

**Minnesota Public Utilities Commission**  
*Staff Briefing Papers*  
**Part II**

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Meeting Dates: June 23, 2015 (Oral Argument)  
June 25, 2015 (Deliberations).....Agenda Item #\_7\*\*\_

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Company: Xcel Energy (Xcel or the Company)

Docket No. **E-002/M-13-867**

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

Issue: Should the Commission make changes to Xcel’s Community Solar Garden (CSG) program?

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**Relevant Documents**

*(See Relevant Documents list attached to Staff Briefing Papers Part I)*

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The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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### ***Statement of the issue***

Should the Commission make changes to Xcel's Community Solar Garden (CSG)<sup>1</sup> program?

### ***Introduction***

Part II of the staff briefing papers covers the following four issues:

- Renewable Energy Credit (REC) payments for unsubscribed energy
- REC payments in years 11-25 for gardens taking part in the Solar\*Rewards (S\*R) or Made in Minnesota (MiM) programs
- assignment of project deposits
- reporting requirements

Staff believes the stakeholder workgroup reached consensus on the following three issues and no Commission action is required. The Commission may wish to confirm this with the parties. These issues include:

- subscription disclosure
- subscription transfers
- address validation

## **Issue One: REC payments for unsubscribed energy**

### **A. Statement of the issue**

Should Xcel be required to pay CSG developers for RECs associated with unsubscribed energy?

### **B. Background**

The Commission's April 7 Order<sup>2</sup> in this docket is specific in its direction on the payment for RECs associated with subscribed energy. However, it is silent with respect to RECs associated with unsubscribed energy.

In its April 7 Order, the Commission determined that "the Commission will allow the garden operator or developer to transfer the solar RECs to Xcel at a compensation rate of \$0.02 per kWh for solar gardens with a capacity greater than 250 kW and \$0.03 for solar gardens with a capacity

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<sup>1</sup> The CSG program is also referred to as Solar\*Rewards Community (S\*RC) or S\*RC program.

<sup>2</sup> *Order Rejecting Xcel's Solar-Garden Tariff Filing and Requiring the Company to File a Revised Solar-Garden Plan*, in Docket No. E-002/M-13-867, issued April 7, 2014.

of 250 kW or less.”<sup>3</sup> In the same Order, as part of its discussion of “Unsubscribed Energy,” the Commission concluded:

The solar-garden statute provides that Xcel must purchase all energy at the “applicable retail rate” until the Commission has approved a value-of-solar rate. The Commission concurs with the Department that, with respect to unsubscribed energy purchased from garden operators, the “applicable retail rate” is the rate that applies to distributed-generation facilities under Minn. Stat. § 216B.164, subd. 3. Accordingly, the Commission will require Xcel to purchase unsubscribed energy from solar-garden operator at (1) Xcel’s avoided-cost rate for solar gardens larger than 40 kW capacity and (2) Xcel’s average retail energy rate for solar gardens smaller than 40 kW.<sup>4</sup>

Because the Commission’s April 7 Order did not directly address the issue of payment for unsubscribed energy RECs, some parties have suggested that garden operators should have the option to be paid for them like RECs for subscribed energy. In contrast, Xcel has argued that there is no support in the Commission’s Orders for such a REC payment.

In its September 17 Order, the Commission partially addressed the issue of how RECs from unsubscribed energy would be handled.<sup>5</sup> The Order states:

#### **K. Handling RECs from Unsubscribed Energy**

Under certain circumstances, Xcel and the garden operator may each be entitled to a share of the RECs associated with a garden. This is most likely to occur if a garden operator has sold Xcel the RECs associated with subscribed energy but has chosen to retain RECs associated with unsubscribed energy.

Xcel will likely use its share of the RECs to help meet its obligation under the Solar Energy Standard. For its RECs to count toward SES compliance, however, Xcel must register the garden with the Midwest Renewable Energy Tracking System (M-RETS).

M-RETS rules require that a facility’s entire energy output be registered and allow only one registered owner. Xcel therefore proposes to take title to all solar-garden RECs initially, register the facility with M-RETS, and transfer RECs associated with unsubscribed energy back to the garden operator if the operator “completes all actions required to receive these RECs, including but not limited to maintaining an active account in the Midwest Renewable Energy Tracking System (M-RETS).”

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<sup>3</sup> Commission Order, issued April 7, 2014, in the current docket, p. 15, and Ordering Paragraph 10, p. 27.

<sup>4</sup> Order, April 7, 2014, p. 17.

<sup>5</sup> *Order Approving Solar-Garden Plan with Modifications*, in Docket No. E-002/M-13-867, issued September 17, 2014, pp. 17-18.

MN Community Solar opposed Xcel's proposal, arguing that a solar-garden operator might not find it cost-effective to establish an M-RETS account to track relatively small numbers of unsubscribed RECs. Xcel responded that its proposal is the only way to comply with M-RETS rules and ensure that its RECs can be counted toward the Solar Energy Standard.

