

**STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION**

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August 31, 2015

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

**Docket No. E002/M-13-867**

**COMMENTS IN RESPONSE TO THE COMMISSION'S AUGUST 10, 2015 NOTICE FOR COMMENTS  
BY FRESH ENERGY AND ENVIRONMENTAL LAW & POLICY CENTER**

Fresh Energy and Environmental Law & Policy Center (ELPC) submit these comments regarding Xcel Energy's (Xcel) July 24, 2015 letter requesting a factual investigation by the Office of Administrative Hearings (OAH) regarding Xcel's Solar\*Rewards Community (S\*RC) program in response to the Commission's August 10, 2015 Notice for Comment. For the reasons set forth below, we conclude that a contested case proceeding before an Administrative Law Judge (ALJ) is not necessary for the issues asserted by Xcel. We instead suggest that the Commission open comment periods to resolve these issues by mid-2016 to establish any program changes for S\*RC projects anticipating interconnection in 2017.

**I. Summary**

Minn. R. Admin. 7829.1000 provides that where a proceeding involves contested material facts and there is a right to a hearing under statute or rule, or if the Commission finds that all significant issues have not been resolved to its satisfaction, the Commission shall refer the matter to the Office of Administrative Hearings (OAH) for contested case proceedings.

Therefore, while within the Commission's discretion whether to refer these issues to the OAH, agencies like the PUC typically resolve policy/quasi-legislative issues using a public comment or rulemaking process that enables broad public participation. Contested cases are most useful when there are disputed facts necessary to the outcome of quasi-judicial proceeding involving specific parties, which is not the case here. Instead, the public comment process is able to provide the Commission with an adequate record to make the policy decisions encompassed in the issues identified in Xcel's letter without the time and resources required in a contested case. In this way, the public comment process better meets Minn. R. Admin. 7829.0200, which states that "[t]his chapter must be construed to secure the just, speedy, and economical determination of issues before the commission."

**II. The Commission Can Resolve Any Remaining Policy Issues Using the Standard Public Notice and Comment Process**

In its letter, Xcel lists eight issue points that it recommends the Commission refer to an ALJ as an independent fact-finder.<sup>1</sup> We do not dispute the relevance of the identified issues, however, each is a policy decision that the Commission can decide without an ALJ report and that do not have material facts in dispute. We discuss the issues listed in Xcel's letter in order of priority for Commission action.

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<sup>1</sup> Xcel Letter, July 24, 2015 at 3.

a. Modification and/or adoption of subscriber bill credit rate formulas

The Commission can modify or otherwise adopt a certain bill credit rate formula, such as the Value of Solar and/or specific adders to it, without a contested case. The Value of Solar methodology has been approved by the Commission and the process for verifying Xcel's calculations of it have already been done without a contested case proceeding.

Regarding possible adders, the Commission has already received substantial comments on adder designs, with many parties supporting the concept of capacity block step-downs for any financial adder.<sup>2</sup> While the Commission did not receive much detailed financial information on a developer by developer basis, it is not clear if or how the likelihood that this information would be shared would change in a contested case.

Unfortunately, there is no "magic number" bill credit that is financeable for all business models and we do not believe that the statute requires a bill credit to support every possible project. As such, the bill credit is not a "fact" that can be ascertained through a contested case. While an ALJ could help organize the record on this point, parties would be able to make similar recommendations through Commission comment periods.

b. Other policy considerations

Prioritization of development on marginal lands (such as brownfields), and residential and minority participation in the S\*RC program, are important goals that are worthy of Commission consideration, but do not hinge on disputed facts. The Commission is equipped to make informed decisions on how to best prioritize these issues through the standard process.

i. Minority participation in S\*RC program

Creating more opportunities for minority and low income participation in both the workforce and subscription base of community solar gardens is an important policy goal, and we are excited to share proposed policy solutions we are researching as part of comment process. The Commission should be aware that this is also a focus on the newly-launched President Obama's *Solar Access for All* initiative. Fresh Energy is a member of the National Community Solar Garden Partnership, which is evaluating best practices in community solar policies. Fresh Energy is also researching financing solutions to grow low income subscriber participation options in community solar. We look forward to sharing this emerging research with the Commission in the coming months. However, we do not believe a contested case proceeding is the best setting to craft new program rules around these policy goals.

