

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

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Commissioner
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**In the Matter of the Petition for
approval of Northern States Power
Company, dba Xcel Energy, for
approval of its Community Solar
Garden Program**

**MINNESOTA SOLAR ENERGY
INDUSTRIES ASSOCIATION'S
COMMENTS ON XCEL
ENERGY'S SECTION 9 TARIFF
REVISIONS**

February 8, 2019

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

**COMMENTS OF THE MINNESOTA SOLAR ENERGY
INDUSTRIES ASSOCIATION**

The Minnesota Solar Energy Industries Association (MnSEIA) offers the following comments concerning Xcel Energy's (Xcel) Community Solar Garden (CSG) program changes arising from the Section 9 Tariff revisions filed on December 14, 2018.¹

A. Without Additional Information, Xcel Energy's Change In Program Deposit Allocation Is Inappropriate And Should Be Precluded.

On the issue of the initial deposit, MnSEIA must note that it is either very problematic for the industry or quite minimal in nature, depending on what more we learn about the topic. If Xcel's intention is to align the deposit process with current practice, then we are less concerned about it. However, if the intention is to begin using it to apply to other outstanding bills, as opposed to being an initial hurdle, then MnSEIA is concerned.

As such, we hope to discuss this item with Xcel at the next S*RC Working Group meeting on February 14, 2019. Thereafter, we may retract this issue in our Reply Comments, if it is in fact a largely non-programmatic change or our interpretation is otherwise incorrect. We have opted to approach our commentary this way, instead of an extension request to do our best to keep this process on time, while having our issues sorted out in the docket.

¹ OTHER – TARIFF PETITION, XCEL ENERGY, Docket No. E-002/M-13-867, Doc. Id 201812-148510-01 (Dec. 14, 2018) [Hereinafter, *Tariff Petition*].

One thing to note on the issue of deposits before we highlight the industry’s potential concerns, is that the new deposit language would return the initial deposit once a developer places its initial Interconnection Deposit. This is sensible decision and a good program change.²

a. The Deposit Change Harms Developer Financing.

The primary challenge that this deposit change has on the industry is that it effectively turns a deposit into a payment. There is very little guarantee that the developer will get their deposit back, if Xcel can reappropriate it for whatever it wants to. On a balance sheet, this \$100,000 deposit becomes a liability; and is now a garden cost. This makes financing a project all that much harder. Some developers have even informed us that using low-cost US Bank escrow facilities is not possible under a strict interpretation of this tariff revision.

Xcel is basically using the deposit as a blank check to cover costs as it sees fit, and this jeopardizes a developer’s ability to finance a project by adding an additional cost.

b. The Deposit Change Is May Be Both Contrary To Law And Outside Xcel’s Or The Commission’s Ability To Regulate.

One of the biggest harms from this change is that Xcel may use the funds against parties not engaged in the garden development process. Each garden is its own separate LLC, but Xcel’s approach breaks the typical understanding of corporate individuality and lumps all LLCs associated with a specific developer or financier into the same bucket. According to Xcel’s redlines “[...] the Company shall return to the garden operator the remaining portion of the deposit after first applying the deposit towards any past due amounts that the garden operator (or any corporate affiliate of the garden operator) owes to the Company pursuant to the Solar*Rewards Community Program.”³ So in the instance of a developer using multiple financiers or having different gardens with different financiers backing them, the parties may lose their deposit money due to the non-payments of parties not affiliated with an individual garden. This could lead to one party effectively stealing deposit money from another.

For example, let us assume Developer X uses Financier 1 and Financier 2, and Developer X has separate LLC gardens with each Financier. Let’s further assume Financier 1 owes Developer X \$100,000, and as such, Developer X owes Xcel Energy \$100,000 in past due payments. Under Xcel’s change, Xcel will apply \$100,000 of Financier 2’s deposit to Developer X’s outstanding bill. As this example clearly illustrates, the language within the tariff is incredibly problematic for the industry, because it makes financing complicated and risky. It may also not be within the Commission’s jurisdiction or Xcel’s to hold harms caused by another party to the detriment of another financier.

² *Tariff Petition, supra* note 1 at 6.

³ *Id.* at Sheet No. 66.1 of Redline.

c. The Deposit Change Is Outside The Scope Of Interconnection.

