



March 28, 2019

Via Electronic Filing

Mr. Daniel Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

Re: *In the Matter of the Verified Formal Complaint and Petition for Expedited Relief by SunShare, LLC Against Northern States Power Company d/b/a Xcel Energy for Violations of Its Section 9 and 10 Tariff and Related Solar*Rewards Community Program Rules and Commission Orders*

Docket No. E002/C-19-203

Reply Comments

Dear Mr. Wolf:

Pursuant to the Minnesota Public Utilities Commission's March 13, 2019 Notice of Comment Period, SunShare, LLC respectfully submits these Reply Comments, Affidavit of David Amster-Olszewski, and Attachments and Exhibits in response to Northern States Power Company d/b/a Xcel Energy's ("Xcel") March 20, 2019 Response to SunShare's Verified Formal Complaint and Petition for Expedited Relief.

SunShare considers certain information included within this filing to contain not public, proprietary, and trade secret protected data. This information is designated as **PROTECTED DATA** because the same and similar information has been designated as such in other disputes involving the community solar gardens program, including disputes between SunShare and Xcel, and the information includes sensitive, competitive information, the disclosure of which could harm SunShare or Xcel. Further, the information (1) is being supplied by SunShare; (2) is the subject of reasonable efforts by SunShare and/or Xcel to maintain its secrecy; and (3) derives independent economic value, actual or potential, from not being generally known or accessible to the public. Minn. Stat. § 13.37, subd. 1(b). SunShare has therefore included a **NONPUBLIC** and **PUBLIC** version of this filing, and has identified the Trade Secret and Not Public information pursuant to Minn. R. 7829.0500.

Thank you for your attention to this matter. Please do not hesitate to contact me with any questions or concerns.

Mr. Daniel Wolf
March 28, 2019
Page 2

Sincerely,

Stinson Leonard Street LLP

/s/ Andrew Gibbons

Andrew Gibbons

STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

<i>Verified Formal Complaint and Petition</i>)	MPUC Docket No. E002/C-19-203
<i>for Expedited Relief by SunShare, LLC</i>)	
<i>Against Northern States Power</i>)	
<i>Company d/b/a Xcel Energy for</i>)	REPLY COMMENTS OF
<i>Violations of Its Section 9 and 10 Tariff</i>)	SUNSHARE, LLC
<i>and Related Solar*Rewards Community</i>)	
<i>Program Rules and Commission Orders</i>)	

Pursuant to the Minnesota Public Utilities Commission's ("Commission") March 13, 2019 Notice of Comment Period, SunShare, LLC respectfully submits these Reply Comments in response to Northern States Power Company d/b/a/ Xcel Energy's ("Xcel") March 20, 2019 Response to SunShare's Verified Formal Complaint and Petition for Expedited Relief ("Complaint"). For the reasons set forth below and in the Complaint, SunShare agrees with Xcel that the Commission has jurisdiction¹ over this dispute. SunShare contends that it is in the public interest to investigate the Complaint's allegations and to grant expedited review and relief.

I. ARGUMENT.

a. Xcel Wrongfully Removed the Schiller Project From the Interconnection Queue, While Continuing to Discuss a Resolution Regarding the Project with SunShare.

Xcel claims that it properly cancelled the Schiller Project and removed it from the interconnection queue because SunShare did not sign an interconnection agreement within thirty days after January 24, 2017, when Xcel provided its revised interconnection estimate of

[PROTECTED DATA BEGINS

PROTECTED DATA ENDS] As explained in

¹ Xcel argues in a footnote that the Commission cannot grant certain relief because it cannot award damages. SunShare is not asking the Commission to issue damages. Instead, SunShare is requesting that the Commission prospectively prohibit Xcel from charging certain expenses, in recognition of Xcel's wrongful conduct discussed herein and in the Complaint. This relief is consistent with the Commission's broad authority, including its authority to fix just and reasonable practices to be observed by Xcel. See Minn. Stat. § 216B.09, subd. 1.

the Complaint, however, Xcel's revised estimate was almost double the estimate they previously provided. SunShare could not have been expected to execute an interconnection agreement based on this revised estimate, because the enormous difference between the two estimates and the internal discrepancies in the new January 24, 2017 interconnection package revealed significant unexplained errors.² SunShare repeatedly asked Xcel to explain these apparent errors and to conduct a new study, and it explained that it could not reasonably be expected to sign an interconnection agreement and pay the required deposit before that occurs. In response, Xcel cancelled the project, even though at the same time an Xcel employee led SunShare to believe that Xcel would not do so.

i. Xcel Leads SunShare to Believe That the Project Would Not Be Cancelled.

SunShare appreciates the initial few extensions that Xcel provided on the 30-day execution window, as the parties were attempting to work out a resolution of these issues. However, Xcel ultimately wrongfully cancelled the project from the interconnection queue on April 26, 2017,³ while at the same time leading to SunShare to believe that it would not do so. Xcel's Response tries to portray SunShare as acknowledging that Xcel could cancel the project at that time, but this is not the case. After Xcel emailed Mortenson Construction in April 2017 stating that it would cancel the project by April 21,⁴ SunShare's CEO David Amster-Olszewski reached out to

[PROTECTED DATA BEGINS

PROTECTED DATA ENDS]

² Compl. ¶¶ 10-14.

³ Xcel claims that the Schiller Project was removed from its salesforce system at the same time Xcel cancelled the Project. However, **[PROTECTED DATA BEGINS**
PROTECTED DATA ENDS] last accessed the system for the project in the fall of 2017. Amster-Olszewski Aff. ¶ 20.

