

STATE OF MINNESOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION

In the Matter of a Request by Xcel Energy)
to Issue Renewable Development Fund)
Cycle 4 Requests for Proposals and Petition)
for Approval of a Standard Grant Contract)

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

REPLY COMMENTS OF MINNESOTA GO SOLAR LLC

Minnesota Go Solar LLC (“Go Solar”) submits these reply comments in accordance with the Commission’s October 7, 2013, Notice of Extended Period for Reply Comments on Renewable Development Fund (“RDF”) Selection Report.

Since Go Solar submitted its initial comments, Xcel has responded to various information requests from Go Solar producing almost 10,000 pages of documents. Those responses indicate a clear failure of substance and of process by the RDF Advisory Group (the “AG”) and Xcel in following both the RDF statute and the terms of the RFP itself. The only person involved in the selection process that was guided by the RDF legislation, and specifically, the recently enacted changes by the Legislature, was Sargent & Lundy (“S&L”).

Not one document in the nearly 10,000 pages produced by Xcel thus far indicates that the AG or Xcel was guided or *even influenced* by the recently enacted changes by the Legislature. Not one document in those 10,000 pages was an explanation to the AG of the recently enacted RDF legislative changes. Not one document in those 10,000 pages provided any objective criteria for the AG to perform its role in light of the legislative changes. Instead the AG evaluation was essentially a standard-less, ad hoc selection, which ignored both the Legislature’s

instruction and the terms of the RFP itself. Indeed the mention of the 2012 legislative changes came in a last-minute change to the press release announcing the RDF selections, which was made as an after-thought well after the selections had been made.

The 2012 statutory changes mandate that Xcel “must strongly consider . . . the potential benefit to Minnesota citizens, businesses, and Xcel Energy’s ratepayers.” Minn. Stat. § 116C.779(f). In addition, the 2012 statutory changes require that for renewable electric energy generation projects Xcel “must, when feasible and reasonable, give preference to projects that are the most cost-effective for a particular energy source.” Minn. Stat. § 116C.779(h). Here those commands of the Legislature were ignored. In none of the almost 10,000 pages produced by Xcel is there one mention of either the AG or Xcel considering, much less following, those directives.

In addition to ignoring the statutory criteria from the 2012 legislative changes, the AG proceeded contrary to the RFP. The terms of the RFP clearly state that the AG would recommend how *far down* the ranked list of proposals it proposed to make awards.¹ That procedure or process plainly requires that the AG would start with the S&L list in each technology category and in the overall category, and propose how far down the S&L list it would propose to make awards. The process set forth in the RFP did not allow for the deletion of projects in the list, it just enabled the AG to narrow or expand the group of projects from which Xcel would make the selection. That group of projects, however, under the procedure described

¹ The RFP states at p. 33:

To facilitate development of a balanced portfolio of projects, Xcel Energy will request that the independent evaluator rank proposals in descending order against all proposals as a single group, and then again within each resource type. For instance, after ranking all projects in a single list, biomass projects will be grouped and then ranked against other biomass projects; solar projects will be grouped and then ranked against other solar projects, and so forth. The advisory group will recommend how far down the ranked list of proposals it proposes to make awards.

in the RFP, must be a group that contains all the projects with a higher score than the lowest scored project in the group.

In addition, once the 2013 energy legislation was enacted regarding solar gardens and the new solar standard (the “2013 Solar Law”), Xcel was given the opportunity to revise its two RDF proposals and communicate directly with the AG with respect to the two Xcel proposals for RDF grants for its own projects. No other proponent was provided with the same opportunity as Xcel reserved for itself. Every proponent of an RDF proposal should be provided with the same opportunity that Xcel reserved for itself regardless of what, if any, effect that opportunity had. In the case of Go Solar, it is evident that in light of the 2013 Solar Law, should Xcel not have wanted to enter into a PPA that the Go Solar proposal would represent 20 of Minnesota’s first solar gardens.

The AG comments with respect to Go Solar’s proposal confirm that the AG did not understand, and did not apply, the Legislature’s directives. Notes from the AG’s meeting describe Go Solar’s proposal as a good project just not an RDF project. How the most diverse project, that provides the greatest benefit by far per RDF dollar to Minnesota citizens, businesses, and Xcel Energy’s ratepayers and is the most cost-effective for a particular energy source, cannot be considered an RDF project defies the plain language of the 2012 legislative changes. It is that defiance that confirms without question that the AG was not adequately instructed as to the legislative directives for the RDF.

Go Solar’s proposal was ranked #1 overall by the independent evaluator, garnered (despite incorrectly overstating Go Solar’s per kwh cost²) more points than any other project, and

² As a result of the erroneous calculation, Go Solar received a score of 45 instead of the 60 points it should have received, which would have put Go Solar’s total overall score at 204.7, even farther ahead of the nearest project, and garnering the highest percentage of available points in RDF history.

would create more jobs than all recommended project combined. In addition, the independent RDF evaluator concluded that the Go Solar proposal provided the largest “potential benefit to Minnesota citizens, businesses, and Xcel Energy’s ratepayers” (*see*, Minn. Stat. § 116C.779(h)).

