



Date: February 21, 2014

*VIA ELECTRONIC MAIL*

**To:**

Dr. Burl W. Haar,  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350, St. Paul  
MN 55101-2147

**From:**

Carrie Cullen Hitt  
Senior Vice President  
Solar Energy Industries Association  
505 9<sup>th</sup> St. NW  
Washington, D.C. 20004

Dear Secretary Haar,

**RE: Reply Comments in the Matter of the Commission Inquiry into Ownership of Renewable Energy Credits used to Meet Minnesota Requirements, Docket No. E999/CI-13-720**

The Solar Energy Industries Association (SEIA)<sup>1</sup> submits the following comments as a reply to the comments submitted by Northern States Power Company (Xcel) on February 7, 2014 in Docket No. E999/CI-13-720.

**1. RECs Do Not Transfer from Customer to Utility Under Net Metering Arrangements**

The Commission should reject Xcel's attempt to transfer renewable energy credits (RECs) under net metering for the reasons below.<sup>2</sup> Allowing Xcel to take RECs from net metered customers without compensating them outside of the net metering arrangement would be a radical break from national net metering policy that would likely drive away investment from Minnesota's solar market.

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<sup>1</sup> The positions expressed herein are the positions of SEIA and not necessarily the positions of any individual member company.

<sup>2</sup> Minn. Stat. Section 216B.164, subd. 2

**a. The Commission Should Protect Property Rights and Promote Customer Choice**

Xcel claims that it should be able to take RECs from net metered customers without compensation.<sup>3</sup> However, customers have a property right in RECs.<sup>4</sup> RECs are commodities like any other, and the owner of the renewable energy generation has a rightful claim to the REC associated with their generation.<sup>5</sup> Xcel should not be allowed to take RECs from net metered customers without transacting for the RECs outside of the net metering arrangement, as this would amount to taking customer property without compensation. This is an outcome the Commission should not support.

Further, Xcel attempts to limit customer choice by becoming the only viable purchaser of RECs.<sup>6</sup> The value of RECs comes largely from a generator's ability to monetize their RECs as they choose. For example, a business that generates SRECs may choose to sell those RECs to the utility for compliance, to a third party in the open market, or retire its RECs to meet its own corporate environmental goals.<sup>7</sup> If the Commission allows Xcel to take RECs under all transaction scenarios, it will be depriving customers of the right to choose how to put their RECs to the best use in the Minnesota economy. This leads to degraded REC values, limited customer choice, and sends signals to developers that Minnesota has stifled its solar energy market.

Therefore, the Commission should deny Xcel's attempt to take RECs from net metered customers.

**b. The Commission Should Deny Xcel's Attempt to Snuff Out REC Markets by Establishing a Monopoly Over RECs**

In its comments, Xcel shows that it intends to establish a monopoly over all RECs in its service territory. Xcel claims that RECs should transfer to Xcel under the Value of Solar Tariff, net metering, the Solar Rewards program, and the Made in Minnesota program.<sup>8</sup> Further, Xcel boldly states, "Typically, REC aggregators and marketers act on behalf of REC owners (sellers)

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<sup>3</sup> Xcel claims that it pays a "premium" for RECs under net metering. SEIA strongly disagrees that any premium is paid to net metered customers, and addresses this issue later in these comments. *See* Xcel Initial Comments to Docket No. E999/CI-13-720 at p. 1 (February 7, 2104)

<sup>4</sup> Minnesota Public Utilities Commission, Docket E002/M-08-440 (September 9, 2010), p. 8.

<sup>5</sup> *See* SEIA's Initial Comments to Docket No. E999/CI-13-720 (February 7, 2104)

<sup>6</sup> Xcel proposes to take ownership of RECs in all scenarios discussed in its Initial Comments. To be discussed at length further in these comments. *See* Xcel Initial Comments to Docket No. E999/CI-13-720 at p. 1-2 (February 7, 2104)

<sup>7</sup> *See* <http://www.epa.gov/greenpower/awards/winners.htm> for a list of companies that use RECs to achieve corporate environmental goals, such as Apple, Dell, and Intel (Accessed on February 21, 2014)

<sup>8</sup> *Id.*; Minn. Stat. Section 216B.164, subd. 2; Xcel Solar Rewards Tariff; Minn. Stat. Section 216B.164, subd. 10(i); Minn. Stat. 216C.414, subd. 5

in a secondary market. In this context, we do not see a need for additional REC ownership considerations related to REC aggregators and marketers.”<sup>9</sup> In other words, Xcel would like the Commission to grant Xcel ownership over RECs in nearly all transaction scenarios so that RECs cannot be monetized by individuals and businesses, and there is no opportunity for a secondary (or voluntary) market to exist.<sup>10</sup>

The Center for Resource Solutions’s (CRS) comments demonstrate the importance of the Minnesota voluntary market to the economy of the state, by showing that the voluntary market has thrived in 2012: “Minnesota has approximately 23,000 residential customers and 400 commercial customers, totaling over 1.5 million MWh in purchases” with over one million MWh unbundled REC purchases.<sup>11</sup> SEIA agrees with CRS that the secondary market is an economic boon for Minnesota and should be encouraged to the extent possible. Should the Commission allow Xcel to take RECs in all the scenarios in which it pays above avoided cost, it will become the primary buyer and seller of RECs in its service territory. This will harm the secondary market significantly because it will lead to less “players” in the market (i.e. fewer buyers and sellers), distorted REC prices, and less liquidity in the market as a result of Xcel’s monopoly over the market.

