

CURTIS P. ZAUN
Attorney at Law
3254 Rice Street
Little Canada, MN 55126
(651) 216-3308 curtis@cpzlaw.com

December 18, 2020

VIA US MAIL and ELECTRONIC FILING

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

Re: In the Matter of the Formal Complaint and Request for Expedited Relief by Sunrise Energy Ventures LLC Against Northern States Power Company d/b/a Xcel Energy Docket No. _____

Dear Mr. Seuffert,

Curtis Zaun, Esq., on behalf of Sunrise Energy Ventures LLC (“Sunrise”), submits this Formal Complaint and Request for Expedited Relief by Sunrise Energy Ventures LLC Against Northern States Power Company d/b/a Xcel Energy pursuant to Minn. Stat. § 216B.164, subd. 5, Minn. R. 7829.1700, Section 5.3.8 of the State of Minnesota Distributed Energy Resources Interconnection Process, and Section 10 of Xcel’s tariff.

Pursuant to Minn. R. 7829.1700, subp. 2, this complaint is being mailed to Xcel Energy at the address noted for Xcel Energy’s counsel in the complaint, and will be electronically filed for service on the Department of Commerce and Office of the Attorney General.

Respectfully Submitted,

/s/ Curtis Zaun _____

CURTIS P. ZAUN

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

Docket Number _____

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

**COMPLAINT OF SUNRISE ENERGY
VENTURES LLC**

Sunrise Energy Ventures LLC (“Sunrise”) respectfully submits this Formal Complaint against Northern States Power Company, d/b/a Xcel Energy (“Xcel”), to the Minnesota Public Utilities Commission (“Commission”) pursuant to the State of Minnesota Distributed Energy Resources Interconnection Process (“MN DIP”) Section 5.3.8, Section 10 of Xcel’s tariff, Minn. Stat. § 216B.164, and Minn. R. 7829.1700.

This dispute concerns Xcel’s failure to follow reasonable methodologies, policies and practices regarding the interconnection of distributed generation. Xcel’s methodologies, policies and practices have consistently discouraged the development of distributed generation in general and community solar gardens in particular, which violate Minnesota law and policy. The simple fact is that Xcel has opposed community solar gardens (“CSGs”) since the program began. While they often tout that over 700 MWs of CSGs have been built, one need only look at their actions, policies and procedures since the program began to easily see that those gardens have been built in spite of Xcel’s actions, not because of them. And those actions, policies and procedures continue today, more unfettered than ever.¹ Xcel’s onslaught against the CSG program is

¹ The comments filed by Nokomis Energy and the Minnesota Solar Energy Industry Association yesterday, December 17, 2020, in docket 13-867 show that not only is Xcel trying to prevent the development of new solar projects, it is unnecessarily shutting down the ones it wasn’t able to prevent previously, claiming safety is a concern as usual, despite the fact that it was their own unnecessary and costly requirement, grounding transformers, that is causing the problem.

multifaceted and unrelenting. Which explains why there are over 300 MWs of shovel ready projects waiting to be built.

Xcel opposed the projects at issue in this dispute before the studies even began, constantly changing the reason there wasn't any capacity throughout the process only after Sunrise questioned each unreasonable justification.² And then when Sunrise received the actual study, which was only provided after unnecessary additional time, and began to question the data, assumptions, analysis and determinations, Xcel threatened to require Sunrise to pay additional exorbitant fees for an unnecessary transmission study to avoid losing its right to dispute Xcel's incomplete and inaccurate study or challenge its illegal and discriminatory policies by having its projects withdrawn. It was only after Sunrise challenged that policy that Xcel relented and agreed to stay project deadlines and the fees associated with them while the parties continued their discussions.

As evident from dockets 12-383, 13-867, and 20-749, and the discussions in the Minnesota Distributed Generation Workgroup, this is not the only complaint about Xcel's unreasonable and illegal practices, policies and procedures and it will not be the last. There are many, many more issues, but few Interconnection Customers have the time or resources to try to resolve them. Xcel knows this and Xcel has the resources to drag on disputes for months or years with no incentive to resolve any of them short of the Commission ordering them to do so because Xcel knows that they don't have to win any dispute, they simply have to drag it on for as long as possible. Time is money and if Xcel can drag a dispute on for long enough it doesn't matter whether they win on the merits because the time and expense of the process is enough to kill most projects and discourage the development of many others. This is not only discouraging the development of distributed generation in Minnesota; it is hurting the economy and environment of Minnesota because of the

² This is a common tactic in Xcel's playbook. With regard to planned outages, Xcel has apparently changed the reason for taking CSGs off line from inverter failure to arc flash. *See* Comments of Nokomis Energy, pgs. 5-6, filed in docket 13-867 on December 17, 2020.

jobs (good paying union jobs) these projects would create and the cleaner environment it would provide.

Accordingly, Sunrise requests that the Commission issue an order (1) finding that the System Impact Study for SolarClub 11 LLC (“SC 11”), SolarClub 26 LLC (“SC 26”) and SolarClub 34 LLC (“SC 34”) (collectively “SolarClubs”) is incomplete and invalid; (2) determine that SC 26 and SC 34 can safely and reliably be connected to SCL322 if the conductor between those projects and the substation is upgraded to 556 AL conductor; (3) determine that Xcel’s unwritten conductor policy violates Minnesota law and policy and is, therefore, unenforceable, (4) require Xcel to run a complete study to determine whether SC 11 can be safely and reliably be connected to feeder SCL322; (5) if SC 11 cannot be safely and reliably connected to feeder SCL322 at a reasonable cost, require Xcel to study whether it could safely and reliably be connected to feeder SDX311 based on its queue position as of June 30, 2020, the date of Sunrise’s request; (6) determine that the MN DIP stays all pending deadlines until any dispute between an Interconnection Customer and an Area EPS Operator is resolved or a reasonable time after the parties determine that a resolution is not possible so that the Interconnection Customer can decide how to proceed; and, (7) require Xcel to use study methodologies that accurately reflect the nature of distributed generation and its realistic impact on the distribution system.

