

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

September 2, 2021

VIA ELECTRONIC FILING

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

Re: Comments in Response to Arguments filed by Xcel on August 23, 2021
In the Matter of the Formal Complaint and Request for Expedited Relief by SunShare, LLC Against Northern States Power Company d/b/a Xcel Energy regarding CleodSun Project
Dockets No. E-002/C-21-126

Dear Mr. Seuffert,

Curtis Zaun, Esq., on behalf of SunShare, LLC, submits these Comments in the above-referenced dockets.

Pursuant to Minn. R. 7829.0400, this document has been filed electronically for service on the parties on the service list filed with this document.

Respectfully Submitted,

/s/ Curtis Zaun

CURTIS P. ZAUN

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**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

Docket Number E-002/C-21-126

*In the Matter of the Formal Complaint and
Request for Expedited Relief by SunShare,
LLC, Against Northern States Power
Company d/b/a Xcel Energy regarding
CleodSun Project*

**COMMENTS IN RESPONSE TO
ARGUMENTS FILED BY XCEL ON
AUGUST 23, 2021**

SunShare, LLC (“SunShare”), respectfully submit these Comments in Response to Arguments filed by Xcel Energy (“Xcel”) on August 23, 2021, in the above-referenced matter. SunShare is filing these comments as directed by the Minnesota Public Utilities Commission (“Commission”) at the August 12, 2021, hearing on this matter.

SunShare filed its amended formal complaint in this matter on June 1, 2021, pursuant to Minn. Stat. § 216B.164, subd. 5, Minn. R. 7835.4500; Minn. R. 7829.1700, and Xcel’s tariff. At the hearing in this matter on August 12, 2021, the Commission determined that it had jurisdiction and that there was a reasonable basis to investigate SunShare’s allegations regarding Xcel’s failure to provide an indicative cost estimate that used the least cost upgrades necessary to safely and reliably interconnect SunShare’s proposed project consistent with state, national and industry standards. Accordingly, the Commission directed Xcel to respond to the allegations in SunShare’s complaint related to Xcel’s failure to provide an indicative cost estimate using the least cost upgrades necessary to safely and reliably interconnect SunShare’s project.

Instead of responding to the allegations in the complaint, Xcel submitted additional arguments making unsupported assertions, raising additional factual issues, attempting to

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rehabilitate the testimony given at the hearing of its engineer, and providing partial new data by disclosing at least one of the pieces of equipment under question-the type of hydraulic recloser that SunShare had been asking Xcel for without response during the past year and a half. Xcel, however, still did not provide the equivalent information on the existing regulator, without which SunShare's engineer cannot complete his analysis of whether Xcel's estimate is the least cost, or whether there is an upgrade to the existing recloser, which Xcel's own engineer at the hearing referred to as a "workhorse of the industry,"¹ that could be utilized to interconnect SunShare's project safely and reliably consistent with industry standards.

This case is about what information Xcel was required to timely provide to SunShare in response to questions and concerns about the IA it paid Xcel to deliver in order to enable SunShare to determine whether it could proceed with the project, and whether Xcel's indicative cost estimate had to consider least cost assumptions NEEDED to interconnect the proposed project or, as Xcel argues, the equipment that Xcel WANTS upgraded. SunShare needs this information in order to allow SunShare to determine whether the project is financially viable and would support SunShare funding the cost of the IA. Xcel's position that SunShare should pay the IA cost before it will provide any information discounts the over \$20,000 SunShare already paid Xcel to study the costs and provide the IA. SunShare is *not* asking for a detailed design of the project, or anything that is improper for SunShare to receive at this stage of the process. It is simply asking for Xcel to comply with its Tariff. After over a year and \$20,000 it is hard to understand they Xcel cannot tell SunShare what parts (and manufacturer) it is actually planning to replace. This information is critical for this project, because due to the high cost of the estimated interconnection, the answers

¹ *In the Matter of the Formal Complaint and Request for Expedited Relief by SunShare, LLC, Against Northern States Power Company d/b/a Xcel Energy regarding CleodSun Project*, Docket E002/C-21-126, Aug. 12 Hearing, Video from 3:54:09-3:54:10 (Aug. 12, 2021) ("Aug. 12 Hearing").