Xcel's changes to the deposit are not in accordance with the intentions behind the interconnection standards changes. Xcel is using this opportunity to make program changes that are over and above the scope of this transition. According to Xcel's December 14, 2018 filing, "As part of the Company's review of our Section 9 Tariff in compliance with the Minnesota Distribution Interconnection Process as set forth in Docket No. E002/M18-714, we submit these tariff changes to create further clarification in the program and relieve certain concerns we have seen ongoing as part of our process."⁴ However, the deposit portion of the application is really outside the scope of "Interconnection Standards" in the traditional sense. The deposit is provided at the outset of the application process and later developers are required to provide additional compensation for an Interconnection Application (IA).

The purpose behind this reallocation of the deposit, seems to be to require developers to pay other outstanding bills. While MnSEIA agrees that outstanding bills likely are frustrating for Xcel, utilizing deposit money for any bill whatsoever blends the interconnection component of the process with the initial application period. Instead the additional costs should be recouped through the IA process to better align with the intention of the MnDIP transition.

B. The Change In The Participation Fee From \$300 To \$500 Is Unexplained And Unnecessary.

Xcel has argued that the large amount of gardens is resulting in more administrative challenges, and thus requires raising the program participation fee. But Xcel has provided no real evidence that this change is necessary or that this is the correct level of a price change. Their statement is as follows in the December 14, 2018, Tariff Petition:

d. Participation fee

Garden Operators pay an annual participation fee of \$300 per garden beginning in the February following the first full year of commercial operation. This fee is intended to cover the cost of log-in and maintenance of the garden subscriber management system, the system of record for garden and subscriber information. With the increase of subscribers, now totaling more than 12,000, the administrative cost and application management costs have begun to significantly increase.

A full time staff member was hired to specifically manage subscriber billing concerns and help Garden Operators manage the online system. In addition, further modification and updates to our online application tool will need to be modified to continue to meet the needs of these customers. The Company is

⁴ *Tariff Petition, supra* note 1 at Cover Letter.

proposing to increase the participation fee from \$300 to \$500 per year to recover the increasing costs in staff and our online application system.⁵

Currently there are 505MW of projects online in Xcel's service territory.⁶ So Xcel is now collecting \$151,500/year from program participation fees. This should be more than enough for even a well-paid full-time staffer. As far as "the cost of log-in and maintenance of the garden subscriber management system, the system of record for garden and subscriber information" goes, Xcel has not opined on what that actually costs, nor have they explained whether a \$200/year increase would 1) cover the changes; 2) more than cover it; or 3) need further revision higher in later iterations of the program.

While this change may seem minor, CSGs do have 25-year contracts with the utility and so this change represents an additional cost of \$5,000/project (\$200/yr increase x 25yrs). While this would not likely cripple a project, it is enough money to at least require Xcel to justify the change.

A. The New S*RC Program Tariff Should Retain the Essential Elements of the Independent Engineer Mechanism, As Compatible With MN DIP Section 5.3.6.

The Independent Engineer (IE) process has been a fairly successful approach for evaluating technical challenges with interconnection studies for participants in the CSG program. The IE came out of the CSG co-location settlement with Xcel and was a way to ensure the utility was applying modern and correct approaches to determining its interconnection costs, requirements and other parameters. The process has been used by several CSG developers, and has helped them resolve multiple interconnection disputes with Xcel without ever having to bring the dispute before the Commission.

While we understand the need to transition to the new MN DIP process, there is no inherent conflict between that new process and retaining the essential elements of the IE mechanism that was agreed to via settlement with Xcel. The Commission should instead seek to integrate Section 9 with the MN DIP's third-party mediator dispute-resolution process in a way that honors and preserves the essential elements of IE mechanism, as agreed to in the co-location settlement.

Unfortunately, Xcel's proposed Section 9 redline appears to suggest simply deleting the IE mechanism for new applications. Compare proposed Section 9 tariff at Sheet 68.19, subd. 9 (for new applications) against Sheets 68.11-13, subd. 9 (for pre-MN DIP applications). But that

⁵ *Tariff Petition, supra* note 1 at 7.

