

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: January 23, 2014**Agenda Item #_3_

Company: Xcel Energy (Xcel or the Company)

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

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

Issues: Should the Commission approve the Cycle 4 RDF project selection recommended by Xcel and the RDF Advisory Group?

Should the Commission grant requests for a contested case proceeding in this matter?

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Relevant Documents

Staff briefing papers..... Commission meeting on January 31, 2013
PUC Order in 12-1278..... issued February 6, 2013
Xcel selection report..... (public and non-public) July 29, 2013
Xcel selection report supplement..... August 9, 2013
Metropolitan Council..... August 15, 2013
Powerworks Wind Turbines August 26, 2013
Dragonfly Solar..... September 12, 2013
Minnesota Go Solar September 12, 2013
Xcel selection report second supplement.....(public and non-public) September 13, 2013
Xcel response to Go Solar..... September 23, 2013
Interphases Solar.....(public and non-public) September 25, 2013
Powerworks Wind Turbines. September 27, 2013
Department comments.(public and non-public) September 27, 2013
Minnesota Agricultural Interpretive Center-FarmAmerica. September 30, 2013
Alan J. Muller comments..... September 30, 2013
Sen. Newman, Rep. Urdahl and Rep. Gruenhagen.....November 15, 2013
Minnesota Go Solar reply December 12, 2013
Xcel Energy reply. December 12, 2013

Alan J. Muller reply comments.....	December 13, 2013
PowerWorks reply comments	December 31, 2013
Alan Muller add't reply	December 31, 2013
Minnesota Go Solar reply.	December 31, 2013

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Statement of the issue

Should the Commission approve the Cycle 4 RDF project selection recommended by Xcel and the RDF Advisory Group?

Should the Commission grant requests for a contested case proceeding in this matter?

Procedural background

On July 29, 2013, Xcel filed its RDF Cycle 4 Selection Report seeking approval of RDF grant awards for energy production (EP) and research and development (RD) projects, a list of reserve EP and RD projects,¹ and awards for block grants to institutions of higher education.

On August 9, 2013, the Company filed a supplement to the Selection Report containing additional information on the independent evaluator's scoring and the evaluation of proposals by the Advisory Group. On August 13, 2013, the Commission issued a notice setting out initial and reply comment periods for parties to comment on Xcel's reports.

On September 3, 2013, the Commission issued a notice extending the comment period to allow parties to comment on Xcel's reports and the scoring of projects. The Commission also set out the date for an informational meeting on the Cycle 4 projects.

On September 10, 2013, Xcel provided a question-and-answer session at the Commission offices for the Commission, stakeholders, potential grantees, and members of the Advisory Group.² At this meeting, Commissioners were given the opportunity to ask specific technical questions about the Cycle 4 projects.

On September 13, 2013, Xcel filed a second supplement to the Selection Report, which addressed scoring errors by the independent evaluator and provided responses to comments received in the proceeding to date. On September 23, 2013, Xcel filed a response to Minnesota Go Solar's petition to intervene and request for a contested case proceeding.

On October 7, 2013, the Commission issued a notice extending the reply comment period and allowing Xcel until December 12, 2013 to file an audit of the independent evaluator's scoring process.

On December 12, 2013, Xcel filed the results of its audit and reply comments. On December 16, 2013, the Commission issued a notice allowing parties until December 31, 2013 to file comments on Xcel's audit and reply.

¹ Initially Xcel proposed Tier 1 and Tier 2 reserve projects but later combined these into one reserve list with 15 projects.

² See Ordering Paragraph 6(g), in the Commission's *Order Approving Requests for Proposals and Standard Contracts as Modified*, in Docket No. 12-1278, issued February 6, 2013. This Ordering Paragraph requires Xcel at the discretion of the Commission to organize such an event.

2012 RDF statutory changes

In 2012, the legislature revised the RDF statute, Minn. Stat. §116C.779 (Appendix D, attached). Below is a summary of the changes:

Fund expenditure and Minnesota preference. The revised RDF statute includes specific language on how funds can be spent. Minn. Stat. §116C.779, subd. 1 (d) specifies that the RDF fund can be expended only for the following purposes:

- to increase the market penetration within the state of renewable electric energy resources at reasonable costs
- to promote the start-up, expansion and attraction of renewable electric energy projects and companies within the state
- to stimulate research and development within the state into renewable electric energy technologies
- to develop near-commercial and demonstration scale renewable electric projects or near-commercial and demonstration scale electric infrastructure delivery projects if those delivery projects enhance the delivery of renewable electric energy

Minn. Stat. §116C.779, subd. 1 (f) explains that “In the process of determining request for proposal scope and subject and in evaluating responses to request for proposals, the public utility must strongly consider, where reasonable, potential benefit to Minnesota citizens and businesses and the utility’s ratepayers.” The statute also requires that a request for proposal “for renewable energy generation projects must, when feasible and reasonable, give preference to projects that are most cost-effective for a particular energy source.”

Commission approval. Previous to the 2012 changes, the RDF statute specified that fund expenditures could only be made after approval by order of the Commission. However, the 2012 legislation gives the Commission broader authority so that it may now “approve proposed expenditures, may disapprove proposed expenditures that it finds to be not in compliance with this subdivision or otherwise not in the public interest, and may, if agreed to by the public utility, modify proposed expenditures. The commission may approve reasonable and necessary expenditures for administering the account in an amount not to exceed five percent of expenditures.” Minn. Stat. §116C.779, subd. 1 (e).

Advisory Group. The legislation specifically defines the roles for Xcel and the RDF Advisory Group:

The account shall be managed by the public utility but the public utility must consult about account expenditures with an advisory group that includes, among others, representatives of its ratepayers. The commission may require that other interests be represented on the advisory group. The advisory group must be consulted with respect to the general scope of expenditures in designing a request for proposal and in evaluating projects submitted in response to a request for proposal. In addition to consulting with the advisory group, the public utility must utilize an independent third-party expert to

evaluate proposals submitted in response to a request for proposal, including all proposals made by the public utility. Minn. Stat. §116C.779, subd. 1 (f).

The statute clarifies the roles of Xcel and the Advisory Group, as follows: “The utility should attempt to reach agreement with the advisory group after consulting with it but the utility has full and sole authority to determine which expenditures shall be submitted to the Commission for approval.” Minn. Stat. §116C.779, subd. 1 (f).

Higher education institutions. Another 2012 statutory provision is a request for proposals from Minnesota institutions of higher education. This request for proposals for research and development may be limited to or include a request to institutions located in Minnesota for multiple projects [authorized under paragraph (d), clause (3)], as follows:

research and development . . . may be limited to or include a request to higher education institutions located in Minnesota for multiple projects The request for multiple projects may include a provision that exempts the projects from the third-party expert review and instead provides for project evaluation and selection by a merit peer review grant system. Minn. Stat. §116C.779, subd. 1 (f).

Annual reporting. Under statute, Xcel “must annually, by February 15, report to the chair and ranking minority member of the legislative committees with jurisdiction over energy policy on projects funded by the account for the prior year and all previous years. The report must, to the extent possible and reasonable, itemize the actual and projected financial benefit to the public utility’s ratepayers of each project.” Minn. Stat. §116C.779, subd. 1 (i).

Project reporting. The RDF legislation requires that:

A project receiving funds from the account must produce a written final report that includes sufficient detail for technical readers and a clearly written summary for non-technical readers. The report must include an evaluation of the project’s financial, environmental, and other benefits to the state and the public utility’s ratepayers. Minn. Stat. §116C.779, subd. 1 (j).

Final reports, any mid-project status reports, and renewable development account financial reports must be posted online on a public Web site designated by the commission. Minn. Stat. §116C.779, subd. 1 (k).

All final reports must acknowledge that the project was made possible in whole or part by the Minnesota renewable development fund, noting that the fund is financed by the public utility’s ratepayers. Minn. Stat. §116C.779, subd. 1 (l).

To ensure compliance with the 2012 legislation, Xcel included language in the Cycle 4 standard grant contracts specifying that final reports must provide a general project summary for non-technical readers. Also, Xcel indicated that it has taken steps to improve the dissemination of RDF project information, including final reports that are clearer and project information sheets.

Fund purpose. The 2012 revisions to the RDF legislation added another purpose for which the funds could be used. Specifically, Minn. Stat. §116C.779, subd. 1(d) (4) provides that RDF funds may be spent “to develop the near commercial-demonstration of renewable electric projects or electric infrastructure delivery projects if those delivery projects enhance the delivery of renewable electric energy.” Xcel’s Request for Proposals (RFP) for Cycle 4 allows energy delivery projects to bid for RDF funding.³

Other 2012 statutory language directly authorizes the use of RDF dollars, to “promote the start-up, expansion and attraction of renewable electric energy companies in the state.” Minn. Stat. §116C.779, subd. 1(d) (2).⁴

Advisory Group. The Commission has issued three Orders specifying the number and composition of the seven-member RDF Advisory Group.⁵ The 2012 legislative changes specify that this group must include ratepayer representatives and other representatives required by the Commission. The current Advisory Group consists of the following members:

- Ben Gerber, Manager, Minnesota Chamber of Commerce, Large Customer Rep.
- Tami Gunderzik, Senior Manager, Xcel Energy Rep.
- Eric Jensen, Energy Coordinator, Izaak Walton League, Environmental Rep.
- Kevin Schwain, Manager, Xcel Energy Rep.
- Linda Taylor, Consultant, Environmental Rep.
- Lise Trudeau, Engineer, DOC, Residential Customer Rep.
- Heather Westra, Development Director, Prairie Island Indian Community Rep.

³ Xcel indicated to staff there were no Cycle 4 project proposals that focused solely on “energy delivery.” Some PV proposals included storage components and charging stations to complement the energy generation facility but “delivery” was not the primary goal for these proposals.

⁴ Xcel interpreted the charge “to promote” to include providing loans and grants and other start-up funding to renewable energy companies within Minnesota, including manufacturing enterprises. Xcel indicated that it plans to explore such options but believes the RDF program is not currently organized or prepared to act as a business incubator or to provide debt financing to manufacturing companies.

⁵ By Order issued on April 20, 2001, in 00-1583, the Commission identified Xcel and the environmental community to appoint equal numbers and established responsibility for the Advisory Board to review applications and make recommendations. By Order issued on August 7, 2003, in the same docket, the Commission expanded the Advisory Board to five members, adding the Prairie Island Indian Community representative. The Commission continued to define the representation on the Board through an October 23, 2006 Order (in Docket 00-1583) to be two representatives from the environmental sector, one representative from the Prairie Island Indian Community, one representative from Xcel’s commercial/industrial customers, one representative from Xcel’s residential customers, and two representatives from Xcel.

Selection and review process

In its February 6, 2013 Order, the Commission approved the following Ordering Paragraphs specifying the procedural steps for the RDF Cycle 4 and for all future RDF cycles until such time as the Commission approves revisions:

- a. The Commission reviews and approves selection criteria as proposed by Xcel Energy with input from the Advisory Group.
- b. With input from the Advisory Group, Xcel Energy develops and files an RFP based on approved selection criteria. Xcel Energy files the proposed RFP and standard form contracts with the Commission and the Department. If no comments are received within 30 days and unless otherwise directed by the Commission, Xcel Energy issues the proposed RFP.
- c. With input from the Advisory Group, Xcel Energy oversees the project selection process and makes a final project selection recommendation to the Commission.
- d. Xcel Energy utilizes an independent third-part expert to evaluate project proposals for EP and RD projects. The Company may also decide whether to retain an independent third-party to assist in the review of responses to the RFP for institutions of higher education.
- e. Within 60 – 90 days of receiving project proposals in response to both RFPs, Xcel Energy submits its final project selections to the Commission for approval. The final selection report shall include a detailed explanation of any deviations from the rankings for EP, RD and institutions of higher education projects provided by an independent third-party evaluator or other evaluator.
- f. If within 90 days of the project proposal receipt date the Company's final project selections are not filed with the Commission, Xcel Energy shall file a letter with the Commission explaining the reasons for the delay and shall continue to file such a letter every 30 days until the final project selection is submitted to the Commission.
- g. At the discretion of the Commission, prior to formal Commission consideration of Xcel Energy's final project selection, the Company shall organize a question-and-answer session for the Commission with stakeholders, potential grantees selected by Xcel Energy and members of the RDF Advisory Group.
- h. Once the Commission approves a final selection of project, Xcel Energy may execute grant contracts with the approved projects. All finalized grant contracts must be filed with the Commission prior to the start of the project or program.
- i. If a grant contract executed with a winning bidder contains no changes from the standard form contract for EP and RD projects, the grant contract shall be filed with the Commission (and in the docket) for informational purposes only. However, if a final grant contract deviates from the standard form contract, the grant contract shall be filed with the DOC (and in the docket) for DOC compliance review. If the DOC identifies issues that cannot be resolved, it will bring the contract to the Commission for review. Otherwise, the DOC will file a letter with the Commission indicating compliance review approval. Xcel Energy shall provide a red-lined version of any grant contract that differs from the standard form contract at the time the contract is filed for compliance review.
- j. Xcel Energy shall file with the Commission for approval all grant contracts executed with institutions of higher education resulting from the separate RFP.

