

Staff Briefing Papers

Meeting Date	May 16, 2019	Agenda Item **4
Company	Xcel Energy (Xcel or the Company)	
Docket No.	E-002/C-19-203	
	In the Matter of a Formal Complaint Against Xcel Energy by SunShare LLC, Pursuant to Minn. Stat. § 216B.17	
Issues	Should the Commission grant the relief sought by SunShare LLC in its Formal Complaint against Xcel Energy filed on March 5, 2019?	
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✓ Relevant Documents

	Date
SunShare LLC Complaint (Public and Non-Public)	March 5, 2019
PUC Notice	March 13, 2019
Xcel response to Complaint (Public and Non-Public)	March 20, 2019
SunShare LLC reply comments (Public and Non-Public)	March 28, 2019
Department reply comments	March 28, 2019

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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.

 **Relevant Documents**

Date

Xcel Response to PUC IR #1 (Public and Non-Public)

April 29, 2019

SunShare Amended Request for Relief (Late Filed)

May 8, 2019

I. Statement of the issue

Should the Commission grant the relief sought by SunShare LLC in its Formal Complaint against Xcel Energy filed on March 5, 2019?

II. Introduction

The SunShare LLC (SunShare) Complaint pertains to the proposed development of a Community Solar Garden (CSG) project consisting of three co-located 1 MW gardens to be located in Lester Prairie, McLeod County (the Schiller Project).

The Complaint is the result of Xcel's decision to remove the Schiller Project from Xcel's CSG Program interconnection queue at the Lester Prairie substation. Once removed, SunShare was unable to request an Independent Engineer (IE) review of the January 24, 2017 engineering study results for the Project, or question the method used to model voltage fluctuations and flicker. SunShare claimed that a restudy would reduce interconnection costs and make the Project financially feasible, unlike the results of the January 24, 2017 study. SunShare seeks to have the Schiller Project reinstated in the queue at the substation, as well as asking for other forms of relief to be granted by the Commission.

SunShare's Schiller Project was removed from the CSG Program interconnection queue on April 26, 2017. The Complaint was filed on March 5, 2019. Both Xcel and the Department recommended dismissing SunShare's Complaint.

III. Background

On March 5, 2019, SunShare filed its Complaint and Petition for Expedited Relief against Xcel Energy.

On March 13, 2019, the Commission issued a Notice of Comment Period setting out a period for Xcel to respond to SunShare's Complaint and a period for reply comments.

On March 20, 2019, Xcel filed its response to the Complaint.

On March 28, 2019, SunShare and the Department of Commerce (Commerce) filed reply comments.

On April 25, 2019, the Commission issued its *Order Excluding Filing and Resolving Independent Engineer Appeal*, in Docket No. E-002/M-19-29, pertaining to SunShare's IE dispute over the Linden Project. In this Order, the Commission noted that during its April 18, 2019 meeting, the parties reported having developed a framework for agreement and resolution of their dispute. Based on these representations, and with the agreement of the parties, the Commission in part:

- Rejected the recommendations of the independent engineer’s report, and found that it was appropriate for Xcel to offer three MW of capacity at the Linden Project site based on the results of the June 27, 2017 engineering review study.
- Directed that by April 26, 2019, SunShare and Xcel file their agreement as discussed in the April 18, 2019 agenda meeting that explicitly seeks to achieve partial energization of the Linden Project by September 30, 2019.

On April 26, 2019, Xcel filed the Settlement Agreement, signed by both parties, resolving the Linden IE dispute, in Docket No. E-002/M-19-29. In the Settlement at § 11, the Parties agreed “...the Independent Engineer Report that was at issue in the Linden Docket is rejected in whole and is of no effect.”¹

IV. Parties’ comments

SunShare’s Complaint and Reply to Xcel

In its Complaint and Reply, SunShare alleged that Xcel incorrectly and unilaterally removed the Schiller Project from the CSG Program interconnection queue, despite ongoing negotiations between Xcel and SunShare. SunShare requested specific relief and expedited review of its Complaint.² SunShare made the following allegations:

Xcel unilaterally terminated SunShare’s Schiller Project position in the interconnection queue, despite ongoing negotiations with Xcel

On April 26, 2017, Xcel returned SunShare’s CSG Program deposit for the Schiller Project and stated that it was removing the Project from the interconnection queue.³ Xcel’s stated reason was that SunShare had not signed the revised Interconnection Agreement provided to SunShare on January 24, 2017. SunShare did not consent to the Schiller Project removal from the interconnection queue. At the time, SunShare was seeking clarification and justification for Xcel’s updated interconnection study and the resulting increase in the distribution upgrade cost estimate.⁴ Citing the Affidavit of Mr. Amster-Olszewski,⁵ SunShare interpreted statements made by Xcel executives to mean that the Company would not take any further action that would harm the project, including removing it from the queue, while the Company investigated.⁶

¹ Xcel, Settlement Agreement, April 26, 2019, Docket No. E-002/M-19-29, Attachment A, p. 4.

² SunShare Complaint, pp. 3-4, and pp. 26-27.

³ SunShare Complaint, Paragraph 18, p. 12.

⁴ SunShare Complaint, Paragraph 15, p. 11.

⁵ SunShare Reply, attachment following Attachment B, Affidavit of David Amster-Olszewski (NON-PUBLIC).

⁶ SunShare Reply, p. 3.

SunShare also did not agree to accept the return of the deposit for the Schiller Project.⁷ SunShare informed Xcel that it was not prepared to pay interconnection fees until it received more information concerning the revised estimate, and what SunShare saw as errors in the engineering studies.⁸ SunShare also noted that Xcel left the Schiller Project in the S*RC Salesforce system, only removing it in late 2017, which according to SunShare suggested that Xcel acknowledged the continuing bilateral discussion between the companies.⁹

SunShare argued that the Affidavit of David Amster-Olszewski provided support for SunShare's allegation that a negotiated settlement on the Schiller Project was within reach. Specifically, SunShare believes the Affidavit supports SunShare's argument that it had assurances from Xcel that it would not take action to harm the Schiller Project pending further discussions.¹⁰ In addition, SunShare was aware that Xcel had extended the deadline for signing the Interconnection Agreement for the Schiller Project several times. When Xcel provided SunShare with the Interconnection Agreement on January 24, 2017, this suggested closure on or about February 23,¹¹ yet Xcel waited until April 26, 2017 to return the deposit and remove the Project from the queue.

Xcel performed a restudy of SunShare's Schiller Project that resulted in a near doubling of the interconnection costs initially given to SunShare

Xcel's restudy of the Schiller Project (presented to SunShare on January 24, 2017) led to cost estimates that SunShare found financially infeasible. SunShare submitted its application for the Schiller Project on November 17, 2015. In March of 2016, Xcel informed SunShare that the Schiller Project was not feasible because the nearby substation had reached maximum capacity.¹² Then, on August 1, 2016, Xcel provided SunShare with corrected information on substation capacity for the Schiller Project that would allow it to go forward with the Project. On that date, Xcel provided SunShare with an Interconnection Agreement and indicative cost estimate for installation and connecting the Schiller Project to a nearby substation. According to the cost study, the Schiller Project could be installed and connected at a project cost that SunShare found financially feasible.¹³

At its hearing on September 20, 2016, the Commission adopted the recommendations of an Independent Engineer directing Xcel to restudy four other SunShare projects using a 2% flicker threshold.¹⁴ Given this decision, SunShare requested a restudy of the Schiller Project using the

⁷ SunShare Complaint, Paragraph 15, page 11.

⁸ SunShare Reply, p. 4.

⁹ SunShare Complaint, Paragraph 18, page 12.

¹⁰ Affidavit of David Amster-Olszewski, Paragraph 11, page 4 (NON-PUBLIC).

¹¹ Under Xcel's CSG Program tariff, the presentation of the Interconnection Agreement to the applicant initiates a 30-day period for signature. Section 9, Sheet No. 68.7, 6(c).

¹² SunShare Complaint, Paragraph 2, pp. 5-6.

¹³ SunShare Complaint, Paragraph 6, p. 7.

¹⁴ *Order Resolving Independent-Engineer Appeals and Establishing Procedures for Future Disputes*, issued

same flicker threshold. Xcel agreed to restudy the Project at the 2% flicker threshold.¹⁵ On December 22, 2016, SunShare signed the Settlement Agreement with Xcel, resolving all of the remaining issues raised in SunShare's November 2015 Complaint. The Settlement Agreement was co-signed by Xcel on January 3, 2017.¹⁶

The Settlement Agreement, effective January 3, 2017, covered a number of SunShare projects. At that point in time, SunShare found the interconnection costs provided as part of the first Interconnection Agreement to be reasonable.¹⁷ However, three weeks later, on January 24, 2017, Xcel provided SunShare with a restudy of the Schiller Project with new cost numbers, nearly double the previous estimates, making the project financially infeasible.¹⁸

Xcel failed to conduct proper engineering studies of the Schiller Project

The SunShare Complaint, citing the IE reports, alleged that under the Commission's November 1, 2016 Order and the IE reports themselves (issued for its four projects on March 31, 2016) "it is expected that Xcel use and apply the latest, most current editions" of IEEE standards in its engineering studies.¹⁹

SunShare also noted that Xcel's cost estimates of January 24, 2017 contained inconsistencies with the previous study on the distance of needed line upgrades. These inconsistencies led to differences and discrepancies in the cost estimates worth hundreds of thousands of dollars.²⁰ The January 24, 2017 study also contained contradictions in the study itself related to the length of replacement line needed for the distribution upgrades.²¹

In its Reply, SunShare argued that Xcel admitted that the discrepancies in the cost estimates were due to its own error in failing to account for a one mile section of overhead conductor.²²

November 1, 2016, in Docket No. E-002/M-13-867.

