

**STATE OF MINNESOTA  
BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMITTEE**

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**Formal Complaint and Petition for Relief  
by Nokomis Energy LLC and Ole Solar  
LLC Against Northern States Power  
Company d/b/a Xcel Energy**

MPUC Docket No. \_\_\_\_\_

**COMPLAINT**

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Nokomis Energy LLC and Ole Solar LLC (“Nokomis”) respectfully submit this Formal Complaint against Northern States Power Company, d/b/a Xcel Energy (“Xcel”) to the Minnesota Public Utilities Commission (“Commission”), pursuant to the Minnesota Distributed Energy Resources Interconnection Process (“MNDIP”), Minn. Stat. § 216B.1611 and Minn. R. 7829.1700.

This dispute concerns Xcel’s unilateral decision to stop processing Nokomis’ “fast track” interconnection application, in direct violation of law. At the relevant stage of the application process, MNDIP required Xcel to either conduct a supplemental review under MNDIP Section 3.4, or evaluate the project under the MNDIP Section 4 Study Process. Xcel has refused to take either step, despite repeated requests by Nokomis, in direct violation of the MNDIP regulation.

Instead of processing the application, Xcel sent Nokomis an email stating that the project was now “on hold” and that it would remain “on hold” for up to “600 business days” before Xcel would resume following the legally mandated MNDIP steps. This “on hold” step is not an option in MNDIP, or any other governing tariff or regulation. Xcel has invented this step out of whole cloth, without any legal authority whatsoever.

Xcel also claims that the 600-business-day-delay constitutes “Reasonable Efforts” to meet the timeframes in MNDIP. This is absurd on its face. 600 business days constitutes nearly 2.5 years of delay for an interconnection process whose *entire study timeline* is a fraction of that. Interstate transmission projects are studied in less than 600 business days. Nokomis is not aware of any comparable distributed energy resource interconnection process in the country that takes anywhere close to 600 business days.

Nokomis requests that the Commission issue an order directing Xcel to resume processing the Ole Solar LLC application and comply with Xcel’s legal obligations under MNDIP. If the Commission finds that Xcel is permitted to unilaterally delay processing the application, then Nokomis requests that the Commission find that 600 business days is not “Reasonable Efforts” and direct Xcel to resume processing the Ole Solar LLC interconnection application within a reasonable timeframe.

## **I. PARTIES AND JURISDICTION**

1. Complainant Nokomis Energy LLC is a renewable energy developer based in Minnesota, developing community solar gardens, customer-sited solar arrays, and other renewable energy projects.

2. Complainant Ole Solar LLC is a wholly owned subsidiary of Nokomis Energy and is the Interconnection Customer under MNDIP.

3. Respondent Northern States Power Company, d/b/a Xcel Energy, is a Public Utility under Minn. Stat. § 216B.02, Subd. 4 and an Area Electric Power System (EPS) Operator under MNDIP.

4. Addresses for Complainants and Respondents, and their Counsel, is as follows:

Complainants: Nokomis Energy LLC and Ole Solar LLC  
2639 Nicollet Ave, Suite 200  
Minneapolis, MN 55408

Complainants' Counsel: Matthew Melewski (#0392819)  
The Boutique Firm PLC  
5115 Excelsior Blvd. #431  
St. Louis Park, MN 55416

Respondent: Northern States Power Company d/b/a Xcel Energy  
414 Nicollet Mall  
Minneapolis, MN 55401

Respondent's Counsel: James Denniston (#0390949)  
Assistant General Counsel  
Northern States Power Company, d/b/a Xcel Energy  
414 Nicollet Mall  
Minneapolis, MN 55401

5. The Commission has jurisdiction to hear this matter, make findings of fact, and order all appropriate relief under, *inter alia*, sections 216A.05 and 216B.164 of Minnesota Statutes, and Chapter 7829 of the Minnesota Rules.

6. Pursuant to MNDIP Section 5.3.3, Nokomis filed a dispute with Xcel on August 18, 2021. After the parties were unable to reach a resolution, the parties mediated the dispute on October 25, 2021, as set forth in MNDIP Section 5.3.6. While both Nokomis and Xcel participated in the mediation in good faith, the mediation did not result in resolution of the dispute. Nokomis now brings this Complaint in accordance with MNDIP Section 5.3.7, pursuant to the Commission's Formal Complaint Process set forth in Minn. R. 7829.1700 *et seq.*

## II. APPLICABLE STATUTES AND REGULATIONS

7. Xcel is obligated to interconnect distributed generation projects under 10 megawatts pursuant to, *inter alia*, Minn. Stat. 216B.164 Subd. 8.

8. The interconnection of such projects is subject to Minnesota Statute § 216B.1611, which directs the Commission to establish “generic standards for utility tariffs for the interconnection and parallel operation of distributed generation.”<sup>1</sup>

9. The Commission adopted the Minnesota Distributed Energy Resources Interconnection Process (“MNDIP”) in 2019, and it contains the “generic standards” and regulatory requirements governing the interconnection process for the Ole Solar LLC project.

10. MNDIP Section 3.3 mandates the options available to the Area EPS Operator at the current state of the Ole Solar interconnection application process.

### **III. FACTUAL ALLEGATIONS**

11. Ole Solar LLC is developing a 1 MW AC distributed generation solar array for St. Olaf College.

12. The Ole Solar project is a “behind-the-meter” project and is not anticipated to contribute any generation to the grid. Rather, St. Olaf College will consume all electricity generated by the solar array.

13. On June 4, 2021, Nokomis, on behalf of its wholly owned subsidiary Ole Garden LLC, submitted an interconnection application to Xcel under MNDIP’s Section 3 “Fast Track” process.

