

**STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION**

Nancy Lange	Chair
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**In the Matter of Utilities’ Annual  
Reports on Progress in Achieving  
The Solar Energy Standard**

**MINNESOTA SOLAR ENERGY  
INDUSTRIES ASSOCIATION’S  
COMMENTS ON INVESTOR-  
OWNED UTILITIES’ COMPLIANCE  
WITH THE SOLAR ENERGY  
STANDARD AND SMALL-SCALE  
SOLAR CARVE OUT REQUIREMENTS**

**July 14, 2017**

**Docket No. E999/M-17-283**

**COMMENTS OF THE MINNESOTA  
SOLAR ENERGY INDUSTRIES ASSOCIATION**

**BACKGROUND**

**I. Overview of the Public Utility Commission’s (“Commission”) Notice of Comment Period**

On April 25, 2014, the Commission issued an Order establishing content requirements for investor-owned utilities’ (“IOUs”) annual Solar Energy Standard (“SES”) reports.<sup>1</sup> On October 23, 2014, the Commission issued another Order establishing additional content requirements for the annual SES reports,<sup>2</sup> and followed-up November 28, 2016 with an Order to develop a standardized SES reporting form.<sup>3</sup>

On April 14, 2017, the Commission posted a Notice of Comment Period regarding the SES reports, inquiring if they contain all information required by the Commission in its previous Orders, as outlined above, whether the reports contain sufficient information to determine if the Minnesota IOUs

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<sup>1</sup> ORDER CLARIFYING SOLAR ENERGY STANDARD REQUIREMENTS AND SETTING ANNUAL REPORTING REQUIREMENTS, PUC Docket No. E-999/CI-13-542, Doc. ID. 20144-98715-01 (April 25, 2014).

<sup>2</sup> ORDER ACCEPTING 2013 SOLAR ENERGY STANDARD REPORTS AND REQUIRING ADDITIONAL INFORMATION IN NEXT REPORTS, PUC Docket No. E-999/M-14-321, Doc. ID. 201410-104069-01 (October 23, 2014).

<sup>3</sup> ORDER, PUC Docket No. E-999/M-16-342, Doc. ID. 201611-126798-02 (November 28, 2016).

have plans to meet the Small-Scale Solar Carve Out of the SES (“the small-scale carve out”), and any other items of interest to commenters.<sup>4</sup>

On June 5, 2017, the Commission requested information from each IOU regarding the 2017 Minnesota legislative session’s impact on its ability to meet the SES and small-scale carve out requirements.<sup>5</sup> In its reply to this Information Request, Xcel Energy requested a determination that it can apply its Community Solar Garden (“CSG”) subscriptions of less than 20 kilowatts (“kW”) toward its small-scale carve out requirements under Minn. Stat. § 216B.1691, subd. 2f.<sup>6</sup>

Subsequently, the Commission posted a Notice of Extended Comment Period and Additional Topic Open for Comment on June 23, 2017,<sup>7</sup> to consider Xcel Energy’s request for determination along with the original topics open for comment in this docket.

## **II. Overview of MnSEIA’s Experience with the IOUs’ Efforts to Achieve SES Compliance.**

The Minnesota Solar Energy Industries Association (“MnSEIA”) is a membership organization made up of over 100 different solar-related companies, including installers, developers, manufacturers, labor unions, energy service companies, and other ancillary service providers for the solar industry.

MnSEIA has had substantial involvement in the matters that the Commission is considering today in its request for comments, including the Commission’s previous Order concerning application of CSG subscriptions to the small-scale carve out.<sup>8</sup> Also, this year MnSEIA lobbied for and against many of the legislative amendments to preexisting solar policies, including the legislation that recently changed the SES small-scale carve out rules for Minnesota Power and Otter Tail Power, and the Made in Minnesota solar panel incentive program repealer language.<sup>9</sup>

Our comments today detail our support for the IOUs’ efforts to promote and pursue in-state solar development to achieve their SES requirements, including the small-scale carve out compliance, for the benefit of the public, solar businesses, Minnesota’s economy, and its carbon footprint.

