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May 18, 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:

On behalf of the Solar Garden Community attached please find Amended Comment in the above docket including Exhibit A which was previously omitted.

Very truly yours,

Stoel Rives LLP

/s/ Andrew P. Moratzka

Andrew P. Moratzka

APM:srb
Attachment

cc: Service List

CERTIFICATE OF SERVICE

I, Sharla Backer, 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.

AMENDED COMMENT ON BEHALF 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 18th day of May, 2015.

/s/ Sharla Backer
Sharla Backer

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**STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

121 7th Place East, Suite 350
St. Paul, MN 55101-2147

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

COMMENT

An ad hoc community of solar businesses including BHE Renewables, LLC; SoCore Energy, LLC; SunEdison, LLC; Sunrise Energy Ventures, LLC; and SunShare, LLC (collectively, the “Solar Garden Community” or “SGC”), all with invested interests in the success of the community solar garden program in Minnesota (“CSG Program”), files this comment in response to the Minnesota Public Utilities Commission’s (“Commission”) May 1, 2015, notice (the “May Notice”) in response to the April 28, 2015 Supplemental Comments and Notice by Xcel Energy (“Xcel’s April 28 Filing”) and SGC’s immediately following petition for expedited relief (the “SGC Petition”).

I. INTRODUCTION

The SGC appreciates that the Commission is now facing a voluminous record with multiple difficult decisions. The SGC has contributed to this record, submitting comments in this docket in advance of the Commission’s June 25 hearing on February 24, March 4, April 2, April 29, April 30, and May 5, 2015. The SGC sincerely hopes that these submissions, while at times admittedly aggressive, assist the Commission in understanding the various issues and urgency thereof. In this Comment, the SGC aims to build upon - not replicate - those past comments here. Our comment will therefore focus on further developing two overarching themes: 1) the schedule and avoidance of further opportunity for delay and 2) moving this docket forward to achieve the objectives of State law.

II. ANALYSIS

A. **Given the Looming ITC Step-Down and Minnesota Winters, Any Additional Delay in Rolling Out the CSG Program As Approved on September 17, 2014, Could Significantly Limit Community Solar Development**

Waning time is becoming a more acute issue with each comment period. The SGC has raised this issue in prior comments and is concerned that it has not been heard. The time frame to build projects before the Investment Tax Credit (“ITC”) changes is extremely limited. The ITC decreases from a 30% to 10% of the eligible basis of the project for any project that is placed in service after December 31, 2016.

The general rule for being “placed in service” is that the property must be ready and available for its intended use. For an energy facility this likely means that the project has:

1. Received the licenses and permits required to operate;
2. Passed control from the construction contractor to the project owner;
3. Completed testing;
4. Been interconnected to the local electric grid; and
5. Most importantly, has the ability to generate and sell electricity in commercial quantities.¹

For all practical purposes, this means that any CSG project has to be complete and fully functional no later than the end of 2016 to retain financing.

The ITC step down after 2016 formally represents the loss of about 20% of a project’s costs, something the solar industry and its financiers will face for the first time. To understand the potential effect on project development following such changes, one only need to look to the boom and bust cycles in the wind industry following the production tax credit’s expiration and renewal over the past decade. Here, all of the SGC projects in Xcel Energy’s queue depend on the ITC as critical to project financing.

Compounding the need for swift resolution is the potential reluctance of tax equity investors to even engage in financing negotiations for projects with such looming uncertainty. As we have stated in previously filings, developers typically do not have adequate taxable income to utilize the ITC themselves. Consequently, developers of solar projects rely on cash investments from tax equity investors to fund construction of projects. In exchange for making

¹ Rev. Rul. 76-428.

cash contributions, tax equity investors receive the ITC, other tax benefits, and cash flows from the projects. While tax equity investors are sophisticated investors that understand the complexities of the ITC, they typically are not in the business of developing energy projects on their own. Because of this, investors rely on the expertise of project developers and seek to minimize risk associated with their investments. The SGC is very concerned that the delays to date, and any future delays, may create such a significant risk that projects cannot be placed in service by December 31, 2016, that tax equity investment will grind to a halt. If this happens, solar project developers will likely lack the financing to move forward with many of their projects.

To underscore the urgency of the situation, we have taken the liberty of building on the project timeline prepared by MnSEIA and submitted alongside MnSEIA's April 28, 2015, comment. Please see our revised timeline scenarios attached as Exhibit A to this comment. In part, our revisions include a timeline for the interconnection build-out because it is a significant factor to any project's being placed in service and eligible for the ITC. It also provides additional scenarios that reflect the delays that applicants have already incurred or are incurring and the effect of future delays.

