MINNESOTA DEPARTMENT OF COMMERCE

85 7TH PLACE EAST, SUITE 500
SAINT PAUL, MINNESOTA 55101-2198
MN.GOV/COMMERCE
651.539.1500 FAX: 651.539.1547
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May 28, 2014

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Response Comments of the Minnesota Department of Commerce, Division of Energy Resources to Northern States Power Company, doing business as Xcel Energy's Reply Comments**
Docket No. E002/M-13-1015

Dear Dr. Haar:

On March 31, 2014, Northern States Power Company, doing business as Xcel Energy (Xcel or the Company) filed a petition with the Minnesota Public Utilities Commission (Commission) for approval of Solar*Rewards Tariffs.

In its April 30, 2014 comments in the above-referenced matter, the Minnesota Department of Commerce, Division of Energy Resources (Department) recommended that the Commission approve the petition with modifications.

Xcel provided Reply Comments on May 12, 2014 in which it responded to a number of parties' Comments. The Department responds to Xcel's comments and to the Commission's Information Request #1 (PUC IR 1) in this Response to Reply Comments.

The Department recommends **approval with modifications** as discussed herein. The Department is available to answer any questions the Commission may have.

/s/ ZAC RUZYCKI
Public Utilities Rates Analyst

ZR/lt
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

RESPONSE COMMENTS OF THE MINNESOTA DEPARTMENT OF COMMERCE DIVISION OF ENERGY RESOURCES

DOCKET NO. E002/M-13-1015

I. PROCEDURAL HISTORY AND BACKGROUND

Xcel Energy (Xcel or the Company) operates its solar rebate program, Solar*Rewards, a Conservation Improvement Program (CIP) approved by the Minnesota Department of Commerce (Department or DOC) in 2009 as part of Xcel's 2010-2012 Triennial CIP.[1] Xcel subsequently proposed phasing out Solar*Rewards in the 2013-2015 CIP Triennial, but was required by the Commissioner of the Department of Commerce to continue the existing program through the 2013-2015 period. Governor Dayton signed legislation requiring Xcel to operate a performance-based solar incentive program beginning in 2014 that mandated the review and approval of the program by the Commissioner of the Department.

On October 31, 2013, the Company filed a program modification request in Docket No. E,G002/CIP-12-447 pursuant to Minnesota R. 7690.0500, 7690.1400, and 7690.1430 to modify its existing Solar*Rewards program in its 2013-2015 Minnesota Electric and Natural Gas CIP. The Company additionally filed a proposal with the Commissioner for approval of a new Solar*Rewards program on October 31, 2013,[2] which was evaluated by Department Staff, who filed a Proposed Decision on January 7, 2014 (regarding both the modification request and the new program proposal). The Commissioner of the Department filed his final Decision (Department's CIP Decision) on February 24, 2014, with subsequent minor corrections to the document filed on March 28, 2014.

On March 31, 2014, the Company filed a petition with the Minnesota Public Utilities Commission (Commission) for approval of Solar*Rewards Tariffs. In its petition, Xcel indicated that the proposed tariff sheets included modifications consistent with the Department's CIP Decision. Xcel filed a correction to the petition on April 17, 2014 to rectify an inadvertent omission of a revision regarding the term of the contract.

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[1] 2013-2015 Minnesota Electric and Natural Gas Conservation Improvement Program Docket No. E,G002/CIP-12-447.

[2] Program Proposal Solar*Rewards Docket No. E002/M-13-1015

In its Comments filed April 30, 2014, the Department enumerated several concerns, and recommended the addition of language in the proposed tariff sheet. Specifically, we recommended that the Commission approve the following:

1. The tariff modification to close the existing Solar*Rewards program to new applicants.

2. The "Assignment of Contract" and "Assignment of Incentive" forms for use by Solar*Rewards participants.

3. Addition of the following in 1(g) on tariff sheet 9-33, 4(k) on tariff sheet 9-36, 1(f) on tariff sheet 9-50, and 4(j) on tariff sheet 9-53:

   > Customer shall not collect incentives from other state or utility programs for the PV System covered under this Contract.

4. Use of the Commission-approved title of Xcel's solar gardens program in the relevant Solar*Rewards customer contracts.

On May 12, 2014, Xcel filed Reply Comments in which it responded to a number of Comments from the Department and other parties.