In the alternative, if the Commission does not find that Xcel violated Minnesota law or policy, its tariff or contractual obligations, we request that the Commission require Xcel to work in good faith and with its best efforts to identify additional sites where the project could be constructed without paying any additional costs or fees.

In either instance, Sunrise also respectfully requests that its costs, disbursements, and reasonable attorney fees be paid by Xcel pursuant to Minn. Stat. § 216B.164, subd. 5.

**I.
PARTIES AND JURISDICTION**

Complainant: Sunrise Energy Ventures LLC
315 Manitoba Ave.
Suite 200
Wayzata, MN 55391

Complainant's Counsel: Curtis Zaun
Attorney at Law
3254 Rice Street
Little Canada, MN 55126

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

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

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. Pursuant to MN DIP 5.3 the parties met on October 26, 2020, and attempted to resolve their dispute but were unsuccessful. The parties continued their discussions, but an impasse was reached and Sunrise elected to file this formal complaint.

Because there are no material facts in dispute, Sunrise requests that these proceedings be expedited under Minn. R. 7829.1200, subp. 1.

**II.
FACTUAL ALLEGATIONS**

1. Sunrise is a Minnesota limited liability company and owner of SC 11, SC 26 and SC 34.
2. Xcel is a public utility under Minn. Stat. § 216B.02, subd. 4, which administers Minnesota's community solar garden program pursuant to Minn. Stat. § 216B.1641.

The Interconnection Process

3. The new process for interconnection of community solar gardens (“CSGs”) with Xcel’s distribution system is set forth in Section 10 of its tariff and is designed facilitate the interconnection of distributed generation projects, including CSGs, to its system.³ As a project proceeds through the process, the Interconnection Customer acquires the information necessary to determine whether the distribution system can safely and reliably accommodate the project at a cost that makes it financially viable.

4. At each step in the process the Interconnection Customer is attempting to make informed decisions about whether to move forward with the interconnection based upon cost and other information provided by Xcel.⁴ Accordingly, a customer interconnecting a project must be able to rely on timely and accurate information from Xcel in order to make commercially prudent decisions. The failure to provide accurate and timely information impairs the ability of an Interconnection Customer to build distributed generation projects, thereby jeopardizing the CSG program.

5. The first piece of information provided by Xcel is a Pre-Application Report. This report is supposed to provide, among other things, the capacity available on the relevant transformer and feeder line. Interconnection Customers reasonably rely on this information to make decisions that affect the development of distributed generation projects.

6. If the report states that there is sufficient capacity on a particular feeder and the transformer for a project, the Interconnection Customer is required to obtain the necessary site control and insurance, develops a site plan and one line diagram, and acquire all the other necessary

³ The previous process was found under Section 9 of Xcel’s tariff.

⁴ See e.g., Section 10 of Xcel’s Tariff setting forth the “Interconnection Process for Distributed Generation Systems” beginning at 1st Revised Sheet No. 83. The Interconnection Process outlines 11 steps and various decision points on whether to proceed with the interconnection based upon increasingly detailed cost information provided by Xcel to the Interconnection Customer.

information required to complete the Interconnection Application, which essentially requires the Interconnection Customer to develop a shovel ready project. The Interconnection Customer is also required to pay an application fee of \$1,200, and a deposit of \$100,000.

7. After the application is Deemed Complete, the Interconnection Customer is required to sign a System Impact Study (“SIS”) Agreement and make a \$12,000 down payment, \$3,000 of which is an engineering application fee, towards the cost of the SIS. The SIS Agreement states:

A system impact study may, as necessary, consist of a short circuit analysis, a stability analysis, a power flow analysis, voltage drop and flicker studies, protection and set point coordination studies, and grounding reviews. A system impact study shall state the assumptions upon which it is based, state the results of the analyses, and 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. A system impact study shall provide 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.

It further provides:

A distribution system impact study shall incorporate a distribution load flow study, an analysis of equipment interrupting ratings, protection coordination study, voltage drop and flicker studies, protection and set point coordination studies, grounding reviews, and the impact on electric system operation, as necessary.

8. The SIS is supposed to be completed within 30 days and determine whether there is sufficient capacity on the system to accommodate the proposed project. If upgrades to the system are necessary to accommodate the proposed project, the SIS is supposed to provide “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.” This information is necessary for the Interconnection Connection to determine whether to proceed to the next step, a Facilities Study.

9. The MN DIP provides for a dispute resolution process. The process allows the parties to attempt to resolve the dispute themselves, ask for the assistance of the Consumer Affairs

Office, enlist a mediator, or bring a formal complaint to the Commission. Significantly, the MN DIP requires that the “parties operate in good faith and use best efforts to resolve the dispute.”⁵

10. Previously, Section 9 of Xcel’s tariff allowed an Interconnection to file a dispute with an Independent Engineer. Notably, any pending deadlines were stayed pending resolution of the dispute by either the Independent Engineer or the Commission.⁶

Sunrise’s Interconnection Process for SC 11, SC 26 and SC 34

11. On November 25, 2019, Sunrise received a Pre-Application Report from Xcel regarding Substation Transformer SCL TR02 and Feeder SCL322. The report stated that the transformer had a 70 MVA nameplate rating and that the daytime minimum load was 6.789 MVA, establishing a total capacity of 76.789 MVA. Subtracting out the 20 MVA of existing generation and the 7 MVA of generation in the queue, left 40.789 MVA of available capacity, which the report stated as 41 MVA.

