

**STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION**

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner
Betsy Wergin	Commissioner

September 10, 2015

**In the Matter of a Formal Complaint and Petition by  
SunShare, LLC for Relief Under Minn. Stat. § 216B.1641  
and Sections 9 and 10 of Xcel Energy's Electric Tariff Book**

**Docket No. E-002/M-15-786**

**COMMENTS IN RESPONSE TO THE COMMISSION'S SEPTEMBER 1, 2015 NOTICE BY  
FRESH ENERGY**

Fresh Energy submits these Comments in response to the Public Utilities Commission's ("Commission") September 1, 2015 Notice Seeking Comments regarding the proper procedural path for SunShare LLC's ("SunShare") Formal Complaint ("Complaint") against Xcel Energy ("Xcel" or "the Company") for specific violations of its Section 9 and 10 tariffs. Xcel's Section 9 tariff contains the program rules for the Solar\*Rewards Community ("S\*RC") program and the Company's Section 10 tariff governs the interconnection process for all distributed generation systems under 10 MW interconnecting on Xcel's system. An S\*RC project submits an application under Section 9, and when that application is deemed complete, it begins the interconnection process under Section 10.

In short, the Commission has jurisdiction to hear the Complaint and grant proper relief. We respectfully recommend that the Commission exercise its authority to hear the Complaint on an expedited basis because SunShare has already worked with Xcel in good faith to remedy the issues and because further delay would only serve to exacerbate the issues raised in the Complaint. Procedurally, we recommend that the Commission hear the Complaint as a dispute under §216B.164, subd. 5, and utilize the procedures for a formal complaint under Minn. Rules 7829.1700-1900.

**1. Does the Commission have jurisdiction over this matter? Are there reasonable grounds to investigate the allegations?**

Yes, the Commission has jurisdiction over this matter and there are reasonable grounds to investigate the allegations. The Commission could find jurisdiction through multiple statutory provisions and rules. First, Xcel's Section 10 tariff, which is based on Minnesota's Statewide Interconnection Standards<sup>1</sup> and

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<sup>1</sup> See Order Establishing Standards, September 28, 2004, Docket No. E-999/CI-01-1023.

governs the interconnection process at issue here, states that the Commission “shall maintain continuing jurisdiction over [the dispute] process.”<sup>2</sup> The Section 10 tariff’s dispute resolution provision also includes a directive that the parties agree to 90 days of mediation before Commission determination.<sup>3</sup> However, the Commission can, and should, waive mediation in this instance. In its Complaint, SunShare has shown good cause as to why mediation is not appropriate in this instance where more time before a decision will only exacerbate the issues raised in the Complaint.<sup>4</sup> The Complaint also demonstrates that SunShare has made Xcel aware of the violations raised in the Complaint and made good faith efforts to remedy the issues with Xcel informally.

The Commission has the authority to waive the mediation contemplated in the tariff, as the Commission maintains ultimate jurisdiction over the Section 10 interconnection process and any Interconnection Agreements.<sup>5</sup> The Commission also has general authority in matters where it has jurisdiction to “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.”<sup>6</sup> In addition, the Commission has general jurisdiction over the S\*RC program and Xcel’s Section 9 tariff.

The Commission should exercise this authority because ruling on the Complaint and addressing the issues therein as soon as practicable will make it more likely that projects otherwise complying with the S\*RC program will be able to interconnect, create more opportunity for customers to subscribe and will likely resolve issues applicable to other S\*RC projects’ interconnections that will help the process move efficiently for subsequent projects and Xcel. The more efficient the interconnection process, the less costly it will be for Xcel and developers, and ultimately Xcel’s customers.

The Commission also has jurisdiction to hear the Complaint under Minn. Stat. § 216B.164, subd. 5. Section 216B.164 applies to small power production, which includes SunShare’s solar gardens as qualifying facilities.<sup>7</sup> Subdivision 5 states “[i]n the event of disputes between an electric utility and a qualifying facility, either party may request a determination of the issue by the commission.”<sup>8</sup> Therefore, the Commission has jurisdiction to hear the dispute between SunShare, as the developer of multiple qualifying facilities, and Xcel regarding Xcel’s processing of these qualifying facility interconnection applications.

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<sup>2</sup> Xcel Section 10 Tariff, Sheet No. 85, B, 2.; Sheet No. 121-122, X.

<sup>3</sup> *Id.*

<sup>4</sup> SunShare Complaint at 12.

<sup>5</sup> Xcel Section 10 Tariff, Sheet No. 85, B, 2; Sheet No. 121-122, X.

<sup>6</sup> Minn. Stat. §216A.05, subd.1.

<sup>7</sup> Minn. Rule 7835.0100, subp. 19.

<sup>8</sup> See *also* Minn. Rule 7835.4500.

