days of the Commission's June 25th Hearing that provides a schedule for discussing and addressing material prospective Solar Garden program design considerations, including but not limited to the size of co-located gardens, how to accommodate development on marginal lands owned by governmental or quasi-governmental entities, and transitioning to new rate structures, such as the value of solar.

### *Positions of the parties*

#### *Xcel's July 24, 2015 compliance letter and proposal for a contested case*

On July 24, 2015, Xcel and the co-signatories of the PSA jointly submitted a compliance letter to meet the requirements agreed to in Section 2.3.(b) of the PSA. In it, Xcel requested that the Commission open an investigation into prospective program design changes for the CSG program and that these changes take effect no sooner than January 1, 2017.<sup>1</sup> The Company proposed that the Commission refer the investigation of a specific list of issues to the Office of Administrative Hearings (OAH) for a contested case.

Xcel argued that "the complexity and interdependency of the disputed issues going forward lend themselves to a contested case proceeding before an independent fact-finder,"<sup>2</sup> during which facts can be developed and disputed issues narrowed and reviewed in the context of a complete record. Xcel argued this process would result in a cohesive set of recommendations.

Xcel believes a contested case structure is best to address primary issues, at the same time the stakeholder implementation workgroup continues to address day-to-day and technical issues. A contested case will not affect continuing implementation of the program based on the Commission's August 6, 2015 Order, the work of the workgroup, or the processing of program applications.

Xcel argued that a contested case will: (1) allow for a thorough development of the record, (2) "synchronize" with the terms of the Commission's August 6 Order regarding programmatic changes, and (3) allow the record to be brought back to the Commission in sufficient time to decide important and material program issues.

*Issues for investigation.* Xcel and the co-signatories of the PSA recommended that the proceeding should address, at a minimum<sup>3</sup>, the following issues:

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<sup>1</sup> This represents a change in the settlement language, which indicates that the 1 MW limit on co-located gardens would apply through September 15, 2016.

<sup>2</sup> Xcel letter, p. 2.

<sup>3</sup> Xcel and the co-signatories noted that the Commission may wish to broaden the scope of the proceeding by including additional issues.

- Should the Commission modify the subscriber bill credit rate (the Applicable Retail Rate) formula for Solar\*Rewards Community?
- Should the Commission adopt other bill credit rate formulas for Solar\*Rewards Community, such as the Value of Solar?
- Should the Commission allow Solar\*Rewards Community applicants to participate with co-located gardens if the gardens' aggregate capacity exceeds 1 MW? If so, to what extent?
- Should the Commission allow special rules such as larger sized garden development on marginal lands owned by public or quasi-public entities? If so, to what extent?
- What actions should the Commission take, if any, to ensure minority participation in the program?
- What actions should the Commission take, if any, to ensure the participation of Residential class customers in the program?
- What actions should the Commission take, if any, regarding the Company's interconnection review practices for community solar gardens?
- How should future distribution system upgrades driven by community solar (and outside of planned grid modernization investments) be treated? How and when should upgrades be made, and at whose cost?

Xcel proposed that the Commission initiate and refer the matter to the OAH no later than October 1, 2015, and that the OAH issue its report and recommendation within eight months or no later than July 1, 2016.

*Department of Commerce (Department or DOC)*

The Department stated that a contested case is not required and recommended that the Commission address a limited number of issues through written comments. The DOC noted that on August 14, 2015, State Senator John Marty filed comments requesting that the Commission address participation by low-income customers as part of its ongoing oversight of the CSG program. For this reason, the DOC asked the Commission to solicit written comments on how to ensure minority contractor participation in CSG development, and subscriber participation in CSGs by minority and residential customers.

The Department argued that the appropriate bill credit rate and whether to move to a Value of Solar (VOS) rate will need to be addressed by the Commission. Since the Commission has already approved a methodology for determining a VOS, it will not need to be revisited as part of a contested case.

The Department commented that the issues of the future distribution system upgrades and interconnection practices for CSGs may be better addressed after more experience with CSG's.

