Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: October 7, 2015 ..... Agenda Item **#_3**___**

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

Issues: Should the Commission grant the petition for reconsideration filed by Sunrise Energy Ventures, LLC or the request for clarification filed by the Minnesota Department of Commerce of the Commission's August 6, 2015 Order in this matter?

Should the Commission grant a stay or partial stay of its August 6, 2015 Order in this matter?

Staff: Susan Mackenzie…….....651-201-2241
Andrew Bahn…….....651-201-2249
Janet Gonzalez…….....651-201-2231

Relevant Documents

Order Adopting Partial Settlement as Modified ..... issued August 6, 2015

Sunrise Energy Ventures, LLC Petition for Reconsideration. ..... August 26, 2015
Department Request for Clarification ..... August 26, 2015
Kandiyo Consulting, LLC ..... August 31, 2015
Xcel Answer ..... September 8, 2015
SoCore/Sun Edison/SunShare (Solar Garden Community) ..... September 8, 2015
Small Solar Developers, Signatories to the Partial Settlement ..... September 8, 2015
Sunrise Energy Ventures, LLC (Sunrise) ..... September 8, 2015
Fresh Energy ..... September 8, 2015
Energy Law and Policy Center (ELPC) ..... September 9, 2015
Xcel response to PUC Staff IRs #2-6 ..... September 11, 2015
Xcel draft compliance tariffs ..... September 15, 2015
Sunrise letter on Xcel response to PUC IR#2-6 ..... September 16, 2015
Xcel response to PUC Staff IR #7 ..... September 23, 2015

Commission Orders in Docket E-002/M-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

The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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Statement of the issue

Should the Commission grant the petition for reconsideration filed by Sunrise Energy Ventures, LLC or the request for clarification filed by the Minnesota Department of Commerce of the Commission's August 6, 2015 Order in this matter?

Should the Commission grant a stay or partial stay of its August 6, 2015 Order in this matter?

Background

On August 6, 2015, the Commission issued its ORDER ADOPTING PARTIAL SETTLEMENT AS MODIFIED, *In the Matter of the Petition of Northern States Power Company, dba Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, in Docket No. E-002/M-13-867.[1]

On August 26, 2015, Sunrise Energy Ventures, LLC (Sunrise) filed a Petition for Rehearing and Reconsideration and Motion for Stay of the Commission's August 6, 2015 Order.

On August 26, 2015, the Minnesota Department of Commerce (DOC or Department) filed a Request for Clarification of the Order.

On September 8, 2015, Xcel Energy (Xcel) filed an Answer to the Sunrise Petition for Rehearing and Reconsideration and the Department's Request for Clarification of the Order.

On September 8, 2015, the following parties filed comments in response to the Petition for Rehearing and Request for Clarification: the Solar Garden Community (SGC)[2], the Small Solar Developers,[3] Sunrise, and Fresh Energy. On September 9, 2015, the Energy Law and Policy Center (ELPC) filed comments.

On September 15, 2015, Xcel filed draft tariff provisions to convey how updated tariffs would be modified in order to implement the August 6 Order.

Minnesota Statutes and Commission rules

Petitions for reconsideration are subject to Minn. Stat. § 216B.27, and Minnesota Rules, Part 7829.3000. Under statute and rule, parties have 20 days from issuance of an order to petition for reconsideration.[4] The Commission may grant and hold a rehearing on the matter, if in its judgment sufficient reason exists. However, petitions are deemed denied by operation of law

[1] The votes adopting the settlement and related issues were all 5-0, with Commissioners Heydinger, Lange, Lipschultz, Tuma, and Wergin present. One motion, to amend the ARR (Applicable Retail Rate) going forward, failed 1-4 and is not the subject of reconsideration. See the Minutes filed in the current docket on September 22, 2015.

[2] The SGC represents the following solar developers: SoCore Energy, LLC, Sun Edison LLC, and SunShare, LLC.

[3] The Small Solar Developers were the signatories to the Partial Settlement Agreement, and include: Innovative Power Systems, Minnesota Community Solar, Novel Energy Solutions, SolarStone Partners, and TruNorth Solar.

[4] Both Sunrise and the Department filed timely petitions with the Commission.

unless the Commission takes action on the petition within sixty days of the request.[5] The Commission may also reconsider or clarify an Order on its own motion.

If the Commission decides to take action on the petitions, it may take specific action either to grant or deny them. The Commission may: (1) reconsider, then reverse, modify/clarify or affirm its initial decision, or (2) deny the petition and thereby affirm the initial decision. The Commission can decide a petition for reconsideration with or without a hearing or oral argument.

Relief sought by Sunrise

Sunrise petitioned the Commission to:

- Withdraw its August 6, 2015 Order as procedurally improper and lacking the force of law.
- Refer the matter for rulemaking or for contested case adjudication.
- Alternatively, refer the matter for expedited mediation.
- Alternatively, either modify substantive provisions of the August 6, 2015 Order or extend the stay of the Order pending an appeal by certiorari to the Minnesota Court of Appeals.

Clarifications or modifications sought by the Department

The Department asked the Commission to clarify the following aspects of the August 6, 2015 Order:

- to clarify or remove the $1 million dollar cap on costs of interconnection.

- to clarify whether CSG applicants, for a limited period of time, may transfer any or all of their ownership interests in an CSG application to a different developer without the application losing its queue position.

- to clarify two topics relating to the independent engineer:

  (a) the independent engineer's decisions to resolve technical disputes are final and binding on the parties unless an applicant or the Company requests in writing Commission review, and

  (b) if Xcel is not reasonably responsive to information requests or does not work cooperatively to attempt to resolve disputes, then applicants are not responsible for a share of the independent engineer's costs.

- to clarify that the Department's written decisions on application tracking are final and binding on the parties, unless an applicant or the Company requests Commission review in writing.

[5] The Petitions in this case will be deemed denied if not acted upon by October 26, 2015.

Requests for Stay of the August 6 Order

Sunrise asked the Commission to grant an immediate stay of the August 6 Order so that the Commission could review the matter before Xcel took actions to implement parts of the Order and remove Sunrise from the queue.[6] Sunrise also asked the Commission to grant or extend the stay of the Order pending an appeal certiorari to the Minnesota Court of Appeals.

SGC suggested the Commission consider a very specific stay tailored narrowly to items such as the release of Xcel's tariff compliance filing as well as the scaling back of facilitates to comply with the Commission's August 6 Order. SGC's concern is based on Ordering Paragraph 11, which states: "This order shall become effective immediately." Given this statement, SGC does not believe it is clear that the petitions for reconsideration imposed a stay on the effectiveness of the August Order under Minn. Stat. § 216B.27, subd. 3.

On September 15, 2015, Xcel filed draft tariffs reflecting how the CSG-related tariffs would be modified to implement the August 6 Order. In this filing, Xcel stated:

> The Company recognizes that the Commission's August 6, 2015 Order in Docket No. E002/M-13-867, including the Order's direction to the Company to file proposed tariffs within 30 days, has been stayed due to the pending petitions for rehearing, reconsideration, and clarification. Recognizing parties' interests in moving forward expeditiously, we file these draft tariff provisions ahead of our obligation to do so.

Minn. Stat. § 216B.27, subd. 3, states that an order is final "ten days after the application for rehearing is either denied, expressly or by implication, or the commission has announced its final determination on rehearing."

Sunrise's Petition

Sunrise asserted that the Commission's Order of August 6 is unenforceable, void and cannot be implemented while Sunrise's petition for rehearing is pending. Sunrise made the following claims:

First, the August 6 Order is void because it is an unpromulgated rule that fails to conform to requirements of "publication, notice, comment and ALJ participation specified in Minnesota Statute Chap. 14".[7] Because the August 6 Order setting forth the rules of the CSG program "erred by not properly adopting rules relating to its procedures as required by Minn. Stat. § 14.06,"[8] it is void.

Second, the August 6 Order violates the CSG statute by failing to make specific reference to the eight factors listed in Minn. Stat. § 216B.1641(a) that any CSG plan approved must meet.[9]

[6] Sunrise Petition at 9-11.
[7] Sunrise Petition at 14.
[8] Sunrise Petition at 14.
[9] Sunrise Petition at 4-5.

