

Staff Briefing Papers

Meeting Date	March 17, 2022	Agenda Item 2**
Company	Northern States Power d/b/a Xcel Energy	
Docket No.	E002/C-21-786	
	In the Matter of a Formal Complaint and Petition for Relief by Nokomis Energy LLC and Ole Solar LLC Against Northern States Power Company d/b/a Xcel Energy	
Issues	Should the Commission investigate the Formal Complaint and Petition for Relief by Nokomis Energy LLC and Ole Solar LLC Against Northern States Power Company dba Xcel Energy?	
Staff	Derek Duran Derek.Duran@state.mn.us	651-201-2206



Relevant Documents

Date

Nokomis Energy – Initial Filing	November 9, 2021
MN PUC – Notice of Comment Period	November 18, 2021
MN PUC – Public Comment, J. Kalin	November 30, 2021
Department of Commerce – Comments	December 20, 2021
Xcel Energy – Comments (Public and Non-Public)	December 20, 2021
Nokomis Energy – Comments	January 3, 2022

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

I. Statement of the Issues

Should the Commission investigate the Formal Complaint and Petition for Relief by Nokomis Energy LLC and Ole Solar LLC Against Northern States Power Company dba Xcel Energy?

1. Does the Commission have jurisdiction over the subject matter of the Complaint?
2. Are there reasonable grounds for the Commission to investigate these allegations?
3. Is it in the public interest for the Commission to investigate these allegations upon its own motion?
4. If the Commission chooses to investigate the Complaint, what procedures should be used to do so?

II. Background

On November 9th, 2021, Nokomis Energy filed a Formal Complaint against Xcel Energy.

On December 20th, 2021, the Department of Commerce and Xcel Energy filed initial comments.

On December 30th, 2021, Nokomis filed reply comments.

At the January 20th, 2022, the Commission discussed improvements to the interconnection process in Docket No. E999/CI-16-521 (*order forthcoming*), and several decision options were passed that are related to issues raised in this docket and are discussed later in the Briefing Paper.

III. Parties' Comments

All parties agree the Commission has jurisdiction over this Formal Complaint. Xcel requested the complaint be dismissed. The Department did not address procedure whereas Nokomis requested an expedited proceeding. Parties disagree on whether there are reasonable grounds in, or a public interest to, investigate the Complaint as described below.

Formal Complaint and Petition for Relief (Nokomis)

The Ole Solar project is designed to be a 1 MW AC distributed generation solar array on St. Olaf College's campus in Northfield, Minnesota. Ole Solar is expected to be a "behind-the-meter" project where St. Olaf College will consume all of the electricity generated from the array and is not anticipated to contribute any generation to the grid.¹ Nokomis alleges in the Complaint that: 1) Xcel Energy violated the Minnesota Distribution Energy Resources Interconnection Process (MN DIP) by implementing an "on-hold" step in the process (consequently, missing several MN DIP deadlines) due to what Nokomis believes is a misinterpretation of the word "serially" by Xcel (Sec. 10; Sheet No. 180, MN DIP 1.8); and 2) Xcel Energy's estimated 600

¹ Nokomis Petition, p. 4, 11/19/21

business day hold on the project does not constitute “Reasonable Efforts”, as defined in the MN DIP, to meet the MN DIP timeframes (Sec. 10; Sheet No. 195, MN DIP 5.2.2 and Sheet No. 209, MN DIP Glossary).

Nokomis seeks relief by the Commission issuing an order directing Xcel to resume processing the Ole Solar LLC application and comply with Xcel’s legal obligation under the MN DIP. Should the Commission find that Xcel is permitted to delay processing the application, then Nokomis requests that the Commission find that 600 business days is not “Reasonable Efforts” and direct Xcel to resume processing the Ole Solar LLC interconnection within a reasonable timeframe.

Serially and On-Hold

Nokomis claims that Xcel has no authorization to create an on-hold step in the MN DIP and that Xcel has even “conceded in its response to Nokomis’ Notice of Dispute that ‘on hold is not defined as part of the MN DIP process’.”² Nokomis posits that the words “on-hold” does not appear anywhere in the MN DIP and thus the Commission must conclude that Xcel lacks that authority.