## **COMMENTS**

### **I. MnSEIA Supports the IOUs’ Continued Development of Solar Projects in the State of Minnesota to Comply with the Solar Energy Standard and Small-Scale Solar Carve Out.**

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<sup>4</sup> NOTICE OF REPORTING REQUIREMENTS AND COMMENT PERIOD, PUC Docket No. E-999/M-17-283, Doc. ID. 20174-130789-01 (April 14, 2017).

<sup>5</sup> INFORMATION REQUESTS-IR 1, PUC Docket No. E-999/M-17-283, Doc. IDs. 20176-132552-01; 20176-132553-01; 20176-132554-01 (June 5, 2017) (sent to each IOU).

<sup>6</sup> INFORMATION REQUESTS-RESPONSE TO MPUC IR NO 1, PUC Docket No. E-999/M-17-283, Doc. ID. 20176-132937-01, at 4 (June 17, 2017).

<sup>7</sup> NOTICE OF EXTENDED COMMENT PERIOD AND ADDITIONAL TOPIC OPEN FOR COMMENT, PUC Docket No. E-999/M-17-283, Doc. ID. 20176-133050-01 (June 23, 2017).

<sup>8</sup> ORDER APPROVING PILOT PROGRAM WITH MODIFICATIONS, PUC Docket No. E-015/M- 15-825, Doc. ID. 20167-123636-01 (July 27, 2016).

<sup>9</sup> 2017 MINNESOTA LEGISLATURE, Senate File 1456 (signed into law May 31, 2017).

As noted above, not only would MnSEIA’s members and stakeholders benefit from the IOUs’ efforts to develop small-scale solar projects within the state of Minnesota, but so would IOU ratepayers, the public, the state economy and the state carbon footprint.

Accordingly, IOU’s should recognize that SES compliance is an in-state initiative: it is pro-Minnesota. Pertinent language in Minn. Stat. 216B.1691, subd. 2f(f) confirms this point:

[A] solar renewable energy credit associated with a solar photovoltaic device installed and generating electricity *in Minnesota* after August 1, 2013, but before 2020 may be used to meet the solar energy standard established under this subdivision. (emphasis added)

Acquiring Solar Renewable Energy Credits (“SRECs”) to achieve compliance should not be done out of state, because it would hinder small solar development statewide, diminish the Minnesota economy, and harm public interest values, including IOU customer demands for clean energy options.

Additionally, to the extent that an IOU fails to act to achieve compliance with the SES small-scale carve out, it is more likely to purchase SRECs out of state at the last minute to attain compliance. The current statute lacks any clear standards to address an IOU’s small-scale carve out *progress* up to the 2020 SES small-scale carve out compliance date. Thus, MnSEIA suggests that the Commission require IOUs to submit annual numeric goals from 2017 to 2020 leading up to the 2020 SES small-scale carve out. This will enable the Commission to measure 2020 small-scale carve out compliance with an eye toward the IOU’s *good faith* efforts from 2017 to 2020 to meet those numeric goals, as intended by the statute’s compliance section.<sup>10</sup>

Supporting the ideas outlined above, the following comments address each IOU individually. While MnSEIA encourages progress in meeting the SES small-scale carve out requirements, MnSEIA also urges the Commission to make determinations that prevent acquisition of SRECs out of state and to ensure compliance with the SES going forward.

