



414 Nicollet Mall
Minneapolis, MN 55401

March 31, 2022

—Via Electronic Filing—

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

RE: REPLY COMMENTS

IN THE MATTER OF A FORMAL COMPLAINT AND REQUEST FOR EXPEDITED RELIEF BY SUNSHARE, LLC AGAINST NORTHERN STATES POWER COMPANY D/B/A XCEL ENERGY REGARDING VARIANCE FOR VOS RATE SCHEDULE FOR FIVE SUNSHARE PROJECTS, DOCKET NO. E002/C-21-125
AND

IN THE MATTER OF A FORMAL COMPLAINT AND REQUEST FOR EXPEDITED RELIEF BY SUNSHARE, LLC AGAINST NORTHERN STATES POWER COMPANY D/B/A XCEL ENERGY REGARDING SUNSHARE CLEODSUN PROJECT, DOCKET NO. E002/C-21-126

Dear Mr. Seuffert:

Northern States Power Company, doing business as Xcel Energy, submits to the Minnesota Public Utilities Commission these Reply Comments consistent with the Commission's Notice of Answer and Comment Period issued on February 18, 2022 in the above referenced dockets on the following issues:

- Should the Commission grant SunShare's variance request to achieve a 2020 VOS Vintage rate rather than a 2019 VOS Vintage rate for all the five SunShare projects?
- Should the Commission determine that Xcel is imposing unreasonable interconnection costs by requiring a replacement, rather than a retrofitting, of a recloser and regulator for the CleodSun site?

A. SunShare Should Not Receive a Variance (Docket No. 21-125)

We appreciate the Department's Comments that recommended denial of SunShare's request for variance.

SunShare should not receive an enhanced VOS rate for the five projects that are the subject of the Petition in Docket No. 21-125. SunShare's Comments (page 2) state that it is asking the Commission to set the VOS rate for these projects consistent with the VOS for other Solar Community Garden projects that were deemed complete in the same time frame. Being deemed complete means that the applicant has submitted a sufficiently complete interconnection application, and this is explained in the Department comments. Our tariff determines which VOS rate applies based on when the application has been deemed complete. We have properly applied what our tariffs provide for, and the SunShare projects here are receiving the same VOS rates as other projects that were deemed complete in the same time frame.

SunShare wants a higher level of VOS rate to apply to its projects instead of the proper VOS rate that applies to projects deemed complete in the same time frame. SunShare's Petition at pages 1, 12, and 16 cites to the reopening statute, Minn. Stat. §216B.25, but its comments at page 3 deny that it is seeking to reopen, and then later on page 6 SunShare cites to the reopening statute upon which it relies. Regardless of these inconsistencies, in any event, the SunShare petition should be denied.

We continue to dispute the appropriateness of seeking a variance to a tariff absent special circumstances, which SunShare still has not provided. Even if this were to be considered a proper procedural approach, SunShare has not met the three requirements for a variance.

- 1. SunShare has failed to show that enforcement of the CSG tariff provision applying the 2019 VOS Vintage Year Bill Credit Rate would impose an excessive burden upon SunShare.*

In our Answer, we discussed several reasons showing why SunShare has not met this requirement. SunShare's Comments have not effectively rebutted these arguments. First of all, SunShare has not demonstrated any injury. Further, SunShare could have fully mitigated or significantly reduced any alleged harm, and the Commission has no authority to award compensatory damages.

- SunShare has failed to show that granting the variance would not adversely affect the public interest.*

Our Answer showed the extensive subsidy already being provided to the CSG program, including how the VOS rates for solar from the CSG program are in the range of 2 to 2.5 times higher than solar PPA rates. In our Answer, we described how granting the relief being requested would discriminate against others. We also pointed out that the Commission has already taken action against the Company for delays in this time frame by imposing a \$1 million underperformance payment against the Company. We also showed that the Commission has no authority to award equitable relief here. SunShare's Comments did not effectively rebut these points.

- SunShare has failed to show that granting the variance would not conflict with standards imposed by law.*

SunShare is effectively seeking compensatory damages, even though they are attempting to call the requested relief something else. The Petition is clear that SunShare is requesting an increased VOS rate because of the alleged harm that they have suffered, and that falls squarely within the concept of compensatory damages which the Commission cannot award here. Further, the Commission cannot apply rates retroactively, and this is what SunShare is asking. Granting the relief SunShare is seeking would provide an unlawful rate preference, and create potential precedence for projects that are delayed for a large number of reasons to request a new VOS bill credit rate if subsequent bill credits rates are higher than the rate for which the CSG, by tariff, qualifies.