Yet, Nokomis says Xcel claims that the practice is implicitly acknowledged in the MN DIP. Nokomis claims that Xcel is wrongfully interpreting the word “serially” in section 1.8.3 of the MN DIP which states:

The Area EPS Operator shall maintain a single, administrative queue and may manage the queue by geographical region (i.e. feeder, substation, etc.) This administrative queue shall be used to address Interconnection Customer inquiries about the queue process. If the Area EPS Operator and the Interconnection Customer(s) agree, Interconnection Applications may be studied in clusters for the purpose of the system impact study; otherwise, they will be studied serially.

Xcel claims that most of the projects will be studied serially due to this MN DIP section but Nokomis believes that interpretation is incorrect and does not give Xcel the authority to “postpone all MN DIP deadlines it is otherwise compelled to meet and to ignore all MN DIP steps it is otherwise compelled to take.”³ Nokomis says this interpretation and practice “renders the timelines in MNDIP essentially meaningless except for the first project in the queue.”⁴

Nokomis goes on to say that “studied serially” does not mean “sequential or one at a time” and that it is only due to Xcel’s interpretation that the practice of studying one project at a time while the rest are put on hold is occurring. Additionally, Nokomis claims that the language Xcel used pre-MN DIP under Tariff No. 9 is nearly identical to

² Nokomis Petition, p. 8, 11/19/21

³ Nokomis Petition, p. 9, 11/19/21

⁴ Nokomis Petition, p. 10, 11/19/21

the MN DIP language and that Xcel utilized a form of parallel processing before the MN DIP passed.⁵

Nokomis then cites a 2005 Federal Energy Regulatory Commission (FERC) rule saying that “the administrative queue does not dictate how the utility performs the studies” and that that FERC “made clear that the administrative queue is separate from the timelines in the SGIP [Small Generator Interconnection Procedure], and the utility ‘must meet all deadlines established in the SGIP without regard to queue position or queue related delays’.”⁶

Reasonable Efforts and Good Utility Practice

Nokomis cites the MN DIP definitions of Reasonable Efforts: “efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests” and Good Utility Practice:

“Any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and act which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.”⁷

Nokomis argues that a 600 Business Day delay does not constitute “Reasonable Efforts” or “Good Utility Practice” under the MN DIP and that it is instead “illegal, unreasonable, and it must stop immediately.”

Department of Commerce

The Department agrees with Nokomis that a 600 business day delay is unreasonable.⁸ The Department also suggests the solutions approved by the Commission on January 20, 2022 in Docket No. E999/CI-16-521 may offer possible remedies to the excessive delays. The Department recommends that the Commission find jurisdiction over the complaint.

Xcel Energy (Response)

⁵ Nokomis Petition, p. 11, 11/19/21

⁶ Nokomis Petition, p. 13, 11/19/21

⁷ Nokomis Petition, p. 14, 11/19/21

⁸ Department of Commerce, Initial, p. 2, 12/20/21

Xcel claims that there are not reasonable grounds to further consider Nokomis' complaint and that it is not in the "public interest for the Commission to further investigate the MN DIP process-related issues as specifically raised in the Complaint."⁹ (Decision Option 3).

Serial Review and On-Hold

Xcel confirms that the Ole Solar application was put on-hold for roughly 600 Business Days.¹⁰ However, Xcel claims that this "timeline is consistent with the MN DIP and is not related to any delay on the part of Xcel Energy" and that the application is on a capacity-constrained feeder with a "total of over 7 MW of operational DER generation ahead of Ole Solar [on the Public DER Queue for feeder NOF071], 1 MW ahead being constructed, 1 MW being studied (row 13), 2 MW of projects ahead in queue not yet being studied".¹¹ Xcel posits that because the feeder is constrained, a "serial review", where the Company studies each application one at a time, is "appropriate because it allows us to determine the incremental changes we would need to make to our network to accommodate safe and reliable interconnection of a project."¹² Xcel continues, saying that this "serial review provides critical information that we need to effectively study the next in queue project and also limits re-studies and queue 'churn' by providing reliable data inputs into the next screen or study."¹³

Xcel justifies their use of the on-hold practice by saying that they must follow the MN DIP and that "the MN DIP specifically requires serial review and requires use of the queue process" and that the MN DIP "requires that queue position be used to determine the cost responsibility for the Upgrades necessary to accommodate the interconnection, and to establish conditional interconnection capacity."¹⁴ According to MN DIP 1.8.3, aside from using a cluster process, which Xcel claims they tried to achieve with Nokomis and three other applications, interconnection applications must be studied serially.