¹⁵ SunShare Complaint, Paragraphs 7 and 8, pp. pages 7-8.

¹⁶ SunShare Complaint, Paragraph 9, pp. 8-9. The Settlement was effective January 3, 2017.

¹⁷ In its Reply to Xcel, SunShare clarified that it saw no reason to demand that the Schiller Project be made part of the Settlement due to the level of interconnection costs, which at that point had not been raised to nearly double the initial estimate provided in August 2016. This occurred three weeks later. In Reply, SunShare again noted that this does not preclude mention of the increased cost of interconnection in Xcel's January 24, 2017 communication (SunShare Reply, pp. 9-10).

¹⁸ SunShare Complaint, Paragraph 10, p. 9.

¹⁹ SunShare Complaint, Paragraph 4, p. 6.

²⁰ SunShare Complaint, Paragraphs 11 and 12, pp. 9-10.

²¹ SunShare Complaint, Paragraph 12, p. 10.

²² SunShare Reply, p. 11.

In addition, Xcel did not clarify for SunShare why its January 24, 2017 restudy did not employ the new IEEE 1453 standards.²³ On the same day that Xcel returned SunShare's deposit and took the Schiller Project out of the queue, it filed a "simplified" IEEE 1453 study process in its April 26, 2017 Compliance Filing. Xcel's Simplified Method provoked dissent in stakeholder group meetings as inappropriate for projects larger than 1 MW, such as the Schiller Project.²⁴ SunShare argued that using the correct IEEE 1453 standards, even the "simplified" version used by Xcel, would be likely to substantially reduce the estimated interconnections costs for the Schiller Project.

In addition, in the review of the Linden Project dispute the IE found engineering errors and inconsistencies.²⁵ SunShare argued there were inconsistencies and inaccuracies in the restudy of that project that might be relevant to the restudy of the Schiller Project. SunShare requested a number of clarifications of the Linden Project, all of which, it argued, pertain to the Schiller Project.²⁶ SunShare alleged that since Xcel's engineering studies for the Linden Project contained numerous inaccuracies and errors (which SunShare claims Xcel was aware of but did not acknowledge), the same could well be true for the Schiller Project.²⁷ Xcel's restudy of the Linden Project demonstrated that it was capable of doing a similar restudy of the Schiller Project.²⁸

SunShare also requested to know why it could not use voltage control measures on its smart inverters.²⁹ As part of the restudy, SunShare asked the Commission to require Xcel to analyze whether the use of smart inverter functionalities could address flicker and steady state voltage concerns; it argued that the use of these functionalities could reduce interconnection costs.

In the face of perceived errors in the January 24, 2017 engineering study, SunShare repeatedly sought further clarification, which Xcel denied

After being presented on January 24, 2017 with the new, substantially increased cost estimates, SunShare asked Xcel to explain and clarify the discrepancies between the new and previous estimates.³⁰ In the 4-month period between the new cost estimate and Xcel's return of the

²³ SunShare Complaint, Paragraph 13, p. 10.

²⁴ SunShare Complaint, Paragraph 19, p. 13.

²⁵ SunShare Complaint, Paragraph 13, p. 10. *Staff note:* As noted, the Commission rejected the recommendations of the IE report in its April 25, 2019 Order, in Docket No. E-002/M-19-29, and parties to the April 26, 2019 Settlement agreed it had no effect.

²⁶ SunShare Complaint, Paragraph 22, p. 14.

²⁷ SunShare Complaint, Paragraph 20, p. 13.

²⁸ SunShare Complaint, Paragraph 20, p. 13.

²⁹ SunShare Complaint, Paragraph 22, p. 14.

³⁰ SunShare Complaint, Paragraph 14, p. 11.

deposit and removal of the Project from the queue, SunShare alleged that Xcel did not explain or clarify the reasons for the cost discrepancies, despite repeated requests.³¹

As noted in SunShare's Reply and attached Affidavit, it believed that it was still engaged in an exchange with Xcel to clarify the discrepancies in the new cost estimate, although it was having difficulty getting a response from Xcel executives, leading to emails from SunShare to Xcel on May 11, May 12, May 18 and May 24, 2017. These all sought an explanation for Xcel's return of the deposit funds on May 11, 2017.³²

SunShare maintained that Xcel refused to clarify discrepancies between its prior and subsequent cost estimates, and that Xcel was asking it to sign an Interconnection Agreement despite the ongoing disagreements between the parties regarding Xcel's new estimate and the determination of final interconnection costs.³³ SunShare characterized Xcel's behavior as "evasive, delayed and incorrect."³⁴ In addition, SunShare was concerned with Xcel's position in favor of a "simplified" version of IEEE 1453 methodology for the engineering study in the Linden Project. As noted, the "simplified" approach had provoked concern among developers in stakeholder discussions.³⁵

SunShare did not include the Schiller Project in the January 3, 2017 Settlement because initial results of the engineering study presented to SunShare on August 1, 2016 demonstrated that the Schiller Project was financially feasible. In addition, SunShare requested a restudy of the Project in light of the Commission's decisions in the November 1, 2016 Order resolving the IE dispute over four other SunShare projects

As noted, SunShare did not include the Schiller Project in the Settlement because initial results of the engineering study demonstrated that the project was financially feasible. However, on October 7, 2016, SunShare requested a restudy in light of the Commission's decisions at the September 20, 2016 meeting (see November 1, 2016 Order), which resolved the IE dispute on four other SunShare projects.

Xcel agreed to restudy the Project shortly after the November 1, 2016 Order was issued. SunShare believes that the restudy should have resulted in reduced interconnection costs, and not nearly doubled them. Because the results of the restudy were issued three weeks after the January 3 Settlement became effective, SunShare was prevented from going back and including the Schiller Project in the Settlement. At the time of the Settlement, SunShare did not object to the estimated interconnections costs for the Schiller Project. This resulted in a dilemma for SunShare, since by the time the new cost numbers were released, SunShare's ability to include

³¹ SunShare Complaint, Paragraph 15, p. 11.

³² SunShare Reply, pp. 6-7.

³³ SunShare Complaint, Paragraph 14, pp. 10-11.

³⁴ SunShare Complaint, Paragraph 23, p. 14.

³⁵ SunShare Complaint, Paragraph 24, pp. 14-15.

the Schiller Project in the Settlement had past; at the same time, it found the new cost numbers prohibitive.

Removing the Schiller Project from the queue denied SunShare the opportunity to request an Independent Engineer (IE) review. This in turn prevented any further consideration of the appropriate IEEE standards to be applied, and potentially obscured errors and inconsistencies in Xcel's restudy

Once the Schiller Project was removed from the queue on April 26, 2017, Xcel argued that an IE review requested by SunShare was unwarranted since the project no longer had a queue position. Absent recourse to an IE study, SunShare followed the Department's recommendation to raise its dispute with the Commission through this Complaint.³⁶ Xcel also argued that SunShare had waited too long to request an IE review. SunShare maintained that there is no time limit on requests for IE review, and that it had been attempting to resolve its issues with Xcel in the interim through bilateral negotiations. As SunShare noted: "Given the ongoing bilateral negotiations between Xcel and SunShare regarding the Linden Project, Schiller Project, and other projects in Minnesota and Colorado, which SunShare was attempting to resolve on a global basis, and in order to avoid wasting Commission resources, SunShare chose to wait to submit the Schiller Project for IE review until it was absolutely clear that a negotiated settlement was impossible."³⁷

According to SunShare, one consequence of the ongoing issues disputed by SunShare and its inability, once removed from the queue, to get an IE review, was that the most recent IEEE 1453 methodology was not being applied. For the SunShare projects included in the Settlement Agreement, including the Linden Project, SunShare requested the application of the most recent IEEE 1453 methodology.³⁸ Among other things, SunShare requested review of line length, as well as whether the correct application of IEEE 1453 would have lowered overall costs of interconnection for the Schiller Project.³⁹

As noted, SunShare sought a more global resolution of its interconnection disputes, including those in the Schiller Project. It therefore waited to submit the interconnection issues for IE review as negotiations were ongoing with Xcel. These had been extended by Xcel, and SunShare believed the new IEEE 1453 methodology would actually bring costs down.⁴⁰

SunShare claimed that wrongful actions and violations by Xcel led to damages, both fiscal and reputational

SunShare alleged the following "wrongful actions and violations" by Xcel:

³⁶ SunShare Complaint, Paragraph 29, p. 17.

³⁷ SunShare Complaint, Paragraph 26, p. 16.

³⁸ SunShare Complaint, Paragraph 20, p. 13.

³⁹ SunShare Complaint, Paragraph 27, p. 16.

⁴⁰ SunShare Complaint, Paragraph 26, p. 16.

- failure to conduct proper engineering studies for the Schiller Project under Section 9, Paragraph 5, Sheet Nos. 68.4 and 68.5, and to provide SunShare with information regarding those studies
- failure to utilize the most current IEEE 1453 standards and to use least cost industry standards in studying the Schiller Project, as required by Minn. Stat. § 216B.1611, subd. 2(2); Section 9, Sheet No. 68.11; Section 10, Sheet No. 136; and Commission Orders
- refusal to participate in IE review under Section 9, Paragraph 9, Sheet No. 68.11, and unilaterally terminating the Schiller Project from the interconnection queue

According to SunShare, these actions led to damages to SunShare of \$153,080⁴¹ including several categories of costs.