### **OTTER TAIL POWER**

Otter Tail Power (“Otter Tail”) noted in its SES annual report that absent significant legislative changes to statute, it will be difficult to meet the small-scale carve out from customer distributed generation sources, and that it will likely rely on purchasing SRECs from small solar facilities that are registered in the Midwest Renewable Energy Tracking System (“M-RETS”).<sup>11</sup> Otter Tail also noted that it may acquire SRECs from out of state and even outside of M-RETS, depending on cost.<sup>12</sup> Indeed, to date, Otter Tail has done very little to attain compliance with the small-scale carve out,<sup>13</sup> despite having years to utilize the Investment Tax Credit (“ITC”) to its benefit, and to the benefit of its ratepayers. MnSEIA

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<sup>10</sup> See Minn. Stat. § 216B.1691, subd. 7 (applying a “good faith effort” standard to gauge IOU compliance with the SES.).

<sup>11</sup> See SOLAR ENERGY STANDARD ANNUAL REPORT, PUC Docket No. E-999/M-17-283, Doc. ID. 20175-132423-02, at 6-7 (May 31, 2017).

<sup>12</sup> See *Id.*, at 8.

<sup>13</sup> See SOLAR ENERGY STANDARD ANNUAL REPORT, PUC Docket No. E-999/M-17-283, Doc. ID. 20175-132423-02, at 4 (May 31, 2017) (Otter Tail has acquired just 18 MWh out of its required 4,000 MWh of SRECs as of the end of 2016).

expects substantial movement from Otter Tail in the coming years to achieve SES small-scale carve out compliance, as outlined below.

### **Purchasing SRECs Out of State Will Harm the Solar Industry and the Public Interest**

There is a tremendous economic opportunity for small solar development in Minnesota and it should not be diminished. As MnSEIA watches the solar industry blossom and solar prices drop, it is increasingly obvious that purchasing SRECs out of state is a detriment to the public interest, IOU customer interests and business interests, where abundant land, rooftops and other Minnesota-specific qualities create an ideal solar development opportunity at home. SREC acquisitions from out of state solar arrays are even more detrimental, because SRECs replace valuable small solar development in Minnesota with a mere certificate – not an in-state solar project – thereby hindering in-state solar growth. Such foregone solar developments could help the state economy and IOU customers achieve their desired goals of clean energy choice.

It is MnSEIA’s view that the Commission would not be giving “maximum possible encouragement to cogeneration and small power production,” as required by statute,<sup>14</sup> if it allows the IOUs to unnecessarily acquire SRECs from out of state to comply with the small-scale carve out. Notably, Otter Tail would be in violation of the Commission’s 2014 Order clarifying SES requirements if it tries to apply SRECs *not* registered with M-RETS to its SES requirements: this proposed conduct is prohibited and should be specifically addressed by the Commission in this docket.<sup>15</sup>

Further, it is MnSEIA’s view that Minn. Stat. § 216B.1691, subd. 2f intended for the small-scale carve out to promote small rooftop development in Minnesota. The Commission made a similar finding in its 2016 Order concerning Minnesota Power’s CSG Pilot program,<sup>16</sup> and MnSEIA respectfully requests that it confirm that keeping solar development in state – i.e., avoiding unnecessary acquisition of SRECs out of state – is in the public interest.

### **Otter Tail Can Achieve SES Compliance Without Procuring Out of State SRECs**

Otter Tail has stated that it may have difficulty meeting the SES small-scale carve out requirements without purchasing SRECs. However, both in its reply to the Commission’s Information Request,<sup>17</sup> and similarly in its presentation to MnSEIA membership during the 2017 legislative session, Otter Tail noted that it remains optimistic, owing to ever-declining solar costs and potential legislative amendments to the SES small-scale carve out (subsequently passed into law May 31, 2017).<sup>18</sup>

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<sup>14</sup> See Minn. Stat. § 216B.164, subd. 1.

<sup>15</sup> See ORDER CLARIFYING SOLAR ENERGY STANDARD AND SETTING ANNUAL REPORTING REQUIREMENTS, PUC Docket No. E-999/CI-13-542, Doc. ID. 20144-98715-01, at 6 (April 25, 2014) (“all SRECs must be generated from facilities registered in M-RETS to be eligible for SES compliance.”).