- k. Xcel Energy shall submit annual progress reports to the Minnesota House and Senate energy committees and to the Commission addressing the operation of the RDF program as required by statute. The annual report should also include the information required by the Commission in the current biennial report.
- l. Xcel Energy shall continue to file quarter informational and progress reports on on-going RDF projects and grant contracts with the Commission.
- m. Xcel Energy shall post all final reports, mid-project status reports, and RDF account financial reports on the Commission-designated public website. All projects must provide a written final technical report and a clearly written summary for non-technical readers.

Also, in the February 6, 2013 Order, the Commission required Xcel to revise its proposed RFP for EP and RD projects to provide more clarity in the scoring system. The Commission explained that the change was not intended to limit the preference criteria or scoring, only to ensure there was sufficient detail in the RFP scoring and selection process.⁶

The RFP approved by the Commission includes the following language:⁷

The MPUC may approve, disapprove or, with the concurrence of Xcel Energy, modify a proposal. If the MPUC disapproves or seeks to modify a particular project, Xcel Energy reserves the right to, in its sole discretion:

- Request the MPUC reconsider its decision;
- Replace the disapproved proposal with an alternative proposal; or
- Work with the project sponsor to appropriately modify the proposed project.

Parties' positions

Xcel Energy (Xcel) filings

Xcel recommended a total of \$30,122,346 in grant awards for 20 projects, including 13 EP projects, four RD projects, and three Higher Education (HE) block grant programs.⁸ Xcel also proposed a reserve list of 15 projects (EP and RD) in the case that recommended projects are unable to reach agreement and sign grant contracts. Xcel's recommendations for RD, EP, reserve and HE block grant projects are contained in the tables attached to these briefing papers (Appendix A) and in attachments to Xcel's reply comments filed December 12, 2013.

⁶ Xcel filed the compliance filing with the revised RFP on February 13, 2013. The DOC approved the revised RFP on February 14, 2013, through a compliance review process.

⁷ See pages 4-5 of Xcel's revised RFP, filed February 13, 2013, in 12-1278.

⁸ Xcel recommended full funding for the Higher Education block grant to the Minnesota State College and University (MnSCU) and to hold in abeyance an amount up to \$3.5 million for block grants to the University of Minnesota and University of St. Thomas, subject to resolving certain contracting issues with these two institutions.

Xcel noted that in 2012, the legislature made several important changes to the RDF program. These changes included a shift in final responsibility from the RDF Advisory Group to the Company for making RDF grant award recommendations. Also, the legislature placed more emphasis on projects located in Minnesota that provide ratepayer benefits and included a higher educational institution block grant component for the RDF program.

The Cycle 4 Request for Proposals (RFP) issued in February 2013 generated 67 qualifying proposals and a total funding request of about \$133.5 million, including three higher education block grant proposals.⁹ The 67 proposals included 46 EP projects requesting \$91.8 million, 18 RD projects requesting \$18.7 million, and three Higher Education block grant proposals requesting \$14.6 million. Of these proposals, 35 were solar technology, representing 63 percent of the total resource mix proposed (compared to 43 percent as the largest resource proposal, biomass, in Cycle 3). To achieve resource diversity as well as diversity in solar projects, the Advisory Group selected a mix of solar project to ensure diverse project sponsors, location, and visibility through location or marketing.

Technical evaluation. On April 30, 2013, Xcel contracted with Sargent & Lundy (S&L) to conduct a technical evaluation of the 64 Cycle 4 proposals. S&L developed its evaluation report based on the framework and criteria outlined in the RFP. Scoring focused on proposal completeness, technical feasibility, project technical and financial risk, and benefits to Xcel electric customers.

Xcel's Cycle 4 recommendations include:

- \$6,030,221 for seven solar PV projects to be used for self-generation
- \$3,825,250 for three solar PV projects with the output sold to the Company
- \$1,106,600 for one small wind project with output to be used for self-generation
- \$7,000,000 for two biomass projects with the output to be used for self-generation or sold to the Company
- \$3,160,275 for four research and development projects
- \$9,000,000 for three higher educational institution block grants

Selected EP proposals represent 60 percent of the total available funds, selected RD proposals represent 11 percent of the total available funds, and selected HE proposals represent 29 percent of the total available funds. The proposed split between the three categories is close to the original targets of \$20 million for EP and RD proposals and up to \$10 million for HE proposals.

⁹ Xcel issued two RFPs; the first was for projects related to energy production and research and development; the second solicited projects from Minnesota institutions of higher education for renewable energy research and development. The RFPs set forth: selection criteria, a selection process, and proposed standard contracts reflecting 2012 statutory changes and previous Commission Orders. These RFPs were approved by the Commission on February 6, 2013.

Reserve project list. Xcel also recommended that an additional 15 projects be placed in reserve status for a possible RDF grant award.¹⁰ If funds are made available, the Company proposed to fund reserve projects in the order ranked on the list and to use a “next in line” approach, regardless of whether the project is an EP or RD project. Xcel recommended that funds that become available be held and accumulated for a reasonable amount of time (six months to a year) before an attempt is made to fund a project on the reserve list. No reserve project will be funded if there are not sufficient unobligated funds to provide a full grant award. The Company is open to additional recommendations on the most effective way to select projects from the reserve list. An example of one approach would be if available funds are not sufficient to fund the highest ranked proposal on the list, the available funds would be allocated to the highest project that has a funding request less than or equal to the funds available.¹¹

Several of the projects recommended have indicated they are able to execute the new standard RDF grant contract but a number have proposed special conditions or are facing circumstances that will take additional time to resolve. If negotiations do not lead to a satisfactory resolution, Xcel is requesting authority to terminate negotiations and to proceed by replacing the project with one of the reserve list projects. Xcel will move to projects on the reserve list when it reasonably believes it has reached an impasse with the negotiating party. In the event that a reserve project does not enter into a standard contract, Xcel will submit a nonstandard contract to the Department for review and approval prior to proceeding with the project.

Higher Education Grants. One of the new aspects of the RDF grant program is the creation of a higher educational institution block grant program. Under the 2012 RDF statute, RDF monies can be used to fund various research activities at any Minnesota higher educational institution (public or private). For Cycle 4, Xcel received proposals from the University of Minnesota, the Minnesota State College and University (MnSCU) System, and the University of St. Thomas.¹²

Xcel recommended approval of a \$5.5 million RDF grant award for the MnSCU proposal. The Company recommended a \$3.0 million set aside for the University of Minnesota and a \$1.5 million set aside for the University of St. Thomas.¹³ Since there are outstanding issues with the second two program proposals, such as patent royalty sharing and grid accessibility, Xcel requested an additional 120 days, once the Commission approves Xcel’s recommendation regarding the HE program grants, to reach resolution of outstanding issues. Xcel set aside a total of \$3.5 million for these two program proposals but could end up signing grant contracts for less.

¹⁰ As noted earlier, in its initial Selection Report, Xcel proposed two tiers for reserve project funding. In reply comments, the Company recommended one list of reserve projects.

¹¹ In Cycle 3, there were two projects placed on the reserve list, which was approved by the Commission. Both projects eventually received grant awards since two of the initial grant recipients declined awards.

¹² For a brief description of the selected HE program proposals and the input from the Advisory Group, see Xcel’s Selection Report, filed July 29, 2013, pages 31-34. For the scoring results for these proposals, see Attachment C to the Company’s July 29, 2013 Selection Report.

¹³ The independent evaluator did not review any of the Higher Education (HE) block grant program proposals.

Regardless, Xcel will submit all three final higher education grant contracts to the Commission for review and approval. If Xcel is unable to reach agreement with the University of Minnesota or the University of St. Thomas, it will notify the Commission and use those dollars to move forward with a reserve list of project(s).

Selection methodology and scoring. Xcel noted that the comments of stakeholders are generally related to two topics—the qualitative analysis conducted by Xcel and the Advisory Group in selecting projects for funding and the scoring discrepancies that were identified during the review of the selection report. While Xcel acknowledged there were some scoring errors in the original selection report, it indicated that these errors have not altered the original recommendations of the Advisory Group or Xcel’s funding recommendations.¹⁴

The Cycle 4 selection methodology and scoring matrix incorporated the statutory policy guidance and were developed by Xcel with input from the Advisory Group and the Department. They were included in the RFP and approved by the Commission. Xcel selected the independent evaluator through a competitive bid process. The independent evaluator applied the scoring methodology to determine technical scores that were used to aid the Advisory Group and Xcel in the identification of Cycle 4 award recommendations.

The RDF statute sets out preferences that include:

- In evaluating responses to the RFP, Xcel must strongly consider, where reasonable, the potential benefit to Minnesota citizens, businesses, and Xcel ratepayers
- In consultation with the Advisory Group, the utility has full and sole authority to determine which expenditures shall be submitted to the Commission for approval
- Renewable electric energy generation projects must, when feasible and reasonable, give preference to projects that are the most cost-effective for a particular energy source
- Proposals must focus on renewable electric energy

Xcel explained that the RDF statute’s policy guidance provides discretion for qualitative evaluation of proposals. The statute recognizes the need to balance the quantitative input from the independent evaluator and qualitative considerations by requiring the Company to attempt to reach agreement with the Advisory Group, which represents a broad array of RDF stakeholders.

For Cycle 4, Xcel is in full agreement with the RDF Advisory Group on the selection of the EP and RD projects proposals recommended for grant awards, the ranking of these projects on the reserve list, and the process for funding projects on the reserve list. Xcel and the Advisory Group are also in agreement on the recommendation for programs to be funded by the higher education block grants.¹⁵

¹⁴ See Table 1, “RDF Cycle 4 Modified Project Scoring,” Xcel’s September 13, 2013 filing, page 6.

¹⁵ The Advisory Group recommendation is slightly different from Xcel’s but the Advisory Group did not object to Xcel’s recommendation for HE grant awards.

Although the final recommendation of projects does not coincide with the projects that received the highest scores from the independent evaluator, the Advisory Group and Xcel used the scores for the initial identification of projects for further consideration. It then applied the various statutory and non-technical criteria to select projects to receive funds and those to place on the reserve list. The technical scores were used to determine technical strengths or weaknesses of proposals submitted, but these data were not regarded as absolute or authoritative. The Advisory Group used the independent evaluator's report as an initial screening tool from which to begin its overall evaluation of the EP and RD proposals. As a way to differentiate the many similar proposals received in Cycle 4, the Advisory Group developed a list of attributes against which to evaluate proposals. These were used in addition to the scoring performed by Sargent & Lundy. They included:

- Diversity of location, project type, and technology
- Uniqueness/innovativeness of the proposal
- Benefit to enhancing renewable market penetration
- Cost
- Practicality
- Convincing nature of the proposal
- Awareness/visibility of the project
- Royalty sharing
- Treatment of Renewable Energy Credits
- Value to Xcel electric ratepayers in Minnesota and Wisconsin
- Balancing of the above attributes

Xcel and the Advisory Group believe that RDF support is not meant to subsidize commercial renewable installations, but to narrow the competitive gap for emerging renewable resources and technologies. Xcel explained that selected projects reflect initiatives that will facilitate the movement of new renewable electric energy into the marketplace but that are also cost-effective for that energy concept.

Overall, Xcel sought proposals for near commercial-scale demonstration projects that produce and/or deliver renewable electric energy; renewable energy projects that will increase the market penetration of renewable electric energy in the state at reasonable costs; and projects to stimulate research and development into renewable energy technologies within the state.

In accordance with the Commission's February 6, 2013 Order approving the RFP, the technical scores reflected seven preference criteria,¹⁶ including:

- Support of the Prairie Island Indian Community for the project
- Projects located within the Energy Innovation Corridor (EIC)
- Projects that are structured to receive a lump-sum payment grant payment upon project completion

¹⁶ A maximum of 30 points (out of 230) could be awarded in the "Bonus Points" category.

