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May 5, 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:

As a follow up to our Petition for Expedited Relief and response to the Department of Commerce - Division of Energy Resources Motion to Show Cause (the "Motion"), the Solar Garden Community attaches, as Exhibit A, an affidavit containing the contents of communications from Xcel Energy (the "Xcel Energy Emails") to our members' potential subscribers.<sup>1</sup>

We are very troubled by the Xcel Energy Emails. Of particular concern is Xcel Energy's allegation that:

Unfortunately, many of the solar garden applications submitted do not meet the one megawatt state law size limit. Rather than solar gardens, these applications are for projects that look and act like utility scale solar projects. That is not allowed under state law or by commission rules, and it is not allowable in the current tariff approved by the PUC.<sup>2</sup>

The Xcel Energy Emails appear to have been sent with the objective of tortiously interfering with the SGC members' prospective economic advantage, which, if true, may provide the SGC

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<sup>1</sup> See Affidavit of Andrew P. Moratzka.

<sup>2</sup> *Moratzka Affidavit*, ¶ 6.



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member with an independent cause of action against Xcel Energy. *Gieseke v. IDCA, Inc.*, 844 N.W.2d 210 (Minn. 2014). Should Xcel Energy continue with these tactics, and the SGC members sustain damages, the SGC members will be forced to evaluate pursuing claims against Xcel Energy. After all, Xcel Energy is arguably intentionally disrupting solar developers' prospective economic advantage in direct violation of the Commission's clear and unambiguous orders. We are concerned that the contents of the Xcel Energy Emails were sent to numerous other customers.

Immediate resolution of the SGC's Petition for Expedited Relief and the Department's Motion is paramount. We understand and appreciate the significant demands already on the Commission. And we recognize the Commission's recent notice of comment setting May 18, 2015, as a deadline to respond on these issues. We emphasize, however, that prompt attention to this matter is critical. Ideally, the Commission would address the SGC's Petition for Expedited Relief within the next two weeks. If that is not workable, the SGC urges the Commission to resolve this matter within one-week of the May 18 comment deadline, to avoid delay in developing the CSG Program.

Very truly yours,

Stoel Rives LLP

*/s/ Andrew P. Moratzka*

Andrew P. Moratzka

APM:kap  
Attachment

cc: Service List

**STATE OF MINNESOTA**  
**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**  
121 7th Place East, Suite 350  
St. Paul, MN 55101-2147

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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

**AFFIDAVIT OF ANDREW P.  
MORATZKA**

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**STATE OF MINNESOTA )**  
**) ss**  
**COUNTY OF HENNEPIN )**

Andrew P. Moratzka, being first duly sworn upon oath, states as follows:

1. I am an attorney with the law firm Stoel Rives LLP. My business address is 33 South Sixth Street, Suite 4200, Minneapolis, Minnesota 55402.

2. Stoel Rives LLP has been hired by the Solar Garden Community, an ad hoc community of solar businesses with invested interests in Xcel Energy’s community solar garden program.

3. As part of my work representing the Solar Garden Community, I have been made aware of certain communications between Xcel Energy and business contacts of the Solar Garden Community.

4. Xcel Energy representatives are contacting customers directly by phone or through written communication and multiple potential subscribers have shared such written or electronic communication with Solar Garden Community members, who in turn have shared those communications with me.

5. To protect the anonymity of the senders and receivers of these emails, I will attest to the contents of the communication myself without disclosing dates and names.

6. I have reviewed the communications and have replicated what appears to be a form email message in its entirety below:

I wanted to send you a short note with an update on Xcel Energy's Solar\*Rewards Community program (also referred to as our solar gardens program). As you may recall, the Minnesota Legislature approved comprehensive energy policy in 2013, which included a law that required Xcel Energy to establish a community solar garden program. The legislature set a size limit of up to one megawatt for each solar garden - which could power about 140 homes. The legislature's goal was to establish a community solar program that was accessible to those who weren't able to install rooftop solar and allowed neighboring residents, nonprofits, churches, small businesses and others to share access to a centrally-located solar garden.

[Today/Yesterday] Xcel Energy announced that we anticipate that 80 megawatts of solar gardens will be moving forward to be developed in Minnesota communities through the Solar\*Rewards Community program. That's enough energy to power more than 11,000 households and it compliments Xcel Energy's other solar and wind energy initiatives that make the company a national leader in renewable energy and carbon reductions. It also will make us one of the largest solar gardens programs in the nation.

Unfortunately, many of the solar garden applications submitted do not meet the one megawatt state law size limit. Rather than solar gardens, these applications are for projects that look and act like utility scale solar projects. That is not allowed under state law or by commission rules, and it is not allowable in the current tariff approved by the PUC.

We know that many of our customers and stakeholders are interested in solar programs and we want to work with you to help meet your energy and environmental goals. Xcel Energy has a clear path to growing our solar energy resources in both the short term and the long term. In addition to developing one of the largest solar gardens programs in the country through Solar\*Rewards Community, Xcel Energy will add enough large-scale solar energy


to provide power to more than 40,000 homes through 2016, and by 2030, solar will deliver 10 percent of our energy mix. In total, renewables will account [sic] 35 percent of the company's energy mix.

Please let me know if you have any questions about our solar gardens program or any of Xcel Energy's renewable, energy efficiency or clean energy [options/strategies].

7. The bracketed text varies between communications. But the un-bracketed text is the same in the communications I have reviewed.

8. I hereby affirm that the foregoing is true and correct to the best of my knowledge and belief.

**FURTHER YOUR AFFIANT SAYETH NOT.**

  
Andrew P. Moratzka

Subscribed and sworn to before me  
this 5<sup>th</sup> day of May 2015.

  
Notary Public

