

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

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

ISSUE DATE: February 13, 2015

DOCKET NO. E-002/M-13-867

ORDER DENYING REQUEST FOR
CLARIFICATION AND SETTING
PUBLIC INFORMATION
REQUIREMENTS

PROCEDURAL HISTORY

On September 17, 2014, the Commission approved Northern States Power Company's (Xcel or the Company's) revised tariff establishing a community-solar-garden program under Minn. Stat. § 216B.1641.¹

On October 8, 2014, TruNorth Solar, LLC (TruNorth) filed a request for clarification of the Commission's September 17 order—specifically, the definition of a solar-garden “subscriber.”

On November 7, 2014, the Commission received comments on TruNorth's request from Xcel, MN Community Solar, LLC, and the Minnesota Department of Commerce (the Department). None of these commenters recommended additional clarification of the Commission's order or any change to the definition of “subscriber.”

On November 24, 2014, Xcel filed reply comments.

On January 15, 2015, the Commission met to consider the matter.

¹ The Commission granted Xcel's request to officially name its solar-garden program “Solar*Rewards Community.” For brevity's sake, however, this order will refer to the program as the “solar-garden program.”

FINDINGS AND CONCLUSIONS

I. Background

A. Community Solar Gardens

A community solar garden (or simply “solar garden”) is a facility that generates electricity by means of a ground-mounted or roof-mounted solar photovoltaic device whereby subscribers receive a bill credit for the electricity generated in proportion to the size of their subscription. The facility may be owned by a public utility or by a third-party operator who contracts to sell its output to the utility.² Subscribers are retail customers of a utility who own one or more subscriptions to a solar garden interconnected with that utility.³

Minn. Stat. § 216B.1641 places a number of limitations on solar-garden size and subscribership. A solar garden may have a nameplate capacity of up to one megawatt (MW) and must have at least five subscribers. Each subscription must represent no more than 40% of the garden’s output (40% rule) and must be sized to supply no more than 120% of a subscriber’s average annual consumption when combined with other distributed-generation resources serving the subscriber’s premises (120% rule).⁴

B. The Commission’s Orders Establishing Xcel’s Solar-Garden Program

On September 30, 2013, Xcel filed with the Commission a proposed tariff establishing a solar-garden program. The Commission received stakeholder comments on a multitude of issues and on April 7, 2014, issued an order rejecting Xcel’s initial tariff filing and requiring a number of changes to the program. After receiving a second round of comments on the Company’s revised tariff, the Commission approved Xcel’s solar-garden tariff with modifications in an order issued on September 17, 2014.

One of the issues that the Commission addressed in the September 17 order was Xcel’s proposed definition of a solar-garden “subscriber.” Xcel’s tariff adopts the following definition: “‘Subscriber’ means a retail customer of the Company who owns one or more Subscriptions of a community solar garden interconnected with the Company.”⁵

In comments prior to the Commission’s September 17 order, several parties, including the Department, suggested that Xcel define “subscriber” as a single metered account, allowing a large customer with several accounts to subscribe to more than 40% of a solar garden’s output without violating the 40% rule. Xcel opposed redefining “subscriber” as a single metered account, arguing that its proposed definition was consistent with the solar-garden statute—which defines “subscriber” as “a retail customer of a utility”—and with the community purpose of the program.

² Minn. Stat. § 216B.1641(a)–(b).

³ Minn. Stat. § 216B.1641(h)(1).

⁴ Minn. Stat. § 216B.1641(a)–(b).

⁵ Minnesota Electric Rate Book section 9, sheet 72.

The Commission agreed with Xcel that “subscriber” should be defined as a retail customer of the Company, based on the language and purpose of the statute. The Commission reasoned that treating a single customer’s accounts as separate subscribers would allow large customers with multiple accounts to crowd out residential and other small customers. Conversely, defining “subscriber” as a retail customer would not significantly limit solar-garden accessibility for larger customers, since a large customer may subscribe to many solar gardens, provided that its subscriptions do not exceed 120% of the energy used at the premises associated with those subscriptions and that the customer holds no more than a 40% share in any one solar garden.

C. TruNorth’s Request for Clarification

TruNorth asks the Commission to define “customer” (and by extension, “subscriber”) as an individual service address, or premises. TruNorth favors this approach because it would allow a large customer with multiple premises to more easily offset its entire electric load. For example, a school district with five schools, each using 1 MW of electricity, could offset its entire electricity use, without violating the 40% rule, by subscribing to five 1-MW solar gardens. However, if the school district were considered a single customer, the district would have to subscribe to at least 13 gardens to offset its entire usage.

II. The Positions of the Parties

A. Xcel

Xcel does not believe that there is a need for additional clarification of the Commission’s order. The Company noted that the statute defines a solar-garden “subscriber” as a “retail customer” of the utility. Xcel interprets “retail customer” to mean the legal name of the party receiving retail electric service, regardless of the number of premises or accounts receiving such service.

