STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION
In the Matter of the Community Solar Garden Program of Northern States Power Company, dba Xcel Energy,

Docket No. E-002/M-13-867
Date: August 31, 2015

COMMENTS OF KANDIYO CONSULTING, LLC

I. General Comments. The Commission has requested comments on whether PUC action is necessary on a number of outstanding issues related to Xcel's Community Solar Program, the timeline for such a process and any recommended methods for developing further information on the outstanding issues. The Commission is also asking for opinions on whether a contested case hearing or expedited hearing before an Administrative Law Judge (ALJ) may be the best course of action for the most timely and definitive resolution of outstanding issues.

Kandiyo also feels compelled to respond to some of the more outrageous comments made by Sunrise Energy Ventures in its August 26, 2015 petition requesting a stay, rehearing and modifications or complete repeal of the Commission's August 6, 2015 order in this docket.

Sunrise, as has Kandiyo, has been a regular and active participant in the community solar working group sessions convened by MnSEIA and Xcel Energy over the last year. It has had the same opportunity as all other participants to provide input on issues before the working group. The suggestion presented by Sunrise that other working group members, particularly small developers, have ganged up on Sunrise is simply not true. In its filing, Sunrise does not present a single example of where it was out-voted, or otherwise not allowed to voice its concerns regarding a particular issue within the working group

The voting procedure that Sunrise references in its filing was only formally approved by the working group until August 26. This procedure, in fact, permits voting rights only for solar developers who have community solar applications deemed complete, and have paid all application fees, transmission study fees, and escrow fees. The result is that the majority of voting rights residing with a handful of large solar developers similarly situated with Sunrise. Furthermore, the right of Sunrise or any other member to offer a dissenting view is recorded and presented in the minutes to the PUC. What is missing, in our opinion, is the broader perspective of other stakeholders, including subscribers, small developers not participating in the working group, low-income ratepayers, minority and women-owned small solar businesses, financing groups, MnSEIA, and non-profit advocacy organizations, that will not have a vote on the working group.

In addition to this process, Sunrise has had the same ability to file comments, and attend public meetings of the Commission where the record has been built for this docket. This includes 15 hours of testimony and deliberation on this docket before the Commission on June 23 and 25. The suggestion that the Commission violated the state's Open Meeting Law during a recess in its deliberations on June 25 is, frankly, offensive and bizarre.

Sunrise represents that it is one of the few experienced solar developers with implementation-ready projects and denigrates the experience of "smaller, unproven developers", some of whom signed the partial settlement agreement with Xcel Energy. We would note that these "unproven developers" and others similarly situated with them have built hundreds of solar facilities, albeit mostly smaller than 1.0 megawatt, in Minnesota over the last 10 years. In contrast, to our knowledge, Sunrise has yet to build a single solar project in the state.

Sunrise accepts no responsibility for its own failure to carefully review the state statute that created the community solar program, which clearly indicates a legislative intent for a 1.0 megawatt limit on capacity. Although such a cap appears to be wholly inconsistent with Sunrise's business model, the company appears to have engaged in very little due diligence before proceeding with project development or the solicitation of subscribers. This is true even as the details of Xcel's community solar program were being vigorously debated and developed within the working group and at the Commission. It should also be noted that Sunrise's assertion that it has invested $12 million in Xcel's community solar program presumably includes $10 million that is in escrow and will be refunded if Sunrise projects do not proceed. This over-statement of its purported financial harm is typical of its filing.

In summary, to paraphrase a statement in its own filing, Sunrise now enlists harsh rhetoric and name-calling to clothe its own poor business judgment with a veneer of unfairness. The company has chosen to sling a lot of mud at other solar developers and the Commission, hoping that something sticks, rather than make any cogent legal arguments about why it deserves relief from the Commission.

There is no question that Minnesota's community solar program, once thought to have so much promise for expanding the benefits of solar energy, has gotten off to a very poor start. This is due, in our opinion, largely to the huge volume of community solar applications and the aggressive posture of large solar developers who have been gaming the system as new entrants to the Minnesota solar market. The result has been to overwhelm the state's regulatory processes, the utility grid, and the ability of Xcel Energy to respond to what may very well be a direct challenge to its current business model.

The process to date has also been distorted by the millions of dollars flowing into multiple areas of the state's solar market. Some of the results have been a revolving door between PUC staff and advocacy organizations, a revolving door between advocacy organizations and private developers, and a paralysis in the ability of MnSEIA to speak for the solar industry in Minnesota as a whole. Most importantly, over the last year we have also seen a sharp increase in the interest and expectations of Minnesota ratepayers that they will have an opportunity in the near future to participate in community solar as subscribers. It seems likely that these expectations will not be met, certainly not at the level of interest that exists, anytime in the next year.

It is also clear to Kandiyo from the original charge given it by the Commission that the Xcel-MnSEIA working group was not intended to address some of the major issues now hampering the community solar program. It is our opinion that the only way to reach a

fair and defensible conclusion about some of the major issues currently outstanding is to refer the most contentious issues to an ALJ as a contested case hearing or an expedited hearing. In recommending this course, we recognize that this may well result in a resolution of the issues on a timeline that puts the 2016 construction season, and access to the current package of federal tax credits, at risk.

However, we also believe that the Commission can order Xcel to proceed with some aspects of its community solar program that do not present issues that are subject to dispute. This course, at a minimum, will meet at least some of the demand for community solar subscriptions and may provide some actual development experience for informing the Commission's deliberations on the community solar program.

