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January 19, 2021

VIA ELECTRONIC FILING

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

Re: Reply Comments of Sunrise Energy Ventures LLC
In the Matter of the Formal Complaint and Request for Expedited Relief by Sunrise Energy Ventures LLC Against Northern States Power Company d/b/a Xcel Energy
Docket No. E002/C-20-892

Dear Mr. Seuffert,

Curtis Zaun, Esq., on behalf of Sunrise Energy Ventures LLC, submits these Reply Comments regarding In the Matter of the Formal Complaint and Request for Expedited Relief by Sunrise Energy Ventures LLC Against Northern States Power Company d/b/a Xcel Energy.

Pursuant to Minn. R. 7829.0400, this document has been filed electronically for service on the parties.

Respectfully Submitted,

/s/ Curtis Zaun

CURTIS P. ZAUN

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

Docket Number E002/C-20-892

In the Matter of the Formal Complaint and Request for Expedited Relief by Sunrise Energy Ventures LLC Against Northern States Power Company d/b/a Xcel Energy	**REPLY COMMENTS OF SUNRISE ENERGY VENTURES LLC**

Sunrise Energy Ventures LLC ("Sunrise") respectfully submits these Reply Comments in response to the Minnesota Public Utilities Commission's ("Commission") Notice of Comment Period regarding In the Matter of the Formal Complaint against Northern States Power Company, d/b/a Xcel Energy ("Xcel"). The formal complaint was filed by Sunrise pursuant to Minn. Stat. § 216B.164, subd. 5(a), Chapter 7829 of the Minnesota Rules, and Section 5.3.8 of the State of Minnesota Distributed Energy Resources Interconnection Process ("MN DIP"), found in Section 10 of Xcel's tariff.

As we have seen from recent events, the right to have an impartial decision maker timely decide disputes is a fundamental aspect of our democracy and system of justice. Without such a right, people and entities in positions of power and influence would be able to abuse that power and influence for personal benefit to the detriment of the public interest. When it comes to the development of renewable energy, that right is embodied in Minn. Stat. § 216B.164, subd. 5(a), Minn. R. 7829.1500-.1900, and Section 10 of Xcel's tariff. As such, the Commission should follow the law established by it to handle formal complaints, Minn. R. 7829.1800, which directs the Commission to serve a complaint on the opposing party if the Commission determines it has jurisdiction and that there are reasonable grounds to investigate the allegations in the complaint. In this case, as the Minnesota Department of Commerce ("Commerce") has stated that the Commission has jurisdiction, and recommended that the Commission

follow the process established by Minn. R. 7829.1800.[1] There are reasonable grounds to investigate the allegations because Xcel has admitted that it has adopted and implemented tariff practices/policies without any notice to or approval by the Commission that prevented the development of the community solar garden ("CSG") projects at issue in this dispute.

The Commission notice asked whether "it was in the public interest for the Commission to investigate these allegations upon its own motion." It would not appear that the Commission needs to investigate the allegations upon its own motion because Sunrise has filed a formal complaint and requested formal action be taken by the Commission. As such, the Commission's rules for initiating and acting on a formal complaint should be followed.[2] However, if the Commission wanted to consider the public interest at this stage of the proceedings, the public interest it should be considering is whether it is in the public interest for the Commission to fulfill its quasi-judicial role under Minn. Stat. § 216A.05, subd. 1, and Minn. Stat. 216B.08 to effectuate Sunrise's legal right under Minnesota law and Xcel's tariff to have the Commission decide its dispute. It would be a violation of Sunrise's due process rights to dismiss Sunrise's complaint without deciding the merits of its allegations. In Minn. R. 7829.1800 the Commission determined that it is in the public interest to investigate the allegations of a formal complaint if there are reasonable grounds to do so and can only dismiss a formal complaint if is "there is no reasonable basis to investigate the matter."[3] There is clearly a reasonable basis to investigate this matter.

Xcel argues that it is not in the public interest to resolve Sunrise's dispute. This position is inconsistent with the position it very recently took regarding Next Energy Equity LLC's complaint[4]

[1] *See* DOC DER Comments, Docket No. E002/C-20-892, Jan. 11, 2021, p. 1.
[2] *See* Minn. R. 7829.1600 & .1800.
[3] *See* Minn. R. 7829.1800, subp. 1.
[4] On page 4 of the comments filed by Xcel on October 7, 2020, in docket C-20-749, Xcel stated that it was in the public interest to investigate the complaint "given that the subject matter of the dispute is regulated by the Commission, the dispute is material, the dispute is unique, and the parties have not been able to resolve the dispute despite best efforts and good faith discussions." That standard is met in this case and there is no reasonable explanation for why Xcel believes the standard should be different for this matter.

and at odds with its extensive discussion of the merits of Sunrise's allegations in its comments in this docket. Based on its admissions and the numerous issues raised and discussed by Xcel in its comments, any reasonable person would agree than an investigation of the allegations is warranted.