Third, the Commission was required by Minn. Stat. § 216B.09, subd. 1, to refer the CSG matter to the Office of Administrative Hearings (OAH) for an evidentiary hearing, specifically a contested case hearing before an ALJ. The purpose of such a hearing would be to consider "multiple material issues of fact involving sizing, operation and connection."[10]

Fourth, the absence of such a hearing has deprived Sunrise of due process under the 14th Amendment to the Constitution and caused the loss of $10 million in deposits and $2 million in development costs. Because Sunrise expended these funds in reliance on the CSG program and tariffs, the requirements of the program cannot "reverse course without providing due process."[11]

Fifth, the Commission's ten-minute break during deliberations on June 25, 2015 was "irregular" and violated Minnesota's Open Meeting Law.

Sixth, the co-location limitation of 5 MW from an applicant at any project site is "arbitrary and capricious"[12] and divestment to other solar interests was considered a "viable alternative for compliance."[13]

Seventh, Sunrise pointed to inconsistencies between the PURPA provision requiring utilities to interconnect qualifying facilities (QFs) and what it refers to as "further restrictions"[14] by Xcel over material upgrades.

Xcel's Answer to Sunrise

Xcel submitted that neither the Department nor Sunrise raised new issues showing that the Commission's Order was unlawful or unreasonable, and therefore met the standard for granting reconsideration or clarification under Minn. Stat. § 216B.27, subd. 3. As Xcel stated: "the Department and Sunrise have not raised new issues, brought forward new evidence, exposed any errors or ambiguities, or raised any other concerns sufficient to reopen this matter."[15]

Xcel explained that the heart of the Partial Settlement Agreement (PSA),[16] set forth in sections 2.2 and 2.3 established co-location restrictions, recognized the technical limits of the existing distribution system, established a path for accelerating the application process, created more transparency in the application process and established a process for refining program rules over the course of next year. Xcel believes that upon reviewing the Partial Settlement, the Commission agreed that it "sets forth a workable solution consistent with the public interest and the statutory intent to create a solar-garden program that is community-focused."[17] Xcel argued that the Commission's decision to adopt sections 2.2 and 2.3 of the PSA is well-reasoned and supported in the record.

[10] Sunrise Petition at 20.
[11] Sunrise Petition at 22.
[12] Sunrise Petition at 25.
[13] Sunrise Petiton at 27.
[14] Sunrise Petition at 30.
[15] Xcel Answer at 3.
[16] Partial Settlement Agreement, filed June 22, 2015, in 13-867.
[17] See August 6 Order, p. 13.

Xcel argued that the Department, in part, and Sunrise, in total, seek to materially change and substantially undo the workable solutions that the settling parties have brought forward and the Commission has adopted. Xcel also argued that through their petitions, the Department and Sunrise are pursuing outcomes that will hinder forward momentum and shift the focus to the regulatory process rather than program implementation.

Xcel explained that the settlement was an attempt to balance two concerns: (1) those of developers and participating customers who sought certainty that community solar gardens would be placed into service before the investment tax credit (ITC) step-down in 2016, and (2) the Company's concern that the reliability of its system would not be compromised and the financial impact on non-participating customers would be appropriately restrained. It was through this mutual desire for certainty that the settling parties were able to reach a near-term solution that moves the program forward rather than seeking recourse from the Minnesota Court of Appeals or FERC.

Xcel argued to the extent that the Department's request for clarification regarding interconnection upgrades or program divestiture or Sunrise's Petition for Reconsideration are granted, uncertainty will be recast over the program and Xcel will have to re-engage with stakeholders to consider new solutions.

Xcel thus maintained that Sunrise failed to show a basis for reconsideration, such as abuse by the Commission of its discretion. It then responded to Sunrise's petition, as follows:

- the Commission's promulgation of rules through its Order is consistent with a legally supported case-by-case approach because it applies only to Xcel and the program is new.
- where Sunrise contends that the Order did not refer to the eight factors in the CSG statute that the program must satisfy, it failed to mention that these factors were considered in deliberations and analyzed in the September 17, 2014 Order approving the program and did not need to be recited again.
- Sunrise's contention that an evidentiary hearing was required before the Office of Administrative Hearings (OAH) incorrectly cites Minn. Stat. § 216B.09. The statute does not require a hearing; the Commission can choose instead, as it did, to develop a record; this record resulted from several rounds of comments and two days of oral argument in which Sunrise actively participated.
- given the comments and oral arguments made by Sunrise, it was heard at a meaningful time and manner and it cannot creditably claim that it was denied due process of law, especially in light of the quasi-judicial nature of the decision, which required less formal procedures than a court.
- the 10-minute break taken by the Commission on June 25 did not violate Minnesota's Open Meeting Law, and even if it did, the sole remedy is a civil fine—not invalidation of the Commission's Order.
- the 5 MW limit on co-location in the August 6 Order is neither arbitrary nor capricious because the Commission engaged in reasoned decision making and had a rational basis for its decision.
- PURPA does not limit the ability of the CSG program to impose restrictions on interconnection.

Small Solar Developers' reply to Sunrise

The Small Solar Developers argued that Sunrise "points to no new issues or new evidence" and that its petition for reconsideration should be denied "without a hearing and without argument."[18] In particular, they warned that further delay could destroy the CSG market and that the public interest requires that no stay be issued. They referred to the abrogation of executive authority and lack of due process alleged by Sunrise as "vague constitutional allegations" insufficient to derail the CSG program, and suggested that Sunrise is free to take its case to the Court of Appeals.

The Small Developers argued the process by which the Commission reached its decision in the August 6 Order was "wholly legal" and consistent with the case-by-case approach allowed under the Administrative Procedures Act (APA). There is therefore no reason for expedited mediation by an ALJ because no dispute is ripe, nor is any further clarification necessary either in the Order or in relation to PURPA, which in any case applies an avoided cost approach to interconnection very different from the CSG program.

Staff comments on Sunrise's Petition

Staff does not believe Sunrise's petition raises any procedural claims that must be addressed by the Commission or that challenge the Commission's legal authority or findings in the August 6 Order. Sunrise has not raised new evidence or presented legal arguments not previously addressed by the Commission, or exposed errors or the need for clarification of the Commission's Order. Staff does not recall any of the parties, including Sunrise, having requested a contested case prior to these proceedings as required by Commission Rule.[19]

Staff notes Sunrise has been actively involved, participating in deliberations, hearings and the stakeholder group meetings concerning the CSG program. It has filed comments through its attorneys that have been considered by the Commission. Clearly, Sunrise has been engaged in the Commission's process. This process began in September 2013 and has resulted in five separate Commission Orders.[20] These Orders provided a deliberative and incremental framework for the implementation of the CSG program by Xcel, including a showing that Xcel's plan met all the statutory provisions of Minn. Stat. § 216B.1641. The Commission expects the CSG program to continue to develop and evolve and that it will revisit issues such as price, size and participation levels.

Staff would note that to the extent that developers have projects that exceed 5 MW, Section 10 provides an alternative process for proceeding with projects.[21] Staff believes Xcel has indicated

[18] Small Solar Developers at 2.

[19] Minn. Rule 7829.1400, subp. 3 requires persons commenting on miscellaneous filings to "specify whether the person believes the filing requires a contested cast proceeding, informal proceeding, expedited proceeding, or some other procedural treatment, together with the person's reasons for recommending a particular procedural treatment."

[20] See "Relevant Documents" for the title and issue date of each of the five Orders issued in this Docket.

[21] Section 10 is the section of Xcel's tariffs that addresses the interconnection process, application, and agreement for distributed generation systems.

that non-compliant projects, which are cancelled within the CSG program, will continue to retain their queue position within Section 10.

The Commission may find the following information useful in its review of Sunrise's petition. First, on page 5-6 of its petition, Sunrise indicates that it "expended in excess of $2 million in non-refundable development costs, secured $10 million in deposits required under the tariff, and invested many hours of labor and study." In PUC staff IR #2, Xcel was asked to identify which fees and deposits would be refunded if projects over 5 MW are cancelled. Xcel stated:

> To the extent to which applications are withdrawn or cancelled in order to resize co-located projects in compliance with the 5 MW(AC) co-location limit, Xcel Energy will refund each Solar*Rewards Community program application fee, each Generation Interconnection Application Fee, and each Solar*Rewards Community deposit. The deposit will be refunded with interest.