The first scenario represents a projected schedule according to the timelines in the Section 9 and Section 10 tariffs. Unfortunately, significant delays have already been incurred in the program so this scenario is no longer particularly useful or representative of what applicants are experiencing. The SGC includes it as a reference point but encourages the Commission to largely disregard it for purposes of evaluating the current problems applicants face.

The second scenario includes the approximately 2.5 months of known delays in the program to date. In this second scenario, and in order to avoid putting financing at stake for the project via a timeline that runs too close to the end of 2016, the developer already takes on significant risk by beginning construction while the procurement of the modules and other equipment is ongoing. Given that this assumption of risk is projected to happen in the middle of 2016, this is no small matter because suppliers will almost surely get backlogged on stock and orders as the rush to build within the current ITC escalates in 2016.

The third scenario represents the situation where additional delays are incurred - affecting the processing of applications through Steps 4 and 5 of the Section 10 process - a very realistic scenario given the continued road blocks Xcel is putting in front of developers. In this scenario, the developer has truncated all possible timelines, overlapping activities wherever feasible and left virtually no room for error or for delays from outside third parties (e.g. equipment orders). Thus, if even a few months more of delays are incurred in this project (cumulatively through minor delays or by any significant delay in processing), the developer will likely be left with a project that is not financeable even if all of the stars are aligned, the developer shoulders significant risks and pushes development forward as fast as possible and no outside delays are incurred. This virtually impossible path is the one the SGC fears we have been headed for because Xcel has already caused 2.5 months' worth of delays and injected such uncertainty into the market that project deals and financing arrangements have already slowed. Meanwhile, as we set forth in our letter dated May 5, 2015, Xcel has also been actively discouraging subscribers from honoring their contracts with SGC members or from entering into them - further undoing work developers had already done or otherwise prolonging the engagement necessary to reassure potential subscribers and stabilize negotiations or contractual relationships. Based on these actions, the SGC has no choice but to question whether the actions are a deliberate attempt to diminish the CSG Program via delay.

In all three of these scenarios, we show a blanket "90 working day" turnaround time for Xcel's Step 4 interconnection studies, since the company has signaled that blanket timeline to one or more of our members. We note that MnSEIA's April 28, 2015, comment argues that Section 10 compels a faster "40 working day" timeline that may be extended for a given set of related studies but only if necessary. The SGC respectfully asks the Commission to confirm the timeline that controls for CSGs including CSGs in close proximity to one another. Not only does each delay further tighten the schedule for getting the projects placed in service in 2016, further delays - particularly in the aggregate - may eventually put projects at risk for cancellation after the 24-month window to complete projects under Section 9 tolls. Additionally parties may be back before the Commission adjudicating a raft of cancellation disputes if it is unclear whether

Xcel Energy had 40 or 90 days before day-for-day extensions to this window were to be given for additional delays not within the applicant's control.²

It is for the above reasons that the SGC moved for expedited relief and continues to stress the urgency involved in light of the ever tightening timelines involved. We are very nearly at the point already where there simply is no room for error. The SGC emphasizes that this point puts at risk the Commission's stated intent to allow "maximum garden development in the early years of the program is particularly critical to allow developers to take advantage of the federal Investment Tax Credit before it expires."³

To avoid any additional delay that would thwart the growth of Community Solar Garden development, the SGC respectfully requests that the Commission direct the Department of Commerce to enforce the terms of section 216B.1641 of the Minnesota Statutes and the Commission's clear and unambiguous prior orders to ensure prompt processing of CSG applications consistent with Sections 9 and 10 of Xcel's Rate Book.⁴

B. Members of the SGC Have Invested Millions of Dollars in Reliance on the CSG Program As Clearly Set Out in the CSG Tariff and Agreed to by Xcel Energy

As part of the CSG Program's original design, Xcel agreed to allow multiple CSG sites to be located in close proximity to share in distribution infrastructure and the Commission required Xcel to call the understanding out in clear terms in the tariff. For the first several months after their tariff was approved, Xcel was very public in its understanding and direction to applicants on how to design and submit co-located applications. In fact, Xcel previously made clear in an FAQ on its website that there is no limit to the number of solar gardens that can be placed on a property or no program restrictions on multiple gardens in one area.⁵ Furthermore, the company gave applicants instruction via direct conversations and on the same FAQ to notify Xcel in the application process if more than 1 garden are in close vicinity and request that they be studied

² Under Section 9 (at Sheet 67), each CSG Applicant must achieve commissioning within 24 months of the Company deeming the applications complete. The tariff allows this period to be extended "on a day-for-day basis" to account for any "[f]ailure of the Company to meet [its] timeframes for completing engineering studies and interconnection cost estimates." Id. If the project is not completed within the 24-month period (including any day-for-day extension, Xcel will cancel the application and return the deposit. In light of the already existing dispute as to whether Section 10 allows Xcel 40 or 90 working days to complete its engineering studies for co-located CSG applications, it is plausible that within the following 20 months Xcel may begin cancelling applications.