Xcel's attempt to mislead the Commission into believing this is a complicated matter with complex issues should be ignored and recognized for what it is, nothing more than a delay tactic. As noted in Sunrise's complaint, Xcel doesn't necessarily need to win on the merits of any argument because the time and expense of the delay alone can be enough to discourage the development of distributed generation. This is a simple dispute with a simple issue. There is no question that the policies at issue are not in Xcel's tariff or Xcel's Technical Services Manual ("TSM"). Xcel has admitted that it adopted and enforced provisions/practices/policies without any notice to or approval by the Commission. These actions violate Minnesota law and policy, both procedurally and substantively. Sunrise is simply asking that the Commission determine that Xcel's practices/policies are unenforceable against the projects at issue in this dispute. If Xcel wants to enforce the practices/policies at issue in this dispute, or any other policy, practice or procedure that affects the interconnection of distributed generation resources, it should follow the procedures required by Minnesota law to do so, which allows the public to comment on their veracity and the Commission to decide their legitimacy.[5] If the Commission approves the adoption of any new policies, practices or procedures related to interconnection, then those policies, practices or procedures should only apply to interconnection applications submitted after their effective date.[6] Thus, the Commission does not need

[5] *See, e.g., In the Matter of Updating Generic Standards for Utility Tariffs for Interconnection and Operation of Distributed Generation Facilities Under Minn. Stat. §216B.1611*, Docket Nos. E999/CI-16-521 and E999/CI-01-1023*; see also* MN DIP 1.1.6, which allows the Area EPS Operator and Interconnection Customer to jointly seek Commission approval of an amendment to the Minnesota Distributed Energy Resource Interconnection Agreement for use between them for a specific Interconnection Application, by filing a petition with the Commission or notice to the Commission and no one objects to it within 30 days. Despite the fact that under this provision Xcel cannot even change the interconnection application for a particular project without approval by the Commission or notice to and passive consent by the public, Xcel now apparently argues that they can unilaterally change interconnection practices or polices without notice, consent or approval.

[6] *See* MN DIP 1.1.3, stating that the new procedures and requirements for interconnection do not apply to interconnection applications that were submitted before their effective date.

to determine the merits of any of the policies or practices at issue in this dispute to resolve it. And even if it did decide allow Xcel to adopt a new policy or practice in this complaint docket, that new policy or practice would be prospective, and, thus, inapplicable to the projects at issue in this dispute.

But regardless of any of these issues, at this point in the proceedings, the only issues that need to be decided are whether the Commission has jurisdiction, whether there are reasonable grounds to investigate the allegations of Sunrise's complaint, and how the Commission should proceed. The parties and Commerce agree that the Commission has jurisdiction. There are reasonable grounds to investigate the allegations in the complaint because Xcel has admitted that it adopted and enforced interconnection policies or practices that prevented the development of the projects at issue in this dispute without notice to or approval by the Commission. Therefore, the Commission should follow the procedures it has adopted for handling formal complaints.

I. Jurisdiction and Consideration of Formal Complaints

The Commission has jurisdiction to resolve this dispute pursuant to Minn. Stat. § 216A.05,[7] Minn. Stat. § 216B.08[8] and Minn. Stat. § 216B.164, subd. 5(a). The parties and Commerce agree that the Commission has jurisdiction, although the basis varies.

Minn. Stat. § 216B.164, subd. 5(a) states, in part, "In the event of disputes between a public utility and a qualifying facility, either party may request a determination of the issue by the commission." The Commission has established how disputes are handled. Minn. R. 7829.1500[9] allows a person with a dispute to submit an informal complaint to the Commission "by letter or other writing,

[7] Minn. Stat. § 216A.05, subd. 1, states:

> The functions of the commission shall be legislative and quasi-judicial in nature. It may make such investigations and determinations, hold such hearings, prescribe such rules, and issue such orders with respect to the control and conduct of the businesses coming within its jurisdiction as the legislature itself might make but only as it shall from time to time authorize. It may adjudicate all proceedings brought before it in which the violation of any law or rule administered by the Department of Commerce is alleged.

[8] Minn. Stat. § 216B.08, subd. 1, states, in part, "The commission is hereby vested with the powers, rights, functions, and jurisdiction to regulate in accordance with the provisions of Laws 1974, chapter 429 every public utility as defined herein. The exercise of such powers, rights, functions, and jurisdiction is prescribed as a duty of the commission."

[9] Sunrise notes that the statutory authority listed for Minn. R. 7829.1500-.1900 is Minn. Stat. § 216A.05.

by telephone, electronically, or in person." Pursuant to Minn. R. 7829.1600, Commission staff are supposed to help resolve informal complaints, but "[i]f the complaint desires formal action by the commission, a formal complaint must be initiated by the commission, or filed by a qualified complainant." Section 5.3 of the MN DIP recognizes these different processes for handling disputes.