The fees and deposits required under the CSG program are described in Xcel's response to PUC Staff IR #3, which indicates that the program application fee per garden in $1,200, which will be refunded. The garden application deposit fee is $100 per kW; so, for example, for a 1 MW garden the application deposit would be $100,000, which will also be refunded. The Interconnection Application Fee varies by project size as detailed in the Company's Electric Rate Book, Section 10, Sheet 93. However, according to the table on Sheet 93, the Interconnection Application Fee for a 1 MW garden would be $2,000, and this fee will also be refunded.

Sunrise refers to its reliance on a "reservation letter" in its dealings with Xcel. Staff notes the reservation letter is one of many steps in the CSG application process.[22] The reservation letter is an agreement signed by the developer once an application has been reviewed for completeness. It locks the developer into a rate structure but not a specific rate; the actual bill credit rate does not take effect until the garden becomes operational, at which time the applicable tariff rate will apply. The reservation letter step in the application process precedes the Study/Statement of Work, Interconnection Cost Estimate, Interconnection Agreement, and most importantly, the SR*C Contract step, which lays out terms and conditions between Xcel and the developer for the garden.[23]

Moreover, staff notes that the 5 MW co-location limit was part of a step down so as to provide for an orderly grace period before the 1 MW co-location limit is effective for new applications beginning on September 25, 2015. The August 6 Order states: "The settlement calls for an initial 5 MW cap on co-location for existing solar-garden applications. After September 25, 2015, no more than 1 MW of co-located solar gardens will be allowed at any given site."[24]

Staff notes that oral testimony brought forward at the hearings on June 23 and 25, 2015 imply that a 5 MW limit on project size will help create a stronger incentive for projects to locate gardens and garden projects in a distributed fashion near load, reducing the line loss and the clustering of large projects around substations.

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[22] See Xcel's response to PUC IR #5, including link to the reservation letter.
[23] See Xcel's response to PUC IR #5, including link to SR*C contract and Reservation Letter.
[24] Order at 14.

Department's request for clarification on four issues

The Department requested clarification and reconsideration of the August 6 Order on four issues:

- distribution system upgrades for CSGs
- divestiture/ownership transfer
- clarity of the role and finality of the decisions of the independent engineer
- timely processing of applications and the tracking system

After a summary of Xcel's responses to the Department, each of these four issues is considered in detail.

Xcel's Answer to the Department's request for clarification

Xcel argued the Department did not meet the Commission's standard for granting a petition for clarification; it has not shown that the Commission's Order is unlawful or unreasonable; the petition has not raised new issues, brought forward new evidence, exposed any errors or ambiguities, or raised any other concern sufficient to reopen this matter.

Xcel responded to the DOC request in four parts.[25] First, it argued that modifying the $1 million distribution system upgrade limit in the Order's adoption of section 2.2(b) of the settlement was not necessary because "the Company and the settling parties agreed to work within the existing electrical confines of our distribution system."[26] Nor, contrary to the Department, did Xcel feel that the absence of such a limit under PURPA necessarily required its absence under the Minnesota CSG program, or that exceptions to the upgrade limit should be allowed if section 2.2(b) of the settlement was to represent a clear boundary.

Second, in response to the Department's request that the Commission clarify the issue of divestiture, Xcel asked the Commission to confirm that a developer cannot divest MWs in excess of the 5 MW cap and remain in the queue.

Third, Xcel responded to the DOC's call for the costs of an independent engineer to be borne by Xcel in the event of a dispute over process or technical interconnection issues. Xcel argued that the implementation of a dispute resolution process to follow an Effective Date (June 25, 2015) had not yet occurred and that Xcel was still formulating appropriate policies. Therefore, the Department's clarification request is premature. In addition, Xcel commented that the DOC's approach might invest the independent engineer with too much authority and create incentives to blow small problems into larger ones so as to force compensation to the engineer from Xcel.

Fourth, Xcel argued that the Department's request for clarification of its role in application-tracking process and the timely processing of applications should be denied because no new facts or issues have been raised and the suggested modifications, like those surrounding the independent engineer, are premature.

[25] Xcel Answer at 3.
[26] Xcel Answer at 4.

In sum, Xcel argued the Commission need not address any of the four issues raised by the Department. These four issues are considered in greater detail below.

Distribution system upgrades for CSGs

Commission's August 6, 2015 Order

The Partial Settlement Agreement (PSA) supported by the Commission's August 6, 2015 Order included a provision that Xcel need not undertake material upgrades to its distribution system to accommodate interconnection of co-located community solar gardens.

> **2.2.b. Distribution System Upgrades.** The Parties agree that for purposes of interconnecting Co-Located Community Solar Gardens to Xcel Energy's distribution system, Section 10 of the Company's Minnesota Electric Rate Tariffs do not require the Company to undertake any material upgrades in its distribution system to accommodate interconnection of Community Solar Garden applications. For purposes of this Agreement, material upgrades include, but are not limited to, the addition of substation transformers, the upgrading of existing substation transformers, the installation of new feeder bays, new overhead feeders, or new underground feeders, and re-conductor and pole line work, where the cost of such upgrades exceeds one million dollars. If the Company does not undertake material upgrades, where such upgrades would otherwise be needed for safety, reliability, or prudent engineering practice, then the Community Solar Garden will not be interconnected to the Company's distribution system.

The Commission adopted the above section of the partial settlement in Ordering Paragraph 1 (pages 27-28) of its August 6 Order. On page 14 of that Order, the Commission found:

> The settlement agreement also provides that Xcel is not required to undertake any material upgrades in its distribution system to accommodate solar-garden interconnections. This provision appears to have the effect of limiting solar-garden capacity at a particular interconnection point to the preexisting capacity available at that point on the distribution system.
>
> The Commission finds this provision of the settlement to be consistent with the intent of the solar-garden statute. Moreover, limiting the range and complexity of distribution upgrades that developers can request to accommodate gardens should result in a faster-moving interconnection queue, which benefits developers.

Party Positions

As noted elsewhere in these briefing papers, Sunrise argues that the Commission's entire August 6 Order is procedurally flawed, rendering it invalid. Sunrise states that in order to preserve its rights, it is also noting some specific needed clarifications. With respect to distribution system upgrades, Sunrise argues the Commission should remove the one-million dollar "material upgrade" limitation to conform to PURPA's requirement that electric utilities must interconnect with QFs.

In its Request for Clarification, the Department also suggested the Commission clarify or remove the one-million dollar cap on upgrades for interconnection. The Department argued that:

- Minn. Stat. §216B.164 and the federal Public Utilities Regulatory Policy Act (PURPA) prohibit utilities from refusing to interconnect on the grounds that the costs exceed a certain amount.

- The settlement language does not explicitly limit the cost cap to a particular interconnection point and would not prohibit Xcel from aggregating costs of multiple interconnection points or multiple garden applications to reach the one-million dollar cap.

- The settlement language is unclear whether "unreasonably" high costs and cost not "directly" related to the "physical facilities" for interconnection can be added into the costs included in the cap. Such costs would not be included under the definition of interconnection costs in the Commission's Cogeneration and Small Production rules, 7835.0100, subp. 12.

The Department suggested that the Commission consider the following amendments to pages 27-28 of its August 6 Order:

> b. Distribution System Upgrades. The Parties agree that for purposes of interconnecting Co-Located Community Solar Gardens to Xcel Energy's distribution system, Section 10 of the Company's Minnesota Electric Rate Tariffs do not require the Company to ~~undertake~~ **bear the cost of** any material upgrades in its distribution system to accommodate interconnection of Community Solar Garden applications. For purposes of this Agreement, material upgrades **will conform to the requirements of Minn. Rule 7835.0100, and** ~~include, but~~ **are** ~~not~~ limited to~~,~~ **the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions, and administrative costs incurred by the utility that are directly related to installing and maintaining the physical facilities necessary to permit interconnected operations, which facilities include** the addition of substation transformers, the upgrading of existing substation transformers, the installation of new feeder bays, new overhead feeders, or new underground feeders, and re-conductor and pole line work ~~where the cost of such upgrades exceeds one million dollars. If the Company does not undertake material upgrades, where such upgrades would otherwise be needed for safety, reliability, or prudent engineering practice, then the Community Solar Garden will not be interconnected to the Company's distribution system~~. **Material upgrades shall include only the most reasonable, cost-effective solutions available to comply with the governing codes[27] and to operate the system safely and reliably. Material upgrades to accommodate interconnection must not exceed costs of comparable upgrades undertaken by Xcel to accommodate its own generation. The costs for interconnection should be itemized and made available to the applicant as part of the engineering review process. Actual cost of upgrades will be within 20% of the estimate supplied by the Company.**

[27] Current version of the National Electric Safety Code and National Electrical Code as adopted in Minnesota.