- EP projects proposing to use electricity on-site located within Xcel's service territories in Minnesota and Wisconsin
- RD projects that demonstrate a high likelihood of royalty returns and propose a larger royalty sharing with the RDF
- Projects sponsored by a K-12 school or local unit of government to construct a solar PV facility
- For proposed anaerobic digester systems, proposals that use non-agricultural residue as feedstock

Xcel noted that over the course of three previous funding cycles, lessons have been learned and best practices developed to ensure the selection of proposals that meet the goals of the RDF and benefit Xcel electric customers who support the fund. The RFP also made clear that a qualitative evaluation of proposals by Xcel and the Advisory Group would be performed. The RFP stated the following:

- "In making final selections, Xcel Energy will consider the independent expert's evaluation as well as the recommendations of the RDF advisory group." (RFP, p. 13)
- "In making its funding decisions, Xcel Energy will utilize these results [technical scores], together with its own judgment and input from the advisory group concerning the mix of projects within the 4th Cycle funding portfolio." (RFP, p. 26)
- "While these evaluations [technical scoring] will inform the proposal selection process, final selection will be based on both these evaluations, and subjective recommendations from the advisory group." (RFP, p. 33)
- "While Xcel Energy has a desire to fund a diverse mix of resource types, it is not obligated to select projects solely on the basis of project rankings and it is not obligated to fund projects within every technology proposed." (RFP, p. 33)

To achieve resource diversity as well as diversity in solar projects, the Advisory Group had to review proposals that scored lower than in previous cycles. Xcel supported the Advisory Group's final recommendation for funding a mix of solar projects to ensure an appropriate and diverse selection of project sponsors, project locations, and visibility through location or marketing of projects to demonstrate the use of solar technology. With such a greater percentage of solar projects bid into Cycle 4, there were fewer non-solar projects from which to select in order to ensure a diverse technology mix.

Xcel believes its solicitation of Cycle 4 proposals has been transparent and in compliance with the Commission's February 6, 2013 Order and the statutory criteria. During the course of reviewing bids and through information received from public comments, some technical scoring discrepancies and errors were identified. These included:

- *Dragonfly Solar (EP4-29)*; Xcel commented that this project did not have any scoring discrepancies but has had some confusion related to labeling. The electronic copy of Telco Corporation (EP4-30) had been mislabeled as EP4-29 which was identified by the advisory group prior to their discussion on this proposal. Statements pertaining to proposed contract modifications that were applicable to EP4-30 were not part of the

discussion for EP4-29 but were inadvertently recorded as part of that discussion. This labeling discrepancy did not affect the RDF Advisory Group decision.

- *Natural Systems Utilities, LLC (EP4-37)*; Received bonus points for the project site's location within Xcel Energy's service territory. The project host is Michael Food's, which is serviced by the City of Chaska. The proposal had already maximized available bonus points due to a request for lump sum financing and utilizing non-agricultural feedstocks. Therefore the technical score of 133.3 for EP4-37 is correct as originally submitted.

As explained in the second supplement to the Selection Report for Cycle 4, additional scoring discrepancies were identified for eight proposals, which affected the technical scores for six of the proposals. These scoring discrepancies were discussed with the Advisory Group during its meetings on September 5, 2013 and September 10, 2013, as follows:

- *City of Rogers (EP4-45)* – Did not receive bonus points for being proposed by a local unit of government. Preference points had been maximized so there was no impact to the original technical score and no adjustment to the award recommendation was necessary. The advisory group confirmed this approach.
- *Minneapolis Park and Recreation Board (EP4-22)* – Did not receive bonus points for being proposed by a local unit of government. Preference points had been maximized so there was no impact to the original technical score and no adjustment was necessary. The advisory group confirmed this approach. The project was also recommended for funding.
- *City of Hutchinson (EP4-41)* – Did not receive bonus points for being proposed by a local unit of government. The technical score increased by 18.97 points and moved the proposal from Sargent & Lundy's Category 2 to Category 1. The advisory group had considered the proposal for a possible award in June and also in September after the discrepancy was identified. Neither the Company nor the advisory group believes that if the proposal had a higher score it would have been selected for funding and therefore no adjustment to award recommendations was necessary. The project remains on the reserve funding list.
- *Region Five Development Commission (EP4-44)* – Did not receive bonus points for being proposed by a local unit of government. The technical score increased by 20.00 points and moved the proposal from S&L's Category 2 to Category 1. The Advisory Group had not considered the proposal for a possible award in June but it was discussed in September after the discrepancy was identified. Neither the Company nor the Advisory Group believes that if the proposal had a higher score it would have been selected for funding. However, the project may have been selected as a reserve project and therefore was added to the reserve funding list.
- *University of Minnesota (RD4-1)* – Did not receive bonus points for being located within the Energy Innovation Corridor (EIC). The technical score increased by 14.79 points and

moved the proposal from S&L's Category 2 to Category 1. The advisory group had not considered the proposal for a possible award in June but it was discussed in September after the discrepancy was identified. Neither the Company nor the advisory group believes that if the proposal had a higher score it would have been recommended for funding. However, it may have been selected as a reserve project and therefore was added to the reserve funding list.

- *University of Minnesota (RD4-12)* – Did not receive bonus points for being located within the Energy Innovation Corridor (EIC). The technical score increased by 19.04 points and remained in S&L's Category 1. The project was recommended for funding by the Advisory Group and by the Company so no adjustment to the award recommendation was necessary.
- *University of Minnesota (RD4-13)* – Did not receive bonus points for being located within the Energy Innovation Corridor (EIC). The technical score increased by 20.00 points and remained in S&L's Category 1. The project was recommended for funding by the Advisory Group and by the Company so no adjustment to the award recommendation is necessary.
- *University of Minnesota Wind Project (RD4-16)* – Did not receive bonus points for being located within the Energy Innovation Corridor. The technical score increased by 10.17 points and remained in S&L's Category 3. The Advisory Group had not considered the proposal for a possible award in June but it was discussed in September after the discrepancy was identified. Neither the Company nor the Advisory Group believes that if the proposal had a higher score it would have been selected for funding or the reserve funding list and therefore no adjustment to award recommendations was necessary.

In addition, the Department suggested, in the biomass category, that Xcel and the Advisory Group did not adequately consider the interests of customers in the selection of the EP4-9 project (Mondovi Energy Systems) over EP4-37 (Natural Systems Utilities). Xcel responded that EP4-9 received a similar but slightly higher technical score than EP4-37. While EP4-37 does not require a PPA and EP4-9 does, the total resource cost per kWh of EP4-37 was greater than that of EP4-9. The total resource cost is the second highest-weighted factor for the scoring done by the independent evaluator. The Advisory Group unanimously supported funding for EP4-9 and was impressed with its utilization of community-wide feedstock. EP4-37 proposed to use feedstock primarily from its own facility. Xcel noted that EP4-9 will still need to negotiate a satisfactory PPA with the Company to sell power at a price that is prudent and reasonable for Xcel customers.

The Company argued the City of Red Wing project, perhaps more than any other reserve list project, is consistent with the goal of using RDF ratepayer funds to benefit ratepayers. It noted that the City of Red Wing is an important host community for the Prairie Island nuclear plant and also for Xcel's 20 MW biomass generation facility that uses refused-derived fuel. Xcel argued

that the grant proposal by the City of Red Wing will support the operation of its Red Wing power plant and, consequently, provide indirect benefit to its ratepayers.¹⁷

Audit results. In light of the errors identified through the Company's review and comments received and the DOC recommendation for a possible audit, Xcel hired PricewaterhouseCoopers LLP (PwC) to assess the accuracy of scoring calculations for the Cycle 4 proposals.

The scope and approach of the audit included:

- PwC reviewed attributes, criteria, and weighting used within the S&L scorecards for consistency with the approved Cycle 4 RFP
- PwC assessed the raw scores within the S&L scorecards for the 64 EP and RD proposals to determine whether raw scores fell within the ranges outlined within the "Xcel Energy Renewable Development Fund - 4th Cycle Evaluation Approach - Sargent & Lundy project no. 13125-001 - July 2013" report
- PwC assessed the accuracy of calculations within the scorecards for the 64 EP and RD proposals

Results from the PwC audit revealed that recalculated scores covering 64 proposals yielded an overall accuracy range of 99 to 100 percent. Scoring errors identified that affected the final score included:

- *University of Minnesota (RD4-2)* – Criteria D6 was calculated with a weight of 3.00 rather than 3.33 which required an additional 1.00 points to be added for a final score of 124.67. The correction did not change the overall proposal rank. The proposal had already been recommended for funding and therefore the increase in score had no impact.
- *AF-Energy Corporation (RD4-6)* – Scores were included for Criteria B7 when it was not relevant to RD. Criteria C4 was calculated with a weight of 1.50 rather than 0.75. Criteria D3 was calculated with a weight of 3.00 rather than 3.33. Criteria F was calculated as 15 percent of the combined core criteria score. The cumulative effect of these errors required a subtraction of 1.34 points for a final score of 131.77. The correction did not change the overall proposal rank. The proposal had not been recommended for funding and therefore, the Advisory Group and Company agree that the decrease in score had no impact.
- *University of Minnesota (RD4-12)* – Criteria D6 was calculated with a weight of 3.00 rather than 3.33. Criteria F was calculated as 15 percent of the combined core criteria score. The cumulative effect of these errors required an additional 1.53 points to be added for a final score of 147.49. The correction did not change the overall proposal rank. The proposal had already been recommended for funding and therefore the advisory group and Company agree that the increase in score had no impact.
- *Solar Cell & LED Technology (RD4-21)* – Criteria C4 was calculated with a weight of 1.00 rather than 0.75 which required a subtraction of 0.75 points for a final score of

¹⁷ For more background on this project and Xcel's reasons for placing it on the reserve list, see the Company's Selection Report, filed July 29, 2013, pp. 35-36.

108.42. The correction lowered the overall proposal rank by one spot and reduced the proposal from S&L Category 1 to Category 2. The proposal had not been recommended for funding and therefore the Advisory Group and Company agreed that the decrease in score had no impact.

Xcel documented the effect of errors on project scores (“scoring adjustment progression”) in a table provided in reply comments, filed on December 12, 2013 (see Attachment B for EP proposals and Attachment C for RD proposals).

The Advisory Group concurred that the findings support the claim that technical evaluations were consistent with the Cycle 4 RFP and the scoring errors identified had no impact on the selection process or recommendations. Xcel indicated that the costs to perform the independent audit will not be charged to customers or recovered through the RDF rate rider.

In making its final recommendation, the Advisory Group considered the independent evaluator’s scoring as well as observations from within the group that represents various stakeholders of the RDF. As a result of its evaluation and consideration of the independent evaluator’s scoring, the Advisory Group recommended a total of \$30,122,346 in grant awards for 13 EP proposals, four RD proposals, and funding levels for three HE block grants. The Company recommended, without changes, approval of the list of projects the RDF Advisory Group recommended for funding.

Xcel stated that it had been transparent throughout the selection process. Xcel believes filings in the docket have informed the record with respect to the selection process, the Advisory Group’s review of projects, and the Company’s ultimate funding recommendations. Xcel noted that concerns about transparency and the selection process have provided valuable lessons that can be incorporated into future funding cycles. However, the Company believes its Cycle 4 selection process is in compliance with the Commission’s Order and that the recommended projects meet the approved goals and preferences for Cycle 4.

Parties’ comments

Department of Commerce (DOC)

The DOC’s analysis of the RDF selection is based on whether the process approved by the Commission and outlined by Xcel in its approved RFP was followed as closely as possible.¹⁸ The only issue the DOC suggested it would consider was whether Xcel’s scoring process was reasonably transparent and sufficiently accurate to allow the Commission a basis upon which to reach a decision. However, the Department made no final recommendation on scoring, transparency or accuracy of the process.

The DOC first cited Xcel’s revised RFP in response to a Commission Order in this matter that describes the Commission-approved EP and RD project selection process. Included in the

¹⁸ The revised RFP was filed February 13, 2013 in a compliance filing.

description of the process cited by the DOC is the statement: “[W]hile Xcel Energy has a desire to fund a diverse mix of resource types, it is not obligated to select projects solely on the basis of project rankings and it is not obligated to fund projects within every technology proposed.”