ii. Residential subscriber participation

As stated in our previous comments, bill credit design should seek to ensure significant residential participation. Since no community solar garden is operational in Xcel Energy's Minnesota service territory, there is a lack of data on this topic for an ALJ to evaluate. Different solar developers are pursuing different business strategies that will offer different options for potential residential subscribers. We look forward to evaluating subscriber class data and offering comments on this topic before the Commission.

iii. Co-location limits on government-owned marginal lands

The policy decision of whether to allow different size limits on co-located solar gardens located on marginal lands owned by government agencies should build on information from existing applications and comments from the parties in the coming months. We have not identified factual information in dispute on this topic.

iv. Co-located gardens generally

Co-location is similarly a policy decision. The Commission has already analyzed and made a decision regarding co-location for projects before 2017. While it is a difficult policy and legal interpretation issue, it is not one where significant facts are in dispute.

c. Review of interconnection practices

Timely and transparent interconnection is critical for the success of the S\*RC program. We list this issue last because, unlike the above issues that deal with setting program rules for post-2017, interconnection issues

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<sup>2</sup> Fresh Energy and ELPC's prior comments regarding VOS & financial adder design are included as Attachment A.

related to the S\*RC program are an issue with *current* applications aiming to interconnect before 2017 and are, therefore, moving faster than Xcel's proposed contested case.

Interconnection is an open topic in the S\*RC Implementation Workgroup and SunShare filed a Section 10 interconnection complaint on August 28, 2015.<sup>3</sup> We also anticipate interconnection practices to be a component of the Commission's upcoming grid modernization workshops. While interconnection delays are a particular concern in the S\*RC program, as only one 40 kW project has an approved interconnection from Xcel after 9 months from the S\*RC program opening, the upcoming venues to evaluate interconnection practices for different types of distributed generation also present an opportunity to address these concerns.

i. Developer-paid distribution system upgrades

On August 26, 2015, the Department of Commerce filed a Request for Reconsideration on four issues, including the partial settlement's one million dollar limit on interconnection costs borne by the developer. We recommend the Commission eliminate the partial settlement's interconnection limit for the reasons listed by the Department of Commerce. As the Commission has the opportunity to address the issue in responding to the Department of Commerce's reconsideration request, this issue does not need to be addressed in a contested case at this time.

### III. Contested Case Resources Concerns

Participating in a contested case is a resource-intensive process and it is a real possibility that parties that have been active in the docket to date will be unable to participate in a contested case because of the resources required, including Fresh Energy and ELPC. Participating in a contested case requires formal intervention, including objections by either party or a hearing on the intervenor's petition, formal discovery, multiple rounds of expert testimony, a hearing, and multiple rounds of legal briefing – all before the issues would again be in front of the Commission.<sup>4</sup>

While we acknowledge that an ALJ could help organize the record and issues before the Commission, none of the issues raised by Xcel require extensive fact finding that cannot be done through normal Commission proceedings or include significant material facts in dispute. Instead, all of these issues would remain policy decisions for the Commission to ultimately decide. We do not believe the resource constraints presented by a contested case outweigh the organizational benefit, or would be an "economical determination of issues before the commission."<sup>5</sup>

### IV. Recommendations

- 1) The issues in Xcel's letter do not involve contested material facts, nor require a lengthy and resource-intensive contested case proceeding. We recommend the Commission not refer S\*RC issues to the OAH.
- 2) We instead recommend that the Commission open specific follow-up comment periods to address these issues by mid-2016. We recommend the following:
  - a. Winter/early spring 2016: Bill credit design, including low income, minority, and residential options, and government marginal land co-location.
  - b. For co-location generally, we recommend the Commission wait to take this up until it establishes a new bill credit formula.
  - c. S\*RC interconnection. To the extent this issue is not resolved in SunShare's Section 10 Complaint, the Working Group, or other venues, the Commission should address this issue as soon as practicable to ensure timely interconnection of current S\*RC projects.