SunShare also maintained that, for reasons similar to the Linden Project, Xcel's failure to process the Schiller Project application in a timely fashion, lack of transparency regarding studies and other delays resulted in costs related to the hundreds of hours spent on SunShare staff time.⁴²

SunShare was compelled to file its Complaint and petition for relief because it was barred from filing a request for IE review

In its Reply, SunShare noted that the decision to file its Complaint only occurred after failed attempts to clarify Xcel's cost estimates.⁴³ It noted: "Because the Schiller Project was no longer in the queue and Xcel was refusing to participate, Commerce informed SunShare that IE review was not possible and recommended that SunShare raise its dispute with the Commission, which SunShare does now."⁴⁴

SunShare also said that because of the similarities between the Linden Project and the Schiller Project, it waited until the IE report had been issued in the Linden case to file its Complaint. When the Schiller Project was removed from the queue, SunShare was waiting on both clarification of interconnection cost estimates from Xcel and on resolution of the Linden Project dispute.

The current situation demands relief because it is contrary to statute ("reasonably allow for the creation" etc.) and Sections 9 and 10, Tariff Sheets 68.4, 68.5 and 68.11, as well as Section 10, Tariff Sheet 136

SunShare's argument related to statute is simply that denying the Schiller Project a position in the queue is setting back or eliminating the possibility for subscribers to gain access to 3

⁴¹ SunShare Complaint, Paragraph 31, p. 17.

⁴² SunShare Complaint, Paragraph 32, p. 18-19.

⁴³ SunShare Reply, p. 8.

⁴⁴ SunShare Complaint, Paragraph 30, p. 17.

additional MW of CSG output. SunShare stated that this runs counter to the purpose of the CSG Program to promote investment, especially by residential and community groups.⁴⁵

SunShare's reference to Tariff Sheets Nos. 68.4, 68.5 and 68.11 relate to "Interconnection Agreement Time Line Review" (Sheet No. 68.4-68.6)⁴⁶ and "Requests for Independent Engineer to Resolve Material Disputes Affecting Interconnection Applications" (Sheet No. 68.11). SunShare also cited Xcel's tariffs, Section 10, Sheet No. 136. This is the forward to the interconnection and power purchase tariff, addressing issues of safety, economics and reliability. SunShare referred specifically to these tariff sheets in connection with the conduct and costs of the interconnection studies.⁴⁷

For all the reasons set forth in the Complaint, SunShare requested that the Commission issue the following relief:

1. Find that Xcel violated Sections 9 and 10 of its electric tariff book, S*RC Program rules, and/or Commission Orders.
2. Require Xcel to immediately restore the Schiller Project to its prior position in the interconnection queue, without impact to the construction timeline, and to complete required interconnection upgrades before September 30, 2019.
3. Require Xcel to study the Schiller Project using appropriate and least-cost industry standards, including Xcel's "simplified" IEEE 1453 methodology, and if interconnection costs are still prohibitively expensive, then a full IEEE 1453 methodology recognized by the IE in the Linden dispute as the appropriate standard.
4. Allow SunShare's engineers to participate in developing and running the studies to address any further issues that arise.
5. As part of the restudy, require Xcel to analyze whether the use of smart inverter functionalities can address flicker and steady state voltage concerns and reduce interconnection costs, and if so, allow for the use of those functionalities.
6. Prohibit Xcel from charging its overhead, profit, bond costs, other markups, or labor to SunShare to complete the interconnection work, recognizing the significant delays and damages caused by Xcel to date.⁴⁸

⁴⁵ SunShare Complaint, p. 4, citing Order in 13-867, issued September 17, 2014, p. 11.

⁴⁶ *Staff note*: Section 9, Sheet No. 68.6-68.8 includes "6. Conditions Precedent and Conditions to Signing Interconnection Agreement."

⁴⁷ SunShare Complaint, p. 18.

⁴⁸ *Staff note*: These requests for relief (both #6 and #7) appear to rely on the Linden IE dispute as the model for the requested relief.

7. In recognition that Xcel wrongfully removed the Schiller Project from the queue, prohibit Xcel from charging any costs to SunShare to upgrade its grid that would not have been necessary had Xcel not wrongfully removed the project.
8. Grant any other further relief in SunShare's favor that the Commission thinks appropriate.

Xcel Energy Response to SunShare's Complaint⁴⁹

Summary and introduction

Xcel argued that SunShare wrongfully alleged that it was denied Independent Engineer (IE) review for its Schiller Project. The Company noted that SunShare did not initiate an IE review while its application for the Project was pending. Xcel explained that it cancelled the Schiller Project because SunShare failed to sign the Interconnection Agreement (IA) and pay one-third of the estimated interconnection costs within 30 days of receiving the agreement, as required by tariff. Moreover, Xcel claimed that it extended the deadline for signing the agreement several times and provided SunShare with multiple notifications before it finally cancelled the project in April 2017.⁵⁰

Xcel argued that SunShare failed to take advantage of cure periods, and did not seek an IE review prior to cancellation, which would have paused the timeline for executing the Interconnection Agreement. Instead, SunShare waited to seek an IE Review until April 2018, a full year after the project was cancelled. By that time, the Department determined that an IE review was not available because the project had been cancelled. The Commission should therefore dismiss the Complaint because it is not in the public interest to investigate the allegations nearly two years after the project's cancellation.⁵¹

Xcel provided a timeline to describe various communications that were referenced in SunShare's Complaint or in the Company's Response. Xcel's timeline is Attachment A to these Staff Briefing papers.

Xcel's response comments are summarized below:

The Schiller Project was properly cancelled on April 26, 2017 after a number of communications

Xcel cancelled the Schiller Project applications on April 26, 2017, because SunShare failed to sign the Interconnection Agreements and pay the required 1/3 payment of the indicative cost estimate required by tariff within 30 days of January 24, 2017. SunShare was given several

⁴⁹ Xcel Attachments A-F are Non-Public in entirety; Non-Public data in Attachment G are highlighted in gray; Xcel Attachment H is Non-Public in entirety; and Xcel Attachment I is Public.

⁵⁰ Xcel Response, March 20, 2019, p. 1.

⁵¹ Xcel Response, March 20, 2019, p. 1.

extensions of the deadline and notice of the January 24 deadline was provided to SunShare and to Mortenson, the Project Application Manager (PAM) listed on the Schiller application.⁵²

Xcel provided the IA packet for the Schiller Project to the PAM on or about January 24, 2017, which means that the executed Interconnection Agreements and payments were due 30 days later. Prior to cancelling the Schiller Project based on the above tariff provisions, the Company communicated with both SunShare and Mortenson, notifying them about the 30-day timeframe and potential cancellation as a result of non-payment.⁵³ The Company also extended the deadline for SunShare to comply with the tariff requirements.⁵⁴ Xcel indicated that the deposits were not requested to be reinstated by either SunShare or Mortenson after they were refunded.

Xcel noted that cancellation of the Schiller Project did not require approval or consent from SunShare or Mortenson, and that the first time after the application was cancelled that SunShare informed the Company that it could not obtain access to the online application portal for this Project was in March 2018.⁵⁵ For the remainder of the bi-weekly calls in 2017 regarding all SunShare's projects in Minnesota, there was no discussion of the Schiller Project.⁵⁶

The Department properly determined that the IE review process was not available to the Schiller Project

⁵² Xcel Response, March 20, 2019, p. 5. Xcel's Tariff, Section 9, Sheet No. 68.7 (6.c.i.), specifies that "payments and providing appropriate letter of credit for unpaid balance must be completed within 30 days of the Company notice to applicant of this payment which is due or the application will be removed from the Study Queue and the applicant will be required to start a new Community Solar garden application if it later determines it wants to proceed."

⁵³ Xcel's provided notes from its April 20, 2017 bi-weekly call with SunShare in support of this argument (Xcel Reply, March 20, 2019, p. 6).

⁵⁴ Xcel Reply, March 20, 2019, p. 6. Per the Company's March 23, 2017 email, Xcel further extended the deadline for executing and paying the Interconnection Agreement to March 30, 2017 (SunShare Complaint, Attachment F, p. 7). On March 30, SunShare informed the Company that it was "unable to pay" (Complaint, Attachment F, PDF page 6). The Company then on April 17 provided an extension to April 21, 2017 (Complaint, Attachment F, PDF page 6). On April 18, Mortenson expressed appreciation for these extensions, but informed the Company that in the event SunShare does not make the payment by April 21, that the project program deposits were to be routed to Mortenson. (Complaint, Attachment F, PDF page 5). Mortenson had paid the re-fundable program deposit of \$100/kW per each garden application on November 9, 2015, so it requested that the deposits be returned to it.

⁵⁵ Xcel Reply, Attachment Xcel-E (Non-Public). Once the application for the Schiller Project was cancelled, SunShare no longer had access to the online application portal for this cancelled application. In 2017, following cancellation, Xcel stated that SunShare never called to the Company's attention that it was looking for information in the online application portal for the Schiller Project, nor did it ask why the Schiller Project was no longer able to be seen in the portal, or inquire as to the status of the project deposit or other application milestones tracked in the portal.