The DOC’s analysis of scoring accuracy was inconclusive although it offered information in an attempt to allow the Commission to move forward. Specifically, the DOC noted that based on the record to date it could not conclude whether or not Xcel followed the process approved by the Commission for the EP and RD project selection. The DOC noted that eight projects were affected by the independent evaluator scoring error, consisting of the omission of points under the bonus criteria. Of these eight, two had their scores unchanged. Two were not affected as they were both recommended for funding.

The DOC noted that Xcel’s supplement, filed on September 13, 2013, corrected the scoring errors. Xcel stated that it had received the Sargent & Lundy revised scoring and had reviewed it with the Advisory Group. However, according to the DOC, the Company did not indicate whether a separate and independent process had been added to verify that there were no additional scoring errors besides the bonus scoring error. The DOC remained concerned about the integrity of the scoring and selection process and suggested that Xcel hire an independent outside auditor to verify the S&L’s calculations and procedures.

The DOC concluded that Xcel’s review and selection process was consistent with statute, which states “the account shall be managed by the public utility” in consultation with an advisory group and an independent third party expert. The DOC observed that Xcel followed the statutory process to consider the independent evaluator’s ranking, incorporate advisory board input, and apply its own judgment to select projects.

The DOC indicated that it would not offer judgments on the projects selected. Instead, it stated that its role was to help ensure that the process is fair and transparent. However, the DOC specifically commented on three biomass energy production projects. The DOC asked Xcel to provide further information on why biomass proposal EP4-37 was not selected while EP4-9 was selected.¹⁹

The DOC noted that the selected biomass project (EP4-9), although somewhat more innovative, was also more costly than the non-selected biomass project (EP4-37). The DOC asked why providing balance among selected projects and avoiding project duplication was sufficient reason for selecting EP4-9 over EP4-37. The DOC asked why, from a ratepayer perspective, a somewhat more innovative project would take precedence over a project that did not require a PPA. The DOC argued the PPA that is part of the bid for EP4-9 would expose ratepayers to additional risk and higher costs.

The DOC did not object to Xcel’s request for authority to terminate contract negotiations that the Company believes have reached an impasse and to move forward with projects on the approved

¹⁹ EP4-73 is the Natural Systems Utilities, LLC/Michael Foods: Anaerobic Digester Project. EP4-9 is the Mondovi Energy Systems project.

reserve list. The DOC noted that this request was consistent with the approval given to Xcel in RDF Cycle 3 to move to projects on the reserve list and that no issues were raised in Cycle 3.

The Department concluded that the awards for the higher education block grants followed the process approved by the Commission and outlined in a compliance filing. The selection process is described in Xcel's Selection Report (filed July 29, 2013, pp. 30-34 and p. 37). The DOC also noted that Xcel proposed a grant award to MnSCU, while holding in abeyance \$3.5 million for block grants to the University of St. Thomas and University of Minnesota. The DOC supported Xcel's intent to work with both institutions to address the concerns of the RDF Advisory Group.

DOC recommendation. The DOC concluded that:

- Xcel followed the process approved by the Commission for awarding block grants to institutes of higher education
- Xcel's request for authority to terminate contract negotiations that the Company reasonably believes have reached an impasse and move forward with a project on the reserve list is consistent with the process approved by the Commission

The DOC recommended Xcel provide information in reply comments as follows:

- Revised Tables 5 and 6, including the independent evaluator's revised numerical ranking of EP and RD proposals
- The independent evaluator's revised ranking of EP and RD proposals in descending order within each resource type
- A complete set of the selections, with updated explanations of any deviations from the revised numerical rankings for EP and RD proposals
- Further explanation regarding why the biomass proposal EP4-37 was selected over EP4-09, given the concerns noted by DOC
- A discussion clearly explaining the process the Company will use to select the reserve proposal to be awarded funding should any of the projects on the recommended list not proceed

The DOC recommended that the Commission review the information requested above to determine whether the scoring process was accurate. The DOC also recommended that the Commission consider requiring Xcel to hire an independent outside auditor to verify Sargent & Lundy's calculations and procedures, with Sargent & Lundy paying for this work.

Multiple parties' comments expressing concerns on selection methodology

The Metropolitan Council, PowerWorks Wind Turbines, Bergey Windpower, Dragonfly Solar, Minnesota Go Solar, Interphases Solar, Minnesota Agricultural Interpretive Center, and Alan Muller all filed comments either expressing concerns with some of the proposed grant awards and the selection methods used. (Bergey Windpower did not express concern with the selection methodology but instead responded to PowerWorks' Wind Turbines criticisms of the process and characterization of Bergey's project.) These commenters expressed positions such as:

- criticizing the fact that some projects received a high technical score but were rejected for funding
- expressing the belief that Xcel and the Advisory Group did not follow the statute in selecting projects for funding
- stating that they believed there were errors in the evaluation
- asking the Commission to exclude all biomass and incineration projects because of emissions and effect on health
- stating that the process was not transparent
- asking for either a contested case on the grants process or completely starting over the selection process

A number of the above-named commenters filed detailed and elaborate comments on their concerns; a summary of these comments is provided in Appendix B.

Letters from Legislative Representatives

Senator Scott Newman, Representatives Dean Urdahl and Glenn Gruenhagen (EP4-41)

Senator Scott Newman, Representative Dean Urdahl, and Representative Glenn Gruenhagen filed comments seeking fair treatment of the City of Hutchinson Solar Project. They asked the Commission to take the necessary steps to ensure that all the RDF projects are properly assessed and supported Xcel's proposed audit. However, instead of the 60-90 days requested by Xcel for the audit, they proposed 30. Their primary concern is that the best projects are selected. They suggested that previous Xcel RDF cycles have lacked transparency or been inconsistent in the selection process. (This project was placed 8th on the reserve list.)

Senator Newman and Representatives Urdahl and Gruenhagen (EP4-41)

Senator Newman, and Representatives Urdahl and Gruenhagen filed a letter in support of the proposal for an audit of the selection processes, which "were clouded because of either a lack of transparency or inconsistency." The letter explicitly supports the reassessment of the City of Hutchinson project proposal.

Representatives Saxhaug, Ward and Persell (EP4-44)

Representatives Saxhaug, Ward and Persell filed a letter in support of the Region Five Development Council (R5DC) project for Cycle 4 approval, arguing that the Cycle 4 process gave insufficient attention to statutory language favoring "start-up, expansion, and attraction of renewable electric energy projects within the state." They also objected to the recommendation in favor of the \$2 million Mondovi Energy Systems project in Wisconsin, a project that is not "in the state." (Note: This project was placed 11th on the reserve list.)

Representative John Persell (EP4-44)

Representative Persell followed up on an earlier letter with colleagues to reiterate support for the R5DC project, emphasizing its innovative qualities and educational value, as well as its location outside Xcel's service area.

Representative John Ward (EP4-44)

Representative Ward's letter of December 20, 2013 followed up on the September 5, 2013 letter from Representatives Saxhaug, Ward and Persell, advocating funding for the R5DC project and emphasizing its educational components. The second letter specifically questions why the R5DC project was placed in the reserve list, while other lower ranked projects were recommended, suggesting that the independent evaluator's ranking should be eliminated if it is not going to be utilized to recommend highly ranked projects.

Public comments

The public comments reflected many of the same concerns as those of the formal commenters, including: (1) accuracy of the scoring procedures employed by the independent evaluator, (2) inconsistencies between the judgments of the Advisory Group and the independent evaluator, (3) a desire for public hearings to allow these concerns to be openly expressed, (4) requests for possible rescoring and re-evaluation of funding decisions, (5) reallocation of some of the weights attached by the independent evaluator to various project criteria, and (6) support for the audit of the independent evaluator's scoring. Below is a summary of some but not all of the public comments in this docket. All public comments are available in the Commission's edockets.

City of Hutchinson (EP4-41)

The City of Hutchinson's solar project was ranked in the first category by the independent evaluator but placed on the reserve list due to lack of consensus by the Advisory Group on funding for the project, despite support for the use of a capped landfill for a solar site.

In its comments, the City of Hutchinson requested that the Commission host a public hearing to review discrepancies in scoring methods and acknowledged its eligibility for points based on lump-sum payment for project completion and local government sponsorship. The result, the City argued, would be reconsideration of the project's status.

Region Five Development Commission (EP4-44)

Region Five Development Commission (R5DC) noted uncertainties in the independent evaluator's scoring of its proposal and requested a public hearing on discrepancies in methodology and a review of Xcel's selection report to ensure proper scoring.

R5DC argued that its project, which would install solar PV systems on the roofs of eight school buildings, should be rescored to reflect lump-sum payment on completion and school and local government sponsorship. (Note: The Advisory Group moved this project to 11th place on the reserve list after the revised scoring by the independent evaluator.)

Natural Systems Utilities, LCC (EP4-37)

The Natural Systems Utilities (NSU) anaerobic digester biomass project, in cooperation with Michael Foods of Chaska, was not recommended for funding. NSU questioned how the total resource cost calculation incorporated the fact that no PPA was required. NSU requested Xcel reconsider funding for this project in light of these issues.

AF Energy Corporation (RD4-6)

The AF Energy Corporation (AFE) wind turbine proposal was not recommended for funding based on the lack of justification for its relatively high (\$1.5 million) cost. AFE emphasized that it had scored well by many of the criteria described in the RFP, especially among solar/wind projects, and that many projects with lower rankings were selected for funding or put on the reserve list. It requested reconsideration of the Advisory Group's funding decision for this project. AFE also recommended that Xcel proceed with the proposed audit of Sargent & Lundy's scoring as recommended by the DOC, provide a decision matrix showing how various criteria were applied, and that the weight given to "Benefits to Minnesota and Ratepayers" for RD projects be reduced from 100 to 40 percent.

City of Red Wing (RD4-8)

The City of Red Wing argued that it had submitted a strong proposal and requested full funding. It recommended that its project be placed in the group of Tier I reserve projects. It emphasized the biomass project's novel technology for solid waste conversion to energy, its business model, and the integration of public and private interests with education. (Note: In its reply comments, Xcel recommended placing this project 12th on the reserve list.)

Opposition to the City of Red Wing project

Separately, a private citizen, Elanne Paleich of Chisholm, MN emailed to object to the Red Wing garbage incinerator on grounds of health impacts from air emissions. Another email was received from Jan Greenfield protesting possible bio-accumulation due to garbage incineration by the Red Wing facility. A third email protesting the Red Wing project was received from Jeanne Johnson of the Citizens Climate Lobby.

EcoCorp Sleepy Eye Biogas Energy Project (EP4-1)

EcoCorp contested Xcel's decision not to support funding of its anaerobic bio-digester biogas project as "arbitrary and capricious" and "not supported by the evidence in the administrative record." The independent evaluator ranked the project second of four anaerobic digestion projects, although the Advisory Group rejected the proposal, citing "price of electricity" for the PPA and "lack of innovativeness." EcoCorp contested the price of electricity claim with data drawn from Attachment C of Xcel's July 29, 2013 Selection Report. It also offered a detailed counter-argument in support of the projects' innovativeness. EcoCorp argued in favor of using

only the independent evaluator's ranking supporting its project. Alternatively, it argued to reject the entire Cycle 4 RDF process and to begin anew.

Gustavus Adolphus College (EP4-18)

Gustavus Adolphus noted that the preference granted to projects within Xcel's service territory did not preclude project proposals elsewhere in Minnesota or Wisconsin, arguing that "a number of benefits from this project would be the same as if it were located in Xcel territory." Gustavus argued that the evaluation process should have included a scoring procedure for these indirect benefits.

Minnesota Renewable Energy Society (EP4-15)

Minnesota Renewable Energy Society (MRES) argued that criticism of its project proposal for lacking a specific site was misplaced, since the siting selection was part of the project itself, involving community organizations and interactions. It therefore objected to being placed on the reserve list. (Note: This project was placed 3rd on the reserve list.) It also noted that its project had been omitted from Xcel's filing of August 9, 2013 that explained the Advisory Group's findings.

Xcel's response to Minnesota Go Solar's petition to intervene and request for a contested case proceeding²⁰

Xcel did not object to Go Solar's request to intervene in this proceeding.²¹ However, it did note that intervention is not necessary to preserve Go Solar's rights and could set a problematic precedent. Go Solar can provide comments in the proceeding and can address the Commission as it deliberates. Only if the Commission grants Go Solar's request for a contested case is its formal intervention relevant. Xcel is concerned that Go Solar's formal intervention could signal to other bidders that they must intervene to preserve rights. This is unnecessary and could be burdensome to certain bidders with fewer resources.