<sup>16</sup> See ORDER APPROVING PILOT PROGRAM WITH MODIFICATIONS, PUC Docket No. E-015/M- 15-825, Doc. ID. 20167-123636-01, at 9 (July 27, 2016) (“...the purpose of the requirement [is] – to promote small scale (*e.g.*, rooftop) distributed solar generation [...] so effectively undermining the statute’s goal of promoting small-scale solar, in anticipation of a possible failure to meet the under-20-kW SES requirement, is unwarranted.”).

<sup>17</sup> See OTTER TAIL SOLAR ENERGY STANDARD ANNUAL REPORT, PUC Docket No. E-999/M-17-283, Doc. ID. 20175-132423-02, at 6 (May 31, 2017).

<sup>18</sup> See 2017 MINNESOTA LEGISLATURE, Senate File 1456 (signed into law May 31, 2017).

Otter Tail has begun thinking outside the box in its consideration of methods to achieve SES compliance, including legislative efforts aligned with Minnesota Power's needs in greater Minnesota and business opportunities revealed with solar research. MnSEIA strongly encourages Otter Tail to continue with its alternate methods for SES and small-scale carve out compliance.

As Otter Tail detailed in its annual SES compliance report, it has a broad array of solar development options that could help the state economy and its customers achieve their desired goals of energy choice and clean power:

In addition to the POP [Publicly Owned Property] Solar program in CIP [Conservation Improvement Program], Otter Tail has researched many strategies to meet the solar carve out, including (a) a utility-scale PV project with customer subscriptions to generation benefits, (b) building several Company-owned small solar facilities [...], and (d) Otter Tail administering its own solar incentive program outside of the CIP.<sup>19</sup>

Otter Tail can make some of these options a reality before the end of 2019, the end of the full-value Investment Tax Credit ("ITC"). One avenue to small-scale carve out compliance may be in utilizing the current 30% ITC to the IOU's advantage. MnSEIA is confident that Otter Tail can use the ITC to develop projects that result in benefits to its customers, local businesses, and Minnesota communities, while meeting its compliance requirements. Specifically, our members have found that a return on investment, after tax, is possible by developing projects that are later donated to eligible nonprofits as a charitable contribution. In greater Minnesota, eligible nonprofits include schools, churches, universities, cities, and state and federal agencies. This is the kind of win-win potential MnSEIA expects Otter Tail to realize in coming years.

In addition to its potential projects listed in the SES annual compliance report, Otter Tail is further bolstered in its efforts to achieve small-scale carveout compliance with the 2017 legislative amendment to the SES statute, which specifically applies to Otter Tail and Minnesota Power. The 2017 Minnesota legislative session ended with the passage of Senate File 1456, which amends the SES statute to require Otter Tail and Minnesota Power to obtain 10 percent of their 1.5 percent SES requirement from solar facilities with 40 kW capacity or less (up from 20 kW capacity). In addition, Otter Tail and Minnesota Power are now allowed to apply CSG subscriptions of less than 40 kW to their small-scale carve out requirement, directly contravening the Commission's 2016 Order that specifically prohibited that practice in Minnesota Power's CSG Pilot program.<sup>20</sup>

This is a significant statutory change that Otter Tail said is necessary to prevent its acquisition of SRECs to obtain compliance with the small-scale carve out. MnSEIA is optimistic that Otter Tail's 2017

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<sup>19</sup> OTTER TAIL SOLAR ENERGY STANDARD ANNUAL REPORT, PUC Docket 17-283, Doc. ID. 20175-132423-02, at 7 (May 31, 2017).

<sup>20</sup> See ORDER APPROVING PILOT PROGRAM WITH MODIFICATIONS, PUC Docket No. E-015/M- 15-825, Doc. ID. 20167-123636-01, at 9 (July 27, 2016).

legislative success may result in further small-scale solar development for Minnesota. Now that the legislation it is finalized, MnSEIA takes Otter Tail at its word to pursue in-state solar development in lieu of SREC procurement out of state, especially considering its legislative success and its ability to apply 40 kW capacity CSG subscriptions to its small-scale carve out requirement.