⁶ COMPLIANCE FILING – STATUS OF THE SOLAR REWARDS COMMUNITY PROGRAM UPDATE, XCEL ENERGY, Docket No. E-002/M-13-867, Doc. Id 20191-149171-01 at 3, Table 1: Status of Applications (Jan. 14, 2019)

would overreach, and is not compelled by the Commission’s Order directing Xcel to adopt the new MN DIP.

For this reason, we respectfully ask the Commission to adopt the following language for Xcel’s proposed new Sheet No. 68.19 (at subdivision 9), in order to retain the IE mechanism in a way that’s compatible with the MN DIP dispute-resolution process:

9. Requests for Independent Engineer to Resolve Material Disputes Affecting Interconnection Application

- a. Any applicant may submit interconnection disputes materially affecting the application to an independent engineering mediator selected or approved by the Department to ensure neutrality, under MN DIP Section 5.3.6. A Company challenge over the suitability of the applicant’s selected mediator shall be decided in the first instance by the Department, with a time-limited right of appeal to the Commission. The independent engineering mediator may request additional information from parties necessary to resolve the dispute. The independent engineering mediator will make a determination of the issues in a written report which provides a description of the pertinent facts, the conclusions and basis for the conclusions.

The majority of this language is already present in the current approved Section 9 tariff, as show in the Attachment (below) via redline against the current tariff at Sheets 68.11-13). We do not anticipate that there will be a strong need for this process, but having the option will provide a level of confidence in the customer, developer and financier community – as well as the public generally - that the utility will act fairly when disputes arise.

C. The “Parent Guarantee” language is Overly Broad And An Unnecessary Precursor To Aggregated Annual Reporting.

On Sheet No. 77 of Xcel’s Tariff revision, requests that the developer has a “Parent Guarantee” that the financier will pay outstanding debts to the utility for all subsidiary gardens.⁷ MnSEIA’s concern is this language may be overly broad and may result in similar challenges that the deposit language included, but furthermore, this is an unnecessary requirement to aggregate a developer’s annual reporting.

This language may have the unintended consequences of making financing very challenging, because of all the gardens that are being underwritten through the guarantee. It is a requirement

⁷ *Tariff Petition, supra* note 1 at Red Line Sheet 77.

that for some developers is over and above the benefits received from the aggregated annual reporting option. That representation is too much of an add-on for something that should be standard practice and available to all developers.

MnSEIA suggests that this requirement be struck. Asserting ownership and control of the gardens in the down-line organization should be a sufficient precursor to this combined Annual Report.

Thank you for your consideration of these comments.

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ATTACHMENT

Black line version (insert into Section 9 Tariff at Xcel's proposed new Sheet No. 68.19, sub. 9)

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Redline version (from current approved Section 9 Tariff at Sheets 68.11-13)

9. Requests for Independent Engineer to Resolve Material Disputes Affecting Interconnection Application

- a. Any applicant may submit interconnection disputes materially affecting the application to an independent engineering mediator selected or approved by the Department to ensure neutrality, under MnDIP Section 5.3.6. A Company challenge over the suitability of the applicant's selected mediator shall be decided in the first instance by the Department, with a time-limited right of appeal to the Commission. ~~The independent engineer shall be available on a standing basis to resolve disputes on the study process, including material disputes related to the Company's determination of application completeness, timeliness of application and study processing, and the cost and necessity of required study costs and distribution system upgrades. The applicant requesting such an independent engineer review shall share 50% of the costs of the independent engineer. The safety and reliability of the Company's system should be given paramount consideration in any analysis. The review of the independent engineer must consider industry standards for interconnection, including the current version of the National Electric Safety Code, National Electric Code as adopted in Minnesota, FERC rules, NERC rules, Minnesota rules and Minnesota Interconnection Standards and must consider, on a case-by-case basis, the Company's standards for building, safety, power quality, reliability and long-term stable operations for building facilities even where such standards are more restrictive than the minimum requirements set forth in the codes, standards and rules. Continuity and consistency of using Company standards is paramount for employee safety. The standards employed by the Company (and as used by the independent engineer) should not vary, where applicable, from the standards which the Company uses when constructing, maintaining, or repairing its distribution network for purposes of providing service to~~

its own retail customers. However, if the independent engineer determines that a particular piece of equipment or engineering alternative proposed by Xeel is more restrictive than industry standards but does not discourage cogeneration or small power production, the Company may implement that alternative, if the Company pays the incremental cost in excess of the amount necessary to implement the industry standard. The additional incremental costs paid by Xeel cannot be included in the \$1 million material upgrade limit. Xeel would continue to have the burden of proof to show that it is reasonable for its ratepayers to pay for the costs of the more restrictive standards. This engineering review specifically excludes appeals relating to Co-Location Determination addressed in par. 4 above, and excludes disputes not related to the interconnection application such as disputes after interconnection has been achieved.