⁴ See Compl. Attachment F.

the Xcel employee who had sent Mortenson emails regarding project cancellation.⁵

Mr. Amster-Olszewski and [PROTECTED DATA BEGINS PROTECTED DATA ENDS] first spoke by telephone on April 24, 2017.⁶ He stated that he was not familiar with the dispute, so Mr. Amster-Olszewski explained the underlying issues, including the apparent errors in Xcel's engineering studies, the vast difference in interconnection estimates, and SunShare's attempts to have Xcel explain these discrepancies.⁷ Mr. Amster-Olszewski also explained that SunShare was asking that the project be restudied under the IEEE 1453 methodology, because SunShare would have sought to include this project under the restudy called for in the January 3, 2017 Settlement Agreement had it known at the time the agreement was executed that the estimated interconnection costs would be so high.⁸ Mr. Amster-Olszewski also requested that Xcel not take any action to harm the project while these issues were being addressed.⁹ [PROTECTED DATA BEGINS PROTECTED DATA ENDS] agreed to look into these issues.¹⁰ He also confirmed that the project had not yet been cancelled and that the deposit funds had not been returned.¹¹ Mr. Amster-Olszewski interpreted these statements to mean that Xcel would not take any further action that would harm the project, including removing it from the queue, while [PROTECTED DATA BEGINS PROTECTED DATA ENDS] investigated.¹² Contrary to this understanding, however, Xcel cancelled the project and

⁵ Amster-Olszewski Aff. ¶ 6.

⁶ *Id.*

⁷ *Id.* ¶¶ 7-9.

⁸ *Id.* ¶ 8.

⁹ *Id.* ¶ 10.

¹⁰ *Id.* ¶ 11.

¹¹ *Id.*

¹² *Id.*

returned the deposit funds.

ii. SunShare and Mortenson Did Not Agree that the Project Could Be Cancelled

As expected, Xcel is relying on incorrect interpretations of correspondence from SunShare and Mortenson in March and April 2017, which Xcel claims constitute acknowledgements from both companies that the project could be canceled. Xcel first relies on a March 30, 2017 email from [PROTECTED DATA BEGINS

¹³ [PROTECTED DATA ENDS] As Mr. Amster-Olszewski explains, however, [PROTECTED DATA BEGINS [PROTECTED DATA ENDS] was not suggesting that SunShare was financially incapable of paying the interconnection fee. Instead, he was simply informing Xcel that the company could not pay the fee in light of the lack of information regarding the revised estimate and the apparent errors in Xcel's engineering studies.¹⁴ Similarly, [PROTECTED DATA BEGINS

¹⁵ [PROTECTED DATA ENDS] should not be interpreted as SunShare's consent to that position. Instead, as discussed above, following this meeting Mr. Amster-Olszewski made clear to [PROTECTED DATA BEGINS [PROTECTED DATA ENDS] that SunShare did not think the project should be cancelled, and Mr. Amster-Olszewski understood it would not be while [PROTECTED DATA BEGINS [PROTECTED DATA ENDS] followed up on the matters they discussed.

Xcel also relies on an April 18, 2017 email from [PROTECTED DATA BEGINS

¹³ See Xcel Response at 6 (citing Compl. Attachment F at 6).

¹⁴ See Amster-Olszewski Aff. ¶¶ 5, 24.

¹⁵ Response at 6.

PROTECTED DATA ENDS] at Mortenson,¹⁶ but acknowledges that a different employee at Mortenson, **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** was the "ultimate decision maker" for the project.¹⁷ Accordingly, Xcel knew that **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** lacked the authority to consent to any project cancellation. Indeed, nobody at Mortenson had the authority to make these statements. Notwithstanding Mortenson's ownership of the LLCs comprising the Schiller Project, SunShare's and Mortenson's relationship at the time with respect to the Schiller Project and other projects in the state was governed in part by a Teaming Agreement through which Mortenson agreed to act as the Primary Application Manager and perform other responsibilities for these projects.¹⁸ SunShare agreed in return to transfer its entire interest in the projects to Mortenson during the application review period, with Mortenson transferring title back to SunShare upon Xcel's approval of the application (or other contingencies).

The Teaming Agreement carefully laid out the respective responsibilities and authorities of SunShare, Mortenson, and the LLCs that were subject to the agreement. In pertinent part, the agreement was clear that Mortenson did not have authority over the execution of any interconnection agreement, and that this was left with SunShare. Paragraph 9 provided that the LLC **[PROTECTED DATA BEGINS**

PROTECTED DATA ENDS] Thus, **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** had no authority to determine whether or not the interconnection agreements for the Schiller Project should be executed, and his

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 5.

¹⁸ The Teaming Agreement is included as Attachment A to these Reply Comments.

correspondence to Xcel should not be construed as him agreeing to the cancellation of the project and the return of the funds. Although Xcel was not a party to this Teaming Agreement, it was generally aware of the relationship between Mortenson and SunShare, and it also knew that **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** did not have any authority to allow for the Schiller Project to be canceled.

As SunShare explained in its Complaint, **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** was clarifying that, if Xcel cancels the Project, Xcel should be careful to avoid incorrectly routing the deposit funds to SunShare rather than Mortenson, which it had done for other projects in the past, causing significant issues. **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** was simply concerned that the deposit funds would be incorrectly routed, and he was fulfilling his responsibility to ensure that the funds went to Mortenson and not an unrelated party.

iii. SunShare Continued to Negotiate with Xcel Regarding the Schiller Project.

Xcel also incorrectly claims that SunShare did not engage with Xcel regarding the Schiller Project after April 2017. To the contrary, Mr. Amster-Olszewski and others at SunShare continued to discuss the project with **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** and others at Xcel, up until March 2018, shortly before SunShare requested that the matter be submitted to an IE.¹⁹ Following their April 24, 2017 call, Mr. Amster-Olszewski again followed up with **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** by email on May 10, 2017,²⁰ who at that time had not responded on the matters that were discussed on the April 24 call. After Xcel returned the deposit funds on May 11, Mr. Amster-Olszewski emailed

¹⁹ See Amster-Olszewski Aff. ¶¶ 12-21.