³ April 2014 CSG Order, at pg. 7.

⁴ MINN. STAT. § 216A.07 subd. 2.

⁵ See Motion For Expedited relief, citing Xcel Energy's FAQ hosted on its website in February, 2015.

together.⁶ All of this, in addition to very clear tariff language and Commission direction allowing for multiple solar garden sites in close proximity to one another, were additional factors inciting types of projects now in Xcel's queue and that Xcel now expresses concern over.

Members of the SGC and others reasonably relied on the clear direction on this issue, submitting applications as directed, while Xcel accepted over \$50 million in deposits, began processing the applications, and deemed (to date) 313 applications "complete" under its interpretation of its program rules.⁷ SGC members alone have since spent millions of dollars in development costs in pursuit of these projects, including hundreds of thousands of dollars for timely interconnection engineering work by Xcel. Nearly seven months after approval of the program and more than four months after the program doors opened, Xcel has unilaterally determined that the program is too large, citing co-location as the culprit and broadcasting that co-located projects should be eliminated or reduced to 1 MW.

To be sure, Xcel has routinely cited its desire to have 80-100 MW of distributed solar. Despite clear statutory language preventing a program cap, Xcel attempted to introduce one as part of its initial program draft.⁸ Xcel's recently proposed actions will once again have the effect of creating a program cap, albeit at far greater costs to the developers who relied on the program rules as they currently stand. The SGC sincerely hopes the Commission sees Xcel's concerns on co-location for what they are - an objection to the size of the CSG Program and an attempt to retroactively establish a cap, consistent with its prior arguments and in direct contravention of the CSG Statute.⁹

Setting aside for the time-being whether issues with co-location are misplaced or whether fixes would solve problems real or perceived, the SGC is very aware of the Commission's desire to see the parties work toward an agreement. Yet the parties did just that for a substantial period of time that led to the April and September 2014 Orders in this docket. And SGC members relied

⁶ *Id.*

⁷ See Xcel Energy Minnesota website, Information for Subscribers, accessible at http://www.xcelenergy.com/Energy_Solutions/Business_Solutions/Renewable_Solutions/SolarRewards_Community-MN.

⁸ *In re Xcel Energy's Petition for Approval of Community Solar Gardens Program*, Docket No. E002/M-13-867, INITIAL PETITION, pg. 6-7 (Sept. 30, 2013).

⁹ MINN. STAT. § 216B.1641 (a) ("There shall be no limitation on the number or cumulative generating capacity of community solar garden facilities other than the limitations imposed under section 216B.164, subdivision 4c, or other limitations provided in law or regulations.")

on the Orders, Xcel's tariff language, and Xcel's own communication on the very same topic. Unfortunately, SGC members now have diminished confidence that any resolution will be honored by Xcel.

In light of the aggressive actions already taken by Xcel Energy, the SGC is quite concerned that the only option being made available to members is to keep careful track of the damages incurred based on their reliance on the program as currently designed. While the SGC is open to prospective adjustments to the program based on what we have learned since the program opening, retroactive changes to the program now - particularly after so much has been invested and so close to an unworkable timeline to capture ITC benefits and thereby build projects - would result in severe consequences for SGC members and the solar industry at large in Minnesota. It will not be lost on the industry and investors that fundamental program design rules were changed retroactively, thereby eliminating hundreds of MW of solar projects. Such a result would be disastrous and force SGC members to evaluate their respective claims for damages.

Even more frustrating about the litigious path being threatened, is that we still don't know just how many applications in the queue are viable projects - a problem that could have been avoided by making distribution information available to potential applicants upfront and may yet be resolved as applicants proceed through a largely self-correcting Section 10 process. Thus, Xcel is risking a disastrous and litigious end to one of Minnesota's most exciting programs in decades and all to solve a problem that may not exist or is in the process of being worked out - and with a "fix" that, as described below, may create more problems than solutions.