If progress is not made, however, we hope the Commission ensures statutory compliance by requiring in-state REC purchases or construction.<sup>21</sup> This would facilitate more in-state solar growth and ensure that the statutory intent of Minn. Stat. § 216B.1691 – to have more small-scale solar in Minnesota – is met.

## **MINNESOTA POWER**

Minnesota Power appears to be on the path to achieving compliance with the SES and small-scale solar carve out requirements. Prior to the 2017 legislative session, Minnesota Power was party to a Commission docket addressing its CSG Pilot program,<sup>22</sup> wherein the Commission denied Minnesota Power's request to apply CSG subscriptions of less than 20 kW to its small-scale carve out requirements. However, Minnesota Power applied its resourcefulness to achieve a legislative override of that Order for itself and for Otter Tail, as discussed above.<sup>23</sup>

Although MnSEIA worked diligently to protest Minnesota Power's initial attempt at having compliance met through Community Solar subscriptions, this was prior to Minnesota Power's expansion of their SolarSense rebate program. Our understanding is that this legislative change will only be utilized by Minnesota Power if SolarSense fails to sell out due to unforeseen reasons. Allowing the utility to utilize their CSG subscriptions to meet their small-scale carve out compliance would provide additional certainty for Minnesota Power by creating a hedge against having to buy SRECs if the program does not sell out.

Minnesota Power, through its SolarSense program, has applied reasonable effort to attain compliance through construction in its service territory. So long as the program remains in place *as is*, or grows further, MnSEIA is generally supportive of Minnesota Power's pathway to small-scale carve out compliance.

## **XCEL ENERGY**

The Commission should make determinations regarding the IOUs' efforts to comply with the SES small-scale solar carve out requirements that provide maximum encouragement to small power production and protect the public interest, per applicable Minnesota statute.<sup>24</sup> This directly involves protection of IOU ratepayers within the applicable service territory, as SES compliance is an in-state initiative that serves customers and their demand for clean energy choice by promoting small rooftop development.

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<sup>21</sup> See Minn. Stat. § 216B.1691, subd. 7.

<sup>22</sup> See *Id.*

<sup>23</sup> See 2017 MINNESOTA LEGISLATURE, Senate File 1456 (signed May 31, 2017).

<sup>24</sup> Minn. Stat. § 216B.164, subd. 1.

MnSEIA encourages Xcel Energy to continue its established solar incentive programs and to develop small solar development programs in-state that benefit both the public interest and the economy statewide.

**Xcel Energy Should Not be Allowed to Apply CSG Subscriptions of Less Than 20 kW to its SES Small-Scale Carve Out Requirements**

1. The Commission's 2016 Order addressing Minnesota Power's CSG Pilot program and the 2017 legislative amendment to the SES provide clear precedent to deny Xcel Energy's request in this docket.

As detailed above, when the Commission issued an Order prohibiting Minnesota Power from applying CSG subscriptions of less than 20 kW to its SES small-scale carve out requirements, Minnesota Power and Otter Tail Power responded by pursuing permission to do so in the Minnesota Legislature, and succeeded with a statutory amendment that allows subscriptions of 40 kW or less to apply to their small-scale carve out. Xcel Energy was not a listed party eligible to benefit from this statutory revision, and thus the legislation does not apply to Xcel. The Commission should not ignore its own precedent in this docket.

2. Allowing an exemption for Xcel Energy from SES compliance rules does not encourage small-scale solar development in Minnesota.