²⁰ *Id.* ¶ 12 & Ex. B.

[PROTECTED DATA BEGINS PROTECTED DATA ENDS] again on May 12, noting that this action was contrary to his statements during the April 24 call.²¹ He did not respond, so Mr. Amster-Olszewski emailed on May 18, and again on May 24.²² The two eventually connected and spoke on the phone on May 26, 2017.

Mr. Amster-Olszewski asked why Xcel cancelled the project after [PROTECTED DATA BEGINS r PROTECTED DATA ENDS] had agreed to look further into the issues they had discussed.²³ Although [PROTECTED DATA BEGINS PROTECTED DATA ENDS] explained that the 30-day deadline for executing the interconnection agreement expired, Mr. Amster-Olszewski reminded him of SunShare's position that it could not execute the interconnection agreement due to the discrepancies and obvious errors between Xcel's estimates.²⁴ Mr. Amster-Olszewski also noted that Xcel had not returned the deposit funds until May, indicating that Xcel was willing to continue discussions.²⁵ Further, contrary to Xcel's statements in its Response,²⁶ Mr. Amster-Olszewski offered to return the deposit funds to Xcel, but [PROTECTED DATA BEGINS PROTECTED DATA ENDS] informed him that this was not possible because it would be contrary to company policy.²⁷ The two also discussed other issues regarding projects in Minnesota and Colorado, in an attempt to resolve matters globally.²⁸

²¹ *Id.* ¶ 12.

²² *Id.* ¶ 13.

²³ *Id.* ¶ 14.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Xcel Response at 6 ("The deposits were not requested to be reinstated by either SunShare or Mortenson after they were refunded.").

²⁷ *Id.* ¶ 16.

²⁸ *Id.* ¶ 17.

Because SunShare and Xcel had recently resolved a number of issues amicably, Mr. Amster-Olszewski believed that the parties could still resolve this dispute bilaterally without needlessly involving an IE and the Department of Commerce. Accordingly, after this call, he delegated these negotiations to [PROTECTED DATA BEGINS

PROTECTED DATA

ENDS] then had a series of phone calls and in-person meetings regarding the Schiller Project and other matters until around February 2018.²⁹ SunShare only submitted the project for IE review after it became clear that Xcel was not willing to negotiate further.

iv. The Department Incorrectly Determined that IE Review Was Improper.

For the above reasons, SunShare also contends that the Department improperly concluded the IE review process was not available for the Schiller Project. Although SunShare informed the Department that it had continued to discuss the project with [PROTECTED DATA BEGINS

PROTECTED DATA ENDS] after cancellation, SunShare did not provide the above details regarding the content of those conversations. After the Department informed SunShare that IE review was not available, SunShare contacted the Department and was told that the issue of whether IE review is available would be more properly presented to the Commission.³⁰ Due to the underlying similarities between this dispute and the Linden Project, we waited to do so until the IE issued his report on the Linden Project.³¹

Simply put, it would set a bad precedent for the S*RC program to support Xcel's unilateral cancellation of projects and to suggest that developers should submit an IE dispute without having sufficient information for the dispute, rather than attempting to work in good faith to negotiate a

²⁹ *Id.* ¶ 18.

³⁰ Amster-Olszewski Aff. ¶ 25.

³¹ *Id.*

resolution with Xcel. Further, Xcel's tariff does not place any time limits on when a developer can initiate IE review before an agreement is signed. Instead, review "may take place before the applicant is Expedited Ready" or "after being Expedited Ready but before a signed Interconnection Agreement."³² In any event, because the Department concluded that IE review was not available, SunShare had no choice but to submit this dispute to the Commission through a Complaint, and SunShare is not asking for the Commission to order IE review. Instead, given Xcel's refusal to study the project under the most recent IEEE 1453 standard, the apparent errors in its engineering studies and vastly different interconnection estimates, and the IE's findings regarding the Linden dispute, SunShare believes it is proper for the Commission to open an investigation into this dispute and order the relief that SunShare requests.³³

b. The January 2017 Settlement Agreement Does Not Bar Any Aspect of this Dispute, and It Does Not Mandate the 2% Voltage Fluctuation Methodology.

i. The Settlement Agreement Bars Actions, Not Allegations.

Xcel is also attempting to give the January 3, 2017 Settlement Agreement a much broader application than the parties intended. According to Xcel, SunShare is precluded from even mentioning any facts, events, or issues which precede the effective date of the agreement, even if those facts, events, or issues are matters of public record and provide context for this dispute.

The Settlement Agreement cannot be construed to have this broad of an effect. As shown in Xcel's Response, through the plain language of the agreement SunShare agreed to

[PROTECTED DATA BEGINS

³² Xcel Tariff, 1st Revised Sheet No. 68.11.

³³ If the Commission agrees that Xcel improperly cancelled the project from the interconnection queue, this finding would have no practical effect if the Commission did not also allow the mechanical completion window to be reset. Of course, this relief is warranted because Xcel's cancellation of the project is what caused SunShare to miss the mechanical completion deadline set out in the Settlement Agreement. Accordingly, if the Commission finds that Xcel improperly cancelled the project, it need not address Xcel's argument that the public interest does not warrant an investigation on the grounds that the project missed its mechanical completion due date. *See* Response at 12.

PROTECTED DATA ENDS] Accordingly, the Settlement Agreement only bars SunShare from **[PROTECTED DATA BEGINS**

PROTECTED DATA ENDS] namely, Xcel's issuance of a vastly increased estimated cost of interconnection on January 24, 2017, and its wrongful cancellation of the project from the queue on April 26, 2017.

- ii. Xcel Cannot Rely on the Settlement Agreement to Argue that IEEE 1453 Does Not Apply to the Schiller Project.