Because Sunrise desires formal action by the Commission, its dispute must be initiated by a formal complaint. The Commission has established how formal complaints are handled. When the Commission receives a formal complaint, Minn. R. 7829.1800, subp. 1, requires the Commission to determine whether it has "jurisdiction over the matter" and whether "there are reasonable grounds to investigate the allegation." Because Xcel has admitted that it adopted policies that discourage or discriminate against the development of distributed generation without notice or approval by the Commission, which are what is preventing development of the projects at issue in this dispute, there are reasonable grounds to investigate the allegations in Sunrise's complaint. While Xcel attempts to justify these policies in its comments, on their face, they violate Minnesota law and policy, and thus, provide "reasonable grounds to investigate."

Accordingly, the next step in the process pursuant to Minn. R. 7829.1800, subp. 2, as noted by Commerce in its comments, is to serve Sunrise's complaint on Xcel and require Xcel to answer the complaint. Sunrise does not oppose Commerce's recommendation that the Commission vary the timelines to allow Xcel 30 days to answer the complaint and Sunrise 30 days to reply, if necessary.

II. Public Interest in Resolving Disputes

The Commission has recognized the public interest in resolving disputes by establishing that the allegations of a formal complaint should be investigated if there reasonable grounds to do so, and only dismissing a complaint if it lacks jurisdiction or "there is no reasonable basis to investigate the matter."[10] This is a relatively low standard. Clearly, the public has an interest in the Commission

[10] *See* Minn. R. 7829.1800, subp. 1.

following the statutes established by the Legislature and the rules that the Commission itself has established for handling formal complaints. Sunrise and other Interconnection Customers rely on and expect the processes and procedures for handling disputes between it and Xcel will be followed. Denying them the legal recourse that has been established by the Legislature and Commission would violate their due process rights.

Apparently recognizing the power and information disparity that exists between renewable energy developers and utilities, the Minnesota Legislature properly placed the burden of proof on the utility and allowed the developer the ability to recover their attorney fees and costs when they prevail on an issue.[11] These provisions were reiterated by the Commission when it promulgated Minn. R. 7835.4500, stating, "In case of a dispute between a utility and a qualifying facility or an impasse in the negotiations between them, either party may request the commission to determine the issue. **When the commission makes the determination, the burden of proof must be on the utility**." (Emphasis added). With regard to recovering attorney fees, the Commission in Minn. R. 7835.4550, stated that "[i]n the order resolving the dispute, the commission shall require the prevailing party's reasonable costs, disbursements, and attorney's fees to be paid by the party against whom the issue or issues were adversely decided …." These are extremely important aspects of the dispute resolution process because it would be fundamentally unfair and unjust to place the burden of proof on any party other than the one who controls the information about the distribution system. Moreover, allowing an Interconnection Customer to recover its attorneys' fees and costs when it prevails is the only effective check on a utility abusing its power and position. Without such a provision, which is common in many situations where there is a power and/or resource disparity,[12] a utility could adopt policies or procedures that violate Minnesota law or policy knowing that its under-resourced customers will be unlikely to challenge them

[11] *See* Minn. Stat. § 216B.164, subd. 5(a).
[12] *See, e.g.*, Minn. Stat. § 332A.18, subd. 2(d); Minn. Stat. § 332B.13, subd. 2(d);

because the time and cost of such a challenge is too great in any but the most egregious abuses and violations.[13] Moreover, without any significant repercussions, a utility will have little incentive for complying with Minnesota law or policy when violating it is in its self-interest. While a $200,000[14] dispute is likely enough to resort to a formal complaint, Interconnection Customers should not be forced to endure illegal or improper actions until the stakes become so great that they are forced to resort to request help from the Commission.

Finally, Xcel's comments, and the myriad of issues they raise, alone demonstrate that there would be a public interest in resolving this dispute. The notion that there is so little public interest that Sunrise's complaint should be dismissed would seem to be at odds with Xcel's argument that there is so much public interest that a generic docket should be opened. The simple answer is somewhere in the middle-Xcel should be required to answer the complaint.

III. Merits of Xcel's Arguments

Although it is unnecessary to address the merits of the allegations in Sunrise's complaint or Xcel's comments at this point in the proceedings because Xcel's comments clearly establish that there are reasonable grounds to investigate the allegations, comments on some of Xcel's arguments are likely warranted to correct any misstatements that were made or clarify any confusion or misunderstandings that may have been created.

