

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

**In the Matter of a Request by Xcel Energy )  
to Issue Renewable Development Fund )  
Cycle 4 Requests for Proposals and Petition )  
for Approval of a Standard Grant Contract )**

Docket No. E-002/M-12-1278

**PETITION FOR RECONSIDERATION  
OF MINNESOTA GO SOLAR LLC**

Pursuant to Minn. Rule 7829.3000, Minnesota Go Solar LLC (“Go Solar” or the “Petitioner”) respectfully asks that the Minnesota Public Utilities Commission reconsider its March 11, 2014 Order (the “Order”) in the above-captioned proceeding in which the Commission approved grant disbursements from the Renewable Development Fund (“RDF”). Go Solar is aggrieved by and directly affected by the Order.

The Order was the culmination of a process where (i) the Commission failed to exercise its oversight role, (ii) the RDF’s statutory directives were treated as mere suggestions, (iii) the Request For Proposal (“RFP”) criteria were largely ignored, (iii) new and previously undisclosed criteria were applied on an *ad hoc* and inconsistent basis, (iv) certain favored applicants were allowed to revise their proposal, and (vi) a last minute, substantial increase in funding was approved on the fly without any examination of how that increase affected the main reason proffered by Xcel for not selecting the Go Solar proposal.

## **REQUEST FOR RECONSIDERATION**

### **I. EXECUTIVE SUMMARY.**

The Legislature established the RDF in 1994 in order to promote the development and investment of renewable energy in the state. In considering applications, the law requires that Xcel “must strongly consider . . . the potential benefit to Minnesota citizens, businesses, and Xcel Energy’s ratepayers.” Minn. Stat. § 116C.779(f). The law further requires that for renewable electric energy generation projects, such as that proposed by GoSolar, Xcel “must, when feasible and reasonable, give preference to projects that are the most cost-effective for a particular energy source.” Minn. Stat. § 116C.779(h). Perhaps most importantly, in order to address concerns about the fairness and transparency of the RDF process, the law requires that Xcel employ an independent evaluator in reviewing applications for funding. Because no disbursement can be made from the RDF without Commission approval, these same statutory criteria bind the Commission’s exercise of its discretion.

It is undisputed that the GoSolar proposal provided by far the largest potential benefit to Minnesota citizens, businesses, and ratepayers, as required by Minn. Stat. §116C.779(f). It is also undisputed that the Go Solar proposal was the most-cost effective renewable electric energy generation project, for solar and overall. It is also undisputed that it was both feasible and reasonable to accord Go Solar the preference mandated by Minn. Stat. §116C.779(f). Yet the mandate of Minn. Stat. § 116C.779(h) that requires a preference for GoSolar was completely ignored without any justifiable basis to do so.

Independent evaluator Sargent and Lundy (the “Independent Evaluator”) made the following findings with respect to GoSolar’s proposal:

- *#1 Overall Score* – GoSolar’s overall scored 187.45 points, the highest of all 64 energy and research proposals submitted;
- *#1 In Job Creation* – GoSolar scored number one in the number of jobs created – creating 1.5 times the number of jobs created *by all of the other selected projects combined*, and approximately 12 times more jobs on a per grant dollar basis than the next highest solar project.
- *#1 In Project Method, Scope and Deliverables* – with respect to quality of work, how well the project is defined, the extent to which a realistic schedule is presented, and other performance metrics, GoSolar ranked ahead of all other projects.
- *#1 in Technical Merit* – with respect to the all-important technical requirements associated with proposed projects, Sargent and Lundy found GoSolar’s technical risk level, technical leverage, technical soundness, and other technical requirements superior to all other proposals.
- *#1 In Potential Benefits to Minnesota and Its Ratepayers* – in increasing market competitiveness, overcoming market barriers, job creation, creation of tax revenues, and how the project will benefit Xcel’s ratepayers over the long-term, GoSolar once again ranked ahead of all other 64 applications.
- *#2 in Management Team* – in regards to team member skills, organizational ability, team structure, proposed contractors, and financing plan, GoSolar ranked behind only the Minneapolis School District.
- *Lowest RDF \$/kw* – the GoSolar proposal requested just \$372 for every kilowatt provided, six times lower than the next lowest proposal.

Despite outranking all other projects, GoSolar failed to receive any renewable funding, marking the first time in RDF history that the highest scoring project did not receive any funding. This is so even though GoSolar’s request was in-line with what other #1 ranked projects received in prior RDF cycles. If funded at the requested level, it would have represented the second lowest in prior RDF cycles, as a percentage available of RDF funds, awarded to other #1 ranked projects. If funded at the requested reduced \$5 million level, it would have represented the lowest, as a percentage available, awarded to all other #1 ranked projects.

Xcel's purported rationale for failing to fund GoSolar lacks merit and requires reexamination by the Commission. Xcel stated that it failed to select GoSolar primarily because it would require too large an award, the energy price per kWh was high relative to other proposals, site locations were "uncertain," and oddly, that PPA negotiations would take "too long." None of these reasons hold up based upon the contrary evidence in the record.