The DOC noted that Xcel is required to provide relevant information on interconnection and application tracking in its monthly reports. If these reports and/or individual disputes brought forward indicate a need for Commission action, the Commission can take up those issues as they arise.

*SunShare, LLC (SunShare)*

SunShare opposed Xcel's proposal to pursue a contested case proceeding, arguing that it would be both costly and time consuming. It argued that the Commission's standard notice and comment process would be preferable. A contested case would require stakeholders to reiterate the entire record of the case for the ALJ or risk prejudice against their own position. Stakeholder-parties to the proceeding would have to retain attorneys. Given this expense, SunShare questioned whether it was necessary for the Commission to launch a contested case proceeding under Minn. Stat. § 216B.14.

SunShare also argued that a contested case is not the appropriate procedural path for addressing the issues identified by Xcel, and that Xcel failed to provide the correct legal and regulatory standard for engaging the OAH in a contested case. The issues Xcel asked the Commission to address are policy issues better addressed through notice and comment.

Like the Department, SunShare noted that Senator Marty requested the Commission to work with Xcel and the DOC to ensure "that a portion of the [S\*RC] program benefit low income households." This issue is better addressed through the Commission's notice and comment procedure, which provides access for all stakeholders in a way an ALJ proceeding does not.

On interconnection practices, which Xcel has proposed for investigation, SunShare hoped the Commission would address these in a more expedited manner as part of the complaint filed by SunShare on August 28, 2015, in Docket 15-786.

*Kandiyo Consulting, LLC (Kandiyo)*

Kandiyo supported sending major, contentious issues to an ALJ for an expedited contested case hearing. However, it also noted that this may result in the resolution of issues on a timeline that puts the 2016 construction season and access to the current package of federal tax credits at risk.

Kandiyo proposed the following issues be resolved through a contested case process:

- *Definition of co-located capacity.* This is a disputed issue that needs a clear and thoughtful standard to be applied to all types of projects. Xcel proposed a one-mile standard for determining when two projects are separate and do not represent capacity above the limit. This may work for projects that are ground-mounted in low-density areas but it is unworkable for dense urban areas.
- *Limitations on distribution and transmission upgrades.* Despite the Commission's grid modernization process that began on September 25, there will be de facto changes to the grid as a result of the interconnection of many solar projects sized from 1-5 MW. The discussions surrounding material upgrades and a \$1 million cap are unlikely to be

resolved without the development of additional information through a contested case process.

- *Interconnection process.* The complaint filed by SunShare demonstrates the frustration with Xcel's interconnection process. An ALJ process could be used to gather information on the barriers to wide-scale solar deployment, especially those created by Xcel and the regulatory process. Since PURPA rules, MISO processes, and other administrative procedures may be impacted, a more formal ALJ process may be required.
- *Rates for CSG.* Current bill credit rates should remain in effect through 2016. However, rate adjustments may be needed thereafter to reflect the different scales, subscriber bases, developer modes, ratepayer impacts and other issues of the CSG program. Gathering this information could be delegated to an ALJ process.

Kandiyo believes the following issues do not need to be resolved through a contested case:

- *Projects less than 1 MW should proceed as expeditiously as possible.* Project applications that are less than 1 MW and do not present any co-location issues should be allowed to proceed. Xcel has indicated that applications less than 250 kW, particularly those interconnecting on the host site's side of the meter, can be quickly reviewed and approved without going into the interconnection queue.
- *Rates for projects below 1 MW.* The current bill credit rate structure is appropriate for these projects; it provides additional incentives for residential and small general service ratepayers and projects below 250 KW. The issue of the bill credit after an initial phase may be an issue for an ALJ process but should not affect the processing of gardens less than 1 MW during the contested case process. Any change in rates should not be implemented prior to December 2016 and any reduction in the ITC should be reflected in the level of the bill credit.
- *Low-income benefits and participation goals.* Kandiyo believes the Commission can gather information on its own and order Xcel to implement program changes that ensure benefits of the CSG program go to low-income households. The Commission can work with Xcel to set participation goals for women, minority and veteran-owned businesses in project development and operation. Kandiyo noted there is already broad consensus in the solar community for doing so.