C. Members of the SGC Appreciate the Desire to Modify the CSG Program But Urge the Commission Do So in a Thoughtful and Prospective Manner

Despite our alarm at Xcel's proposed April 28 "solution" to its alleged concerns, the SGC does not dismiss the overall concern Xcel must be facing with regard to the potential program size and impact on its business. The SGC appreciates that Xcel Energy's solar garden program has seen growth in its first few months of existence that is faster than some had predicted. While the served-whenever-ready nature of the program should have helped dilute the nearly inevitable rush to a new program, limited and unknown distribution capacity, along with a reasonable

subscriber bill-credit rate approved by the Commission, and a looming ITC step-down appear to have facilitated the rush of applicants Xcel is now wrestling with.

The SGC also understands that one of the most important concerns for the Commission is non-participating ratepayer impact. Both size and the potential for rate impact are valid concerns.¹⁰ But they are also very different and addressing each requires a thoughtful response. Rather than look backward and set negative precedent for any similar program in the future, we respectfully request that the Commission to look forward, based on what we have learned and apply tweaks to the program that are more likely to get at core concerns.

The SGC suggests this general course of action for two reasons. First, any retroactive decision will have precedential value. The SGC is acutely aware of the regulatory transformation occurring in Minnesota, which includes expansion of decoupling programs, energy conservation incentive mechanisms, and ongoing discussion under the e21 Initiative of a significantly revised regulatory framework. All of these discussions, as well as any new programs encouraged by the legislature, would be negatively impacted by knowledge that the Commission retroactively changed the rules to the detriment of third parties.

Second, Xcel had multiple opportunities to ask the Commission to reconsider its decisions leading to this point. But Xcel failed to do so, rendering those decisions free from attack via an appeal. If the Commission chooses to clarify or otherwise modify its prior orders, including the September 17, 2014, order approving the CSG Program, such a decision will effectively re-open the prior orders up to reconsideration, clarification and appeal - timelines that have otherwise tolled.

D. Potential Prospective Modifications to the SGC Program

In light of these concerns, and because the SGC also wants to encourage robust but intelligent CSG Program growth, the SGC is willing to engage in a balanced and forward looking

¹⁰ As previously stated, the SGC questions Xcel's rate impact calculations. The assumptions on program size are entirely unknown, especially in light of the interconnection and timeline concerns discussed above. In order to cause alarm over ratepayer impacts, Xcel makes heroic assumptions that 100% of projects will be built within 24 months and 100% subscribed 100% of the time. Notwithstanding this concern, there is the additional question of value. In light of the current value of solar (VOS) calculation submitted by Xcel, the Applicable Retail Rate set forth in the CSG tariff is reasonable. Furthermore, the VOS is set to calculate all of the benefits and costs of distributed solar such that it is neutral to non-participating ratepayers. Given an ARR that is close to this rate, any perceived effect on non-participating ratepayers is questionable.

discussion regarding the best manner for bending the growth curve down. Xcel's focus to date has been on co-location, so we will begin our discussion there.

Unfortunately, a retroactive limitation on co-location will not only unleash claims for damages by developers, the SGC queries whether doing so would serve any purposes other than as an attempted program cap. The problem here is that the statute requires the program be: 1) financeable, 2) open to all customers of Xcel, and 3) unlimited.¹¹ With solar programs around the country filling up nearly immediately and the recent exponential growth of distributed solar, it should not be surprising to any party that a financeable, uncapped solar program open to all customers in a highly supportive renewable state was staged for rapid adoption. Furthermore, any limitation on co-location still has to fit within the above statutory framework. If the program remains unlimited, financeable and open to all customers, the net result could easily be no reduction in total megawatts but instead complicated reorganization of what is in the queue, more inefficient use of land, and at as high or higher costs to the ratepayer to support the change. The SGC supports the Department's May 1 Motion to Show Cause which addresses, at least in part, the Department's concern regarding the potential for unintended consequences of any limitations on co-location.

This is not, however, to say that the SGC is opposed to any form of prospective adjustments to the rules regarding co-location. But any such prospective changes would need to be carefully thought out to avoid additional unintended consequences and be designed properly to maximize efficient use of land and existing distribution resources. We stress the importance, however, of leaving the underlying Commission orders and existing program intact not only to prevent significant harm to existing applicants but also to avoid introducing a new opportunity for appeal of prior Commission orders - a process that could put the whole program in jeopardy under the weight of significant delays.