12. Relying on the information provide in this report, Sunrise began to gather the extensive amount of information and take the actions necessary to submit an application under the MN DIP. Sunrise estimates that the costs to gather this information are approximately \$40,000 to \$70,000 per project.

13. Sunrise submitted its application for SC 11 on March 4, 2020, SC 26 on March 4, 2020, and SC 34 on April 8, 2020.

14. SC 11’s Interconnection Application was Deemed Complete on April 14, 2020.

15. SC 26’s Interconnection Application was Deemed Complete on April 7, 2020.

16. SC 34’s Interconnection Application was deemed complete on April 21, 2020.

⁵ MN DIP 5.3.5

⁶ See NSP Rate Book, Section 9, Sheet 68.12, paragraph 9(e).

17. Before the SIS even began, during a bi-weekly call on May 5, 2020, an Xcel engineer mentioned that although it will be very dependent on project location to the feeder, there might be a thermal issue with all projects in the batch study on feeder SCL322. Xcel commonly makes these allegations to discourage Interconnection Customers from proceeding with the process.

18. The SIS Agreement was signed on May 12, 2020,⁷ making the SIS results deadline June 12, 2020.

19. All three projects were studied together in a batch.

20. The TR02 transformer was upgraded in May 2020.

21. On June 25, 2020, Sunrise received an automated email from Xcel stating that the SIS results “will be available for your review in the portal within 5 Business Days.”

22. On June 26, 2020, Sunrise emailed Xcel asking why it would take 5 days to receive the results considering they were already overdue.

23. Xcel quickly responded stating that the results were in the portal and attaching letters dated June 24, 2020, titled “MN DIP Phase 2 System Impact Study Notice – No Capacity Currently Available,” and stating “that **there is no capacity for this interconnection without upgrading the substation transformer.**”

24. Sunrise responded, “Thank you for sending this over, I just checked the portal and it is still not in the system. I can check again later. All the letters indicate that there is no capacity at the transformer, how do we confirm if the substation can take a reduced capacity in lieu of the 1MW that we applied for, in other words did the project get studied only at 1MW or did they look

⁷ The agreement was signed electronically on this date, but is dated by Xcel as of the date the application is deemed complete.

at reduced load as well? I'd appreciate if you can clarify this for us."

25. Xcel responded to Sunrise stating:

That is an excellent question. These substations are not have any reduced capacity without these upgrades unfortunately. There is no capacity left without the Phase 2 System Impact Study on both substations in this case.

If any curtailed capacity is ever available for a project, then the letter you receive will specify the curtailed capacity amount and specify that in order to receive any additional capacity a Phase 2 System Impact Study would be required.

26. On June 30, 2020, Sunrise requested that Xcel connect SC 11 to feeder SDX311, which had capacity at that time based on the SIS results Sunrise received for it SolarClub 15 LLC project.

27. On July 2, 2020, during its bi-weekly call Xcel informed Sunrise that its June 24, 2020, letter was incorrect.

28. On July 7, 2020, Sunrise requested Xcel's authority, either in guidelines or its tariff, for refusing to allow SC 11 to be connected to a feeder with capacity, SDX 311.

29. On July 10, 2020, Xcel responded stating,

I have attached a slide from our Initiate Application Training document that follows the Xcel Energy interconnection process for all developers in the Solar*Rewards Community program. This illustrates the step in which the Substation and Feeder are assigned for each application, and also explains how this assignment is determined by Xcel Energy.

The St. Cloud feeder ends between Highway 24 and 99th St. We are not however able to extend the SDX feeder from that point to these projects. Our engineering team has reviewed this location on multiple occasions, and has again confirmed that the closest feeder to this application is SCL322.

30. The attachment include one slide that had a statement at the bottom of the slide which said, "*Substation/Feeder assignment determined by closest proximity to application location.*"

31. On August 25, 2020, Sunrise requested the complete SIS.

32. On September 8, 2020, Sunrise submitted the Non-Disclosure Agreement that Xcel

requires to receive the complete results of the SIS.

33. On September 22, 2020, Sunrise received a letter from Xcel dated September 18, 2020, stating:

Based on our review and knowledge of the feeder assigned to this project, we have determined that there is no further capacity available on this feeder. Without modifications to our distribution network, your project would create a thermal overloading of the largest mainline feeder conductor available for DER interconnections that cannot be corrected with the appropriate upgrades. Planning feeder upgrades already include the reconductoring of 336 AL for this given feeder; this is the largest size reconductoring we allow.

34. Xcel, in fact, uses larger conductor, 795 AL, 750 AL, 556 AL, and 556 AAC, in its distribution system.

35. Sunrise received a redacted copy of the partial SIS performed on the relevant substation and feeder on October 6, 2020.

36. The SIS provided to Sunrise was not a complete study. It did not perform any analysis beyond the initial problem caused by the insufficient conductor to determine if there were any other issues. It did not provide sufficient information to determine the validity or accuracy of the results and some of the information conflicted with prior information provided by Xcel.

37. The SIS did not run a complete model of the impact of the proposed projects to determine all the potential issues.

38. Xcel is currently using larger conductor, 795 AL, on the relevant feeder, SCL 322.

39. During its conference call on October 26, 2020, Xcel agreed with Sam Wheeler, Sunrise's engineer who was the former Independent Engineer, that 556 AL conductor would resolve the alleged thermal overloading issues.