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to this question determine whether SunShare can proceed with the project at all.

Xcel's failure to specifically respond to each of the allegations in SunShare's complaint leaves the Commission and SunShare to try to figure out what its responses are and, thus, what allegations remain in dispute. This refusal to provide information that other parties need is, as the Commission is aware from the numerous complaints that have been made and DGWG meetings, a consistent pattern with Xcel, and has been SunShare's concern since the original IA was delivered. It shouldn't take a formal complaint and Commission action for Xcel to provide basic information about the equipment on its system. But, unfortunately, after over a year, that is where we are at now. If Xcel has appropriately replied to SunShare's complaint, this reply could have highlighted the areas of agreement and disagreement, which could have helped the Commission determine which allegations require further investigation.

As such, the Commission should continue its investigation into this matter and help establish a clear record by directing Xcel to respond to each specific allegation, either admitting or denying it. After Xcel has answered SunShare's complaint, the Commission can determine what additional factual and legal questions remain and determine the best way for the parties to respond to them.

Commission Rule Regarding Formal Complaints

The Commission's rules dictate what happens when the Commission determines that it has jurisdiction over a formal complaint and that there is a reasonable basis to investigate its allegations. "On concluding that it has jurisdiction over the matter and that investigation is warranted, the commission shall serve the complaint on the respondent, together with an order requiring the respondent to file an answer either stating that it has granted the relief the complainant

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requests, or responding to the allegations of the complaint.”² One would reasonably expect that “responding to the allegations of the complaint” would require the respondent to admit or deny each specifically numbered allegation in the complaint so that the decision maker and the parties clearly know which allegations the parties agree on and which ones are in dispute. If a party does not admit or deny each allegation, the Commission and the opposing party are left guessing the respondent’s position on each allegation. Notably, the Commission’s rules provide, “If the respondent fails to answer a complaint served by the commission under subpart 2, the commission shall consider the allegations of the complaint denied.”³

Although Xcel titled its filing an “Answer,” rather than “responding to the allegations” of SunShare’s complaint, Xcel submitted additional arguments making unsupported assertions, raising additional factual issues and attempting to rehabilitate the testimony of its engineer. Xcel’s “Answer” also stated, “We incorporate into this Answer all of our responses and arguments on this issue as set forth in our June 23, 2021, Comments.” A filing that does not respond to each of the allegations in a complaint, and that relies on other filings, should not be considered an answer under Minn. R. 7829.1800, subp. 2. Such a response does not move this case forward by establishing the clear record that is necessary for the Commission to determine what additional issues require further investigation, which is what an answer is supposed to do. Instead, it raises new factual questions. In fact, based on the Commission’s rules, Xcel’s failure to answer the complaint consistent with Minn. R. 7829.1800, subp. 2, should be considered a denial of all of the allegations in SunShare’s complaint. Moreover, nothing in Minn. R. 7829.1800 allows a party to rely on statements made before the commission has served the complaint on the respondent with “an order requiring the respondent to file an answer either stating that it has granted the relief the

² Minn. R. 7829.1800, subp. 2.

³ Minn. R. 7829.1800m subp. 4.

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complainant requests, or responding to the allegations of the complaint.” As such, even if any arguments made in its August 23, 2021, filing could be considered responsive, surely any arguments made previously cannot be considered responsive under the Commission’s rules.

The lack of any agreement between the parties on the factual and legal allegations of SunShare’s complaint will, of course, require the Commission to make such findings to establish a clear record for any decision it makes. In the alternative, the Commission could, as SunShare has previously suggested, refer this matter to an ALJ to make findings on the allegations that Xcel has refused to admit it agrees with, along with ones related to the allegations that are in dispute, so that the Commission can make a decision.

