

## Staff Briefing Papers

Meeting Date May 10, 2018

Agenda Item \*\*5

Company Xcel Energy (Xcel or the Company)

Docket No. **E-002/AI-17-577**

**In the Matter of Xcel Energy's Petition for Approval of an Affiliated Interest Agreement**

Issues Should the Commission approve the use of the two tariffed contracts, the S\*RC Standard Contract and the Interconnection Agreement, between Xcel Energy and its non-regulated affiliate Nicollet Projects I LLC (Nicollet Projects) in order to allow participation by Nicollet Projects in Xcel's S\*RC program?

Should the Commission approve the Administrative Services Agreement (ASA) between Xcel Energy Services (XES) and Nicollet Projects?

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### Relevant Documents

### Date

Xcel initial petition, Parts 1-5 (Public and Non-Public)

July 28, 2017

Xcel label correction (Public and Non-Public)

August 25, 2017

Department of Commerce (Public and Non-Public)

October 24, 2017

Office of the Attorney General (OAG)

October 25, 2017

Xcel reply

November 6, 2017

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

## I. Statement of the Issues

Should the Commission approve the use of the two tariffed contracts, the S\*RC Standard Contract and the Interconnection Agreement, between Xcel Energy and its non-regulated affiliate Nicollet Projects I LLC (Nicollet Projects) in order to allow participation by Nicollet Projects in Xcel's S\*RC program?

Should the Commission approve the Administrative Services Agreement (ASA) between Xcel Energy Services (XES) and Nicollet Projects?

## II. Procedural Background

On July 28, 2017, Xcel filed its initial petition ("Affiliated Interest Request and Informational Filing"). On August 25, 2017, the Company filed a labelling correction.

On October 24, 2017, the Department of Commerce (Department or DOC) filed comments recommending that the Commission approve Xcel's petition. On October 25, 2017, the Office of the Attorney General (OAG) filed comments recommending that the Commission deny the petition with prejudice.

On November 6, 2017, Xcel filed reply comments.

## III. Parties' Comments

### *Xcel's Petition*

Xcel is seeking approval of two contracts between the Company and its affiliate, Nicollet Projects, in order to facilitate Nicollet Projects' participation in Xcel's S\*RC program.<sup>1</sup> Nicollet Projects is in the process of purchasing a portfolio of CSG's from solar developer New Energy Equity LLC (NEE or the Seller). The signatories of the two tariffed contracts for which Xcel is seeking approval will be the Company and Nicollet Projects.

The first contract is the Company's standard, tariffed Interconnection Agreement. An Interconnection Agreement has been executed for each of the 14 solar projects that make up the portfolio to be purchased by Nicollet Projects. The current signatories to the executed Interconnection Agreements are the Company and New Energy Equity (the Seller). Pending

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<sup>1</sup> The solar portfolio being purchased by Nicollet Projects includes 14 projects, for a total capacity of approximately 18.5 MW (AC). See Xcel's petition, Attachment F, for a schedule of all of the projects. The projects are located in Goodhue, Washington, Renville, Blue Earth, Rice, Steele, and Chisago Counties. In its initial petition, the Company indicated that the projects were anticipated to start construction during summer 2017, and that the majority of the projects were scheduled to be placed in service by 2017 year-end. All projects are anticipated to be fully subscribed by the time they are placed in service.

Commission approval of the Company's petition, and the transaction close, these will be transferred from New Energy Equity to Nicollet Projects.<sup>2</sup>

The second contract is the tariffed Standard Contract for the S\*RC program. Standard Contracts have not yet been executed for any of the CSG projects in the portfolio, which will occur once a project is at (or very near) commercial operation. No transfer of the Standard Contracts will be required because the original signatories will be the Company and Nicollet Projects.

Xcel noted that it submitted its petition in compliance with Minnesota Rules 7825.2200, subp. B, and Minn. Stat. §216B.48, subd. 3, which together establish the standards for approval of an affiliated interest request.

In addition to its request for approval of the use of the two contracts to facilitate participation in the S\*RC program by its affiliate, the Company also provided details regarding the affiliates' participation in the program as a CSG Operator. The Company emphasized that the purpose of its petition is to seek regulatory approval of the agreements between Nicollet Projects and the Company to facilitate the participation of Nicollet Projects in the S\*RC program. The Company believes that Nicollet Projects, as a non-regulated entity, is not obligated to obtain Commission approval for its participation in the S\*RC program. However, Xcel provided information on the affiliate's participation in the interest of transparency.

Upon the close of the transaction, Nicollet Projects will be the owner of the garden projects and the Community Solar Garden Operator for purposes of the S\*RC Standard Contract. New Energy Equity (the Seller), however, will continue to deliver the subscription management services, as well as the O&M services for all of the solar garden facilities in the portfolio.

Xcel explained that Minn. Stat. § 216B.48, subd. 3, establishes the Commission's authority over affiliate arrangements, as follows:

No contract or arrangement, including any general or continuing arrangement, providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing[...] between a public utility and any affiliated interest [...] is valid or effective unless and until the contract or arrangement has received the written approval of the commission. [...] Every public utility shall file with the commission a verified copy of the contract or arrangement, or a verified summary of the unwritten contract or arrangement [...]

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<sup>2</sup> Xcel explained that by "transferred" it means "effective transfer." The underlying transaction is technically a purchase of membership interests in 14 LLC project companies by Nicollet Projects.

Xcel explained that when the Company requests approval of an affiliate agreement, Minn. Stat. § 216B.48 and Minn. R. 7825.2200 require it to provide certain information and that it had fully met these requirements.

As part of the S\*RC program, the Commission has already approved the use of a tariffed standard contract.<sup>3</sup> The Standard Contract sets forth the terms and conditions that govern the program as it pertains to all participants, including a term that requires the Company to purchase the energy generated by the solar garden and, based on that production, to provide bill credits to the garden's subscribers.<sup>4</sup> As noted, in this case, the Standard Contract for each project will be executed by the Company and the garden operator Nicollet Projects, once the project has achieved commercial operation.

Xcel's Interconnection Agreement is a tariffed contract at Section 10 of the Company's Electric Rate Book. It provides the terms and conditions for interconnecting generating facilities to the Company's distribution grid and sets forth certain operational requirements, cost responsibility, terms for disconnection, and insurance requirements.

As noted, an Interconnection Agreement has already been signed for each project by the Company and the Seller.<sup>5</sup> Included as Attachment E to Xcel's petition is the tariffed form of the Standard Contract. As noted, upon closing, the executed Interconnection Agreements will be transferred from the Seller to Nicollet Projects and thus will ultimately be between the Company and Nicollet Projects.

Xcel stated that there are no outstanding contracts or agreements between the Company and Nicollet Projects. At the time Xcel filed its initial petition, Xcel Energy Services Inc. (the service company affiliate of the Company) was developing an Administrative Services Agreement (ASA) with Nicollet Projects that would provide the rates, terms and conditions for XES charges to Nicollet Projects.<sup>6</sup>

Under the Interconnection Agreement, if the Company upgrades its network to accommodate the projects, then the applicant pays the costs of the Company's work. If the interconnection applicant has complied with Company engineering requirements and passed required inspections, the Company allows interconnection to its distribution system.