⁵⁶ Xcel Reply, March 20, 2019, p. 7.

Xcel argued that the Department's conclusion that the IE process was not available to dispute the Schiller Project is correct. SunShare waited to initiate an IE dispute for the Project until April 12, 2018, when it submitted an Intake Form to the Department, copying the Company on that email. The Company objected to conducting an IE dispute process at that point.⁵⁷ After reviewing information submitted by both SunShare and Xcel, the Department concluded in an April 25, 2018 email⁵⁸ that the IE process was not available for the Schiller Project. It noted that there was nothing to indicate that SunShare had raised an IE dispute previously or that Xcel had agreed the Project could go forward.

The Department confirmed that Xcel communicated with SunShare about the necessary payment of the interconnection cost and also made clear that it would cancel the applications for the Schiller Project if payment was not received by April 21, 2017. The Department also noted that the issuance of an Interconnection Agreement and indicative cost estimate is the final marker for raising disputes, and that the time for SunShare to raise a dispute over the estimated interconnection costs for the Schiller Project was a year earlier.⁵⁹

Xcel argued that the Department's conclusion is correct because the IE process is only available to an "applicant."⁶⁰ If there is no currently-pending application, then there is no possibility of an IE review. Xcel noted that SunShare's Complaint refers to "ongoing bilateral negotiations between Xcel and SunShare" regarding the Schiller Project and states that SunShare "chose to wait to submit the Schiller Project for IE review until it was absolutely clear that a negotiated settlement was impossible." However, Xcel stated that after the Schiller Project was cancelled in April 2017, it did not engage in any further negotiations related to the Project with SunShare.⁶¹

Untimeliness of the Complaint and request for restudy is highlighted by the fact that there are other applications in queue

Xcel noted that other projects in queue at this substation would have followed the Schiller Project in queue had the Schiller Project not been cancelled. The queue is publicly posted, and as of the March 4, 2019, for the Lester Prairie substation there were 5.998 MW in commercial operation; 1 MW in design and construction; 2 MW with recently offered Interconnection Agreements; and 1 MW in the initial engineering study phase. Therefore, Xcel pointed out that the engineering study that resulted in the Interconnection Agreement packets sent to SunShare in January 2017 are out-of-date.⁶²

⁵⁷ Xcel Reply, Attachment Xcel-F (Non-Public).

⁵⁸ See Xcel Reply, Attachment Xcel-G (Non-Public, in part).

⁵⁹ Xcel Reply, p. 7.

⁶⁰ Section 9, Tariff Sheet No. 68.11, par. 9.A.

⁶¹ Xcel Reply, p. 7.

⁶² Xcel Reply, p. 8.

Xcel argued that to place the Schiller Project back into queue ahead of other projects retroactively could have a substantial and negative impact on these other projects. The queue cannot be replicated as of April 2017, and to “restore the Schiller Project to its prior position in the interconnection queue,” as is requested by SunShare, is not possible. If the Commission decides to consider this relief, Xcel noted that other gardens would likely be necessary parties to this proceeding, given their direct interest in the outcome. For this reason, Xcel believes that the Commission should dismiss SunShare’s Complaint, avoiding the need to consider impacts to third-party developers.⁶³

SunShare is not the correct party to bring this complaint

Xcel argued that SunShare has no standing to bring its Complaint because the representative of the “Owner/Applicant” on the applications, the Interconnection Customer in the IA packet, and the Design Engineer and Primary Application Manger (PAM) are all Mortenson employees, with addresses listed as Mortenson’s headquarters.⁶⁴

In addition, the garden projects are registered as limited liability companies in Minnesota, and the Minnesota Secretary of State’s business records listed Mortenson Development, Inc. as the Manager for the three companies.⁶⁵ Xcel’s Attachment Xcel-H (Non-Public) shows that these three companies are no longer authorized to transact business in Minnesota. Xcel noted that none of these entities have brought the Complaint, nor is the PAM a party to this Complaint.⁶⁶

The Settlement Agreement requires specific voltage fluctuation methodology

The Settlement Agreement (Xcel Reply, Attachment Xcel-B, Non-Public) was effective on January 3, 2017. According to Xcel, the Settlement Agreement includes binding terms that specify a voltage fluctuation methodology.

The January 24, 2017 Interconnection Agreement packet specified an indicative cost estimate for interconnecting the three co-located gardens and indicated that the applicant had 30 days to pay 1/3 of the indicative cost estimate.⁶⁷ Xcel indicated that the IA packet explained the engineering study results, listing necessary system modifications and their costs.

For distribution system modifications, the January 24, 2017 IA packet listed about 10,000 feet of 336 AL reconductoring at a cost of \$616,000. While this was a significant increase from the prior August 1, 2016 engineering study, the Company explained to SunShare that it had discovered that an about one mile section of overhead conductor in the field was #2 ACSR,

⁶³ Xcel Reply, p. 8.

⁶⁴ Xcel Reply, p. 8.

⁶⁵ Xcel Reply, Attachment Xcel-H (Non-Public).

⁶⁶ Xcel Reply, p. 9.

⁶⁷ The January 24, 2017 Interconnection Agreement packet is included in SunShare’s Complaint as Attachment D.

although the Company had previously assumed it was 336 AL based on maps that were not accurate. Reconductoring with the higher cost conductor/cable will increase the cost of the project.

In addition, prior to the time that SunShare determined that it wanted the 2% methodology⁶⁸ applied to the Schiller Project, it was aware that this would include the Company “field verifying our existing lines and equipment where reasonably possible.”⁶⁹ Xcel claimed that if SunShare had a concern with the results or methodology from applying the 2% methodology or any other aspect of the engineering study and associated Interconnection Agreement for the Schiller Project, it should have submitted an IE Review prior to the time that application for the Schiller Project was cancelled.⁷⁰

The Schiller Project does not qualify for 1453-based methodology

Xcel noted that the Commission’s November 1, 2016 Order⁷¹ recognized that it was the Company’s then-current practice to use the 2% methodology for new applications. It directed the Company to work with other interested parties to develop and file a plan for transition to incorporating the standards of IEEE 1453 into its modeling of voltage fluctuations and flicker for solar PV. The Company was required to file this plan within six months of the November 2016 Order.⁷²

On April 26, 2017, the Company submitted its compliance plan in Docket No. 13-867. This filing provided the transition plan for the 1453-based methodology and stated: “The Company officially adopted [our simplified IEEE 1453 approach] methodology in the white paper for all projects starting the study process on or after April 1, 2017...”. Xcel argued that using the 1453-based methodology for the Schiller Project that received its first study results in March 2016 would not be appropriate. The Project was not restudied for cause (such as queue changes impacting this project) after the 1453-based methodology was implemented. To restudy the Project again under the Simplified IEEE 1453 method, as requested by SunShare, would be in conflict with the policy stated above and be inconsistent with a standardized interconnection process.⁷³

⁶⁸ *Staff note:* Staff believes Xcel is referring to the 2% full on/off alternative to IEEE 1412 and the precursor to the IEEE 1453 Simplified Method for voltage fluctuation review.

⁶⁹ SunShare Complaint, Attachment C, PDF p. 2, email of October 6, 2016.

⁷⁰ Xcel Reply, p. 10.

⁷¹ *Order Resolving Independent-Engineer Appeals and Establishing Procedures for Future Disputes*, issued November 1, 2016, in Docket No. 13-867.

⁷² Xcel Reply, pp. 10-11.

⁷³ Xcel Reply, p. 11.

Xcel argued that the 1453-based methodology is not available for any project that started the study process prior to April 1, 2017,⁷⁴ and that SunShare was aware that the 1453-based methodology would not be retroactively applied.⁷⁵

Xcel noted that SunShare could submit a new application at this same site but it would need to be limited to 1 MW capacity, and subject to the VOS Vintage rate in place at the time that the application is Deemed Complete. In such a case, the 1453-based methodology would be applied to the new application. The new application would also need to take its place in queue based on the date that the new application joined the queue. It would be studied based on the information on the Xcel network at the time of the study.⁷⁶

The Linden IE dispute is irrelevant

Xcel argued that the conclusions of the Linden Project IE Report (issued December 2018) should not apply to the Schiller Project. Since the Schiller Project is a different project, the Linden IE Report does not serve as a precedent in this case. Moreover, the Company appealed the Linden IE Report in its entirety, and at the time Xcel submitted its Reply in the Schiller Complaint, the Linden dispute was pending at the Commission.⁷⁷

The Mechanical Completion due date for Schiller Project has expired

Xcel argued that since the Schiller Project failed to achieve Mechanical Completion in a timely fashion, it cannot be part of the CSG Program.⁷⁸ This decision was based on Xcel's tariff, Section 9, Sheet No. 67.1, which states:

If Mechanical Completion is not achieved within this ... period (including any day-for-day extension referenced above), then the Company will return the deposit and the garden operator, if it still intends to proceed with the project, will need to reapply and submit a new application fee and deposit. Additionally, in this situation, if applicant already has an executed Interconnection Agreement, then that Interconnection Agreement may not be used for a project as part of the Solar*Rewards Community program, and such project shall immediately lose its queue position in the interconnection queue.

⁷⁴ Xcel noted exceptions, such as the Settlement Agreement on the Linden Project, and the settlement on the Sunrise projects addressed at the Commission hearing on January 5, 2017.

⁷⁵ Xcel Reply, Attachment Xcel-A, email of September 28, 2016.