### *Sundial Solar (Sundial)*

Sundial recommended that the Commission:

- Order Xcel to expedite work on all applications under 1 MW so that these projects can meet the 2016 deadline for the ITC step-down.
- Re-examine the August 6 Order and reaffirm the 1 MW limit in statute.
- Study the potential of implementing a utility scale solar program and state-wide deployment of solar energy.

- Investigate the potential of creating a solar renewable energy certificate (S-REC) market as a tool in adopting the EPA Clean Power Plan and facilitating state-wide solar deployment.

*Fresh Energy and Environmental Law & Policy Center (Fresh Energy/ELPC)*

Fresh Energy/ELPC argued that the issues posed by Xcel do not involve material facts in dispute nor require a lengthy and resource-intensive contested case proceeding. Instead, it suggested the Commission open comment periods to resolve CSG issues by mid-2016, and that these decisions then be applied to projects anticipating interconnection in 2017.

Fresh Energy/ELPC believes a public comment process will more efficiently provide the Commission with an adequate record to make policy decisions, and will not require the time and resources required by a contested case. Contested cases are most useful when there are disputed facts necessary to the outcome of quasi-judicial proceedings involving specific parties.<sup>4</sup> This is not the case here. While it is within the Commission's discretion to refer issues to the OAH, agencies like the Commission typically resolve policy/quasi-legislative issues using a public comment or rulemaking process that allows for broad public participation. Fresh Energy/ELPC concluded that the public comment process better meets Minn. Rule 7829.0200, which states that "[t]his chapter must be construed to secure the just, speedy, and economical determination of issues before the commission."

Fresh Energy/ELPC argued that each of the eight issues listed by Xcel are policy decisions. Therefore, these issues can be decided without a contested case.

- *Modification and/or adoption of bill credit rate formulas.* The Commission can modify or adopt a bill credit rate formula, such as the VOS and/or specific adders to it, without a contested case. The VOS methodology has been approved by the Commission and the process for verifying calculations has already been done without a contested case. Regarding possible adders, the Commission has already received substantial comments on adder designs. While the Commission did not receive much detailed financial information on a developer by developer basis, it is not clear if or how the likelihood that this information would be shared would change in a contested case. There is no "magic number" bill credit that is financeable for all business models and Fresh Energy/ELPC does not believe that the statute requires a bill credit to support every possible project. As such, the bill credit is not a "fact" that can be ascertained through a contested case. While an ALJ could help organize the record on this point, parties would be able to make similar recommendations through Commission comment periods.
- *Other policy considerations.* Prioritization of development on marginal lands (such as brownfields) and residential and minority participation in the CSG program, are important goals worthy of Commission consideration. However, they do not hinge on

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<sup>4</sup> Minn. Rule 7829.1000 provides that where a proceeding involves contested material facts and there is a right to a hearing under statute or rule, or if the Commission finds that all significant issues have not been resolved to its satisfaction, the Commission shall refer the matter to the OAH for contested case proceedings.



disputed facts. The Commission can make informed decisions on how best to prioritize these issues through the standard comment process.