Despite Xcel’s failure to answer SunShare’s complaint, SunShare will respond to a few of misstatements made by Xcel.

Least Cost Solution to Interconnecting

To support its position in this matter, Xcel states, “Generally, oil-filled hydraulic reclosers are not capable of being upgraded to provide VSR and therefore a replacement with a breaker is needed for the CleodSun project to interconnect.”⁴ However, this is not always the case.

For example, based on the limited information Xcel finally provided on August 23, 2021, over a year and a half after SunShare initially requested it, it appears that there is an accessory that can be used with Xcel’s existing equipment. Using an accessory to existing equipment could not only be lower cost, it would also have less environmental impact by preventing perfectly good existing equipment from being disposed of, and potentially unnecessary new equipment from being installed. As Xcel’s engineer noted at the August 12 hearing on this matter, because

⁴ *In the Matter of the Formal Complaint and Request for Expedited Relief by SunShare, LLC, Against Northern States Power Company d/b/a Xcel Energy regarding CleodSun Project*, Docket E002/C-21-126, Other-Answer to 8-12-2021 Hearing, p. 3 (Aug. 23, 2021) (“Xcel Aug. 23 Filing”).

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hydraulic reclosers are “a workhorse of the industry,” Xcel is not “proactively replacing” them.⁵

SunShare’s research since Xcel provided the manufacturer has shown that the manufacturer of the oil-filled hydraulic recloser – **PROTECTED DATA** – [REDACTED] – **PROTECTED DATA** – was absorbed into the equipment manufacturer Eaton. Eaton manufacturers an accessory to the recloser, available on its online catalog, that can perform functionality of a VSR without having to replace the recloser or installing VSR. Eaton says it can be installed on the hydraulic reclosers and prevent the recloser from closing when voltage is applied to the accessory’s operating coil (the essence of VSR). Given the expedited nature of this reply, and Xcel’s release of this information a week ago, SunShare’s engineer has not yet been able to connect with Xcel’s engineer on this solution.

While Xcel has finally, after over a year of asking, provided more information than it has previously provided regarding the recloser, it still hasn’t provided information on the regulator, which is necessary for SunShare’s engineer to complete his review. SunShare emailed Xcel once again two days after its August 23rd filing to ask for this information, hoping that since Xcel provided the manufacturer of the recloser, it might reveal the same for the other component.

SunShare wrote:

Hi Kerry,

We appreciate in your filing that you disclosed the manufacturer of the recloser related to the Cleodsun project. That was what we had been asking for over the past year and is very helpful information.

Could you also please share the make and model of the regulator itself and its controller?

In the spirit of trying to work this out outside of the PUC hearing, this would help us reach a conclusion.

Thank you,

⁵ Aug. 12 Hearing, Video from 3:54:05-3:54:19.

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David⁶

Unfortunately, as of today, SunShare has not received a response from Xcel that would enable SunShare to proceed with its review so that it can more thoroughly respond to Xcel's filing and try to reach a settlement to move this project forward.

However, based on the limited information that has been provided, SunShare's engineer believes that at least the recloser can be upgraded to allow the safe and reliable interconnection of CleodSun at a lower cost and lower environmental impact than replacing it. The lower cost could make the project financially viable as well. And Xcel's statement that "SunShare is seeking to have us install non-standard equipment configurations into our network" is illogical. Xcel admits as much, stating "Hydraulic reclosers have been a mainstay piece of equipment within the power industry *and are still used and maintained today on our distribution system.*"⁷ Further, at the August 12, 2021, hearing in response to Commissioner Schuerger's question about whether the recloser at issue was at the end of its useful life, Xcel's engineers stated, "As long as routine maintenance is done on a hydraulic recloser, they frequently last extensive amounts of time."⁸

Thus, Xcel is admitting that it is requiring CSG developers to replace a piece of equipment that does not need to be replaced to maintain the safety and reliability of Xcel's system, or that it is not maintaining the safety and reliability of its system by not replacing all of its hydraulic reclosers. And its admission that the information SunShare is requesting "goes beyond the type of information we provide to other distributed energy resource (DER) customers interconnecting to our system"⁹ does not support its position, but rather highlights its violation of its Tariff and refusal to act transparently and in "good faith," which is why so many disputes arise. In

⁶ Email from SunShare to Xcel (Aug., 25, 2021) (Exhibit A).

