

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: May 15, 2014**Agenda Item #3

Company: Xcel Energy (Xcel)

Docket No. **E-002/M-12-1278**

**In the Matter of Xcel's Request to Issue Renewable Development Fund
Cycle 4 Requests for Proposals and Petition for Approval of a Standard
Grant Contract**

Issue: Should the Commission reconsider its March 11, 2014 Order in this matter?

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Relevant Documents

Commission Order Approving RDF Grant Recommendations..... March 11, 2014
Minnesota Go Solar LLC, Request for Reconsideration March 31, 2014
Xcel Energy, Answer to Petition April 10, 2014

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Statement of the issue

Should the Commission reconsider its March 11, 2014 Order in this matter?

Background

On March 11, 2014, the Commission issued its *Order Approving RDF Grant Recommendations, Establishing Funding Procedures, and Requiring Compliance Filings*, in the current docket. On March 31, 2014, Minnesota Go Solar LLC (Go Solar or the Petitioner) filed a Petition for Reconsideration pursuant to Minnesota Rules 7829.3000. On April 10, 2014, Xcel filed an Answer to the Petition.

On April 15, 2014, Xcel notified all RDF Cycle 4 grant awardees that the Petition had been filed and that although the Company planned to continue to develop RDF grant contracts and collect due diligence items, it did not plan to execute grant contracts during the pendency of the request for rehearing. It noted that a further step that could take place would be a subsequent judicial appeal of the Commission's Order, and should this take place, the execution of grant contracts could be further delayed.¹

Statutory Authority

Petitions for reconsideration are subject to Minn. Stat. §216B.27 and Minnesota Rules 7829.3000. Petitions for reconsideration are denied by operation of law unless the Commission takes action within sixty days of the request. If the Commission takes no action on Minnesota Go Solar's petition, the request would be considered denied as of May 30, 2014. The Commission may also take specific action to deny the petition.

If the Commission takes up a party's request for reconsideration, the Commission can: (1) reconsider, and (a) affirm, (b) modify or (c) reverse its initial decision, or (2) toll the time period to allow additional time for reconsideration, or (3) deny the petition for reconsideration and thereby affirm the initial decision. The Commission may also reconsider its Order on its own motion.

The Commission has the authority to accept or decline a petition for reconsideration with or without a hearing or oral argument, under Minn. Rules 7829.3000, subpart 6.

Minnesota Go Solar Petition

The Petition filed by Go Solar repeated its previous comments:

- the independent evaluator ranked the petitioner's proposal very highly, yet the petitioner did not receive funding

¹ RDF Quarterly Status and Progress Report, filed April 29, 2014, p. 5.

- the Order makes a conclusion that the selection process meets the requirements of Minn. Stat. §116C.779 without explaining how the statutory criteria were satisfied with respect to the proposal by Minnesota Go Solar
- the Commission must do more than accept without examination Xcel's four baseless reasons for rejecting the proposal
- the Commission failed to refer the matter to a contested case

The Petitioner also asserted the relevance of the Commission's decision to select the Geronimo Energy solar proposal in Xcel's Resource Acquisition Docket (12-1240). Minnesota Go Solar stated that Geronimo's proposal was very similar, if not identical, to its own. Go Solar's affiliate Ecos Energy requested permission to make a late solar proposal in that docket but the Commission denied its request. The Department also opposed Ecos' request and then argued against Geronimo's proposal because there were no competing solar proposals in the docket.

Minnesota Go Solar further stated that in the Xcel Resource Acquisition Docket, the Geronimo solar proposal was selected although site control had not been achieved at the time Geronimo submitted its proposal, while in the current docket, lack of site control was one of the reasons for rejecting the Go Solar proposal.

In sum, Go Solar asked the Commission to reconsider its March 11 Order and to order funding for the Go Solar project or in the alternative to order a contested case proceeding and stay any further action on the selected projects until its completion.