Despite being rated #1, the lowest cost per watt of RDF funding, creating more jobs than all other selected projects combined, and offering to sell at avoided costs, Xcel has not recommended any (even partial) funding for the Go Solar proposal, marking the first time in the history of the RDF that the top-ranked proposal was not recommended for any funding.

Furthermore, the uniqueness of the Go Solar proposal cannot be understated, particularly as it compares to the other recommended projects. With a single grant that is proportionate to what other #1 ranked proposals have received in each of the three prior RDF cycles, the State of Minnesota would almost *triple* its currently installed solar resources and create highly visible projects using 20 different sites across a diverse set of communities.

The Go Solar project’s focus was fivefold:

- promote the expansion and attraction of solar renewable energy projects and companies in the Xcel Energy service area;
- increase the market penetration of solar renewable energy resources on a scale not done before in Minnesota at reasonable costs, by almost tripling Minnesota’s installed solar resources;
- Provide the largest potential benefit *by far* to Minnesota citizens, businesses, and Xcel Energy’s ratepayers as compared to any other project that would be proposed. Minn. Stat. § 116C.779(f);
- Provide solar resources at the most cost-effective for a particular energy source. Minn. Stat. § 116C.779(h); and

- create highly visible projects using 20 different sites across a diverse set of communities.

Because Go Solar asked for such a low per kW grant based upon a low per kWh production incentive, a bonus of the Go Solar project was that it would also illustrate how a solar renewable energy credit market would enable the rapid deployment of solar in Minnesota at reasonable costs, which fits in line exactly with the RDF mission.

Based upon the statutory criteria prescribed by the Legislature, the Go Solar proposal was the clear winner. In spite of its highest ranking, Xcel is recommending no award for Go Solar, instead awarding over 45% of the amount awarded for energy projects to the three projects that the independent evaluator concluded provided the lowest benefits to Minnesota citizens and ratepayers in the recommended group.

If either Xcel or the AG intended to evaluate and select proposals based upon criteria that was not included in either the RFP or the RDF statute, then fundamental fairness requires that those criteria be announced and clearly set forth prior to the time for submission of proposals. Any criteria that differ from that in the RDF statute or the RFP must be set aside.

In a supplemental selection filing Xcel provided an explanation of why Go Solar was not selected. The documents produced by Xcel reveal that the list of reasons for not selecting Go Solar was just a post-hoc attempt to justify ignoring the clear legislative directive and the rules of the RFP, and were either unfounded and/or contradicted by the AG's and Xcel's other actions and comments.

The AG's failure to follow the rules of both the statute and the RFP appears to be primarily due to Xcel's failure to explain the priorities under the statute, and to explain how the RFP described what the AG would do. Perhaps the clearest example of the AG's failure to

follow the statute and the RFP's description of the role of the AG is shown by the AG selecting projects (either as recommended or reserve) in both the R&D and EP categories that were in the do not recommend (or bottom tier) according to the independent evaluator. Moreover, it is clear that the entire process has gone awry when a do not recommend project is moved from the bottom to the number one spot on the reserve list for what can only be inferred is due to a friends and family approach taken by both the AG and Xcel.

The only way to address the deficiencies in the entire process is for a new advisory group to be formed, which would have members that are not affiliated with any proponents proposal, and for the new advisory group to be educated as to the statutory priorities under the statute, and the process described in the RFP that the AG would follow.

A new panel is the only way to insure the soundness of the process and to properly address projects such as Go Solar, and others, particularly those that have been rescored. EP4-44, for example, has been rescored giving it a total score of 158.5, which would have resulted in its selection if the AG had followed both the statute and the rules provided in the RFP. Neither were followed and as a result, EP4-44 was one project that received absolutely no discussion at all during the AG process.

In addition, every proponent should be given the same opportunity that Xcel had to adjust or add additional narrative to its proposal to explain how the proposal would be affected or how the proposal's evaluation should be affected by or evaluated in light of the 2013 Solar Law.

Anything less would simply not be fair and would result in Xcel and the AG continuing to attempt to justify decisions that are inconsistent with the statute and the process set forth in the RFP.

For the reasons stated above and in its initial petition and comments, Go Solar asks the Commission to order the formation of a new advisory group, or in the alternative to order a contested case proceeding, and stay any further action on any of the Recommended Projects until either the new review is completed or the completion of the contested case proceeding.

Dated: December 12, 2013

Respectfully submitted,

/s/ Thomas Melone

Thomas Melone

President

Minnesota Go Solar LLC

222 South 9th Street, Suite 1600

Minneapolis, MN 55120

Phone: (212) 681-1120

Email: Thomas.Melone@AllcoUS.com

Certificate of Service

I certify the attached *REPLY COMMENTS OF MINNESOTA GO SOLAR LLC* has been served this day, December 12, 2013, via U.S. mail and e-mail as designated on the Official Service List for the proceeding on file with the Minnesota Public Utilities Commission.

/s/ Thomas Melone

Thomas Melone