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December 30, 2021

***Via Electronic Filing***

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

**RE: DOCKET NO. E002/C-21-786**

Dear Mr. Seuffert:

Nokomis Energy submits to the Minnesota Public Utilities Commission these Reply Comments in response to the Commission's November 18, 2021 Notice of Comment Period. We have electronically filed this document with the Minnesota Public Utilities Commission, and copies have been served on the parties on the attached service list. Please contact me at [matthew@nokomisenergy.com](mailto:matthew@nokomisenergy.com) or (612) 999-8600 if you have any questions regarding this filing.

Regards,

A handwritten signature in black ink, appearing to read "Matthew D. Melewski", with a long, horizontal flourish extending to the right.

Matthew D. Melewski  
General Counsel

**STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION**

Katie J. Sieben	Chair
Valerie Means	Commissioner
Matt Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

IN THE MATTER OF THE FORMAL COMPLAINT AND  
PETITION FOR RELIEF BY NOKOMIS ENERGY LLC AND  
OLE SOLAR LLC AGAINST NORTHERN STATES POWER  
COMPANY DBA XCEL ENERGY

DOCKET NO. E-002/C-21-786

**REPLY COMMENTS OF NOKOMIS ENERGY**

December 30, 2021

**I. Introduction**

Nokomis is developing an on-site solar project for St. Olaf College, which will offset a small portion of the College's electricity load without exporting energy to Xcel's grid. Xcel stopped processing the St. Olaf interconnection application and stated that it would resume processing in 600 business days. In response, Nokomis filed a Complaint asking the Commission to direct Xcel to follow MNDIP, which does not permit Xcel to stop processing the application.

In response to the Commission's request for comments, Xcel filed an extraordinary 68-page jeremiad, addressing a range of extraneous topics. For example, Xcel's comments contain approximately 136 references to the Community Solar Garden program<sup>1</sup>, which is not applicable to this behind-the-meter facility. Several pages and an exhibit are dedicated to the interconnection process and price of electricity in other states. Whole sections are copied from other filings. There is a bizarre accusation that Nokomis might be an illegal utility.

These reply comments focus on Xcel's justification for its actions, which seems to be that Xcel does not have to follow the law. We will then address some other points in Xcel's comments, but most of Xcel's comments are simply not relevant to the Complaint. These reply comments conclude that the Commission has jurisdiction, that there are even more reasonable grounds to investigate in light of Xcel's filing, and that the Commission should order Xcel to answer and investigate the Complaint in an expedited proceeding.

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<sup>1</sup> Counting acronyms for Community Solar Garden ("CSG") and Value of Solar ("VOS"), along with references to the CSG payment mechanism ("Bill Credit").

## II. Xcel Claims They Do Not Have To Follow The Law

Nokomis' Complaint advances two arguments. The first is that MNDIP does not authorize Xcel to stop processing Nokomis' interconnection application, and that by doing so anyway, Xcel is breaking the law.<sup>2</sup> The second argument is that Xcel's 600 business-day delay also violates MNDIP, because such a delay does not constitute "Reasonable Efforts."<sup>3</sup>

Xcel responds to these arguments for the first time in page 28, in a section titled "The Company Has Complied with Applicable Law and Regulation."<sup>4</sup> Instead of identifying the provision of law that authorizes Xcel to stop processing Nokomis' interconnection application, Xcel explains that's its "engineering judgment" allows Xcel to determine which laws – like any conflicting timelines or other requirements in MNDIP – apply to Xcel.<sup>5</sup>

The only legal authority Xcel cites for this proposition are a series of unrelated Commission hearings, orders, statutes and technical manuals; none of which have any bearing on whether MNDIP authorizes Xcel to stop processing the St. Olaf interconnection application.<sup>6</sup> There is also a bulleted list of mostly extraneous topics, including cluster studies,<sup>7</sup> the Duke Energy interconnection process, and the Community Solar Garden Bill Credit rate. Xcel never identifies what legal authority gives Xcel the right to stop processing the St. Olaf application

In response to Nokomis' second argument that a 600 business-day delay does not constitute "Reasonable Efforts," Xcel explains that because it has unilaterally removed the St. Olaf interconnection application from the MNDIP timelines, the project is no longer in MNDIP, so Xcel can delay it for as long as it wants:

"The provisions in MN DIP 5.2.2 do not apply when a project is waiting for its turn for a study in the queue, as there is no MN DIP timeframe for remaining in the queue for this purpose. And the length of time for waiting is directly influenced by the number of applications ahead in queue. MN DIP 5.2.2. only applies to using Reasonable Efforts to meet MN DIP time frames."<sup>8</sup>

[and]

"as MN DIP has no timeline for being on hold during serial review, there is no MN DIP violation."<sup>9</sup>

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<sup>2</sup> As noted in Nokomis' complaint, MNDIP is the governing regulation promulgated under Minn. Stat. 216B.1611, and for purposes of Nokomis' interconnection application, MNDIP is the law.

<sup>3</sup> Nokomis Energy et al., *Complaint*, Doc. No. E002/C-21-786 at 13-14 (Nov. 9, 2021).

<sup>4</sup> Xcel Energy, *Comments*, Doc. No. E002/C-21-786 at 28 (Dec. 20, 2021).

<sup>5</sup> *Id.* at 28-32.

<sup>6</sup> *Id.* at 29. There is no other reference to MNDIP, the regulation that governs what Xcel is legally required to do in the interconnection process.

<sup>7</sup> As explained *infra*, Xcel's claim that Nokomis refused to participate in a cluster study is extremely misleading.

<sup>8</sup> Xcel Comments at 33.

<sup>9</sup> *Id.* at 31.

This claim is remarkable, and bears repeating. Nokomis has argued that Xcel invented a step that is inconsistent with MNDIP, and Xcel responded that the step cannot be inconsistent with MNDIP because Xcel invented the step.

### **III. MNDIP Requires Xcel To Perform A Supplemental Review Or Review The Application Under The Study Process**

As Nokomis explained in the Complaint, MNDIP requires Xcel to take one of two steps; either begin the Supplemental Review process or begin the Section 4 study process.<sup>10</sup> This is simply the plain language of the MNDIP regulation.

Xcel recharacterizes this as Nokomis' belief that the St. Olaf interconnection application "would pass a Supplemental Review."<sup>11</sup> Xcel then explains that it has run such a Supplemental Review, and the results show that the project must proceed under the Section 4 Study Process.<sup>12</sup>

This is a bit confusing, as it appears that Xcel has now taken one of the steps that Xcel had previously refused to take, which in turn led to the Complaint.<sup>13</sup> However, Xcel still needs to continue studying the application under the Section 4 Study Process. Accordingly, Nokomis would revise the relief requested in the Complaint, and ask the Commission to order Xcel to continue studying the interconnection application under the MNDIP Section 4 Study Process.

### **IV. MNDIP Allows Xcel To Study Projects However It Wants So Long As It Studies Them In Order**

Xcel's comments focus significantly on Xcel's current "serial review" study process, in which it will not undertake the study of subsequent projects in the queue until the first project has a signed Interconnection Agreement. Xcel claims that its "serial review" study process is required by MNDIP," and that Nokomis believes serial review is "not consistent with MNDIP."<sup>14</sup> Neither of these things is true.

As the Department of Commerce<sup>15</sup> and Nokomis' Complaint make clear, Xcel is itself interpreting the MNDIP requirement for applications to be "studied serially" to require each project to wait until the prior project has signed an interconnection agreement (which Nokomis has labeled "one at a time review"). Nothing in MNDIP requires this process, and the Complaint itself explains that "'Serial' does not dictate how Xcel studies projects."<sup>16</sup> Xcel chose, on its own, to wait until the previous project had a signed interconnection agreement – it could have

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<sup>10</sup> Complaint at 1, 5 ("MNDIP required Xcel to either conduct a supplemental review under MNDIP Section 3.4 or evaluate the project under the MNDIP Section 4 Study Process.")

<sup>11</sup> Xcel Comments at 31.

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

<sup>13</sup> According to Xcel's overview of timelines, this has advanced the St. Olaf interconnection application by approximately 67 business days. *See* Xcel Comments at Attachment B.

<sup>14</sup> Xcel Comments at 4, 13.