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<sup>3</sup> Docket No. 15-786.

<sup>4</sup> See generally Minn Stat. § 216.161, Minn. R. Admin. 1400.5010 -8400.

<sup>5</sup> Minn. R. Admin. 7829.0200.

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## Attachment A

The footnote numbers changed so if you plan to cite this please refer to original document for correct footnote numbers.

### Comments from May 18, 2015:

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- **Bill Credit:** We recommend the Commission set the following subscription bill credit rate structure for applications deemed complete 60 business days after the Commission's updated Order:
  - **For new solar gardens cumulatively less than or equal to 1 MW at a given site:** maintain the current Applicable Retail Rate (ARR) and REC prices as defined in the Commission's April 7, 2014 Order. As no material concerns have been raised regarding non-co-located 1MW gardens, we do not believe a bill credit adjustment for those projects is necessary.
  - **For new solar gardens cumulatively over 1 MW at a given site:** set the bill credit at Xcel's calculated Value of Solar (VOS) rate, with a financing adder for residential and small business subscribers. We recommend that the residential/small business adder be set to preserve the difference in customer class bill credits under the current ARR plus large project REC price. That difference is \$0.02829 per kWh for residential customers and \$0.02517 per kWh for small business customers.<sup>6</sup>

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#### **V. Bill Credits**

We continue to support the Commission moving S\*RC bill credits to a Value of Solar (VOS)-based rate with limited adders in the form of capacity step-downs targeted at particular policy outcomes. While we continue to believe a targeted rate structure is a viable option for the Commission to consider, we recognize that such a structure is complex and parties would likely need more time and consideration to develop a targeted rate structure for the Commission to consider.<sup>7</sup>

Therefore, we offer a simpler, middle-ground bill credit modification that can be implemented now. We recommend that the Commission change the bill credit for new projects co-locating multiple 1MW gardens to a VOS-based rate for General Service customers. Under our proposal the rate for these customers subscribing to new gardens would be \$0.1075 in year 1, as compared to the existing the year 1 bill credit for these subscribers of \$0.11914.<sup>8</sup> It would also change the economics throughout the 25-year contract as the VOS rate is adjusted at a modest inflation rate, while the ARR tracks Xcel's rate increases over 25 years.

Under our proposal residential and small business customers subscribing to new co-located projects would also receive a VOS-based rate, but we recommend a financial adder that would preserve the rate differentials between customer classes under the ARR plus large project REC structure. Structuring the adder this way preserves an incentive for developers to seek residential and small business subscribers and helps cover the

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<sup>6</sup> We use "small business customers" to refer to small general service customers.

<sup>7</sup> We are also open to considering other parties' proposals if they are transparent and prospective.

<sup>8</sup> See Xcel Section 9 Tariff, 1<sup>st</sup> Revised Sheet No. 64.

additional customer acquisition cost, while creating a lower rate for those customers in co-located gardens, reflecting the economies of scale. Our recommendation yields an adder of \$0.02829 for residential customers and \$0.02517 for small business customers.<sup>9</sup>

It is not in dispute that attracting residential and small business customers is a goal of this program. Similarly, our recommendation would leave the bill credit for non-co-located gardens under the current structure for simplicity and because the concerns raised in Xcel's February 10, 2015 Comments and April 28, 2015 Supplemental Comments were not related to non-co-located gardens.