14. MNDIP Section 3.2 provides that Xcel “shall” perform certain initial review screens within 15 business days of such interconnection application being deemed complete.

15. On July 13, 2021, Xcel notified Nokomis that Ole Solar LLC’s application had failed the initial review screens set forth in MNDIP Section 3.2.1.

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<sup>1</sup> Minn. Stat. § 216B.1611 Subd. 2.

16. On July 16, 2021, Nokomis received an email from the “Xcel Energy DER Interconnection Project Team,” stating, in relevant part:
- [Ole Garden’s] interconnection application has been put on hold temporarily while Xcel Energy sequentially reviews other applications ahead in the engineering queue at the same feeder/substation NOF071. These applications must be reviewed one at a time based on their queue position in order to maintain the safety and reliability of our grid for all our energy customers, pursuant to notice provided under MN DIP 5.2.2. There are currently 3 other projects ahead of yours in queue. This may add a 600 business day delay to your application timeline.<sup>2</sup>
17. Pursuant to MNDIP Section 3.2.3 and 3.3, Nokomis requested a Customer Options Meeting, which was held on July 29, 2021.
18. MNDIP Section 3.3 provides that no later than the Customer Options Meeting, the Area EPS Operator (here, Xcel) “shall”:
- 3.3.1 Offer to perform a supplemental review in accordance with section 3.4 and provide a non-binding good faith estimate of the costs of such review; or
  - 3.3.2 Obtain the Interconnection Customer’s agreement to continue evaluating the Interconnection Application under the Section 4 Study Process.<sup>3</sup>
19. After receiving an offer to perform supplemental review, the Interconnection Customer must agree in writing and pay the deposit for supplemental review within 15 business days, or the interconnection application will be reviewed under the Section 4 Study Process.<sup>4</sup>
20. If the Section 4 Study Process is elected by the Interconnection Customer, or it is defaulted to by the Interconnection Customer’s failure to make the deposit for supplemental review, the Area EPS Operator and the Interconnection Customer are to hold a Scoping Meeting within 10 business days.<sup>5</sup>

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<sup>2</sup> A copy of the July 15, 2021 email is attached as Exhibit A to this complaint.

<sup>3</sup> MNDIP § 3.3.

<sup>4</sup> *Id.* § 3.4.1.

<sup>5</sup> *Id.* § 4.2.1.

21. Xcel has not offered to perform a supplemental review pursuant to Section 3.4 or provided a non-binding good faith estimate of the costs of such review.

22. Xcel has not asked for Nokomis' consent to review the project under the Section 4 Study Process.

23. As a result, Nokomis has not received an opportunity to pay the deposit for supplemental review or engage in a scoping meeting for the Section 4 Study Process.

24. Nokomis submitted a Notice of Dispute pursuant to MNDIP Article 5.3 on August 18, 2021, arguing that Xcel does not have the authority to stop processing Ole Solar's application and requesting that Xcel follow the MNDIP process.<sup>6</sup>

25. In the Notice of Dispute, Nokomis also addressed Xcel's invocation of MNDIP Section 5.2.2 in its July 16, 2021, email, which states that Xcel must use "Reasonable Efforts" to meet deadlines. Nokomis argued that a 600 business day delay does not constitute "Reasonable Efforts."<sup>7</sup>

26. Xcel responded to Nokomis on September 1, 2021, asserting that MNDIP Section 1.8.3 "implicitly" allows Xcel to indefinitely suspend compliance with MNDIP to accommodate other projects in the queue.<sup>8</sup> Xcel stated, in relevant part:

MN DIP requires the Area EPS Operator to maintain a single administrative queue and manage the queue by geographical region (i.e. feeder, substation, etc.). This means that all DER applications, including community solar gardens and on-site solar systems, are being studied serially based on their queue position (as noted in MN DIP 1.8.3). . . . applications behind projects being studied in queue are temporarily placed "on hold" until the applications ahead in queue are fully studied and have either signed the Interconnection Agreement (IA) or have been withdrawn.<sup>9</sup>

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<sup>6</sup> A copy of Nokomis' Notice of Dispute is attached as Exhibit B.

<sup>7</sup> *Id.*

<sup>8</sup> A copy of Xcel's response to the Notice of Dispute is attached as Exhibit C.

<sup>9</sup> *Id.* at 1.

27. Nokomis and Xcel met on September 10, 2021 to discuss the dispute, pursuant to MNDIP Section 5.3.5, but were unable to identify a mutually agreeable resolution.

28. On October 25, 2021, Nokomis and Xcel participated in a third-party mediation to resolve the dispute, pursuant to MNDIP Section 5.3.6, but were unable to identify a mutually agreeable resolution.

#### **IV. COMPLAINT**

29. Xcel lacks any legal authority under MNDIP to stop processing the Ole Solar “fast track” application at the Section 3.3-step in the interconnection process.

30. Bereft of any written authorization, Xcel declares that it has discovered a new step between the lines of MNDIP. Xcel claims it is “implicitly” authorized to place projects “on hold” indefinitely, because MNDIP calls for projects to be “studied serially based on their queue position.”<sup>10</sup> This justification is as unpersuasive as it is convoluted, concealing the simple fact that MNDIP gives Xcel no authority to stop processing the Ole Solar application. As explained in more depth below, Xcel’s position relies on a misunderstanding of the plain language of MNDIP and the interconnection process itself.

31. Even if Xcel had the legal authority under MNDIP to stop processing the Ole Solar interconnection application, Xcel’s contention that a 600-business day delay constitutes “Reasonable Efforts” does not pass the laugh test.