⁷⁶ Xcel Reply, pp. 11-12.

⁷⁷ Xcel Reply, p. 12. In addition, Staff notes that at the Agenda Meeting on April 18, 2019, Xcel and SunShare agreed to settle the Linden Project IE dispute (19-29) subject to a written agreement to be filed with the Commission by April 26, 2019. The Commission's Order in this matter was issued on April 25, 2019, in Docket E-002/M-19-29, and the Settlement between Xcel and SunShare was filed on April 26, 2019. Both the Settlement and the Order reject the recommendations of the IE in the 19-29 dispute, and find that it has no effect.

⁷⁸ Xcel indicated that the Settlement Agreement requires SunShare to achieve Mechanical Completion for the Schiller Project. See Xcel Reply, p. 12.

The public interest is not served by addressing issues and allegations that SunShare's previously signed agreement has already resolved and bars them from raising them before the Commission

Xcel argued that the Settlement Agreement bars SunShare from raising a number of issues and allegations it has asserted in its Complaint. Xcel maintained that certain allegations in the Complaint violate the provisions of the Settlement Agreement, and that SunShare is barred from making these allegations. Examples of the allegations that should be stricken from the record are set forth in the Xcel Reply, Attachment Xcel-I. However, unlike in the Linden dispute docket, Xcel did not file a Motion to Strike.

There is no public interest in addressing SunShare's request for use of smart inverter functionalities

SunShare requested that the Commission require the Company to consider whether the use of Advanced Functionality Inverters (AFIs) or storage technologies could reduce interconnection costs and increase capacity for the Schiller Project.⁷⁹ Xcel argued that the Schiller Project should not be used as a test case to inform the development of Minnesota technical standards on AFIs for interconnection. Instead, it recommended the Commission wait until the technical workgroup finishes its work before making a decision on AFI or storage technologies.⁸⁰

Other public interest issues

Xcel is concerned that two years after the application for the Schiller Project was cancelled, SunShare appeared to have continued to market and keep its subscribers to its contracts for the cancelled project. Xcel also suggested that SunShare clarify its claimed 80 MW or 100 MW of garden ownership in Colorado and Minnesota. Xcel stated that its public listing of garden operators does not show SunShare as being the Operator (Representative) for any solar garden in Minnesota.⁸¹

Process to be used if the Commission decides to investigate

If the Commission decides to investigate the Complaint, Xcel noted that the appropriate procedure would depend on the scope of the investigation and issues to be addressed. This

⁷⁹ SunShare made this same request in the Linden Dispute, but neglects to point out that the Department determined that this issue is outside the IE's jurisdiction. The Department on September 4, 2018 noted that smart inverters have not yet been required by the Commission. In addition, they remain under consideration by the technical workgroup convened to develop technical standards for Minnesota interconnection, as part of Phase II of the Minnesota interconnection reform. Therefore, the Department concluded that Xcel Energy cannot be required to incorporate smart inverter capabilities at this time. The Linden IE Report reflects this Department decision.

⁸⁰ Xcel Reply, pp. 13-14.

⁸¹ Xcel Reply, p. 14.

could range from a further round of comments to a contested case hearing depending on the issues and scope that the Commission wants to consider.⁸²

However, Xcel noted that Minn. Stat. § 216B.17 provides specific direction. It states that, if the Commission does not dismiss the Complaint, and finds that all significant factual issues raised have not been resolved to its satisfaction, the Commission shall order a contested case proceeding.

Conclusion

Xcel asked that the Commission find there are no reasonable public interest grounds to investigate SunShare's allegations and that it should dismiss the Complaint. At the time the Schiller Project was still active, SunShare could have used the IE dispute process in Section 9 tariff to review its engineering concerns. SunShare, however, waited until a year after the Project's cancellation before it attempted to initiate a dispute of the engineering study, required system upgrades, and indicative cost estimate.

In sum, the Company argued that it cancelled the Schiller Project appropriately based on Section 9 Tariff rules and communicated with both SunShare and Mortenson prior to the cancellation, and the project's required deposits have remained unfunded since that time.

Department of Commerce (Department) reply comments

The Department concluded that SunShare's Complaint lacks foundation and recommended that it be dismissed. It stated that the threshold question is whether Xcel wrongfully removed the Schiller Project from the interconnection queue. The Department reasoned that only if the Commission finds that Xcel erred in removing the Project from the queue, should it take up any of the other concerns raised by SunShare in the Complaint.

The Department provided the following history of the Schiller Project:

- SunShare submitted the application for the Schiller Project in November 2015
- SunShare was informed by Xcel that there was insufficient capacity at the Lester Prairie substation to permit the Project to go forward
- SunShare referred other CSG projects to the IE for dispute resolution concerning the appropriate flicker threshold, and use of smart inverters (SunShare's Becker, Glazier, Bartlett, and Murphy sites)
- Xcel appealed the findings of the IE in this case to the Commission
- In 2016, using the Commission-determined flicker standard from the above IE dispute (the 2% full on/off from the Commission's November 1, 2016 Order), SunShare requested and Xcel agreed to a restudy of its Schiller Project

⁸² Xcel Reply, p. 14.

- In January 2017, Xcel revised its interconnection cost estimate for the Schiller Project resulting in a significant increase in costs; Xcel issued an Interconnection Agreement to SunShare with the updated cost estimate on January 24, 2017
- SunShare made several requests to Xcel to restudy the Schiller Project, and sought clarification on the change of inputs that resulted in the significant increase in cost in the January 24, 2017 cost estimate
- Xcel contacted SunShare on March 23, 2017 to notify the developer that it needed to submit the signed interconnection agreement along with a payment for the interconnection costs by March 30, 2017 or the application would be cancelled
- Xcel sent a second email to Mortenson Construction on April 17, 2017 (and to SunShare) reiterating the need to provide a signed Interconnection Agreement and payment by April 21, 2017
- Xcel cancelled the Schiller Project on April 26, 2017
- In April 2018, SunShare contacted the Department about filing an IE dispute resolution for both its Schiller Project and its Linden Project
- On April 25, 2018, the Department notified SunShare by email that it had determined that the Schiller Project had been removed from the queue in April 2017 for failure to execute the Interconnection Agreement and make payment; and that the IE dispute process was not available for the Schiller Project because it was no longer in the interconnection queue.

The Department noted that the IE dispute process was established with the intent of resolving technical disputes between a solar developer and Xcel that arise in the interconnection process. Xcel's Tariff provides:

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 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. [Xcel Tariff, Section 9, Sheet 68.11 – 68.12, 9 (b) and (e).]

The Department noted that a dispute that 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. Therefore, if SunShare had requested an IE review in the spring of 2017, prior to Xcel cancelling the application, the Project would not have been cancelled. However, at this time, according to Xcel's Salesforce system, there are about 5 MWs of operational CSGs, and 4 MWs of CSG applications pending at the Lester Prairie substation. Any interconnection cost estimates provided two years ago for the Schiller Project are therefore no longer valid. While the Department understands SunShare's frustration with Xcel's revision to the interconnection cost estimates for its Schiller Project, it noted that SunShare could have stopped the process from moving forward by initiating an IE dispute at the time SunShare received the higher cost estimate.

SunShare LLC reply comments

SunShare disagreed with Xcel's claim that restoring the Schiller Project to the queue would cause "havoc," arguing that the capacity screen it requested for the Lester Prairie substation in December 2018, together with Xcel's public response, showed that the substation will be able to accommodate an additional 3 MW without removing other projects from the queue.⁸³

In its Complaint, SunShare stated that Xcel left the Schiller Project in its Salesforce system only removing it in late 2017.⁸⁴ According to SunShare, it next accessed the system for the Project on March 14, 2018. The reason SunShare did not notice that it could not access the on-line application portal for the Project until March 2018 was because the Project negotiations were on hold and it was not checking the system daily. As it happened, it only checked and emailed Xcel on March 14, 2018 when it did finally notice the lack of access.⁸⁵

It argued that Xcel's reliance on its correspondence with Mortenson did not suggest that SunShare understood that the project would be cancelled.⁸⁶ The relationship between SunShare and Mortenson was spelled out in the "Teaming Agreement" reached by the two companies to guide their management of the Schiller Project. The Teaming Agreement between SunShare and Mortenson did not give Mortenson authority for the interconnection agreement, which was left to SunShare. Therefore, the contact between Xcel and a representative of Mortenson, which Xcel used to justify its action to cancel, was not with a person authorized to consent to project cancellation under the Teaming Agreement.⁸⁷

It disagreed with Xcel's claim that SunShare did not engage with Xcel after April 2017, citing the string of emails noted in the allegations above from Mr. Amster-Olszewski in April and May of 2017, seeking clarification from Xcel concerning the Schiller project cancellation.⁸⁸ Even after the project was cancelled, SunShare's Mr. Amster-Olszewski asked Xcel for an explanation and reminded the Company that it could not execute the interconnection agreement until the discrepancies and errors had been resolved.⁸⁹

It contended that the Department was incorrect to conclude that the Schiller Project was not eligible for IE review and that SunShare was waiting for the Linden Project review results before proceeding. As SunShare stated, due to the similarities in the issues in the Schiller and Linden disputes, it waited until the IE issued his report in the Linden dispute.⁹⁰

⁸³ SunShare Reply, p. 14, citing Attachment C to the Reply.

⁸⁴ SunShare Complaint, Paragraph 18, p. 12.