II. RESPONSE TO REPLY COMMENTS

Xcel addressed each topic brought up by commenting parties in its Reply Comments:

A. PROGRAM ELIGIBILITY

In its Comments, the Department recommended the addition of language in four locations in the proposed tariff sheets regarding the eligibility for the Solar*Rewards program and concerns regarding over-incentivizing individual systems through combinations of other programs' incentives. Additionally, Comments submitted by Aladdin Solar and Powerfully Green raised the issue of program eligibility of multiple solar facilities being operated by a single customer and the application of different programs to each set of facilities.

Xcel stated that the language suggested by the Department was appropriate, and amended Sheet 9-36 at 4(k) as suggested by the Department, and additionally at Sheet 9-53 at 4(i), rather than 4(j) as suggested in the Department's Comments. In addition, Xcel stated that the same language as suggested by the Department at Sheet 9-33 1(g) and at Sheet 9-50 1(f) would be duplicative and was therefore not included in the amendments. The Department agrees with the Company regarding the duplicity of the language and supports the proposed amendments.

The Company addressed the issues of multiple program eligibility and stated that neither Made in Minnesota nor Solar*Rewards rules preclude a customer with two separate sets of solar facilities, configured with separate production meters and inverters, from participating in both programs with a single system for each. The customer would however continue to be subject to Section 4(g) which states that the generation resources at the Service Address cannot exceed 120 percent of the customer's annual consumption.

B. ESTIMATING CONSUMPTION

Powerfully Green inquired into the Company's methodology for estimating energy consumption for new construction. The Company replied that in cases where less than four months of consumption history is available, home usage would be estimated based on the historical average energy use of homes of a similar size. Commercial properties and all properties over 4,500 square feet with less than four months of consumption history would be required to submit an energy audit or load calculations for the property indicating the estimated annual consumption. Load calculations must be documented and sent to the Solar*Rewards Program Manager for approval. The Department concludes that these estimation methodologies are reasonable.

C. PRODUCTION METER

Some parties raised questions about the production meter, and possible incentive payment inaccuracies in the case of a customer installing one Made in Minnesota PV system and one Solar*Rewards system at the same location. The Company did not anticipate a concern since "a separate production meter must be installed for each separate system" and because Xcel will track incentive calculations separately. The Department concurs and concludes that the Company's Reply Comments in this matter is sufficient.

D. ENGINEERING REVIEW FEE

The Company replied to an inquiry from Powerfully Green regarding whether the Engineering Review Fee at Sheet 9-33 1(d) represented a separate charge from the charge at Sheet 9-38 5(e). The Company stated these are two separate charges, with the Engineering Review Fee being a cost incurred in reviewing the interconnection application and the second fee representing the cost of service upgrades as needed. The Department has no objection to the Engineering Review Fee.

E. SYSTEM MODIFICATION REIMBURSEMENTS

The Department in its April 30, 2014 Reply Comments raised concerns regarding undue financial risks to the customers in the Solar*Rewards program as to their liability to pay for unknown costs to the Company for modification to its system. Xcel accepted the Department's recommendation to add language to tariff sheet 9-39, section 5(k) and Tariff Sheet 9-40, Section 5(n) to ensure that Xcel notifies the participant before any upgrades are made.

F. VALUE OF SOLAR

The Company responded to an inquiry from Powerfully Green regarding the future migration of a customer in Solar*Rewards to the Value of Solar rate, if Xcel offers such a rate. The Company stated its belief that, until a Commission Order indicates otherwise, the terms of the Solar*Rewards Customer Contract would remain in effect. The Department agrees with Xcel's response.

G. LIABILITY INSURANCE

Parties asked whether participating customers could purchase liability insurance in excess of $300,000. Xcel replied that it had no intention of imposing a maximum level of insurance coverage. The Company amended the language, adding the words "at minimum" at Sheet 9-41 5(v). The Department notes that this addition increases clarity of the contract and agrees with its inclusion.

H. 30-DAY DEFAULT CURE

The Department requested in its April 31, 2014 Comments that the Company discuss the feasibility of offering a mutually agreed upon extension to the contract provision that allows a defaulting party 30 days to remedy an identified default prior to termination of the contract by the non-defaulting party. The language in the Contract at Sheet 9-43 7(e) states in part:

> If the defaulting Party does not cure the default identified in the written notice within that thirty (30) day period, then the non-defaulting Party may, <u>at its sole option</u>, terminate this Contract upon written notice of termination mailed or delivered to the defaulting Party. Any notices given under this Section shall be addressed to the Parties (or their successors in interest) at their respective mailing addresses identified in the first paragraph of this Contract. (Emphasis added).