32. In sum, there is no interpretation of MNDIP that authorizes Xcel’s action in this case. Xcel violated the law when it stopped processing the Ole Solar application and continues to do so every day it refuses to process the application.

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<sup>10</sup> See Exhibit C at 1.

**There Is No “On Hold” Step in MNDIP**

33. As noted above, Xcel has no authority under MNDIP to stop processing the Ole Solar application and Xcel has not cited any provision authorizing it to do so. Rather, MNDIP Section 3.3. directs that Xcel “shall” take one of the two listed steps. It is a mandatory requirement.

34. Xcel, however, believes that compliance is in Xcel’s discretion. Xcel theorizes that the nature of the administrative queue entitles Xcel to place the Ole Solar project “on hold” indefinitely.<sup>11</sup>

35. Xcel’s “on hold” theory finds no support in MNDIP. Indeed, Xcel conceded in its response to Nokomis’ Notice of Dispute that “‘on hold’ is not defined as part of the MN DIP process.”<sup>12</sup>

36. Xcel nonetheless contends that “[on hold] is implicitly acknowledged in the timelines.”<sup>13</sup> This claim is irreconcilable with the plain language of MNDIP. The MNDIP subsection cited by Xcel (1.8.3) does not contain the phrase “on hold,” any reference to an “on hold” process, or any analogous step or process. In fact, the phrase “on hold” does not appear *anywhere* in MNDIP.

37. The language in MNDIP must be construed to give words and phrases their plain and ordinary meaning.<sup>14</sup> There is simply no way to interpret the plain language of MNDIP to give Xcel an authority it does not have; to take a step it cannot take.

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *See, e.g., Emerson v. Sch. Bd. of Indep. Sch. Dist. 199*, 809 N.W.2d 679, 682 (Minn. 2012); *State v. Scovel*, 916 N.W.2d 550, 554 (Minn. 2018) (explaining that interpretation of regulations uses the same principles as when interpreting statutes).



38. Absent any language authorizing Xcel to stop processing Ole Solar's interconnection application, the Commission must conclude that Xcel lacks that authority.

**The Word “Serially” Does Not Mean “MNDIP Timelines Are Optional”**

39. Lacking any actual authority to stop processing Ole Solar's application, Xcel argues that a single use of the word “serially” in the administrative queue subsection of MNDIP acts as a sort of skeleton key, giving Xcel discretion to determine which deadlines it must meet.

40. The subsection in question, MNDIP 1.8.3, states in full:

The Area EPS Operator shall maintain a single, administrative queue and may manage the queue by geographical region (i.e. feeder, substation, etc.) This administrative queue shall be used to address Interconnection Customer inquiries about the queue process. If the Area EPS Operator and the Interconnection Customer(s) agree, Interconnection Applications may be studied in clusters for the purpose of the system impact study; otherwise, they will be studied serially.<sup>15</sup>

41. This section says nothing about “on hold” or Xcel's obligations under MNDIP.

42. Xcel's contention is hard to take seriously. Xcel is claiming that because this subsection says that most projects will be “studied serially,” Xcel is legally authorized to postpone all MNDIP deadlines it is otherwise compelled to meet, and to ignore all MNDIP steps it is otherwise compelled to take.<sup>16</sup>

43. Again, Xcel is fighting against the plain language of MNDIP. There is no text or suggestion in subsection 1.8.3, explicit or implicit, that serial review means Xcel can halt project timelines or place projects “on hold.” Xcel's baseless interpretation would make “serially” into the quintessential “elephant in a mousehole.”<sup>17</sup>

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<sup>15</sup> MNDIP § 1.8.3.

<sup>16</sup> See, e.g., *id.* § 3.3 (“the Area EPA Operator **shall**...”) (emphasis added)

<sup>17</sup> See generally *Whitman v. American Trucking Ass'ns*, 531 U.S. 457, 468 (2001) (“Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.”). An “elephants in mouseholes” doctrine has developed subsequent to *Whitman v. American Trucking*, which is essentially that

44. The consequences of Xcel’s interpretation similarly cut against Xcel. In no uncertain terms, Xcel is arguing that its interpretation of one ancillary subsection, which never discusses timelines, authorizes Xcel to ignore all erstwhile mandatory timelines and stop the MNDIP process altogether. This renders the timelines in MNDIP essentially meaningless except for the first project in the queue. MNDIP must be interpreted to avoid such absurd, unreasonable results.<sup>18</sup>

### *A Queue Is Serial*

45. In addition to the lack of legal authority and absurd interpretations, Xcel’s justification also misrepresents the interconnection process itself.

46. Xcel appears to believe that “studied serially” means something other than “studied in the order of the queue.” This conflicts with the basic meaning of the words “queue” and “serial.” A queue *is* serial. That’s the nature of a queue. “Serial” does not dictate how Xcel studies projects; just that Xcel must do so “in order.”

47. What Xcel wants “studied serially” to mean is “studied *sequentially*,” or “one at a time.” In its July 16, 2021 letter, for example, Xcel does not say that the projects ahead in queue are to be studied serially, but that Xcel “**sequentially** reviews other applications ahead in the engineering queue [and] [t]hese applications must be reviewed **one at a time**.”<sup>19</sup> Similarly, in its public Distributed Energy Resources Queue, Xcel lists the “application step” for “on hold” projects as “**sequential** review.”<sup>20</sup>

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extraordinary authority is not delegated in vague or ancillary provisions. *See generally* Loshin & Nielson, *Hiding Nondelegation in Mouseholes*, 62 Admin. L. Rev. 1 (2010).