SunShare agrees with Xcel that the Settlement Agreement provides that the **[PROTECTED DATA BEGINS** 34

PROTECTED DATA ENDS] However, as SunShare explained in its Complaint, at the time it executed this agreement, Xcel had estimated that the interconnection costs for the Schiller Project would only be **[PROTECTED DATA BEGINS** 35 **PROTECTED DATA ENDS]**

Accordingly, SunShare had no reason to demand as part of this global settlement that **[PROTECTED DATA BEGINS**

PROTECTED DATA ENDS] This changed three weeks later after the Settlement Agreement went into effect, when Xcel presented its significantly higher

³⁴ The Complaint states that it "did not seek to include the Schiller Project in the January 2017 Settlement Agreement." Compl. ¶ 10. SunShare acknowledges that the Schiller Project is **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** However, by stating that SunShare did not seek to include the project in the agreement, the Complaint is simply stating that SunShare did not see a reason to request that the project be included in **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** for the reasons discussed herein.

³⁵ Compl. ¶ 10.

revised estimate.

Xcel admits that the enormous discrepancy between the two estimates was due to its own error; namely, that its initial estimate failed to notice that an approximately one mile section of overhead conducted was #2 ACSR rather than 336AL.³⁶ Notwithstanding this error, Xcel claims that SunShare is stuck with the prior study, even though a restudy under the IEEE 1453 methodology would almost certainly lower the project's estimated interconnection costs. Furthermore, Xcel offers no explanation as to why it cannot, in good faith, conduct such a restudy. Had Xcel's initial study of the Schiller Project been accurate and reflected the significantly higher cost estimate, SunShare would have sought to include the project among those projects to be studied under the new method as part of the Settlement Agreement. Accordingly, fairness dictates that Xcel be required to restudy the project using the IEEE 1453 methodology.

c. SunShare Has Standing and is a Proper Party to this Dispute.

Xcel's argument that SunShare is not the proper party to bring this dispute is a distraction. The Commission has previously asserted jurisdiction over a complaint brought by SunShare regarding numerous solar garden projects where SunShare was the sole complainant, even though each project was comprised of various independent LLCs.³⁷ The Commission found jurisdiction in that dispute under Minn. Stat. § 216B.21, which allows it to initiate an investigation on its own motion.³⁸ Further, Xcel agrees that the Commission has jurisdiction here under Minn. Stat.

³⁶ See Response at 10.

³⁷ See Order Finding Jurisdiction and Referring Complaint to Independent Engineer, Docket No. E-002/M-15-786 (Dec. 1, 2015), eDocket ID 201512-116051-01.

³⁸ *Id.* at 4; see Minn. Stat. § 216B.21, subd. 1 ("When the Commission has reason to believe that any rate or charge may be unreasonable or unjustly discriminatory or that any service is inadequate or cannot be obtained or that an investigation of any matter relating to any public utility should for any reason be made, it may on its own motion summarily investigate the same with or without notice.").

§ 216B.09,³⁹ which does not limit who may bring a complaint contemplated by that statute.⁴⁰

Further, the January 3, 2017 Settlement Agreement that Xcel submitted into this record⁴¹ was executed **[PROTECTED DATA BEGINS**

PROTECTED DATA ENDS] As Xcel notes in its Response, the **[PROTECTED DATA BEGINS**

PROTECTED DATA ENDS] that would be the logical result if the Commission were to find that SunShare lacked standing here.

Xcel also claims that Mortenson is the proper party to bring this dispute, because two Mortenson employees are listed as the representative for the Owner/Applicant and as the Design Engineer for the individual LLCs comprising the project, and the Secretary of State's records list Mortenson Development, Inc. as the manager for these companies. All ownership interests in these LLCs, however, were transferred from Mortenson back to a SunShare affiliate on June 29, 2018, and Mortenson has been removed as manager.⁴² SunShare has updated this information with the Minnesota Secretary of State in response to Xcel's filing.⁴³ Further, if Xcel believes that Mortenson is the proper party to this dispute and had complete authority over the Schiller Project, it would have sought to **[PROTECTED DATA BEGINS**

³⁹ Response at 4 ("The Commission clearly has jurisdiction generally over the subject matter of the Complaint.").

⁴⁰ See Minn. State. § 216B.09, subd. 1 ("The commission, on its own motion or upon complaint and after reasonable notice and hearing, may ascertain and fix just and reasonable standards, classifications, rules, or practices to be observed and followed by an or all public utilities with respect to the service to be furnished.").

⁴¹ See Attachment Xcel B to Xcel's Response.

⁴² Amster-Olszewski Aff. ¶ 23.

⁴³ See Attachment B to these Reply comments. Further, the fact that the Minnesota Secretary of State's records had not been updated to reflect this transfer has no legal effect. Colorado law, under which the companies were organized, provides that "[a] limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time." Colo. Rev. Stat. § 7-80-408(4).

PROTECTED DATA ENDS] The Commission should disregard Xcel's overly formalistic standing argument as a basis to reject jurisdiction.

d. The Issues Underlying the Linden Dispute Are Directly Relevant.

The Linden Dispute is not irrelevant to these proceedings, as Xcel suggests. As SunShare explained in its Complaint, the IE's findings in that dispute inform the issues here.⁴⁴ Just like the IE found for the Linden Dispute, Xcel here failed to conduct a proper engineering study for the Schiller Project and was not transparent with SunShare in explaining the discrepancies and errors underlying the studies that it did perform. Further, the IE dispute for the Linden Project reveals that Xcel is fully capable of restudying the Schiller Project under the simplified IEEE 1453 methodology, but simply chose not to, and that SunShare's engineers should be permitted to participate in any restudy of the Schiller Project in order to ensure its accuracy.

e. The Public Interest Would Be Served By Requiring Xcel to Evaluate Whether Smart Inverter Functionalities Can Reduce Interconnection Costs.