Xcel's Answer to the Petition

Xcel filed an Answer on April 10, 2014. It pointed out that the Petition raises no new issues or facts, and that there are no errors or ambiguities in the Commission's Order. These are the criteria for granting reconsideration; the petition fails to meet these criteria and therefore should be denied.

In Xcel's view, the Petition simply repeats its previous arguments regarding the selection process by focusing on the permissible decision to deviate from the independent evaluator's technical score. The RDF statute does not require selection of projects based solely on the technical score of the independent evaluator. The Commission's previous Order approving the RFP expressly allowed for deviations from scoring so long as they were supported.

Go Solar also took issue with RDF advisory group meeting minutes. Xcel sees this as immaterial. Xcel argued that Go Solar has attempted to characterize the Advisory Group as not following the RDF statute due to absence of any discussion of the RDF statutory criteria. Xcel's filings in the docket show that the Advisory Group was aware of the statute and its grant consideration requirements.

Lastly, Xcel's Answer states that the Commission's Order approving the proposal for program expenditures did not contain errors or ambiguities. The Order is supported by substantial

evidence in the record, explains the connections between the facts and choices made by the Commission, and demonstrates that the Commission reached a reasoned decision.

Staff discussion

Xcel noted that the criteria for reconsideration are: (1) whether new issues not yet considered arise, (2) new facts are brought to light, (3) the Commission orders are in error or ambiguous, or (4) the Commission is otherwise persuaded to reconsider its Order.² Xcel's answer to the Petition argued that it failed to meet these criteria. First, Go Solar's Petition repeated its previous reply comments of December 12, 2013 and December 31, 2013. It continued to argue that its high technical score from the third party evaluator obligates an award despite the qualitative judgments of the RDF Advisory Group. These are not new issues or facts and were in the record when the Commission issued its Order.

Second, Go Solar stated that the Commission's Order was "conclusory" and without adequate explanation. Xcel argued that this objection identifies no "errors, ambiguities, or other persuasive information."³ Xcel argued that the Commission Order met evidentiary requirements, explained the connection between the facts and the selections made and its reasoning in making those selections, without error or ambiguity.

Xcel did not explicitly repeat the statutory language laying out the process of project selection and approval, but staff notes that Minn. Stat. §116C.779 (f) is clear in stating that the public utility "must consult with an advisory group that includes, among others, representatives of its ratepayers." It goes on to obligate the utility, "in addition to consulting with the advisory group," to utilize an "independent third party expert to evaluate proposals..." The statute grants the Advisory Group the authority to interpret, accept or reject the technical scoring. It is clear that the Commission, Department, and the public utility are not bound to accept the third party's evaluation alone, and that the RDF Advisory Group adds value to the selection process by exercising the latitude to consider more than technical scoring.

The Commission's March 11, 2014 Order approving the RDF grant recommendations provided the following rationale for its selections:

- the Advisory Group considered both technical scores and other factors, including innovativeness, uniqueness and visibility (Order, p. 4)
- in order to maximize ratepayer benefits, the Advisory Group selected a diverse set of projects⁴ (Order, p. 4)

² See Minn. Stat. §216B.1691, *Order After Reconsideration*, Docket No. E-999/CI-03-869, August 13, 2004, p. 9.

³ Xcel's Answer to Petition, filed April 10, 2014, p. 3.

⁴ Staff notes that diversity not only demonstrates an array of alternative technologies but is also a focus of risk spreading within Cycle 4.

- of the 46 energy production proposals nearly 80% involved solar technology⁵ (Order, p. 3)
- the Advisory Group provided sufficient reasons for recommending each project, holding it in reserve or rejecting it (Order, pp. 4-5)
- Xcel accepted the Advisory Group's recommended projects as well as its list of 15 reserve projects (Order, p. 5)
- the Order concluded that Xcel had complied with the RDF statute and Commission Orders in making its project selections (Order, pp. 7-8)

The specific language of the March 11 Order relating to approval of recommended and approved projects stated:⁶

The Commission finds that the Cycle 4 selection process meets the requirements of section 116C.779 and the Commission's February 6, 2013 order approving the RFP. Xcel followed the statutory procedures by retaining an independent evaluator and consulting with an advisory group including ratepayer representatives. Where Xcel's recommendations deviated from the Independent Evaluator's rankings, Xcel explained its choices in sufficient detail.