As GoSolar pointed out in its December 31, 2013 comments, GoSolar's proposal was consistent on an RDF \$/kW with other number one ranked projects previously awarded funds. Its proposed price was not high relative to other projects because it was bid at Xcel's "avoided cost" rate, and the independent evaluator and the advisory group noted that the project scored high "because of its [low] price." With respect to facility locations, the GoSolar proposal included a colored map that specifically identified each of the proposed 20 sites. Last, Xcel's comment that PPA negotiations couldn't get done within four months is mere subterfuge and defies experience – Xcel negotiated PPAs in other instances for hundreds of megawatts for wind in as short as two months.

The Legislature entrusted the Commission with review authority specifically to ensure that ratepayer funds are awarded on a fair, transparent and impartial basis, and in accordance with the mandates in the statute. On the basis of the record in this case – where the entity with absolutely no taint of bias or partiality – Sargent and Lundy – scored the GoSolar proposal so far ahead of the other proposals, and where Xcel' purported rational for failing to fund *at any level* falls even under cursory examination, to overcome the clear statutory preference and mandates of Minn. Stat. § 116C.779(h) and Minn. Stat. §116C.779(f), the Commission must do more than accept, without examination, the reasons proffered by Xcel. For whatever reason, that did not

happen here and this reconsideration request presents the Commission with an opportunity to correct this miscarriage.

The Order in mere conclusory fashion states that the Commission “finds the Cycle 4 selection process meets the requirements of section 116C.779 and the Commission’s February 6, 2013, order approving the RFP [and] [w]here Xcel’s recommendations deviated from the Independent Evaluator’s rankings, Xcel explained its choices in sufficient detail.”<sup>1</sup> There is no explanation in the Order with respect to GoSolar how the statutory criteria were satisfied. Nor does the Order even address the unsupported reasons offered by Xcel with respect to the GoSolar proposal, or the evidence in the record of detailing the application of undisclosed criteria, and the evidence in the record that criteria was applied inconsistently and on a discriminatory basis. Quite simply, there is no adequate explanation as to how the Commission derived its conclusion regarding Go Solar and whether that conclusion is reasonable on the basis of the record. The Order simply fails to address any of the evidence offered by Go Solar, and provides an insufficient explanation for a reviewing court to review the Order.

In order to overcome the clear statutory preference and mandates of Minn. Stat. § 116C.779(h) and Minn. Stat. §116C.779(f), the Commission must do more than accept, without examination, the four baseless reasons offered by Xcel to reject the GoSolar proposal. The RDF statute clearly provides the Commission with the final say in how the ratepayer funds of the RDF are disbursed. The Order is devoid of any review of the statutory preference and mandate and its application to GoSolar.

---

<sup>1</sup> See, Order at p.7.

In addition, from a procedural perspective, by failing to refer the matter to a contested case, the Order denied GoSolar due process and a meaningful opportunity to challenge the failure to select GoSolar's proposal, the conflict of interests and bias involved in the selection process, and other irregularities in the process, including the use of previously unpublished selection criteria, the *ad hoc* and inconsistent application of those criteria, and the lack of evidence to support denial of the GoSolar proposal.

Last, GoSolar's sense of frustration in this case is only heightened by examples of what it believes are unfair treatment in recent proceedings before this Commission. As an example, GoSolar's RDF proposal to Xcel consisted of a proposal for distributed solar generation on twenty sites throughout Minnesota. Go Solar submitted its proposal on April 1, 2013. After Go Solar made its proposal, Geronimo Energy made a very similar (if not identical) distributed solar proposal in Docket No. 12-1240. In the -1240 docket, Go Solar's affiliate, Ecos Energy, asked the Commission for permission to make an out-of-time solar proposal in the -1240 docket based upon the fact that no prejudice would accrue to any party given the earliness of the process, and also because Ecos Energy needed very little time to submit a bid, since it already had access to a ready-to-go proposal – i.e., the GoSolar proposal. The Commission denied Ecos' request for leave, however, based on a sense of urgency to have the matter decided by year end due to Xcel's purported capacity need for 2017. But as Ecos Energy (and the Minnesota Chamber of Commerce) pointed out, based upon Xcel's then current forecasts, there was no capacity deficit in 2017, a fact which the ALJ validated in his findings.

Add to this fact that in the -1240 docket, the Department of Commerce actually opposed Ecos Energy's request to file a solar proposal and add solar competition into the mix – one that it

could have easily and swiftly done – and then argued *against* Geronimo’s proposal because there wasn’t any competing solar proposal in the docket.

And to add insult to injury, last week, despite being a higher cost than competing proposals and a higher cost for solar than offered by Go Solar in this docket, the Commission accepted the \$250 million Geronimo solar proposal in the -1240 docket, at extreme prejudice to Ecos Energy.

On the basis of these recent developments, it would not be irrational for GoSolar to believe that decisions were being based more on the project’s sponsor and less on its merits.

For the reasons stated above, the Order is in violation of constitutional and statutory provisions, in excess of statutory authority, made upon unlawful procedure, lacks substantial evidence, is arbitrary and capricious, and affected by other error of law, and Minnesota GoSolar respectfully asks that the Commission reconsider it.

