

Staff Briefing Papers

Meeting Date October 7, 2021 Agenda Item 3**

Company Northern States Power d/b/a Xcel Energy

Docket No. **E002/C-21-160**

In the Matter of a Formal Complaint and Petition for Expedited Relief by Sunrise Energy Ventures LLC Against Northern States Power Company d/b/a Xcel Energy

Issues 1. Should the Commission grant Sunrise Energy Ventures LLC's Petition for Reconsideration?

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Relevant Documents

Date

Sunrise Energy Ventures LLC, Petition for Reconsideration

Sept. 2, 2021

Xcel Energy, Answer to Petition

Sept. 13, 2021

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

I. Statement of the Issues

Should the Commission grant Sunrise Energy Ventures LLC's Petition for Reconsideration?

II. Background

On March 8, 2021 Sunrise filed a Formal Complaint against Xcel Energy related to Solar Clubs 12 and 14 (Solar Clubs).¹

On August 13, 2021 the Commission issued its Order Dismissing the Complaint based on the Commission's unanimous 5-0 decision at the June 17, 2021 Agenda Meeting.

On September 2, 2021, Sunrise Energy Ventures LLC (Sunrise) filed a petition to reconsider the Commission's August 13, 2021 Order Dismissing Complaint. Sunrise's primary argument is that "the Commission misapplied the standard for considering formal complaints and improperly determined that Xcel did not need to provide an SIS [System Impact Study] that includes the information required by its Tariff."²

On September 13, 2021, Xcel Energy filed an Answer asking the Commission to deny the Sunrise's petition because the Petition "has not raised new issues, pointed to new relevant evidence, or presented errors or ambiguities in the Commission's August 13, 2021 Order."³

Standard for Review

Both parties acknowledge petitions for reconsideration are governed by Minn. Stat. §216B.27 and Minn. R. 7829.3000. Sunrise does not address further the standard for review. Xcel Energy cites a standard of review used in past Commission considerations for such petitions:⁴

¹ Staff note: Sunrise requests the following relief in the Formal Complaint (Sunrise Formal Complaint, pp. 10 & 29):

- Finding that the System Impact Study (SIS) provided by Xcel for the Solar Clubs projects violated Xcel Tariff Sheet 10-233 because it did not provide "the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection."
- Requiring Xcel to provide an SIS for Solar Clubs that includes all of the information required by Xcel Tariff Sheet 10-233, which includes, among other things, "the requirement or potential impediments to providing the requested interconnection service," and "a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection."
- Awarding Sunrise its costs, disbursements, and reasonable attorney fees pursuant to Minn. Stat. § 216B.164, subd. 5(a), and Minn. Rules 7835.4550.

² Sunrise Petition, p. 2

³ Xcel Answer, p. 3

⁴ Xcel Answer, p. 1 citing ORDER DENYING RECONSIDERATION, DENYING STAY, AND APPROVING COMPLIANCE FILINGS, Oct. 7, 2019, Docket No. E002/M-18-643, at 3; see also ORDER DENYING RECONSIDERATION, June 12, 2020, Docket No. E002/M-17-410.

... determine whether the petition (i) raises new issues, (ii) points to new and relevant evidence, (iii) exposes errors or ambiguities in the underlying order, or (iv) otherwise persuades the Commission that it should rethink its decision.

III. Parties' Comments

Petition for Reconsideration (Sunrise)

Sunrise requests the Commission vacate/amend its dismissal of Sunrise's Formal Complaint and order Xcel Energy to respond to each allegation in the Complaint.⁵ (**Decision Option 1.a**) Sunrise claims the Commission's order misapplied the standard for considering whether to investigate the formal complaint by citing to Minn. Stat. 216B.17 and public interest; whereas, the MN DIP dispute resolution cites to Minn. Rule 7829.1800 which sets the bar lower at a "... reasonable basis to investigate the matter...".⁶

Sunrise claims the Commission recognized that Xcel Energy did not provide the information required in the tariff and provided no legal or factual basis for its decision to not enforce the tariff. Specifically, Sunrise contends the following are reasonable grounds to investigate the Complaint:⁷

It is undisputed that Xcel did not provide the SIS that is required by its Tariff [at 10-233, MN DIP Att. 6 System Impact Study Agreement, Cl. 4], and neither the facts noted by the Commission nor "Good Utility Practice," support or allow Xcel's violation the explicit terms of its Tariff. Moreover, even if "Good Utility Practice" could be used to violate the explicit requirements of a Tariff, the facts do not support that Xcel exercised "Good Utility Practice."