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<sup>3</sup> See Order, in 13-867, issued September 17, 2014.

<sup>4</sup> Other key provisions outlined in the Standard Contract include the length of the contract, disclosure requirements, how and to whom Renewable Energy Certificates (RECs) are assigned, and the subscriber bill credit rate.

<sup>5</sup> Included as Attachment D to Xcel's petition are copies of the "Assignment of Interconnection Agreement" contracts.

<sup>6</sup> Xcel filed the completed ASA as an attachment to DOC Information Request No. 3. (Note: Xcel's responses to all of the DOC's Information Requests are attached to the DOC's comments filed on October 24, 2017.)

Under the Standard Contract for the S\*RC program, if Nicollet Projects as the CSG Operator complies with program rules, the Company will purchase the energy generated by the solar projects and provide bill credits to Nicollet Projects' subscribers.

Costs associated with any service company employees who provide services to Nicollet Projects will be directly assigned to Nicollet Projects. Any indirect costs that cannot be directly assigned to it (such as overhead costs) will be allocated pursuant to the Administrative Services Agreement (ASA) as described above. Regarding operational expenses, the tariffed agreements set forth any and all terms with respect to cost responsibility.

Xcel explained that there was no competitive bidding between the Company and Nicollet Projects with respect to the Interconnection Agreements, the S\*RC Standard Contract, or for any other purpose. The S\*RC program is a statutory program and all rates, fees, or other costs between the Company and its affiliate are as set forth in the tariffed agreements.

Xcel maintained that the agreements are reasonable and in the public interest. It noted that Minn. Stat. § 216B.48, subd. 3 (in addition to the provisions already noted) establishes the public interest as the standard of review for affiliate arrangements, as follows:

The commission shall approve the contract or arrangement made or entered into after that date only if it clearly appears and is established upon investigation that it is reasonable and consistent with the public interest.... The burden to establish the reasonableness of the contract or arrangement is on the public utility.

Xcel explained that the CSG statute also provides explicitly both for utility and non-utility ownership of solar gardens. Under Minn. Stat. § 216B.1641, Xcel, as the program administrator, must not "apply different requirements to utility and non-utility community solar gardens." This provision in statute was reinforced in the Commission's April 7, 2014 Order in Docket No. E002/M-13-867, which states: "Xcel shall submit a filing for Commission approval of any proposal to offer utility-owned solar gardens. The filing shall include a detailed explanation of all processes and procedures to ensure that solar garden operators are treated on a non-discriminatory basis with Xcel-owned solar gardens."

Xcel noted that Nicollet Projects is bound to comply with the tariffed terms that the Commission has already found to be reasonable and in the public interest. In its September 17, 2014 Order in Docket No. E002/M-13-867, the Commission authorized the terms of the S\*RC program on the basis that the terms were reasonable and consistent with the public interest. In approving the Section 10 Interconnection Agreement, the Commission similarly concluded that those terms and conditions were reasonable and in the public interest. Further, the Commission conditioned participation in the CSG program for all garden operators on execution of both the Standard Contract and the Section 10 Interconnection Agreement.

Once the transaction closes, Nicollet Projects will be the Community Solar Garden Operator for all 14 projects and, by the terms of its Membership Interest Purchase Agreement (MIPA), will

outsource to New Energy Equity (NEE) the subscriber management services as well as the ongoing facility operation and maintenance work associated with the portfolio of projects.<sup>7</sup>

*Non-discriminatory treatment*

Xcel stated that the projects in the portfolio have not and will not benefit from discriminatory treatment because:

- Initial discussions with the Seller did not start until January 2017, and by that time, all of the projects had already been submitted into the program (including their location, size, and technical details). Neither the Company nor Nicollet Projects had influence on the projects submitted by NEE into the program—the Seller followed the S\*RC program process in the same way as any other competing developer. The Seller has been independently marketing subscriptions to potential subscribers in the same way as other competing developers, without assistance or information from Nicollet Projects.
- Because the S\*RC program's governing contracts are tariffed, Nicollet Projects will be in the same position as all other CSG operators and will need to satisfy all of the contractual terms as a condition of program participation. In compliance with the tariffed agreements, Nicollet Projects will be responsible for paying the actual costs for distribution system construction, receive any unsubscribed energy payments at the currently tariffed rate, and otherwise be required to comply with the terms of the tariff.
- Nicollet Projects has not and will not have access to non-public distribution grid information, customer data, or program data. It will not be permitted specialized access to S\*RC program staff, Company engineering staff, or any other information not accessible to other program developers. To underscore this, Xcel submitted affidavits from the negotiating team leads who attested to these facts.<sup>8</sup>
- Nicollet Projects will be outsourcing the subscriber-facing contact through its Customer Management Agreement with the Seller.<sup>9</sup> The provisions in Section 2 of the Customer Management Agreement demonstrate that in the event a subscriber withdraws from the program, replacement of that subscriber will be handled by the Seller, who has no greater access to the Company's customer records and market research than any other

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<sup>7</sup> Energy Support Services (ESS) is an affiliate of New Energy Equity that will perform the O&M and the subscriber management services for the 14 projects.

<sup>8</sup> The first affidavit is from Mr. Kurt Battles, a Manager in Xcel's Business Development group, which is housed within Xcel Energy Services. His affidavit is included at Attachment G to Xcel's initial petition. The second affidavit is from Mr. Jean-Baptiste Jouve, a Director in Xcel's Corporate Finance group, which is housed within Xcel Energy Services. His affidavit is included at Attachment H to Xcel's initial petition.

<sup>9</sup> The Customer Management Agreement is included as Attachment C to Xcel's initial petition and is an exhibit to the Membership Interest Purchase Agreement (MIPA).

solar developer. No employees from the Company (NSPM) have nor will support Nicollet Projects. To the extent that any employees of Xcel Energy Services support Nicollet Projects, the Company will directly allocate those costs to Nicollet Projects. Any indirect costs not capable of being directly assigned will be addressed in the Administrative Services Agreement.

- Nicollet Projects will be outsourcing the operation and maintenance of the projects through its O&M Agreement with the Seller's affiliate.<sup>10</sup> There will be no employees of the Company who will support Nicollet Projects on the O&M related to the solar facilities.

In addition to these safeguards, Xcel stated that neither its affiliate nor the Company has or will have any influence over the siting, queue position, or interconnection of the projects. As noted, neither the Company nor its affiliate will play a role in the initiation or maintenance of any current or future subscriber contracts, or in the O&M for the projects.

In sum, based on the above assurances, Xcel asked the Commission to approve the use of two affiliate agreements, the Interconnection Agreements and the S\*RC Standard Contract. This will allow Nicollet Projects to participate in the S\*RC program under the terms of the tariffs binding the program, in such a way that is reasonable and supports the public interest.