If the Commission were to retain the million-dollar cap on interconnection per solar garden application, it could also add the following to the above paragraph:

> **Costs associated with material upgrades outside the substation are excluded from the $1 million limit per garden. Each garden application may incur material upgrade costs of up to $1 million for substation improvements.**

In replies, Sunrise and the SGC supported the Department clarifications. Fresh Energy also supported the Department's recommendations, and additionally stated that:

- The one-million dollar limit is not necessary to achieve the policy objective of moderating CSG capacity
- The public interest is better served by having the CSG program conform to Minnesota and federal interconnection rules and
- The interconnection restrictions create additional implementation issues for the program.

The Environmental Law and Policy Center (ELPC) made very similar arguments to those of Fresh Energy.

As noted above, Xcel opposed the Department's proposed clarifications, arguing that the modifications to the settlement provisions would upset the careful balance struck by the parties and approved by the Commission, allowing the program to move forward. The limit on material upgrades avoids delays that could be caused by undertaking major upgrades, allows more CSGs to come on-line before the 2016 ITC step-down, helps ensure reliability, and allows the program to move forward without getting into broader PURPA issues.

The Small Solar Developers also opposed the Department request for clarification. They noted that while it is correct that PURPA does not have a limit on interconnection costs for which a QF would be responsible, under PURPA, these facilities would only receive avoided cost rates for their energy. The CSG program has other specific benefits and requirements.

Staff comments on PURPA

Under federal and state law and implementing rules[28], utilities must interconnect with qualifying facilities (QFs), and undertake the upgrades needed to do so, provided the QF is willing to pay the related costs. Therefore, if Sunrise were to put forward its projects as standard QFs of 20 kW or under, rather than as CSGs, then Xcel would be required to interconnect and the one-million dollar material upgrade cost limit would not apply. However, a CSG is a special type of entity authorized by the legislature under Minnesota state law, and the Commission may set specific qualifications for, and limits on, CSGs consistent with that law. If an entity wishes to avail itself of the benefits of being a CSG, such as special rates and billing arrangements, then it must also abide by any qualifications and limitations put on CSGs.

The CSG program has analogous net-metering requirements under state law. Net-metering is consistent with, but not required by, PURPA. Minnesota has enacted specific size criteria, rate considerations, and billing arrangements for net-metered QFs. A number of other states have set

[28] 16 U.S. Code § 824a–3; 18 CFR Part 292; Minn. Stat. §216B.641; Minn. Rules, Chapter 7835

further limits on net-metering, including limits on the number of net-metered customers allowed and/or kWh generated for each utility or statewide. The Commission can likewise set specific criteria for CSGs without violating PURPA, FERC rules, or state laws and rules. Staff also notes that, under PURPA, the Commission may impose reasonable standards to ensure the safety and reliability of interconnection operations to the system. As Xcel has previously noted, the reliability of the system was one of the primary concerns when the parties adopted the settlement agreement.

Non-PURPA related arguments related to distribution system upgrades

Party positions

The Department opposed any limit on interconnection costs to be paid by the developer on the basis of PURPA. However, in the event that caps or limits were to be applied, the Department went on to point to what it believed were several ambiguities.

Fresh Energy objected to Xcel's interpretation of the Order to allow the Company to include both a $1 million cap on what it deems to be "non-material upgrades" and to allow Xcel to reject any interconnection application that includes "material upgrades." According to Fresh Energy, Xcel has interpreted "material upgrades" to include any of the interconnection work listed in the Order, and also to include anything the Company deems to be "material."

SGC asked the Commission to grant the DOC's proposed language regarding the $1 million cap in order to resolve the present dispute and move forward. It indicated that it had refrained from filing a petition asking for clarification and had worked within the stakeholder group to effect the terms of the August 6 Order.[29] However, it believes that Xcel's reading of the Order language to allow a $1 million cap on "material upgrades" to the distribution system is incorrect. This allows the Company full discretion to determine the materiality of an upgrade and rule it off-limits.[30]

ELPC argued that limiting interconnection based on material upgrades and/or a dollar cap would result in the interconnection of renewable energy projects across the state that is not uniform and consistent for all state jurisdictional facilities. It argued such limits are unusual. ELPC also asked the Commission, as it has in previous filings, to initiate a new proceeding to update and streamline interconnection standards for all state jurisdictional facilities.

Xcel provided context in support of the adopted language on material upgrades in the Order and in section 2.2.(b) of the settlement, as follows:

> The PSA provides that there will be no Material Upgrades to the distribution system for a community solar garden project. The PSA identifies examples of the types of upgrades that are, by definition, material—adding substation transformers, upgrading existing substation transformers, installing new feeder bays, new overhead feeders, or new

[29] Staff notes that SGC's written comments were filed on September 8, 2015. Since that time, the Stakeholder Workgroup has met several times to discuss the tariff language for the material upgrade limit.
[30] SGC noted that Xcel interpreted "where" as "or," thus allowing both the "material upgrade" limit to be determined by Xcel, as well as a dollar cost cap of $1 million limit to upgrades, thus rendering the $1 million qualifier meaningless while creating a new limitation on non-material upgrades.

> underground feeders—and provides for an aggregate materiality cap of $1 million per site. Essentially, the Company and settling parties agreed to work within the existing electrical confines of our distribution system. There was recognition that taking the system as it is today would ensure system reliability for all customers and alleviate the need to undertake long-lead time upgrades, resulting in more projects being built. Agreeing to limit distribution upgrades was fundamental to the settlement because the construction of most Material Upgrades is time-consuming. The estimated lead time for constructing substation transformers, for example, is 12 to 15 months. In addition, there is a limited amount of time before the ITC step-down at the end of next year and a significant number of projects in the community solar garden queue. The settling parties also recognized that the language in Section 2.2(b) would serve to enforce the five MW co-location limit. In this way, Section 2.2(b) is the crux of the PSA.[31]

At the outset of settlement negotiations, the Company sought certainty that the reliability of its system would not be compromised. If upgrades are limited in materiality, the Company can move more quickly through the interconnection study process and meet a 50 day review period.[32] Xcel indicated that if the Department's request for clarification regarding interconnection upgrades is granted, the Company will need to "re-engage" with stakeholders to consider new solutions for moving the program forward or pursue options in other venues. Xcel also suggested the Commission could explore this issue as part of a contested case proceeding.[33]

Staff comments on non-PURPA issues

As discussed above, staff does not believe that either the material upgrade or the $1 million cap limit on interconnections for CSG projects is in conflict with PURPA. However, apart from PURPA concerns, some parties find the settlement language adopted by the Commission to be in need of clarification, notably the Department. The Department has proposed significant language modification if the Commission retains the interconnection limits in the settlement. These changes could themselves raise additional disputes over application and implementation. As noted, the Department's proposed language on material upgrades eliminates Xcel's discretion to determine and apply a limit on interconnection through a material upgrade or dollar cap limit.

In adopting the settlement, the Commission provided broad policy direction and a general framework. The Commission thus allowed leeway for the development of specific tariff language in which details of the program would be specified. This tariff development process could provide the clarification the Department and other parties seek. The settlement authorizes Xcel to determine what a material upgrade is and provides examples of upgrades which if over $1 million will be considered material and not be performed. Xcel's proposed tariff language is clearer in that it limits the application of the $1 million cap to aggregated costs for two types of upgrades.

The Commission will need to decide if the settlement language should be reconsidered as requested by the parties, and if so how. The Commission has the option: (1) to reaffirm the

[31] Xcel Answer at 4.
[32] See Xcel response to PUC IR #7, regarding treatment of project applications in the queue.
[33] Xcel's Sept. 14, 2015 comments on the contested case proposed that distribution system upgrades is one of three important issues to be addressed in a potential future contested case proceeding.

Order as reflecting the settlement language and to look to proposed tariff language for further clarification, (2) to reconsider, change or clarify the language in the settlement and/or Order,[34] (3) to accept the Department's proposed language changes.