<sup>18</sup> *See Moore v. Robinson Env't*, 954 N.W.2d 277, 284 (Minn. 2021) (stating that “we presume that the legislature does not intend a result that is absurd ... or unreasonable [and] may interpret the statute ‘in a sensible manner’ to avoid such results.”) (citations and quotations omitted)

<sup>19</sup> Ex. A (emphasis added).

<sup>20</sup> A screenshot of the NOF071 Queue is attached as Exhibit D. (emphasis added)

48. MNDIP does not even mention “sequential” or “one at a time” review, let alone require it. Those words don’t appear anywhere in MNDIP. In other words, MNDIP does not mandate “sequential” or “one at a time” review as Xcel claims. Rather, Xcel chose to do so on its own, and the consequences from doing so are ultimately Xcel’s creation.

49. Xcel’s decision to study projects sequentially or one at a time is a dramatic shift from historical practice.

50. Xcel has always maintained a queue for the interconnection process, even before MNDIP. Before June 17, 2019, Xcel managed the interconnection process under Tariff No. 9, which defines the queue process in nearly identical terms to MNDIP:

“Study Queue” means the priority sequencing of Interconnection Applications for a certain feeder or substation waiting to be studied, or in fact being studied, as part of the Engineering Scoping Study, or which have completed the Engineering Scoping Study and which do not yet have an Interconnection Agreement signed by the Company.<sup>21</sup>

51. As the Tariff makes clear, the queue was the “priority sequencing” of applications as they pass through the various steps in the interconnection study process.

52. MNDIP is nearly identical to the Tariff. MNDIP directs Xcel to “maintain a single, administrative queue and may manage the queue by geographical region (i.e. feeder, substation, etc.),” to study projects “serially,” and to maintain a public queue with the “Status of the Application’s progress through the process (e.g. Initial Review, Supplemental Review, Facilities Study, Construction, Inspection, etc.).”<sup>22</sup>

53. Whereas the Tariff calls for “priority sequencing” of applications as they pass through the various steps in the interconnection study process, MNDIP calls for applications to

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<sup>21</sup> Xcel Tariff 9-68.

<sup>22</sup> MNDIP § 1.8.3, 1.8.4.1.7. MNDIP Section 1.8.4.1.7 makes little sense if there is an “on hold” step. If there is, then only one active project ever has any status other than “on hold” (which is not among the listed options).

be “studied serially,” with the various steps in the interconnection study process to be listed in a public queue. There is no meaningful difference between these descriptions, let alone a directive for Xcel to change how it studies projects.

54. The only major change from the interconnection process under Tariff No. 9 to MNDIP is that Xcel decided, unilaterally, to start processing applications sequentially or one-at-a-time. Nothing in MNDIP required Xcel to do this.

55. Prior to MNDIP, during the period in which Minnesota interconnected the overwhelming majority of the largest community solar garden program in the country, Xcel studied projects in a different manner (which Xcel has referred to as “parallel study”). Xcel used to do it one way, and now Xcel does it another way. Xcel’s contention that it *must* study projects sequentially or one-at-a-time is simply false.<sup>23</sup>

56. Notably, there is no reference in any of these sections to Xcel having the authority to halt projects or refuse to comply with timelines in MNDIP. Which makes sense – one has nothing to do with the other.

57. The model for MNDIP is instructive on this point. MNDIP was expressly modelled after the Federal Energy Regulatory Commission’s Small Generator Interconnection Process (SGIP).<sup>24</sup> In the final rule enacting SGIP, FERC made clear that the administrative queue does not dictate how the utility performs the studies:

Although Queue Position determines the order of the interconnection studies and the cost responsibility for the Network Upgrades necessary to accommodate the

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<sup>23</sup> Xcel included a long “engineering perspective” in its response to the Notice of Dispute explaining that Xcel has to review projects one-at-a-time because that’s the only way Xcel can obtain essential information and manage the queue. *See* Ex. C. In light of the fact that Xcel did not perform its engineering studies in this manner for several years in which it interconnected over 700 MWs of DER, the claims about why Xcel must study projects one-at-a-time would appear to be mistaken.

<sup>24</sup> *See* MNDIP at 1.

interconnection, it does not determine the order in which the interconnections are completed.<sup>25</sup>

58. FERC also made clear that the administrative queue is separate from the timelines in the SGIP, and the utility “must meet all deadlines established in the SGIP without regard to queue position or queue related delays.”<sup>26</sup>

59. Accordingly, even if Xcel was correct, and “serially” meant “sequentially” and “one at a time,” it does not matter. Xcel still has to comply with the timelines and steps in MNDIP. There is no exception for Xcel or its chosen study methodology.

**A 600-Business-Day-Delay Is Not Reasonable**

60. Even if the Commission finds Xcel acted in compliance with MNDIP, it is beyond question that the “600 business day” delay does not constitute “Reasonable Efforts” under MNDIP.

61. In its July 16, 2021 email, Xcel argues the “on hold” delay is justified by MNDIP Section 5.2.2. That section provides:

The Area EPS Operator shall make Reasonable Efforts to meet all time frames provided in these procedures. If the Area EPS Operator cannot meet a deadline provided herein, it must notify the Interconnection Customer in writing within three (3) Business Days after the deadline to explain the reason for the failure to meet the deadline, and provide an estimated time by which it will complete the applicable interconnection procedure in the process.<sup>27</sup>

62. On its face, a 600 business day delay is not “reasonable” when the entire interconnection process set forth in MNDIP should take a fraction of that time.

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<sup>25</sup> FERC, *Standardization of Small Generator Interconnection Agreements and Procedures*, Final Rule, 70 Fed. Reg. 34,190, 34,207, ¶ 178 (May 12, 2005). FERC has elsewhere explained how utilities under SGIP should manage projects lower in queue proceeding ahead of projects higher in the queue. *See, e.g.*, 70 Fed. Reg. 71,760, 71,767-68 (Nov. 30, 2005).