Xcel argued a contested case proceeding is not necessary in this matter. There are no issues of material fact that need to be developed to assist the Commission in its deliberations. A contested case would merely delay the proceeding and burden other bidders. Xcel has fully complied with Minn. Stat. §116C.779 and the Commission's February 6, 2013 Order. Xcel has fully documented its selection process in its Selection Report and supplements. Xcel argued that its filings, comments received from parties, and the Company's reply comments provide a full and

²⁰ On September 23, 2013, Xcel filed comments in response to Minnesota Go Solar's request to intervene and petition for a contested case proceeding.

²¹ Pursuant to Minnesota Rules 7829.0800, subp. 5,

[if] there is no objection to intervention and a petition to intervene is not denied or suspended within 15 days of filing, the petition to intervene must be considered granted, unless the matter is referred to the Office of Administrative Hearings for contested case proceeding before the expiration of the 15-day period.

complete record upon which the Commission can make a decision with respect to the projects recommended for funding.

Xcel noted that the Commission may refer this matter to the Office of Administrative Hearings for contested case proceeding if: (1) there are “contested material facts,” or (2) the Commission “finds that all significant issues have not been resolved to its satisfactions.”²²

Xcel argued that Go Solar has the burden, “as the party requesting a contested case hearing, to demonstrate the existence of material facts that would aid the agency [i.e., Commission] in making a decision.”²³ Go Solar’s petition does not identify a contested material fact that warrants a contested case proceeding. No comments have raised issues of material fact but instead raise issue with the Company’s selection of projects recommended for funding. Xcel recognized that those bidders that were not recommended for funding may want to raise concerns with the Commission but these concerns do not rise to the level of requiring a contested case. Xcel suggested that this matter can and should be resolved without the delay and expenditure of resources required by a contested case proceeding.

Staff discussion

The RDF fund is based on the 2012 statutory language of Minn. Stat. §116C.779, subd. 1 (d), which clearly states that the RDF fund can only be used for four purposes:

- to increase the market penetration within the state of renewable electric energy resources at reasonable costs
- to promote the start-up, expansion, and attraction of renewable electric energy projects and companies within the state;
- to stimulate research and development within the state into renewable electric energy technologies
- to develop near-commercial and demonstration scale renewable electric projects or near-commercial and demonstration scale electric infrastructure delivery projects if those delivery projects enhance the delivery of renewable electric energy

Minn. Stat. §116C.779, subd. 1 (f) indicates that the fund is to be managed by Xcel in consultation with the Advisory Group including, among others, representatives of the utility’s ratepayers. The statute requires Xcel to consult with this Advisory Group with respect to the general scope of expenditures in designing the RFP and in evaluating projects submitted in response. In addition to consulting with an Advisory Group, Xcel must utilize an independent third-party expert to evaluate proposals submitted in response to the RFP. The statute directs

²² Minnesota Rules 7829.1000 (2013).

²³ *In re Petition of N. States Power Co.*, 676 N.W. 2nd 326, 335 (Minn. App. 2004).

Xcel to “attempt to reach agreement with the advisory group after consulting with it but the utility has full and sole authority to determine which expenditures shall be submitted to the commission for commission approval.”

Since its inception, the Commission has relied on this Advisory Group (prior to 2012 the “Advisory Board”) to select projects with and without rankings from an independent evaluator.²⁴ For three funding cycles prior to Cycle 4, the Commission has deferred to the Advisory Group’s recommendation on project selection and approved the Advisory Group’s selection except in one case.²⁵ Both the Department and the Legislative Auditor have supported this general process and approach.²⁶

The original RDF fund legislation passed in 1994 was the result of an agreement between Xcel and the environmental community. A “Letter of Intent” was provided to legislators at the time of passage. This letter established the RDF fund and outlined a process for setting criteria and selecting projects. It was signed by two Xcel representatives and two representatives of the environmental community. Public input was an important part of this process. The Letter of Intent was attached to one of Xcel’s early RDF Cycle 1 filings and in 2001 the Commission relied on this agreement in setting up and approving the structure of the RDF fund,²⁷ including an “advisory board” working with Xcel to select projects. Staff believes there is an historic and continuing role for the Advisory Group.

In Cycle 4, the Advisory Group selected projects from the list of technical project rankings provided by Sargent & Lundy, the independent evaluator, in order to achieve an overall balance in the portfolio of projects. The Advisory Group sought to achieve a diverse mix of projects, weighing project location, type, and technology, as well as project uniqueness and innovation together with project visibility. Counter to claims that this process was opaque, the RFP stated: “In making final selections, Xcel Energy will consider the independent expert’s evaluation as well as the recommendations of the RDF advisory group.”²⁸ The RFP also stated that final project selection would pursue “a diverse mix of as many projects as possible.”²⁹ The RFP also

²⁴ In Cycle 1, the Advisory Group did not rely on a third party independent evaluator.

²⁵ During the second funding cycle, the Commission ordered the funding of a legislatively authorized project despite the fact the RDF Advisory Board and Commission staff recommended against such funding.

²⁶ See Evaluation Report, RDF, Office of the Legislative Auditor, State of Minnesota, October 2010, Attachment C, page 1, which states: “The RDF Board contracts with an outside consulting firm that helps evaluate the feasibility and technical merits of the proposed projects. The board makes project recommendations (based on consultant’s recommendations in conjunction with the board’s own project rankings), and Xcel submits the list of recommendations to the PUC for approval.”

²⁷ See Order issued April 20, 2001, in 00-1583. This Order cites the letter of agreement between Xcel and the environmental community setting up a formal process.

²⁸ See RFP, filed February 13, 2013, p. 13.

²⁹ See RFP, filed February 13, 2013, p. 10.

alerted bidders that this mix will contain different “technologies and market penetration time frames, consistent with overall funding availability”.³⁰

The DOC supported the Commission’s conclusion that Xcel’s review and selection process was consistent with statute, which states that “the account shall be managed by the public utility” in consultation with an advisory group and an independent third-party expert. The DOC observed that although Xcel followed the statutory process to consider the independent evaluator’s ranking, incorporate advisory board input, and apply its own judgment to select projects, the Commission will need to determine whether the process was followed “as closely as practical.”³¹ These comments were made prior to the audit of the scoring process.

Currently, the Commission’s role in the RDF process once an RFP has been approved comes at the end of a prescribed and lengthy procedure, which includes the technical scoring by an independent evaluator, review and recommendation by an Advisory Group established by the Commission, and final review and recommendation by Xcel. It is at this point that the Commission renders its judgment on the recommendations by Xcel.

Staff believes there has always been an understanding by the Commission that the Advisory Group would apply its judgment in selecting projects and not necessarily be bound by numerical rankings. It also appears Xcel has corrected the scoring errors initially made by the independent evaluator. Some parties have continued to raise issues related to scoring and the Commission will need to decide if individual projects should be reconsidered for funding, or whether the entire Cycle 4 process should be re-evaluated and/or repeated. Given this, the Commission must decide:

- Do the recommendations of Xcel and the Advisory Group comply with statute and follow the procedures approved by the Commission?
- Does the selection of projects by Xcel and the Advisory Group generally follow the technical rankings, and where they vary from technical rankings, have Xcel and the Advisory Group supported their reasoning?
- Was the process adequately transparent and fair to bidders?

Xcel noted that there were many good projects put forward but limited funds available for Cycle 4 grant awards. Therefore, the Advisory Group was required to make difficult judgments. As stated in the RDF statute, the funds were to be allocated according to the informed views of the Advisory Group and Xcel--further informed but not dictated by technical scores of each project offered as decision data by Sargent & Lundy. Even these data required judgments and it is natural therefore to expect that such judgments would lead to differences of opinion.

After the Commission considers the above issues, it will need to decide whether to:

³⁰ See RFP, filed February 13, 2013, p. 13.

³¹ See DOC comments in this matter, September 27, 2013, p. 6.

- approve the selection of projects as recommended by Xcel and the Advisory Group
- approve some projects but request additional information on others
- propose modifications to Xcel's project selection;³² these modification may require Xcel to remove or add specific projects, keeping in mind that the addition of projects to the selection list may require removal of other recommended projects³³
- reject the recommendations of Xcel and the Advisory Group and require Xcel to re-evaluate its selections and recommendations based on direction from the Commission
- reject the recommendation of Xcel and the Advisory Group and require Xcel to start Cycle 4 over based on specific direction from the Commission

If the Commission rejects all of the selected projects as a result of issues that have been raised in relation to certain projects, it will also be rejecting many projects for which support was strong. If the Commission rejects only some projects, it will need to defend these decisions relative to the judgments of Xcel and the Advisory Group. The Commission will also need to consider that to reverse judgments already made in this process will raise questions by other projects and interests.

In so deciding, the staff believes some of the following tables and information may be of particular interest to the Commission:

- Xcel's recommendation for EP and RD grant awards (attached to staff briefing papers); see also Xcel's December 12, 2013 reply comments, Attachment H
- Xcel's recommendation for reserve projects (attached to staff briefing papers); see also Xcel's December 12, 2013 reply comments, Attachment O
- Xcel's recommendation for HE block grants (attached to staff briefing papers); see Xcel's December 12, 2013 reply comments, Attachment N
- List of projects ranked by technical score, with Xcel and Advisory Group project selections; see Xcel's December 12, 2013 reply comments, Attachments D and F (EP proposals) and Attachments E and G (RD proposals).
- Table of EP proposals and explanation of deviations from technical rankings; see Xcel's December 12, 2013 reply comments, Attachment K
- Table of RD proposals and explanation of deviations from technical rankings; see Xcel's December 12, 2013 reply comments, Attachment M

³² See Minn. Stat. §116C.779, subd. 1, (e), "The commission may approve proposed expenditures, may disapprove proposed expenditures that it finds to be not in compliance with this subdivision or otherwise not in the public interest, and may, if agreed to by the public utility, modify proposed expenditures." In addition the RFP, approved by the Commission, states: "The MPUC may approve, disapprove or, with the concurrence of Xcel Energy, modify a proposal. If the MPUC disapproves or seeks to modify a particular project, Xcel Energy reserves the right to in its sole discretion: request the MPUC reconsider its decision; replace the disapproved proposal with an alternate proposal; or work with the project sponsor to appropriately modify the proposed project." (See RFP, filed February 13, 2013, pp. 4-5.)

³³ Xcel projects a balance of \$13.9 million in unencumbered funds in the RDF account at the end of 2014. However, according to the Company, this is not a firm number and is contingent on estimated REPI payments, disallowance of certain project costs, and the potential for new 2014 legislative programs.

Request for a contested case proceeding

Some commenters, including Minnesota Go Solar and Mr. Muller, requested a contested case, citing the need for transparency and the concern that Xcel and the Advisory Group did not follow state law or their own RFP.

The reasons given by these commenters do not justify a contested case. Contested cases are appropriate when there are material issues of fact in dispute and testimony under oath is the only way to resolve those disputes:

Minn. Rules part 7829.1000 REFERRAL FOR CONTESTED CASE PROCEEDING. If a proceeding involves contested material facts and there is a right to a hearing under statute or rule, or if the commission finds that all significant issues have not been resolved to its satisfaction, the commission shall refer the matter to the Office of Administrative Hearings for contested case proceedings, unless:

- A. all parties waive their rights to contested case proceedings and instead request informal or expedited proceedings, and the commission finds that informal or expedited proceedings would be in the public interest; or
- B. a different procedural treatment is required by statute.

In the case of the RDF docket, the concern is over the criteria Xcel and the Advisory Group used and applied. Minnesota Go Solar would prefer that larger projects that use a large percentage of the funding (such as its own project) be selected; Mr. Muller's is that the Red Wing project should be excluded due to emissions and possible health impacts of those emissions. A contested case would not conclusively resolve whether larger projects should receive funding or whether public health impacts should be one of the criteria used to judge projects. Staff believes the appropriate criteria used to evaluate these proposals involve policy decisions, which are not a good fit for a contested case.

In the event of a contest case, it is unclear how the hearing would be conducted. For example, would each organization that submitted a bid be required to offer testimony? Would Xcel and the Advisory Group members testify on their opinions of each of the proposals? The RDF project selection process may not lend itself to such a contested case proceeding.