Xcel submitted the following schedules and attachments to support its petition:<sup>11</sup>

- Attachment A: Membership Interest Purchase Agreement [non-public]
- Attachment B: O&M Agreement [non-public]
- Attachment C: Customer Management Agreement [non-public]
- Attachment D: Section 10 Interconnection Agreements [non-public]
- Attachment E: Standard Contract for Solar\*Rewards Community
- Attachment F: Schedule of Projects [non-public]
- Attachment G: Affidavit of Mr. Kurt Battles
- Attachment H: Affidavit of Mr. Jean-Baptiste Jouve

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

The Department recommended that the Commission approve the use of the two contracts for the solar projects to be purchased by Nicollet Projects. Based on its review of Xcel's petition, including responses to information requests, the Department found that the Interconnection Agreement and Standard Contract were reasonable and in the public interest and

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<sup>10</sup> See Attachment B to Xcel's initial petition.

<sup>11</sup> On August 25, 2017, Xcel filed a "label correction" to clarify the various Exhibits to Attachment A of the Trade Secret version of its initial petition. In addition, it noted that Attachment D had been incorrectly labeled as Attachment B and provided a correctly labeled Attachment D.

recommended that the Commission approve them for the limited purpose of the 14 solar projects to be owned by Nicollet Projects. The Department noted that the Commission authorized the terms of the S\*RC program, including the terms of the Interconnection Agreement and Standard Contract, as part of its September 17, 2014 Order in Docket No. E002/M-13-867.

It also recommended that the Commission approve the Administrative Services Agreement (ASA) between Xcel Energy Services (XES) and Nicollet Projects, after modifications to correct the Employee Ratio allocation method. The DOC cautioned that even with this approval, the ASA should remain subject to future review in rate recovery proceedings and in an annual compliance filing in the current docket. Based on Xcel's response to Information Request No. 3, and its review of the Company's ASA, the Department concluded that the cost assignments and allocations between XES and Nicollet Project are reasonable at this time, with the exception of its use of the Employee Ratio allocator.

The Department also concluded that the Company's protections ensure that Nicollet Projects has not been, and will not be, given preferential treatment and that other solar developers will not be treated in a discriminatory manner.

The Department recommended that the Commission approve the Company's ASA, as modified by replacing all Employee Ratio allocations with Allocated Labor Hours with Overtime allocations, and require Xcel to show in the Company's annual reporting compliance that all cost allocations are consistent with past Commission Orders. The Department recommended that the Company, in its annual compliance filing, show the actual amounts of costs assigned and allocated from XES to Nicollet Projects and be compared to the estimated costs by services or cost categories, in a similar format to that provided in response to DOC IR No.3.

#### *Statutory requirements for affiliated-interest agreements*

The Department verified Xcel's position that Minn. Stat. § 216B.48, subd. 3, states that no contract or arrangement for the purchase or exchange of any property is valid or effective unless and until the contract or arrangement has received written approval from the Commission. The Commission is to approve the contract or arrangement only if it finds it to be reasonable and consistent with the public interest.

In addition, the Department noted that Minn. Stat. § 216B.48, subd. 6, clearly states that the Commission has continuing authority over the affiliated-interest agreement. If actual experience under the agreement results in rates that are unreasonable, the Commission may disallow payments.

#### *Affiliated interest filing requirements*

The Department noted that the Commission's 1998 Order, in Docket No. E, G-999/CI-98-651, sets out filing requirements that must be satisfied within 30 days of executing a contract with an affiliate,<sup>12</sup> and requires that within this period, the utility must file certain information.

Although there was no competitive bidding between the Company and Nicollet Projects with respect to the Interconnection Agreements or the S\*RC Standard Contract, the Department noted that certain safeguards were in place. These include the fact that the S\*RC is a statutory program and all rates, fees, and other costs between the Company and its affiliate Nicollet Projects are set forth in the tariffed agreement. The Department agreed with Xcel that, as long as Nicollet Projects is held to the same standards as other CSG owners and operators by use of the same Interconnection Agreement and Standard Contract, competitive bidding is not necessary.

The Department concluded that Xcel, through its petition and responses to DOC Information Requests, provided the affiliated-interest information necessary to meet the requirements of Minnesota Rules 7825.2200, subp. B.

#### *Department analysis of Xcel's affiliated interest proposal*

In addition to reviewing the two contracts, the Department also assessed whether Nicollet Projects would be treated in the same, non-discriminatory manner as other owners and developers of CSG projects regarding the use of the two contracts. The Department also reviewed the cost allocations between Xcel Energy Services (XES) and Nicollet Projects to ensure that the Xcel's ratepayers do not subsidize operations of the non-regulated affiliate.<sup>13</sup>

#### *Reasonableness of the Interconnection Agreement and Standard Contract*

The Department, like the Company, observed that the Interconnection Agreement is a tariffed contract contained in Section 10 of the Company's Electric Rate Book, providing terms and conditions for interconnecting generating facilities to the Company's distribution grid. The S\*RC Standard Contract sets forth the terms and conditions that govern the S\*RC program as it pertains to all participants, including a provision that requires the Company to purchase the energy generated by the solar garden and, based on that production, to provide bill credits to the garden's subscribers.

The Department stated that, in approving the Section 10 Interconnection Agreement, the Commission concluded that the terms and conditions were reasonable and in the public interest. Additionally, in approving the program, the Commission conditioned participation on

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<sup>12</sup> See Order Initiating Repeal of Rule, Granting Generic Variance, and Clarifying Internal Operating Procedures, *In the Matter of a Commission Investigation into Procedures for Reviewing Public Utility Affiliated Interest Contracts and Arrangements*, in Docket No. E, G-999/CI-98-651, issued September 14, 1998.

<sup>13</sup> As noted, Xcel Energy Services (XES) is the Company's service company affiliate that developed the Administrative Services Agreement (ASA) with Nicollet Projects to provide the rates, terms and conditions for XES charges to Nicollet Projects.

execution of both the Standard Contract and the Section 10 Interconnection Agreement for all CSG Operators. In its affiliated petition, Xcel noted that, “In stepping into the shoes of the solar developer and becoming the counterparty to the Standard Contract and Interconnection Agreements, Nicollet Projects is bound by tariffed terms that the Commission has already found to be reasonable and in the public interest.”<sup>14</sup>

In IR No. 7, the Department asked Xcel if it had any conversations or provided any information to NEE regarding best places to locate its solar projects. It also asked if Xcel’s knowledge of best solar locations, influenced in any way the solar projects developed by NEE that would become Nicollet Projects’ projects. Finally, it asked whether Xcel had provided location information regarding best places to locate community solar gardens to all solar entities (developers, owners, etc.).