A. Mediation

Xcel argues that if the Commission wants to proceed with addressing Sunrise's allegations, "there are a number of other issues that the Commission would need to address before doing so."[15] Sunrise disagrees. As noted above, the only issue the Commission needs to address is whether there

[13] *See* NEE Complaint, Docket No. E002/C-20-749, Sept. 23, 2020, where Xcel tried to recover over $200,000 more in system upgrade costs than it had previously informed the developer about.
[14] *See id*.
[15] Xcel Energy Comments, Docket No. E002/C-20-892, Jan. 11, 2021, p. 9.

are reasonable grounds to investigate Sunrise's allegations. Based on Xcel's admissions and comments, this standard is clearly met.

Nonetheless, the first issue that is Xcel raises that it claims needs to be addressed before the Commission can proceed is whether an Interconnection Customer must participate in mediation before it can file a complaint, claiming that the "sequence of steps for dispute resolution in MN DIP seems to indicate that mediation is required before filing a formal Complaint, but MN DIP 5.3.8 creates some ambiguity."[16] Section 5.3.8 of the MN DIP doesn't create any ambiguity. As quoted by Commerce in its comments, this section explicitly states that a complaint can be filed "at any time." Xcel's argument ignores the plain language of this provision. It also ignores the futility of engaging in any sort of voluntary dispute resolution with Xcel. To the best of Sunrise's knowledge, Xcel has rarely, if ever, voluntarily resolved a significant dispute involving CSGs without the involvement of the Commission.

B. Expedited Relief

The Commission's rules state that the Commission "shall deal with a formal complaint through a contested case proceeding, informal proceeding, or expedited proceeding."[17] Because there are no material facts in dispute, Sunrise has requested an expedited proceeding. As noted in the complaint, any delay in resolving a dispute affects the ability to develop a CSG. As such, any unreasonable or unnecessary delay necessarily discourages the development of a CSG. Moreover, as noted by Xcel, a delay can affect the development of any projects behind the disputed project in the queue. Accordingly, if disputes are not resolved as expeditiously as possible, that is discouraging the development of distributed generation in violation of Minnesota law and policy.

Xcel states that "should the Commission decide that it is in the public interest for it to address the engineering issues, then it should make sure that it has a complete record upon which to makes (sic)

[16] Xcel Comments, p. 9.
[17] Minn. R. 7829.1900, subp 1.

its determinations."[18] Sunrise agrees that the Commission should have a complete record, which is why it requested Xcel to do a complete a System Impact Study ("SIS") with 556 AL conductor.[19] Xcel, however, refused to do so and provide the Commission with a complete record. Xcel should not be able to delay these proceedings now based on claims there is not a complete record when it intentionally refused to provide one.

Though, nonetheless, the Commission has a record sufficient to address the allegations in Sunrise's complaint. First and foremost, because the policies at issue in this dispute are not part of Xcel's tariff or Xcel's TSM, and were adopted and implemented without any notice to or approval by the Commission, they should not be enforceable. Moreover, Xcel has admitted that it is its practices/policies that are preventing the development of Sunrise's projects, not any actual engineering issues. Xcel admitted in the October 26, 2020, meeting with Sunrise that the use of 556 conductor would resolve the thermal amperage issues identified in the SIS and has reiterated that admission in its comments. Though the comments now claim, without support, that an increase from 336 AL to 556 AL will only result in an additional 40 amps of capacity, equating to 1 to 2.5 MWs of capacity, Pre-Application reports provided by Xcel to Sunrise state the capacity of 336 AL is 560 amps, while 556 AL is 765 amps, an increase of 205 amps. This would equate to an increase in between 5 and 12.5 MWs of additional capacity, which is more than sufficient to safely and reliably connect the projects at issue in this dispute. And no engineering issues have been identified that would limit interconnecting SolarClub 11 to feeder SDX 311. As such, there is no reasonable argument that these policies are necessary for Xcel to maintain the safety or reliability of its system.

[18] Xcel Comments, p. 10.

[19] At the November 19, 2020, meeting with Xcel, Sunrise explicitly asked Xcel to run a System Impact Study using 556 AL conductor for the purpose of having a complete record for the Commission and followed up with an email stating, "Sunrise understands that if you agree to run the model using this solution to the problems that are identified by the study it does not bind Xcel to allowing 556 to be sued to develop these projects. It is simply for the purposes of creating a complete record for the Public Utilities Commission to decide whether Xcel can enforce its unwritten policy to not allow the development of distributed generation." *See* Sunrise Complaint, p. 15-16, ¶¶. 54 & 56.

C. Deadlines Stayed While Dispute is Pending

Because Xcel has confirmed in its comments that it "does not object in this instance to staying the MN DIP timelines while the engineering issues identified above are pending at the Commission,"[20] Sunrise would be willing, with the Commission's approval, to withdraw its request for relief related to this issue.