The Commission concurs with Xcel and will approve the Company's proposal to require solar-garden operators to maintain an active account with M-RETS in order to receive RECs associated with unsubscribed energy. The procedure proposed by Xcel appears to be the only feasible way to ensure that its solar-garden RECs can be registered with M-RETS and counted toward the Solar Energy Standard. The Commission recommends further discussion of this issue as part of the collaborative workgroup encouraged by the Commission in its April 7, 2014 order.

### C. Parties' comments

#### Xcel Energy (Xcel)

In its March 2, 2015 comments, Xcel stated that it did not “. . . find support in the Commission's April 7, 2014 Order for a requirement that Xcel pay to CSG operators a \$0.02 to \$0.03 per kWh REC payment for unsubscribed energy production . . .”.<sup>6</sup> Xcel noted there is still an unresolved issue surrounding the question of the Commission's intent with respect to its approved bill credit rates for unsubscribed energy. The Company indicated it did not find support in the Commission's April 7 Order for a requirement that the Company pay CSGs that have opted for the “Enhanced” rate option for their RECs associated with unsubscribed energy. Xcel explained that, currently, the tariff provides the CSG operator with the option to claim unsubscribed energy RECs within six months of production, which the Company believes is reasonable.<sup>7</sup>

Xcel argued that when the Commission made its determination about crediting CSG operators for unsubscribed energy, it did so with consideration of the public's interest in seeing CSGs fully subscribed. Accordingly, it set the unsubscribed rates well below the rates for subscribed energy. The Company noted that if the Commission does take action to require REC payments for unsubscribed energy, the Company's billing systems would need updates to accommodate new tariffed rates. Xcel expects to be able to complete this update prior to the first CSG achieving commercial operation.<sup>8</sup>

Xcel noted that this issue was discussed at stakeholder meetings in March and April where it was agreed that full subscription levels should be encouraged but a range of unsubscribed REC

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<sup>6</sup> Xcel, March 2, 2015.

<sup>7</sup> Xcel, March 2, 2015. Note: if the developer does not claim the RECs associated with the unsubscribed energy, then ownership of these RECs would remain with Xcel.

<sup>8</sup> Xcel, March 2, 2015.

values were discussed. There was also discussion of thresholds for subscription levels, or periods of time that a portion of capacity/energy production was unsubscribed and would therefore qualify at the unsubscribed level for REC payments.

Some workgroup members acknowledged that a market-based REC price might be close to \$0.01/kWh. However, other workgroup members suggested that compensation should be the same as for subscribed energy and that paying more for unsubscribed RECs could exacerbate rate impacts.

At the April 9 stakeholder meeting, the Company indicated that it could support a \$0.01/kWh REC payment to resolve the issue. The Company argued that since the current REC price is non-precedential, and in order to encourage maximum subscription levels, the unsubscribed REC price should not equal the subscribed energy REC price. The Company argued that a \$0.01/kWh rate was well above market pricing, but less than the current Commission-approved REC rate for subscribed energy and represented a reasonable compromise. The stakeholder group discussed the Company's offer at both the April 9 and April 15 meetings but was unable to reach consensus. In response, the Company withdrew its offer and returned to its initial position that no payment should be required for RECs for unsubscribed energy.

In its last set of comments, filed on May 18, 2015, Xcel maintained its position in opposition to REC payments for unsubscribed energy, arguing that the Commission did not intend to incentivize unsubscribed energy and did not order the payment of REC values for unsubscribed energy.<sup>9</sup>

### **Department of Commerce (Department or DOC)**

In its April 30 comments, the DOC recommended that the Commission find that Xcel must pay for RECs from unsubscribed energy at a rate to be determined by the Commission. The Department noted that the Commission has not distinguished between the price Xcel must pay for RECs for subscribed energy and RECs for unsubscribed energy. Specifically, the DOC noted that the Commission's April 7, 2014 Ordering Point 10 directing Xcel to purchase RECs at a specific price does not distinguish between RECs from unsubscribed and subscribed energy. Absent a Commission decision explicitly making such a distinction, REC prices set by the Commission for subscribed energy should be the same as REC prices for unsubscribed energy.

The DOC noted that the Commission's April 7 Order determined that Xcel must pay for unsubscribed energy from facilities smaller than 40 kW at the average retail energy rate, and at its avoided cost rate for unsubscribed energy from qualifying facilities larger than 40 kW. However, in its September 9, 2010 Order in Docket E002/M-08-440 (the Silent REC docket), the Commission determined that for power purchase agreements entered into prior to the establishment of Minnesota's Renewable Energy Standard (RES) that were silent on the disposition of RECs and in which Xcel paid generators its avoided cost of energy, the RECs

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<sup>9</sup> Xcel comments, May 18, 2015, p. 25.

were awarded to the generator. Given the findings in the 08-440 case, the DOC believes that the Commission has already decided that RECs resulting from unsubscribed energy should be awarded to garden operators, unless Xcel purchases the RECs.