## **II. INTRODUCTION.**

Go Solar’s proposal was ranked #1 overall by the independent evaluator, garnered the highest percentage of available points in RDF history, requested the lowest grant per kW, and would create more jobs than all recommended project combined. In addition, the independent RDF evaluator concluded that the Go Solar proposal provided the largest “potential benefit to Minnesota citizens, businesses, and Xcel Energy’s ratepayers” (*see*, Minn. Stat. § 116C.779(h)).

In spite of its highest ranking, the Commission and Xcel have provided no award for Go Solar, instead awarding over 45% of the amount awarded for energy projects to the three projects that the independent evaluator concluded provided the lowest benefits to Minnesota citizens and ratepayers in the recommended group. If the Order is not reconsidered, it would mark the first time in the history of the RDF that the top-ranked proposal was not selected for funding.

The Minnesota Legislature established the RDF in 1994 to administer funds collected from the ratepayers of Xcel in order to promote the development of renewable generation in Minnesota. On February 15, 2013, Xcel issued its RFP for funding from the RDF. On April 1, 2013, Go Solar submitted its proposal. On June 29, 2013, Xcel filed its selection report (the “Selection Report”).

The Go Solar proposal was ranked #1 overall by the independent evaluator, and #1 in almost all categories reviewed. After the independent evaluator review, according to Xcel, the advisory group met with Xcel and the independent evaluator on June 12, 2013, to develop a list of recommended and reserve projects.<sup>2</sup> According to Xcel, the group eliminated various projects from consideration leaving the list contained in Table 1 of Xcel’s August 9, 2013 Filing. Go Solar was at the top of the list.

Xcel and the Commission are charged with fiduciary duties in the administration of the fund. The fund must be administered in a neutral and transparent manner, guided by the criteria set forth by the Legislature, and without regard to any bias against a particular project proponent. That did not occur here.

### **III. XCEL DID NOT FOLLOW MINN. STAT. § 116C.779 AND THE 2012 RDF STATUTORY CHANGES.**

In 2012 various changes were made to the statutory framework of the RDF. The 2012 statutory changes mandate that Xcel “must strongly consider . . . the potential benefit to Minnesota citizens, businesses, and Xcel Energy’s ratepayers.” Minn. Stat. § 116C.779(f). In addition, the 2012 statutory changes require that for renewable electric energy generation

---

<sup>2</sup> See, Xcel Selection Report—Supplement filing (“Xcel August 9 Filing”), August 9, 2013, p.2.



projects Xcel “must, when feasible and reasonable, give preference to projects that are the most cost-effective for a particular energy source.” Minn. Stat. § 116C.779(h).

Finally, the 2012 statutory changes codified the use of the independent evaluator, which finds its roots in the first RDF Docket E002/M-00-1583. There, the Department of Commerce (the “Department”) set forth the basic framework regarding the fairness of the RDF selection process. The Department set forth three overriding criteria<sup>3</sup>:

*B. THE FAIRNESS OF THE SELECTION PROCESS*

For the selection process to be fair the following conditions must be met:

1. The selection process should follow as closely as practical the guidelines of the Request for Proposals (RFP);
2. The selection process should avoid potential conflict of interest; and
3. The final selection of projects should not eliminate any project that appears to be superior to anyone of the selected projects.

The role of the independent evaluator was created specifically because the Department concluded in the RDF 1<sup>st</sup> cycle that “the fairness of the selection process was somewhat questionable.”<sup>4</sup> The use of an independent evaluator was put in place for all future RDF cycles, and was codified by the Legislature in 2012 for this 4<sup>th</sup> cycle.

Although Xcel retains discretion to make final selections, its discretion is not absolute and unfettered, and its discretion can only be exercised if it is approved by the Commission, which means as a statutory and practical matter that it is the Commission that must concur with all selections and rejections. Xcel and the Commission must exercise their discretion (and their fiduciary duty) adhering to the guidelines and commands of the statute. That was not done with respect to Go Solar.

---

<sup>3</sup> See, Docket No.M-00-1583, Department of Commerce Comments, January 22, 2002, p. 2.

<sup>4</sup> See, Docket No.M-00-1583, Department of Commerce Comments, January 22, 2002, pp. 5-6.

**IV. THE INDEPENDENT EVALUATOR RANKED GO SOLAR #1.**

The Independent Evaluator conducted a detailed evaluation of each proposal taking into account every reasonable factor given the criteria outlined by Minn. Stat. § 116C.779 and the Commission. Based upon their review, the Go Solar proposal received a score of 187.45, the highest of all 64 energy production and research and development proposals submitted.

Table 1<sup>5</sup> shows the relative ranking and total score of the energy production projects recommended for funding by Xcel (the “Recommended Projects”) and Go Solar. Go Solar was ranked #1.