Sunrise's Attempt to Resolve the Dispute with Xcel

40. On September 25, 2020, Sunrise sent a dispute to Xcel regarding its refusal to connect SC 11 to a nearby feeder with capacity.

41. Xcel acknowledged the dispute and responded reaffirming its policy that it will not connect SC 11 to any other feeder.

42. Sunrise had Mr. Wheeler review the SIS after it was received on October 6, 2020.

43. Based on the lack of information and issues with the SIS identified by Mr. Wheeler, Sunrise provided several questions to Xcel prior to their On October 26, 2020, to help it understand and analyze the SIS results.

44. Because additional questions were raised by Xcel's responses, Sunrise and Xcel were unable to reach a resolution of their dispute and continued discussions until November 20, 2020.

45. Because the projects were studied together and many of the issues that were being discussed related to SC 26 and SC 34, on November 2, 2020, Sunrise sent Xcel a Notice of Dispute to Xcel regarding SC 26 and SC 34 so that it was clear to Xcel that the Sunrise disputed the study results as they related to all of the projects. In addition, Sunrise raised the issue of Xcel's illegal and discriminatory policy of only using 556 AL conductor when it benefited Xcel, but not when it assisted in the development of distributed generation.

46. In its November 2, 2020, email to Xcel, Sunrise asked Xcel to confirm that Xcel agreed that any pending deadlines were stayed until its dispute was resolved, consistent with the prior dispute resolution process for community solar gardens until Section 9 of its tariff. Sunrise asked Xcel to "provide the legal and/or policy basis" if it did not agree that any pending deadlines were stayed pending resolution of the dispute.

47. On November 4, 2020, Xcel acknowledged Sunrise's Notice of Dispute, but did not explicitly respond to Sunrise's question regarding the stay of any pending deadlines. Instead, it stated:

On June 25, 2020 we filed in the CSG docket the attached contract amendment "Regarding Mediation Hold Process for Pre MN DIP Applications". This describes how the 24-month Mechanical Completion deadline would be extended due to a mediation on pre-MN DIP applications. We currently do not have an amendment or direction as part of MN DIP to stay pending deadlines related to mediation. We could certainly discuss with you contract amendment terms to address extending the 24-month Mechanical Completion deadline in the current situation, but any such amendment would first need to follow the process for Commission approval before it could be used.

48. On November 5, 2020, Sunrise responded to Xcel's email stating:

Because you didn't explicitly answer my question, I want to make sure that I understand Xcel's position so that there isn't any miscommunication or misunderstanding.

Based on your lack of response to my question and provision of a copy of a contract amendment that you filed in docket 13-867, which states, among other things, that "For the duration of the mediation, the interconnection application is considered to be "on hold" and all interconnection timelines are suspended," and your explicit acknowledgment that it is not applicable to the current situation, I understand that it is Xcel's position that during a dispute under MN DIP 5.3, no pending deadlines are stayed, tolled or otherwise suspended.

So for these particular projects, and SolarClub 11 LLC, which we have also filed a dispute regarding, Sunrise will have to enter into a Transmission System Impact Study Agreement with Xcel by November 10 and pay an additional \$30,000.

The basis Xcel's position that it will not stay, toll or suspend any pending deadlines is because Xcel does "not currently have an amendment or direction as part of MN DIP to stay pending deadlines related to mediation."

First, I would note that Sunrise is not attempting to mediate any dispute. Rather, it is, as required by MN DIP 5.3, attempting in "good faith" and using "best efforts" to resolve the dispute directly with Xcel. Based on past experiences with Xcel and Xcel's conduct with other parties in the CSG docket, Sunrise recognizes that any attempt at mediation would likely be an unproductive use of time and resources. If a resolution cannot be reached through direct negotiations, Sunrise understands that the Commission will have to make a decision.

Moreover, Xcel's position that it cannot stay, toll or suspend any pending deadlines while the parties attempt to determine the accuracy and validity of Xcel's study and reach a resolution regarding its discriminatory and illegal practices because the MN DIP does not explicitly provide for a stay, tolling or suspension, while a dispute is pending is not

only contrary to the Commission's intent to "establish a practical, efficient interconnection process that is easily understandable for everyone involved," "give maximum possible encouragement of distributed energy resources consistent with protection of the ratepayers and the public, and be "non-discriminatory," it is contrary to the explicit language of MN DIP 5.3.5, which requires that the "parties shall operate in good faith and use best efforts to resolve the dispute." It is Sunrise's position that a suspension of all pending deadlines is not only allowed by the MN DIP, it is required. Any other interpretation would be unreasonable and violate fundamental principles of fairness and due process. An Interconnection Customer cannot make an informed decision regarding whether to proceed to the next step in the process when issues are unresolved in its current stage. So it appears that Xcel could stay the pending deadlines, but because it is not operating in good faith or using best efforts, it is simply choosing not to do so in this instance.

The only purpose for a policy that requires an Interconnection Customer to proceed with a Transmission System Impact Study while the accuracy and validity of the System Impact Study has not yet been resolved is to effectively eliminate the utility of the dispute resolution process and deny Interconnection Customers a right explicitly provided for by the MN DIP. In other words, Xcel is requiring Sunrise to pay an additional \$30,000 in order to allow it to continue to exercise its right under the MN DIP to bring a dispute to the attention of the Commission. Because if it doesn't pay the additional \$30,000 by November 10, then Xcel will withdraw the relevant projects from the queue. The effect of this position is to discourage the development of distributed generation, which is contrary to Minnesota law and both the Legislature's and Commission's stated intent.

However, if Xcel is refusing to suspend all pending deadlines while the parties are attempting to resolve their dispute under the MN DIP, then Sunrise will, under protest, proceed with the unnecessary Transmission System Impact Study to retain its right and ability to attempt to resolve this dispute with Xcel, or, if necessary, have the Commission make a decision. Please provide the necessary agreement with sufficient time to review it before the deadline.