<sup>26</sup> *Id.* at ¶ 180 (May 12, 2005).

<sup>27</sup> MNDIP § 5.2.2 (emphasis added).

63. Elsewhere in the MNDIP Glossary, “Reasonable Efforts” is defined as “efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.”<sup>28</sup> The phrase “Good Utility Practice” is defined in the MNDIP Glossary as:

“Any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and act which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.”<sup>29</sup>

64. These definitions mandate a standard that is generally accepted in the context. As noted earlier, Nokomis is not aware of any delays of this nature outside of Xcel territory in Minnesota.

65. A 600-business day delay for a distributed energy resources interconnection of a behind-the-meter 1 MW project appears to be anomalous within the electric industry in the United States. It is not Good Utility Practice. Its not even *acceptable* Utility Practice. It is illegal, unreasonable, and it must stop immediately.

## **V. REQUEST FOR RELIEF**

For the reasons detailed above, Nokomis respectfully requests that the Commission issue an order directing Xcel to resume processing the Ole Solar LLC application and comply with Xcel’s legal obligations under MNDIP. If the Commission finds that Xcel is permitted to unilaterally delay processing the application, then Nokomis requests that the Commission find

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<sup>28</sup> MNDIP Glossary of Terms, at 5 (emphasis added).

<sup>29</sup> *Id.* at 2.

that 600 business days is not “Reasonable Efforts” and direct Xcel to resume processing the Ole Solar LLC interconnection application within a reasonable timeframe.

Respectfully Submitted,

NOKOMIS ENERGY LLC & OLE SOLAR LLC

A handwritten signature in black ink, appearing to read 'Matthew Melewski', written over a horizontal line.

Matthew Melewski (#0392819)  
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*Attorney for Complainants*

**Formal Complaint and Petition for Relief by Nokomis Energy LLC and Ole Solar LLC  
Against Northern States Power Company d/b/a Xcel Energy**

**Exhibit A**

**Email From Xcel Energy DER Interconnection Project Team**

From: **Solar Program MN** <[solarprogramm@xcelenergy.com](mailto:solarprogramm@xcelenergy.com)>  
Date: Thu, Jul 15, 2021 at 6:45 PM  
Subject: DER Application On-Hold Status – 04498403  
To: [nicole@nokomis.partners](mailto:nicole@nokomis.partners) <[nicole@nokomis.partners](mailto:nicole@nokomis.partners)>  
Cc: [nicole@nokomispartners.com](mailto:nicole@nokomispartners.com) <[nicole@nokomispartners.com](mailto:nicole@nokomispartners.com)>

Hello Nicole,

I wanted to let you know that your interconnection application has been put on hold temporarily while Xcel Energy sequentially reviews other applications ahead in the engineering queue at the same feeder/substation NOF071. These applications must be reviewed one at a time based on their queue position in order to maintain the safety and reliability of our grid for all our energy customers, pursuant to notice provided under MN DIP 5.2.2. There are currently 3 other projects ahead of yours in queue. This may add a 600 business day delay to your application timeline -- I apologize for the inconvenience. Please note the provided timeline is a *maximum* timeline and our teams are working diligently to ensure these studies are completed in a timely manner while also ensuring the safety of all our customers.

The applicable application timeframes will restart once your project re-enters active study, and Xcel Energy will notify you at that time. Your queue position will be maintained throughout this process.

If you have any questions or you would like a status update, please don't hesitate to ask.

Best,

**Xcel Energy DER Interconnection Program Team**

[SolarProgramMN@xcelenergy.com](mailto:SolarProgramMN@xcelenergy.com)



**Formal Complaint and Petition for Relief by Nokomis Energy LLC and Ole Solar LLC  
Against Northern States Power Company d/b/a Xcel Energy**

**Exhibit B**

**Nokomis Energy Notice of Dispute**

## NOTICE OF DISPUTE

Nokomis Energy (“Nokomis”) is providing notice that it is invoking the MNDIP Article 5.3 dispute procedures regarding Xcel Energy’s unlawful “on hold” delay of the interconnection application timelines for Ole Garden LLC (SRC #04498403) for a manifestly unreasonable 600 business days.

### **The Facts**

On June 4, 2021, Nokomis, on behalf of its wholly owned subsidiary Ole Garden LLC, submitted an interconnection application to Xcel Energy (“Xcel”) pursuant to the MNDIP Section 3 “Fast Track Process.” On July 13, 2021, Xcel notified Nokomis that Ole Garden’s application had failed the initial review set forth in Section 3.2.1, and would require supplemental review pursuant to MNDIP Section 3.4, to determine if the project could be interconnected.

Three days later, on July 16, 2021, Nokomis received an email from the “Xcel Energy DER Interconnection Project Team,” stating in relevant part that:

[Ole Garden’s] interconnection application has been put on hold temporarily while Xcel Energy sequentially reviews other applications ahead in the engineering queue at the same feeder/substation NOF071. These applications must be reviewed one at a time based on their queue position in order to maintain the safety and reliability of our grid for all our energy customers, pursuant to notice provided under MN DIP 5.2.2. There are currently 3 other projects ahead of yours in queue. This may add a 600 business day delay to your application timeline<sup>1</sup>

Nokomis subsequently requested a Customer Options Meeting pursuant to MNDIP Section 3.2.3 and 3.3. The scoping meeting was held on July 29, 2021. During the meeting, Xcel was obligated by MNDIP section 3.3 to either:

3.3.1 Offer to perform a supplemental review in accordance with section 3.4 and provide a non-binding good faith estimate of the costs of such review; or

3.3.2 Obtain the Interconnection Customer’s agreement to continue evaluating the Interconnection Application under the Section 4 Study Process.