**TABLE 1**

Proposal	Organization	Technology	S&L Total Score	S&L Category*
EP4-038	Minnesota Go Solar, LLC	solar	187.45	1
EP4-020	Target Corporation	solar	182.85	1
EP4-043	Cornerstone Group	solar	171.45	1
EP4-013	Metropolitan Airports Commission	solar	163.25	1
EP4-039	Goodwill Solar, LLC	solar	160.71	1
EP4-011	Innovative Power Systems, Inc.	solar	158.32	1
EP4-042	Aurora St. Anthony Limited, LLC	solar	155.92	1
EP4-007	Anoka Ramsey Community College	solar	151.8	1
EP4-005	Best Power, Int'l, LLC	solar	149.02	1
EP4-003	Minneapolis Public School	solar	141.64	1
EP4-009	Mondovi Energy Systems	biomass	135.03	2
EP4-024	Bergey Windpower Co	wind	129.57	2
EP4-004	SGE Partners LLC	biomass	129.09	2
EP4-022	Minneapolis Park and Recreation Board (MP	solar	122.95	2

<sup>5</sup> Reference to Tables here is from the same Tables provided by Sargent & Lundy in its report, limited, however, to only those energy production proposals being recommended by Xcel and to the Go Solar proposal. Although, to be clear, Go Solar was ranked #1 overall of out all energy production and research and development proposals submitted.

## V. THE ADVISORY GROUP MINUTES AND NOTES.

Xcel's Reply Comments confirmed that its views the RDF statutory criteria are only "policy guidance". The plain language of the statute confirms that the RDF statutory criteria are more than mere suggestions. The only evidence that Xcel adhered to the statutory requirements is Xcel's bare assertion that it did so. On the other hand, a review of the minutes and notes of the advisory group (the "AG") meetings, as well as the other documents produced by Xcel, tell a different story. The minutes of the AG selection meeting show an absence of any discussion of the RDF statutory criteria. The meeting minutes state that Paul Lehman explained the goals for the meeting as "gaining input and feedback from the group so that the Company can make an informed decision." [PC 1<sup>6</sup>]. The direction that Paul Lehman provided to the AG was: "Besides the scoring, the group should look at diversity in location, project types, and technology." [PC 1]. No mention of the RDF statutory criteria was mentioned.

After that direction from Lehman, certain members of the AG outlined certain extra-statutory criteria, and criteria that were neither approved by the Commission, listed in the statute, *nor disclosed in the request for proposals as being a factor or a consideration*. Rather, the selection process was analogized to an ice skating competition with the AG being delegated the task of providing the "artistic" scoring to complement the "technical" scoring provided by Sargent & Lundy (the "IE"). Even in a skating competition, however, the technical score is a predefined weight of the final score, and in the case of the artistic score, there are factors and criteria disclosed to competitors in advance. Here, Xcel and the AG felt unconstrained by the technical scores, engaged in a process that gave no predefined weight to the IE evaluation, used criteria that were not disclosed and applied that criteria on an ad hoc and inconsistent basis.

---

<sup>6</sup> References to PC are to the Printed Case submitted with GoSolar's Reply Comments dated December 31, 2013.

## VI. THE CHANGING ADDITIONAL CRITERIA AND THE INCONSISTENT SELECTIONS.

One of the more striking features of the entire process is how from the beginning of the selection meeting the AG and Xcel created new criteria for selection, then proceeded to alter, or apply or not apply, that new criteria during the meeting on an ad hoc basis. Then when all was said and done Xcel and the AG produced a set of selections (out of order from the IE score and the statutory criteria) supposedly justified by those additional, inconsistently applied, criteria. Xcel and the AG did so while at the same time discarding projects such as Go Solar that had all of the purportedly favorable new criteria which has been used by Xcel to justify the out of order selections.

At the beginning of the AG selection meeting, the minutes reflect the following criteria as being important to the AG<sup>7</sup>:

Ben: many of the proposals are asking money to do things that are already done, for example, putting solar panels on building roofs. Is this what we want to fund? In his opinion, the funding goal should be more experimental and valuable. There is a problem if the ratepayers first pay for solar panels from RDF and then pay again in rates because of lost sales.

Kevin: looking for market penetration of renewable energy, low cost, and balance. All projects need not be fancy and experimental.

Linda: on Ben's side: there needs to be something there, innovative aspects and whether those aspects are convincing.

Tami: awareness and visibility are factors to consider, too. I see the evaluator scoring as the technical marks, and the artistic marks are for the group to decide.

Mike: there are two fundamental issues: 1) royalty issues, especially in the UMN proposals, and 2) RECs, which RDF needs to get.

---

<sup>7</sup> See, PC 1.

As the meeting progressed there are other examples of creating new criteria along the way, such as, without limitation, the following:

1. EP4-9 moved up from a Tier 2 project based solely upon the fact that it is located in Wisconsin<sup>8</sup>, a criteria not previously announced, which is the equivalent of a criteria that says the RDF will fund the best project in Wisconsin even if it is much worse than almost two dozen projects in Minnesota. Clearly that new criteria that the best project in Wisconsin gets selected does not comport with either the RDF statutory criteria or the pre-announced criteria in the RFP.
2. EP4-15 MN Renewable Energy Society, a Tier 3 project and one of the lowest scored, moved up without explanation, but presenting a clear conflict of interest. (See PC 2);

With respect to EP4-15, AG member Ben Gerber stated:

I am extremely uncomfortable funding the MRES project at any level. It was extremely deficient in detail and received a do not recommend from our scoring agency. After the board meeting I looked up MRES and Eric Jensen is their Board Chair. While it may be okay to support the project if it received a recommendation from the disinterested reviewing party this is not the case. I would likely submit a dissenting letter to the PUC if we fund this project out of principle as a ratepayer advocate on the board.