D. Minnesota Statute Section 216B.164

Minnesota law requires that "[w]hen the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit."[21] Minn. Stat. § 216B.164, subd. 5(a), states, in part, "In the event of disputes between a public utility and a qualifying facility, either party may request a determination of the issue by the commission." Minn. R. 7835.0100, subp. 19, defines a "qualifying facility" as a small power production facility that satisfies the conditions of title 18, part 292 of the Code of Federal Regulations. The projects at issue in this dispute satisfy the definition under part 292 because each of them have a capacity of just 1 MW and generate power by a renewable resource.[22]

Interestingly, Xcel's argument that Section 216B.164 does not apply to Sunrise completely ignores the language of the statute, instead relying on an unpublished Minnesota Court of Appeals decision that did not deal with any issues related to the present dispute. That case dealt with certain limitations imposed on CSGs, not whether disputes involving a CSG were handled under Minn. Stat. § 216B.164, subd. 5(a). So, besides the fact that pursuant to Minn. Stat. § 480A.08, subd. 3, the case cited by Xcel may not be cited for anything other than the "law of the case, res judicata, or collateral estoppel," none of which are applicable here, it is not dispositive and any dicta should not

[20] Xcel Comments, p. 11.
[21] Minn. Stat. § 645.16.
[22] *See* 18 C.F.R. § 292.203(a).

be considered persuasive.

But even if the Commission did consider the dicta, that does not help Xcel's argument. In explaining why the Commission could impose certain limitations on the size and amount of upgrades required to interconnect CSGs, the court focused on the difference in the rate a developer could recover under Section 216B.164 versus under Section 216B.1641. Under Section 216B.1641, a developer could get an "enhanced 'applicable retail rate,'" which is higher than the rate under Section 216B.164.[23] The court noted, "If a developer proceeds under Minn. Stat. § 216B.164, that developer is subject to the Public Utilities Regulatory Policies Act of 1978 (PURPA), which provides that a qualifying facility (QF) such as Sunrise may take advantage of an 'avoided cost rate.'"[24] As Xcel must be aware, the projects at issue in this dispute filed their applications under Section 10 of its tariff, not Section 9. Thus, Sunrise will not receive the "applicable retail rate," but rather the rate determined under Minn. Stat. § 216B.164, subd. 10.

Finally, under Minnesota law "[e]very law shall be construed, if possible, to give effect to all its provisions."[25] In addition, there is a presumption that "the legislature intends the entire statute to be effective and certain" and "the legislature intends to favor the public interest as against any private interest." While it is reasonable to conclude, under the canons of statutory construction, that certain specific provisions of the CSG statute can supersede some of the general provisions of the PURPA statute, there is nothing to indicate that the legislature intended the CSG statute to preempt or supplant all the provisions of Minn. Stat. § 216B.164. Another court could give effect to the dispute resolution provision of Section 216B.164 without it affecting the capacity and upgrade limitations affirmed by Court of Appeals' 2016 decision. Moreover, it is unreasonable to believe

[23] *In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of its Proposed Community Solar Garden Program*, A15-1831 (Minn. Ct. App. May, 31, 2016), p. 9.
[24] *Id*.
[25] Minn. Stat. § 645.16.

that the Minnesota Legislature would direct the Commission to "reasonably allow for the creation, financing, and accessibility of community solar gardens" but then expect it to take away one of the fundamental rights and protections that the Legislature provided to all distributed generation developers. Eliminating the only effective way to challenge the illegal or unreasonable policies or procedures of Xcel would favor its interest over that of the public and have a significant impact on the ability of CSG developers to create and finance CSGs, as illustrated by the present dispute.

E. Correct Legal Standard

Xcel argues that the "correct legal standard is set forth in Minn. Stat. 216B.03, and the standard is whether this is a unreasonably discriminatory practice."[26] Minn. Stat. § 216B.03 states, in part, "Rates shall not be unreasonably preferential, unreasonably prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to a class of consumers." Because Minn. Stat. § 216B.03 appears to be primarily about reasonable rates, it is unclear at this time if it would be applicable to Sunrise's dispute.[27] However, even if it is determined to be applicable, Xcel's argument ignores the rules of grammar and, therefore, is incorrect.[28] The word unreasonably is used to modify preferential and prejudicial, but not discriminatory. If the legislature had wanted to modify the word discriminatory by the word unreasonably, it could have either placed the word only before preferential, thereby modifying all three words, or placed it before each word. It did not and this choice must be considered intentional.

Moreover, Minn. Stat. § 216B.07, states, "No public utility shall, as to rates or service, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage." Thus, while the correct legal standard could be "discriminatory," or "unreasonable prejudice or disadvantage," it is not "unreasonably

[26] Xcel Comments, p. 5.
[27] Sunrise recognizes that Minn. Stat. § 216B.02, subd. 5, defines "rate" as any practices affecting a tariff.
[28] *See* Minn. Stat. § 645.08 (stating that "words and phrases are construed according to rules of grammar").

discriminatory."