Thank you.

49. Xcel responded on November 9, 2020, Xcel responded stating, "We can suspend the current deadline of November 10 for SolarClub 11, 26 and 34, to pay the \$30,000 for the Transmission System Impact study, subject to our ability with proper notice to let you know the new deadline on this. SunRise is aware of how to extend deadlines as part of the MN DIP process (Meron has been working through this process and can contact Rehana to do so). In your prior note you were not clear on what specific deadline you were asking us to address."

50. Sunrise responded on November 9, 2020, stating:

Thank you Jessie,

We appreciate the consideration. I apologize if you didn't think my prior email was clear.

Sunrise is aware of how to extend the deadlines, but because this deadline had already been extended we did not believe another extension under the MN DIP was possible.

It would be Sunrise's position that the deadlines should be extended until we have reached a resolution to our dispute or, if a resolution cannot be reached, 5 business days after we agree that we have reached an impasse. The 5 business days will give Sunrise time to decide whether to move to the next step in the process and pay any applicable fees, or file a formal complaint with the Commission. If a formal complaint is filed, any deadlines should be stayed until the Commission issues a final order and the appeal period for that order has expired.

Please let us know what Xcel's position is on the staying the deadlines for these projects while we are trying to resolve our dispute.

Thank you again for your time and consideration.

51. On November 19, 2020, Xcel sent an email to Sunrise asking "specifically what would like to review and your suggested resolution for this project."

52. Sunrise responded stating:

Based on the inconsistent and missing information in the redacted System Impact Study (SIS) you provided for SCs 11, 26 and 34, we would like a complete SIS done for these projects. First and foremost, it is undisputed that a complete SIS was not done for these projects. It looks like the model for the SIS terminated the analysis approximately 2 miles outside the relevant substation. The SIS Agreement requires that a complete SIS be done, not a partial SIS. As such, Xcel has breached its agreement with Sunrise. In addition, other notable issues with the study that was provided include:

- The redacted study shows inconsistency on the transformer size used to run the model. Page 38 shows a Transformer Base MVA ranging of 25MVA whereas Page 6 indicates a 42MVA rating. Xcel sent an email on 11/17/2020 confirming the current transformer size. However, the model has not been updated to run all simulations using the correct transformer base sizing.
- The model does not show the penetration level to determine the DML and, the location of where the peak DML takes place on the feeder.
- The 8760 load curve for the entire SCL 322 Circuit and the SCs 11, 26 and 34 POI's is missing. The distributed generation production curve is necessary to accurately gauge how the load curve and the production curves work together. This would demonstrate whether the relevant projects production would cause

feedback to the relevant substation's transformer.

These issues, among others, call into question the validity of the incomplete SIS that was provided.

Sunrise would like a complete study done that provides the information required by the SIS Agreement, which states, among other things:

A system impact study shall state the assumptions upon which it is based, state the results of the analyses, and 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. A system impact study shall provide 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.

This would include accurate information regarding the issues noted above. In addition, we believe the base case scenarios should include upgrading the conductor to 556kcmil, since Xcel has acknowledged that upgrading the conductor to 556kcmil will resolve the ampacity issue. While we understand that this is inconsistent with Xcel's unwritten policy regarding distributed generation, as I'm sure you will agree, before any legal or policy issues can be discussed or addressed, the parties need to have complete, accurate and reliable information upon which to base its discussions and possible resolutions.

If Xcel is agreeable to providing a complete SIS for SCs 11, 26 and 34, consistent with the SIS Agreement, then a meeting this afternoon would likely not be necessary. Please let us know how you would like to proceed.

Thank you for your time and consideration.

53. At the meeting on November 19, 2020, Xcel insisted that it had run a complete study even though it did not run the model past the issue caused by the inadequate conductor within the first 2 miles from the substation. SC 11 is almost 4 miles from the substation.

54. When Xcel refused to agree to run a complete model that would identify all of the potential issues that would be caused by the interconnection of the projects, Sunrise noted that Xcel's unwritten policy that only allows larger conductor to be used for load situations, not to allow for the interconnection of distributed generation, violated Minnesota law and policy. As such, it was Sunrise's opinion that this issue would likely have to be decided by the Minnesota

Public Utilities Commission (“Commission”). In order for the Commission to have a complete record, Sunrise asked Xcel to run a complete study using 556 conductor.

55. Sunrise also noted that if additional issues beyond the size of the conductor were identified that made the projects unfeasible, then a formal complaint to the Commission would not be necessary.

56. After concluding the meeting with Xcel, Sunrise followed up with an email stating:

I just wanted to send an email to confirm our understanding that you are going to discuss re-running the study for SolarClubs 11, 26, and 34 to identify all the potential impacts on the feeder, not just the first impact caused by the first project that made all the projects unfeasible, by running the model using 556 conductor where it resolves potential issues. Sunrise understands that if you agree to run the model using this solution to the problems that are identified by the study it does not bind Xcel to allowing 556 to be used to develop these projects. It is simply for the purpose of creating a complete record for the Public Utilities Commission to decide whether Xcel can enforce its unwritten policy to not allow the development of distributed generation.

It is also Sunrise’s understanding that while you are discussing this option with Xcel’s leadership, Sunrise will not be required to pay any additional deposits to take any other actions to maintain its right to file a formal complaint with the Public Utilities Commission under Minnesota Statute or Rule and the MN DIP, consistent with the requirements of MN DIP 5.3.5, which requires the parties attempt to resolve disputes in good faith and with best efforts.