- *Minority participation in CSG program.* Creating more opportunities for minority and low income participation in both the workforce and subscription base of CSGs is an important policy goal. This is the focus of the newly-launched program by President Obama (the Solar Access for All initiative). Fresh Energy is a member of the National Community Solar Garden Partnership, which is evaluating best practices in community solar policies. It is also researching financing solutions to expand low income subscriber participation. Fresh Energy/ELPC does not believe a contested case proceeding is the best way to design new program rules around these policy goals.
- *Residential subscriber participation.* Fresh Energy/ELPC noted that no CSGs are operational, so there is a lack of data on residential subscribers for an ALJ to evaluate. Solar developers are pursuing different business strategies and offering different options for residential subscribers. Fresh Energy plans to evaluate subscriber class data and offer comments on this topic once data is available.
- *Co-location limits on government-owned marginal lands.* Fresh Energy/ELPC has not identified any facts in dispute on this issue. The policy decision of whether to allow different size limits for co-located solar gardens located on marginal lands owned by government agencies should build on information from existing applications and comments from the parties.
- *Co-located gardens.* Co-location is a policy decision. Fresh Energy/ELPC noted the Commission has already analyzed and made a decision regarding co-location for projects until 2017. While a difficult policy and legal interpretation issue, it is not an issue where significant facts are in dispute.
- *Review of interconnection practices.* Fresh Energy/ELPC argued that timely and transparent interconnection is critical for the success of the CSG program. Unlike the issues above that deal with setting program rules for post-2017, interconnection issues related to current applications aiming to interconnect before 2017. These issues are moving faster than Xcel's proposed contested case.

Interconnection is an open topic in the workgroup; SunShare filed a Section 10 interconnection complaint on August 28, 2015 (in Docket 15-786); interconnection practices are anticipated to be a component of the Commission's grid modernization workshops. Therefore, these venues present an opportunity to address interconnection practices.

- *Developer-paid distribution system upgrades.* Fresh Energy/ELPC noted the Commission will have the opportunity to address this issue in responding to the Department's request for clarification of the August 6 Order; therefore Fresh Energy/ELPC believes it does not need to be addressed in a contested case.

*Resource concerns.* Participating in a contested case is an expensive process and some parties that have been active in the CSG docket to date may be precluded by these costs, including Fresh Energy and ELPC.<sup>5</sup> While an ALJ could help organize the record, Fresh Energy/ELPC does not believe the resource constraints presented by a contested case outweigh the organizational benefit or would be an “economical determination of issues before the commission.”<sup>6</sup>

Fresh Energy/ELPC recommended that the Commission open specific follow-up comment periods to address these issues by mid-2016:

- During the winter/early spring 2016, the Commission should address bill credit design, including low income, minority, and residential options, and government marginal land co-location.
- The Commission should wait to take up the issue of co-location until a new bill credit formula is established.
- To the extent interconnection concerns are not resolved as part of SunShare’s Section 10 Complaint, the working group or other venues, the Commission should address this issue as soon as practicable to ensure the timely interconnection of current CSG projects.

#### *Xcel Energy (Xcel) reply*

In reply comments, Xcel clarified that the Partial Settlement Agreement (PSA) is only a bridge for the CSG program from the present through the end of 2016, but that important issues remain. These include how to set the program pricing and whether to allow aggregate projects greater than 1 MW. These issues (price and size) are intertwined. Xcel argued that a contested case process would put the Commission in the best position to decide unresolved issues involving fact, law, and public policy.

*Commission has broad discretion.* Xcel clarified that the Commission has broad discretion to refer any matter within its jurisdiction to a contested case proceeding and that it is not restricted to purely factual matters. The Commission has the authority to refer any matter to a contested case if it finds that “all significant issues have not been resolved to its satisfaction.”<sup>7</sup> Xcel noted the Commission frequently uses contested cases to require disparate parties to build an orderly record on both factual and policy disputes.

*Bill credit rate.* Xcel reminded the Commission that it made no adjustments to the bill credit rate as part of its deliberations on June 23 and June 25 or in its August 6 Order, and the rate must be revisited. The market response strongly signals that the program pricing is too high, as is the impact on customers, who directly pay for the bill credits that flow both to garden operators and subscribers.

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<sup>5</sup> Participating in a contested case requires formal intervention, including objections by either party or a hearing on the intervenor’s petition, formal discovery, multiple rounds of expert testimony, a hearing, and multiple rounds of legal briefing--all before the issues go back to the Commission. See Minn. Stat. § 216.161 and Minn. Rule 1400.5010-8400.

<sup>6</sup> Minn. Rules 7829.0200.

<sup>7</sup> Minn. Rule 7829.1000.