F. Right to Amend Complaint

Xcel argues that "[t]he Commission should not allow Sunrise to continue to allege that it has a 'right' to later amend its complaint.[29] Interestingly, even though Next Energy Equity LLC had exactly the same provision in its complaint[30] Xcel did not raise any objection to it.[31] The purpose of such a reservation is simply to ensure that the complaint is consistent with any additional relevant information that is disclosed or discovered after the complaint is filed. Sunrise is a proponent of due process and agrees that any such action could only be done with the approval of the Commission and sufficient time for Xcel to respond.

G. Xcel's 556 AL Conductor Discrimination Practice/Policy

Xcel's attempt to paint Sunrise as an unreasonable developer who was pressing for "irregular treatment" of its unviable projects is belied by the facts of this dispute. The Pre-Application Report Sunrise received from Xcel before it submitted any applications, which is specifically provided for by Section 1.4 of the MN DIP and is supposed to provide the "[a]vailable capacity (in MW) of the substation/area bus or bank and circuit likely to serve the proposed Point of Common Coupling (i.e., total capacity less the sum of existing aggregate generation capacity and aggregate queued generation capacity),"[32] stated that there was 41 MVA available on the assigned substation, SCL TR02, and 3 MVA available on the assigned feeder, SCL 322. Which is why Sunrise questioned the June 24, 2020, letter it received from Xcel, stating "that there was no capacity for this interconnection without upgrading the substation transformer."[33] Xcel's response on June 26, 2020, was, "That is an excellent question. These substations are (sic) not have any reduced capacity without these upgrades

[29] Xcel Comments, p. 12.
[30] *See* NEE Complaint, p. 12.
[31] *See* Xcel Comments, Docket 20-749.
[32] *See* MN DIP 1.4.2.4.
[33] Sunrise Complaint, Docket No. E002/C-20-892, Dec. 21, 2020, ¶ 23.

unfortunately. There is no capacity left without the Phase 2 System Impact Study on both substations in this case."[34] When Sunrise followed up again noting that the Pre-Application Report said the transformer had 41 MVA of capacity, the reason for the lack of capacity changed to the "thermal capacity of the conductor." If Xcel was "already very familiar"[35] with the relevant feeder it seems odd that it would send a letter stating that the substation that had been upgraded in May 2020 would need to be upgraded again. This is situation is similar to the situation Nokomis Energy noted in its Comments, wherein Xcel notified it that there was no capacity for its project because its project required conductor larger than 336 AL to mitigate the voltage and thermal impacts caused by it.[36] It wasn't until after Nokomis informed Xcel that the relevant conductor was actually 556 AL that "Xcel eventually relented and provided Nokomis an Interconnection Agreement after a substantial delay." It are these types of situations that have caused developers to question the information that is provided by Xcel and to push for more information and transparency.

A July 1, 2020, email from Xcel also stated:

> On the bi-weekly call we had on 5/5/20, our engineer did mention that although it will be very dependent on project location to the feeder, this was likely to be a problem will all project in this batch study on this feeder. Limits such as this, especially when based on location, are only able to be identified when studied at this stage. Additionally, thermal limits are no something that a pre-application data report reports on. Only a System Impact Study can catch this.

So, contrary to the inference in Xcel's comments that Sunrise was proceeding unreasonably, Sunrise was simply utilizing the only mechanism that Xcel has told it can accurately determine whether there is capacity on Xcel's system for a project.

At its October 26, 2020, meeting with Sunrise Xcel admitted that reconductoring to 556 AL would resolve the thermal ampacity issues it identified in the SIS, and it reaffirms that position in its

[34] Sunrise Complaint, ¶ 25.
[35] Xcel Comments, p. 2.
[36] Nokomis Energy Comments, Docket No. E002/C-00-892, Jan. 11, 2021, p. 1

comments. So, in reality, there are not engineering issues preventing the development of Sunrise's projects, but rather practice/policy choices adopted by Xcel without any notice to developers or the Commission.

Xcel does not dispute that is 556 AL conductor discrimination practice/policy is not in its tariff or TSM. In fact, Xcel told Sunrise it is an unwritten policy, so there is no dispute that Xcel did not receive approval from the Commission to adopt such a practice/policy. Xcel attempts to justify its 556 AL discrimination practice/policy by claiming that it cannot use 556 AL just in case "there were later to be a decrease in load."[37] Xcel's argument appears non-sensical and specious. Xcel is essentially arguing that upgrading the conductor size will make the system less reliable. If the conductor is upgraded today, then it has been upgraded, at the developer's cost rather than the ratepayers, and is ready to address any load situation that may arise in the future. And that "may" is a big "may" because Xcel does not substantiate that it has any reasonable grounds to believe that there will be a decrease in load on this particular feeder in the future. Moreover, as more electric vehicles are adopted, including trucks and buses,[38] one would reasonably expect load to increase, not decrease. In fact, if Xcel plans to power 1.5 million EVs by 2030, more than 30 times the current number, "including efforts to support residential and public charging options and EV adoption," as it stated in August of last year,[39] then the likelihood of load going down on this feeder or any other feeder seems extremely remote, if not non-exist. According to Xcel, "[t]he additional electricity sales generated by EVs more than pay for the system investment required to support them."[40] And while Xcel would benefit by having ratepayers pay for the system upgrades because then it can ask the Commission for the additional 9-10% it