If this understanding is incorrect or inaccurate, please provide any necessary clarification as soon as possible so that Sunrise has a reasonable amount of time to respond appropriately.

Thank you again for your time and consideration.

57. Xcel acknowledged Sunrise’s understanding stating, “Yes, my understanding is the same, I’ve brought your request for a specialized study for your project utilizing 556 conductor to our leadership team and as noted earlier we will not require you to pay any additional deposits at this time.”

58. On December 1, 2020, Xcel responded to Sunrise’s request stating:

Thank you for organizing your team for further conversation regarding the SolarClub 11 project (and subsequently those behind in queue, SolarClub 26 and SolarClub 34).

To summarize, your request for the Company was as follows:

- Why did Sunrise have to pay for additional analysis for its SolarClub 26 and 34 projects after it was known that the first in queue (SolarClub 11) ran into capacity issues?
- Will Xcel Energy provide a study to include all corrected information?
- Will Xcel Energy provide a special study to identify whether or not 556 conductor is the only impediment to building the SolarClub 11 project on the SCL322 feeder?

We address each of these requests in detail below. We also acknowledge that SunRise has stated their intention to file this dispute as a Complaint to the Commission without first going to mediation. We read the provisions of MN DIP 5.3 as giving the parties the option to pursue mediation (MN DIP 5.3.6), but MN DIP only authorizes a complaint to be filed if the results of the mediation are not accepted by a party (MN DIP 5.3.7). In this event, following the progression of the MN DIP dispute resolution steps, following rejection of the mediation results at any time either party may bring this dispute as a complaint before the Commission. (MN DIP 5.3.7). As such, we provide the detail requested and look for your written confirmation regarding how you would like to proceed.

Why did Sunrise have to pay for additional analysis for its SolarClub 26 and 34 projects after it was known that the first in queue (SolarClub 11) ran into capacity issues?

Our records show the following:

- **May 5:** Before Sunrise paid any System Impact Study (SIS) fees, we informed Sunrise that there likely was no capacity for all three projects;
- **May 12:** Sunrise paid the SIS fees for all three projects;
- **June 5:** Early in the SIS review, we informed Sunrise that there was no capacity available for all three projects;
- **July 2:** During our scheduled bi-weekly call, Sunrise asked us how much would be refunded if the studies were not going to be completed. We provided this information to Sunrise in our July 10 email which stated: *“Our teams have looked into all of these applications to see how much you would receive in a refund if you decided to withdraw these applications at this time for you. If you were to proceed with withdrawing all applications right now in the St. Cloud Batch Study: SolarClub 11, SolarClub 26 & SolarClub 34, you would receive approximately \$25,500 as a refund, from the original \$27,000 that you paid in System Impact Study Fees. If you were to proceed with withdrawing right now the Dodge Center application: SolarClub 16, you would receive approximately \$8,500 from the original \$9,000 System Impact Study Fee. If you were to withdraw right now the two applications currently at Foreign Utility Substations, SolarClub 7 and SolarClub 22, you would receive approximately \$15,700, of the original \$18,000, at this time. Individually the refund would be the full \$9,000 for SolarClub 22 and \$6,700 for SolarClub 7. Alternatively, if you decided to proceed with having the*

studies done for the St. Cloud Batch Study and SolarClub 16, once we receive your official request to proceed, it would follow the standard MNDIP 30 business day timeline to receive those results. Please also note that for Batch Studies, as there is more than 1 project being studied together, it does take longer than the 30 business day timeframe itself.”; and

- **July 22:** Sunrise informed us that it wanted us to complete the SIS studies in process.

In summary, Sunrise was informed that there was no capacity for all three projects and after being informed of this wanted the SIS studies completed together rejecting our offer to limit the study analysis to the first project in queue. Given the studies were authorized to continue, we will be issuing a refund to Sunrise to reflect that the actual costs for this cluster study were less than the deposit paid by Sunrise for this study. Per the MN DIP System Impact Study Agreement (beginning at our tariff sheet 10-232) if the deposit exceeds the invoiced fee, the Area EPS Operator shall refund such excess within 20 Business Days of the invoice without interest. As a result, the Company will be refunding \$23,666.50 out of the \$33,000 previously paid deposit for the cluster study. You will need to let us know how allocate this refund to each of the projects (SolarClub 11, SolarClub 26 and SolarClub 34). This can be communicated to SRCMN at your convenience and we will refund those fees.

Can you provide a study to include all corrected information?

Yes. We will provide a version of the study that includes a corrected table; we will have this to you this week. As a reminder, the information in the table you want corrected does not change the study results because correct values were used in the study – this adjustment only aligns the initial values provided to the consultant with the values used in the study.

Will Xcel Energy provide a special study to identify whether or not 556 conductor is the only impediment to building the SolarClub 11 project on the SCL322 feeder?

Xcel Energy has provided Sunrise a complete study analysis of its SolarClub 11, 26 and 34 projects. There is no available capacity at the sites based on the engineering analysis. The Company completes engineering studies based on scope and limiting factors and the limiting factor here is the conductor on the SCL322 feeder. As discussed, we have conducted the analyses based on a 336 Al conductor size, which is the standard conductor used for DER interconnections.

Sunrise has requested that we provide a hypothetical study analysis that uses 556 Al, which is not a standard conductor for DER interconnections, and predict what may happen if we were to use this conductor size. Our interconnection review process reviews actual interconnection options and steers away from making predictions or hypothetical solutions. Such an analysis does not provide interconnection customers with a pathway for interconnection and would take much more time and resources within the interconnection process to conduct. We would not provide these details to other customers and consistent with this we will not do so here.