These examples call into question the entire process and cast doubt on every decision made by Xcel and the AG. They also show how the process significantly and without justification deviated from the statutory criteria and the criteria in the RFP.

---

<sup>8</sup> See, PC 2, Comments of non-AG member/AG member Mike Bull.

**VII. XCEL’S PURPORTED REASONS FOR DEVIATING FROM THE IE SCORING AND NOT SELECTING GO SOLAR FOR ANY AWARD ARE UNSUPPORTABLE.**

In Xcel’s Reply Comments, at Attachment K, page 1, Xcel provides its reasons for deviating from the IE scoring and not selecting Go Solar for any award.<sup>9</sup> Those are stated as:

Was disfavored by the advisory group as it would require too large of a portion of the funds anticipated to be awarded to EP projects (over a third of available funds). The energy price per kWh was high relative to other EP proposals and the locations for constructing the facilities were still open, which adds uncertainty. From prior experience, RDF proposals that do not have specific sites identified or a very clear plan to identify sites have significant project delays. Further, the overall timeline proposed for the project was not long enough based on the Company's prior experiences negotiating power purchase agreements for projects of the scale proposed.

Go Solar will address them in reverse order:

The Timeline for a PPA. Xcel claims and the minutes confirm that one member of the AG claimed that the “timeline allows only 4 months to negotiate PPAs, which is too short.” If anyone has followed the recent Xcel wind acquisition docket, they know that 4 months to negotiate a PPA is more than enough time. In fact, this year in the case of Docket 13-603, the PPAs for hundreds of megawatts of wind were negotiated in less than two months. Moreover, in the case of Go Solar, there is an existing precedent PPA agreement for the Slayton Solar project that could have been used for a PPA, which would have shortened the time even more. There was clearly no basis on which to consider 4 months too short a time to negotiate a PPA with Xcel.

The locations of the sites. Xcel claims (and the AG minutes confirm) the same member of the AG stated that the locations for constructing the facilities were “still open, which adds

---

<sup>9</sup> Although Xcel has alleged that it only considers full or no award, that is a rule or procedure not previously announced, and is also contradicted in this RDF Cycle by Xcel’s award to MnSCU and the proposed award to St. Thomas. See, Xcel Reply Comments at pp.18-19. It is also contradicted by Tami Gunderzik’s meeting notes which indicate that discussion was held regarding reducing the Go Solar proposal to five sites. See, PC 36. See also, PC5, Comments of Heather Westra regarding EP4-36 suggesting a lower award than requested.

uncertainty.” [PC 4]. Xcel’s justification for rejecting Go Solar and rejecting the IE and statutory criteria is thus that from “prior experience, RDF proposals that do not have specific sites identified or a very clear plan to identify sites have significant project delays.” The complete Go Solar proposal was attached to Go Solar’s reply comments and is incorporated herein by reference. [PC 40 to PC 120]. The sites were identified and selected as shown on Appendix E to those comments. [PC 100 to PC 120]. Although contracts to obtain site control had not been executed, a clear plan was in place to do so, and to select alternate sites if the originally selected site was no longer available. Therefore the proffered reason is simply not justified.

Moreover, in Docket No. 12-1240, in the case of the Geronimo solar proposal neither the Commission nor the Department had any concern that site control had not been achieved by the time that the proposal was submitted by Geronimo. In addition, the Commission allowed the University of St. Thomas to move its site at the very end of the process confirming that the proffered reason regarding Go Solar is simply frivolous. Applying a different rule here (which would yet be another criteria or rule not previously announced), is simply not justified.

The energy price per kWh. In its Reply Comments Xcel asserts that a reason for rejecting the IE scoring for Go Solar was that Go Solar’s “energy price per kWh was high relative to other EP proposals.” That alleged reason is neither supported by the AG meeting minutes nor Xcel’s comments regarding the lack of accounting of the cost of net metering proposals.

Indeed, the AG meeting notes and the IE evaluation contradict Xcel’s proffered reason. The meeting notes state Go Solar:

“scored high because of the price”. [PC 3].

“price is good” [PC 3].

“scored high in every area.” [PC 3].

As Go Solar has previously stated, even with being unfairly and inappropriately being penalized for selling at avoided costs, the independent evaluation was that the “price was good”. Of course, if net metering projects were properly assessed their equivalent PPA cost at retail rates, Go Solar’s proposal would be even further ahead. As a result, Xcel’s unsupported statement as to the price per kWh is simply wrong.