Should the Commission grant Xcel's request, small-scale solar development may decline in Minnesota. Xcel might meet its SES goal immediately, or in short order, if it can apply CSG subscriptions to the small-scale carve out.<sup>25</sup> This prospect leaves Xcel with no statutory incentive to develop more small rooftop projects, and instead encourages its focus on CSGs at the expense of rooftop solar. This runs afoul of the statutory directive to provide maximum possible encouragement to small power production.<sup>26</sup> It is also contrary to the intent of the SES small-scale carve out, which aims to encourage small distributed generation projects like rooftop solar.<sup>27</sup>

This argument is no stretch: Xcel's annual SES report lacks plans to change any of its approaches to meet the SES for the next twelve years.<sup>28</sup> Xcel has an expanded Solar Rewards program, per 2017 legislative changes, but it has no plans to pursue a replacement for its now-repealed Made in Minnesota program, or any other new incentive programs for small-scale solar development, despite high customer demand for clean power choices.

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<sup>25</sup> See XCEL ENERGY 2016 SES ANNUAL REPORT PART 1 OF 2, PUC Docket No. E-999/M-17-283, Doc. ID. 20176-132492-01, at 6 (June 1, 2017) (Xcel expects a year-to-year surplus of 15,000 SRECs if granted this exemption, or 25% of its SES obligations).

<sup>26</sup> See Minn. Stat. § 216B.164, subd. 1.

<sup>27</sup> See ORDER APPROVING PILOT PROGRAM WITH MODIFICATIONS, PUC Docket No. E-015/M- 15-825, Doc. ID. 20167-123636-01, at 8-9 (July 27, 2016).

<sup>28</sup> See *Generally*, XCEL ENERGY 2016 SES ANNUAL REPORT PART 1 OF 2 and PART 2 OF 2, PUC Docket No. E-999/M-17-283, Doc. IDs. 20176-132492-01 and 20176-132492-02 (June 1, 2017).

Considering recent legislative cuts to small-scale solar development incentives, the Commission should encourage small solar production and protection of ratepayers by denying Xcel Energy's request. Granting this request would further strain the solar rooftop industry and contravene both statutory requirements and the public interest.

3. Xcel Energy clearly does not need this exemption to meet its SES small-scale carve out requirements, as noted in both its SES annual report and in its reply to the Commission's Information Request concerning the impact of the 2017 Legislature on its compliance efforts.

In its SES annual report, Xcel notes that it will have no trouble complying with the small-scale solar carve out through 2021.<sup>29</sup> Furthermore, its response to the Commission's Information Request even projects an ability to meet such goals through 2029, due to the legislative expansion of Solar Rewards through 2021, which will increase its small-scale solar projects.<sup>30</sup> At this time, there is no demonstrated need for Xcel to receive an exemption from the SES small-scale carve out rules.

In sum, the Commission should deny Xcel's request for determination because is not supported by the small-scale carve out statute, applicable precedent, ratepayers and the public interest, nor does it provide maximum possible encouragement to small solar development.

## **II. Conclusion and Request for Commission Findings.**

MnSEIA appreciates the opportunity to provide comments in this docket, and respectfully requests that the Commission make the following findings: (1) SES compliance is an in-state initiative; (2) acquiring SRECs to achieve SES small-scale carve out compliance should not be done out of state, because it would hinder small solar development statewide, diminish the Minnesota economy, and harm public interest values, including IOU customer demands for clean energy options; (3) that Xcel Energy's request to apply CSG subscriptions of less than 20 kW to its SES small-scale carve out requirements is unwarranted and prohibited; and (4) the IOUs must submit annual numeric goals from 2017 to 2020 leading up to the 2020 SES small-scale carve out date.

Respectfully submitted,

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<sup>29</sup> See *Id.*, XCEL ENERGY 2016 SES ANNUAL REPORT PART 1 of 2, at 4-5.

<sup>30</sup> See XCEL ENERGY RESPONSE TO MPUC IR NO 1, PUC Docket No. E-999/M-17-283, Doc. ID. 20176-132937-01, at 3-4 (June 19, 2017).