Xcel responded that it had not provided any location information to NEE, nor influenced developers’ site selections or their interconnection processes.<sup>15</sup> The Company provided no information on project location to NEE, project location decisions were made entirely by the developers, driven by their assessment of the suitability of the site. Also, the Company stated that it had not influenced the developers’ site selections, nor did it influence the manner in which developers moved projects through the interconnection process. Lastly, the Company indicated that it provides options (such as a capacity screen, commonly referred to as pre-application data<sup>16</sup>) to all potential S\*RC program developers as they assess site suitability.

In IR No. 9, the Department asked Xcel to describe all protections in place to ensure non-discrimination related to information regarding the available capacity for gardens, and planned upgrades to the distribution system. Xcel responded by describing the planning process as inherently independent and that interconnection capacity information is not publicly shared, noting again that a capacity screen is equally available to all developers.

The Department asked Xcel to identify and explain any differences in the Interconnection Agreements and Standard Contracts at issue in this proceeding, compared to agreement and contract approved by the Commission. Xcel confirmed that both are standard, tariffed agreements approved by the Commission and have been applied with no changes.<sup>17</sup>

The Department next asked if the prices for the projects being purchased by Nicollet Projects are lower as a result of any assistance that may have been provided to the Seller or if any exchanges of favors occurred between Xcel, Nicollet Projects, the Seller, or Energy Support Services.<sup>18</sup> Xcel responded that neither Xcel nor Nicollet Projects had assisted the Seller and

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<sup>14</sup> Xcel Petition, July 28, 2017, p. 7.

<sup>15</sup> Xcel’s response to Information Request No. 7 is included as part of Attachment A to the Department’s comments, filed October 24, 2017.

<sup>16</sup> Section 9, Sheets 68.14 and 68.15.

<sup>17</sup> See Xcel’s response to DOC IR No. 2.

<sup>18</sup> See Xcel’s response to DOC IR No. 8.

that the developer is incurring the same costs for interconnection and distribution system upgrades as any other developer. The interconnection and/or development costs are not affected by the fact that the projects eventually will be owned by an Xcel affiliate. Accordingly, the purchase price was not lower given that Xcel did not provide project development assistance to the developer. Xcel also referred the Department to the Company's response to DOC IR No. 4, subp. (a).

Based on its affiliated interest review, the Department concluded that the use of the Interconnection Agreement and the Standard Contract was reasonable and in the public interest and recommended approval of the use of the two contracts.

### *Non-Discriminatory Treatment*

The Department also agreed with Xcel that the solar projects in the portfolio to be purchased by Nicollet Projects have not and will not benefit from any discriminatory treatment for several reasons. First, the negotiations for the sale transaction began after the project applications were filed and Nicollet Projects will operate under the same tariffed contracts as all other developers/garden operators. Second, marketing of subscriptions was done independently from Nicollet Projects. Third, Nicollet Projects will receive no special access to data or distribution information. Lastly, Nicollet Projects will outsource O&M without any support from Xcel.<sup>19</sup>

The Department also found the Company's responses to DOC IR Nos. 4, 5 and 6 satisfactory. It asked Xcel to explain all safeguards to ensure it will not treat Nicollet Projects in a preferential manner compared to other solar garden developers and asked Xcel to include information on: (1) how Nicollet Projects will be identified to Xcel personnel, (2) Nicollet Project's access to information on Xcel's distribution system, (3) bill treatment, and (4) how Xcel will ensure non-discriminatory treatment through the interconnection process. Xcel addressed each of these questions in its response to DOC IR No. 4. In sum, the Company indicated that neither it nor Nicollet Projects influenced the projects submitted and that Nicollet will be bound by the same tariffs as other garden operators. In addition, the affiliate will not be permitted specialized access to information including grid, customer or program data. All operation and maintenance will occur through NEE's O&M Agreement. The Department indicated that it was satisfied with Xcel's responses.<sup>20</sup>

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<sup>19</sup> The O&M Agreement is included as Attachment B of the Company's petition. Section 1.1.1 of the O&M Agreement provided that the NEE affiliate (Energy Support Services) shall have "care, custody and control of the system . . . and shall perform basic services" as described in Section 1.2, Section 1.1.2 identifies additional work that the affiliate shall provide upon Xcel Energy's request. Sections 1.2.3 through 1.2.8 describe the basic services to be provided, including routine system monitoring, work order processing, maintenance to ensure requirements are met for system equipment warranties, calibration of the electric revenue meter, system performance reporting, corrective maintenance, permitting and grass cutting. Section 1.3 identifies the process for the affiliate to provide additional services not covered as basic services, such as Solar PV Module Cleaning.

<sup>20</sup> Department comments, October 24, 2017, pp. 12-13.

The Department asked Xcel if Nicollet Projects planned to develop any solar gardens beyond those purchased from NEE. Xcel responded that it was NEE, and not Nicollet Projects, that developed the projects that Nicollet Projects plans to purchase. However, the Company indicated that Nicollet Projects has no current plans to purchase additional solar garden projects, although it remains a future possibility if additional solar developers seek to identify long-term owners for their S\*RC projects.

The Department asked Xcel to explain what would happen in the event that a NEE project slated for purchase by Nicollet Projects fails to meet the 24-month deadline for mechanical completion. Xcel responded that to the extent that an NEE project fails to meet any tariffed obligation, it will be treated as any other participant would under the terms of the tariff.<sup>21</sup>

The Department also asked about replacement projects in the event of cancellation and how replacement projects would be identified. Xcel referred the Department to Section 9, Sheet 67.1, of its tariff book that describes the procedure to be followed if mechanical completion is not achieved in the appropriate time period. It also noted that Nicollet Projects has no plans at this time to replace a project that fails to achieve mechanical completion by the tariff deadline with another project.<sup>22</sup>

Based on its review of Xcel's filings and responses to Information Requests, the Department concluded that both the Company's protections to ensure Nicollet Projects have and will not be given preferential treatment appear to be reasonable and supported.

#### *Cost allocations between Xcel Energy Services (XES) and Nicollet Projects*

The Department reviewed cost allocations between Xcel Energy Services (XES) and Nicollet Projects to ensure that ratepayers will not subsidize operations of the affiliate. The Company indicated that, if employees of XES support Nicollet Projects, the Company will both assign any direct costs and allocate any indirect costs to Nicollet Projects. The Department asked Xcel to provide a copy of the ASA in order to review the types of services and related cost allocation methods that XES expects to provide and use for Nicollet Projects portfolio of projects. The Department also asked Xcel to explain whether the assigned and allocated costs of XES to Nicollet Projects would be included in any current or future agreements and whether the costs would be included in the solar costs billed to ratepayers.<sup>23</sup>

Based on its review of both Xcel's response to Department IR No. 3 and the Company's ASA, the Department concluded that the Company's cost assignments and allocations between XES and Nicollet Projects are reasonable at this time, with the exception of Xcel's use of the Employee Ratio.

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<sup>21</sup> See Xcel response to DOC IR No. 6, attached to the DOC's comments.

<sup>22</sup> See Xcel response to DOC IR No. 6, attached to the DOC's comments.