- ~~b. The applicant shall initiate such a request by submitting via email any such dispute to the Department. The Company must be copied on this email for this request to be effective. The submission of a such a dispute to the independent engineer may take place before the applicant is Expedited Ready, after being Expedited Ready but before a signed Interconnection Agreement, or after the Interconnection Agreement is signed but only related to issues occurring prior to initial energization of the Generation System.~~
- ~~c. Such a dispute which is submitted before the applicant is Expedited Ready or after the Interconnection Agreement is signed shall not affect Study Queue position.~~
- ~~d. A dispute which is submitted after an Interconnection Agreement is signed is limited to disputes on the actual costs incurred by the Company to interconnect the Community Solar Garden. A condition precedent to filing such a dispute is that the applicant must have first paid the amount in controversy. Such a dispute must be brought within 60 days of the date the bill is mailed or electronically sent by the Company under Section 10, Sheet 117, par. V.2.b.iii.~~
- ~~e. A dispute which is submitted after an application is Expedited Ready but before the Interconnection Agreement is signed may impact processing in the Study Queue for the applicant and for those behind the applicant in queue. If the issues presented to the independent engineer are in the Company's judgment so significant that they may impact the results of the engineering indicative cost study or impact as a practical matter how the Company studies the application or those in queue behind the applicant, then the Company may send notice to the applicant and to those behind the applicant in queue that it will not sign an Interconnection Agreement until the dispute raised to the independent engineer is resolved. Similarly, if the consequence of the independent engineer's determination (or any determination as affirmed or reversed by the Commission if any such appeal is taken) is that the scope of assumptions in the Engineering Scoping Cost study must be redone, then such studies will be redone and the Interconnection Agreement Time Line will be reset accordingly for all applications impacted by this determination.~~

- ~~f. Once a dispute is submitted and an independent engineer selected (i.e., the contract between the applicant, Company and independent engineer has been signed), the Company shall file a notice in Docket No. E-002/M-13-867 that includes (1) the filing and date, (2) the developer, (3) the engineer assigned, and (4) a brief summary of the disputed issues.~~
- ~~g. Once a dispute is submitted, the independent engineer will determine what additional information is needed from the applicant and/or the Company and when that information is needed. Both the applicant and the Company shall be included on all emails and communications to and from the independent engineer. The independent engineer should address only those issues necessary to resolve the dispute between the parties. The independent engineering mediator may request additional information from parties necessary to resolve the dispute before the independent engineer. The independent engineering mediator will make a determination of the issues in a written report which provides a description of the pertinent facts, the conclusions and basis for the conclusions.~~
- ~~h. There is an expectation that the independent engineer will issue its written determination on such a dispute within 30 calendar days of the dispute being submitted to it. As part of this program, the Company shall work with the Department and developers to develop a standardized format for independent engineer reports, including the independent engineer's credentials and licensure, and once that is developed the most current version of the standardized format should be used as the format for independent engineer reports. The independent engineer will provide a copy of the independent engineer report with its written determination via email to both the applicant and the Company. Once an independent engineer report is issued, the Company shall file it with the Commission within ten business days.~~
- ~~i. The applicant or the Company may appeal to the Commission the determination of the independent engineer by making a filing in Docket No. 13-867 (or such other docket as designated by the Commission) within 10 business days of the delivery of the independent engineer's written determination. A report delivered after 4:30 pm (central standard or central daylight savings time, as applicable) shall be considered to be delivered on the next business day. If an appeal is filed, notice shall be given to those on the E-002/M-13-867 service list, and the Commission will open a new docket. When a party appeals an independent engineer's report, each party must identify the documents submitted to the independent engineer in the record necessary for the Commission's record. Such an appeal should include all information relied upon by that party. Responses to any such appeal are due 10 business days from the date of the filing of the appeal. No reply to the response will be allowed.~~