Next Steps

Our next step in this process is to provide to you under the NDA the study report with the transformer information in the Checklist provided to the consultant, to match the transformer information used in the study. We will also look for your confirmation as to whether you would like to move to mediation as noted above and how you would like allocate the refund of the SIS.

Thank you.

59. The updated redacted study was provided on December 3, 2020.

60. On December 3, 2020, Sunrise responded to Xcel stating:

Sunrise will discuss and evaluate the information that you have provided and let you know how it would like to proceed.

Another piece of information that would be helpful in evaluating its next step is getting a better understanding of the effectiveness of mediation regarding these types of matters. How many mediations regarding community solar garden projects has Xcel participated in and, out of those, how many resulted in a settlement?

Sunrise is very interested in resolving this matter in whatever manner is the most efficient and effective for all of the parties concerned.

Thank you for your time and attention to this matter.

61. On December 11, 2020, Xcel responded stating:

We have NDAs for each mediation in place that restrict us from providing information about the mediation to those that have not participated in each specific mediation. This would include releasing information on whether matters that went to mediation have been resolved. We have only released information on whether mediations have been concluded or are in process. We have had five mediations in 2020. Only two are currently in process. That being said, if a party was dissatisfied with the result of a mediation it could file a complaint with the MPUC and the fact of the filing of any such complaint would be visible on e-dockets; as you may be aware.

Mediation timelines are not defined by MN DIP; however, we have a 90-day period outlined in our Section 10 Tariff.

The process is usually for the developer to submit a request for mediation. We provide the mediation agreement for the developer to fill out (and we hash that out if necessary). We also provide mediation resources for consideration although a developer can bring others to the table if they so wish. We then determine an agreed upon resource and begin the process that is primarily driven by the chosen mediator. We do try to schedule meetings quickly.

We have only had one mediation in 2020, that has taken more than 90 days; but that has

been driven by the developer.

Please let me know if you have any further questions.

62. On December 18, 2020, Sunrise responded that it would be filing a formal complaint with the Commission and that it did not think a refund of the SIS deposits would be prudent until after the Commission had made a decision on Sunrise's complaint.

III. COMPLAINT

63. Xcel's methodologies, policies and practices have consistently discouraged the development of distributed generation in general and community solar gardens in particular, which violates Minnesota law and policy.

64. The primary authority regarding renewable energy in Minnesota states that it "shall at all times be construed in accordance with its intent to give the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public." Minn. Stat. § 216B.164, subd. 1.

65. In establishing the MN DIP, the Commission stated that it was the goal of these standards to:

- 1) Establish a practical, efficient interconnection process that is easily understandable for everyone involved;
- 2) Maintain a safe and reliable electric system at fair and reasonable rates;
- 3) Give maximum possible encouragement of distributed energy resources consistent with protection of the ratepayers and the public;
- 4) Be consistent statewide and incorporate newly revised national standards;
- 5) Be technology neutral and non-discriminatory.

66. Among other things, the standards must:

To the extent possible, **be consistent with industry and other federal and state operational and safety standards;**

Provide for the low-cost, safe, and standardized interconnection of distributed energy resources; [and,]

Take into account differing system requirements and hardware; as well as, the

overall demand load requirements of individual utilities; ...

67. Based on the limited information provided to date, it appears that Xcel's methodology for determining available capacity is inconsistent with industry standards and unreasonably limits the claimed amount of capacity of the distribution systems assets, thereby imposing unreasonable interconnection costs on Interconnection Customers and unreasonably discouraging the development of renewable energy in general and community solar gardens in particular, which is inconsistent with the public interest.

68. Xcel's capacity determination appears to compare the period of smallest amount of load to the greatest amount of solar generation from our facility, even though those two events are unlikely to occur at the same time. Xcel has not provided sufficient information for Sunrise to analyze either the load and generation curves to determine if Xcel's determination is accurate

69. Xcel's unwritten policy to only use 556 AL conductor when it benefits Xcel, but not to allow for the development of distributed generation violates Minn. Stat. § 216B.164, subd. 1, the goals of the MN DIP and the stated intent of the community solar garden program.

70. However, regardless of whether Xcel's analysis is accurate, the parties agree that if 556 AL conductor was used on the problematic segments of the feeder it would eliminate any thermal amperage issues.

71. Xcel's unwritten policy to not allow a project to interconnect to a nearby feeder violates Minn. Stat. § 216B.164, subd. 1, the goals of the MN DIP and the stated intent of the community solar garden program.

72. Xcel's position that Sunrise cannot connect to a nearby feeder, but can build its own dedicated distribution line, which would be significantly more expensive, is clearly meant to make developing distributed generation more difficult and expensive in violation of Minnesota law and policy.

73. Interconnection Customers rely on timely accurate information and a fair process to develop distributed generation projects. The failure of Xcel to provide either of these discourages the development of distributed generation.

74. As the administrator of the interconnection process, owner of the distribution systems and the entity being paid to perform the required studies as well as the resulting work, Xcel controls the process and is the gatekeeper of all relevant information regarding the interconnection of a project. It is a monopoly provider of these services, and so has an obligation to ensure that the Interconnection Customer has the information necessary to make informed decisions regarding the costs to interconnect a project throughout the process and that this monopoly position is not abused to take advantage of Interconnection Customers. Absent such an obligation, Xcel could provide inaccurate studies and require Interconnection Customers to pay exorbitant fees for unnecessary studies to exercise its dispute rights. Failure to require Xcel to provide accurate information or administer the interconnection process in a fair manner will undermine the entire interconnection process and place the entire CSG program in jeopardy as developers decided that they could not rely on Xcel's information or interconnection process to make investment decisions.