<sup>23</sup> See Xcel response Department IR No. 3, attached to the DOC's comments.

The Employee Ratio, based on number of employees, is used several times in the Company's ASA. The Department found that the use of allocators based on number of employees is inconsistent with a past Commission Order and noted that the Commission's March 25, 2011 Erratum Notice Order, *In the Matter of Northern States Power Company's Cost Allocation Procedures and General Allocator*, states:

The Company shall change the formula for the general allocator and for all allocators in which it uses number of employees to substitute Allocated Labor Hours with Overtime in place of Number of Employees.

Based on the findings in this Order, the Department recommended that the Commission require the Company to change all Employee Ratio allocations to Allocated Labor Hours with Overtime. It also recommended that the Company review past Commission Orders addressing cost allocations to ensure that no other incorrect allocators are being used in the ASA. The Department noted that further review of cost assignments and allocations with actual costs may be necessary to ensure reasonable results. Therefore, in future rate recovery filings or in annual reporting compliances, the Department may recommend changes to these costs and cost assignments and allocations between XES and Nicollet Projects.

The Department recommended that the Commission approve the Company's ASA, modified as proposed by the Department to replace all Employee Ratio allocations with Allocated Labor Hours with Overtime allocations. It also recommended that the Commission require Xcel to show that all cost allocations in the ASA are consistent with past Commission Orders in its annual reporting compliance.

#### *Office of the Attorney General (OAG)*

The OAG noted that approval of the petition would allow Nicollet Project, a subsidiary owned by Xcel's corporate parent, to take ownership of community solar gardens. It recommended that the Commission reject Xcel's petition with prejudice for two reasons. First, it argued that neither Xcel nor sister companies within the Northern States Power Company system should be permitted to participate in the community solar garden market because they would have a competitive advantage over other firms not owned by Xcel. Second, it argued that if Xcel is allowed to own CSGs, the Company will have a vested interest in the method in which CSG owners are compensated. This could create a conflict of interest in which the Company's financial interests are not consistent with the best interests of its ratepayers.

The OAG argued that the Commission's legal obligation under the CSG statute (Minn. Stat. § 216B.1641) allows it to approve an Xcel-owned solar garden, but does not require it to do so, emphasizing that the statutory language says that it "may" be an owner. The OAG also argued that Nicollet Projects is not a public utility but an unregulated affiliate owned by Xcel. Even if the definition of a public utility extends to an affiliated interest such as Nicollet Projects, the Commission may decide to deny Xcel's petition. The OAG argued that this reflected the legislature's intent "to preserve the Commission's authority to decide whether a utility should

be permitted” to approve utility ownership.<sup>24</sup> In each instance where a utility or utility-affiliate seeks CSG ownership, the OAG argued that the Commission should be guided by its duty to ensure just and reasonable rates and to protect the public interest. While Nicollet Projects may be legally permitted to own CSGs, the Commission has the discretion to decide whether they should be allowed to do so.

Each contract specifying a utility-owned affiliated interest undertaking a CSG is therefore an instance in which the Commission may decide for or against the contract based on the usual criteria of reasonable rates and the public interest.

The OAG argued that an affiliate owned by Xcel may have a competitive advantage over third-party CSG owners because it enjoys a special relationship with its customers that could lead to advantages in marketing to customers and obtaining subscriptions.

In addition, the OAG argued that Xcel would be in a position to give preference to its own affiliate on issues such as interconnection (although in this case an interconnection agreement is already in place). The OAG maintained that the mere knowledge of this special opportunity for its affiliates might discourage other developers from entering the Minnesota solar market.

Finally, the OAG argued that ownership of CSGs would give the Company a financial interest in maximizing the compensation rate paid to subscribers, in conflict with its interest in keeping bill credit rates low. It might also lead the Company to oppose reforms that would lower profits to CSG owners, such as market-based procurement. According to the OAG, it does not matter whether Xcel has taken or would take actions in response to the new incentive, the concern is that it is not in the public interest to create new incentives that are not aligned with the interests of ratepayers.

#### *Xcel reply to Department and OAG*

In reply, Xcel asked the Commission to: (1) approve the use of the Interconnection Agreement and S\*RC Standard Contract for the CSG projects to be purchased by Nicollet Projects, and (2) approve the ASA between XES and Nicollet Projects.

Xcel responded to the OAG by arguing that issues related to process fairness were addressed by the Company in response to Department IRs Nos. 1-9. Specifically, Nicollet Projects is not handling the interconnection and siting process or the customer-facing, subscriber recruitment process. Both processes have safeguards in place to ensure that Nicollet Projects does not gain advantages over other participants given that it is an affiliate of the Company. In addition, Xcel commented that because Nicollet Projects is an “off-taker” of completed projects, and not a developer, the OAG’s concerns are misplaced.

Xcel noted that NEE (the Seller) began the development of the CSG projects on their own and initiated the interconnection process before entering into an agreement with Nicollet Projects.

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<sup>24</sup> OAG, October 25, 2017, p. 2.

Xcel referred the Commission to the Company’s response to DOC IR No. 4, which indicates that the siting and interconnection responsibilities were managed by NEE. Nicollet Projects (the developer) will incur the same costs for interconnection and distribution system upgrades as any other developer participating in the program. The interconnection and/or development costs will not be affected by the fact that the projects eventually will be owned by an Xcel affiliate.

Also as part of the response to DOC IR No. 4, Xcel described the safeguards that ensure the CSG projects have not received preferential treatment in the interconnection process. NEE followed the S\*RC program process in the same way as any other developers. All projects were submitted for approval before initial discussions between NEE and the Company or Nicollet Projects commenced. Nicollet Projects will be bound by all the same Commission-approved tariffs for the S\*RC program as other developers, and will have no special access to non-public distribution grid information, customer data, or program data. Xcel submitted affidavits by the negotiating team to attest to these facts.

Rather than discouraging other developers from entering the market due to an unfair advantage or receiving preferential treatment, Xcel believes that participation by Nicollet Projects will benefit the program as a whole. As an off-taker of project portfolios, Nicollet Projects provides a long-term ownership exit strategy for developers wishing to sell portfolios of constructed projects.

Xcel maintained that the model Nicollet Projects is using as an eventual garden owner assures that neither it nor the Company will benefit from access to customer data or other potential “marketing” advantages. As explained in response to DOC IR No. 4, neither the Company nor Nicollet Projects is handling the customer-facing aspects of the CSG directly. Nicollet Projects will be outsourcing the subscriber-facing contact to NEE through a Customer Management Agreement. NEE has been independently marketing the subscription offer for its projects to potential subscribers without any information or assistance from Nicollet Projects or Xcel. Per the Customer Management Agreement with NEE, in the event a subscriber were to withdraw from the program, replacement of that subscriber will be handled by NEE, who has no greater access to the Company’s customer records and market research than any other solar developer.