SunShare maintains that it is in the public interest for the Commission to require Xcel to evaluate whether the use of smart inverter functionalities could reduce interconnection costs for the Schiller Project, and to allow for their use if so. As SunShare explained, these functionalities have the capacity to correct flicker, voltage fluctuation, and steady state overvoltage issues that unnecessarily increase interconnection costs, and significant progress has been made in implementing these technologies since the Commission first addressed whether Xcel should be required to evaluate their use two years ago. And although this issue is being considered as part of a broader Commission-led review, utilizing these technologies for the Schiller Project would only aid in that review. Accordingly, the public interest warrants their review here.

f. Reinstating the Schiller Project Will Not Necessarily Impact Other Projects.

⁴⁴ Compl. ¶ 20.

Restoring the Schiller Project to its prior position in the interconnection queue may not have significant adverse impacts on other developers in the queue, as Xcel suggests. SunShare requested a capacity screen for the Lester Prairie substation in December 2018.⁴⁵ This screen, and the public queue provided in Xcel's response, shows that the substation should be able to handle an additional 3 MW without kicking other projects out of the queue. However, SunShare will need additional information regarding capacity on the circuit running to the west of the substation to determine the extent of impact the project would have on others in the queue, if any. Accordingly, without additional information from Xcel (which SunShare will request in the event an investigation is opened), we cannot know the extent of the Schiller Project's impact on the queue.

g. Xcel's Other "Public Interest" Concerns Are Meritless.

Xcel also states that it has two "concerns" in light of statements in the Complaint. These concerns are baseless. First, SunShare has not continued any marketing activities for the Schiller Project, and it is not compelling any subscribers to remain. Nonetheless, former subscribers to the project have maintained an interest in the project and would like to be included if the project moves forward. Second, the Complaint states that SunShare has "developed and subscribed" over 80 MW worth of community solar projects in Minnesota, and that it "has" over 100 MW DC of fully subscribed and operational solar gardens in both states.⁴⁶ To the extent there is any confusion on this point, SunShare did not intend to claim garden ownership as Xcel suggests, but rather SunShare's involvement in a large number of successful, operational projects, of which Xcel is fully aware.

II. APPROPRIATE PROCEDURES TO USE FOR THE INVESTIGATION.

⁴⁵ This capacity screen is included as Attachment C to these Reply Comments.

⁴⁶ Compl. ¶ 1.

The Commission is not required to order a contested case in this matter, as Xcel contends. To the contrary, the Commission "shall deal with a formal complaint through a contested case proceeding, informal proceeding, or expedited proceeding."⁴⁷ An expedited proceeding is warranted here. As SunShare explained in its Complaint, an expedited process is warranted to allow for construction before the end of 2019, and in light of Xcel's delays. To facilitate expedited review, SunShare believes that a single round of written submissions to introduce any additional facts that the parties think are relevant is warranted. One round of information requests, with a limited ten business day response period, would also be useful to inform these comments.

CONCLUSION

Accordingly, for the reasons set forth above and in SunShare's Complaint, SunShare respectfully requests that the Commission issue an order on an expedited basis requiring Xcel to (1) immediately restore the Schiller Project to its prior position in the interconnection queue; (2) conduct an engineering study that utilizes appropriate least-cost technology, including the IEEE 1453 standard methodology; (3) allow SunShare's engineers to participate in developing and running this study; (4) analyze whether the use of smart inverter functionalities and/or storage technologies can address flicker and steady state voltage concerns, and to allow for their use if so; (5) refrain from charging overhead, profit, bond costs, other markups, or labor to SunShare to complete the interconnection work; and (6) refrain Xcel from charging any costs to SunShare for grid upgrades that would not have been necessary had Xcel not wrongfully removed the project.

⁴⁷ Minn. R. 7829.1900, subp. 1.

Respectfully Submitted,

Dated: March 28, 2019

STINSON LEONARD STREET LLP

/s/ Andrew J. Gibbons

Andrew Gibbons (#0389692)
50 South Sixth Street, Suite 2600
Minneapolis, Minnesota 55402
Telephone: (612) 335-1500
Facsimile: (612) 335-1657
andrew.gibbons@stinson.com

Attorneys for Complainant SunShare, LLC

ATTACHMENT A IS TRADE SECRET IN ITS ENTIRETY

(11 Pages)

Business Record Details »

Minnesota Business Name

Lake Nokomis 44 LLC**Business Type**

Limited Liability Company (Foreign)

MN Statute

322C

File Number

842732000025

Home Jurisdiction

Colorado

Filing Date

9/17/2015

Status

Active / In Good Standing

Renewal Due Date

12/31/2020

Registered Office Address7705 208th St N
Forest Lake, MN 55025
USA**Registered Agent(s)**

Robert Maki

Home Business Name

Lake Nokomis 44 LLC

Principal Place of Business Address1441 18th Str #400
Denver, CO 80202
USA**Principal Executive Office Address**1151 Bannock Street
Denver, Colorado 80204
United States**Manager**David Amster-Olszewski
1151 Bannock Street
Denver, CO 80204
United States**Filing History****Filing History**Select the item(s) you would like to order:

<input type="checkbox"/>	Filing Date	Filing	Effective Date
<input type="checkbox"/>	9/17/2015	Original Filing - Limited Liability Company (Foreign) (Business Name: Lake Nokomis 44 LLC)	
<input type="checkbox"/>	11/10/2015	Registered Office and/or Agent - Limited Liability Company (Foreign)	
<input type="checkbox"/>	3/14/2019	Revocation - Limited Liability Company (Foreign)	
<input type="checkbox"/>	3/26/2019	Annual Reinstatement - Limited Liability Company (Foreign)	
<input type="checkbox"/>	3/26/2019	Registered Office and/or Agent - Limited Liability Company (Foreign)	