Xcel commented that the Commission has taken an important first step in adopting the PSA and placing limits on the size of community solar garden projects, and that the next step is to explore needed course corrections on the pricing issue. An exploration of appropriate pricing and equitable treatment of customers by class should be the top priorities for a contested case.

*Other issues appropriately in the scope of a contested case.* Xcel supported including any and all disputed programmatic issues in a contested case proceeding. Although ALJ resources are limited and the proposed list of issues thorough, the Company remains open to the inclusion of additional issues.

*Issues should not be treated in isolation.* Xcel argued that program design issues, such as program size and price, should be handled in concert. The challenged introduction of the program may have been due to isolating the creation of the Applicable Retail Rate (ARR) from other program design issues. For this reason, Xcel believes sending the primary issues (size, price, system upgrades, and inclusivity) to a contested case will allow the record to develop thoroughly and efficiently.

*Additional comment periods.* Xcel questioned whether the notice and comment process had been useful up to this point and suggested the Commission may want to try a new course. Allowing another agency to develop and provide a complete record may be a more efficient use of the Commission's limited resources, and would avoid a piecemeal approach to these issues.

*SunShare, LLC (SunShare) reply*

SunShare supported comments by the Department and Fresh Energy/ELPC, especially those that characterized Xcel's list of issues as falling within the Commission's "quasi-legislative" authority, and therefore best addressed using a notice and comment process so as to enable broad public participation.

SunShare indicated that conservative estimates of the cost of its active participation in a contested case proceeding would be over \$90,000.<sup>8</sup> It noted parties, such as Fresh Energy, ELPC, IREC and MnSEIA, who have participated in the docket to date, may be unable to participate in a contested case with such costs. Also, a contested case process may restrict stakeholder diversity and engagement.

Finally, SunShare pointed out that despite Xcel's characterization of its contested case proposal as "jointly proposed," none of the listed developers actually signed Xcel's July 24, 2015 letter or filed comments in support of it.

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<sup>8</sup> See SunShare's September 14, 2015 comments, p. 1. The estimate is based on over 400 hours of attorney, paralegal, and staff time.

### ***Staff comment***

Xcel argued that a number of interdependent issues in the CSG docket require attention as part of a contested case. The Company believes a contested case would bring order and focus to the issues in dispute. As noted, Xcel proposed that any changes resulting from a contested case not take effect before January 1, 2017.

Neither the Partial Settlement Agreement (PSA) nor the Commission's August 6 Order specifically referred to the need for a contested case. Apart from Xcel, and to a limited degree Kandiyo, none of the parties supported a contested case proceeding. The parties opposing a contested case together argued that there are no material facts in dispute, that the cost of a contested case would be prohibitive, that more experience with the program is needed before making changes, and that the consequence of a contested case will be to delay the implementation of the CSG program. They argued that the issues requiring Commission consideration are matters of policy, not disputed facts or statutory interpretations. These issues lend themselves best to a notice and comment process.

Fresh Energy/ELPC details how each of the eight issues listed by Xcel is a policy decision, not a difference over material facts. SunShare argued that a conservative estimate of the cost of its participation in a contested case would be over \$90,000 based on 400 hours of attorney, paralegal and staff time. It and other parties would have difficulty meeting such costs. Fresh Energy/ELPC concluded that a public comment process rather than a contested case better meets the statutory requirements for a "speedy and economical determination of the issues."

The parties emphasized a number of issues that require attention, some near term and some requiring additional data and experience with the program. First is whether the bill credit rate is set appropriately and the related issue of project size. The Commission must recognize that the 1 MW limit it set in the August 6 Order only applies until September 15, 2016, after which there is no limit on co-location of gardens apart from the disputed 1 MW statutory language. Xcel proposed that this deadline be extended to applications filed beginning January 1, 2017.