Sunrise claims Xcel Energy's SIS did not provide the following as required in Tariff 10-233:⁸

- 1) "the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection"; and,
- 2) "a list of facilities that are required as a result of the Interconnection Application and non-binding good faith estimates of cost responsibility and time to construct"

Sunrise disputes the Commission's decision as follows:

⁵ Sunrise Petition, p. 2

⁶ Sunrise Petition, pp. 2, 5

⁷ Sunrise Petition, p. 4

⁸ Sunrise Petition, pp. 5-6

First, Sunrise disagrees that Xcel Energy's decisions with the SIS were "grounded in safety, reliability and efficiency"⁹ citing to the pre-application report and Sunrise's persistent claim that Xcel did not provide an SIS consistent with the Company's tariff because a larger reconductoring size was not evaluated (556AL instead of 336AL). Sunrise claims the burden of proof is on Xcel Energy, and alleges Xcel Energy's Information Request (IR) responses¹⁰ in the record undermine the Company's justifications on this matter.¹¹

Second, Sunrise claims the "uncontested facts" highlighted in the Commission's Order have no relevance to whether the SIS complied with the tariff. Sunrise suggests that Xcel Energy's Community Solar Garden (CSG) program would be even larger if Xcel's SIS were done as Sunrise suggests. Sunrise further claims the Company or Commission have not identified utilities with the same or similar policies suggesting California, Hawaii, New York, and Massachusetts have similar penetrations of distributed generation. Lastly, Sunrise alleges it is irrelevant whether "feeders are reaching the limits of their capacity" in terms of Xcel delivering the SIS Sunrise believes is required by tariff.¹²

Finally, Sunrise alleges the Commission improperly applied "Good Utility Practice" and that "engineering judgment" cannot contradict or violate the Company's tariff. Here, Sunrise claims the standards for "Good Utility Practice" require that the Company must either demonstrate an industry practice or that the decision to not consider reconductoring was based on facts known at the time. Sunrise argues neither was demonstrated, and Xcel's response to IRs demonstrate the Company's admission it did not have facts known at the time to support its decision to withhold a reconductoring size for reliability in case of future changes in load. Sunrise goes on to claim exercising "Good Utility Practice" means a utility seeks additional information from the customer and does not stop a SIS analysis due to a "self-imposed 'limiting factor.'" Lastly, Sunrise argues "Good Utility Practice" does not apply because Sunrise is not attempting to interconnect the Solar Clubs at this time; rather, Sunrise is seeking information on whether the Solar Clubs would be financially viable.¹³

Sunrise concludes with an admission that what is at issue is not technical, but rather a plain reading of the tariff. To which, Sunrise alleges Xcel Energy did not meet the tariff requirements for an SIS, and the Commission nor the Company cite to any authority allowing Xcel "to violate the clear language of Xcel's Tariff."¹⁴

Answer (Xcel)

Xcel Energy recommends the Commission deny Sunrise's petition for reconsideration. (**Decision Option 2**)

⁹ August 13, 2021 Order, p. 7

¹⁰ Sunrise, Information Request Responses from Xcel 1-7. Staff Note: Staff summarized the IR responses and other late-filed information in an addendum set of briefing papers filed on June 8, 2021 in the current docket.