Moreover, the GoSolar price was less than the proposal the Commission voted to accept last week from Geronimo in Docket No. 12-1240, which was based upon the very same framework as GoSolar’s.

The requested grant amount. Admittedly, the amount requested by Go Solar was higher than other requests in nominal dollars (other than the University of Minnesota aggregate requests), but was consistent with the awards given in previous RDF cycles to the #1 ranked proposal. It was, however, very low on a per kWh basis and on a facility basis. Furthermore, Go Solar submits that based on (1) it being ranked #1 by the IE, (2) garnering the highest percentage of available points in the history of the RDF, (3) requesting by far the lowest grant per kW, (4) creating more jobs than all Recommended Projects combined, (5) creating double the economic impact of all Recommended Projects combined, and (6) creating a highly visible, large scale project on 20 different sites across Minnesota, the Go Solar proposal provided more than sufficient justification to satisfy the RFP. Moreover, Go Solar’s proposal was clearly scalable so that if Xcel had wanted to reduce the amount of the grant, it could have easily included conditions that it expected the number of projects being funded be something less than 20, as Tami Gunderzik’s notes indicate was contemplated. [PC 36].



In addition, Go Solar had satisfied many of the other criteria that Xcel has used to justify the selection of other projects. An objective comparison of the selected projects with Go Solar clearly shows that almost all the factors that were used as positives to select those projects were also a feature of Go Solar's proposal.

**VIII. THE COMMISSION AND XCEL HAVE FAILED TO ADDRESS WHY CERTAIN SELECTED PROJECTS WERE NOT REJECTED.**

Neither the Commission nor Xcel addressed why certain selected projects were either not rejected immediately for failure to adhere to the RFP, or allowed to benefit from clearly unrealistic assumptions.

Those projects were discussed in Go Solar's petition, and Reply Comments and are noted again here.

1. The retention of certain green attributes for the Metropolitan Airport Commission and the SGE Partners, LLC, projects is specifically *contrary* to a firm condition in the RFP<sup>10</sup>. As a result, those projects *should have been eliminated*.
2. Unless the Cornerstone Group project is going to be located in New Mexico, or in geosynchronous orbit over Minnesota, it clearly benefitted from an erroneous assertion of its energy production.

**IX. THE ORDER PROVIDE AN INSUFFICIENT EXPLANATION OF WHY GO SOLAR'S PROPOSAL WAS REJECTED; A CONTESTED CASE IS WARRANTED.**

The Order in mere conclusory fashion states that it "finds the Cycle 4 selection process meets the requirements of section 116C.779 and the Commission's February 6, 2013, order approving the RFP [and] [w]here Xcel's recommendations deviated from the Independent

---

<sup>10</sup> The RFP states: "As a condition of accepting any grant award, Xcel Energy will receive all "green attributes" of the energy such as renewable energy credits, green-tags or certificates."

Evaluator’s rankings, Xcel explained its choices in sufficient detail.”<sup>11</sup> There is no explanation in the Order as to what was reviewed, and in particular with respect to GoSolar, how the statutory criteria were satisfied. Nor does the Order even address the unsupported reasons offered by Xcel with respect to the GoSolar proposal. There is no adequate explanation as to how the Commission derived its conclusion regarding Go Solar and no basis on which a reviewing court could uphold the Order on the basis of the record. The Order simply fails to address any of the evidence offered by Go Solar.

The 2012 statutory changes mandate that Xcel “must strongly consider . . . the potential benefit to Minnesota citizens, businesses, and Xcel Energy’s ratepayers.” Minn. Stat. § 116C.779(f). While the “strongly consider” language might be viewed as a mere suggestion by some, the burden is upon Xcel to show that it did “strongly consider . . . the potential benefit to Minnesota citizens, businesses, and Xcel Energy’s ratepayers.” There is no substantial evidence that the statutory criteria was satisfied. Indeed, putting aside for the moment the fact that Xcel did not satisfy that criteria in the case of Go Solar, the selection of the best project in Wisconsin, objectively ranked as a Tier 2, and behind 23 other projects, plainly illustrates how that criteria ran off the rails.

From a statutory perspective, Xcel has not shown that it strongly considered the potential benefit to Minnesota citizens, businesses, and Xcel Energy’s ratepayers. To the contrary, the documents establish a prima facie case that Xcel used a standard-less process to deviate from the scoring matrix.

---

<sup>11</sup> See, Order at p.7.

As shown in Table 7 of Go Solar’s Petition, Go Solar was ranked #1 by the IE in the specific category of providing the greatest potential benefit to Minnesota citizens, businesses, and Xcel Energy’s ratepayers. It is noteworthy that in that category the non-solar projects scored at the bottom of the list, recognizing that those projects have the lowest potential benefit to Minnesota and ratepayers. It is therefore surprising that within the recommended group over 45% of the amount awarded for energy projects went toward the three projects that provide the lowest benefits to Minnesota and ratepayers. Such a large amount to energy projects that provide the lowest benefit to Minnesota citizens, businesses and ratepayers is in direct conflict with the statutory requirement in Minn. Stat. §116C.779(f) that Xcel “must strongly consider . . . the potential benefit to Minnesota citizens, businesses, and Xcel Energy’s ratepayers.”