The sentence in the Order attracting the Department's concern reads: "This provision appears to have the effect of limiting solar-garden capacity at a particular interconnection point to the preexisting capacity available at that point on the distribution system." Staff believes that this statement was not intended to draw the line for material upgrades but to explain that a limit on material upgrades was reasonable. Staff believes that the Commission intended to adopt the settlement and not necessarily to clarify or modify it through this statement in the Order. The Department and parties may be over-interpreting this statement.

It bears emphasis that the $1 million limit attracting comment on material upgrades was an explicit part of the settlement agreement.[35] The basis for the $1 million limit comes from Section 10, Tariff Sheet 80-81 of Xcel's Tariff Book, which provides a range of typical interconnection costs for distribution generation projects. According to this tariff, interconnection costs for projects over 1 MW are estimated to be from $5,000 to $1,000,000. This estimate in tariff provided a basis for the $1,000,000 cost cap for system upgrades for CSG garden projects over 1 MW.

The Commission was aware that the purpose of placing a limit on distribution system upgrades, in the short term, was to recognize the technical limits of the existing distribution system and to accelerate the application process. The settlement was an attempt to maintain system reliability and accelerate interconnections of CSGs to the grid by reducing study time and system upgrades.

Staff does not believe the settlement was intended to change who pays which costs for upgrades when generators interconnect, although this issue is addressed in the Department's proposed language changes. In other words, staff believes boundaries on the appropriate interconnection costs to be paid by the developer would conform to Minnesota Rules 7835.0100 regardless of whether the language proposed by the Department is inserted into the adopted settlement language or not. The cost cap or dollar limit being discussed would be used at an early stage in the process (i.e. Engineering Scoping Study) to assist in the determination of whether a material upgrade was required and whether the project would move forward to the next step in the interconnection process, not necessarily as part of the final interconnection cost to be paid by the developer.

On September 15, 2015, recognizing parties' interest in moving forward, Xcel filed draft tariff language demonstrating how it would implement the Commission's August 6 Order. As part of this draft language, Xcel made an attempt to incorporate concerns voiced by developers at stakeholder meetings. Staff understands that the proposed tariff language on material upgrades was voted on by the stakeholder work group during the week of September 13,[36] and discussed at the September 23 stakeholder meeting. The further work of the stakeholder group on the language after its filing suggests that additional consensus may be possible. Staff believes that

[34] Xcel's proposed draft tariff language is discussed in detail below.
[35] The Commission should note that the distribution system upgrade cost limit only applies to gardens that are co-located.
[36] The vote failed.

the draft tariff language will improve Xcel's ability to implement the current settlement language on material upgrades.

For this reason, the Commission could take comments from developers on the draft tariff language at the October 7 meeting, and if further consensus is apparent, may choose to incorporate or adopt the revised language in its Order. Staff has included a decision option based on the proposed tariff language, with some revisions. The revisions are intended to provide more clarify around what Xcel will can determine is a material upgrade.

Also, staff notes that under the August 6 Order, any disagreement over how this language is to be applied will follow the dispute resolution process and go to the independent engineer for resolution, a resolution which may be binding if the Commission accepts the Department's proposal.

Attachment A, page 4, of Xcel's draft tariff language describes the process proposed by Xcel for determining a material upgrade, as follows:

> h. Beginning with the Initial Revised Tariff Filing Date, once a Community Solar Garden is Expedited Ready it will undergo Engineering Scoping Studies which will include among other matters the following:[37]
>
> > i. The Company will determine whether a "Material Upgrade" to the Company network is needed to accommodate a Community Solar Garden. A Material Upgrade will not be performed.
> >
> > aa. Examples of Material Upgrades that will not be performed include the following:
> >
> > - New substation transformer
> > - Upgrade substation transformer(1)
> > - Install new feeder bay
> > - Install new overhead or underground feeder(2)
> > - Changes that require a substation outage
> >
> > (1) A substation transformer upgrade is defined by the replacement of entire unit. Auxiliary relaying, instrumentation, and other minor upgrades do not fall in this category.
> >
> > (2) This provision only applies to a switchgear substation. A switchgear substation is one that contains pre-manufactured feeder breaker assemblies.
> >
> > bb. In addition, a Material Upgrade includes the following upgrades or additions resulting from the engineering indicative cost estimate which, in the aggregate, exceed $1 million:

[37] Staff has modified the draft tariff language slightly as presented in the Decision Alternatives.

- Three-phase line extension on existing feeders
- Reconductor/build Line

A decision to reconsider by the Commission should only be taken with an understanding that on some issues surrounding this language consensus may be emerging. However, if the Commission decides to make changes to the settlement and Order, it could consider the following questions:

- Is Xcel clearly responsible for determining what constitutes a "material upgrade" for the interconnection of a garden, or does the Commission wish to step in and decide what constitutes a material upgrade, including an enumerated list?

- Is the $1 million cap necessary and clear?

- In application of the $1 million cap, what costs are to be aggregated? Does the Commission intend to determine whether the cap on material upgrades applies per garden or per site?

- Should there be a cap on non-material upgrades?

Staff notes that the procedures developed in this docket limiting material upgrades to Xcel's distribution system do not respond to the larger challenges of interconnection faced by distributed generators. The issues to be addressed here are short term and respond specifically to CSG development in light of the pending ITC step-down. For this reason, the Commission may wish to set a date by which the language regarding distribution system upgrade limits for the CSG program expire. This is in order to ensure that the limit, including the longer term implications, is revisited. Staff also notes that Xcel has proposed that this issue be included as one to be taken up as part of a contested case proceeding.[38]

If Xcel has the discretion to limit material upgrades, then the Commission may wish to consider setting deadlines for interconnection construction/completion that Xcel is required to meet. On September 22, 2015, staff issued an IR seeking information on possible timelines for completing system upgrades for CSGs. The response was not available at the time these briefing papers were prepared.[39] In addition, on September 22, 2015, Xcel filed a Supplemental Report in this docket, which addresses some of these issues.

Divestiture or ownership transfer

The Department asked the Commission to clarify whether CSG applicants with projects exceeding the 5 MW co-location limit may change the name and ownership information for a project at a site without losing the project's queue position. The Department suggested the Commission consider whether applicants, "for a limited period of time,"[40] may transfer any or all

[38] Xcel Answer at 5.
[39] See Xcel's response to PUC IR #8, when available.
[40] Staff believes the appropriate limited time period or reasonable time period is not clear in the record. Sunrise proposed a reasonable time period would be up until the "revenue contract" is signed with Xcel.

of their ownership interests related to a CSG application to a different developer without the application losing its substation queue position.

Sunrise supported the Department's proposal to allow some reasonable period of time for applicants to comply with the 5 MW co-location requirements through divestiture, allowing applicants to sell ownership interest while retaining their place in the queue.[41] It recommended that applicants whose applications had been deemed complete be allowed to divest until the signing of the revenue contract with Xcel.[42] Sunrise suggested that relocated projects on the same substation as the initial application should maintain their current place in the interconnection queue for that substation.[43] Relocated facilities, with applications deemed complete, that require a change to a different substation, should be placed in the queue for applications deemed complete as of June 25, 2015 (the date on which the Commission's decision on the 5 MW co-location limit takes effect for projects in the interconnection queue) but behind other projects already in queue at that substation.[44]

SGC and ELPC supported the Department's request to expressly allow divestiture. SGC noted this issue was before the Commission on June 25, 2015, but was not decided. The stakeholder group has been unable to agree on the issue. Unless clarified by the Commission, the issue will be passed on to the Department in the form of a dispute on co-location.[45] SGC believes the Department will not be able to resolve co-location issues without further involvement and guidance from the Commission.

Xcel and the Small Solar Developers opposed the Department proposal to allow divestiture and asked the Commission to deny reconsideration of this issue. To the extent the Commission decides to reconsider and clarify the issue, Xcel asked the Commission to confirm that a developer cannot divest its MWs in excess of the 5 MW cap and, for those divested projects, remain in the queue.

Xcel observed that divestiture was the subject of a robust debate and, following lengthy deliberations, the Commission decided the issue. In the absence of new or different facts, the Department should not reargue a settled issue. It warned that allowing divestiture, under which applicants may transfer "any or all" of their ownership interests without loss of queue position, even for a "limited period of time," will create an end run around the five MW co-location restrictions contained in the settlement and approved by the Commission.