⁷ Xcel Aug. 23 Filing, p. 2.

⁸ Aug. 12 Hearing, Video from 3:54:42-3:54:49.

⁹ Xcel Aug. 23 Filing, p. 1-2.

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SunShare’s experience, other utilities provide this information, which demonstrates that Xcel is not providing information that it should reasonably provide when paid over \$20,000 to study an interconnection, to help developers make go/no-go decisions about projects before signing and funding an interconnection upgrade.

The Minnesota Technical Interconnection and Interoperability Requirements (“TIIR”) require that Xcel’s design of the upgrades be “cost-effective” and consistent with “applicable industry standards and good utility practice.”¹⁰ Good utility practice requires, among other things, that Xcel’s practices, methods and actions “accomplish the desired result at a reasonable cost consistent with good business practices.”¹¹ This requirement is echoed in the MN DIP and Minnesota statutes, which state that the interconnection standards must, among other things, “[t]o the extent possible, be consistent with industry and other federal and state operational and safety standards” and “[p]rovide for the low-cost, safe, and standardized interconnection of distributed energy resources.”¹² Minn. Stat. § 216B.03 requires, among other things, that all charges demanded by Xcel be just, reasonable, sufficient and equitable. And, interconnection costs must be “*the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions, and administrative costs incurred by the utility that are directly related to installing and maintaining the physical facilities necessary to permit interconnected operations with a qualifying facility.*”¹³

In short, the upgrades necessary must be the least cost necessary to interconnect the proposed project consistent with state, national and industry standards. As the Commission has stated, “industry standards should be the touchstone for solar-garden interconnection

¹⁰ Minnesota Technical Interconnection and Interoperability Requirements, p. 1 (April 27, 2020).

¹¹ See Xcel Tariff Sheet 10-206.

¹² MN DIP, Forward, p. 1; see also Minn. Stat. § 216B.1611, subd. 2.

¹³ Minn. R. 7835.0100, subp. 12 (emphasis added).

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requirements.”¹⁴ Xcel appears to agree with this requirement based on its numerous assurances to the Commission that it uses least cost assumptions. But the only way to determine whether Xcel is using actually using least cost solutions to interconnecting CSG projects is for Xcel to provide information about the equipment that is on Xcel’s system and the upgrades it is proposing.

And while Xcel’s reliance on the Commission’s December 15, 2015, Order to support its argument that it can require that facility upgrades be consistent with its standards is reasonable, it is also important to note that the Commission explicitly required Xcel to pay for any upgrades that exceeded industry standards, stating that if “a particular piece of equipment or engineering alternative proposed by Xcel is more restrictive than industry standards, but does not discourage cogeneration or small power production, the Company may implement that alternative, *if the Company pays the incremental cost in excess of the amount necessary to implement the industry standard.*” (Emphasis added). As noted above, the Commission has stated, “industry standards should be the touchstone for solar-garden interconnection requirements.”¹⁵ Thus, the Commission’s approach is consistent with Minnesota law that only makes developers responsible for the reasonable costs of upgrading facilities that are necessary to interconnect a CSG.¹⁶ It would be unreasonable for a CSG developer to pay for the cost of upgrading facilities beyond what is *necessary* to safely and reliably interconnect a CSG.

VOS Rate

In light of the Commission’s comments regarding the rate adder that this project should receive, SunShare hereby withdraws its request for a rate adder, but respectfully requests that the

¹⁴ *In the Matter of the Petition of Northern States Power Company, dba Xcel Energy, for Approval of its Proposed Community Solar Garden Program*, Docket No. E-002/M-13-867, Order Approving Tariffs as Modified and Requiring Filing, p. 7 (Dec. 15, 2015).