Data Practices Act

Mr. Muller also raised concerns under the Data Practices Act that because the Advisory Group is a public body, "information for all meetings held by the advisory group" are in the public domain.³⁴ He also stated that the original project proposal applications are not but should be part of the docket record.

³⁴ Alan Muller reply comments filed December 13, 2013.

Minnesota Statutes Chapter 13 is the Minnesota Data Practices Act. While the Commission does extensively regulate utilities and is subject to the Data Practices Act as a state agency, staff believes that it is beyond the Commission's expertise at this time to determine whether Xcel's Advisory Group is subject to the Data Practices Act. The Minnesota Department of Administration has an Information Policy Analysis Division which issues advisory opinions on the Data Practices Act and is a better forum, should Mr. Muller choose to pursue this question.³⁵

Mr. Muller's other request, that the project proposals (bids) in response to the RFP be filed in eDockets, is within the Commission's authority and expertise and could be granted by the Commission.³⁶ Staff believes this is a policy decision and would be tied to whether the Commission believes additional process is necessary. Staff notes that in previous RDF cycles, the RDF bid proposals were not filed in eDockets.

³⁵ See <http://www.ipad.state.mn.us/>. There may also be another forum in which Mr. Muller's legal question can be addressed, such as a court of law.

³⁶ Following his initial requests, Mr. Muller submitted additional requests under the Minnesota Data Practices Act.

Decision options

1. Approve Xcel's selection of EP and RD projects and reserve list. Approve Xcel's recommendation for block grant awards to institutes of higher education.
2. Deny Xcel's selection of EP and RD projects and reserve list and recommendation for block grants to institutes of higher education. Require Xcel to start Cycle 4 over based on specific direction from the Commission.
3. Approve Xcel's selection of EP and RD projects and reserve list with some modifications to be specified by the Commission. Approve Xcel's recommendation for block grant awards to institutes of higher education with some modifications to be specified by the Commission.
 - a. Seek additional information on certain projects and/or block grant programs
 - b. Require Xcel to re-evaluate its selection and recommendation of all or some of the projects based on direction from the Commission
4. Take no action at this time and require further information from Xcel and the Advisory Group and/or seek additional comments from parties.

Request for a contested case proceeding

5. Deny parties' request for a contested case proceeding in this matter.
6. Grant parties' request for a contested case proceeding in this matter.

Compliance filings

1. Require Xcel, within 20 days of the Order in this matter, to file for compliance review and approval a more detailed description of how projects on the reserve list will be selected for funding.
2. Require Xcel within 30 days of the Order in this matter to make a compliance filing with proposals for how to improve the transparency of the RDF selection process based on parties' comments and lessons learned in the Cycle 4 RFP and selection process.

Appendix A

RD Award Recommendations					
Rank	ID Number	Applicant	Type	Amount Recommended	Total Project Cost
4	RD4-13	U. of Minnesota	Wind	\$1,391,684	\$1,391,684
6	RD4-12	U. of Minnesota	Wind	\$625,102	\$625,102
7	RD4-2	U. of Minnesota	Wind/Solar	\$982,408	\$982,408
18	RD4-14	Barr Engineering	Wind	\$161,081	\$161,081
Total				\$3,160,275	\$3,160,275

EP Award Recommendations					
Independent Evaluator Rank	ID Number	Applicant	Type	Amount Recommended	Total Project Cost
2	EP4-20	Target Corporation	Solar (350 kW)	\$583,513	\$1,060,933
5	EP4-43	Cornerstone Group	Solar (152 kW)	\$310,310	\$705,250
7	EP4-13	Metropolitan Airport Commission	Solar (1,180 kW)	\$2,022,507	\$4,189,000
9	EP4-39	Goodwill Solar, LLC	Solar (700 kW)	\$1,075,250	\$1,525,250
10	EP4-11	Innovative Power Systems, Inc.	Solar (967 kW)	\$1,850,000	\$2,698,200
12	EP4-42	Aurora St. Anthony, LLC	Solar (252 kW)	\$398,000	\$911,798
15	EP4-7	Anoka Ramsey Community College	Solar (458 kW)	\$828,900	\$1,825,976
17	EP4-5	Best Power Int'l, LLC	Solar (907 kW)	\$900,000	\$1,811,857
20	EP4-3	Minneapolis Public School	Solar (485 kW)	\$917,250	\$1,949,002
23	EP4-9	Mondovi Energy Systems	Biomass (2,000 kW)	\$2,000,000	\$13,220,683
26	EP4-24	Bergey Windpower Co	Wind (500 kW)	\$1,106,600	\$3,191,745
27	EP4-4	SGE Partners, LLC	Biomass (1,100 kW)	\$5,000,000	\$14,847,764
30	EP4-22	Minneapolis Park & Recreation Board	Solar (200 kw)	\$969,741	\$1,119,133
Total				\$17,962,071	\$49,056,591

Reserve Projects					
Funding Priority	Proposal ID	Applicant	Technology	Grant Award	S & L Score
1	EP4-34	City of St. Paul (Saints Stadium)	Solar	\$555,750	117.97
2	EP4-48	Oak Leaf Energy Partners Ohio, LLC	Solar	\$2,000,000	180.17
3	EP4-15	MN Renewable Energy Society	Solar	\$2,661,320	90.66
4	EP4-29	Dragonfly Solar, LLC (Dodge Center)	Solar	\$1,650,000	156.78
5	RD4-11	U of M (Duluth) - NRRI (Torrefaction)	Biomass	\$1,899,499	136.37
6	EP4-21	Farmamerica	Solar/Wind	\$600,000	106.28
7	RD4-4	Xcel Energy Business Systems	Solar	\$390,000	103.92
8	EP4-41	City of Hutchinson	Solar	\$958,369	126.50
9	EP4-6	Best Power, Int'l, LLC (St. John's)	Solar	\$172,213	162.15
10	EP4-36	City of Austin	Biomass	\$3,565,000	164.25
11	EP4-44	Region Five Development Commission	Solar	\$1,993,659	158.50
12	RD4-8	City of Red Wing	Biomass	\$1,999,500	113.75
13	RD4-5	University of Florida	Biomass	\$1,109,538	136.37
14	RD4-7	Interphases Solar	Solar	\$1,000,000	156.83
15	RD4-1	U of M (Gasification)	Biomass	\$999,999	113.37

HE Block Grant Recommendations					
Project ID	Institution	Grant Request	Score	Advisory Group Recommendation	Xcel Energy Recommendation
HE4-1	MnSCU	\$5,500,000	145.01	\$4,500,000	\$5,500,000
HE4-2	U. of St. Thomas	\$2,157,215	120.00	\$1,500,000	\$1,500,000
HE4-3	U. of Minnesota	\$6,900,300	117.96	\$3,000,000	\$2,000,000
Total HE Awards				\$9,000,000	\$9,000,000

Appendix B

Staff summary of parties' comments

Metropolitan Council, Oak Leaf Energy Partners Ohio, LCC (EP4-48)

The Metropolitan Council submitted a project that was placed second on the reserve list. Its project received the third highest technical score. The Advisory Group noted possible contract issues and less visibility of the Met Council project compared to other solar projects. The Met Council asked for further detail concerning the weight attached to the subjective criteria used to evaluate its project. It recommended that the Commission ask Xcel to further explain how the final determination was made and how the Company could make the evaluation more transparent.

PowerWorks Wind Turbines (EP4-33)

PowerWorks contested the rejection of its project proposal, noting that another project that received a lower overall technical score was selected for funding. It argued:

- Xcel did not properly utilize the objective evaluation of the independent evaluator because PowerWorks received the highest score of any wind project in the EP category, yet it did not receive a recommendation for a grant award
- Xcel is unable to explain how the projects selected were recommended over other projects
- The process followed by Xcel attached excessive reliance on subjective considerations utilized by the Advisory Group
- Xcel's recommendation is inconsistent with Minn. Stat. §116C.779 that requires renewable energy at reasonable costs and projects approaching commercialization

PowerWorks argued that Xcel's finding that the PowerWorks turbines use refurbished turbines with questionable service and reliability was incorrect. PowerWorks argued that Xcel relied on subjective criteria in contrast to the quantitative scoring of the independent evaluator and this was not consistent with either the RFP or Minn. Stat. §116C.779. PowerWorks stated:

- Its 100 kW turbine was inaccurately characterized as "refurbished," relative to the Bergey Windpower 10 kW turbines, which PowerWorks claimed to have been introduced 30 years ago; according to PowerWorks, if Xcel rejected the PowerWorks' project due to refurbished turbines, then it should have rejected the Bergey project for the same reason
- Citing IRS regulations, property that is partially used but in which the fair market value of the used part is not 20% of the total can be considered "new"; PowerWorks argued that the wind turbines in its proposal met the definition of new and therefore should not be considered refurbished
- The PowerWorks' turbines have proven their reliability despite Xcel's assertion that they might be unreliable

On December 30, 2013, PowerWorks filed additional comments in support of its proposal. Acknowledging that Xcel and the Commission have considerable discretion regarding project selection, it argued:

- Xcel precluded bidders from becoming “fully informed of the RDF’s bid criteria, evaluation process, and Cycle 4 goals.” Specifically, PowerWorks alleged that Xcel misled bidders as to what would qualify as a “new renewable project” related to definitions of refurbishment, and used refurbishment definitions to lower its score. Xcel also failed to inform bidders of the qualitative “evaluation process,” resulting in approval of a more expensive proposal.
- Xcel failed to “include a detailed explanation of any deviations from the rankings” created by the independent expert. Xcel’s definition of “new” as including “refurbished” was met by PowerWorks proposal; its turbine has proven reliable.

PowerWorks petitioned the Commission to intervene as a full party pursuant to Minnesota Rules 7829.1400, subp. 2. It requested a contested case proceeding for the reasons stated in its initial comments. It argued that a full contested case was necessary, including the ability to obtain discovery, to provide full transparency and to determine whether Xcel fulfilled its fiduciary duties in administering the RDF grants, followed the criteria provide for by Commission rulings and Minnesota law, and whether Xcel allowed improper bias or interests to enter or influence its decisions, the decisions of its representatives on the RDF Advisory Group, or any discussions regarding the project proposals, especially the PowerWorks’ proposal. PowerWorks argued that these are material issues that cannot be resolved through written comments.

*Bergey Windpower Co. (EP4-24)*³⁷

In response to PowerWorks, Bergey Windpower stated that:

- The role of the Advisory Group although somewhat subjective, should carry more weight than that of the independent evaluator
- Bergey Windpower disagreed with PowerWorks comments on the expertise of the Advisory Group relative to the independent evaluator and that Minn. Stat. 116C.779 indicates that the Advisory Group’s consultative role should be given deference relative to independent evaluator
- The Bergey Windpower proposal contains no refurbished turbines; the Bergey Excel 10 turbine is on its third generation rotor, its second generation alternator, and its third generation inverter
- The PowerWorks 100 kW turbine is in fact a refurbished U.S. Windpower/Kenetech USW 56-100. This model was introduced in 1983 and no units have been manufactured since 1992. USW/Kenetech went bankrupt in 1996.
- Bergey argued that the PowerWorks interpretation of the IRS regulations was inaccurate; the IRS regulations do not state that no more than 20% of fair market value of used

³⁷ The Bergey Windpower comments were filed as public comments.

equipment is the same as “new.” The IRS regulation pertains to a qualifying property and its eligibility for a production tax credit.

- Xcel is justified in its concern over refurbished wind turbines, which when installed in Minnesota have not earned a good reputation for reliability

Dragonfly Solar (EP4-29 and EP4-30)

Dragonfly Solar (Dragonfly) submitted two proposals: EP4-29 and EP4-30. Dragonfly pointed to what it believed to be factual errors in the evaluation of its proposed project (EP4-29) and requested a re-ranking of the project after reevaluation of the Advisory Board’s objections. Despite the relatively high ranking of EP4-29 by the independent evaluator, the project was placed 4th on the list of reserve projects. Dragonfly noted that the reason was the need for modifications to the standard grant contract. Dragonfly stated that EP4-29 required no changes to the standard grant contract. However, the standard grant contract for Dragonfly’s second project proposal (EP4-30) did require changes. Dragonfly argued that these required changes may have been incorrectly attributed to EP4-29, resulting in that project’s assignment to 4th on the reserve list (originally an assignment to “Tier 2”).

In addition, Dragonfly noted that the evaluation report stated that EP4-29 was not located within Xcel’s service territory. Yet, the project is located south of Dodge Center, which is in Xcel’s service territory.