If the Commission wishes to make a distinction between RECs from subscribed versus unsubscribed energy, the DOC offered three options: (1) to establish a different price for unsubscribed RECs, (2) to require garden operators to obtain an active account in M-RETS and require Xcel to transfer unsubscribed RECs to the solar operator for their use or sale in the REC market,<sup>10</sup> or (3) to allow garden operators to determine whether to retain the RECs or to sell them to Xcel. The DOC concluded that if the Commission wishes to distinguish subscribed and unsubscribed energy RECs, garden operators should be allowed to determine whether to establish an M-RETS account to take ownership of unsubscribed RECs, or receive payment from Xcel for those RECs and transfer ownership to Xcel. The DOC did not recommend a specific price to be paid for the RECs under this scenario.

### **Kandiyo Consulting (Kandiyo)**

Kandiyo argued that Xcel should pay the full REC price (\$0.02/\$0.03 per kWh) established in the Company's original contract with a CSG project for the RECs associated with unsubscribed energy, because the REC value set for subscribed energy is intended to reflect the environmental and compliance value of solar energy, the benefits of which continue to accrue to Xcel even if the energy is unsubscribed. Kandiyo argued that Xcel is already benefiting from a reduction in the cost of this unsubscribed energy by buying it at the utility's avoided cost rate, at a substantial discount from its ARR.<sup>11</sup> Kandiyo also commented that the current formula of differentiated rates reflects the spirit and intent of the community solar legislation and fairly reflect the additional costs for developing smaller projects with larger numbers of smaller subscribers.

Kandiyo explained that developers of CSG projects require greater certainty about the value they will receive from unsubscribed energy and that the Commission should clarify this soon to enable negotiations with project financiers. This clarification would also help determine what penalty, if any, will apply to a subscriber who wishes to terminate their subscription agreement before the end of its full 25-year term. Maintaining the same REC agreement would also be easier for ongoing administration of CSG projects and may be more consistent with the requirements and structure of the M-RETS system for registering and selling RECs in Minnesota.

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<sup>10</sup> With respect to the establishment of an M-RETS account, the Commission's September 17 Order in this docket requires solar garden operators to maintain an active account with M-RETS in order to receive RECs associated with unsubscribed energy. With an active M-RETS account, Xcel would be able to transfer RECs associated with unsubscribed energy to the solar developers for their use or sale in the REC market. The DOC noted that M-RETS has reduced its subscription fees for smaller account holders to make it more economically feasible for smaller projects to participate in M-RETS. Also, there are opportunities for operators to aggregate smaller projects into a single M-RETS account.

<sup>11</sup> Kandiyo, April 2, 2015; May 18, 2015.

Kandiyo suggested that concerns over manipulating the system by purposefully maintaining a high level of unsubscribed energy could be met by the Commission establishing an upper limit on the amount of unsubscribed energy that Xcel would be required to purchase at its avoided cost plus the full REC value in its original contract. It suggested that the Commission may wish to consider a limit such as no more than 10 percent of a project's annual energy generation be sold as unsubscribed energy with the full REC value.

### **Minnesota Community Solar (MN Community Solar)**

MN Community Solar argued that Xcel should pay for the RECs associated with unsubscribed energy and that the Company should not expect to acquire these RECs for free. These RECs represent a valuable commodity and should not through default be given to Xcel at no cost. Next, MN Community Solar noted that Xcel's argument that the "subsidized" REC rate for subscribed energy will unfairly reward developers when applied to unsubscribed energy and create incentives not to fully subscribe gardens is at best speculative. MN Community Solar stated that there is no reason for developers to reduce subscription levels and forego sizable subscription payments far larger than REC payments to capture a better REC price. Moreover, the program and administrative costs associated with an RFP or other complicated mechanism to get a differentiated price for what will be a relatively limited amount of RECs associated with unsubscribed energy may exceed the benefits to anyone.<sup>12</sup>

MN Community Solar commented that the stakeholder workgroup reviewed the REC issue and an agreement was reached that the RECs associated with unsubscribed energy must be purchased by Xcel. In discussions about a price, a scenario was suggested in which the price for unsubscribed energy plus the CSG REC price might create disincentives for the highest possible subscription rate. To avoid this possibility, MN Community Solar suggested that an alternative REC price be agreed to that would satisfy both Xcel and developers.<sup>13</sup> On May 18, 2015, MN Community Solar reaffirmed its earlier comments and indicated support for the DOC position with respect to RECs for unsubscribed energy.

### **Minnesota Solar Energy Industries Association (MnSEIA)**

MnSEIA argued that assuming the garden operator has elected to sell their RECs to Xcel, the Company should be required to purchase the RECs for both the operator's subscribed and unsubscribed energy. MnSEIA noted Xcel is already required to purchase the unsubscribed energy at either avoided cost or the average retail rate depending on size. If Xcel is already purchasing the unsubscribed energy, then it follows that Xcel should also have to compensate the garden operator for any RECs associated with unsubscribed energy.<sup>14</sup>

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<sup>12</sup> MN Community Solar, April 2, 2015.

<sup>13</sup> As noted above, Xcel did propose a \$0.01/kWh REC payment for unsubscribed energy but the workgroup could not reach 100% consensus, so Xcel withdrew its offer.

<sup>14</sup> MnSEIA, March 2, 2015.