Xcel recalls that "one of the goals of MN DIP was to get better indicative cost estimates at the time of the signing of the interconnection agreement, and that goal would be compromised by not adhering to the serial review process". Xcel claims that the parties, including the Joint Movants (IREC, ELPC, and Fresh Energy), that helped develop the MN DIP in Docket 16-521, recognized that projects later in queue "may be delayed due to management of the queue, if there are several larger projects ahead in queue."¹⁵

Further, Xcel posits that the MN DIP is based on FERC's SGIP which also uses a serial review process. Xcel then cites a 2012 article, "*Updated Small Interconnection*

⁹ Xcel Energy, Initial, p. 1, 12/20/21

¹⁰ Xcel Energy, Initial, p. 12, 12/20/21

¹¹ Xcel Energy, Initial, p. 13, 12/20/21

¹² Xcel Energy, Initial, p. 17, 12/20/21

¹³ Xcel Energy, Initial, p. 17, 12/20/21

¹⁴ Xcel Energy, Initial, p. 18, 12/20/21

¹⁵ Xcel Energy, Initial, p. 20, 12/20/21

Procedures for New Market Conditions” by the National Renewable Energy Laboratory (NREL) that notes that “under the SGIP serial study process an interconnection request may not be studied until all ahead-in-queue generators are studied, and cautions that the serial study process can lead to long delays when the volume and interrelatedness of interconnection requests increases.”¹⁶ Xcel then argues that the information Nokomis quoted about the FERC SGIP is from a 2005 Order that was taken out of context and misapplied and is talking about situations that are more related to the parallel review process the Company exercises for small DER applications rather than Community Solar Gardens (CSGs)¹⁷.

Good Utility Practice

Xcel notes that it is allowed to use Good Utility Practice and engineering judgement in managing its distribution network and DER interconnections. Xcel cites Commission Schuerger in the March 4th, 2021 Commission hearing that “not every detail of utility practices must be committed to tariff” and that utilities’ practices must not be arbitrary or discriminatory.¹⁸ Xcel says that this flexibility in engineering judgment is necessary to follow Minn. Stat. §216B.04, to “furnish safe, adequate, efficient, and reasonable service” and to follow Minn. Stat. §216B.029, subd. 1(d) to “comply with all applicable governmental and industry standards required for the safety, design, construction, and operation of electric distribution facilities”. Xcel also states that the statewide Technical Interconnection and Interoperability Requirements (TIIR) further supports the Company’s need for engineering judgement. Xcel argues that it has complied with applicable law and regulation, included Good Utility Practice.

Xcel’s Long Queue Justification

Xcel expounds several times that the root cause of the long-queue problem is due to the high Bill Credit rate under the CSG program which attracts a high volume of applications.¹⁹ This high volume of applications, combined with the contiguous-county requirement under the state CSG statute leads to highly constrained feeders. Constrained feeders then require more time and resources to properly study interconnection applications that may need distribution upgrades to provide for more capacity. Additionally, Xcel points out that other states have had similar long queue lengths as a result of the serial review process and that their way of dealing with the interconnection process is more lenient than utilities like Duke Energy.²⁰

Nokomis Reply Comment

¹⁶ Xcel Energy, Initial, p. 22, 12/20/21

¹⁷ Staff notes that Ole Solar is a 1 MW “behind-the-meter” project, not a Community Solar Garden, but that the project is on a constrained feeder.