The Company stated in Reply Comments that it does not believe any modification is necessary at this time, as the non-default party is in control of this provision and is not

required to terminate the contract after 30 days, but may do so if it desires. Communication with Xcel has indicated that the customer would have an ability to speak with and work with the Company past the 30 days if the Company was willing. However, the option of the non-defaulting party to terminate the Contract after 30 days, regardless of the option to communicate with the defaulting party represents a time frame that is, in the Department's opinion, too short.

The Department continues to support its initial recommendation of an extended duration before the defaulting party's contract can be terminated by the non-defaulting party. This extension is primarily due to the following reasons, which additionally address PUC IR 1:

1. Safety: Minnesota winters can make access to roofs and equipment seasonally unsafe and hazardous. If a system needs repair, or a part needs replacement, storms, snow, or winter weather may significantly impede the ability for the equipment to be accessed. In addition to issues regarding equipment access, poor conditions caused by Minnesota winters could be hazardous for those performing work on the system.

2. Availability of equipment: It can be difficult to acquire critical parts such as inverters or modules in a timely manner. Specific manufacturer make and model replacement equipment is needed to tie in to existing systems and perform optimally. This equipment is not always on hand, and a 2-3 week lead time, or longer, is not considered unusual when ordering from a manufacturer. When this circumstance is considered together with the time it can take to diagnose, troubleshoot, and repair any issues with the system, a good faith effort to cure a default may take more than 30 days.

The Department notes that if the consequence of not remedying a default state is the termination of the Contract, the defaulting party must be given a reasonable amount of time to comply. Further, there is no harm to allowing more time to comply since the incentive in this iteration of Solar*Rewards is production based, which means that the participant does not receive payment for any lost generation. Therefore, the participant has the incentive to remedy a situation in which the system is not operational, unlike the previous Solar*Rewards where the payment was up front and the participant would not lose payments for a non-functioning system.

The Department recommends that the default deadline be extended beyond 30 days, through the addition of the following language at Sheet 9-43 7(e):

> If a Party defaults in performing its obligations under this Contract, the nondefaulting Party may give written notice to the defaulting Party identifying the nature of the default and stating that the non-defaulting Party may terminate this Contract if the

> defaulting Party does not cure the identified default as soon as possible and within ninety (90) days ~~within thirty (30) days~~ of the date the non-defaulting Party mailed or delivered the written notice to the defaulting Party. If the defaulting Party does not cure the default identified in the written notice within that ninety (~~3~~90) day period, then the non-defaulting Party may, at its sole option, terminate this Contract upon written notice of termination mailed or delivered to the defaulting Party. Any notices given under this Section shall be addressed to the Parties (or their successors in interest) at their respective mailing addresses identified in the first paragraph of this Contract. (Emphasis added).

I. NATIONAL ELECTRIC CODE

In its April 31, 2014 Reply Comments, the Department suggested that language on Sheet 9-40 5(o) be struck for redundancy as the National Electric Code (NEC) rules govern the installation of PV systems. The Company stated in Reply Comments that the language mirrors that of the Rules and Regulations Applicable to Cogeneration and Small Power Production Facilities in Section 9, Sheet 6.

The Department understands that this language mirrors statewide uniform rules on qualifying facilities, and concludes that, while somewhat redundant, the language may be helpful in ensuring the participant is aware of the grounding requirements. Therefore, the Department no longer opposes inclusion of the language in Sheet 9-40 5(o).

J. PROGRAM NAME

The Department noted the possible confusion associated with the use of the "Solar*Rewards Community" contract name for those participating in both the Solar*Rewards program and the Community Solar Garden program. Xcel stated in Reply Comments that it will use the program name assigned to the program by the Commission in Docket No. E002/M-13-867, and once the program name is approved by the Commission, it will update the contracts as required.

The Department notes that in Docket 13-867, Xcel referred to its proposal as "Community Solar Garden." The Commission did not specifically address the program name in its April 7, 2014 *Order Rejecting Xcel's Solar-Garden Tariff Filing and Requiring the Company to File a Revised Solar-Garden Plan*. In its May 7, 2014 compliance filing in that docket, Xcel proposed to change "Community Solar Garden" to "Solar*Rewards Community."