<sup>15</sup> Department of Commerce, *Comments*, Doc. No. E002/C-21-786 at 2 (Dec. 20, 2021).

<sup>16</sup> Complaint at 10-11.

alternatively waited until the previous project had completed its system impact study. Xcel's comments also contain several suggestions about different ways to perform a "serial review."<sup>17</sup>

Nokomis's Complaint concludes that *how* Xcel performs its studies is not the issue. Xcel can perform the studies in any reasonable fashion, so long as Xcel complies with the timelines and steps in MNDIP.<sup>18</sup>

#### **V. Nokomis Has Repeatedly Tried To Engage Xcel Regarding Cluster Studies**

Xcel claims that "Nokomis declined to participate in the Cluster Study."<sup>19</sup> This is extremely misleading. On more than one occasion in 2021, Nokomis provided Xcel with comments and concerns about its draft cluster study guidelines. Xcel never responded to these comments and concerns, despite agreeing to respond multiple times.

With respect to the St. Olaf project specifically, Xcel only proposed a cluster study *after* Nokomis initiated the dispute, and forced Nokomis to choose between the dispute and a theoretical cluster study regarding which Xcel had been completely nonresponsive. Xcel later informed Nokomis that it had sent the wrong draft cluster study guidelines after all, and that the other potential participants in the cluster study declined to participate anyway, rendering the issue moot.<sup>20</sup>

#### **VI. The Commission Should Order Xcel to Respond to the Complaint and Investigate On An Expedited Basis**

All commenters agree that the Commission has jurisdiction of the Complaint. The Complaint also provides reasonable grounds for the Commission to investigate, including information regarding the proposed project, Xcel's statement that it has ceased processing the St. Olaf application for 600 business days, and a thorough explanation as to why there is no legal basis for Xcel's action. Clear evidence of unlawful action by a regulated utility warrants investigation. Moreover, Xcel has provided more grounds on which to investigate, namely Xcel's claim that it can unilaterally decide when and how it is subject to MNDIP requirements. Pursuant to MINN. R. 7829.1800, the Commission should order Xcel to file an answer.

Xcel contends that there are no reasonable grounds to investigate and that it would not be in the public interest for the Commission to investigate, but does not specifically say why. Xcel does suggest that the Commission should instead "include the factual circumstances from this matter

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<sup>17</sup> Xcel Comments at 11 ("Duke Energy allows applications to be studied out of serial queue review order . . ."); at 22 (stating that "an interconnection request may not be studied until all queued-ahead generators have *been studied*," as opposed to "*signed interconnection agreements*"); at 24 (explaining that FERC's discussion of SGIP is more similar to Xcel's "parallel review" study process that Xcel uses for <40kW projects); at 30 ("Under the Duke serial review process, Duke places projects on hold and keeps them on hold until the ahead in queue projects provide 100 percent certainty of funding for the upgrades associated with their applications.").

<sup>18</sup> Complaint at 13.

<sup>19</sup> Xcel Comments at 19; 30.

<sup>20</sup> Xcel Comments at 19; 30 ("Nokomis has declined to participate in a cluster study for this project *as have others within the queue*") (emphasis added).

as it more holistically considers changes to MN DIP in the 16-521 Docket.”<sup>21</sup> We take this to be a sort of abstention request.

Nokomis agrees with Xcel that one of the issues raised in the Complaint – whether Xcel has the authority to stop processing interconnection applications and place them on-hold without regard to the MNDIP timeline – has been raised in some of the briefing in the 16-521 docket. However, we believe Xcel has the relationship between the two dockets backwards. The issues raised in the 16-521 docket involve the entire DER interconnection process, current and future, including available capacity and cluster studies, some of which would require extensive revisions to MNDIP. Including the specific factual circumstances of this one behind-the-meter project in that discussion will only add confusion, as those issues cannot be resolved to benefit one project out of hundreds. On the other hand, determining whether Xcel has the authority under MNDIP to stop processing an interconnection application would be beneficial to resolving the larger, more complex issues raised in other dockets. Using expedited procedures to investigate the Complaint before the other matters are again before the Commission would aid in this process.

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<sup>21</sup> *Id.* at 4.