¹¹ Sunrise Petition, pp. 6-9

¹² Sunrise Petition, pp. 9-10

¹³ Sunrise Petition, pp. 10-13

¹⁴ Sunrise Petition, p. 14

Xcel Energy argues Sunrise’s petition repeats arguments previously raised, and that the Company “performed a proper System Impact Study up to the limiting factor, which could not be cured by further study on the same feeder, nor by further reconductoring consistent with [the Company’s] standards. [Xcel] presented Sunrise a path forward by offering to study installation of a new feeder that would allow these projects to interconnect; Sunrise declined this approach.”¹⁵

Xcel asserts the Commission appropriately applied both the standard for Minn. R. 7829.1800 (reasonable basis) and Minn. Stat. 216B.17 (public interest) in the August 13, 2021 Order at pp. 7-8. Xcel notes Sunrise filed other objections to the Commission’s March 17, 2021 Notice of Comment in the docket which included both standards but did not challenge both standards being addressed in comments.¹⁶

Lastly, Xcel questions the usefulness of opening an investigation when the Company already provided a robust response that informed the Commission’s August 13, 2021 Order, and neither party appears to have additional material facts.¹⁷

IV. Staff Analysis

Sunrise does not raise new issues or point to new and relevant evidence; rather, Sunrise’s petition for reconsideration appears to focus on an attempt to expose errors or ambiguities in the August 13, 2021 Order or otherwise persuade the Commission to rethink its decision. Here Sunrise makes two primary arguments:

- 1) Procedurally, the Commission applied the wrong standard of review for the Formal Complaint by discussing public interest (Minn. Stat. 216B.17) rather than reasonable grounds (Minn. R. 7829.1800) which Sunrise contends is a lower bar; and
- 2) “The Commission’s decision does not provide any legal or factual basis that supports its decision to not enforce the explicit language of Xcel’s Tariff.”¹⁸

The Commission’s August 13, 2021 Order clearly applied both the Minn. R. 7829.1800 and Minn. Stat. 216B.17 standards consistent with MN DIP 5.3.8 and Commission’s past practice with Formal Complaints for interconnection customers. Staff does not think Sunrise’s procedural argument warrants reconsideration of the Formal Complaint.

The Commission’s August 13, 2021 Order provides legal and factual basis to support the decision to dismiss the Complaint, notably on pp. 7-8. Sunrise continues to assert that it is undisputed that Xcel did not provide an SIS in compliance with the tariff, and Xcel continues to dispute this claim most recently in the Answer to the Petition for reconsideration. This was a topic in both a subgroup of the Distributed Generation Workgroup (E999/CI-16-521) and another Sunrise Formal Complaint Against Xcel (Docket No. E002/C-20-892). The latter of which

¹⁵ Xcel Answer, pp. 1-2

¹⁶ Xcel Answer, p. 2

¹⁷ Xcel Answer, pp. 2-3

¹⁸ Sunrise Petition, p. 2

resulted in a subgroup report filed May 17, 2021 in Docket 20-892. Further, on May 28, 2021, Xcel filed the System Impact Study provided to Sunrise for the Solar Clubs in November 2020 in this docket.

It is unclear to Staff what additional material facts would be brought to light by additional investigation, or how the System Impact Study provided could be misconstrued by Sunrise as a No Capacity Letter.¹⁹ The Commission must determine whether it is persuaded to rethink its decision that there are no reasonable grounds to further investigate whether the SIS provided meets the obligations in the Company's tariff. No new issues nor new and relevant information were provided in Sunrise's Petition to reconsider.

In light of the Commission's careful consideration of the record in its initial decision to dismiss and lack of additional information in the petition, there does not appear to Staff to be a basis to reconsider the order.

V. Decision Options

1. Grant Sunrise Energy Ventures LLC's Petition for Reconsideration. (*Sunrise*)

[*and*]

- a) Open an investigation on Sunrise's Formal Complaint and require Xcel Energy to Answer the Complaint. (*Sunrise*)
2. Deny Sunrise Energy Venture LLC's Petition for Reconsideration. (*Xcel Energy*)

¹⁹ Sunrise Petition, ftn. 1, p. 1