⁸⁵ SunShare Reply, Amster-Olszewski Affidavit, Paragraph 20.

⁸⁶ SunShare Reply, p. 4.

⁸⁷ SunShare Reply, p. 5.

⁸⁸ SunShare Reply, pp. 5-7.

⁸⁹ SunShare Reply, p. 7.

⁹⁰ SunShare Reply, p. 8, and Amster-Olszewski Affidavit, Paragraph 25.

SunShare argued that allowing Xcel to unilaterally cancel projects would set a bad precedent, and might lead developers to file unnecessary IE requests before attempting to work through issues in good faith without engaging in formal procedures or litigation.⁹¹

SunShare disagreed with Xcel's assertion that the Settlement Agreement co-signed by Xcel (effective January 3, 2017) barred it from submitting the Complaint. It agreed with Xcel that the Settlement provides that the Schiller Project is referenced in the Agreement, but that it did not see a reason to include it given the initial set of cost estimates.⁹² It argued that Xcel cannot rely on the Settlement Agreement to exempt the Schiller Project from the latest IEEE standards or to fail to correct errors in its cost estimates.⁹³

As SunShare stated, "Had Xcel's initial study of the Schiller Project been accurate and reflected the significantly higher cost estimate, SunShare would have sought to include the project among those projects to be studied under the new method as part of the Settlement Agreement."⁹⁴ SunShare disagreed with Xcel's contention that it lacked standing to file its complaint, and argued that the Commission had previously asserted jurisdiction over a complaint brought by SunShare. That Complaint was comprised, like Schiller, of projects under management by various LLCs, such as Mortenson. It contended that SunShare, not Mortenson, is the party with standing.⁹⁵ SunShare supported this by noting that the Commission, in its Order of December 1, 2015, had recognized SunShare as the sole complainant, even though its projects were composed of various LLCs. SunShare also dismissed Xcel's claim that Mortenson is the proper party to bring the Complaint, noting that all ownership shares in the LLCs in question were transferred from Mortenson back to a SunShare affiliate on June 29, 2018 and Mortenson has been removed as a manager.⁹⁶

It argued that the Linden Project is directly relevant to the Schiller Project Complaint, both because it involves similar engineering standard issues and reveals that Xcel is capable of studying them, adding that the Commission should require Xcel to evaluate potential cost savings for the Schiller project from using smart inverters. It noted that as the Commission reviews technologies and functionalities to facilitate interconnection, utilizing them as part of the Schiller Project could help become part of this review.⁹⁷

It maintained that returning the Schiller project to the queue would not have the disruptive effects on other projects claimed by Xcel. It added that the Lester Prairie substation should be able to handle the 3 MW from Schiller without affecting these other projects, especially if

⁹¹ SunShare Reply, pp. 8-9.

⁹² SunShare Reply, p. 10, ft. 34.

⁹³ SunShare Reply, p. 11.

⁹⁴ SunShare Reply, p. 11.

⁹⁵ SunShare Reply, pp. 11-13.

⁹⁶ SunShare Reply, p. 12.

⁹⁷ SunShare Reply, p. 13.

additional circuit information can be gained.⁹⁸ SunShare stated that information on the circuit running to the west of the substation will be needed to know the impact on other projects in the queue.

It denied Xcel's claim that it has continued to market the Schiller Project or compelled existing subscribers to remain. However, it stated that former subscribers remain interested if the project moves forward.⁹⁹

It rejected Xcel's contention that its complaint should proceed as a contested case instead of an expedited proceeding, and concluded that the Commission should order Xcel to: (1) restore the Schiller Projects position in the queue; (2) conduct another engineering review under the most recent standards; (3) allow SunShare's engineers to participate in this review; (4) consider the use of smart inverters to lower costs; (5) not be allowed to charge costs for overhead, profit, bond, markups or labor; and (6) also disallow any costs to SunShare resulting from its removal from the queue.¹⁰⁰

SunShare commented that: "The Commission is not required to order a contested case in this matter, as Xcel contends." Citing Minn. R. 7829 1900, subp. 1, it noted that the Commission "shall deal with a formal complaint through a contested case proceeding, informal proceeding, or expedited proceeding." Hence, SunShare believes that the Commission has three options, only one of which is a contested case. As noted, SunShare requested an expedited proceeding instead.¹⁰¹

V. Staff discussion

Does the Commission have jurisdiction over the subject matter of the Complaint?

Both Xcel and SunShare concluded that the Commission has jurisdiction over the subject matter in the Complaint.

Xcel indicated that the Commission has jurisdiction over the subject matter of the Complaint, consistent with Minn. Stat. § 216B.09 (allowing the Commission to consider complaints with respect to services provided by utilities). The general nature of the Complaint relates to the Company's S*RC Program as developed in Docket No. E-002/M-13-867, and tariffs that the Commission has approved, and the fact that the S*RC program is regulated by the Commission. However, Xcel argued that the Commission does not have authority to award some of the relief requested by SunShare, for instance, to award monetary damages. Accordingly, Xcel argued

⁹⁸ SunShare Reply, p. 13-14.

⁹⁹ SunShare Reply, p. 14.

¹⁰⁰ SunShare Reply, p. 15.

¹⁰¹ SunShare Reply, p. 15.

that where SunShare seeks relief by capping costs assessed against it as a way to make it financially whole or otherwise offset losses, such relief cannot be awarded.¹⁰²

SunShare agreed with Xcel that the Commission has jurisdiction over the subject matter in the Complaint, and has asserted jurisdiction over previous complaints brought by SunShare comprised of various independent LLCs under Minn. Stat. § 216B.21.¹⁰³ It also noted that Xcel agreed that the Commission has jurisdiction under Minn. Stat. § 216B.09, which does not limit who may bring a complaint.¹⁰⁴

Is it in the public interest for the Commission to investigate allegations in the Complaint on its own motion?

SunShare's filing is not a formal complaint under Minn. Stat. § 216B.17. However, under Minn. Stat. § 216B.21, the Commission has broad authority to open an investigation on its own motion to ensure the public interest and enforce the tariffs it has approved. Therefore, the Commission will need to determine whether it is in the public interest to investigate allegations in SunShare's Complaint on its own motion. If so, it will next need to determine if there are material facts in dispute or if there are issues beyond those in the record that merit investigation.

SunShare argued that further investigation by the Commission is in the public interest and should be conducted under an expedited review process. However, Xcel and the Department argued that investigating the allegations would not be in the public interest and recommended dismissal.

If the Commission decides there are material facts in dispute and further investigation is necessary, it should look to the requirements of Minn. Stat § 216B.17, subd. 8, and Minnesota Rules 7829.1000, which appear to require a contested case.

SunShare's Complaint

Before deciding on a procedural path, the Commission will need to weigh SunShare's allegations against the counterarguments provided by Xcel and the Department. The central issue is whether the Commission should direct Xcel to reinstate the Schiller Project to the queue. Returning the Project to the queue requires that the Commission find that Xcel's

¹⁰² Xcel Response, March 20, 2019, pp. 4-5.

¹⁰³ SunShare Reply, pp. 11-12. See Commission's *Order Finding Jurisdiction and Referring Complaint to Independent Engineer*, in Docket No. E-002/M-15-786, issued December 1, 2015. In this Order, the Commission found that it has jurisdiction under Minn. Stat. 216B.21 over the matters alleged in SunShare's complaint in that docket. The Commission noted that Section 216B.21 provides the Commission with broad authority to investigate "any matter relating to any public utility" whenever the Commission has reason to believe that an investigation should be made.

¹⁰⁴ SunShare Reply, pp. 11-12, ft. 39 and 40.

actions to remove were inappropriate or improper, unfairly preventing SunShare from moving forward with the Schiller Project.

The record indicates that Xcel's removal of the Project from the queue after SunShare's failure to make payment and sign the Interconnection Agreement within 30 days was consistent with Xcel's tariff (Section 9, CSG program tariff).¹⁰⁵ SunShare alleged, however, that a number of mitigating circumstances explain why it did not seek a timely IE review, despite concerns with the results of Xcel's January 24, 2017 engineering study. The Commission will need to decide if these mitigating circumstances merit granting SunShare's request for relief.

SunShare alleged that negotiations were ongoing when Xcel terminated the Project on April 26, 2017. It also argued that the January 2017 engineering cost restudy, unexpectedly resulting in a near doubling of costs, was improperly performed, and that Xcel refused to clarify errors that SunShare perceived in the study. SunShare explained that the timing of the revised study made it impossible for SunShare to include the Schiller Project in the January 3, 2017 Settlement Agreement.

On the other hand, Xcel asserted that the Project was properly studied and cancelled, after numerous communications and extensions. The Department added that if SunShare had filed for IE review regarding its concerns with the engineering study prior to Xcel canceling the application, the Project cancellation would not have occurred, because the IE review would have "stopped the clock."¹⁰⁶

Xcel indicated that it did explain why there was a significant cost increase in the engineering study results included in the January 24, 2017 IA packet.¹⁰⁷ According to Xcel, the increase was due to the need for reconductoring of a mile of cable with the higher cost conductor/cable.¹⁰⁸ Xcel also maintained that its use of the 2% flicker standard for design evaluation was appropriate, that the Settlement directs the use of a specific flicker methodology, and that IE decisions in the Linden dispute are not relevant.¹⁰⁹ Xcel also questioned SunShare's legal

¹⁰⁵ The specific tariff authority in Section 9, Sheet 68.7 (6.c.i.), states that if payment and a letter of credit for unpaid balance are not made within 30 days the application will be removed from the queue and a new application will be required if it is later determined to proceed.