Finally, the proposed projects are likely to further the goals of the RDF by increasing the market penetration of renewable energy at reasonable costs; promoting the startup, expansion, and attraction of renewable projects and companies in Minnesota; stimulating research and development into renewable technologies; and developing near-commercial and demonstration-scale renewable electric generation projects.

Xcel's reliance on qualitative criteria led several parties to comment that the selection process was too subjective and lacked transparency. With Cycle 4 grant requests far exceeding the available funding, not every meritorious proposal could receive an award. Xcel thus faced a difficult task in choosing a set of projects that would provide the greatest possible benefit to Minnesota and its ratepayers.

Xcel and the Advisory Group used the Independent Evaluator's technical scores as a starting point but also placed considerable weight on qualitative factors. Xcel's RFP notified bidders that the final selections would be based both on technical score and subjective recommendations from the Advisory Group. This approach was reasonable

⁵ Staff notes that among the many projects with merit, the competition among solar projects was particularly intense in light of the need to achieve a diverse project mix.

⁶ See Order, pp. 7-8.

because it gave Xcel the necessary leeway to select a diverse mix of unique and innovative projects.

The technical scores were one input to an evaluation process in which diversity, a balanced portfolio and other considerations affected the Advisory Group's decisions. Selecting the Go Solar proposal would have meant the rejection of a number of other projects, which the Advisory Group ranked higher overall than the Go Solar project.

Xcel provided the following specific reasons for deviating from the independent evaluator scoring and not selecting the Go Solar project. The Go Solar project:

Was disfavored by the advisory group as it would require too large of a portion of the funds anticipated to be awarded to EP projects (over a third of available funds). The energy price per kWh was high relative to other EP proposals and the locations for constructing the facilities were still open, which adds uncertainty. From prior experience, RDF proposals that do not have specific sites identified or a very clear plan to identify sites have significant project delays. Further, the overall timeline proposed for the project was not long enough based on the Company's prior experiences negotiating power purchase agreements for projects of the scale proposed.⁷

In sum, the Commission made clear in its March 11 Order that the Advisory Group could deviate from the evaluator's technical score. The evaluation and reasons for selecting other projects over Go Solar's project proposal were explained. Therefore, staff concludes that there may be no compelling justification or basis for reconsideration.

Go Solar asked for reconsideration of the Commission's March 11 Order and in the alternative that the Commission order a contested case. However, Go Solar's request for a contested case was denied as part of the initial proceeding. Procedurally, if the Commission wished to grant Go Solar's request for a contested case, it would need first to decide to reconsider the case and then decide to grant Go Solar's request for a contested case.

⁷ Xcel reply comments, 12-1278, filed December 12, 2013, Attachment K, p. 1.

Decision Options⁸

1. Deny the Petition for reconsideration.
2. Grant the Petition for reconsideration.
3. Toll the time period to allow additional time for reconsideration.

⁸ Pursuant to Commission practice, only a Commissioner who voted on the prevailing side may make a motion for rehearing/reconsideration. At the January 23, 2014 meeting, five Commissioners were present and voted 3-2 on Commissioner Wergin's motion to approve Xcel's December 12, 2013 selection of projects and reserve list, with certain specifications. Chair Heydinger and Commissioner O'Brien voted against the motion. (Commissioner Wergin also made a separate motion to direct Xcel to confer with the Advisory Group and determine whether \$2,157,215 should be provided to a St. Thomas grant; Chair Heydinger and Commissioner Lange voted against that motion.)