Xcel believes that the August 6 Order recognized that the purpose of the CSG program is to help foster community based, not utility scale, solar. Xcel described a scenario where developers

[41] Sunrise Petition at 25-26.

[42] Staff believes the "revenue contract" is the "SR*C contract," which is the very last step in the application process but the Commission may wish to confirm this.

[43] Staff is unclear if the Department is also asking the Commission to allow relocation to a new substation with preserved queue position.

[44] See letter filed by Sunrise on September 16, 2015 that explains how the proposed relocation and queue positioning would work.

[45] The Department will be faced with the question of whether there is any distinction to be made between two projects under different ownership but in close proximity to one another and another two projects similarly under different ownership but in close proximity to one another simply because they once were under common ownership under a different set of rules.

parcel out ten 5-MW applications to other developers through alternate ownership schemes resulting in a 50-MW project in ten, 5-MW increments, rather than fifty, 1-MW increments. Such a result would place the program in the same position it was prior to the June deliberations.[46]

The Small Solar Developers warned that allowing large solar projects to transfer ownership in gardens larger than 5 MW would invite abuse and gaming of the system as utility scale projects traded collusively with one another, thus allowing them to "do indirectly what the Commission determined they could not do directly."[47] The group asked for finality, so that a continuing set of calls for clarification does not ultimately consume the time remaining for implementation.

Staff comments on divestiture

Staff does not believe the Commission intended to allow divestiture of co-located gardens greater than 5 MW as part of its August 6 Order. For this reason, the Commission may wish to clarify the issue on its own motion. SGC noted that the Department may not be able to resolve co-location issues without guidance from the Commission on the issue of divestiture.[48] If the Commission decides to allow parties to divest, there does not appear to be agreement in the record on what a "reasonable" period of time might be to allow projects to divest. This will need discussion and creates its own form of ambiguity.

Clarifying the role and finality of decisions of the independent engineer

The Department sought clarification from the Commission that the expertise of the independent engineer will be utilized so as to minimize the delay inherent in resolving disputes, and that applicants will not be responsible for the costs of the independent engineer to the extent that Xcel does not demonstrate the reasonableness of its actions. To do this, the Department recommended revisions to the August 6 Order. It asked the Commission to find that: (1) the independent engineer's resolution of disputes is final and binding on the parties unless an applicant or the Company requests review and determination by the Commission, and (2) in the event that Xcel is not reasonably responsive to discovery requests or does not work cooperatively to an attempt to resolve disputes, then applicants are not responsible for the independent engineer's costs.[49]

As background, the Department explained that, in the event of a dispute between an applicant and Xcel regarding technical conditions of interconnection and/or costs associated with interconnection, the applicant (developer) may elect to seek resolution of the dispute by an independent engineer identified on the Commerce list of approved engineers.[50] The August 6

[46] Xcel Answer at 7.
[47] Small Solar Developers at 7.
[48] Sunrise argued there are three possible forms of divestiture: (1) a project that remains at the same substation, with no relocation, (2) a project that remains at the same substation, but relocates, and (3) a project that relocates to a different substation.
[49] Other parties such as Sunrise, SGC and ELPC supported the Department's request.
[50] The Department is in the process of identifying qualified independent engineers through a Request for Qualifications (RFQ). The RFQ was released on August 27, 2015, and the Department intends to circulate it widely including within its renewable energy newsletter, funding opportunities notification list, previous engineering firms who have done business with the state, trade and professional organizations, the Department website and other means. The RFQ was distributed locally and nationally for maximum

Order provided that, in the event of interconnection disputes, "The independent engineer shall be selected or approved by the Department to ensure neutrality." The Order also stated that the costs of the independent engineer are to be shared equally by the applicant and the Company.

The Department recommended the following changes to Ordering Paragraph 1 [Partial Settlement paragraph 2.2.a. (v)] of the Commission Order:

> (v) The Company agrees, upon the request of any Community Solar Garden applicant, to submit interconnection disputes materially affecting the application to an independent engineer. The Company shall cause the selection of the independent engineer promptly following the Effective Date. The independent engineer shall be selected or approved by the Department to ensure neutrality. The independent engineer shall be available on a standing basis to resolve disputes on the study process, including material disputes related to the Company's determination of application completeness, timeliness of application and study processing, and the cost and necessity of required study costs and distribution system upgrades. **The independent engineer's decision is final and binding on the parties unless review and determination by the Commission is requested within 5 business days of the issuance of the independent engineer's written decision by an applicant or the Company.** If the Community Solar Garden applicant disputes the findings of the Company, the applicant may request independent engineer review, and shall share 50% of the costs of the independent engineer. **However, if the independent engineer finds that excess costs of dispute resolution were the result of the Company's failure to be responsive to requests for information or its failure to cooperatively work toward a solution, the Company will bear the cost of dispute resolution services. In the event that Xcel deviates from industry standards for access to the grid, from governing codes,[51] FERC rules, the Minnesota Interconnection Standard or from Minnesota Rules, that result in delays, unreasonable conditions of interconnection, and/or excessive costs, dispute resolution costs will not be recoverable from customers.** The Parties recognize and agree that the Company is statutorily obligated to provide safe and reliable service, and the safety and reliability of the system should be given paramount consideration in any analysis. A clear dispute resolution process shall be identified by the Parties following the Effective Date of this Agreement.

Xcel disagreed with the Department's proposal, arguing it was both premature and vague. Xcel understands that disputes regarding the application process and the technical details in the interconnection studies may arise. For that reason, the settlement addresses the dispute resolution process in section 2.2.a.(v), which requires the parties to identify a "clear dispute resolution process" following the Effective Date of the settlement.[52] Therefore, Xcel believes the Department's proposed clarification is premature.

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exposure and to increase the pool of qualified candidates. The Department plans to accept responses for a period of four weeks in the form of a statement of qualifications (SOQ), and to identify multiple qualified candidates and to maintain a list of independent engineers on the Commerce website.

[51] Current version of the National Electric Safety Code and national Electrical Code as adopted in Minnesota.

[52] The "Effective Date" of the Settlement Agreement as this term is used in the settlement is June 25, 2015.

In its Answer to the petitions, Xcel noted that it would submit proposed draft tariffs containing provisions to implement the August 6 Order, including the provisions on the independent engineer review process. On September 15, 2015, Xcel filed its proposed draft tariffs, including section 9 entitled, "Requests for Independent Engineer to Resolve Material Disputes Affecting Interconnection Application,"[53] which states:

> 9. Requests for Independent Engineer to Resolve Material Disputes Affecting Interconnection Application
>
> a. Any applicant may submit interconnection disputes materially affecting the application to an independent engineer selected or approved by the DOC to ensure neutrality. The independent engineer shall be available on a standing basis to resolve disputes on the study process, including material disputes related to the Company's determination of application completeness, timeliness of application and study processing, and the cost and necessity of required study costs and distribution system upgrades. The applicant requesting such an independent engineer review shall share 50% of the costs of the independent engineer. The safety and reliability of the Company's system should be given paramount consideration in any analysis. The review of the independent engineer must use the Company's standards for building, safety, power quality, reliability and long term stable operations for building facilities even where such standards exceed the minimum requirements set forth in the codes, standards and rules. Continuity and consistency of using Company standards is paramount for employee safety. This engineering review specifically excludes appeals relating to Co-Location Determination addressed in par. 4 above, and excludes disputes not related to the interconnection application such as disputes after interconnection has been achieved.
>
> b. The applicant shall initiate such a request by submitting via email any such dispute to the DOC. The Company must be copied on this email for this request to be effective. The submission of a such a dispute to the independent engineer may take place before the applicant is Expedited Ready, after being Expedited Ready but before a signed Interconnection Agreement, or after the Interconnection Agreement is signed but only related to issues occurring prior to initial energization of the Generation System.
>
> c. Such a dispute which is submitted before the applicant is Expedited Ready or after the Interconnection Agreement is signed shall not affect Study Queue position.
>
> d. A dispute which is submitted after an Interconnection Agreement is signed is limited to disputes on the actual costs incurred by the Company to interconnect the Community Solar Garden. A condition precedent to filing such a dispute is that the applicant must have first paid the amount in controversy. Such a dispute