¹⁵ *In the Matter of the Petition of Northern States Power Company, dba Xcel Energy, for Approval of its Proposed Community Solar Garden Program*, Docket No. E-002/M-13-867, Order Approving Tariffs as Modified and Requiring Filing, p. 7 (Dec. 15, 2015).

¹⁶ See Minn. Stat. § 216B.03; Minn. R. 7835.0100, subp. 12.

PUBLIC DOCUMENT

Commission consider the appropriate Value of Solar (“VOS”) vintage year that this project should receive in light of the delays caused by Xcel’s failure/refusal to provide the information necessary for SunShare for move forward in the interconnection process, which have delayed this project by a year. The VOS vintage year is typically set based on the year the application was deemed complete, prior to Xcel’s delay.

This project was deemed completed in 2019, but because of the material delays caused by its delayed study in 2019, and Xcel’s failure/refusal to provide information, which are ongoing, the project will likely be built alongside other projects deemed complete in 2020. Projects deemed complete in 2020 receive a slightly higher VOS than projects deemed complete in 2019, meaning that Xcel’s delay of this project by a year puts it at a disadvantage in finding subscribers when compared to other developers who have not been materially delayed by Xcel. As such, leaving this project with the 2019 VOS would be fundamentally unfair because it will be competing against other CSGs that are receiving a rate more commensurate to when they began to move forward in earnest. As subscribers have a choice to join any community solar garden they desire, they will obviously choose not to participate in the Cleodsun project if it has a slightly lower 2019 VOS whereas the rest of the projects being subscribed at a similar time are at the better 2020 VOS (2020 VOS projects will be subscribed in 2021 and 2022 because projects typically take a couple years to be developed). Based on the year delay attributable to Xcel’s refusal to provide information and other errors in this case that have delayed it a year, SunShare believes that the Commission should consider the project to be deemed complete in 2020, allowing it to be eligible for that VOS.

Conclusion

Despite the Commission’s emphasis on “Xcel’s duty to be responsive to all its customers,

PUBLIC DOCUMENT

including DER customers,”¹⁷ and recognition that tensions between utilities and developers can be reduced if the parties act in “good faith,” Xcel continues to refuse to act with the transparency that other utilities use and which is necessary to avoid and resolve conflicts. Instead, it admits to enforcing unwritten “standards” that violate Minnesota law, its Tariff and/or state, national or industry standards and argues that requiring it to start complying with these requirements would constitute discrimination against all the other developers it improperly imposed unwritten “standards” on. Such an argument is absurd and highlights the importance of the Commission affirming a developers’ right to have the Commission decide disputes between Xcel and CSG developers.¹⁸ Further, unless the Commission also reaffirms Xcel’s obligation to provide engineering studies with costs estimates that use the least cost assumptions to interconnect proposed projects as required by the authorities cited above, Xcel will continue to impose unreasonable interconnection costs on developers and other parties attempting to interconnect DER. Thus, SunShare requests that the Commission continue its investigation to determine whether Xcel used least cost estimates in development of the IA SunShare paid it for and, if not, either require Xcel to use this least cost solution to interconnection SunShare’s project or require Xcel to pay for the costs that exceed what SunShare would have to pay to implement this solution. It also requests that the Commission’s investigation consider whether the 2020 VOS is the appropriate rate to apply to this project under the unique facts of this case.

Respectfully Submitted,

Dated: September 2, 2021

/s/ Curtis Zaun

CURTIS P. ZAUN

¹⁷ *In the Matter of the Formal Complaint and Request for Expedited Relief by Sunrise Energy Ventures LLC, SolarClub 12 LLC and SolarClub 14 LLC against Northern States Power d/b/a Xcel Energy*, Docket E002/C-21-160, Order Dismissing Complaint, p. 8 (August 13, 2021).

¹⁸ See Minn. Stat. § 216B.164, subd. 5; Minn. R. 7835.4500.