Regardless of the exact wording, the Department notes that Community Solar Gardens is separate and distinct from Solar*Rewards. Further, since Solar*Rewards is a known name, changing that name at this time could cause undue confusion.

For customers participating in both the Community Solar Garden and Solar*Rewards programs, their contract should include both names. The contract used by customers participating only in the Community Solar Garden program should not include "Solar*Rewards," and *vice versa*. Therefore, the Department recommends that the contract name for those participating in both the Solar*Rewards and Community Solar Garden programs be entitled "Solar*Rewards/Community Solar Garden." Should the Commission choose a different name for Xcel's Community Solar Garden program, the Department agrees that Xcel would need to file a request for a name revision in this docket.

III. CONCLUSION

The Department appreciates Xcel's Reply Comments, and recommends approval, with modifications to portions of the Petition as proposed by Xcel in its May 12, 2014 Reply Comments in addition to extending the 30-day default deadline as below at Sheet 9-43 7(e):

> If a Party defaults in performing its obligations under this Contract, the nondefaulting Party may give written notice to the defaulting Party identifying the nature of the default and stating that the non-defaulting Party may terminate this Contract if the defaulting Party does not cure the identified default as soon as possible and within ninety (90) days ~~within thirty (30) days~~ of the date the non-defaulting Party mailed or delivered the written notice to the defaulting Party. If the defaulting Party does not cure the default identified in the written notice within that ninety (~~3~~90) day period, then the non-defaulting Party may, at its sole option, terminate this Contract upon written notice of termination mailed or delivered to the defaulting Party. Any notices given under this Section shall be addressed to the Parties (or their successors in interest) at their respective mailing addresses identified in the first paragraph of this Contract. (Emphasis added).

In addition, the Department recommends that contracts for customers participating only in the Community Solar Garden program should not include "Solar*Rewards," and *vice versa*, and that contracts for any customers participating in both the Community Solar Garden and Solar*Rewards programs should be entitled "Solar*Rewards/Community Solar Garden.

/lt

CERTIFICATE OF SERVICE

I, Jan Mottaz, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

Comments of the Minnesota Department of Commerce, Division of Energy Resources

Docket No. E002/M-13-1015

Dated this 29th day of May 2014

/s/Jan Mottaz

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_13-1015_Official
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_13-1015_Official
Elizabeth	Goodpaster	bgoodpaster@mncenter.org	MN Center for Environmental Advocacy	Suite 206 26 East Exchange Street St. Paul, MN 551011667	Electronic Service	No	OFF_SL_13-1015_Official
Burl W.	Haar	burl.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_13-1015_Official
Lynn	Hinkle	lhinkle@mnseia.org	Minnesota Solar Energy Industries Association	2512 33rd Ave South #2 Minneapolis, MN 55406	Electronic Service	No	OFF_SL_13-1015_Official
Jan	Hubbard	jan.hubbard@comcast.net		7730 Mississippi Lane Brooklyn Park, MN 55444	Electronic Service	No	OFF_SL_13-1015_Official
Jon	Kramer	jk2surf@aol.com	Sundial Solar	4708 york ave. S Minneapolis, MN 55410	Electronic Service	No	OFF_SL_13-1015_Official
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_13-1015_Official
Rebecca	Lundberg	rebecca.lundberg@powerfullygreen.com	Powerfully Green	11451 Oregon Ave N Champlin, MN 55316	Electronic Service	No	OFF_SL_13-1015_Official
Bridget	McLaughlin	bmclaughlin@mncee.org	Center for Energy & Environment	212 3rd Ave N Ste 560 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_13-1015_Official
David	Moe	momentums@aol.com		2825 28th Ave S Minneapolis, MN 55406	Electronic Service	No	OFF_SL_13-1015_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Donna	Pickard	dpickard@aladdinsolar.com	Aladdin Solar	1215 Lilac Lane Excelsior, MN 55331	Electronic Service	No	OFF_SL_13-1015_Official
SaGonna	Thompson	Regulatory.Records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	No	OFF_SL_13-1015_Official
Daniel	Williams	DanWilliams.mg@gmail.com	Powerfully Green	11451 Oregon Avenue N Champlin, MN 55316	Electronic Service	No	OFF_SL_13-1015_Official