© 2019 Office of the Minnesota Secretary of State - [Terms & Conditions](#)

Business Record Details »

Minnesota Business Name

Lake Nokomis 45 LLC**Business Type**

Limited Liability Company (Foreign)

MN Statute

322C

File Number

842733300021

Home Jurisdiction

Colorado

Filing Date

9/17/2015

Status

Active / In Good Standing

Renewal Due Date

12/31/2020

Registered Office Address7705 208th St N
Forest Lake, MN 55025
USA**Registered Agent(s)**

Robert Maki

Home Business Name

Lake Nokomis 45 LLC

Principal Place of Business Address1441 18th Str #400
Denver, CO 80202
USA**Principal Executive Office Address**1151 Bannock Street
Denver, CO 80204
United States**Manager**David Amster-Olszewski
1151 Bannock Street
Denver, CO 80204
United States**Filing History****Filing History**Select the item(s) you would like to order:

<input type="checkbox"/>	Filing Date	Filing	Effective Date
<input type="checkbox"/>	9/17/2015	Original Filing - Limited Liability Company (Foreign) (Business Name: Lake Nokomis 45 LLC)	
<input type="checkbox"/>	11/10/2015	Registered Office and/or Agent - Limited Liability Company (Foreign)	
<input type="checkbox"/>	3/14/2019	Revocation - Limited Liability Company (Foreign)	
<input type="checkbox"/>	3/26/2019	Annual Reinstatement - Limited Liability Company (Foreign)	
<input type="checkbox"/>	3/26/2019	Registered Office and/or Agent - Limited Liability Company (Foreign)	

© 2019 Office of the Minnesota Secretary of State - [Terms & Conditions](#)

Business Record Details »

Minnesota Business Name

Lake Nokomis 46 LLC**Business Type**

Limited Liability Company (Foreign)

MN Statute

322C

File Number

842734300024

Home Jurisdiction

Colorado

Filing Date

9/17/2015

Status

Active / In Good Standing

Renewal Due Date

12/31/2020

Registered Office Address7705 208th St N
Forest Lake, MN 55025
USA**Registered Agent(s)**

Robert Maki

Home Business Name

Lake Nokomis 46 LLC

Principal Place of Business Address1441 18th Str #400
Denver, CO 80202
USA**Principal Executive Office Address**1151 Bannock Street
Denver, Colorado 80204
United States**Manager**David Amster-Olszewski
1151 Bannock Street
Denver, CO 80204
United States**Filing History****Filing History**Select the item(s) you would like to order:

<input type="checkbox"/>	Filing Date	Filing	Effective Date
<input type="checkbox"/>	9/17/2015	Original Filing - Limited Liability Company (Foreign) (Business Name: Lake Nokomis 46 LLC)	
<input type="checkbox"/>	11/10/2015	Registered Office and/or Agent - Limited Liability Company (Foreign)	
<input type="checkbox"/>	3/14/2019	Revocation - Limited Liability Company (Foreign)	
<input type="checkbox"/>	3/26/2019	Annual Reinstatement - Limited Liability Company (Foreign)	
<input type="checkbox"/>	3/26/2019	Registered Office and/or Agent - Limited Liability Company (Foreign)	

© 2019 Office of the Minnesota Secretary of State - [Terms & Conditions](#)

ATTACHMENT C IS TRADE SECRET IN ITS ENTIRETY

(1 Page)

STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

<i>Verified Formal Complaint and Petition</i>)	MPUC Docket No. E002/C-19-203
<i>for Expedited Relief by SunShare, LLC</i>)	
<i>Against Northern States Power</i>)	
<i>Company d/b/a Xcel Energy for</i>)	REPLY COMMENTS OF
<i>Violations of Its Section 9 and 10 Tariff</i>)	SUNSHARE, LLC
<i>and Related Solar*Rewards Community</i>)	
<i>Program Rules and Commission Orders</i>)	

**AFFIDAVIT OF
DAVID AMSTER-OLSZEWSKI**

1. My name is David Amster-Olszewski. I am the Chief Executive Officer of SunShare, LLC. My business address is 1151 Bannock Street, Denver, CO 80204-8020. I submit this affidavit in support of SunShare's Reply Comments in support of its Verified Formal Complaint and Petition for Expedited Relief in the above-captioned matter.

2. The purpose of my affidavit is to respond to certain statements set forth in Northern States Power Company d/b/a Xcel Energy's ("Xcel") March 20, 2019 Response to Complaint ("Response") and to provide additional context for the Commission's consideration. In my position as CEO, I have personal knowledge of the matters addressed in this statement, through my personal experience and speaking with the SunShare employees referenced herein.

3. This affidavit responds to Xcel's assertion that SunShare did not engage with Xcel regarding the Schiller Project after April 2017. This is not true. After April 2017, I and our **[PROTECTED DATA BEGINS**
PROTECTED DATA ENDS] continued to discuss the project and attempt to negotiate a resolution of the issues presented in this Complaint with **[PROTECTED DATA BEGINS**

t **PROTECTED DATA ENDS]** at Xcel who had been threatening to cancel the Schiller Project from the interconnection queue. **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** and I attempted to negotiate a resolution with **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** throughout the following year, up until April 2018 when we determined that it was absolutely clear that Xcel would not come to the table and requested IE review of the dispute.

4. Our negotiations with **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** are reflected in text messages and emails that we exchanged up until April 2018, attached as exhibits here. This written correspondence does not reflect the content of our discussions, which occurred in person and over the phone. I describe the content of those conversations here, based on my personal recollection and conversations with **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]**

5. **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** at Mortenson Construction in April 2017, threatening to cancel the Schiller Project. By this time, SunShare had received a revised interconnection package from Xcel which showed a vastly different estimated interconnection costs which were nearly double the company's original estimate that it provided in August 2016. Naturally, I was concerned about this enormous discrepancy, as well as other apparent errors in the studies. Given these uncertainties, SunShare could not make a down payment and sign an incorrect interconnection agreement, so our team spent months trying to get information about the cause of discrepancy from Xcel, and a test under IEEE 1453 to see if that resolved whatever issue drove the change in cost, which Xcel would not clarify for us.