Xcel argued that the OAG’s claim—that if a non-regulated affiliate participated as a garden owner this would modify Company behavior with respect to program costs—is wholly unsupported.<sup>25</sup> Xcel noted that the OAG’s suggestion that neither Xcel nor sister companies within the Northern States Power Company system should be permitted to participate in the CSG program would effectively preclude the Company’s involvement in the low income customer program at Railroad Island in St. Paul. Under this pilot, Xcel will own the Railroad Island solar facility directly. The Company has in that docket set forth its compliance with the statutory requirement to treat utility- and non-utility participation alike, as well as a plan to safeguard against discriminatory treatment. The OAG did not object to Xcel’s participation in the pilot or the Company’s ownership of the solar facility in that case.

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<sup>25</sup> Xcel reply, November 6, 2017, pp. 5-6.

Xcel asked the Commission to approve its Affiliated Interest request. The Company will utilize a regulatory adjustment to make sure that the indirect cost allocation procedures comply with Commission Order. It concluded that the OAG's objection did not raise any concerns not already addressed and refuted in Information Requests or evidence provided in its Petition. Xcel argued that the OAG objection is overly broad, unsupported, and may harm future CSG program developments, including the ability for the Company and its community partners to expand access to community solar for low-income customers.

Xcel agreed to provide all of the documentation requested by the Department in its annual compliance filings. This includes documentation that all cost allocations are consistent with past Commission Orders and a comparison of the actual amounts allocated to Nicollet Projects with the estimated costs as provided in Department IR No. 3.

With respect to cost allocation, the ASA and the Company's financial accounting will proceed as described in response to Department IR No. 3.

Xcel explained that for ratemaking purposes it applies a regulatory adjustment consistent with the Commission's March 25, 2011 Erratum Notice Order, in the Cost Allocation Procedures and General Allocator docket, Ordering Paragraph 1, which the DOC referenced in its comments. The Order states:

The Company shall change the formula for the general allocator and for all allocators in which it uses number of employees to substitute Allocated Labor Hours with Overtime in place of Number of Employees.

This regulatory adjustment implements the compliance sought by the Department for Minnesota without disrupting the accounting methods and agreements that govern cost flows across Xcel Energy and its other jurisdictions. The Company explained that it applied this adjustment in each of its last three Minnesota rate cases in order to comply with the Commission's order:

- Docket No. E002/GR-12-961, Heuer Direct, page 81.
- Docket No. E002/GR-13-868, Heuer Direct, page 137-138.
- Docket No. E002/GR-15-826, Heuer Direct, page 90-91.

Because of this regulatory adjustment in rate cases, the Company believes alterations to the ASA specific to the State of Minnesota are unneeded. (*Staff note:* The Department confirmed the Company's understanding and proposal for the treatment of this issue.)

## IV. Staff Discussion

The Commission will need to decide if the threshold affiliated interest requirements related to the contracts enabling Nicollet Projects to participate in the CSG program have been met. In addition to a decision on these requirements, it will also need to consider what broader standards and considerations should apply to Xcel-affiliate participation in the CSG program. With respect to both the affiliated interests standards and the CSG statute and orders, the Commission will need to decide if Xcel's petition is reasonable and in the public interest.

### *Affiliated interest requirements*

The first issue is whether the contracts and agreements between Xcel and Nicollet Projects comply with the affiliated interest standards. The Department agreed with Xcel that together, Minn. Stat. §216B.48, subd. 3, and Minnesota Rules 7825.2200, subp. B establish the standards for approval of an affiliated interest request. The Department thoroughly reviewed Xcel's petition and affirmed that the affiliated interest requirements in statute and rules have been met. However, it recommended an adjustment to the Employee Ratio allocation method, to which Xcel agreed. The Department also suggested an annual compliance filing to allow the Commission ongoing oversight of cost assignments and allocations between Xcel and its affiliated, Nicollet Projects.

The statutory language in the relevant subdivision of the affiliated interest statute provides for Commission approval of an affiliated interest contract only if after investigation it appears reasonable and in the public interest. For this reason, the Department's review centered on the two contracts to be signed by Xcel and its affiliate. The Department concluded that both appear to be reasonable and consistent with the public interest.

The statute also indicates that no contract with an affiliate is valid without approval from the Commission. Because the two contracts under consideration have already been approved by the Commission, and will, according to Xcel, be applied without changes, the Commission may wish to affirm that they meet the standard of review for contract approval.

Included as part of the Department's review was an evaluation of cost allocations between Xcel Energy Services (XES) and Nicollet Projects to ensure that Xcel's ratepayers do not subsidize operations of the affiliate. The Department concluded that the Company's cost assignments and allocations of activities between XES and Nicollet Projects are reasonable, with the exception of the aforementioned Employee Ratio. Xcel agreed to make changes to this ratio as part of a regulatory adjustment in rate cases and the Department accepted this proposal.

Under the affiliated interest statute, the Commission also has continuing authority over affiliated-interest agreements. The Department noted that the Interconnection Agreement and Standard Contract are specific to the 14 solar projects allowing Nicollet to participate in the CSG as an affiliate, but that even in this limited circumstance continued reporting and review are appropriate. The Department noted that further review of cost assignments and allocations may be necessary once actual costs are known, and that as this information becomes available, it may recommend further adjustments.

The Department also observed that as long as Nicollet Projects is held to the same standards as other CSG owners and operators, and is using the same Interconnection Agreement and Standard Contract, in this limited case, competitive bidding is not necessary.

Finally, the Department concluded that Xcel, through its petition and responses to Department Information Requests, had provided the affiliated-interest information necessary to meet the requirements of Minnesota Rules 7825.2200, subp. B, which sets out what must be included in a utility affiliated-interest filing.

Staff notes that the OAG did not appear to comment directly on compliance with the affiliated interest rules and statutes.

In conclusion, staff believes that the Department has performed a thorough review of Xcel's affiliated interest request and the contracts agreed to by Xcel and Nicollet Projects, and has confirmed that they meet the standards in the affiliated interest statute and rules. If the Commission agrees that the Department has met its standard of review, it can move on to consider the broader relationships between affiliated interest participation and the CSG program.

#### *CSG program requirements*

The second issue is whether the provisions of the CSG statute pertaining to public utility ownership and non-discrimination apply to an affiliated interest of a public utility such as Xcel. The CSG statute does not directly address the question of public utilities' affiliated interests or whether the affiliate may own or operate a community solar garden. It does, however, clearly state that a CSG owner "may be a public utility or any other entity or organization that contracts to sell the output" of the garden to the utility under section 216B.1641. Although Nicollet Projects is not a public utility furnishing retail service, it will be an affiliate of Xcel.<sup>26</sup>

The CSG statute in subdivision 3 requires that utility and non-utility CSG facilities must not face "different requirements." In applying this standard, in its April 7, 2014 Order, the Commission indicated that:

.....if Xcel in the future decides to offer its own solar gardens, the Commission will require the Company to submit a proposal for Commission approval including a detailed explanation of processes and procedures to ensure that third-party and utility solar gardens are treated in a nondiscriminatory fashion. This requirement will serve the public interest by advancing the solar-garden statute's directive that the plan approved

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<sup>26</sup> As noted, Xcel believes that Nicollet Projects, as a non-regulated entity, is not obligated to obtain Commission approval for its participation in the program. The Company emphasized that the purpose of its petition is to seek regulatory approval of the agreements between Nicollet Projects and the Company in order to facilitate the participation under affiliated interest requirements of Nicollet Projects in the S\*RC program.

by the Commission “not apply different requirements to utility and nonutility community solar garden facilities.”