A third issue, emphasized by SunShare, Kandiyo, and Fresh Energy/ELPC, concerns interconnection practices, which are at the center of SunShare's complaint in Docket 15-786 and will be considered in detail there. Fresh Energy/ELPC emphasized that the success of the CSG program depends on a working interconnection process now, not later. A fourth issue, raised in Senator Marty's letter of August 14, 2015, concerns the importance of low-income participation in the program. Apart from low-income and minority participation is the larger question of participation by Residential class customers compared to General Service and other classes of customers. Fresh Energy/ELPC noted that since few CSGs are operational there is a lack of data on customer categories or classes to be evaluated as part of a contested case. Fresh Energy/ELPC plans to evaluate this data once it is available. Another consideration is whether special rules might be applied to garden developments on marginal lands owned by public or quasi-public entities.

As the CSG program is implemented and projects come on line, there will be material impacts on the nature of Xcel's distribution grid. In approving the PSA, the Commission made no commitment or finding regarding grid modernization and distribution system planning. Staff

believes the CSG docket may be too narrowly construed to accommodate such a commitment or policy. This is true whether or not the Commission finds in favor of a contested case.

The Commission's decision to adopt the provision of the settlement limiting material upgrades puts off the larger decisions that must be made concerning grid modernization. Parties have recommended, and staff agrees, that these larger issues may be taken up in the context of the Commission's grid modernization docket (Docket 15-556). The Commission may also wish to wait to consider these issues until more information is gathered and Xcel, the parties, and Commission have had more experience with the program. Grid modernization will depend on the development of a shared understanding of the impacts of CSGs on the distribution system and how the costs and benefits of distributed generation and the upgrades required will be estimated and allocated. The Commission and parties will need to think carefully about whether, how and when the limits on material upgrades in the PSA should be adjusted to accommodate potential changes in the grid that could result from CSG distributed generation.

The Commission must decide whether to grant Xcel's request for a contested case, and if granted, which issues to send to a contested case and under what timeline. The alternative to a contested case would be to address some or all of the issues raised by Xcel in its July 24, 2015 letter through a notice and comment procedure, possibly in consultation with the Department. Whether the procedural path is a contested case or notice and comment, staff believes that the Commission will need to address these issues with due regard for the deadlines set in prior Commission Orders. Also, staff notes that the Commission may wish to address issues raised by Xcel on separate procedural paths as more information becomes available and Xcel and parties have more experience with the program. If the Commission decides to deny the request for a contested case, it could direct the Executive Secretary to issue a notice seeking recommendations on the matters raised by Xcel in its July 24, 2015 letter, including additional recommendations on schedule and procedure.

## ***Decision alternatives***

### *Contested Case*

1. Deny Xcel's request to open a contested case and send this matter to the Office of Administrative Hearings (OAH).
2. The Commission hereby refers this case to the Office of Administrative Hearings (OAH) for a contested case proceeding.

*If the Commission decides to deny the request for a contested case and to use a notice and comment period to make decisions on the issues raised by the parties, it could adopt the following option:*

3. Delegate authority to the Executive Secretary to issue notices, set schedules, and establish and vary timelines in seeking comments on prospective CSG program changes, with due regard for the deadlines set in prior Commission Orders.

*Alternatively, if the Commission decides to send this matter to a contested case hearing, it will need to decide which issues should be addressed.*

4. Direct the OAH to address some or all of the following prospective CSG program changes:

*Xcel's list of proposed issues:*

- a. Should the Commission modify the subscriber bill credit rate (the Applicable Retail Rate) formula for Solar\*Rewards Community?
- b. Should the Commission adopt other bill credit rate formulas for Solar\*Rewards Community, such as the Value of Solar?
- c. Should the Commission allow Solar\*Rewards Community applicants to participate with co-located gardens if the gardens' aggregate capacity exceeds 1 MW? If so, to what extent should the Commission allow co-location of gardens?
- d. Should the Commission allow special rules such as larger sized garden development on marginal lands owned by public or quasi-public entities? If so, to what extent should this be allowed?
- e. What actions should the Commission take, if any, to ensure low income and minority participation in the program?
- f. What actions should the Commission take, if any, to ensure the participation of Residential class customers in the Solar\*Rewards Community program?