II. Issues that do not require resolution through an ALJ process

1. Projects less than 1.0 megawatt. Applications for community solar projects that are less than 1.0 megawatt and do not present any issues related to co-location should be allowed to proceed. The determination of whether such projects exceed 1.0 megawatt of co-located capacity should be made first by Xcel, with an appeal of that determination to the Department, and thereafter to the Commission.

In addition, Xcel has indicated that applications which represent less than 250 kilowatts of AC-rated capacity, particularly if those applications propose to interconnect on the host site's side of the utility meter, can be quickly reviewed and approved without the need to go into the interconnection queue that has been the source of so much conflict for other projects. These projects, which are likely to result in a modest but steady amount of community solar development, should proceed as expeditiously as possible.

2. Rates for projects below 1.0 megawatt. The current structure of the Applicable Retail Rate (ARR) and a two-cent or three-cent REC value meets the legislative test of allowing for the reasonable development of community solar gardens that are below the 1.0 megawatt limit. Kandiyo believes the current structure is particularly appropriate in that it provides additional incentives for residential and small general service ratepayers, and projects below 250 kilowatts of AC capacity.

The issue of rates for community solar after an initial phase of development may be an issue for an ALJ process, but should not affect the processing of gardens less than 1.0 megawatt that continue to be processed by Xcel while an ALJ process proceeds.

Kandiyo believes the Commission should consider two additional factors as it looks at rates for community solar. First, a single Value of Solar rate for community solar, when compared to the current ARR-plus-REC, has the effect of transferring some of the benefits for residential and small general service subscribers in projects below 250 kW, to large ratepayers subscribing to projects larger than 250 kW. In other words, a single VOS tariff for community solar will pay residential subscribers less and large general service subscribers more. This seems contrary to some of the Commission's statements about ensuring benefits for residential ratepayers.

Second, any change in rates should not in any event be implemented prior to December 2016 and the anticipated reduction in federal tax benefits. If in fact these tax benefits are reduced, the costs of solar development will be significantly impacted and rates should be structured thereafter based on this new development reality.

3. Low-income benefits and participation goals. Kandiyo believes the Commission has the authority to gather information on its own and order Xcel to implement program changes that ensure some of the benefits of community solar go to low-income households. Similarly, we believe the Commission can work with Xcel to set participation goals for women, minority and veteran-owned businesses in various aspects of community solar project development and operation. We believe there is broad consensus in the solar community, among elected leaders, on the Commission, and at Xcel for making these program changes.

III. Issues that should resolved by an ALJ process

1. Definition of co-located capacity. This issue is not even close to being satisfactorily resolved by the working group or Commission deliberations to-date. Xcel has proposed some definitions of aggregated capacity that reference state statutes on production taxes and has suggested a one-mile standard for determining when two projects are separate and do not represent capacity above the limits. While such a one mile standard may be workable for projects that are ground-mounted in areas of low-density, it is likely to be unworkable for more dense urban environments. A single developer with the same project financing might have four or more inner-city projects within a mile of one another that in the aggregate are greater than 1.0 megawatt. This pattern of solar development does not seem to be the primary concern of Xcel or the Commission, or to be inconsistent with the legislative intent of the program. This further illustrates the need to have a clear and thoughtful standard for co-location that can be applied to all types of community solar projects.

The process for developers to restructure their original applications to meet reduced capacity limits, queue positioning, and appeal rights and processes are other aspects of this issue that we believe can only be addressed by an ALJ process. We believe divestiture in a project greater than capacity limits should result in the loss of queue position for any capacity below the limitation that is transferred to another developer. However, we recognize that other developers have a different opinion on that particular issue and it should also be addressed by an ALJ. To the extent that the Commission can expedite this ALJ process, it will allow the development of community solar to get underway sooner rather than later.

2. Limitations on distribution and transmission upgrades. The Commission reasonably intends to begin its grid modernization process on September 25 without the pressure of significant de facto changes to the grid as a result of interconnecting a series of multiple solar projects of 1.0-5.0 megawatts. However, the $1 million cap on "material upgrades" in the Commission's August order has proven to create more

ambiguity than clarity. The definition of material upgrades, whether the cap is applied per project, or in the aggregate across multiple projects, and the process of appealing Xcel's determinations related to upgrades are all issues unlikely to be resolved without development of additional information through an ALJ process.

3. Interconnection process. The filing from SunShare documents its frustration with Xcel's process for interconnection of solar. Other solar projects, outside of Xcel's community solar program, have experienced similar delays in the company's timely processing of its interconnection applications. The Commission should be very concerned about this issue and should gather information through an ALJ process on the issues within Xcel, or within the regulatory process as a whole, that are clearly creating a major barrier to the wide-scale deployment of solar energy. This issue may also be impacted by PURPA rules, MISO processes and other administrative procedures that will not be easily resolved without a more formal ALJ process. Such an ALJ process should operate on a parallel track with the schedule of the Commission and Department for scoping of issues related to grid modernization.

4. Rates for community solar. As noted, Kandiyo believes the current rate structure for community solar should remain in effect through 2016. However, we recognize that rate adjustments may be needed thereafter to reflect the different scales, subscriber bases, development modes, ratepayer impacts and other issues of the community solar program. Some of the information that the Commission can use for making these ongoing decisions about rate adjustments could be delegated to an ALJ process.

IV. Conclusion

Notwithstanding the unwarranted attacks on its credibility and the critiques of its decision-making to-date, Kandiyo encourages the Commission to continue its efforts to develop a model community solar program that serves the public interest, expands the solar energy market in Minnesota, and allows all Minnesota ratepayers to participate in the benefits of solar energy.

Sincerely,
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