In addition, the 2012 statutory changes require that for renewable electric energy generation projects Xcel “must, when feasible and reasonable, give preference to projects that are the most cost-effective for a particular energy source.” Minn. Stat. § 116C.779(h). Here those commands of the Legislature were ignored. In none of the almost 10,000 pages produced by Xcel is there one mention of either the AG or Xcel considering, much less following, those directives. Similarly, the Order fails to address this statutory mandate for Go Solar.

Go Solar was without question the most-cost effective. There has been no assertion that providing that preference was not feasible and reasonable. Moreover, as shown in Table 10 of Go Solar’s petition, Go Solar’s proposal provided, by far, the best value per RDF grant dollar, all while offering to sell energy and capacity at Xcel’s avoided costs, keeping ratepayers neutral and providing a far greater financial benefit than self-generation projects that effectively sell at retail rates.

**TABLE 10**

Proposal	Organization	Technology	project size (kW AC)**	DC solar project sizes (kW)	Requested Grant Amount	Requested Grant Amount per kW
EP4-038	Minnesota Go Solar, LLC	solar	20,000.00		\$7,439,000	\$372
EP4-009	Mondovi Energy Systems	biomass	2,000.00		\$2,000,000	\$1,000
EP4-005	Best Power, Int'l, LLC	solar	770.95	907	\$900,000	\$1,167
EP4-020	Target Corporation	solar	350.00	418	\$583,513	\$1,667
EP4-039	Goodwill Solar, LLC	solar	595.00	700	\$1,075,250	\$1,807
EP4-042	Aurora St. Anthony Limited, LLC	solar	214.20	252	\$398,000	\$1,858
EP4-013	Metropolitan Airports Commission	solar	1,003.00	1180	\$2,022,507	\$2,016
EP4-007	Anoka Ramsey Community College	solar	389.30	458	\$828,900	\$2,129
EP4-024	Bergey Windpower Co	wind	500.00		\$1,106,600	\$2,213
EP4-003	Minneapolis Public School	solar	412.25	485	\$917,250	\$2,225
EP4-011	Innovative Power Systems, Inc.	solar	821.95	967	\$1,850,000	\$2,251
EP4-043	Cornerstone Group	solar	129.20	152	\$310,310	\$2,402
EP4-004	SGE Partners LLC	biomass	1,100.00		\$5,000,000	\$4,545
EP4-022	Minneapolis Park and Recreation	solar	170.00	200	\$969,741	\$5,704
** For Recommended Solar a derate of 85% was used (except for Target and Go Solar which specified an AC size)						

Moreover, as Table 11 of Go Solar’s petition shows, the Recommended Projects require almost six times the grant award per MW as the Go Solar proposal.

**TABLE 11**

	Total AC nameplate	RDF Grant \$	RDF Grant \$ per MW
Minnesota Go Solar, LLC	20,000	\$ 7,439,000	371.95
ALL Recommended Projects Combined	8,456	\$ 17,962,071	2,124.22

As Tables 10 and 11 reinforce, the Go Solar proposal is not only the most cost-effective proposal by far, but is also the proposal that does the most to “increase the market penetration of renewable electric energy in the state at reasonable cost.”<sup>12</sup> It is also undisputed that it was both feasible and reasonable to accord Go Solar the preference mandated by Minn. Stat.

<sup>12</sup> See, RFP, pp.3-4.

§116C.779(f). Yet the mandate of Minn. Stat. § 116C.779(h) that requires a preference for GoSolar was completely ignored without any justifiable basis to do so.

**X. XCEL ALSO IGNORED THE TERMS OF THE RFP.**

In addition to ignoring the statutory criteria from the 2012 legislative changes, Xcel and the AG proceeded contrary to the RFP. The terms of the RFP clearly state that the AG would recommend how *far down* the ranked list of proposals it proposed to make awards.<sup>13</sup> That procedure or process plainly requires that the AG would start with the IE list in each technology category and in the overall category, and propose how far down the IE list it would propose to make awards. The process set forth in the RFP did not allow for the deletion of projects in the list, it just enabled the AG to narrow or expand the group of projects from which Xcel would make the selection. That group of projects, however, under the procedure described in the RFP, must be a group that contains all the projects with a higher score than the lowest scored project in the group.

In addition, once the 2013 energy legislation was enacted regarding solar gardens and the new solar standard (the “2013 Solar Law”), Xcel was given the opportunity to revise its two RDF proposals and communicate directly with the AG with respect to the two Xcel proposals for RDF grants for its own projects. Other favored proponents were provided with the same opportunity such as the University of St. Thomas and the selected projects that failed to conform to the RFP. The failure to provide that same opportunity to Go Solar was a violation of the RFP,

---

<sup>13</sup> The RFP states at p. 33:

To facilitate development of a balanced portfolio of projects, Xcel Energy will request that the independent evaluator rank proposals in descending order against all proposals as a single group, and then again within each resource type. For instance, after ranking all projects in a single list, biomass projects will be grouped and then ranked against other biomass projects; solar projects will be grouped and then ranked against other solar projects, and so forth. The advisory group will recommend how far down the ranked list of proposals it proposes to make awards.

unjust, unreasonable and discriminatory. The Order fails to provide any explanation of its rationale on this issue.