[53] Xcel Draft Tariffs, Attachment A, p. 7.

must be brought within 60 days of the date the bill is mailed or electronically sent by the Company under Section 10, Sheet 117, par. V.2.b.iii.

e. A dispute which is submitted after an application is Expedited Ready but before the Interconnection Agreement is signed may impact processing in the Study Queue for the applicant and for those behind the applicant in queue. If the issues presented to the independent engineer are in the Company's judgment so significant that they may impact the results of the engineering indicative cost study or impact as a practical matter how the Company studies the application or those in queue behind the applicant, then the Company may send notice to the applicant and to those behind the applicant in queue that it will not sign an Interconnection Agreement until the dispute raised to the independent engineer is resolved. Similarly, if the consequence of the independent engineer's determination (or any determination as affirmed or reversed by the Commission if any such appeal is taken) is that the scope of assumptions in the Engineering Scoping Cost study must be redone, then such studies will be redone and the Interconnection Agreement Time Line will be reset accordingly for all applications impacted by this determination.

f. Once a dispute is submitted, the independent engineer will determine what additional information is needed from the applicant and/or the Company and when that information is needed. Both the applicant and the Company shall be included on all emails and communications to and from the independent engineer. The independent engineer will make a determination of the issues in a written report which provides a description of the pertinent facts, the conclusions and basis for the conclusions.

g. There is an expectation that the independent engineer will issue its written determination on such a dispute within 30 calendar days of the dispute being submitted to it. The independent engineer will provide a copy of such report via email to both the applicant and the Company.

h. The applicant or the Company may appeal to the Commission the determination of the independent engineer by making a filing in Docket No. 13-867 within 5 business days of the delivery of the determination. A report delivered after 4:30 pm (central standard or central daylight savings time, as applicable) shall be considered to be delivered on the next business day. Such an appeal should include all information relied upon by that party. Responses to any such appeal are due 10 business days from the date of the filing of the appeal. No reply to the response will be allowed.

Xcel proposed that concerns raised by the Department be addressed as comments on the draft tariff language or through stakeholder discussions of the draft tariff language. Xcel believes the Department's language is too vague to provide meaningful guidance to the Company or stakeholders and could be miss-applied by the independent engineer. Additionally, Xcel asked what standard the engineer will apply to decide if the Company cooperatively worked toward a solution. According to Xcel, a collaborative effort may be the preferred approach to establish a dispute resolution process.

In addition, Xcel is concerned that the independent engineer's role would be expanded beyond his/her technical expertise, such as determining "that excess costs of dispute resolution were the result of the Company's failure to be responsive to requests for information or its failure to cooperatively work toward a solution." Xcel feels it is likely that the Department's proposal will create more, not fewer, disputes. Also, the Company noted that it publishes system standards for safety, power quality, reliability, and long-term stable operations that sometimes exceed code. An independent engineer would need to take into account and use these standards.

In sum, Xcel argued that the Department's proposal does not raise any new issues or material facts that would prompt granting reconsideration or clarification. Xcel argued that the work of the stakeholder group should provide the detail for establishing a dispute resolution process, as contained in the draft tariffs.

Staff comments on issue of independent engineer

As noted by Xcel, the settlement as adopted in the August 6 Order by the Commission already states: "A clear dispute resolution process shall be identified by the Parties following the Effective Date of this Agreement."[54] Xcel's draft tariff language (filed on September 15) addresses the process related to the dispute resolution process and use of an independent engineer.[55] The Commission will need to decide if it wishes to formally adopt the additional language proposed by the Department or if approval through the tariff review process is more appropriate.

Timely processing of applications and the tracking system

Xcel's timely processing of CSG applications is essential for satisfaction of the provisions of Minn. Stat. § 216B.1641, and for the success of the CSG program. The Department is seeking clarification from the Commission that its written decisions are final and binding on the parties, unless an applicant or the Company requests review and determination by the Commission within 5 business days of the issuance of the Department's written decision.

The Department suggested that the Commission may wish to clarify the scope of the duties requested of the Department in connection with the timeliness of application processing. The Department anticipates tracking applications and developing written decisions regarding Xcel's timeliness of processing each application. It asked the Commission to clarify that the Department's written decisions are final and binding on the parties, unless an applicant or the Company requests Commission review in writing.

The Department noted that the Commission's Order accepted the Department's proposal "to devise an application-tracking process in cooperation with Xcel and developers," by stating:

> The Commission directs the Department to devise an application-tracking process in cooperation with the Company and all solar-garden applicants, and to provide the

[54] August 6 Order, Ordering Paragraph 1, and Partial Settlement paragraph 2.2.a. (v).

[55] Staff is not sure if the language proposed by Xcel in the draft tariffs has been discussed by the stakeholder group or the settling parties.

> Commission and parties with an application-processing schedule in a compliance filing within 60 days of this order. The Department is authorized to investigate situations in which application-processing timelines are not reasonably met.[56]

According to the Department, the goal of application tracking is to increase transparency and expedite the processing of CSG applications. Although its plan for application tracking is not due until October 5, 2015,[57] the Department noted that to conduct business under the CSG program it would be helpful for applicants to have ready access to information including, but not limited to, application status, queue placement, the timeline for review as well as reports from independent engineers actively engaged in dispute resolution.

The Commission's August 6 Order states that requiring detailed information from Xcel, and tracking that information, as part of its Section 9 application process and Section 10 interconnection process:

> …will keep Xcel focused on meeting its obligations under sections 9 and 10, and monthly reporting will ensure that any problematic trends can be identified and addressed in a timely manner. To that end, the Commission will authorize the Department to investigate situations in which application-processing timelines are not reasonably met.[58]

The Department commended Xcel for agreeing to an application processing timeline not to exceed 50 days, as noted on pages 5 and 20 of the August 6 Order. However, the Department noted successful completion of projects prior to the December 31, 2016 ITC step-down requires processing by Xcel without delay. The Department believes this 50-day timeline is both reasonable and achievable. However, to meet its 50-day approval timeline, and in light of Xcel's slow application processing history to date, the Company must dedicate adequate internal personnel and other resources.

The Department suggested the Commission clarify the August 6 Order as follows:

> …will keep Xcel focused on meeting its obligations under sections 9 and 10, and monthly reporting will ensure that any problematic trends can be identified and addressed in a timely manner. To that end, the Commission will authorize the Department to investigate situations in which application-processing timelines are not reasonably met. **The Department's written decision in this regard is final and binding on the parties, unless an applicant or the Company requests review and determination by the Commission within five business days of the issuance of the Department's written decision.**[59]

Xcel responded that the Department's request to add language should be denied, arguing that the Department raised no new facts or issues and that the modifications are premature. As with the independent engineer dispute resolution process, Xcel argued the parties should be given an

[56] Order at 29.
[57] Order at 22 and 29.
[58] Order at 22.
[59] Order at 22.

opportunity to jointly develop an application tracking process and that it should be given an opportunity to work.

Staff comments on application tracking

The Department's language is intended to speed up and provide certainty around the application process, by providing a short timeline for appeal and finality of the Department's decision through issuance of a "binding" decision. The Commission will need to decide whether a formal timeline for appeal and a requirement that Department decisions are binding is appropriate and will function to speed up the application process.[60] Xcel did not include language addressing the Department's application tracking process in the Company's draft tariff filing (September 15, 2015), presumably because the process will be the Department's.

[60] Staff notes that the Commission has the authority to hear all petitions filed with it, and "may investigate, hold hearings, and make determinations upon its own motion to the same extent." Minn. Stat. §216A.05, subd. 5. It is not clear whether making Department decisions "binding" would interfere with the Commission's authority to investigate issues on its own motion.

Decision alternatives

A. Reconsideration

1. Grant the Sunrise petition for reconsideration of the Commission's August 6 Order.

2. Grant the Department petition for clarification of the Commission's August 6 Order.

3. Reconsider all or specific aspects of the August 6 Order on the Commission's own motion.

4. Deny the Sunrise petition for reconsideration.

5. Deny the Department petition for clarification.

B. Tolling the time

1. For procedural purposes, grant reconsideration for the limited purpose of tolling the 60-day time period to allow additional time for preparation of the Commission's written Order on the merits.

C. If the Commission grants reconsideration:

1. Affirm the Commission's August 6 Order and decline to make any changes or clarify any aspect of the August 6 Order as requested by Sunrise or the Department.