¹⁸ Xcel Energy, Initial, p. 29, 12/20/21

¹⁹ Xcel Energy, Initial, p. 6-10, 12/20/21

²⁰ Xcel Energy, Initial, p. 11, 12/20/21

In response to Xcel's comment, Nokomis maintains their two arguments – the MN DIP does not authorize Xcel to stop processing Nokomis' interconnection application via an "on-hold" practice that does not exist in the MN DIP and that a 600 Business Day delay does not constitute "Reasonable Efforts".²¹

Nokomis disagrees that Xcel's "engineering judgement" allows "Xcel to determine which laws – like any conflicting timelines or other requirements in MNDIP – apply to Xcel".²² Additionally, Nokomis reiterates that it is Xcel's interpretation of the word "serial" and not the MN DIP that is causing Xcel to study applications one at a time. 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.²³

Public Comment – J. Kalin

J. Kalin expresses that their solar energy system has also been put on-hold. They have been on-hold for a period of 14 months and they still have 12 other projects ahead of them in the queue. Kalin claims that this process has caused them financial loss and may cause them to lose future savings if the solar tax credit decreases or is eliminated while their project is on-hold. They request the Commission have Xcel remove their on-hold status and begin processing their application.²⁴

IV. Staff Analysis

On-Hold

There have been significant developments regarding the interconnection in process Docket 16-521 since this petition was filed. Through the Commission's decision at the January 20, 2022 Agenda Meeting, the "on-hold" practice has been heavily modified with plan to phase it out completely in areas where there are no capacity constraints. In areas where feeders are capacity constrained such as for the Ole Solar LCC application, the Xcel would have to move the trigger to begin reviewing the next-in-queue project when the ahead-in-queue has begun the Facilities Study if the project itself would not trigger the applicable known capacity constraint. Staff is unclear if this change would provide relief for Ole Solar.

Additionally, and possibly most relevant, the longer-term plan is to have projects like this one, where there are multiple projects in a queue on a constrained feeder, is to have a mandatory group study process. Xcel has been given a variance to MN DIP 1.8.3. to begin a pilot for mandatory group studies. Staff notes Xcel mentioned a voluntary group study was not successfully arranged and suggests that Nokomis could participate in a group study to shorten review time.

²¹ Nokomis, Reply, P. 2, 12/30/2021

²² Nokomis, Reply, P. 2, 12/30/2021

²³ Nokomis, Reply, P. 4, 12/30/2021

²⁴ Public Comment – J Kalin, P. 2, 11/30/2021

Due to the developments in Docket 16-521, Staff believes that an on-hold delay of 600 Business Days is now unlikely and Xcel will begin processing the application sooner than anticipated. Given these changes, Staff recommends the Commission deny Nokomis Energy LLC and Ole Solar LCC's request for relief. (Decision Option 4)

Should the Commission decide to further investigate the Complaint it is common for the next step to be to serve the Complaint on Xcel Energy for a response per Minn. Rule 7829.1800. As seen in recent Formal Complaint dockets related to interconnection issues like the Ole Solar Complaint, Xcel's Answer is often what was provided in response to this initial consideration of jurisdiction and reasonable grounds or public interest. Staff notes historically a decision on relief (Decision Options 4 and 5) usually comes as part of this second step in the process.

V. Decision Options

Should the Commission investigate the Formal Complaint and Petition for Relief by Nokomis Energy LLC and Ole Solar LLC Against Northern States Power Company dba Xcel Energy?

1. Find the Commission has jurisdiction over the issues raised in the Ole Solar LLC Formal Complaint filed by Nokomis Energy LLC (Nokomis, Xcel, the Department), and
2. Determine investigation of the Ole Solar LLC Formal Complaint is reasonable [*and in the public interest*] and continue with an expedited proceeding. (Nokomis), or
3. Dismiss the Ole Solar LLC Formal Complaint. (Xcel)
4. Require Xcel to resume processing of the Ole Solar LLC application and comply with the legal obligations under the MN DIP (Nokomis), or
5. Determine that Xcel's 600 Business Day delay is not "Reasonable Efforts" as defined by the MN DIP and that Xcel must resume processing the Ole Solar LCC interconnection application within [X] days. (Nokomis, the Department)