Based on these alleged errors, Dragonfly requested a re-ranking of the EP4-29 project. Dragonfly argued that correcting these alleged errors would likely increase the base score of the project placing it higher on the list of projects to be funded.

Minnesota Go Solar (EP4-38)

Minnesota Go Solar (Go Solar) did not receive a recommendation for funding. In response, it filed a petition to intervene, initial comments and a request for a contested case proceeding.³⁸ It argued that its project (EP4-38) was ranked first by the independent evaluator, had the lowest grant amount per kWh and would create more jobs than all recommended projects combined. Go Solar objected to the Advisory Group’s decision and requested a contested case proceeding to obtain discovery concerning this decision and to provide transparency to determine whether Xcel satisfied its fiduciary responsibility in administering the RDF grant program in a manner unbiased to Minnesota Go Solar.

Specifically, Minnesota Go Solar argued:

- Xcel did not follow Minn. Stat. §116C.779 (f), which states that Xcel “must strongly consider...the potential benefit to Minnesota citizens, businesses, and Xcel Energy’s ratepayers.” Also, Xcel did not follow Minn. Stat. §116C.779 (h), which states that Xcel

³⁸ Go Solar petitioned to intervene under Minnesota Rule 7829.1400, subp. 2. It requested a contested case proceeding under Minnesota Rule 7829.1400, subp. 9.

“must, when feasible and reasonable, give preference to projects that are the most cost-effective for a particular energy source.” Minnesota Go Solar argued that its project would provide the largest potential benefit to Minnesota citizens, businesses and ratepayers and represented the most cost-effective project for solar energy

- Xcel did not follow 2012 RDF statutory changes, which put in place the use of an independent evaluator
- The independent evaluator ranked the Minnesota Go Solar first of all 64 project proposals
- Minnesota Go Solar’s project created more jobs per grant dollar than the next closest recommended solar project; on an absolute jobs basis Go Solar’s project created nearly twice the number of jobs as the next highest project in job creation; when expressed on a per grant dollar basis, the independent evaluator found that the Go Solar project created 12 times more jobs than the closest recommended solar project
- Minnesota Go Solar was ranked first in project method, scope and deliverables; these include quality of work, well-defined product or projects, realistic schedule and performance metrics
- Minnesota Go Solar was ranked first in technical requirements; for EP projects, these included: technical leverage, soundness of technical basis, assumptions and approach, documentation of fuel source and supply, identification and plan to overcome barriers to performance, demonstrated understanding of interconnection requirements relating to power delivery, metering, safety and reliability
- Minnesota Go Solar was ranked second in management team schedule and cost; this included team structure, team member skills, experience and knowledge, organizational ability, oversight and evaluation, efficient use of funds, appropriate budget level, cost sharing level, project contractors and financing plan
- Minnesota Go Solar was ranked first in potential benefits to Minnesota ratepayers; these included market competitiveness, barriers to market deployment, job creation, tax and fiscal benefits, ratepayer benefits, and emissions levels
- Minnesota Go Solar would have been ranked first with respect to total resource cost per kWh but for a calculation error (see Minnesota Go Solar’s September 12, 2013 comments, pp.16-20)
- Minnesota Go Solar meets the requirements of Minn. Stat. §116C.779 (f) to benefit “Minnesota citizens, businesses, and Xcel Energy’s ratepayers.” According to Go Solar, these include more than double the nameplate capacity of all recommended projects combined, the lowest grant amount per kW of nameplate capacity, and the requirement of far less grant award per MW than other recommended projects.
- Minnesota Go Solar has many of the benefits of lower ranked projects that were approved; for example, high project visibility, including street level visibility and many locations, financial and technical credibility, and creation of about double the economic impact of all other recommended projects
- Minnesota Go Solar does not have many of the negative features noted in lower ranked projects; for example, requests for special conditions and exceptions to conditions stated in the RFP (e.g. REC ownership), modifications to the standard grant contract, and requests for ownership of carbon-offset credits
- Minnesota Go Solar provided counter arguments to the reasons given by the Advisory Group for not selecting the Minnesota Go Solar project; in response to the Advisory

Group reasoning that the overall project cost was too high (41.4% of the total \$ awarded to EP projects), Go Solar indicated that its project: (1) was ranked first by the independent evaluator, (2) achieved a very high percentage of available points, (3) requested the lowest grant per kW, (4) created more jobs than other recommended projects combined, (5) created double the economic impact of all recommended projects, and (6) created a highly visible, large scale project on 20 different sites across Minnesota. Go Solar argued that the Advisory Group's finding that the energy price per kWh was high relative to other EP proposals was incorrect; Go Solar argued that the project's focus on the development of a solar REC market would enable rapid deployment of solar energy within Minnesota in line with the RDF mission

- Go Solar argued that a potential conflict of interest exists if Xcel is to administer ratepayer funds intended to benefit the development of renewable energy projects that could have an adverse effect on the capacity need that Xcel has identified and for which the Company has proposed a self-build gas-fired power plant; according to Go Solar, the Commission has the authority under Minn. Stat. §116C.779, subd. 1(b), to remedy Xcel's actions by approving the Minnesota Go Solar project

Go Solar also requested a contested case proceeding to obtain discovery, provide full transparency, determine Xcel's fiduciary duties consistent with the RDF statute and Commission rulings and whether any bias entered into Xcel's decision or the decisions of its representatives on the Advisory Group.

Minnesota Go Solar also argued Xcel did not explain the directives of the 2012 statutory changes to Minn. Stat. §116C.779 to the Advisory Group. In addition, it argued that the Advisory Group proceeded contrary to the RFP since it did not recommend how far down the ranked lists of proposals it would go in making awards. Go Solar argued that the process set out in the RFP did not allow for the deletion of projects in the independent evaluator list. Go Solar stated that Xcel was given the opportunity to revise its two RDF proposals and communicate directly with the Advisory Group.

Go Solar argued its project was unique and the focus fivefold: to promote solar projects in Xcel's service area; to increase market penetration of solar at reasonable costs; to provide large potential benefits relative to other potential projects; to provide cost effective solar energy and to create 20 visible solar sites.

Go Solar also argued that the only way to address the deficiencies in the process is for a new Advisory Group to be formed, members of which should not be affiliated with any proponents' proposal, and for the new Advisory Group to be educated as to priorities under the statute and the process in the RFP to be followed by the group.

In sum, Go Solar asked the Commission to order the formation of a new Advisory Group to re-evaluate the scoring, or in the alternative to order a contested case proceeding and to stay any further action on the recommended projects until either the new review is completed or the contested case is completed.

Interphases Solar (RD4-7)

Interphases Solar argued that in view of its project's high overall technical score and the previous RDF investments in its solar PV technology, the Commission should reassess the project and consider funding. The Interphases Solar project received the highest score and ranking in the RD category, as well as positive reviews by the Advisory Group. Despite this, the project was placed 14th on the reserve list. Interphases argued that its project fulfilled all of the 11 relevant attributes used by the Advisory Group in their evaluation. In response to the two concerns with the project, Interphases argued:

- As to “value to Minnesota,” the project specifically emphasizes the intent to manufacture in Minnesota, locating a pilot plant and future manufacturing plants in Minnesota; the project will collaborate with the University of Minnesota and partner with two Minnesota manufacturers for specialty materials and production technology
- As to “relying on the RDF support,” Interphases argued that RDF support is crucial to bridge the gap at this critical juncture along the commercialization path; the RDF grant will only partially support this final R&D step of the project, leading to completion of the pilot line; future investments and benefits will more than offset the project cost

Interphases also urged the Commission to give greater weight to RD versus EP projects, pointing to a ratio of 13:4 in favor of EP projects in Cycle 4, with a funding ratio of 18:3 (\$18 million versus \$3 million). It argued that in the longer term, RD projects will create more jobs in “manufacturing, sales, distribution and installation.”

Minnesota Agricultural Interpretive Center – Farmamerica (EP4-21)

The Minnesota Agricultural Interpretive Center – Farmamerica project was not selected for funding but was added to the reserve list.³⁹ Farmamerica is an educational venue established by the Minnesota Legislature as a public-private partnership to interpret agriculture and rural life's past, present and future. K-12 education is a partner in many of its projects. It noted that the rural location near Waseca, non-profit status and K-12 education components make the project valuable.

Farmamerica commented that the scoring of its project may have been flawed and the stated goals overlooked. It noted that, of the 15 projects recommended for funding, 11 are in the seven county metro area; only two are sponsored by non-profit organizations. Farmamerica noted:

- Advisory Group comments on the project noted incompleteness of technical specifications; however, Farmamerica plans to use competitive bidding with specifications that can be validated for highly reliable existing commercial components (batteries, etc.); therefore, they did not specify a brand or manufacturer
- The project did not receive point credit for use of a battery bank and the contribution of the project to lowering peak utility loads in the area

³⁹ The Farmamerica project was placed 6th on the reserve list.

- Different from other solar projects, the Farmamerica project proposed to use both tracking and a fixed array of solar panels
- Given the sufficient acreage for a ground-mounted system, Farmamerica argued the data logging and production differences will be an interesting feature of the project to be made available as part of the education-related programming
- The intent in the proposed project is to work with regional technical and community colleges and students involved in renewable energy and electrician programs
- The project is a combined solar, wind and battery project that will provide students the opportunity to be engaged in the initial construction; future students and installers throughout the South Central, South East and South West regions will be able to observe a commercial scale project that they themselves may have the opportunity to design, build and maintain
- There is a resistance to renewable energy technology in the counties in the region; therefore, this type of project can be a door opener to distributed rural power generation in rural areas of the state

Alan Muller, Energy & Environmental Consulting

Alan Muller believes the Cycle 4 RDF process is fundamentally flawed. He commented that: (1) biomass and incineration projects need to be removed and RD projects limited, and (2) the non-transparency of the process, errors by Xcel and poor choices for recommended projects all justify a contested case.

Mr. Muller noted that essentially all of the public comments are those of project proposers wanting more favorable treatment or elected officials commenting on behalf of proposers. Absent are comments from a public interest point of view. He noted his comments were submitted on his own behalf and not on those of any other party or interest.

Mr. Muller argued that many of the earlier RDF projects are misguidedly associated with production of biomass fuels, whereas the current emphasis is on solar energy production. He also noted that no one involved in the selection process represents or has expertise in public health concerns.

According to Mr. Muller, “renewable” sources of electricity are favored by public policy in Minnesota under the assumption that there are environmental benefits. However, some renewable electricity, such as biomass and garbage incineration, has unfavorable environmental impacts, even worse than coal. Yet, the RDF selection report favors certain biomass and incineration projects, without evaluation of the environmental attributes or costs to Minnesota citizens. While not called out in the statute, Mr. Muller believes detrimental health, environmental, and economic impacts on Minnesota citizens should be avoided.

As a resident of the City of Red Wing, Mr. Muller specifically objected to the City of Red Wing biomass project (RD4-8), which has been placed 12th on the list of reserve projects. He described this project as a garbage grinding project that would increase the burning of garbage as refuse derived fuel. The refuse derived fuel would then be burnt at Xcel’s garbage burners in

Red Wing. He argued the Xcel facility has a history of harmful emissions, including poisons (mercury and dioxins) emitted from the burners found in the breast milk of people living hundreds of miles away. He argued it would be perverse to approve projects that increase the environmental burden on the communities of Red Wing and Monticello, communities that bear a disproportionate negative impact from radioactive waste storage, which was the reason for the RDF fund in the first place.

He noted that biomass projects in Minnesota tend to be associated with high-energy-cost PPAs, high emissions, and poor records of environmental compliance. He suggested the Commission identify and evaluate these impacts before approving any such projects under the RDF fund. Given that many solar projects were received, biomass and incineration projects should not be authorized.

He also noted that Xcel's filings in this matter lack meeting minutes for the Advisory Group, written reports, or other documentation of the role played by this group. Neither is there outreach to stakeholders by this group or any member of the group who actually represents environmental interests.

Mr. Muller argued that energy production projects have immediate benefit to Minnesota citizens, and should be favored by the Commission over research and development projects, which have little measureable benefit to ratepayers. He specifically objected to the creation of research funds for the University of Minnesota, to be drawn on outside the control of the Commission.