Xcel staff did not offer to continue the review under either MNDIP Section 3.3.1 or 3.3.2 during the meeting. Rather, Xcel staff confirmed that the Ole Garden interconnection application was “on hold” and would remain “on hold” for up to 600 business days. When asked to explain the delay, Xcel staff stated that Xcel was required by MNDIP to place projects “on hold” while Xcel completed interconnection studies for projects ahead in Queue Position.

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<sup>1</sup> See Exhibit A.

MNDIP Section 5.2.2, referenced in Xcel's July 16, 2021 email, attached as Exhibit A, provides:

The Area EPS Operator shall make **Reasonable Efforts** to meet all time frames provided in these procedures. If the Area EPS Operator cannot meet a deadline provided herein, it must notify the Interconnection Customer in writing within three (3) Business Days after the deadline to explain the reason for the failure to meet the deadline, and provide an estimated time by which it will complete the applicable interconnection procedure in the process (emphasis added).

The phrase "Reasonable Efforts" is defined in the MNDIP Glossary as "efforts that are timely and consistent with **Good Utility Practice** and are otherwise substantially equivalent to those a Party would use to protect its own interests." (emphasis added)

The phrase "Good Utility Practice" is, in turn, defined in the MNDIP Glossary as "Any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and act which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region."

### **The Specific Dispute**

Nokomis disputes that MNDIP includes, references, or allows for an "on hold" process. MNDIP sets forth a series of steps that Xcel is required to take in the interconnection process, in this case pursuant to the "Fast Track Process" found in Section 3. "On hold" is not a step that Xcel may take, or an option that Xcel may exercise in this process. The phrase "on hold" does not appear anywhere in MNDIP, nor is there any relevant provision authorizing Xcel to place project "on hold." Xcel's "on hold" Process is therefore unlawful and in violation of MNDIP.

Instead of the unlawful "on hold" process, Xcel is required to follow the process set forth in MNDIP Section 3.3 and perform a supplemental review consistent with the timeframes set forth therein.

Nokomis separately disputes that 600 business days reflects "reasonable efforts" to meet the deadlines in MNDIP. 600 business days is not timely. Rather, a delay of 600 business days is manifestly unreasonable and is not consistent with "good utility practice." A delay of this nature is not consistent with the accepted practices of the industry.

### **Relief Sought**

Nokomis requests that Xcel remove the Ole Garden LLC interconnection application from the unlawful "on hold" process and comply with the requirements of MNDIP, by providing a good faith estimate of supplemental review costs and beginning the supplemental review process.

**Formal Complaint and Petition for Relief by Nokomis Energy LLC and Ole Solar LLC  
Against Northern States Power Company d/b/a Xcel Energy**

**Exhibit C**

**Xcel Energy Response to Notice of Dispute**

RE: Ole Garden LLC, Case #4498403  
Notice of Dispute (sent August 18, 2021)

Matthew,

Consistent with MN DIP 5.3.5 through 5.3.8, we are writing to provide Nokomis Energy (Nokomis) with relevant regulatory and/or technical details and analysis regarding the interconnection requirements currently under dispute.

The Notice of Dispute (Notice) submitted by Nokomis on August 18, 2021, discussed the following disputed matters for case number 04498403:

1. MN DIP does not include, references, or allows for an “on hold” process; and
2. 600 business days does not reflect “reasonable efforts” to meet the deadlines in MN DIP.

Our mutual goal is to resolve the dispute in hand so that Nokomis’ Ole Garden LLC (SRC #04498403) application may proceed, however, we do note that the allegations made within the Notice are incorrect. The Company provides further discussion into these two (2) matters being disputed below.

#### 1. Serial Review Process

As noted in the Company’s August 5, 2020 filing in Docket No. E999/CI-16-521, MN DIP requires the Area EPS Operator to maintain a single administrative queue and manage the queue by geographical region (i.e. feeder, substation, etc.). This means that all DER applications, including community solar gardens and on-site solar systems, are being studied serially based on their queue position (as noted in MN DIP 1.8.3). Simply put, it is a first come, first served system. For example, applications behind projects being studied in queue are temporarily placed “on hold” until the applications ahead in queue are fully studied and have either signed the Interconnection Agreement (IA) or have been withdrawn. While “on hold” is not defined as part of the MN DIP process, it is implicitly acknowledged in the timelines as a serial review stops timelines for those behind other projects. The application timeline is paused until the application re-enters active study.

The Company additionally provided an example of how this process impacts studies in our Compliance filing submitted on July 22, 2020 in Docket No. E002/M-13-867. Certain feeders have a significant amount of existing DER, and some feeders in these instances are reaching maximum thermal capacity with new applications in queue that would exceed this maximum capacity.

From an engineering perspective, serial review makes sense. In order to study an application, we need to know existing load characteristics, plus the locations and operating characteristics of DER connected to the feeder and substation along with the physical make-up of our network. Additionally, we need to know the locations and operating characteristics of the DER ahead in queue that is not yet in commercial operation along with all changes to our network that we are planning to implement in order to accommodate the DER ahead in queue. The serial review process thus allows us to determine the incremental changes we need to make to our network in order to accommodate the interconnection of the project being studied, including whether a new feeder would need to be built in order to accommodate that interconnection. If any project ahead in queue drops out or is cancelled, we would need to examine what work we had planned on to accommodate that interconnection and determine if that same work still needs to be done and how to allocate the costs for that work to those behind in queue to the project that was cancelled. Consistent with this, applications behind projects being studied in queue are temporarily placed “on hold” until the application ahead in queue is fully studied and has either signed the Interconnection Agreement (IA) or been withdrawn. It is only at that point that we have the information needed to study the next-in-queue application. The application timeline is paused until the application re-enters active study. This limits re-studies and queue “churn” by providing reliable data inputs into the next screen or study. In addition, placing projects on hold allows them to wait for possible capacity on the feeder which otherwise may be presumed to be unavailable in some situations if the serial process is not followed.