Our bill credit recommendation is a reasonable future program modification that addresses the main concern raised by Xcel and others: namely, the economics of multiple co-located 1MW gardens and large customer subscribers. Moreover, by using a VOS-based rate, any non-participant impacts from residential and small business customer adders are explicit and transparent. For general service customers receiving the VOS rate, no general ratepayer harm exists because the VOS rate by design quantifies the benefits solar provides and eliminates cross-subsidization concerns. This is further described in the Commission-approved VOS methodology when describing the similar net energy metering and VOS rate relationship:

While NEM [net energy metering] effectively values PV-generated electricity at the consumer retail rate, a VOS tariff seeks to quantify the value of distributed PV electricity. If the VOS is set correctly, it will account for the real value of the PV-generated electricity, and the utility and its ratepayer would be indifferent to whether the electricity is supplied from customer-owned PV or from comparable conventional means. Thus, a VOS tariff eliminates the NEM cross-subsidization concerns.<sup>10</sup>

We recommend that the Commission order this bill credit change for new projects to be effective for any application deemed complete 60 business days after the Commission's new Order. This proposed bill credit and timing will provide certainty while providing projects with pending applications that were developed and submitted under current rules a sufficient buffer for the completeness determination. We think this amount of time is fair considering the amount of applications submitted in December 2014 that still have not received a completeness determination and because Xcel appears to have added project applications requirements beyond the completeness requirements listed in the Section 9 tariff, adding to the timelines for completeness determinations<sup>11</sup>

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Recommendations:

3. Modify the subscriber bill credit rates for S\*RC applications deemed complete after 60 days of the Commission's Order as follows:

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<sup>9</sup> *Id.*

<sup>10</sup> At 1.

<sup>11</sup> Department of Commerce 4-30-15 Reply Comments at 5-7.

- a. For applications solar gardens cumulatively less than or equal to 1 MW at a given site: maintain the current Applicable Retail Rate (ARR) and REC prices as defined in the Commission's September 17, 2014 Order.
- b. For new solar gardens cumulatively over 1 MW at a given site: set the bill credit at Xcel's calculated Value of Solar (VOS) rate, with the following financing adders:
  - i. \$0.02829 per kWh residential customer financing adder, and
  - ii. \$0.02517 per kWh small general service customer financing adder.

**Fresh Energy Reply Comments from April 30, 2015:**

Pages 6-7:

Our prior comments have suggested that adjustments to bill credits and other program modifications are warranted on a going-forward basis. Cost/benefit analysis for the S\*RC program should focus on how best to maximize value through forward-looking bill credit and program adjustments and the Commission should set a timeline and process to consider these issues as soon as practicable. We have offered different bill credit structures and options throughout the docket aiming to help the program evolve in a cost-effective and inclusive manner. For example, we suggest a capacity block structure as a possible mechanism to target locations or subscriber attributes on top of a Value of Solar-derived base rate.<sup>12</sup> We also continue to suggest “that the Commission set a timeline for upcoming decision points to limit market uncertainty, including 1) when REC prices under the ARR will be adjusted, and 2) when the Commission will consider a switch to [a] VOS-based, and in conjunction with that decision, [a] VOS-rate adder design if one is necessary.” We continue to believe that “at this juncture forward market clarity and transparency are as important as the rate amount.”<sup>13</sup>

**4) The Commission May Choose to Implement A Value of Solar-based S\*RC Bill Credit**

In response to the Commission's consideration of a future Value of Solar-based bill credit, Xcel states that “[t]he Company has no imminent plans to file an alternative VOS tariff. For this reason, we do not believe the Commission needs to further explore the use of an incentive to be added to the VOS at this time.”<sup>14</sup> This statement implies that Xcel believes a Value of Solar-based bill credit can only be offered if the Company elects to file a Value of Solar Tariff. If so, Xcel's new position is contrary to its previous position and is not supported in statute. The statute gives the Commission considerable discretion to set the bill credits, including basing the bill credit on a Value of Solar calculation unless and until Xcel has an approved Value of Solar Tariff.<sup>15</sup> Xcel

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<sup>12</sup> Environmental Law & Policy Center et. al. March 2, 2015 Reply Comments at 3-7.

<sup>13</sup> Fresh Energy et. al. December 4, 2014 Reply Comments at 4.

<sup>14</sup> Fresh Energy et al. April 2, 2015 Comments at 5.