6. Accordingly, I sent a text message to **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** on April 24, 2017, asking if we could have a telephone call to discuss the Schiller Project (identified as Steinkraus in the text – each of our projects has a name assigned to it by us and one assigned to it by Xcel for their internal use. Schiller is Xcel's name, and Steinkraus is ours) as well as a Colorado project. (See Exhibit A.) **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** agreed to a call that afternoon. (*Id.*)

7. During the April 24 call, **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** told me that he was not fully aware or involved with the issues underlying the Schiller Project. I informed him that there clearly were errors in Xcel's engineering studies for the Schiller Project, given the vast difference in estimated interconnection costs between the two. I also told him that Xcel had not explained the reason for these discrepancies, and that we had been trying to get Xcel to address this since receiving the revised estimate.

8. I also informed him that SunShare wanted the project to be restudied under the IEEE 1453 methodology. Although I knew that the January 3, 2017 Settlement Agreement **[PROTECTED DATA BEGINS**

PROTECTED DATA ENDS] which apparently was erroneous given the vastly different estimate from that performed in a study only three weeks after executing the settlement. I reasonably thought in good faith that Xcel would

agree to this restudy, given their errors alone drove the need for it.

9. I also requested that Xcel explain what the errors were between the first and second studies, and why there were internal discrepancies within the second interconnection package as to the estimates included in the "statement of work" and "description" sections. As explained in our Complaint, Xcel's January 24, 2017 interconnection package stated that the company had determined that 10,000 feet of 336 AL replacement line was needed, at a cost of \$616,000, but this was contradicted by the statement of work section in Xcel's proposed interconnection agreement, which stated that 11,200 feet of #2AI conductor needed replacement.

10. Lastly, I requested that Xcel not take any further action to harm the project.

11. **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** agreed to look into the issues that I raised during the call. He also confirmed that the project had not been cancelled and that the deposit funds had not been returned to Mortenson, as **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** stated would happen on April 21. Given **[PROTECTED DATA BEGINS**

PROTECTED DATA ENDS] I took his assurances to mean that Xcel would not take any further action to harm the Schiller Project, including cancelling it from the queue.

12. I next emailed **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** on May 10, 2017, because I had not heard back from him regarding the items that we discussed during our April 24 call. (*See* Exhibit B at 3.) Because I had not heard from him, I assumed that he was working internally to prepare a response to those items I had raised. Notably, Xcel returned the deposit funds for the Schiller Project the next day, after I had sent this follow-up email. I therefore emailed **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** again on May 12, noting that there appeared to be a disconnect

between my discussions with him and **[PROTECTED DATA BEGINS
PROTECTED DATA ENDS]** statements that the project would be cancelled and the deposits returned.

13. **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** did not respond to my May 12 email. Accordingly, I emailed him again on May 18, 2017, asking again if he had availability for a call. He again did not respond, so I emailed him a third time on May 24, 2017, asking for a call. **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** finally responded, stating that he had availability on May 26.

14. During our May 26 call, I asked why Xcel cancelled the project after he agreed to follow up with me on the issues discussed during our April 24 call. **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** explained to me that the 30-day deadline for executing Xcel's interconnection agreement had passed. I reminded him that SunShare could not and should not execute the interconnection agreement within that window because of the serious discrepancies and obvious errors between the two estimates. I also pointed out that the project was not cancelled and the funds were not returned until May, which clearly indicated that Xcel was willing to continue discussions and not cancel the project as I had understood from my April 24 call with **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]**

15. I also reminded him that he stated he would follow up internally on the issues that I raised with him during our April 24 call, and he had not done so. I also informed him that we had not initiated an IE dispute given his assurances during the April call. Having just settled a number of disputes amicably, as reflected in the January 3, 2017 settlement agreement, I was very hopeful that we could reach a resolution of this dispute, without unnecessarily involving an IE and the Department of Commerce.

16. I then offered to resubmit the deposit funds. I asked if he could provide something in writing stating that we could. We needed this in writing to resubmit the funds because we would use an escrow and loan facility at U.S. Bank we had for other projects, whom I'd have to show that Xcel would accept the funds. **[PROTECTED DATA BEGINS**

PROTECTED DATA ENDS] informed me that Xcel would not do this, because this would constitute a change in company policy, and that any change in policy would have to be accomplished through a broader settlement.

17. We also discussed other issues that SunShare had been negotiating with Xcel, including the Linden Project and a set of projects in Colorado, which program **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** also manages.

18. After this conversation, I delegated negotiations regarding the Schiller Project and other matters to **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** As reflected in the emails attached as Exhibit C, **[PROTECTED DATA BEGINS**

PROTECTED DATA ENDS] then had a series of phone calls and in-person meetings regarding the Schiller Project and these other matters from this time until February 2018. The **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** noted in the subject line of certain emails refers to the Schiller Project. Other emails also reflect that **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** were continuing to discuss the project. For example, a September 26, 2017 email from **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** shows that he wanted to speak the following day, but not about **[PROTECTED DATA BEGINS**

PROTECTED DATA ENDS] This clearly reflects that the parties continued to discuss the Schiller Project into 2018.

19. As reflected in **[PROTECTED DATA BEGINS
PROTECTED DATA ENDS]** on February 9 through 13, 2018, SunShare tried one last time that month to resolve the Schiller dispute.