2. Make some or all of the modifications or clarifications to the August 6 Order as requested by Sunrise.

3. Make clarifications and/or modifications to the August 6 Order as requested by the Department on some or all or the following issues:

   a. Distribution system upgrade language

      i. Amend Ordering Paragraph 1, Partial Settlement Agreement, section 2.2.(b), on pages 27-28 of the Commission's August 6, 2015 Order to read:

      b. Distribution System Upgrades. The Parties agree that for purposes of interconnecting Co-Located Community Solar Gardens to Xcel Energy's distribution system, Section 10 of the Company's Minnesota Electric Rate Tariffs do not require the Company to ~~undertake~~ **bear the cost of** any material upgrades in its distribution system to accommodate

interconnection of Community Solar Garden applications. For purposes of this Agreement, material upgrades **will conform to the requirements of Minn. Rule 7835.0100, and** ~~include, but~~ **are** ~~not~~ limited to~~,~~ **the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions, and administrative costs incurred by the utility that are directly related to installing and maintaining the physical facilities necessary to permit interconnected operations, which facilities include** the addition of substation transformers, the upgrading of existing substation transformers, the installation of new feeder bays, new overhead feeders, or new underground feeders, and re-conductor and pole line work ~~where the cost of such upgrades exceeds one million dollars. If the Company does not undertake material upgrades, where such upgrades would otherwise be needed for safety, reliability, or prudent engineering practice, then the Community Solar Garden will not be interconnected to the Company's distribution system~~. **Material upgrades shall include only the most reasonable, cost-effective solutions available to comply with the governing codes[61] and to operate the system safely and reliably. Material upgrades to accommodate interconnection must not exceed costs of comparable upgrades undertaken by Xcel to accommodate its own generation. The costs for interconnection should be itemized and made available to the applicant as part of the engineering review process. Actual cost of upgrades will be within 20% of the estimate supplied by the Company.**

ii. Amend Ordering Paragraph 1, Partial Settlement Agreement section 2.2.(b), on pages 27-28 of the Commission's August 6, 2015 Order as noted above and add the following to the end of the paragraph:

Costs associated with material upgrades outside the substation are excluded from the $1 million limit per garden. Each garden application may incur material upgrade costs of up to $1 million for substation improvements.

b. Clarification of divestiture/ownership transfers

i. Clarify that the August 6, 2015 Order does not allow CSG applicants to transfer their ownership interests related to a CSG application to a different developer without the application losing its queue position.

ii. Find that, for a limited period of time, CSG applicants may transfer any or all of their ownership interests related to a CSG application to a different

[61] Current version of the National Electric Safety Code and National Electrical Code as adopted in Minnesota.

developer without the application losing its CSG queue position. This limited time period is:

a. 90 days from the date of the Order in this matter:
   (1) August 6, 2015 Order
   (2) Order issued after reconsideration

b. starting immediately and up until the point that a revenue contract is signed with Xcel

c. Clarify the role and finality of decisions of the independent engineer

i. Amend Ordering Paragraph 1, Partial Settlement Agreement, Section 2.2.a.(v), on pages 27-28 of the Commission's August 6, 2015 Order to read:

(v) The Company agrees, upon the request of any Community Solar Garden applicant, to submit interconnection disputes materially affecting the application to an independent engineer. The Company shall cause the selection of the independent engineer promptly following the Effective Date. The independent engineer shall be selected or approved by the Department to ensure neutrality. The independent engineer shall be available on a standing basis to resolve disputes on the study process, including material disputes related to the Company's determination of application completeness, timeliness of application and study processing, and the cost and necessity of required study costs and distribution system upgrades. **The independent engineer's decision is final and binding on the parties unless review and determination by the Commission is requested within 5 business days of the issuance of the independent engineer's written decision by an applicant or the Company.** If the Community Solar Garden applicant disputes the findings of the Company, the applicant may request independent engineer review, and shall share 50% of the costs of the independent engineer. **However, if the independent engineer finds that excess costs of dispute resolution were the result of the Company's failure to be responsive to requests for information or its failure to cooperatively work toward a solution, the Company will bear the cost of dispute resolution services. In the event that Xcel deviates from industry standards for access to the grid, from governing codes,[62] FERC rules, the Minnesota Interconnection Standard or from Minnesota Rules, that result in delays, unreasonable conditions of interconnection, and/or excessive costs, dispute resolution costs will not be recoverable from customers.** The Parties recognize and agree that the Company is statutorily obligated to provide safe and reliable service, and the safety and reliability of the system should be given paramount consideration in any analysis. A clear dispute resolution process shall be identified by the Parties following the Effective Date of this Agreement.

[62] Current version of the National Electric Safety Code and national Electrical Code as adopted in Minnesota.

d. Clarify application processing under the application tracking system

i. Amend page 22 of the August 6, 2015 Order, to read:

Tracking this information will keep Xcel focused on meeting its obligations under sections 9 and 10, and monthly reporting will ensure that any problematic trends can be identified and addressed in a timely manner. To that end, the Commission will authorize the Department to investigate situations in which application-processing timelines are not reasonably met. **The Department's written decision in this regard is final and binding on the parties, unless an applicant or the Company requests review and determination by the Commission within five business days of the issuance of the Department's written decision.**

Amend also Ordering Paragraph 3, page 29 of the August 6, 2015 Order, to read:

The Commission directs the Department to devise an application-tracking process in cooperation with the Company and all solar-garden applicants, and to provide the Commission and parties with an application-processing schedule in a compliance filing within 60 days of this order. The Department is authorized to investigate situations in which application-processing timelines are not reasonably met. **The Department's written decision in this regard is final and binding on the parties, unless an applicant or the Company requests review and determination by the Commission within five business days of the issuance of the Department's written decision.**

4. Make clarifications and/or modifications to the August 6 Order, as developed by staff, on the issue of distribution system upgrades:

a. Distribution system upgrade language

i. Adopt the following draft tariff language proposed by Xcel, with revisions developed by staff, in order to implement section 2.2.(b) of the Partial Settlement Agreement:

> Beginning with the Initial Revised Tariff Filing Date, once a Community Solar Garden is Expedited Ready it will undergo Engineering Scoping Studies which will include among other matters the following:
>
> The Company will determine whether a "Material Upgrade" to the Company network is needed to accommodate a Community Solar Garden. A Material Upgrade will not be performed.

~~Examples of~~ Material Upgrades that will not be performed **are limited to** ~~include~~ the following:

- New substation transformer
- Upgrade substation transformer(1)
- Install new feeder bay
- Install new overhead or underground feeder(2)
- Changes that require a substation outage
- the following upgrades or additions resulting from the engineering indicative cost estimate which, in the aggregate, exceed $1 million:
    - Three-phase line extension on existing feeders
    - Reconductor/build Line

(1) A substation transformer upgrade is defined by the replacement of entire unit. Auxiliary relaying, instrumentation, and other minor upgrades do not fall in this category.

(2) This provision only applies to a switchgear substation. A switchgear substation is one that contains pre-manufactured feeder breaker assemblies.

b. Sunset on distribution system upgrade limit

i. Find that any language in Xcel's tariff pertaining to limits on the interconnection of CSGs, due to the need for material upgrades, will expire as of January 1, 2017.

D. Stay of the August 6 Order

1. Requests for immediate stay of the Order

A. Grant the request by Sunrise for an immediate stay of the August 6 Order until such time that the Commission can decide the issues surrounding reconsideration.

B. Grant the request by SCG for an immediate but narrow stay of the August 6 Order.

C. Find that it is not necessary to grant either request for an immediate stay

D. Take no action.

2. Request by Sunrise

A. Grant the request by Sunrise for a stay of the August 6 Order pending an appeal certiorari to the Minnesota Court of Appeals.

B. Deny the request by Sunrise for a stay of the August 6 Order pending an appeal certiorari to the Minnesota Court of Appeals.

E. Compliance filings

1. Require Xcel to file compliance tariffs required by the August 6 Order within 5 days of the issuance of the Order in this matter. These tariff filings should reflect the decisions made by the Commission as part of its reconsideration of the matter.

2. Find that the compliance tariff sheets filed by Xcel will be effective within 7 days of filing unless the Department or other party files an objection or the Commission through its Executive Secretary issues a notice indicating otherwise.