- g. What actions should the Commission take, if any, regarding the Company's interconnection review practices for community solar gardens?
- h. How should future distribution system upgrades driven by community solar (and outside of planned grid modernization investments) be treated? How and when should upgrades be made, and at whose cost?

*Additional issue proposed by Kandiyo for contested case:*

- i. How should co-located capacity be defined?

*If the Commission decides to send some or all of these issues to a contested case, it will need to decide whether to ask OAH for an expedited hearing and under what schedule.*

- 5. Ask OAH to submit its report and recommendation to the Commission by July 1, 2016.

**Attachment A**

August 14, 2015

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

Dear Chair Heydinger:

Minnesota's community solar program has received strong interest from people and businesses around the state and could become a meaningful source of clean, renewable energy in the next few years.

This program was created, in part, to allow more people of all economic means to participate in the growing solar economy even if they did not own their own homes or could not install solar on their housing. It is an opportunity for people with low or moderate incomes to be part of generating more solar power in Minnesota. I believe there is widespread agreement that this was one of the purposes for the community solar program, and I also understand that there has been interest in doing so from Xcel, some members of the PUC, and some solar developers.

I am attaching a memo from one of the businesses interested in including low income people, which provides more details and suggests some possible changes.

Unfortunately, unlike other states with community solar programs, we neglected to explicitly direct that a portion of the program benefit low income households. Because the program is likely to move forward rapidly in the coming months, I am writing to ask that the Public Utilities Commission work with Xcel Energy and the Department of Commerce to facilitate changes to the community solar program for it to fulfill its intended purpose.

Thank you for your consideration of this request.

Warm regards,

A handwritten signature in blue ink, appearing to read "John Marty".

John Marty

Attachment: Memo on low-income benefits

cc: Governor Mark Dayton  
Chris Clark, President, Northern States Power Company  
Commissioner Michael Rothman, Minnesota Department of Commerce



## MEMORANDUM

June 29, 2015

**TO:** Sen. John Marty  
**FR:** Michael Krause, Kandiyo Consulting, Jamez Staples, Renewable Energy Partners  
**RE:** Low-Income Access and Participation in Community Solar

Unlike the community solar program in Colorado or new state programs in Maryland and California, Minnesota's community solar law does not include any requirements to provide at least some of the program's benefits for low-income households. In fact, we have seen in almost all of the gigawatt of community solar applications so far that the main beneficiaries are large corporate and institutional ratepayers, not homeowners, renters, non-profits and small businesses.

There have been strong statements of support from Xcel, PUC commissioners and some of the solar developers and stakeholders for program changes that will guarantee a more equitable distribution of the benefits from community solar. We suggest the following provisions as a starting point for such benefits:

Require every community solar project over 100 kilowatts to:

- Set aside five percent of the project's subscriptions for distribution to low-income households
- Contract with disadvantaged businesses for at least 20 percent of the development and maintenance costs of the community solar project
- Pay a fee as an alternative to either of these measures roughly equal to the value of five percent of the subscriptions (about 10 cents per watt of DC solar capacity).

Funds accumulated from the alternative payments could be split as follows:

- Grants to the state's 25 Weatherization and Low-Income Energy Assistance providers to subsidize community solar subscriptions for low-income households.
- DEED grants for workforce development and business development to expand the capacity of minority, women and veteran-owned solar businesses.

If Minnesota develops 500 megawatts of community solar over the next 2-3 years, it will represent an investment of about \$1.25 billion. This approach for low-income benefits could have some combination of the following impacts from that investment:

- 25,000 one-kilowatt subscriptions for low-income households
- \$250 million of contracted work by MBE/WBE/Veteran firms
- \$10-12 million in community solar subsidies for low-income households; AND
- \$5-6 million for workforce training for disadvantaged firms; AND
- \$5-6 million in grants to develop more minority, women and veteran-owned firms in solar and related energy fields.