STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

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

May 18, 2015
Docket No. E002/M-13-867

MINNESOTA CENTER FOR ENVIRONMENTAL ADVOCACY, IZAAK WALTON LEAGUE OF AMIERCIA AND SIERRA CLUB COMMENTS IN RESPONSE TO XCEL ENERGY'S APRIL 28, 2015 SUPPLEMENTAL COMMENTS AND NOTICE

I. Introduction.

The Minnesota Center for Environmental Advocacy, Izaak Walton League of America – Midwest Office, and Sierra Club ("Clean Energy Organizations") submit these comments in response to Xcel Energy's Supplemental Comments and Notice filed April 28, 2015 and the Commission's May 1, 2015 Notice for Comment. The Clean Energy Organizations are nonprofit organizations actively engaged in the promotion of clean energy resources in Minnesota. The Commission approved Xcel's community-solar-garden plan pursuant to Minn. Stat. § 216B.1641 on September 17, 2014, and Xcel's April 28, 2015 Supplemental Comments and Notice indicate that it has "nearly 560 MWs of proposals in the application queue and the number is growing daily." The community-solar-garden program is an important aspect of Minnesota's clean-energy future that was mandated by the Legislature.

In its April 28, 2015 filing, Xcel seeks to unilaterally limit the community-solar-garden program by imposing restrictions that are contrary to the Commission's September 17, 2014 Order in this docket. The company threatens to eliminate approximately 85% of the applications it has already received and reviewed from further processing. Xcel's Notice does not ask for Commission action on, or approval of, its changes, but presents them as a *fait accompli*.

The Clean Energy Organizations submit that the Commission should clearly indicate to Xcel that if Xcel follows through on the threats in its April 28 filing Xcel will be in violation of the Commission's September 17 Order in this docket and that the Commission will take enforcement steps as appropriate. The Clean Energy Organizations take this position for the following reasons: First, Xcel's maneuver is essentially an untimely request for reconsideration of the Commission's September 17, 2014 Order and must be rejected. Second, a retroactive change to the program of this magnitude would create unnecessary instability and erode public confidence in Commission proceedings. Third, Xcel's stated reasons for violating the Commission's previous Order are unsubstantiated and not supported by Minnesota law.

II. Xcel's Filing is an Untimely Petition For Reconsideration and Should Be Rejected.

As with any order of the Commission, "[a] party or a person aggrieved and directly affected by a commission decision or order may file a petition for rehearing, amendment, vacation, reconsideration, or reargument within 20 days of the date the decision or order is served by the executive secretary."[1] The purpose of this deadline to seek rehearing is to ensure finality of Commission decisions. In its September 17, 2014 Order, the Commission expressly considered co-location of community-solar-garden projects and determined that "[m]ultiple Community Solar Garden Sites may be situated in close proximity to one another in order to share in distribution infrastructure."[2] The question of co-location and the various positions of the parties was thoroughly briefed by Commission staff and argued by the parties at the August 7, 2014 Commission meeting.[3] Xcel did not petition for reconsideration of the Commission's decision. Accordingly, this Order became final after the 20-day period for filing such a petition had passed and Xcel missed its opportunity to challenge the decision in that Order that community-solar-garden sites can be located "in close proximity" to one another.

III. No Retroactive Changes Should Be Allowed.

The Commission should not allow retroactive changes to the community-solar-garden program at this stage in the proceedings. In other words, applications already received by Xcel under its current community-solar-garden tariff, which allows community solar gardens to be co-located with one another, should be processed accordingly.

With any new program such as this, there are bound to be adjustments that need to be made as the implementation of the program sheds light on potential issues. We are not suggesting that the community-solar-garden program is perfectly designed or that the Commission should ignore the many comments and suggestions filed by interested parties in this docket to date. If the design of the community-solar-garden program needs to be adjusted going forward, the Commission can make changes at its June agenda meeting based on the record and comments of the parties. But we strongly urge the Commission not to allow Xcel to violate the September 17 Order by throwing out 85% of the applications properly received under the current program.

The integrity of the Commission's procedures for allowing interested parties to participate in these dockets of general interest would be seriously undermined if the Commission allowed Xcel to unilaterally and retroactively redesign the program outside of the proper procedural channels. Parties and the public must be able to rely on the finality of a Commission decision and the ability to participate in changes going forward. People need to have confidence in the process that is designed to allow the public to have a voice in these proceedings. Moreover, the developers of community solar gardens have made substantial investments relying

[1] Minn. R. 7829.3000.
[2] Sept. 17, 2014 Order at 14-15.
[3] Staff Briefing Papers dated July 31, 2014 at 8-11.

on the Commission's Order, and Xcel's intention to refund developers for program application, deposits, and interconnection fees will not make those developers whole for the losses they will suffer. Allowing Xcel to violate a Commission order without any consequences would create unnecessary instability not only for the community-solar-garden program but for all Commission proceedings. When the Commission orders certain action by the entities it regulates, the public needs to be able to rely on the fact that utilities will either take those actions or, if not, be subject to enforcement actions.