If the general pace of growth and ratepayer concerns are to be addressed more effectively, the Commission may also want to consider prospective tweaks to the rate structure among other things. Many solar programs (including feed-in-tariffs or solar renewable energy credit driven programs) have struggled to find the right rate initially to support long-term steady growth. Minnesota would certainly not be unique if we decide we need to make adjustments to

¹¹ MINN. STAT. § 216B.1641.

identify a rate structure that delivers the right mix of projects, at a steady pace and with optimal cost-benefit balance. Tweaking the rate structure carefully for the future may help stabilize the growth rate and overall program costs and possibly help secure more of the projects that from a public interest stand-point are desirable but are harder for developers to manage and finance.

III. CONCLUSION

The SGC emphasizes its willingness to engage in a thoughtful discussion to optimize growth of the CSG Program from all stakeholders' perspectives. As it has previously stated, however, the CSG Program needs to apply to existing applications as set forth in the existing statutes, Commission orders and Xcel's Section 9 tariff - and as formerly agreed to by Xcel Energy. The SGC understands the interests in looking for thoughtful, forward-looking changes to the program but respectfully encourages the Commission to avoid upending prior orders for fear that doing so could risk appeal or introduce significant new opportunities to call the whole program into question and create unworkable additional delays. In light of this concern, we ask that any material programmatic changes made to address Xcel's April 28 Filing be made effective to new applicants no earlier than the date of the Commission's written order following its June 25th deliberation in this docket. Furthermore, we ask the Commission to take action to ensure Xcel does not introduce any additional delays in the interconnection application process, lest the CSG Program fail over delays and missed opportunities for current project financing. The SGC greatly appreciates all parties' attention to development of this important program and looks forward to continuing the dialogue.

Dated: May 18, 2015

Respectfully submitted,

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ATTORNEYS FOR THE SOLAR
GARDEN COMMUNITY

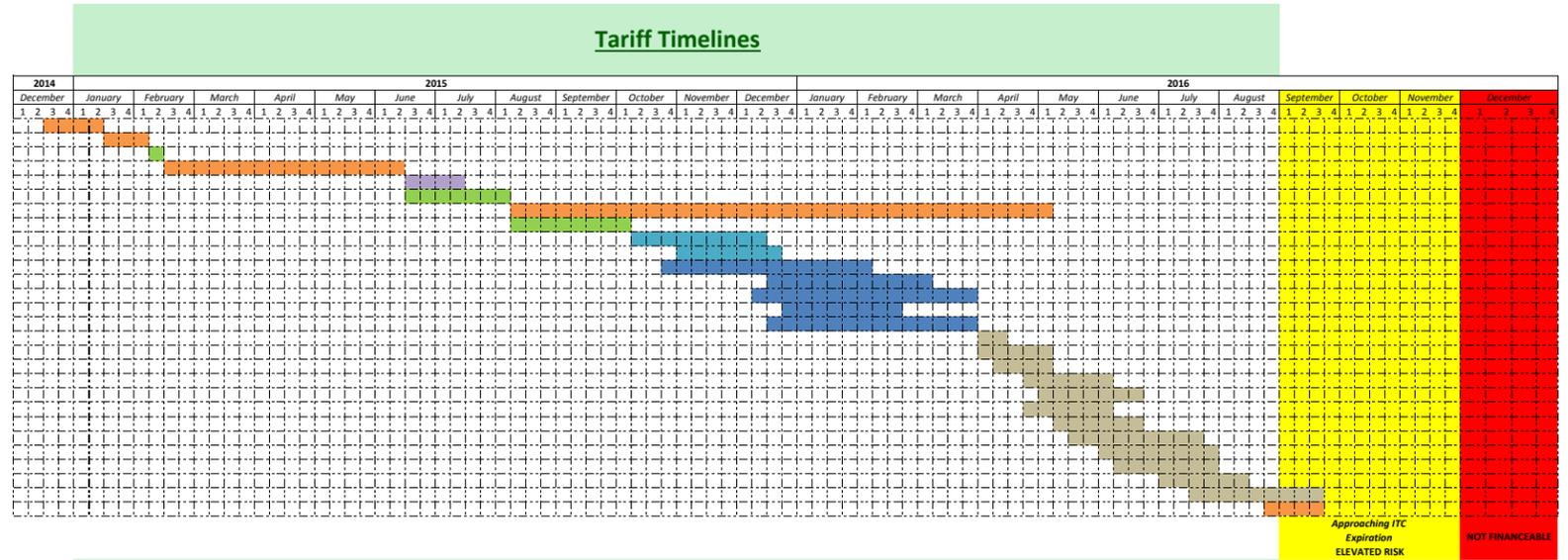
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Exhibit A
Timeline