On May 18, 2015, MnSEIA noted that Xcel, in the context of the workgroup meetings, had offered a \$0.01/kWh payment for RECs associated with unsubscribed energy. However, stakeholders at the meeting were unable to agree amongst themselves on whether to accept it. Based on this reasoning and the fact that Xcel made an initial offer, MnSEIA recommended that the Commission require Xcel to pay a REC price to operators of at least \$0.01/kWh for unsubscribed energy.

### **SunShare Solar (SunShare)**

SunShare explained that under Xcel's current S\*RC business rules, developers must elect to sell all (or none) of the RECs associated with a given CSG project to Xcel at the time of S\*RC project application. Thus, Xcel will receive all RECs generated by gardens that elect to sell them. SunShare believes that it is unfortunate that Xcel's position is that it cannot compensate CSG operators for RECs produced by unsubscribed generation, despite the fact that Xcel will receive those RECs. SunShare asked the Commission to clarify that Xcel must pay CSG developers for the valuable RECs they deliver to Xcel associated with unsubscribed energy.<sup>15</sup>

### **TruNorth Solar (TruNorth)**

While previous Commission Orders may imply that a REC payment of \$0.02/kWh for unsubscribed energy is warranted, TruNorth recommended that the Commission require Xcel to pay a REC price of at least \$0.01/kWh for unsubscribed energy.<sup>16</sup>

## **D. Staff discussion**

The Commission must decide whether a payment to garden operators for RECs from unsubscribed energy is warranted and if so, at what price. As noted by Kandiyo, developers need greater certainty about the value they will receive from unsubscribed energy. Developers need this clarity for ongoing negotiations with project financiers and for determining what penalty, if any, will apply to a subscriber that wishes to terminate its subscription agreement before the end of its full 25-year term.

Parties have proposed three options: the same size-differentiated REC payment required for RECs from subscribed energy, a different REC payment possibly differentiated by garden size, or the \$0.01/kWh REC payment initially proposed by Xcel and partially accepted by the workgroup. As noted, the workgroup got fairly close to agreement on this issue. Although Xcel's position in May 18 comments does not support a payment for RECs from unsubscribed energy, at the April 9 stakeholder meeting, the Company noted it could support paying a REC price for unsubscribed energy of \$0.01/kWh in order to resolve the issue. Xcel made clear that at

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<sup>15</sup> SunShare, March 2, 2015.

<sup>16</sup> TruNorth, May 18, 2015.



the time it was willing to pay for RECs from unsubscribed energy at a price less than the \$0.02 to \$0.03/kWh payment rate for RECs from subscribed energy.

In addition, as suggested by some parties, the Commission could put a limit on the amount of unsubscribed energy for which Xcel would be required to purchase RECs. Kandiyo proposed a limit of no more than 10 percent of a project's annual energy generation. This option has not been fully vetted in the workgroup or in the record of the case. Staff suggests prior to adopting a limit of 10 percent (or some other limit), the Commission may wish to ask Xcel if this might create any significant administrative difficulty.

Parties argue that there is no viable option for garden operators to take claim to and sell the RECs from unsubscribed energy. Staff notes most garden operators have opted to sell their RECs from subscribed energy to Xcel in order to receive the enhanced bill credit rate. Garden operators are permitted to select this option and lock into a specific REC price by signing a rate sheet following the application completeness determination. Under program rules, Xcel is not required to purchase the RECs associated with the unsubscribed energy. If a garden operator wants to take ownership of the unsubscribed energy RECs, they are required to maintain an active account in M-RETS and to claim ownership of RECs from unsubscribed energy within six months of garden operation.

Developers, as well as the DOC, are concerned with the existing approach. Since most garden operators will opt for the enhanced rate and transfer the majority of their RECs to Xcel, it is unlikely that they will maintain an active M-RETS account and pursue sales for such a small number of RECs.

Although staff believes the Commission's September 17 Order envisioned that developers could retain ownership of RECs from unsubscribed energy or negotiate a sale to Xcel, staff agrees with parties that the CSG Section 9 tariff provides no viable option to do so. The tariff only provides the garden operator with the option to claim unsubscribed energy RECs within six months of production if they have an M-RETS account. If not claimed, then Xcel takes ownership. Section 9 states:

The Company will transfer the RECs associated with Unsubscribed Energy annually to the Community Solar Garden Operator, provided the Community Solar Garden Operator completes all actions required to receive these RECs, including but not limited to maintaining an active account in the Midwest Renewable Energy Tracking System (M-RETS) or its successor and makes such requests within 6 months of the production of the Unsubscribed Energy.<sup>17</sup>

Given the value of solar RECs in some markets, the Commission may wish to consider these parties' arguments. In addition, the DOC argued that Xcel's taking ownership of the RECs without paying for them runs counter to the Commission's findings in the 08-440 Docket.

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<sup>17</sup> See Section 9, Tariff Sheet 85, part 14 "Renewable Energy Credits (RECs)."

Staff agrees that the Commission intended to create incentives for gardens to be fully subscribed. However, a REC rate for unsubscribed energy below the established REC rate for subscribed energy, and a limit per garden on the total REC payments for unsubscribed energy, may be consistent with this goal.