- SunShare's QF arguments are misplaced.*

SunShare's Comments devote several pages on the Qualifying Facility (QF) issue. The QF term applies to show eligibility for a PURPA program. As explained in our Answer, the irony of SunShare's position is that if it were a QF for purposes of the Community Solar Garden program, then the highest rate that could be paid is our avoided cost, which is far less than the VOS rate. In any event, the Minnesota Court of Appeals has already determined that the Community Solar Garden program is not a PURPA program. Based on this, SunShare has no QF standing. SunShare argues that Minnesota law has a different standard for being a QF, but this is not correct. Minn. Stat. §216B.164 and Minn. R. Ch. 7835, upon which SunShare relies, implement PURPA and related federal regulations. (See, April 1, 2014 order, page 1 footnote 1, in Docket No. E999//M-14-65, *In the*

Matter of Establishing a Distributed Solar Value Methodology, and Minn. Stat. §216B.164, Subd. 2)

We recommend that the Commission dismiss the Petition in Docket No. 21-125.

B. The Proposed Replacement of Equipment is Reasonable (Docket No. 21-126)

For the CleodSun project in Docket No. 21-126, the Commission requested Initial Comments to be filed on March 21 on the following issue:

Should the Commission determine that Xcel is imposing unreasonable interconnection costs by requiring a replacement, rather than a retrofitting, of a recloser and regulator for the CleodSun site?

The Department filed Comments supporting the Company's position. SunShare, however, failed to submit any comments.

When the Commission issues a Notice requesting comments on a complaint, the party bringing the complaint should be expected to participate in the process. The Company provided a robust Answer to SunShare's amended complaint on March 10, 2022. By failing to file initial comments regarding our Answer and related to the merits of its own complaint, and providing no comment to support its own complaint, SunShare appears to have capitulated or abandoned this matter. SunShare's failure to file initial comments also could be viewed as an "implied waiver" of the relief sought in the Second Amended Complaint. Black's Law Dictionary defines "implied waiver" as "a waiver that is assumed to be in effect from a person's behavior and shows he is waiving a right."¹ SunShare's failure to file initial comments could be viewed as a forfeiture of its right to proceed with its complaint.² We also note that by deciding not to provide initial comments, SunShare may be attempting to file robust reply comments and thereby game the process so that the Company will be prejudiced and be denied an opportunity to respond in writing to SunShare's positions. The Commission has discretion in determining which complaints it will consider, and SunShare's failure to provide

¹ See, <https://thelawdictionary.org/implied-waiver/>

² See, *Breza v. Schmitz*, 311 Minn 236, 248 NW2d 921 (Mn S.Ct. 1976), willfully and without justification or excuse refusing to comply with discovery orders forfeits right to a trial on the merits.

initial comments to support its complaint should be a factor that the Commission considers. Because of this prejudice, dismissal of the complaint is authorized.³

Our Answer provided a detailed explanation why the upgrades required for the CleodSun project interconnection are appropriate and reasonable. We ask that the Commission dismiss the complaint and take no further action on the complaint.

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 Jessica Peterson at Jessica.k.peterson@xcelenergy.com or (612)330-6850 if you have any questions regarding this filing.

Sincerely,

/s/

JAMES DENNISTON
ASSISTANT GENERAL COUNSEL

Enclosures
c: Service List

³ See, *Housing and Redevelopment Authority of St. Paul v Kotlar*, 352 NW2d 497, 500 (Minn. Ct.App. 1984), “Having shown both prejudice to the defense and failure to produce by a court-ordered deadline, the trial court was within its discretion to dismiss the case.”

CERTIFICATE OF SERVICE

I, Crystal Syvertsen, hereby certify that I have this day served copies of the foregoing document on the attached list of persons.

xx by depositing a true and correct copy thereof, properly enveloped with postage paid in the United States mail at Minneapolis, Minnesota; or

xx by electronic filing.

Docket Nos.: E002/C-21-125 and E002/C-21-126

Dated this 31st day of March 2022.

/s/

Crystal Syvertsen
Regulatory Administrator

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Jacob	Bobrow	jbobrow@mysunshare.com	SunShare	1724 Gilpin St Denver, CO 80218	Electronic Service	No	OFF_SL_21-125_Official Service List 21-125
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-125_Official Service List 21-125
James	Denniston	james.r.denniston@xcelenergy.com	Xcel Energy Services, Inc.	414 Nicollet Mall, 401-8 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_21-125_Official Service List 21-125
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_21-125_Official Service List 21-125
Elizabeth	Reddington	lreddington@pivotenergy.net	Pivot Energy	1750 15th St Ste 400 Denver, CO 80202	Electronic Service	No	OFF_SL_21-125_Official Service List 21-125
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_21-125_Official Service List 21-125
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th PI E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-125_Official Service List 21-125
Lynnette	Sweet	Regulatory.records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	No	OFF_SL_21-125_Official Service List 21-125
Curtis P	Zaun	curtis@cpzlaw.com	Attorney At Law	3254 Rice Street Little Canada, MN 55126	Electronic Service	No	OFF_SL_21-125_Official Service List 21-125

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_21-126_Official Service List 21-126
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Curtis P	Zaun	curtis@cpzlaw.com	Attorney At Law	3254 Rice Street Little Canada, MN 55126	Electronic Service	No	OFF_SL_21-126_Official Service List 21-126