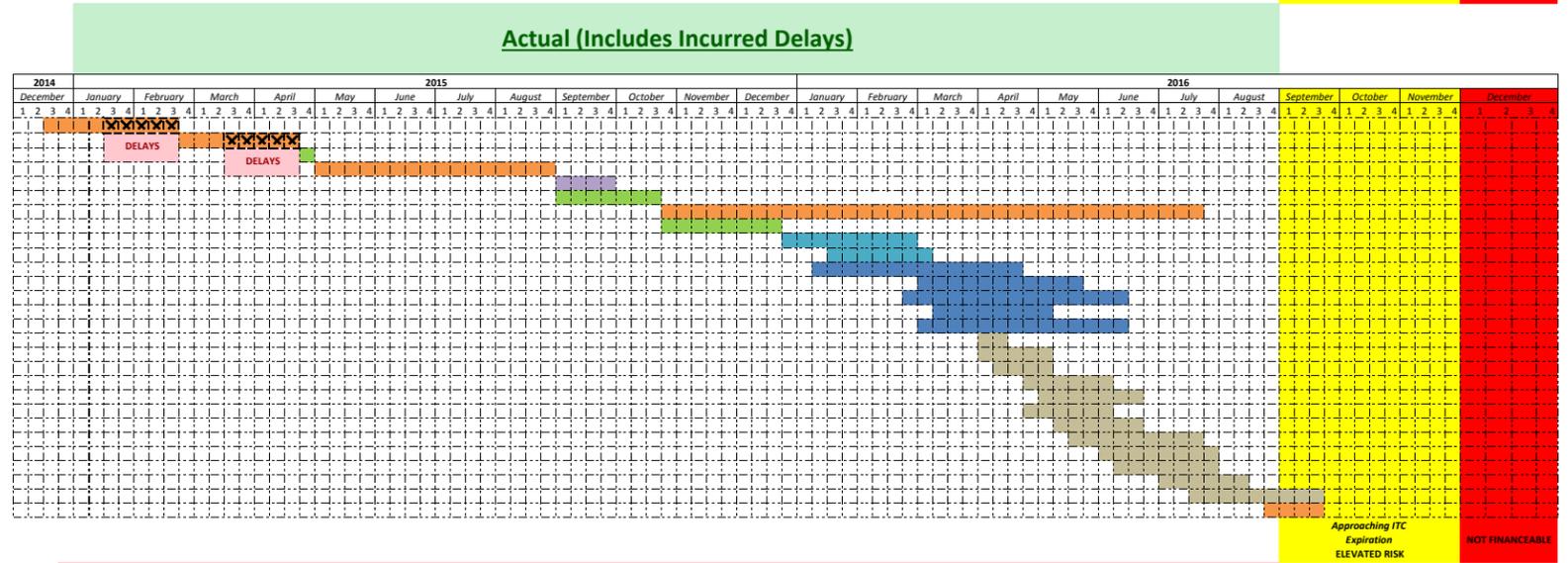
Garden Program 1 MW Project Schedule



Item	Required Time
1 Section 9 Garden Application- Xcel Initial Review Until Deemed Complete	2 Months
2 Section 10 Step 1 & 2 (Initial Engineering Review)	2 Months
3 Section 10 Step 3 (Applicant Review SOW and Pay Study Fee)	1 Week
4 Section 10 Step 4 & 5	4 Months
5 Section 10 Finalize Interconnection Agreements with Xcel	1 Month
6 Financing Finalize Financing Agreements Based on Interconnection Costs	1.5 Months
7 Interconnection Xcel Infrastructure Build Out	9 Months
8 EPC Selection EPC subcontractor RFP & Final Contracts	3 Months
9 Engineering PV Engineering	2.5 Months
10 Permitting	
11 MV Collection Cable	
12 Modules	
13 Procurement Padmount / Grounding Transformer	5 Months
14 Racking	
15 Inverter	
16 PV Construction Mobilization	
17 Civil Sitework / Access Roads	
18 Site Fence Installation	
19 UG AC Collection	
20 UG DC Collection	
21 Foundation Installation	5 Months
22 Racking Installation	
23 Module Installation	
24 Module Installation	
25 Wire DC and AC Electrical	
26 Install Inverters / Transformers	
27 Energization of PV Facility	
28 Commissioning Xcel Testing and Start Up	1 Month



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