Xcel stated that it plans to treat state agencies and other political subdivisions as discrete customers. For corporate entities, Xcel will identify the customer at the highest level of an organization’s structure; affiliates of a parent organization will be considered the same entity.

Xcel stated that it does not have full knowledge of the legal structure of its customers and that garden operators will be responsible for ensuring that their subscribers are in compliance with program rules. The Company is willing to review these issues with garden operators and customers in the context of specific gardens.

B. MN Community Solar

MN Community Solar does not believe that additional clarification of the term “subscriber” is necessary at this time. Instead, the developer recommended that the parties move forward with the program and work through any issues in the context of specific projects. If, based on actual experience, a problem arises that defies resolution and materially affects program growth, MN Community Solar would support seeking further guidance from the Commission.

C. The Department

The Department concluded that the Commission’s order is clear as to the definition of

“subscriber.” However, the Department believes that ambiguity remains as to how the definition applies to organizations with complex ownership structures. Since garden operators will be responsible for verifying that each subscriber is eligible, the Department believes that more clarification is necessary to reduce operator and subscriber confusion.

The Department therefore recommended that the Commission direct Xcel to file information on how it will determine the identity of retail customers with multiple facilities and different organizational structures. The Department also recommended that the Commission direct Xcel to explain what it means by saying that affiliates are the same entity.

III. Commission Action

Having carefully considered the parties’ arguments, the Commission will deny TruNorth’s request for clarification of the Commission’s September 17, 2014 order. The order is clear that “subscriber” means “a retail customer” and not an account number or location. This definition is grounded in the statute, which states that a subscriber is “a retail customer of a utility who owns one or more subscriptions of a community solar garden facility interconnected with that utility.”⁶

The Commission also declines to adopt any definition of “customer” that would contravene the clear statutory intent to encourage broad community participation in solar gardens. The Commission is sympathetic to the predicament of larger customers, such as school districts, who wish to offset their entire electricity usage but are prevented from doing so by the 40% rule. However, fully offsetting energy use is not the primary purpose of a solar-garden program. If it were, the statute would not cap solar-garden size, set a minimum number of subscribers per garden, or limit a subscriber’s share of garden output to 40%. These restrictions appear instead to serve the statutory purpose of ensuring that solar gardens are accessible to a broad cross-section of the community.⁷

While Xcel’s comments in this docket have been helpful in clarifying the definition of “customer,” the Commission concurs with the Department that questions remain as to how the term will be applied to certain entities. Elaborating on this definition is primarily Xcel’s responsibility, and yet because of the nature of a solar-garden program, in which third-party operators construct the facilities and recruit subscribers, the responsibility for enforcing the definition lies in large part with garden operators. Under these circumstances, transparency as to how Xcel defines “customer” is particularly important and will help ensure that the program “reasonably allow[s] for the creation, financing, and accessibility of community solar gardens.”⁸

For these reasons, the Commission will require Xcel to consolidate and make available on its website criteria for determining whether a potential subscriber is a retail customer and qualifies as the legal entity taking service. Xcel should include an explanation of what the statement “affiliates are considered the same entity” means, as requested by the Department. The Company should also

⁶ Minn. Stat. § 216B.1641(h)(1).

⁷ See Minn. Stat. § 216B.1641(e)(1) (requiring that a solar-garden program “reasonably allow for the creation, financing, and accessibility of community solar gardens.”).

⁸ *Id.*

include contact information and, to the extent practicable, commit to a specific response period for assisting garden operators and potential subscribers who have questions or are unable to make this determination on their own. Xcel should make this information available on its website within 15 days of the date of this order and update it as necessary as new information becomes available.

Xcel has been holding stakeholder workgroup meetings to help guide the design and implementation of the solar-garden program. The minutes from these meetings reflect both stakeholder consensus and areas where disagreement remains. Although Xcel has been filing occasional program reports, the Commission, as well as stakeholders who have not been participating in the workgroup, would benefit from more frequent updates on program implementation. The Commission will therefore require Xcel to file in this docket the approved minutes, attachments, and agendas from all stakeholder workgroup meetings, including past meetings.

ORDER

1. The Commission hereby denies TruNorth's request for clarification of the Commission's September 17, 2014 order.
2. Xcel shall consolidate and make available on its website information to determine whether a potential subscriber meets the definition of a retail customer and qualifies as the legal entity taking service. Xcel shall include an explanation of what the statement "affiliates are considered the same entity" means, as requested by the Department. The Company shall also include contact information and, to the extent practicable, commit to a specific response period for assisting garden operators and potential subscribers who have questions or are unable to make this determination on their own. Xcel shall make this information available on its website within 15 days of this order and update it as necessary as new information becomes available.
3. Xcel shall file in eDockets the approved minutes (with attachments) and the agendas from all stakeholder workgroup meetings, including past meetings.
4. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Daniel P. Wolf
Executive Secretary

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