If the Commission does decide to require a payment for RECs associated with unsubscribed energy, or to clarify the issue, it should require Xcel to file revised tariff pages to reflect the Commission's decision.

**E. Commission Decision Options – REC payments for unsubscribed energy**

1. Require Xcel to pay CSG operators for the RECs associated with unsubscribed energy if an operator opts to sell these RECs to Xcel.
2. Require Xcel to purchase RECs associated with unsubscribed energy under a REC payment as follows:
  - a. \$0.01/kWh for unsubscribed energy regardless of garden size
  - b. the same payment amounts designated by the Commission for the purchase of RECs associated with subscribed energy
  - c. another payment amount or size-differentiated payment amounts to be determined by the Commission
3. Find it appropriate to place an upper limit of 10 percent on the amount of unsubscribed energy that Xcel is required to purchase from a CSG at the bill credit rate plus REC rate established for unsubscribed energy.
4. Clarify that CSG developers have the option to set up an account in M-RETS in order to receive transfer from Xcel of RECs associated with unsubscribed energy or to individually negotiate a sale of these RECs to Xcel.

[**Note:** Xcel may not be willing to negotiate individual REC sales with garden operators and may require further direction from the Commission. However, staff included this option because it may have been the Commission's original intent in the April 7 and September 17 Orders for which parties are now seeking clarification.]

5. Take no action.

## **Issue Two: REC payments for Solar\*Rewards (S\*R) and Made in Minnesota (MiM) Gardens in Years 11-25**

### **A. Statement of the issue**

Should Xcel make REC payments for years 11-25 of the CSG operating contract to those CSGs receiving S\*R or MiM incentives?

### **B. Background**

In its April 7 Order, the Commission determined that “no solar REC value will be paid if the solar garden has received or intends to accept a Made in Minnesota benefit or a Solar\*Rewards benefit, since these incentive programs require that the RECs be transferred to Xcel.”<sup>18</sup> However, S\*R and MiM incentives end after 10 years, while the CSG operating contract continues through year 25. The Commission’s Orders and Xcel’s tariff are silent on the treatment of RECs from these smaller gardens once they cease to receive incentives (S\*R or MiM) in years 11 through 25.<sup>19</sup>

### **C. Parties’ comments**

The issue of REC payments after year 10 for smaller gardens receiving either the S\*R or MiM incentives appears to have been resolved by the stakeholder workgroup. Staff believes the parties have agreed that the Commission should make clear that its previously-set solar REC prices apply to RECs generated after year 10 for those CSG gardens receiving S\*R and MiM incentives. Xcel will pay the current REC pricing at the time the garden application is deemed complete and the garden operator will at that time specify if it wishes to retain or sell the RECs to Xcel. This resolution will be need to be clarified through a tariff change.

Initially, the workgroup determined that this issue could not be resolved in the full group and should be referred to a subgroup that included small-scale developers and installers. The subgroup consisting of the Department, MnSEIA, and the Company worked to develop the recommendation.

Xcel’s stated position is that it supports a tariff change to pay current REC pricing at the time an application is “deemed complete.” MnSEIA explained that from a contractual standpoint it is significantly easier and more financeable if the REC rate stays the same throughout the duration

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<sup>18</sup> April 7 Order, p. 15.

<sup>19</sup> CSG’s under 40 kW are eligible to receive MiM payments and gardens under 20 kW are eligible to receive S\*R incentive payments. CSGs meeting these capacity requirements must apply for one of these two incentives through an application system like other PV systems. As noted if there are payments to the garden operator under these programs, Xcel is entitled to receive the RECs from the CSG for 10 years.

of the contract. It noted that a clear decision on REC treatment will allow for small gardens, including rooftop gardens, to move forward with more confidence.<sup>20</sup>

As more background, the Department initially offered three options for the Commission to consider: (1) make clear that the Commission's previously-set solar REC prices apply for RECs generated by solar gardens receiving incentives after year 10, (2) require solar garden operators to obtain an active account with M-RETS and require Xcel to transfer RECs to the solar operator for their use or sale in the REC market, or (3) allow the solar garden operator to determine whether to retain the RECs or sell them to Xcel. The DOC recommended that the Commission make clear that the small solar garden operator be given the option of receiving a \$0.03/kWh REC payment from Xcel for RECs generated in years 11 through 25, or having the RECs transferred to an M-RETS account in the operator's name. The DOC requested that the Commission make a determination on this issue in order to avoid any ambiguity for these small gardens.

**D. Commission Decision Options – REC payments for Solar\*Rewards (S\*R) and Made in Minnesota (MiM) gardens in years 11-25**

1. Require Xcel to make a compliance tariff filing within 15 days of the Order date in this matter that reflects the resolution of this issue by the parties, as follows: require Xcel to provide the option of paying the current REC pricing for RECs generated after year 10 for those CSG gardens receiving S\*R and MiM incentives. OR;
2. Take no action.