<sup>15</sup> SunEdison LLC's June 19, 2014 Comments at 3-6 provide a detailed explanation of the Commission's discretion regarding bill credits and the interplay between the Value of Solar statute and the Community Solar Garden statute.

has agreed with this position in the past. During the Commission's August 7, 2014 hearing, Xcel confirmed that the Commission has discretion to set a bill credit based on the Value of Solar calculation, even if Xcel has not filed a Value of Solar Tariff, in response to a question from Commissioner Lipschultz. The Commission should continue to consider a Value of Solar-based bill credit when it establishes future bill credits.

### ELPC Reply Comments from December 1, 2014

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These Reply Comments provide some suggestions and examples from other programs to help inform these proactive discussions, including consideration of a "capacity-block" incentive structure used successfully by the California Solar Initiative ("CSI").

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#### **II. The Commission Should Closely Monitor Market Data and Consider Future Steps to Adjust CSG Bill Credits to Avoid a "Boom and Bust" Cycle and Ensure a Long-Term Sustainable CSG Market.**

The Commission has requested substantial information from stakeholders to help determine the proper level of CSG bill credits to meet the statutory requirement that the program "reasonably allow for the creation, financing, and accessibility of community solar gardens." Minn. Stat. 216B.1641(e)(1). The Commission's April 7, 2014 Order cited project developers' statements that \$0.15 per kWh may be the "conservative minimum needed to secure financing and make solar gardens attractive to subscribers."<sup>16</sup> In response, Xcel Energy suggested that experience from other states suggests that rates "lower than the VOS or a lower applicable retail rate (with reduced or no REC payments) may well provide the necessary incentive to support solar development in Minnesota."<sup>17</sup>

The National Groups acknowledge the difficulty of identifying an appropriate bill credit for the CSG program on an *ex ante* basis. The right "price" for a solar incentive is highly project and location specific and depends on underlying solar market fundamentals and costs that are changing rapidly. Thus, we agree with MnSEIA that the best evidence of the rate needed to reasonably allow for project creation and financing will come from actual market experience when the CSG program opens in the next month or two.<sup>18</sup> Moreover, experience in other jurisdictions suggests that the *initial* price offered for a solar incentive program is not as important to the long-term success of the program as the framework used to make *adjustments* to this price over time as the market changes and matures. Programs that provide a high level of transparency and certainty about future price adjustments are more successful in creating long-term sustainable markets and a stable investment

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<sup>16</sup> Docket No. E-002/M-13-867, Order Rejecting Xcel's Solar-Garden Tariff Filing, p. 12 (April 7, 2014).

<sup>17</sup> Docket No. E-002/M-13-867, Xcel Energy Motion to Show Cause, p. 2 (May 1, 2014).

<sup>18</sup> See MnSEIA Request for Extension of Time to File Community Solar Garden Adder Reply Comments, p. 1 (Nov. 24, 2014) (noting that "project-specific, real-world information" about CSG project costs "may only be two months away").



environment than programs that change prices suddenly and unpredictably in a reactive fashion to market conditions or political dynamics.

In recognition of the importance of market transparency and the difficulty in setting *ex ante* prices, many jurisdictions are moving to solar incentive programs that adjust prices on a transparent, pre-determined schedule based on the market response to the program. Under this type of “capacity block” program, the initial incentive price bumps down through a series of step-wise blocks of capacity. The faster the market response to the program, the faster the capacity blocks are subscribed, and the faster the incentive price bumps down. In some cases, capacity block programs have been designed to bump prices back up if a block of capacity is not fully subscribed after a predetermined amount of time.