Finally, the Commission could find jurisdiction under Minn. Stat. § 216B.17, Complaint Investigation and Hearing. While jurisdiction under Xcel's Section 10 tariff (via the Statewide Interconnection Standards) and § 216B.164, subd. 5 is more applicable, it would be reasonable to interpret jurisdiction under § 216B.17. Although community solar projects, qualifying facilities, or non-utility power generators are not explicitly listed in § 216B.17, it would be reasonable for the Commission to interpret that section broadly to include investigating utility execution of their tariffs as it relates to enabling the delivery of programs for customers.

SunShare has also demonstrated reasonable grounds for an investigation. The Complaint documents 100 discreet tariff violations throughout the interconnection process. Multiple parties have commented on the importance of Xcel implementing its interconnection tariff to the success of the S\*RC program throughout the S\*RC docket. Interconnection remains a critical issue for the program, and a complaint detailing 100 tariff violations sufficiently demonstrates reasonable ground for the Commission to investigate.

**2. If the Commission decides to investigate the complaint, what procedure should be followed to carry out the investigation, given the large number of claimed tariff violations? For example, could the issues raised by the complaint be addressed as part of a contested case proceeding in Docket No. E-002/M-13-867, through direction to the Department of Commerce or some other entity to investigate the potential violations, or within the scope of grid modernization?**

SunShare's Complaint should be handled as a stand-alone proceeding. We recommend that the Commission hear the Complaint as a dispute under §216B.164, subd. 5, or alternatively under the Section 10 tariff dispute provision while waiving mediation, and utilize the procedures for a formal complaint under Minn. Rules 7829.1700-1900. Section 216B.164, subd. 5 is the most applicable statutory dispute mechanism because this is a dispute between qualifying facilities and the utility, as discussed above. Moreover, while the dispute provision in the Section 10 tariff is the most direct authority, it does not provide any direction to the Commission regarding procedure, but only provides that the Commission has jurisdiction. Similarly, because section 216B.164, subd. 5 does not provide procedural guidance other than establishing the burden of proof, the Commission should utilize the formal complaint procedures under Minn. Rules 7829.1700-1900. We make this recommendation because SunShare's Complaint was filed under this procedure as a formal complaint under these rules, and second because these procedures seem well suited to handle the large number of claimed tariff violations. The formal complaint procedures provide more opportunity for factual development than the standard notice and comment process through an Answer step for Xcel to respond to the factual

allegations before open commenting, but are also much faster-moving and less resource-intensive than a full contested case.<sup>9</sup>

Because this is a specific dispute between a single party and Xcel, it should not be handled in other more general proceedings, such as the Grid Modernization docket or the ongoing S\*RC program docket (No. E002/M-13-867). Attempting to address SunShare's Complaint in either of those dockets would distract from the objectives of each and would not be an efficient means of handling the detailed and numerous claimed violations in the Complaint. Certainly information and lessons-learned from SunShare's Complaint process should still inform the Grid Modernization and S\*RC program dockets where issues overlap.

**3. How will an investigation of the allegations be coordinated with the process established in the Commission's August 6, 2015 Order (in Docket No. E-002/M013-867) to investigate interconnection disputes? How will the timing of an investigation be coordinated with other filings already pending in the Community Solar Garden Docket?**

The process established in the August 6, 2015 Order to investigate interconnection disputes will hopefully provide a means to help deal with interconnection issues as they arise from other community solar garden projects in the future and to prevent another instance where the accumulation of tariff violations results in a formal complaint. However, that process is still under development, with the Department recently issuing an RFP for the independent engineer.<sup>10</sup> The Department's RFP anticipates a notification of the awarded proposal by October 16, 2015. With the RFP schedule it is doubtful that the independent engineer process will be in place until late 2015. SunShare should be able to seek relief before the time it will take for that process to be developed and implemented. Further, that process is "upon the request of any Community Solar Garden applicant."<sup>11</sup> Therefore, even when that process is established, SunShare and other Community Solar Garden applicants may seek relief through the existing tariff dispute and statutory channels identified above. Hopefully issues resolved by the Commission in this Complaint process will provide guidance and settle some issues that may come before the independent engineer once that process is established.

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<sup>9</sup> Although a contested case remains an option for the Commission under Minn. Rule 7829.1900 if the Commission determines that is the most appropriate venue.

<sup>10</sup> Minnesota Department of Commerce, Request For Qualifications For Independent Engineer To Engage In Dispute Resolution Issued 8-28-15

<sup>11</sup> Order, August 6, 2015 at 22.

## **Recommendation**

In summary, we respectfully recommend that the Commission exercise its authority to hear the Complaint on an expedited basis because SunShare has already worked with Xcel in good faith to remedy the issues and because further delay would only serve to exacerbate the issues raised in the Complaint.

Procedurally, we recommend that the Commission hear the Complaint as a dispute under §216B.164, subd. 5, and utilize the procedures for a formal complaint under Minn. Rules 7829.1700-1900.

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