**Issue Three: Assignment of Deposit**

**A. Statement of Issues**

Should the Commission clarify that CSG developers may assign deposit returns to the deposit lender?

**B. Background**

In its initial September 30, 2013 filing for approval of its CSG program, Xcel proposed requiring CSG developers to submit a one-time refundable \$100/kW deposit to protect subscribers from poorly planned projects and a one-time refundable \$100/kW escrow to incent developers to build expeditiously and withdraw questionable projects with each application for a CSG.

Xcel proposed to refund the deposit without interest if a project is operational within 18 months from the date of the solar-garden application; and if the developer misses the 18-month deadline,

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<sup>20</sup> MnSEIA comments, May 18.

the deposit would be forfeited and credited to Xcel's ratepayers through the Renewable Energy Standard (RES) Rider. Xcel proposed to refund the escrow fee within 90 days of the start of commercial operation or upon written notice that the operator does not intend to pursue completion of the garden. Xcel did not propose that the escrow fee be subject to forfeit.

In its April 7, 2014 Order, the Commission determined that a single refundable deposit should be sufficient to protect subscribers from poorly planned projects and required Xcel to amend its solar-garden plan to remove the escrow requirement and require only that garden operators make a single deposit of \$100 per kilowatt. The Commission also required Xcel to refund the deposit to an operator either within 30 days of the garden's completion or within 30 days of the date the operator informs Xcel that it will no longer pursue completion of the project.

Specifically, the Commission findings on CSG Deposit in the April 7, 2014 Ordering paragraphs 5(d-f) were the following:

- d. Xcel shall require the solar-garden operator to make a one-time refundable \$100/kW deposit and shall pay interest on the deposit amount in accordance with Minn. Stat. §325E.02.
- e. Xcel shall refund the deposit to the solar-garden operator within 30 days of the solar garden's completion or within 30 days of the date on which the solar-garden operator informs Xcel that it will no longer pursue completion of the solar-garden.
- f. Xcel shall amend the solar-garden plan to remove the requirement of a one-time refundable \$100/kW escrow fee.

### **C. Parties Comments**

In its January 13, 2015 Supplemental Comments, Xcel described issues that have arisen related to the garden operators' requirement to furnish a refundable deposit. According to Xcel, some developers wish to assign to a third party the return of their multi-million dollar deposit. Xcel stated it is concerned about the consumer protection function of the deposit requirement in the absence of meaningful risk on the part of financiers. In addition, Xcel stated it was concerned about facilitating commercial solutions for developers in this way and has not yet assessed the scope of its own potential liability for these assignment transactions.

In its February 24, 2015 Comments, SunShare asked the Commission to clarify that CSG developers may assign deposit returns to the deposit lender to enable developers to effectively cancel an existing CSG application and quickly re-deploy those funds into new CSG applications. SunShare claimed this will allow CSG developers to obtain lower-cost financing and increase the tempo at which recalled deposit fees may be redeployed in service of 2015 and 2016 CSG project construction, reducing CSG lender risk around flow-of-funds (incl. potential lender concerns regarding security, fraud, and developer nonpayment).

In its March 4, 2015 comments, Xcel stated that SunShare's request to the Commission is directly contrary to the Commission's prior decision with respect to solar garden deposits and

would contravene the intended purpose of deposits to protect subscribers from developers who lack a serious commitment in the project proposal. In addition, Xcel stated that there is no justification to impose the additional administrative burden on Xcel to track where deposits are to be returned and if developers want to agree with their financiers to return deposits, they can do so. However, Xcel stated that there is no reason for the Commission to require the Company to serve as the intermediary in that process.

Furthermore, Xcel noted that pursuant to the Commission's April 7, 2014 Order, the Company is required to refund the deposit to the operator, not the party of the operator's choosing. Xcel claimed that the primary purpose of the deposit requirement, as established in the record in this docket, is to protect subscribers from speculatively planned solar gardens, and to ensure that only gardens that are very likely to be built are moved through the application process and that purpose can only be served where the developer is required to undertake some risk of its own, and to demonstrate its ability to proceed with the proposed project. Xcel objected that requiring that Xcel return deposits directly to the deposit lender in order to reduce lender risk undermines the intended purpose of the deposit.

In its April 2 Comments, Kandiyo Consulting stated that current deposit levels are excessive for many Community Solar projects. Kandiyo objected that requiring a deposit in addition to other application fees and costs ties up a considerable amount of capital (an estimated \$50 million currently), that could be better used as working capital by solar developers. Kandiyo stated it believes an appropriate level of deposits for projects under 250 kilowatts AC capacity would be \$10,000 or \$100 per kilowatt, whichever is less, and an appropriate level for projects from 250 kW to 1.0 MW would be \$25,000.

In its April 30 Reply Comments, the SGC requested that the Commission direct Xcel to allow for the use of an escrow agreement for deposits made and facilitate the transfer of deposits currently held by Xcel into escrow upon the applicant's request and at the applicant's cost. According to SGC, Xcel was holding upwards of \$50 million worth of applicant deposits at the time of its filing. The SGC alleged that Xcel's unwillingness to all the use of an escrow agreement for new deposits has become increasingly problematic because developers have to tie up funds for deposits for vastly longer periods than originally anticipated and with increasing uncertainty if the deposits will be in pursuit of viable projects. The SGC claimed that allowing for the use of debt or equity financing is an essential ingredient to any energy transaction and was expressly written into the CSG statute .