**XI. THERE IS NO REASONABLE BASIS ON WHICH TO DENY AN AWARD TO GO SOLAR.**

How the most diverse project, that provides the greatest benefit by far per RDF dollar to Minnesota citizens, businesses, and Xcel Energy's ratepayers and is the most cost-effective for a particular energy source, cannot be considered an RDF project defies the plain language of the 2012 legislative changes. It is that defiance that confirms without question that the AG was not adequately instructed as to the legislative directives for the RDF.

Go Solar's proposal was ranked #1 overall by the Independent Evaluator, garnered (despite incorrectly overstating Go Solar's per kwh cost<sup>14</sup>) more points than any other project, and would create more jobs than all recommended projects combined. In addition, the independent RDF evaluator concluded that the Go Solar proposal provided the largest "potential benefit to Minnesota citizens, businesses, and Xcel Energy's ratepayers" (*see*, Minn. Stat. § 116C.779(h)).

Despite being rated #1, the lowest cost per watt of RDF funding, creating more jobs than all other selected projects combined, and offering to sell at avoided costs, Xcel has not recommended any (even partial) funding for the Go Solar proposal, marking the first time in the history of the RDF that the top-ranked proposal was not recommended for any funding.

Furthermore, the uniqueness of the Go Solar proposal cannot be understated, particularly as it compares to the other recommended projects. With a single grant that is proportionate to what other #1 ranked proposals have received in each of the three prior RDF cycles, the State of

---

<sup>14</sup> As a result of the erroneous calculation, Go Solar received a score of 45 instead of the 60 points it should have received, which would have put Go Solar's total overall score at 204.7, even farther ahead of the nearest project, and garnering the highest percentage of available points in RDF history.

Minnesota would almost *triple* its currently installed solar resources and create highly visible projects using 20 different sites across a diverse set of communities.

The Go Solar project's focus was fivefold:

- promote the expansion and attraction of solar renewable energy projects and companies in the Xcel Energy service area;
- increase the market penetration of solar renewable energy resources on a scale not done before in Minnesota at reasonable costs, by almost tripling Minnesota's installed solar resources;
- Provide the largest potential benefit *by far* to Minnesota citizens, businesses, and Xcel Energy's ratepayers as compared to any other project that would be proposed. Minn. Stat. § 116C.779(f);
- Provide solar resources at the most cost-effective for a particular energy source. Minn. Stat. § 116C.779(h); and
- create highly visible projects using 20 different sites across a diverse set of communities.

Because Go Solar asked for such a low per kW grant based upon a low per kWh production incentive, a bonus of the Go Solar project was that it would also illustrate how a solar renewable energy credit market would enable the rapid deployment of solar in Minnesota at reasonable costs, which fits in line exactly with the RDF mission.

Based upon the statutory criteria prescribed by the Legislature, the Go Solar proposal was the clear winner. In spite of its highest ranking, the Commission's action rejects an award for Go Solar, instead awarding over 45% of the amount awarded for energy projects to the three projects

that the independent evaluator concluded provided the lowest benefits to Minnesota citizens and ratepayers in the recommended group.

If either Xcel or the AG intended to evaluate and select proposals based upon criteria that was not included in either the RFP or the RDF statute, then fundamental fairness requires that those criteria be announced and clearly set forth prior to the time for submission of proposals. Any criteria that differ from that in the RDF statute or the RFP must be set aside.

In addition, Go Solar should be given the same opportunity that Xcel and certain favored applicants had to adjust or add additional narrative to its proposal to explain how the proposal would be affected or how the proposal's evaluation should be affected by or evaluated in light of the 2013 Solar Law or to address issues raised by Xcel or the AG. Anything less would simply not be fair and would result in Xcel and the AG continuing to attempt to justify decisions that are inconsistent with the statute and the process set forth in the RFP.

For the reasons stated above, in its initial petition and comments and its initial reply comments, Go Solar asks the Commission to reconsider its Order and order the RDF to provide funding to Go Solar, or in the alternative to order a contested case proceeding, and stay any further action on any of the Recommended Projects until the completion of the contested case proceeding.

Dated: March 31, 2014

Respectfully submitted,

/s/ Thomas Melone

Thomas Melone

President

Minnesota Go Solar LLC

222 South 9<sup>th</sup> Street, Suite 1600

Minneapolis, MN 55120

Phone: (212) 681-1120

Email: [Thomas.Melone@AllcoUS.com](mailto:Thomas.Melone@AllcoUS.com)



## Certificate of Service

I certify the attached *PETITION FOR RECONSIDERATION OF MINNESOTA GO SOLAR LLC* has been served this day, March 31, 2014, via U.S. mail and e-mail as designated on the Official Service List for the proceeding on file with the Minnesota Public Utilities Commission.

/s/ Thomas Melone

Thomas Melone