He noted that, while Xcel has provided a "core criteria and point system," which includes a "potential benefits" category, there is no comparable "potential harm" category. He noted that bonus points are awarded for anaerobic digester systems that propose to use non-agricultural residue for feedstock, but there is no explanation of why. Similarly, bonus points are awarded for projects located within the Energy Innovation Corridor. This is an area with degraded air quality. However, project RD4-1 and RD4-11 are both biomass projects that violate this principle and should therefore be disqualified. Moreover, Mr. Muller argued that Xcel's Total Resource Cost used to evaluate projects does not adequately capture externalities, nor are "emissions costs" clearly defined. He also argued there was no basis for withholding the discount rate or the marginal energy price per MWh used in the evaluation of projects.

Lastly, he argued that the Advisory Group was established by legislation. Therefore, it is a public body subject to Minnesota law governing "open meetings" and data practices. Meetings should have been given public notice, agendas and minutes should be made available. Pursuant to the Minnesota Data Practices Act, he requested this information for all meetings of the Advisory Group.

In sum, Mr. Muller argued that, given the errors made, the lack of transparency of process, and the potential conflicts of interest between Xcel and the statutory purpose of the fund, the costs and delays of a contested case are justified. He recommended that the Commission:

- Not proceed on the basis of Xcel's current proposed selection of projects, that the comment period be extended until January 15, 2014, and that full proposals for all projects be made part of the record
- Order an in-depth examination of the health and environmental impacts of project proposals
- Reject any further funding of incineration-related and biomass-combustion-related proposals
- Order a contested case in this matter

Mr. Muller raised specific concerns related to a number of RD proposals, including: University of Florida biomass (RD4-5), University of Minnesota biomass gasification (RD4-1), University of Minnesota-Duluth-NRRI, Torrefaction (RD4-11), and City of Red Wing biomass (RD4-8). Finally, he largely concurred with Bergey Windpower and Mike Bergey's filing concerning the PowerWorks proposal.

Regarding the PowerWorks project (EP4-33), Mr. Muller noted that this project proposed to install used wind turbines removed from California projects; the project appears to propose the installation of machines that have been taken out of service elsewhere, perhaps with hundreds of thousands of hours of prior service. This model turbine uses lattice towers, rotates at 72 rev/min, and is downwind design. There is potential for noise problems and high bird and bat impacts.

Mr. Muller commented that a project such as EP4-33 might make economic sense for the owners. However, it is not likely that the project will advance the state-of-the-art of renewable energy in Minnesota. Mr. Muller concluded that Xcel and the Advisory Group made the right decision in not selecting this project for RDF funds. He commented that potential avian mortality and noise nuisance should be carefully and fully considered in the siting of any wind project of any scale.

Appendix C

Xcel's explanation of why the Minnesota Go Solar project was not selected

Minnesota Go Solar, LLC: 20 1.0 MW Alternating Current Solar PV Facilities (EP4-38): This project proposed to construct 20 1.0 MW alternating current solar photovoltaic generating facilities in Xcel Energy's service territory. Solar installations would be located near sufficient load centers in small and medium sized cities throughout southeast and southwest Minnesota.

While the proposal presented an interesting opportunity through solar renewable energy credits, the overall project cost was disfavored by the Advisory Group as it would require too large a portion of the funds anticipated to be awarded to EP projects (over a third of available funds). As stated on page 10 of the RFP, grant awards larger than average amounts should include specific information that support why a larger grant award is justified. One of the objectives the Advisory Group identified for RDF Cycle 4 was a desire for a diverse set of grant opportunities. The project's focus on the development of a solar renewable energy credit market was identified by some Advisory Group members as not very compelling within the mission of the RDF. As stated earlier in this document, the Advisory Group sought to fully fund grant requests and preferred to have a diverse portfolio of projects for RDF Cycle 4. Additionally, 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.

Xcel's explanation of why the PowerWorks Wind project was not selected

PowerWorks Wind Turbines: Ten 100 kW Refurbished Wind Turbines (EP4-33); this project proposed to install 10 remanufactured PowerWorks 100 kW wind turbines to provide 1,000 kW additional capacity in Xcel's Minnesota service territory. The wind turbines would collectively generate approximately 2,000,000 kWh per year to Xcel's grid.

A proposal to utilize refurbished turbines was disfavored by the Advisory Group. The use of refurbished turbines has had mixed results pertaining to service and reliability within the State of Minnesota. The Advisory Group would prefer introducing new wind technology by supporting the introduction of new model's versus funding the older technology.

Xcel's explanation of why the Interphases Solar project was not selected

InterPhases Solar: New CIS Solar Cells with All-Solutions-Based Roll-to-Roll Processing (RD4-7); this project would advance the production of thin film manufacturing outcomes achieved from an RDF Cycle 2 and RDF Cycle 3 grant award by taking the next step toward commercializing and marketing a simplified manufacturing process that also improves the output efficiency of solar PV cells.

Advisory group members identified several concerns with the proposal including the possibility that the proposer could find an industry partner instead of relying on the RDF. But due to the high technical score and past investment from the RDF, the advisory group recommended this proposal as an alternative project on the reserve funding list.

Appendix D

116C.779 FUNDING FOR RENEWABLE DEVELOPMENT.

Subdivision 1. Renewable development account. (a) The public utility that owns the Prairie Island nuclear generating plant must transfer to a renewable development account \$500,000 each year for each dry cask containing spent fuel that is located at the Prairie Island power plant for each year the plant is in operation, and \$7,500,000 each year the plant is not in operation if ordered by the commission pursuant to paragraph (c). The fund transfer must be made if nuclear waste is stored in a dry cask at the independent spent-fuel storage facility at Prairie Island for any part of a year.

(b) The public utility that owns the Monticello nuclear generating plant must transfer to the renewable development account \$350,000 each year for each dry cask containing spent fuel that is located at the Monticello nuclear power plant for each year the plant is in operation, and \$5,250,000 each year the plant is not in operation if ordered by the commission pursuant to paragraph (c). The fund transfer must be made if nuclear waste is stored in a dry cask at the independent spent-fuel storage facility at Monticello for any part of a year.

(c) After discontinuation of operation of the Prairie Island nuclear plant or the Monticello nuclear plant and each year spent nuclear fuel is stored in dry cask at the discontinued facility, the commission shall require the public utility to pay \$7,500,000 for the discontinued Prairie Island facility and \$5,250,000 for the discontinued Monticello facility for any year in which the commission finds, by the preponderance of the evidence, that the public utility did not make a good faith effort to remove the spent nuclear fuel stored at the facility to a permanent or interim storage site out of the state. This determination shall be made at least every two years.

(d) Funds in the account may be expended only for any of the following purposes:

(1) to increase the market penetration within the state of renewable electric energy resources at reasonable costs;

(2) to promote the start-up, expansion, and attraction of renewable electric energy projects and companies within the state;

(3) to stimulate research and development within the state into renewable electric energy technologies; and

(4) to develop near-commercial and demonstration scale renewable electric projects or near-commercial and demonstration scale electric infrastructure delivery projects if those delivery projects enhance the delivery of renewable electric energy.

The utility that owns a nuclear generating plant is eligible to apply for renewable development account grants.

(e) Expenditures authorized by this subdivision from the account may be made only after approval by order of the Public Utilities Commission upon a petition by the public utility. The commission may approve proposed expenditures, may disapprove proposed expenditures that it finds to be not in compliance with this subdivision or otherwise not in the public interest, and may, if agreed to by the public utility, modify proposed expenditures. The commission may approve reasonable and necessary expenditures for administering the account in an amount not to exceed five percent of expenditures. Commission approval is not required for expenditures required under subdivisions 2 and 3, section 116C.7791, or other law.

(f) The account shall be managed by the public utility but the public utility must consult about account expenditures with an advisory group that includes, among others, representatives of its ratepayers. The commission may require that other interests be represented on the advisory group. The advisory group must be consulted with respect to the general scope of expenditures in designing a request for proposal and in evaluating projects submitted in response to a request for proposals. In addition to consulting with the advisory group, the public utility must utilize an independent third-party expert to evaluate proposals submitted in response to a request for proposal, including all proposals made by the public utility. A request for proposal for research and development under paragraph (d), clause (3), may be limited to or include a request to higher education institutions located in Minnesota for multiple projects authorized under paragraph (d), clause (3). The request for multiple projects may include a provision that exempts the projects from the third-party expert review and instead provides for project evaluation and selection by a merit peer review grant system. The utility should attempt to reach agreement with the advisory group after consulting with it but the utility has full and sole authority to determine which expenditures shall be submitted to the commission for commission approval. In the process of determining request for proposal scope and subject and in evaluating responses to request for proposals, the public utility must strongly consider, where reasonable, potential benefit to Minnesota citizens and businesses and the utility's ratepayers.

(g) Funds in the account may not be directly appropriated by the legislature by a law enacted after January 1, 2012, and unless appropriated by a law enacted prior to that date may be expended only pursuant to an order of the commission according to this subdivision.

(h) A request for proposal for renewable energy generation projects must, when feasible and reasonable, give preference to projects that are most cost-effective for a particular energy source.

(i) The public utility must annually, by February 15, report to the chairs and ranking minority members of the legislative committees with jurisdiction over energy policy on projects funded by the account for the prior year and all previous years. The report must, to the extent possible and reasonable, itemize the actual and projected financial benefit to the public utility's ratepayers of each project.

(j) A project receiving funds from the account must produce a written final report that includes sufficient detail for technical readers and a clearly written summary for nontechnical readers. The report must include an evaluation of the project's financial, environmental, and other benefits to the state and the public utility's ratepayers.

(k) Final reports, any mid-project status reports, and renewable development account financial reports must be posted online on a public Web site designated by the commission.

(l) All final reports must acknowledge that the project was made possible in whole or part by the Minnesota renewable development fund, noting that the fund is financed by the public utility's ratepayers.

Subd. 2. Renewable energy production incentive. (a) Until January 1, 2021, \$10,900,000 annually must be allocated from available funds in the account to fund renewable energy production incentives. \$9,400,000 of this annual amount is for incentives for electricity generated by wind energy conversion systems that are eligible for the incentives under section 216C.41 or Laws 2005, chapter 40.

(b) The balance of this amount, up to \$1,500,000 annually, may be used for production incentives for on-farm biogas recovery facilities and hydroelectric facilities that are eligible for the incentive under section 216C.41 or for production incentives for other renewables, to be provided in the same manner as under section 216C.41.

(c) Any portion of the \$10,900,000 not expended in any calendar year for the incentive is available for other spending purposes under subdivision 1. This subdivision does not create an obligation to contribute funds to the account.

(d) The Department of Commerce shall determine eligibility of projects under section 216C.41 for the purposes of this subdivision. At least quarterly, the Department of Commerce shall notify the public utility of the name and address of each eligible project owner and the amount due to each project under section 216C.41. The public utility shall make payments within 15 working days after receipt of notification of payments due.

Subd. 3. Initiative for Renewable Energy and the Environment. (a) Beginning July 1, 2009, and each July 1 through 2011, \$5,000,000 must be allocated from the renewable development account to fund a grant to the Board of Regents of the University of Minnesota for the Initiative for Renewable Energy and the Environment for the purposes described in paragraph (b). The Initiative for Renewable Energy and the Environment must set aside at least 15 percent of the funds received annually under the grant for qualified projects conducted at a rural campus or experiment station. Any set-aside funds not awarded to a rural campus or experiment station at the end of the fiscal year revert back to the Initiative for Renewable Energy and the Environment for its exclusive use. This subdivision does not create an obligation to contribute funds to the account.

(b) Activities funded under this grant may include, but are not limited to: (1) environmentally sound production of energy from a renewable energy source, including biomass and agricultural crops; (2) environmentally sound production of hydrogen from biomass and any other renewable energy source for energy storage and energy utilization; (3) development of energy conservation and efficient energy utilization technologies; (4) energy storage technologies; and (5) analysis of

policy options to facilitate adoption of technologies that use or produce low-carbon renewable energy. (c) For the purposes of this subdivision: (1) "biomass" means plant and animal material, agricultural and forest residues, mixed municipal solid waste, and sludge from wastewater treatment; and (2) "renewable energy source" means hydro, wind, solar, biomass, and geothermal energy, and microorganisms used as an energy source. (d) Beginning January 15 of 2010, and each year thereafter, the director of the Initiative for Renewable Energy and the Environment at the University of Minnesota shall submit a report to the chair and ranking minority members of the senate and house of representatives committees with primary jurisdiction over energy finance describing the activities conducted during the previous year funded under this subdivision.