As we have previously noted, we do allow smaller DER applications to be studied simultaneously with other projects ahead in queue if doing so would not have a material impact on those projects that are ahead in queue. If we were to study your application now, such as with a System Impact Study, prior to those ahead in queue it would have a material impact on those ahead in queue. This would violate the purpose of queue order and could harm those ahead in queue.

Nokomis has long been aware of our practices, as representatives from Nokomis Daniel Rogers ([dan@nokomispartners.com](mailto:dan@nokomispartners.com)) or Matthew Melewski ([matthew@thebotiquefirm.com](mailto:matthew@thebotiquefirm.com)) were listed as Electronic Service recipients to the distribution list for the July 22, 2020 and August 5, 2020 filings noted above.

We are also aware that Nokomis is challenging the on-hold process as detailed in its August 25, 2021 comments in Docket No. 16-521. It might be best to see how the Commission addresses the Nokomis comments in that docket to address the issues that Nokomis is raising here.

## 2. 600 business days does not reflect “reasonable efforts” to meet the deadlines in MN DIP

As described above, applications behind projects being studied in queue are temporarily placed “on hold” until the application ahead in queue is fully studied and has either signed the IA or has been withdrawn. It is only at that point that the Company has the information needed to study the next-in-queue application. The application timeline is paused until the application re-enters active study. The deep queues and clumping of projects on a small proportion of feeders

has resulted in maximum timeframes of three hundred days for a single CSG project to move through the MN DIP process from the point the application is deemed complete until it has a signed an IA, and this can happen even if we meet all MN DIP timelines.

The Company believes that mandating cluster studies in certain situations so that projects can be studied in groups is the most efficient way to clear the queue and move projects to a faster completion date. We have suggested this approach in our August 25, 2021 comments in Docket No. E999/CI-16-521 & E999/CI-01-1023.

We believe that Nokomis' Ole Garden LLC, Case #4498403 project would be suited to participate in a Cluster Study. A Cluster Study may provide a step toward addressing the deep interconnection queue in hand, delays associated with it, and significant upgrade costs. Given that cluster studies currently are not mandatory, but instead need to be voluntary among all participants, the Company has reached out to the projects ahead in queue (as highlighted in yellow on Attachment A: an excerpt from the Company's August 2, 2021 Queue report) to see if developers ahead in queue would be interested in participating in a Cluster Study with your project. The Company is waiting to hear back from these developers.

We want to bring up another related issue. Your Notice of Dispute states that the current application (Case #4498403) was submitted by Ole Garden LLC, a wholly owned subsidiary of Nokomis Energy. We can find no verification of the legal existence of Ole Garden LLC in either the Minnesota or Delaware Secretary of State listings of corporations. Regardless, we note that the interconnection application for the onsite DER system was not submitted in the name of the retail customer at that address. This raises a question as to how many other onsite DER systems serving customers in our exclusive service territory in Minnesota that Nokomis (along with its subsidiaries) own or have pending applications for systems. Under state law, Minn. Stat. §216B.40, we have the exclusive right to provide electric service at retail to each and every present and future customer in our assigned service territory and no other electric utility is allowed to provide this service. Under Minn. Stat. §216B.02, Subd. 4, the definition of public utility "means persons, corporations, or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured, or mixed gas or electric service to or for the public or engaged in the production and retail sale thereof...." But this definition excludes a "person" that produces or furnishes service to less than 25 persons. Subd. 3, defines "person" as including a corporation and two or more persons having a joint or common interest, which would include a parent corporation and all of its subsidiaries. Accordingly, if Nokomis and its subsidiaries are providing onsite service to 25 or more customers in our exclusive service territory it would be violating state law. To help us better understand the lawfulness of the activity of Nokomis, we ask Nokomis to provide for us a list containing by address of each onsite DER system for which it provides electric service to our retail customers in Minnesota, and for each address identify the name of our retail customer and size of the DER system.

Within 20 Business Days of the Notice of Dispute (meaning on or before September 16, 2021) the parties' authorized representatives will be required to meet and confer and try to resolve

the dispute. We've proposed a few times we are available for discussion below. Can you please let us know which option works best for your team, and who from Nokomis should be in attendance?

- Friday, September 10: 4:00pm – 4:30 pm CST
- Monday, September 13: 3:30pm – 4:00pm CST
- Tuesday, September 14: 1:30pm – 2:00pm CST