[37] Xcel Comments, p. 5
[38] One would also expect semis, tractors, and recreational vehicles, and bicycles as well.
[39] Xcel Press Release, Xcel Energy's new electric vehicle vision to save customers billions while delivering cleaner air, August 12, 2020, (https://www.xcelenergy.com/company/media_room/news_releases/xcel_energy%E2%80%99s_new_electric_vehicle_vision_to_save_customers_billions_while_delivering_cleaner_air (visited on January 17, 2021).
[40] *Id*.

typically does on top of the upgrade costs, it would be in the public interest to let developers pay for upgrades now instead of the ratepayers in the future. So not only are CSG projects creating jobs, including good paying union jobs, and a cleaner environment today, they are likely avoiding or mitigating upgrade costs to ratepayers in the future.

Minnesota law and policy requires that Xcel connect Sunrise's projects if it can do so safely and reliably based on known information.[41] Xcel, in fact, acknowledges this in its comments when it states that under the MN DIP interconnection process, "developers submit applications, and, only after an application is submitted, does **the utility study the application based on then-current network conditions**, queue position, location, size and type of DER."[42] If Xcel were allowed to deny interconnecting a project based on unlikely or unsubstantiated hypotheticals it would eviscerate the interconnection requirement of Minn. Stat. § 216B.164, subd. 8(a). Xcel would be allowed to discriminate in violation of Minn. Stat. § 216B.03, unreasonably prejudice or disadvantage in violation of Minn. Stat. § 216B.07, discourage the development of distributed generation in violation of Minn. Stat. § 216B.164, subd. 1, and violate the goals, requirements and very purpose of the MN DIP with impunity. Such an outcome is surely not in the public's interest nor what the Minnesota Legislature intended when it passed any of these statutes or the Commission approved the MN DIP.

And to be clear, Sunrise is not advocating that every project be required to be interconnected in a particular way. It is simply arguing that when a distributed generation project can be safely and reliably connected to the distribution system based on the "then-current network conditions" and whatever upgrades are identified in the Facilities Study, the law requires that it be allowed to do so. Interconnection should be based on the particular facts and circumstances of the request, not a generic arbitrary policy untethered to the reality of the request. If Xcel wants to change the standard away from

[41] *See* Minn. Stat. § 216B.164, subd. 8(a); Minn. Stat. § 216B.1611, subd. 2; Minn. R. 7835.1900; MN DIP Forward, 4.3.1 and 4.4.1; and MN DIP Attachment 6, System Impact Study Agreement.
[42] Xcel Comments, p. 7 (emphasis added).

what is required now, then it should follow the proper procedure for doing so. Sunrise is not asking the Commission to change the law or Xcel's tariff, it is simply asking the Commission to enforce it.

H. Feeder Limitation Practice/Policy

Xcel does not dispute that its feeder limitation practice/policy is not in its tariff or TSM. Nor does it dispute that did not provide explicit notice to or receive approval from the Commission for this practice/policy prior to its implementation/enforcement. Rather, it argues that, based on a Commission order in docket M-13-867 on November 1, 2016, it is consistent with Commission precedent.[43] This order regards several appeals to the Commission of Independent Engineer decisions. However, none of the appeals dealt directly with this policy, especially in a situation where application of it would violate Minnesota law and policy. As such, this decision not controlling and distinguishable.

To be clear once again, Sunrise is not arguing that Interconnection Customers should be able to choose any feeder they want. Rather, as noted above, interconnection should be based on the facts and circumstances of the request, not unsubstantiated facts, speculative hypotheticals, or arbitrary policies untethered to the reality of the request. In most cases the nearest feeder will likely be the most viable one for technical, practical and legal reasons, but not in every case. In this case, SolarClub 11 is .28 miles East of SCL 322 down 90th Street Southeast. It could be interconnected to SDX 311 approximately one mile down exactly the same road, just in the opposite direction. In other words, less than three-quarters of a mile and an arbitrary policy is the difference between creating more jobs and a cleaner environment or not.

Xcel raises hypotheticals regarding crossing feeders, increasing the cost to the consumer and permits by local units of government to justify its position. But this project could be designed to avoid crossing feeders and because the developer is required to pay for all of the upgrade costs, there would not be any increased cost of service to the consumer. And the risk of a local unit of government denying

[43] Xcel Comments, p. 6.

any required permit is inherent in connecting to any feeder. If that is the reason a project cannot be constructed, then that should be the reason, not an arbitrary policy meant simply to discourage the development of distributed generation. Again, Minnesota law and policy requires that the determination of whether a project can interconnect be based on the facts and circumstances of the project, not unsubstantiated facts, speculative hypotheticals, or arbitrary policies. But regardless, if Xcel wants to enforce a feeder limitation practice/policy, it should follow the proper legal procedure for adopting such a practice/policy so that the public can weigh in and the Commission can consider the merits of such practice/policy.