Further, Xcel currently takes ownership of RECs under the Made in Minnesota, Solar Rewards, and Value of Solar Tariff programs.<sup>12</sup> In contrast, the legislation establishing the Community Solar Gardens and net metering programs is silent on the issue of REC ownership. The Commission should be especially concerned that customers retain their RECs under these programs to ensure that a secondary market and customer choice remain viable in Minnesota. If the Commission allows Xcel to take RECs under Solar Gardens and net metering, in addition to the Made in Minnesota, Solar Rewards, and Value of Solar Tariff programs, it will send a negative market signal to developers that the market is entirely controlled by Xcel.

Therefore, in order to protect customer interests and promote a vibrant solar market, the Commission should deny Xcel’s request to take RECs from net metered customers.

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<sup>9</sup> Id. at p. 8

<sup>10</sup> The “secondary” market consists of transactions between generators and third parties who are interested in RECs for a number of reasons. For example, so entities purchase RECs for their own environmental goals, and others aggregate and package RECs for resale. This market is also known as the voluntary market.

<sup>11</sup> See Center for Resource Solutions’s Initial Comments to Docket No. E999/CI-13-720 at p. 3 (February 7, 2104)

<sup>12</sup> See Xcel Solar Rewards Tariff; Minn. Stat. Section 216B.164, subd. 10(i); Minn. Stat. 216C.414, subd. 5

**c. Xcel Attempts to Misconstrue Net Metering and Break From Industry Best Practice**

Xcel's argument that full retail credit is a premium paid by Xcel misconstrues net metering entirely. The Commission has never held that net metering is an incentive or premium payment. Rather, net metering is a simple bill crediting mechanism that allows customers to be fully compensated for the energy that they generate.<sup>13</sup> Thus, no exchange of RECs takes place. Customers have a property right in the RECs they generate with their systems, and may choose to sell those RECs to any party in a separate transaction. To allow otherwise would be to allow Xcel to take customer property without just compensation.

In addition, allowing Xcel to take RECs from net metered customers would be a stark departure from accepted industry practice and current Minnesota practice. In states across the country, including Minnesota, customers with net metered systems are credited for the energy they produce and then choose to either keep their RECs, or sell their RECs to their utility or third parties. In fact, SEIA is unaware of any state that requires net metered customers to give their RECs to utilities without a separate transaction. Xcel's proposal flies in the face of this best practice and would drive solar investment away from Minnesota if it were adopted.

Therefore, the Commission should deny Xcel's request to take RECs from net metered customers.

**2. The "Premium" That Xcel Claims to Pay is Arbitrary**

Xcel argues that any time it pays more than avoided cost for energy, it pays a premium that entitles it to the RECs associated with the energy.<sup>14</sup> This argument is nonsensical. RECs have specific values that are set by the market.<sup>15</sup> Xcel argues that it pays a premium under net metering, the Value of Solar Tariff, the Solar Rewards program, and the Made in Minnesota program because it is paying above avoided cost in each scenario. However, the amount paid above avoided cost by Xcel under each of these scenarios is different. Thus, because RECs have a specific value that is set in the market, and the alleged "premium" claimed by Xcel is different in each transaction scenario, it is arbitrary to assume that any amount paid above avoided cost constitutes a fair payment for RECs.

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<sup>13</sup> See <http://www.irecusa.org/regulatory-reform/net-metering/> (Accessed on February 21, 2014)

<sup>14</sup> See SEIA's Initial Comments to Docket No. E999/CI-13-720 at p. 3-7 (February 7, 2104)

<sup>15</sup> For more information on renewable energy markets, see <http://www.renewablemarketers.org/> (Accessed on February 21, 2014) and <http://www.resource-solutions.org/index.php> (Accessed on February 21, 2014)

Further, Xcel's comments do not provide any calculation or formula showing that in effect the amount paid above avoided cost is equal to the market value of a REC. Xcel does not provide any showing that the margin between the rates paid under net metering, the Value of Solar Tariff, the Solar Rewards program, or the Made in Minnesota program and the avoided cost rate is equal to or exceeding the market value of a REC. It may certainly be that the margins under each scenario are less than the market value of RECs, and thus allow the utility to get the RECs at a price which is below market value (i.e. getting some of the RECs for free).

Therefore, the Commission should reject Xcel's argument and conclude that not every payment above avoided cost is equal to a premium payment for a REC. The Commission should allow the market to set REC prices to the extent possible. In instances where the Commission is bound by statute, the Commission should order that utilities which argue that they pay a "premium" for a REC to disclose the exact monetary value of the "premium" and prove that it is no less than the value of a REC.

## **II. CONCLUSION**

SEIA appreciates the time taken by the Commission to consider the difficult issues in this proceeding, and is confident that the Commission will adopt an approach that encourages open markets, customer choice, and fair compensation for solar energy.

Sincerely,



Carrie Cullen Hitt  
Senior Vice President, State Affairs  
Solar Energy Industries Association