SunShare added, in its April 30, 2015 Reply Comments that it disagreed with Xcel's characterization that allowing developers to assign deposit returns to the deposit lender would eliminate all business risk and uncertainty for solar developers. SunShare stated that CSG applicants already have plenty of business risk when developing such as the requirement to pay an initial non-refundable fee, and a need to expend funds for legal expenses, engineering, permits and other expenses. In addition, SunShare stated that applicants that borrow money to satisfy the deposit requirement must pay lender interest and related transaction costs.

Finally, in its May 18 Comments, MnSEIA also requested the Commission direct Xcel to provide lender-requested cash management services for the CSG deposits, or outsource the job to an appropriate third-party escrow agent. MnSEIA stated that having a bank hold the money in escrow and/or allowing reasonable requests for deposit assignment would create more certainty for project financiers. According to MnSEIA, moving the deposits to a bank or escrow agent could be a relatively simple undertaking, would be consistent with common industry practice, and would substantially lessen the risk to those interested in helping finance the projects.

In its April 28 Supplemental Comments, Xcel stated that although it continues to strongly oppose the imposition of a duty on the Company to facilitate the assignment of applicants' deposits to third parties because, it did note its openness to creating a more secure cancellation process within the application system where the applicant can cancel its project from within the system, rather than requesting that Xcel Energy cancel its project.

In its May 18th Comments, Xcel expressed its openness to 3rd party administration of the deposit, but only if the process is efficient and the costs borne by applicants. In the alternative, Xcel stated that if a deposit was assignable, it supported tariff changes to make the deposit non-refundable in certain circumstances.

#### **D. Staff Comments**

Staff notes that the Commission's Order does not appear to allow for CSGs to assign deposit returns to the deposit lender. The Order explicitly states that "Xcel shall refund the deposit to the solar-garden operator..." Likewise, it is not clear that the Order would allow SGC's request for the use of an escrow agreement for deposits made to facilitate the transfer of deposits currently held by Xcel into escrow upon the applicant's request and at the applicant's cost. Staff notes further, however, that Minn. Stat. § 216B.25 States:

The commission may at any time, on its own motion or upon motion of an interested party, and upon notice to the public utility and after opportunity to be heard, rescind, alter, or amend any order fixing rates, tolls, charges, or schedules, or any other order made by the commission, and may reopen any case following the issuance of an order therein, for the taking of further evidence or for any other reason. Any order rescinding, altering, amending, or reopening a prior order shall have the same effect as an original order.

Staff also notes that that the purpose of the deposit stated in the Order was to protect subscribers from poorly planned projects. No party appears to suggest that there is no longer a need for subscribers to be protected. The sole purpose for requesting the assignment of deposits to the deposit lender appears to be to reduce CSG lender risk around the flow of deposit funds. While Staff appreciates CSG developer's desire for more capital and an easier access to it, staff notes that this easier access to deposit funds from lenders may be contrary to protecting subscribers and undermine the purpose for the requirement of the deposit in the first place.

Finally, staff notes that Order requires Xcel to refund the deposit to an operator either within 30 days of the garden's completion or within 30 days of the date the operator informs Xcel that it will no longer pursue completion of the project.

#### **E. Commission Decision Options – Assignment of Deposit**

1. Pursuant to Minn. Stat. § 216B.25, modify the Commission's April 7, 2014 Order Rejecting Xcel's Solar-Garden Tariff Filing and Requiring the Company to File a Revised Solar-Garden Plan to allow CSG developers may assign deposit returns to the deposit lender. (SunShare)
2. Pursuant to Minn. Stat. § 216B.25, modify the Commission's April 7, 2014 Order Rejecting Xcel's Solar-Garden Tariff Filing and Requiring the Company to File a Revised Solar-Garden Plan to allow for the use of an escrow agreement for deposits made and facilitate the transfer of deposits currently held by Xcel into escrow upon the applicant's request and at the applicant's cost. (SGC)
3. Pursuant to Minn. Stat. § 216B.25, amend the Commission's April 7, 2014 Order Rejecting Xcel's Solar-Garden Tariff Filing and Requiring the Company to File a Revised Solar-Garden Plan to require the deposits for projects under 250 kilowatts AC capacity be equal \$10,000 or \$100 per kilowatt, whichever is less and the deposits for projects from 250 kW to 1.0 MW be equal to \$25,000. (Kandiyo)
4. Take no Action

#### **Issue Four: Reporting requirements**

Xcel noted that the Department's April 30 comments suggest several new reporting requirements. These would be in addition to current monthly requirements and would require Xcel:

- to identify each instance in which an application was deemed incomplete or otherwise returned to the applicant for additional information
- to provide the additional information being sought from the applicant
- to provide the amount of additional time taken for processing the application
- to identify each instance in which the Company did not meet a Section 10 tariff interconnection process timeline, or otherwise restarted the timeline
- to provide the reason for not meeting/restarting timeline

The Company indicated that while it could provide some of this detail, much of it is unavailable on a per application basis. The process for interconnection often includes ongoing communications between S\*RC program staff, Company engineers, and the garden operator.