¹⁰⁶ Department Reply, pp. 2-3. See Xcel Tariff, Section 9, Sheet 68.11-68.12, 9 (b) and (e).

¹⁰⁷ Xcel noted that the explanation for the revised cost estimate is contained in the January 24, 2017 Interconnection Agreement packet and engineering study, which is Attachment D (Non-Public) to SunShare's Complaint. (Xcel Reply, p. 10.)

¹⁰⁸ As noted by Xcel, for distribution system modifications, the January 24, 2017 Interconnection Agreement packet listed about 10,000 feet of 336 AL reconductoring at a cost of \$616,000. While this was a significant increase from the prior August 1, 2016 engineering study, the Company explained to SunShare that it had discovered that about one mile section of overhead conductor in the field was #2 ACSR, although the Company had previously assumed it was 336 AL based on maps that were not accurate. Reconductoring with the higher cost conductor/cable will increase the cost of the project.

¹⁰⁹ Staff again notes that both the Order and Settlement regarding the Linden IE dispute, in Docket E002/M-19-29, reject the IE report and the findings therein.

standing to bring the Complaint, arguing that the Complaint violates the January 3, 2017 Settlement Agreement, and suggesting that portions of the Complaint be stricken from the record.

Staff notes that if the Commission grants SunShare the requested relief to restore the Schiller Project to its prior position in the queue, it may need to address several questions, not fully developed by SunShare in its Complaint. It may need to consider where in the queue the current project application will go, what right SunShare has to remaining capacity at the substation (given capacity has been awarded to other projects), and the timing of any revised engineering studies (what right SunShare has to specific timing on receiving study results, possibly ahead of other applications in the queue).

As noted by Xcel, “it is not possible to replicate the queue as it was in April 2017.”¹¹⁰ Even if SunShare’s argument for restoration to the queue is interpreted to mean the queue as it exists today (as suggested in SunShare’s Reply, page 14), additional engineering cost restudies may be required, and these could result in a different set of distribution upgrade costs to accommodate the Project.

SunShare maintained that restoring the Schiller Project to its “prior position” may not have significant adverse impacts on other developers in the queue. In December 2018, it requested a capacity screen for the Lester Prairie substation. According to SunShare, this screen, and the public queue information provided by Xcel, show that the substation should be able to handle an additional 3 MW without removing other projects from the queue. However, SunShare indicated that it would need additional information regarding the capacity on the circuit running to the west of the substation to determine the extent of the impact that the Project would have on others in the queue. Accordingly, without additional information from Xcel, SunShare stated that it could not know the extent of the impact of the return of the Schiller Project to the queue.¹¹¹

SunShare is thus asking the Commission to consider mitigating circumstances that explain why the request to reinstate the Project was not filed earlier. Whatever these circumstances, the fact remains that between April 26, 2017 (the date the Project was removed from the queue) and March 5, 2019 (the date SunShare filed its Complaint), other projects moved forward in the queue. As noted by Xcel, almost 6 MW of garden capacity have gone into operation, and 2 MW have been offered interconnection agreements.¹¹² Both Xcel and the Department agreed that to reinstate the Project could have negative impacts on other projects in the queue, which would not be in the public interest.

Xcel also maintained that the engineering study that resulted in the Interconnection Agreement packets sent to SunShare in January 2017 is now out of date. Staff notes that, apart from the alleged potential errors in the January 2017 study, and the question of the appropriate voltage

¹¹⁰ Xcel Reply, p. 8.

¹¹¹ SunShare Reply, p. 14.

¹¹² These numbers describe the queue as of March 4, 2019.

fluctuation method, a restudy of the Project will need to account for the changes at the substation (e.g. projects that have been completed and gone into operation, or have received or signed Interconnection Agreements, etc.).

As noted, during the period that the Schiller Project has been under review, Xcel's approach to design evaluation for voltage fluctuation has continued to evolve. These changing standards may have created uncertainty for SunShare regarding the appropriate voltage fluctuation method to be applied to the Schiller Project. To treat all projects fairly however, Xcel as Program Administrator set deadlines and attempted to specify when different approaches would apply.

If the current Project is placed back in the queue, and a restudy is performed, SunShare has asked the Commission to provide direction on the appropriate voltage fluctuation approach. The Commission will need to decide if Xcel's most recently updated voltage fluctuation approach (the Simplified IEEE 1453 Method) or the 2% method should be applied.¹¹³ The Commission should note that in October 2016, SunShare accepted the Company's offer to restudy the Schiller Project with the 2% methodology as a result of the Commission's September 20, 2016 decision.¹¹⁴ In addition, Xcel has argued that the Settlement requires a specific voltage fluctuation methodology.

SunShare indicated that it faces time constraints for the construction of the Schiller Project. Therefore, it asked the Commission to restore the Project to its prior queue position "immediately" so as to complete interconnection upgrades before September 30, 2019.¹¹⁵ It indicated that an expedited process is warranted so that the Project could be constructed "before next winter."¹¹⁶ It repeated that an expedited process is warranted to "allow for construction before the end of 2019" and called for a "single round of written submissions" to introduce "any additional facts" and a ten day response period to inform reply comments.¹¹⁷

Advanced Functionality Inverters

SunShare requested that the Commission require the Company to consider whether the use of Advanced Functionality Inverters (AFIs) or storage technology could reduce interconnection costs and increase capacity for the Schiller Project.¹¹⁸

¹¹³ Since the Commission rejected the IE report in Docket No. 19-29, including the findings and recommendations, the updated voltage fluctuation method proposed in the report may no longer be an option for any potential restudy of the Schiller Project.

¹¹⁴ *Order*, issued November 1, 2016, in 13-867.

¹¹⁵ SunShare Complaint, p. 26.

¹¹⁶ SunShare Complaint, p. 27.

¹¹⁷ SunShare Reply, p. 15.

¹¹⁸ SunShare Complaint, Paragraphs 5, 8, 22, and also pp. 24-26.

The Company argued that the Schiller Project should not be used as a test case to inform the development of Minnesota technical standards for interconnection. Instead, it requested that the Commission wait until the technical workgroup finished its work before making any decisions regarding AFI or storage technologies, so as not to defeat the goal of a standardized interconnection process.¹¹⁹

Staff provides the following discussion of this issue from the Staff Briefing Papers in SunShare's Linden Project IE dispute resolution case (Docket No. E-002/M-19-29):

SunShare has raised the issue of advanced inverter utilization in IE disputes with the Commission before, and the Commission has not required utilization to-date but is tracking progress toward certification and broader adoption of advanced inverters (i.e. installation and use.)

The newly revised IEEE 1547-2018 was finalized in April 2018 and requires certain performance capabilities for distributed energy resources; including advanced inverter functionality. Phase II in Docket No. E999/CI-16-521 is focused on developing Minnesota's statewide interconnection and interoperability technical requirements informed by this updated standard. UL 1741 certified equipment complying with the updated IEEE 1547-2018 is not expected until 2020-2021. Several states, including ISO-NE, are moving forward with advanced inverter functional requirements in the interim using a supplemental amendment (UL 1741 SA) based on California's Rule 21 or Hawaii's Rule 14H as the source requirement document (instead of IEEE 1547-2018). EPRI provided a draft chart outlining how certification with the various rules and standards aligned with the new IEEE 1547-2018 to the Technical Subgroup (TSG) working on updating Minnesota's statewide technical interconnection and interoperability requirements (TIIR). The TSG is currently proposing to wait for the update to the testing procedures (IEEE 1547.1) for UL 1741; rather than adopting an interim solution. The draft TIIR has not been reviewed or approved by the Commission (anticipated not later than 4 Q 2019), but discusses when advanced inverter functions would be required, enabled, disabled or allowed by mutual agreement. (Footnotes omitted)

Does SunShare have legal standing to bring the Complaint?

Xcel asserted that SunShare does not have legal standing to bring the Complaint because the "Owner/Applicants" on the projects are Program Application Managers (PAMs) of LLCs associated with Mortenson Construction at its headquarters address; and these parties did not bring the Complaint.¹²⁰

SunShare responded that Xcel's argument distracts from the fact that the Commission has heard complaints brought by SunShare over previous projects in which various independent LLCs were the PAMs. Furthermore, all ownership interests in the Mortenson LLCs were

¹¹⁹ Xcel Reply, pp. 13-14.

¹²⁰ Xcel Reply, p. 9.

transferred back to SunShare on June 29, 2018. SunShare commented that if Xcel actually thought Mortenson was the proper party to bring the Complaint, it would have treated it as such.¹²¹

Like the application of the Settlement's proscriptions to the Schiller Project discussed below, the issue of standing is a legal judgement.