I. Alternative Request for what is Effectively Equitable Relief

In its complaint, Sunrise requests that "if the Commission does not find that Xcel violated Minnesota law or policy, its tariff or contractual obligations, require Xcel to work in good faith and with its best efforts to identify additional sites where the project could be constructed without paying any additional costs or fees."[44] Sunrise is not seeking to vary the MN DIP. Sunrise has submitted applications under the MN DIP and the request to work in good faith and use best efforts comes directly from the language of Section 5.3.5 of the MN DIP. Sunrise is simply asking that if the Commission allows Xcel to enforce discriminatory policies that were adopted without notice to Sunrise or the Commission, which prevent Sunrise from developing the projects at issue, Sunrise should not have to pay an additional application fee or deposit to move these projects to another feeder. Sunrise would still have to pay for the new SIS from the remaining SIS deposits it has already paid and Xcel could bill Sunrise for the difference after the new SIS was completed as provided for by section 10.0 of the SIS agreement. And, of course, Sunrise would have to pay for the Facilities Study and any necessary upgrade costs. In short, Sunrise is not asking for Xcel to pay to develop its projects. Rather, Sunrise is simply asking that it be put in as close a position as possible to where it would be were it not for

[44] Sunrise Complaint, p. 25.

Xcel's discriminatory policies. As evident from this dispute, Xcel's policies have placed an excessive burden on Sunrise, it would be in the public to develop more renewable energy, and a variance would not conflict with any standard imposed by law.[45] And, significantly, this is only an issue that the Commission would have to decide if it determined that Xcel's admittedly discriminatory policies did not violate Minnesota law or policy for procedural or substantive reasons.

IV. Procedure to be Followed

As discussed above, and recommend by Commerce, the Commission should follow the procedure for handling formal complaints that it established under the Minnesota Rules. Under Minn. R. 7829.1900, subp. 2, the Commission should serve the complaint on Xcel and require it to answer within the 30 days recommended by Commerce. It should allow 30 days for Sunrise to submit a reply, if necessary. It should also establish a comment period for other persons pursuant to Minn. R. 7829.1900. Because there are no material facts in dispute, this matter should be handled as an expedited proceeding.

Xcel's recommendation to dismiss Sunrise's complaint without ruling on the merits of it and, instead, opening a generic docket should be rejected by the Commission. First, for the reasons discussed above, dismissing Sunrise's complaint without deciding the merits of the dispute would violate Sunrise's due process rights. Second, opening a generic docket is unnecessary. There is nothing in the record to suggest that any utility other than Xcel has adopted and enforced practices or policies that prevent the development of distributed generation without any notice to or approval by the Commission. If Xcel wants to adopt and enforce tariff practices or policies that affect the development of distributed generation, it should follow the proper procedures for doing so. The Commission orders cited by Xcel to support its position are so factually and legally distinguishable from the present situation they provide no useful guidance to the Commission. If Sunrise was an apartment company

[45] *See* Minn. R. 7829.3200.

asking the Commission to adopt some new policy or practice, then these orders might provide a some direction, but that is simply not the case.

Conclusion

Although Xcel raises a myriad of issues in its comments, as illustrated by Commerce's concise comments, the simple fact is that the only questions that need to be answered at this point in the proceedings are whether the Commission has jurisdiction over this dispute and there are reasonable grounds to investigate the allegations in the formal complaint. From there the Minnesota Rules provide the procedure to be followed.

The Commission has recently stated that it is in the public interest to build renewable energy projects that create jobs and provide a cleaner environment for Minnesotans.[46] These statements simply reiterate the Commission's and the Minnesota Legislature's long-stated intent to promote developing distributed energy resources.[47] Xcel has admitted that it adopted interconnection practices/policies without notice to or approval by the Commission that prevent the development of the projects at issue in Sunrise's formal complaint, and, thereby, violate Minnesota law and policy, both procedurally and substantively. Thus, there are clearly reasonable grounds for the Commission to proceed with serving Sunrise's formal complaint on Xcel. As noted previously, Sunrise is not asking the Commission to change the law or Xcel's tariff, it is simply asking it to enforce them.

Respectfully Submitted,

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[46] *See* PUC Notice of Reporting Required by Utilities, Docket No. E,G-999/CI-20-492, May 20, 2020.
[47] *See, e.g.*, Minn. Stat. 216B.164, subd. 1; Minn. Stat. § 216B.1611, subd. 1; and, Section 10 of Xcel's Tariff, Sheet 165.