The Company's systems of records do not capture or track details including each communication date or follow-up request, in part because there are so many individual, day-to-day communications.

Xcel indicated it is currently fulfilling three compliance items, including:

- the April 7, 2014 Order (Order Point 3.c) stating "Xcel shall make information on the total number of pending and approved applications and their size available on its website"
- the February 13, 2015 Order (Order Point 3) requiring "Xcel shall file monthly updates on the status of the initial cohort of 427 solar-garden applications, reflecting the following information: the number of initial solar-garden applications commissioned and/or still active and related MW capacity, categorized by county..."
- the February 13, 2015 Order (Order Point 3) notes "Xcel shall file in eDockets the approved minutes (with attachments) and the agendas from all stakeholder workgroup meetings, including past meetings"

To the extent these compliance items continue to be beneficial to the Commission, the Company agreed to report the information. However, the Company believes there is a more efficient way to provide the desired information. It requested that the Commission consider modifying the full scope of the Company's compliance requirements as follows. It suggested quarterly reports filed through eDockets that include:

- application process detail for the CSG program including the number of applications and associated MW by county for all applications submitted to-date
- interconnection status of CSG projects including application ID, rated AC output, substation, date the project paid all necessary fees, date the application was deemed complete, date the Scope of Work is provided to the applicant for the interconnection study, date payment was received for the interconnection study, and the date the interconnection study started and was completed
- application issues and causes of delay
- implementation stakeholder workgroup approved meeting minutes

The Company also agreed to provide all compliance reports on its CSG website once filed.

Staff notes the Commission's April 7 Order also requires reporting not mentioned above that would begin 18 months after the first garden starts operation. The Order states:

#### **L. Additional Compliance Filings**

Xcel's community-solar-garden program is a landmark undertaking in Minnesota, and, as with any new program, there will be implementation challenges and unintended consequences. To facilitate regulatory oversight and program improvements based on experience with the program, the Commission will require Xcel to file annual reports

beginning 18 months after the first solar garden begins operating. These reports will include the following information:

- reporting on solar-garden program costs, including an analysis of the deposit, application, participation, and metering fees and further justification for these fees going forward;
- reporting on the solar gardens, including but not limited to size, location, and type of subscriber groups;
- reporting on known complaints and their resolution;
- a copy of each contract signed with a solar-garden operator, if not otherwise required by this order;
- reporting on the bill credits earned and paid;
- reporting on the application process; and
- lessons learned and any recommended changes to the program.

As solar penetration levels on Xcel's system rise through the solar-garden program and other initiatives, the system will need the ability to adapt to the rapid load changes caused by intermittent generation. Smart inverters, which have equipment that allows them to communicate with the grid operator, can help provide this capability. The Commission will require Xcel to report back to the Commission by September 1, 2015, on the progress toward certification of smart inverters, barriers to their broader installation, and their potential for use in solar gardens.<sup>21</sup>

Staff also notes that until some of the outstanding issues in this case are resolved, it may be difficult to determine appropriate reporting requirements or changes to the current requirements. Therefore, the Commission may wish to ask parties to comment further on reporting requirements at the meeting on June 25.

### **Commission Decision Options – Reporting Requirements**

1. Require Xcel in place of its current reporting requirements to provide quarterly reports to the Commission through eDockets that contain:
  - a. Application process detail for the CSG program including the number of applications and associated MW by county for all applications submitted to-date
  - b. Interconnection status of CSG projects including application ID, rated AC output, substation, date the project paid all necessary fees, date the application was deemed complete, date the Scope of Work is provided to the applicant for the interconnection study, date payment was received for the interconnection study, and the date the interconnection study started and was completed
  - c. Application issues and causes of delay

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<sup>21</sup> April 7 Order, p. 25.

- d. Implementation Stakeholder Workgroup approved meeting minutes  
(*Xcel Energy*)
2. Require Xcel to continue its current set of monthly reporting requirements but to add those recommended by the DOC, as follows:
  - a. identify each instance in which an application was deemed incomplete or otherwise returned to the applicant for additional information
  - b. additional information being sought from the applicant
  - c. amount of additional time taken for processing the application
  - d. identify each instance in which the Company did not meet a Section 10 tariff interconnection process timeline, or otherwise restarted the timeline
  - e. the reason for not meeting/restarting timeline(*Department*)
3. Require Xcel to provide a breakdown by customer class of CSG subscribers and update this breakdown quarterly. (*Department*)
4. Clarify that Xcel is still required to meet the compliance reporting required beginning 18 months after the first garden begins operation (from the April 7 Order, Ordering Point 23) and the requirement to report back to the Commission by September 1, 2015, on the progress toward certification of smart inverters and other relevant barriers to the broader installation and use of smart inverters for solar gardens (from the April 7 Order, Ordering Point 24).