Thank you,

Brandon Stamp



**Attachment A:**

Excerpts from August 2, 2021 Queue report for Feeder NOF071

Row	Application Number	Project Type	Date Application Deemed Complete	Interconnection Process Track	DER (kW AC)	Feeder	Application Status	Customer Full Name
1	3127720	Solar*Rewards Community	1/4/2016 23:01	Pre-MNDIP	1000	NOF071	Step 8: Active	Northfield CSG3, LLC
2	3127721	Solar*Rewards Community	1/4/2016 23:01	Pre-MNDIP	1000	NOF071	Step 8: Active	Northfield CSG4, LLC
3	3127722	Solar*Rewards Community	1/4/2016 23:01	Pre-MNDIP	1000	NOF071	Step 8: Active	Northfield CSG2, LLC
4	3127580	Solar*Rewards Community	1/4/2016 23:01	Pre-MNDIP	1000	NOF071	Step 8: Active	Northfield CSG1, LLC
5	3127602	Solar*Rewards Community	1/4/2016 23:01	Pre-MNDIP	1000	NOF071	Step 8: Active	Northfield CSG5, LLC
6	3581468	Solar*Rewards Community	12/5/2018 23:06	Pre-MNDIP	1000	NOF071	Step 8: Active	Chub Garden LLC
7	3581397	Solar*Rewards Community	3/13/2019 23:08	Pre-MNDIP	1000	NOF071	Step 8: Active	Hyacinth Solar, LLC
8	3498665	Solar*Rewards	2/5/2020 6:47	Simple	7.25	NOF071	Permission to Operate	N/A
9	3897946	Solar*Rewards	9/28/2020 11:28	Simple	5	NOF071	Permission to Operate	N/A
10	4124406	Solar*Rewards Community	11/5/2020 13:16	Fast Track	1000	NOF071	System Impact Study	MN CSG 2019-77 LLC
11	4123251	Solar*Rewards	11/12/2020 9:40	Simple	5.584	NOF071	Permission to Operate	N/A
12	4225667	Solar*Rewards	12/21/2020 10:18	Simple	2.03	NOF071	Metering and Testing	N/A
13	4218616	Solar*Rewards Community	1/14/2021 12:25	Fast Track	1000	NOF071	On Hold	DIVOCSG 17 LLC
14	4193986	Solar*Rewards Community	1/14/2021 14:17	Fast Track	1000	NOF071	On Hold	SV CSG Northfield, LLC
15	4387001	Solar*Rewards	4/13/2021 9:06	Simple	4.886	NOF071	Metering and Testing	N/A
16	4347588	Solar*Rewards Community	5/6/2021 15:57	Study	1000	NOF071	On Hold	Johnnyvale Garden LLC
17	4498403	Distributed Generation	6/17/2021 17:37	Fast Track	1000	NOF071	On Hold	N/A
18	4507616	Distributed Generation	7/8/2021 9:46	Simple	8.41	NOF071	Supplemental Review	N/A
19	4455139	Distributed Generation	7/13/2021 10:20	Simple	3.77	NOF071	Initial Engineering Screens	N/A

**Formal Complaint and Petition for Relief by Nokomis Energy LLC and Ole Solar LLC  
Against Northern States Power Company d/b/a Xcel Energy**

**Exhibit D**

**Screenshot of the NOF071 Queue**

Application Number	Project Type	Date Application Deemed Complete	Interconnection Process Track	DER (kW AC)	Feeder	Application Status	Application Step	Customer Full Name
3127720	Solar*Rewards	1/4/16 23:01	Pre-MNDIP	1000	NOF071	Step 8: Active	Complete	Northfield CSG3, LLC
3127721	Solar*Rewards	1/4/16 23:01	Pre-MNDIP	1000	NOF071	Step 8: Active	Complete	Northfield CSG4, LLC
3127722	Solar*Rewards	1/4/16 23:01	Pre-MNDIP	1000	NOF071	Step 8: Active	Complete	Northfield CSG2, LLC
3127580	Solar*Rewards	1/4/16 23:01	Pre-MNDIP	1000	NOF071	Step 8: Active	Complete	Northfield CSG1, LLC
3127602	Solar*Rewards	1/4/16 23:01	Pre-MNDIP	1000	NOF071	Step 8: Active	Complete	Northfield CSG5, LLC
3127231	Solar*Rewards	12/5/18 23:06	Pre-MNDIP	1000	NOF071	Step 8: Active	Complete	Chub Garden LLC
3128525	Solar*Rewards	3/13/19 23:08	Pre-MNDIP	1000	NOF071	Step 8: Active	N/A	Hyacinth Solar, LLC
3498665	Solar*Rewards	2/5/20 6:47	Simple	7.25	NOF071	Permission to Operate	Complete	N/A
3897946	Solar*Rewards	9/28/20 11:28	Simple	5	NOF071	Permission to Operate	Complete	N/A
4124406	Solar*Rewards	11/5/20 13:16	Fast Track	1000	NOF071	Facilities Study	In Progress	MN CSG 2019-77 LLC
4123251	Solar*Rewards	11/12/20 9:40	Simple	5.584	NOF071	Permission to Operate	Complete	N/A
4225667	Solar*Rewards	#####	Simple	2.03	NOF071	Metering and Testing	Witness Test	N/A
4218616	Solar*Rewards	1/14/21 12:25	Fast Track	1000	NOF071	On Hold	Sequential Review	DIVOCSG 17 LLC
4193986	Solar*Rewards	1/14/21 14:17	Fast Track	1000	NOF071	On Hold	Sequential Review	SV CSG Northfield, LLC
4354155	Solar*Rewards	4/1/21 10:01	Simple	6.38	NOF073	Permission to Operate	Complete	N/A
4387001	Solar*Rewards	4/13/21 9:06	Simple	4.886	NOF071	Permission to Operate	Complete	N/A
4347588	Solar*Rewards	5/6/21 15:57	Study	1000	NOF071	On Hold	Sequential Review	Johnnyvale Garden LLC
4498403	Distributed Generation	6/17/21 17:37	Fast Track	1000	NOF071	On Hold	Sequential Review	N/A
4507616	Distributed Generation	7/8/21 9:46	Simple	8.41	NOF071	Facilities Study	In Progress	N/A
4455139	Distributed Generation	7/13/21 10:20	Simple	3.77	NOF071	Metering and Testing	Witness Test	N/A