Staff briefing papers of January 25, 2018, concerning Xcel’s proposal for a low-income CSG pilot program, assessed and analyzed the issue of non-discrimination between utility-owned and non-utility CSG projects in light of the many comments by developers over preserving a competitive environment if Xcel was allowed CSG ownership. In that docket, the Commission was following through on its direction to Xcel to develop a CSG proposal for low-income customers by March 1, 2017.<sup>27</sup> After receiving Xcel’s proposal and parties’ comments, the Commission’s Order of March 6, 2018 concluded that the importance of serving low-income customers justified ordering Xcel’s plan and that the Railroad Island Pilot should proceed.

While the Commission’s concern in that docket was primarily related to the needs of underserved low-income customers, it nonetheless was the first time Xcel was permitted to own a CSG. In the current docket, the question is not one of ownership but the one-step-removed position of an Xcel affiliate. In this case, at issue is whether the facts describing the affiliated interest relationship and the various safeguards put in place are sufficient to assure non-discrimination. The OAG has warned, for example, that the proposed arrangement could allow Xcel or Nicollet Projects to take advantage of customers’ familiarity with the Company to obtain subscriptions, or give preference to its own investments or the investments of its parent company or affiliates.

Both Xcel and the Department analyzed the question of the proposed affiliated interest contracts by treating the affiliate arrangement with Nicollet Projects as if it was subject to the same non-discrimination provisions of the CSG statute that apply directly to public utilities. Both spent considerable effort to provide assurances that the arrangement would not present problems of discriminatory treatment or anti-competitive behavior of the sort concerning the OAG. For example, Nicollet Projects will purchase the 14 garden projects only after they have completed both the application and interconnection process. This and other safeguards were explained and further detailed in response to numerous information requests from the Department. The Department concluded that the Company’s protections ensure that Nicollet Projects has not been, and will not be, given preferential treatment and that other solar developers will not be treated in a discriminatory manner.

Among the safeguards described by Xcel to assure non-discriminatory treatment in the case of Nicollet Projects were the following:

- Neither the Company nor its affiliate have initiated or will maintain any of the current or future subscriber contracts, nor the operation or maintenance of the projects; the seller has marketed subscriptions without assistance from the Company or its affiliate.
- Under the tariffed contracts, Nicollet Projects will be in the same position as other CSG operators and required to meet all the same contractual terms of program participation.

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<sup>27</sup> See Commission’s Order, issued September 6, 2016, in 13-867, Order Point 9.

- Nicollet Projects will have no special access to grid information and program data, or to Xcel program or engineering staff not available to other developers.
- No Xcel employees will support Nicollet Projects and XES support costs will be directly allocated to Nicollet or addressed in the ASA.
- No Xcel employees will support Nicollet Projects on O&M related to solar facilities.

Assuming that CSG ownership by an affiliate of a utility confers the same obligations under the CSG statute as utility-ownership, the Commission must decide whether Xcel and the Department have shown that in this case those obligations have been met. Staff believes there is evidence in the record to support this position, but suggests that Commission approval and findings be limited to this case.

A narrow determination in favor of the affiliated interest arrangement could find that these assurances and safeguards are sufficient to permit Nicollet Projects to participate in the CSG program because it is even further removed from Xcel than might otherwise be the case. However, the Commission might qualify this judgment by noting that it does not carry over into future cases of utility affiliated interest participation in the CSG program. This action would preserve the Commission's authority to continue to monitor and review whether future participation of a utility affiliated interest might lead to discriminatory or anti-competitive conditions.

If the Commission approves the use of the two CSG contracts (Interconnection Agreement and S\*RC Standard Contract) for these 14 projects, in order to allow participation by Nicollet Projects in the CSG program, the affiliate's participation would represent only a small segment of the market.<sup>28</sup> The Commission could therefore acknowledge the role of affiliated interest participation in the CSG program while continuing to review future requests as they arise.

### *Issues raised by the OAG*

The OAG raised a number of issues relating to the position of Xcel in the CSG market and the extent to which this might put the Company, or its affiliates, in a position of relative competitive advantage compared to other developers. These concerns led the OAG to urge the Commission to reject Xcel's petition with prejudice, both for reasons of anti-competitiveness and because of potential conflicts of interest relating to the level of CSG compensation. If these arguments are accepted, it suggests that any future participation in CSGs by an affiliated interest, or by the utility itself, should be rejected.<sup>29</sup>

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<sup>28</sup> As of April 4, 2018, Xcel's CSG program had 335 MWs in Commercial Operation ("in-service"). See Xcel's CSG Monthly Update, filed April 16, 2018.

<sup>29</sup> Commenting on the Railroad Island case, Xcel noted that the OAG's suggestion that neither Xcel nor sister companies within the Northern States Power Company system should be permitted to participate in the CSG program would effectively preclude the Company's involvement in the low-income customer program at Railroad Island.

As noted above, the Commission already ruled in favor of an Xcel-owned CSG when it approved the Railroad Island low-income project.<sup>30</sup> In the March 6, 2018 Order approving the pilot, the Commission responded to parties' concerns over the possibility of discriminatory treatment of non-utility providers. The Commission's Order cited Xcel's three principles assuring that it "would refrain from giving the RENEWs project any treatment that would not be available to other solar garden proposals."<sup>31</sup> The Commission's summary conclusion in the Order stated that at that time it would "not require additional safeguards concerning the pilot program's effects on other solar gardens."<sup>32</sup>

In the Railroad Island case, therefore, similar questions of anti-competitiveness and discrimination were raised as a possibility by some parties (although staff notes that none of those parties raised these issues in the current docket). In that case, part of the Commission's objective was to provide access to CSG for low-income customers—"an outcome that few utilities have achieved."<sup>33</sup> As a means of gathering more information, and as a way of monitoring the project, the Order went on to specify a list of reporting requirements to act as due diligence over project progress and impacts. As suggested above, if the Commission was willing to permit Xcel ownership in that case, then indirect ownership of CSG's through an affiliated interest may also be permissible under specific conditions.

The OAG noted that the legislative intent of the CSG statute was to "preserve the Commission's authority to decide whether a utility should be permitted" to own a CSG, but did not explain how it came to this conclusion. As noted, the two provisions of statute bearing directly on this issue: the provision stating that "the owner of a CSG may be a public utility or any other entity or organization that contracts to sell the output from the community solar garden to the utility" and that "different requirements" may not be applied to utility and nonutility gardens, appear to staff to embrace the possibility of participation by an affiliated interest. Together they might be interpreted to suggest that utilities can own and operate CSGs, whether directly or indirectly, subject to Commission approval.