75. Pursuant to Minn. Stat. § 216B.164, subd. 5, in a dispute between the Area EPS Operator and the Interconnection Customer, "the burden of proof shall be on the public utility." Therefore, the burden of proof in this dispute is on Xcel to demonstrate that its unwritten policies to not allow CSGs to be connected to its system using conductor that is already used throughout it and not allow CSGs to be connected to feeders with available capacity is not discriminatory, discourages the development of distributed generation or otherwise violates Minnesota law or policy, its tariff or its agreements.

76. Minn. Stat. § 216B.164, subd. 5, also states:

The commission in its order resolving each such dispute shall require payments to the prevailing party of the prevailing party's costs, disbursements, and reasonable attorneys' fees, except that the qualifying facility will be required to pay the costs, disbursements, and attorneys' fees of the public utility only if the commission finds that the claims of the qualifying facility in the dispute have been made in bad faith, or are a sham, or are frivolous.

77. Sunrise's dispute is not made in bad faith, a sham or is frivolous.

IV. ALTERNATIVE REQUEST FOR DIFFERENT SITES

78. Even if the Commission does not agree that Xcel violated its tariff, the SIS Agreement with Sunrise, or Minnesota law and policy, it is evident that Xcel's actions have discouraged the development of distributed generation and unreasonably caused Sunrise to expend unnecessary time and costs. Therefore, in the event that the Commission finds that Xcel complied with Minnesota law and other relevant authority, Sunrise respectfully requests that the Commission require Xcel to work in good faith and with its best efforts to identify additional sites where the project could be constructed without Sunrise paying any additional costs or fees. Pursuant to Minn. R. 7829.3200, the Commission can grant a variance/waiver when three conditions are satisfied:

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and,
- C. granting the variance would not conflict with standards imposed by law.

79. The same standard applies in granting a one-time modification to a previously approved tariff. Here, all three conditions are satisfied and a waiver of any applicable tariff provisions requiring Sunrise to pay additional fees and costs for re-studying these projects at a different location is warranted.

80. First, Xcel's actions and inaccurate information have placed an excessive burden on Sunrise. It has forced Sunrise to waste a significant amount of time and expenses to develop

three projects. Even if Xcel identifies another site for its projects, Sunrise will still have to expend additional time and resources to acquire site control and develop another project.

81. Second, granting the relief requested is in the public interest. It will promote the development of distributed generation consistent with Minnesota law and policy, which reduces pollution emissions, provides access to clean energy resources for Minnesotans and creates jobs, including good paying union jobs, to assist in Minnesota's economic recovery.

82. Finally, Sunrise is unaware of any statute, regulation, rule, or Commission precedent that would prohibit the Commission from granting the requested waiver. In fact, it is fully within the Commission's authority to waive an applicable tariff provision it previously approved for good cause shown.⁸ In the present case, the Commission clearly retains authority to grant equitable relief.⁹ The Commission should exercise that authority here to promote the development of distributed generation, which will reduce pollution emissions, provide access to clean energy resources for Minnesotans and create jobs to assist in Minnesota's economic recovery.

V. REQUEST FOR RELIEF

Accordingly, for the reasons set forth above, Sunrise respectfully requests that the Commission issue an order (1) finding that the SIS for the SolarClubs is incomplete and invalid; (2) determine that SC 26 and SC 34 can safely and reliably be connected to SCL322 if the conductor between those projects and the substation is upgraded to 556 AL conductor; (3)

⁸ The Commission has clear authority pursuant to Minn. Stat. § 216B.25 to “upon notice to the public utility and after opportunity to be heard, rescind, alter, or amend any order fixing rates, tolls, charges, or schedules, or any other order made by the commission, and may reopen any case following the issuance of an order therein, for the taking of further evidence or for any other reason.” This authority, of course, includes granting a waiver of any provision of Xcel's Tariff approved by order of the Commission.

⁹ See, e.g., *In the Matter of the Petition of N. States Power Co., d/b/a Xcel Energy, for Approval of Its Proposed Cmty. Solar Garden Program*, No. E-002/M-13-867, 2020 WL 605932 (Feb. 4, 2020) (granting a partial waiver of late fees on equitable grounds).

determine that Xcel's unwritten conductor policy violates Minnesota law and policy and is, therefore, unenforceable; (4) require Xcel to run a complete study to determine whether SC 11 can be safely and reliably be interconnected; (5) if SC 11 cannot be safely and reliably connected to feeder SCL322 at a reasonable cost, require Xcel to study whether it could safely and reliably be connected to feeder SDX311 based on its queue position as of June 30, 2020, the date of Sunrise's request; (6) determine that the MN DIP stays all pending deadlines until any dispute between an Interconnection Customer and an Area EPS Operator is resolved or a reasonable time after the parties determine that a resolution is not possible so that the Interconnection Customer can decide how to proceed; (7) require Xcel to use study methodologies that accurately reflect the nature of distributed generation and its realistic impact on the distribution system; and, (8) award Sunrise its reasonable attorney fees and costs. In the alternative, if the Commission does not find that Xcel violated Minnesota law or policy, its tariff or contractual obligations, require Xcel to work in good faith and with its best efforts to identify additional sites where the project could be constructed without paying any additional costs or fees.

Sunrise reserves the right to timely modify or expand its request for relief herein (*i.e.*, through an amended complaint) as supported by, *inter alia*, additional relevant information that becomes known to Sunrise after the filing of this Complaint with the Commission.

Respectfully Submitted,

Dated: December 18, 2020

/s/ Curtis Zaun

CURTIS P. ZAUN
Attorney at Law
3254 Rice Street
Little Canada, MN 55126
(651) 216-3308
curtis@cpzlaw.com