20. Xcel notes that the first time SunShare notified them that we could not access the online application portal for the Project was in March 2018. According to Xcel, the Schiller Project was removed from the salesforce system at the same time Xcel cancelled the project. This is not true. SunShare continued to access the system after April 2017, including up until the fall of 2017 when **[PROTECTED DATA BEGINS**

PROTECTED DATA ENDS] last accessed the system for the project. Given that the project was under negotiations and on hold, we were not checking Xcel's system every day, but naturally did not feel the need to, as we were clearly disputing it. Had the project been removed from the salesforce system sooner after Xcel's April notice, SunShare would have noticed and inquired with Xcel; hence, I did not email Xcel until March 14, 2018 regarding system access. At that time I also asked Xcel once more to confirm their reasoning for not restudying the Schiller Project under the new IEEE 1453 methodology in one last attempt to try to reach a resolution.

21. Xcel asserts that, if SunShare had concerns regarding Xcel's studies, it should have submitted an IE dispute regarding those concerns. As shown above, however, SunShare continued to engage with Xcel regarding its concerns with the Project from the time of cancellation up to April 2018, when it submitted an IE dispute after it became clear that a negotiated resolution would be impossible. Until that point, SunShare was attempting in earnest to avoid tying up the resources of an IE and Department of Commerce, and Xcel's conduct and correspondence with me and others at SunShare indicated that they wanted to resolve disputes on

a bilateral basis. Notably, we were able to resolve the Colorado disputes mentioned earlier on a bilateral basis after nearly a year of discussions, signaling to us that this process was preferred and worked.

22. Xcel's response also relies heavily on the March and April 2017 email correspondence involving [PROTECTED DATA BEGINS PROTECTED DATA ENDS] certain people at Mortenson Construction, and SunShare's Director of Construction and Program Execution at the time, which Xcel interprets as Mortenson consenting to cancellation of the Schiller Project from the interconnection queue. I disagree with this interpretation. First, [PROTECTED DATA BEGINS PROTECTED DATA ENDS] April 18, 2017 email provides that he understood Xcel's position, but it does not indicate Mortenson's agreement that the project could be cancelled. Further, Xcel recognizes that the Mortenson contact with actual authority over the project is [PROTECTED DATA BEGINS

PROTECTED DATA ENDS] I understood this to be the case as well, and I understood that [PROTECTED DATA BEGINS PROTECTED DATA ENDS] would not have authority to consent to a removal of the project. Instead, as stated in our Complaint, I understood [PROTECTED DATA BEGINS PROTECTED DATA ENDS] statement to mean that, if Xcel cancels the Project, Xcel should be careful to avoid incorrectly routing the deposit funds to SunShare rather than Mortenson, which it had done for other projects in the past, causing significant issues. [PROTECTED DATA BEGINS

PROTECTED DATA ENDS] was simply concerned that the deposit funds would be incorrectly routed, and he was fulfilling his responsibility to ensure that the funds went to Mortenson and not an unrelated party.

23. Further, Xcel's statement that Mortenson still owns the Schiller Project LLCs or is

the manager of them, is not true. Mortenson transferred its ownership interests back to a SunShare affiliate on June 29, 2018, and was removed as manager. While Mortenson owned the LLCs, the relationship between Mortenson and SunShare with respect to the Schiller Project and others was governed by a Teaming Agreement, Attachment A to our Reply Comments.

24. I also want to clarify that **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** email from March 30, 2017 (included in Attachment F to our Complaint), in which he stated SunShare was unable to pay the 1/3 interconnection deposit, must be read in context. As explained, SunShare could not pay this amount at the time because it was premised on an apparently faulty interconnection estimate, and SunShare needed more information from Xcel to vet that estimate and approve of the cost. Accordingly, that is why Mr. Peterson stated that SunShare could not pay the deposit.

25. After the Department of Commerce informed SunShare and Xcel that IE review was not available for its dispute regarding the Schiller Project, I contacted the Department by telephone and was told that the question of whether IE review is available would more properly be presented to the Commission because Xcel had cancelled the project, and it was not within the Commission's authority to determine whether a project cancelled by Xcel could be subject to an IE review. Due to the underlying similarities between this dispute and the Linden Project, we waited to make a filing before the Commission until the IE issued his ruling on the Linden Project.

This concludes my affidavit.

STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

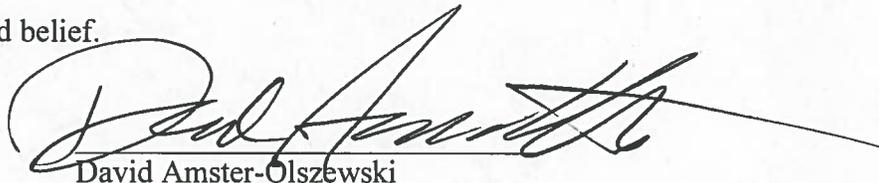
Verified Formal Complaint and Petition
for Expedited Relief by SunShare, LLC
Against Northern States Power
Company d/b/a Xcel Energy for
Violations of Its Section 9 and 10 Tariff
and Related Solar*Rewards Community
Program Rules and Commission Orders

MPUC Docket No. E002/C-19-203

REPLY COMMENTS OF
SUNSHARE, LLC

AFFIDAVIT OF
DAVID AMSTER-OLSZEWSKI

I, David Amster-Olszewski, being duly sworn, depose and state that the contents of the foregoing Affidavit on behalf of SunShare, LLC are true, correct, accurate, and complete to the best of my knowledge, information, and belief.


David Amster-Olszewski

Subscribed and sworn to before me
this 28th day of March, 2019.


Notary

SARAH GALUSKY
Notary Public
State of Colorado
Notary ID # 20184039053
My Commission Expires 10-03-2022

EXHIBIT A IS TRADE SECRET IN ITS ENTIRETY

(1 Page)

EXHIBIT B IS TRADE SECRET IN ITS ENTIRETY

(4 Pages)

EXHIBIT C IS TRADE SECRET IN ITS ENTIRETY

(12 Pages)