Nonetheless, the OAG's concerns may become relevant if utility ownership of CSG's expands beyond the 14 projects (18.5 MW) contemplated in this docket, or if the nature of the participation by an affiliate is factually different. As noted, the proposed arrangement currently would represent a very small segment of Xcel's overall CSG program capacity.

The OAG is also concerned, however, that the mere presence of a large and visible utility like Xcel might give it or its affiliate a brand advantage and deter new entrants to the CSG market. For these reasons, as suggested above, the Commission may wish to reiterate that any further affiliated interest participation in Xcel's or other utilities' CSG program seek and receive

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<sup>30</sup> See the Commission's *Order Approving Pilot Program with Conditions*, in Docket No. E-002/M-17-527, issued March 6, 2018. Also, see Staff Briefing Papers for the January 25, 2018 agenda meeting, p. 10, pp.15-17, and pp. 24-26.

<sup>31</sup> *Order*, in 17-527, issued March 6, 2018, p. 7.

<sup>32</sup> *Order*, in 17-527, issued March 6, 2018, p. 2.

<sup>33</sup> *Order*, in 17-527, issued March 6, 2018, p. 11.

Commission approval and that the level of utility or affiliated participation in the CSG program be monitored.<sup>34</sup>

If the Commission approves the use of the two contracts by Xcel's affiliate, it can also reserve its right of review for any future affiliate-owned CSG projects. It may also wish to require requiring reporting requirements on the extent and conduct of any other affiliated interest participation in the CSG program. If the number of affiliated interest contracts begins to grow, and the conduct of the affiliated firms raises questions of discrimination or anti-competitiveness, the Commission may decline to approve them.

Therefore, in assuring compliance with the standards for CSGs set forth in the CSG statute and implementing orders, including the Commission's Order on the low-income pilot, the Commission can approve the affiliated interest contracts in this docket. It can refer again to the fact that the application and interconnection agreements are already complete. At least in this case, these facts make it appear unlikely that Xcel provided any special treatment to NEE. In addition, upon the close of the transaction, NEE, not Nicollet Projects, will be responsible for subscription management and O&M services. These provisions reinforce a conclusion that the project places Xcel in a position not to "apply different requirements" to the projects, consistent with the CSG statute.

Moreover, as required in the Commission's CSG Order of April 7, 2014, Xcel has in this case provided a "detailed explanation of the processes and procedures to ensure that solar garden operators are treated on a non-discriminatory basis." Staff therefore concurs with the conclusions of the Department in its investigation and review of Xcel's filing and responses to Information Requests, that the Company's protections to ensure Nicollet Projects has not and will not be given preferential treatment appear well-supported and reasonable.

An implication of the affiliated interest standards for approval and monitoring of contracts as well as the application of the CSG statute is the need for transparency. This transparency may help to allay the concerns expressed by the OAG as well as any future concerns raised by nonutility developers. Requirements for regular reporting and compliance filings can be seen as a primary means of assuring such transparency.

As a last consideration, the Commission can consider whether the safeguards Xcel provides in this matter may also apply to future instances of affiliated interest participation in the CSG program. Even if the Commission approves Xcel's request in this case, it can still question whether the standards applied here will also apply in other cases. For example, the fact that the application approval and interconnection agreements were in place prior to affiliate participation may or may not always be true. In other cases, affiliates of the utility may not be as easily restricted from access to grid information and customer or program data. In short, it is unclear whether the Nicollet Projects' arrangement will be the model for other affiliated

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<sup>34</sup> The Commission should note that contrary to the OAG's argument related to anti-competitive behaviors, Xcel noted that the purchase of projects by Nicollet Projects could work to strengthen the CSG program by increasing the number of CSG transactions and providing additional capital to develop more projects.

interest participation requests. Therefore, staff suggests that these and other questions related to safeguards be considered further if Xcel files another request for affiliate participation.

In summary, staff believes that the Company's safeguards ensure that Nicollet Projects does not have and will not be given preferential treatment. First, in this case the negotiations for the sale transactions began after the project applications were filed. Second, Nicollet Projects will operate under the same tariffed contracts as all other developers or garden operators. Third, marketing of subscriptions was undertaken independently of Nicollet Projects. Fourth, Nicollet Projects will receive no special access to data or distribution information. Lastly, Nicollet Projects will outsource O&M without any support from Xcel.

### *Reporting Requirements*

In order to maintain ongoing oversight of Xcel's affiliate, the Department proposed an annual reporting requirement to which Xcel agreed. This will require Xcel to show, as part of an annual compliance filing in the current docket (E-002/AI-17-577), the actual costs assigned and allocated from Xcel Energy Services (XES) to Nicollet Projects. These will be compared to the estimated costs by services or cost categories, using a format similar to that provided in response to DOC IR No.3.

Even where affiliated interest requirements are met, the Commission should continue its oversight of affiliate participation to assure that it remains consistent with the goals of the CSG program. To assist in this oversight, the Commission may wish to ask Xcel to report on the number of affiliate-owned projects and the MW capacity associated with each project. This information could be provided as part of the Company's annual S\*RC report (filed April 1, in Docket No. 13-867).

## V. Decision Options

### *Affiliated interest approval*

1. Approve the use of Xcel's two tariffed contracts, the S\*RC Standard Contract and the Interconnection Agreement, as they relate specifically to the 14 projects proposed in this docket, in order to allow participation by Nicollet Projects in Xcel's S\*RC program. *(Xcel Energy, Department)*
2. Approve the Administrative Services Agreement (ASA) between Xcel Energy Services Inc. (XES) and Nicollet Projects, with the modifications to the Employee Ratio allocation method proposed by the Department reflected through adjustments in future rate recovery proceedings. Find that the ASA between XES and Nicollet Projects will be subject to future review in rate recovery proceedings where Xcel will demonstrate that all cost allocations are consistent with past Commission Orders. *(Xcel Energy, Department)*
4. Deny Xcel's Petition. *(OAG)*

### *Reporting requirements*

5. Require Xcel to show, as part of an annual compliance filing in the current docket (E-002/AI-17-577), the actual amounts of costs assigned and allocated from Xcel Energy Services (XES) to Nicollet Projects compared to the estimated costs by services or cost categories, using a format similar to that provided in response to Department Information Request No.3, in the current docket. *(Xcel Energy, Department)*
6. Require Xcel to report on the number of projects owned by an affiliated interest of the Company, including the associated MW capacity by project, as part of the Company's S\*RC Annual Report, filed annually on April 1, in Docket No. E-002/M-13-867. *(Staff proposed for Commission consideration)*

### *Compliance filings*

7. Where not otherwise specifically required, require Xcel, within 30 days of the Order in this matter, to submit compliance filings in the current docket and, if necessary, updated tariff sheets to reflect the Commission's decisions.