Xcel's concerns about the implementation of the community-solar-garden program can be addressed on a prospective basis without undermining public trust and confidence in the integrity of Commission proceedings and we request that the Commission clearly indicate to Xcel that the action Xcel threatens to take will violate its September 17 Order and that the Commission will take enforcement steps as appropriate if Xcel follows through on its threat.

IV. Xcel Has Not Established That Co-Located Gardens Are Contrary To Statutory Intent Or Will Negatively Impact Ratepayers.

Xcel's argument that allowing developers to co-locate gardens on a single site is contrary to the legislative intent of the community-solar-garden statute has no merit. Statutes are to be interpreted as written based on their plain meaning.[4] While the statute limits an individual solar garden to a "nameplate capacity of no more than one megawatt,"[5] there is nothing in the statute that suggests co-locating multiple gardens should be prohibited. The statute specifically states that "[t]here 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."[6]

Moreover, the Commission specifically determined that locating gardens in close proximity was permissible, would reduce costs, and would benefit all stakeholders.[7] Co-located gardens are still subject, individually, to the 1 MW limit for each point of interconnection and all of the attendant rules, such as that no individual customer can subscribe more than 40% of any particular garden. These restrictions ensure that a variety of consumers have access to subscriptions in these community gardens, consistent with the statutory intent. Restricting the co-location of community solar gardens would do nothing to advance the statutory purpose of expanding access to solar energy, as Xcel implies. It seems that Xcel's actual argument is that it did not anticipate the level of interest in the program demonstrated by the solar development community or by the commercial and industrial customers looking for a way to offset their carbon footprints.

Xcel's attempt to tie its concern over the unexpected level of interest in the community-solar-gardens program to the Commission's decision to allow gardens to be co-located is not grounded in fact. The developer and subscriber interest in the program is not tied to the fact that

[4] Minn. Stat. § 645.08(1).
[5] Minn. Stat. § 216B.1641.
[6] *Id.*
[7] Sept. 17, 2014 Order at 13.

gardens can be co-located—it is likely more closely tied to the fact that the applicable retail rate used to determine bill credits for the program is an attractive rate to these parties. Xcel's proposed "fix" of slashing the program to only allow developers proposing one garden at a site to continue through the application process is therefore unrelated to what is likely the actual driver of the interest.

Xcel's other stated concern—that allowing immediate interconnection of 560 MWs of solar would have a negative impact on ratepayers as well as legal and technical consequences—is not grounded in the information available at this time. It is unknown at this point whether it will be feasible to interconnect *all* 560 MWs for which applications currently exist.[8] It is likely that some of these projects will not be built due to the fact that only so many projects can connect at a given location on the distribution system. But the only information we have at this time is that Xcel has not processed a single application through the interconnection phase.[9] At this point, only Xcel knows how many MWs are likely to actually make it through the interconnection process due to the opacity of its system. Without access to the information held by Xcel, there is no way to prove, or disprove, the likelihood of Xcel's significantly overstated scenarios about the consequences of the immediate interconnection of this much solar energy.

The Commission can only accurately consider the costs and benefits[10] to ratepayers and the legal and technical implications of from the community-solar-garden program when it has a realistic number of how many of the proposed gardens can be developed on Xcel's system.

V. Recommendation.

The Clean Energy Organizations request that the Commission order Xcel to continue to process applications it has received to date under the program as currently designed and ordered by the Commission—including allowing community solar gardens to be co-located. If Xcel refuses to comply with the Commission's past orders, the Clean Energy Organizations agree with the relief requested by the Solar Garden Community in its April 29, 2015 Petition for Expedited Relief including all appropriate enforcement action. If adjustments to the program need to be made on a prospective basis, the Commission can adjust the program accordingly.

[8] Indeed, it is likely that developers have submitted applications for more MWs than they intend to build because of the lack of transparency on distribution grid availability and the queue of projects ahead of developers.

[9] *See* Xcel's Compliance filing dated May 7, 2015 indicating that no applications from its "initial batch" received through December 31, 2014 have been approved.

[10] If the Commission is going to appropriately address the concerns over rate impacts to non-participating customers that have been raised it must also consider the many benefits provided by increased solar energy on the system in order to make a fully informed decision.

Dated: May 18, 2015

Respectfully submitted,

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