Settlement Agreement

Xcel asserted that the January 3, 2017 Settlement Agreement reached between Xcel and SunShare effectively bars SunShare from raising a number of issues and allegations in its Complaint concerning the Schiller Project. Although the specific provisions of the Settlement are "Protected Data," they appear as Attachment Xcel-B (Non-Public) to Xcel's Reply comments, and appear to prevent SunShare from making certain claims in the Complaint. Examples of allegations that SunShare should be barred from raising are provided by Xcel in its Reply, Attachment Xcel-I.¹²²

SunShare responded that its Complaint remained valid. It argued that Xcel is construing the Settlement too broadly, interpreting it to bar SunShare from mentioning certain facts, events or issues even if they are a matter of public record and provide context for the dispute. It argued that it is entitled, notwithstanding the Settlement language in the relevant sections, to argue in terms of the impact of the doubling of interconnection costs in Xcel's January 24, 2017 restudy and the wrongful cancellation of the Schiller Projects queue position.¹²³

Staff notes that the provisions of the Settlement in question are Protected Data and whether SunShare is prevented from bringing its Complaint by these provisions is a legal judgement turning on the interpretation of the Settlement language.

Another issue related to the Settlement Agreement concerns Mechanical Completion, which the Agreement, citing the tariff, requires be completed in a timely fashion for the project to move forward. The date by which this phase of the Schiller Project needed to be completed under tariff was well past at the time of SunShare's Complaint filing, and is one more reason Xcel gives to argue that there is no public interest in addressing the Complaint.¹²⁴

Xcel claims allegations in the Complaint violate a provision of the Settlement and should be stricken from the record

As noted, the Settlement and Agreement terms refer broadly to any number of potential communications related to issues or disputes from SunShare. Xcel argued that certain allegations in the Complaint clearly violate these provisions, and provided examples of the

¹²¹ SunShare Reply, pp. 11-13.

¹²² Xcel Reply, p. 13.

¹²³ SunShare Reply, pp. 9-10.

¹²⁴ Xcel Reply, pp. 12-13, citing Tariff Sheet No. 67.

allegations that should be stricken from the record in Xcel Reply, Attachment Xcel-I.¹²⁵ The Commission should note that, unlike in the Linden dispute docket, Xcel did not file a Motion to Strike. SunShare disagreed that allegations in the Complaint violate the Settlement Agreement, and argued that its Complaint remained valid.

Summary and conclusion

The Commission may not be in a position to assess the truth-value of what the parties are each claiming, since the parties are not in general disputing the material facts of the case. The allegations and counterarguments raise issues of interpretation, many of which may be beyond the investigative reach of the Commission and staff in a notice and comment process. If the Commission determines that there are substantial differences of opinion by the parties over the facts themselves, then it could order a resource-intensive contested case proceeding. Staff believes that each party can view the events leading up to and following Xcel's decision to cancel the Project and remove it from the queue from its own perspective, without disagreeing about the sequence of events itself. These perspectives, and reasonable arguments defending them, can be held without disagreement over the underlying facts.

The Commission will need to decide, after considering these points of view, whether Xcel's decisions rose to the level of "wrongful actions and violations," as alleged by SunShare, or if the issues in the case arose from poor communication between the two companies. If Xcel is found to have engaged in wrongful actions and violations, then the Commission should consider the relief of returning SunShare's Project to the queue, among other relief requested. If Xcel's actions are consistent with tariff and oversight role in the CSG program's interconnection process, then the Department and Xcel's position in favor of denying the Complaint may have merit.

Specifically, the Commission should ask whether SunShare adequately supported its allegations that Xcel failed to conduct proper engineering studies, did not use proper engineering standards, and did not allow IE review before terminating the Project and removing it from the queue. Alternatively, the Commission should consider whether Xcel was within its tariff authority to remove the Project from the queue for non-payment, especially after granting several extensions, and in recognition of the time lapse during which SunShare could have requested an IE review but did not.

Staff believes that the parties' positions in this case are unlikely to be changed by a resource intensive investigation, such as a contested case. Staff is also unconvinced that a further notice and comment process will bring new facts to light or reverse the conclusions reached by Xcel in the course of its negotiations with SunShare. If the Commission does direct an investigation, SunShare asked that it be abbreviated and occur quickly. However, this may or may not be possible given the realities of the Commission's workload and scheduling.

¹²⁵ Xcel Reply, p. 13, citing Attachment Xcel-I.

In summary, the options for the Commission to consider include: (1) dismissing SunShare's Complaint, as recommended by the Department and Xcel, (2) granting SunShare's requests for relief, in part or in full, (3) seeking additional comments, and undertaking further inquiry, (4) directing or encouraging further negotiations between SunShare and Xcel so as to reach agreement, (5) sending the matter to arbitration, or (6) sending the matter to the Office of Administrative Hearings (OAH) for a contested case hearing.

VI. Decision options

Jurisdiction

1. Find that the Commission has jurisdiction over the subject matter in the Complaint. *(Xcel, SunShare)*
2. Find that the Commission does not have jurisdiction over the subject matter in the Complaint and dismiss the Complaint.

SunShare's Complaint

3. Find that it is in the public interest for the Commission to investigate the Complaint. *(SunShare)*
4. Find that it is not in the public interest for the Commission to investigate the Complaint and dismiss the Complaint. *(Xcel Energy, Department)*

Adequacy of the record for the Commission to make a decision on the merits of the case

5. Find that the Commission has an adequate record upon which to make a decision on the merits of the case.
6. Find that the Commission does not have an adequate record upon which to make a decision on the merits of the case and take one of the following actions:
 - a. Direct the Executive Secretary to issue a notice seeking additional comments within a specified time period. *(SunShare)*
 - b. Refer the matter to the Office of Administrative Hearings (OAH) for a contested case hearing. **(Staff note:** Xcel recommended a contested case hearing if the Commission decides to investigate the Complaint and the scope of issues is broad enough.)

SunShare's Complaint and relief sought

7. Based on the record in the case, dismiss the Complaint.
8. Grant SunShare some or all of the following relief:
 - a. Find that Xcel violated, inter alia, Sections 9 and 10 of its electric tariff book, S*RC program rules, and/or Commission Orders.
 - b. Require Xcel to immediately restore the Schiller Project to its prior position in the interconnection queue, without impact to the construction timeline, and to complete required interconnection upgrades before September 30, 2019.

- c. Require Xcel to study the Schiller Project using appropriate and least-cost industry standards, including Xcel's "simplified" IEEE 1453 methodology, and if interconnection costs are still prohibitively expensive, the current IEEE 1453 methodology recognized by the IE as the appropriate standard.
- d. Allow SunShare's engineers to participate in developing and running the studies to address any further issues that arise.
- e. As part of the restudy, require Xcel to analyze whether the use of smart inverter functionalities can address flicker and steady state voltage concerns and reduce interconnection costs, and if so, allow for the use of those functionalities.
- f. Prohibit Xcel from charging its overhead, profit, bond costs, other markups, or labor to SunShare to complete the interconnection work, recognizing the significant delays and damages caused by Xcel to date.
- g. In recognition that Xcel wrongfully removed the Schiller Project from the queue, prohibit Xcel from charging any costs to SunShare to upgrade its grid that would not have been necessary had Xcel not wrongfully removed the project.
- h. Grant any other further relief in SunShare's favor that the Commission thinks appropriate.

Attachment A

Xcel's Timeline of communications that were referenced in either the SunShare Complaint or in the Company's Response¹²⁶

Date/Description	Complaint Reference	Xcel Energy Response Reference
March 1, 2016 No Capacity Letter	Attachment A	
August 1, 2016 IA Packet	Attachment B	
September 22, 2016 email from SunShare requesting 2% methodology for Schiller Project	Attachment C	
September 28, 2016 email from the Company to SunShare noting that the 1453-based methodology will not be retroactive once filed		Attachment Xcel-A
October 6, 2016 email from the Company offering 2% methodology for Schiller that would include "field verifying our existing lines and equipment where reasonably possible."	Attachment C	
October 7, 2016 email from SunShare wanting the 2% methodology in the October 6 email to apply to the Schiller Project	Attachment C	
Settlement Agreement, effective January 3, 2017		Attachment Xcel-B
January 24, 2017 IA packet (for 1 of the three SRC numbers) ¹	Attachment D	
March 23, 2017 email from the Company to SunShare providing extension for payment to March 30, 2017.	Attachment F	
March 30, 2017 email from SunShare stating that it is unable to pay the 1/3 interconnection deposit.	Attachment F	
April 4, 2017 email from the Company to SunShare explaining that Schiller not eligible for the 1453-based methodology.		Attachment Xcel-C
April 17, 2017 email from the Company to SunShare, and Mortenson extending deadline to pay to April 21, 2017.	Attachment F	

Date/Description	Complaint Reference	Xcel Energy Response Reference
April 18, 2017 email from Mortenson to SunShare and the Company, appreciation of prior extensions, and stating that in event SunShare does not make payment by April 21 that the project program deposit is to be routed to Mortenson. There was a call on April 20 that is summarized below on page 6.	Attachment F	

¹²⁶ Xcel Response, March 20, 2019, pp. 3-4.

May 15, 2017 email from the Company to Mortenson confirming April 26, 2017 cancellation, and providing status on refund of the program deposit. The deposit was refunded on May 11, 2017.		Attachment Xcel-D
March 13-14, 2018, email string, including SunShare stating that it could not access Salesforce for the Schiller Project		Attachment Xcel-E
April 16, 2018 email from the Company to Department and SunShare addressing SunShare's IE request.		Attachment Xcel-F
April 25, 2018 email from Department to SunShare and the Company determining that IE Review is not available for the Schiller Project		Attachment Xcel-G
Minnesota Secretary of State website information for [PROTECTED DATA BEGINS PROTECTED DATA ENDS]		Attachment Xcel-H
Allegations in Complaint that are barred by Settlement Agreement of Jan. 3, 2017		Attachment Xcel-I