The California Solar Initiative (“CSI”) offers a useful example for reference, as the CSI was one of the first and most successful versions of this kind of “capacity block” program.<sup>19</sup> The CSI established a goal to install approximately 1,940 MW of new distributed solar generation capacity in California between 2007 and 2016. The California Public Utilities Commission divided the overall megawatt goal for the incentive program into 10 programmatic incentive level steps, and assigned a target amount of capacity in each step to receive an incentive based on dollars per-watt or cents per-kilowatt-hour. As the MW targets in a particular incentive step level are subscribed, the incentive level offered by the CSI Program automatically reduces to the next lower incentive step level. This creates a demand-driven incentive program that adjusts solar incentive levels based on local solar market conditions. In recognition of the success of the CSI program, many other jurisdictions are now exploring or implementing similar “capacity-block” programs. For example, the NY-Sun Program, which is expected to increase installed solar capacity in New York by 3 gigawatts by 2023, is largely based on a capacity block-style program.<sup>20</sup> This type of step-down incentive program was also adopted by the Colorado PUC for Xcel Energy in its 2010 Renewable Energy Standard Plan submittal, leading to decreasing costs and steady market growth.<sup>21</sup>

The National Groups agree with MnSEIA and Fresh Energy that the Commission need not try to readjust the CSG bill credit rate before Xcel opens the program to subscribers. However, it is not too early to begin thinking through program design options for deriving bill credits that will promote stability in the CSG market. The Commission should carefully monitor market responses to the initial bill credit rates based on the applicable retail rate plus compensation for renewable energy credits (RECs), and consider various program options to adjust CSG bill credits in a transparent and predictable way. Although several options likely exist, a declining capacity-block program could be a good fit for the Minnesota CSG market. For example, if the Commission were to shift to a value of solar (VOS) rate plus an incentive for the CSG program, the incentive could be adjusted downward through a series of transparent capacity blocks based on market response to ultimately

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<sup>19</sup> See <http://www.cpuc.ca.gov/PUC/energy/Solar/aboutsolar.htm>.

<sup>20</sup> See <http://ny-sun.ny.gov/About/NY-Sun-FAQ.aspx>.

<sup>21</sup> See [http://www.xcelenergy.com/Save\\_Money\\_&\\_Energy/Rebates/Solar\\*Rewards\\_-\\_CO](http://www.xcelenergy.com/Save_Money_&_Energy/Rebates/Solar*Rewards_-_CO).

reach the published VOS rate alone, without an additional incentive. This would satisfy the statutory requirements for an “uncapped” program and the Legislature’s apparent preference for bill credits based on the VOS rate, while still ensuring that the program “reasonably allow[s] for the creation, financing, and accessibility of community solar gardens.” Minn. Stat. § 216B.1641(a), (d), and (e)(1). It would also relieve some of the pressure on the Commission to identify the “right” bill credit incentive on an *ex ante* basis and allow the bill credit to adjust based on actual market response.

If desired by parties, the Commission could consider adding a “safety valve” that would increase bill credit levels if market response slows and project developers do not subscribe a given block of capacity within a pre-determined amount of time. California’s feed-in tariff program (which is a separate and distinct incentive from the aforementioned CSI) utilizes a mechanism, the renewable market adjusting tariff (ReMAT), that ratchets the program’s price up or down depending on market response on a bi-monthly basis.<sup>22</sup> If the Commission wishes to explore incorporating a “safety valve” into the CSG program, the ReMAT mechanism could offer a good starting point.

In addition, the Commission should strongly consider modifying the CSG program to reward and incentivize projects that are located in highly desirable locations on Xcel’s distribution grid or that provide additional public benefits, such as the revitalization of urban brownfield areas. For example, the NY-Sun incentives promote customer-owned DG in “strategic locations” identified by the utilities to help offset transmission and distribution infrastructure investments to help keep rates low for all ratepayers.<sup>23</sup> These “adders” for desirable projects could be layered on top of a declining capacity block program or the Commission could explore other ways to incentivize such optimal project siting. The National Groups would be pleased to participate in these ongoing discussions and bring further options and suggestions to the table based on our experience in other jurisdictions.

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<sup>22</sup> See <http://www.cpuc.ca.gov/PUC/energy/Renewables/hot/feedintariffs.htm>

<sup>23</sup> See <http://www.conedison.com/ehs/2011annualreport/environmental-stewardship/reducing-greenhouse-gases/long-term-business-strategies-in-clean-energy/new-value-through-customer-distributed-resources.html>.