

Staff Briefing Papers

Meeting Date March 4, 2021 Agenda Item 6**

Company Xcel Energy

Docket No. **E002/C-20-892**

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

- Issues
- 1) Does the Commission have jurisdiction over the subject matter of the Complaint?
 - 2) Is there a reasonable basis to investigate the complaint? Or, is it in the public interest for the Commission to investigate these allegations upon its own motion?
 - 3) If the Commission chooses to investigate the Complaint, what procedures should be used to do so?

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 **Relevant Documents**

Date

Sunrise Energy Ventures, Formal Complaint	Dec. 21, 2020
Department of Commerce-Division of Energy Resources, Initial Comments	Jan. 11, 2021
Xcel Energy, Initial Comments	Jan. 11, 2021
Nokomis Energy, Initial Comments	Jan. 11, 2021
Sunrise Energy Ventures, Reply Comments	Jan. 19, 2021
Xcel Energy, Reply Comments	Jan. 19, 2021
Interstate Renewable Energy Council, Inc., Reply Comments	Jan. 19, 2021
Minnesota Solar Energy Industry Association, Reply Comments	Jan. 19, 2021

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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.

Contents

I.	Statement of the Issues	2
II.	Background	2
1.	Summary of Decision Options	3
III.	Sunrise Energy Ventures’ Formal Complaint	3
A.	Summary of Sunrise’s Facts	3
B.	Sunrise Allegations.....	4
C.	Sunrise’s Request for Relief	5
IV.	Parties’ Comments.....	6
A.	JURISDICTION	6
B.	REASONABLE GROUNDS OR PUBLIC INTEREST TO INVESTIGATE.....	7
2.	Xcel Energy Policy and Interconnection Review.....	7
3.	System Impact Study Details.....	9
4.	Dispute Resolution.....	9
C.	COMMISSION PROCEDURE.....	10
V.	Staff Analysis.....	12
A.	JURISDICTION	12
B.	REASONABLE GROUNDS OR PUBLIC INTEREST.....	12
1.	DISMISS	13
2.	PROCEED	15
3.	NARROW SCOPE.....	15
C.	COMMISSION PROCEDURE FOR A FORMAL COMPLAINT	17
1.	Type of Proceeding	17
2.	Legal Authority cited by Commenters	18
VI.	Decision Options	19
	Att. A: Timeline of the Solar Club Projects.....	
	Att. B: Further Detail on the Complaint and Investigation Considerations.....	

I. Statement of the Issues

- 1) Does the Commission have jurisdiction over the subject matter of the Complaint?
- 2) Is there a reasonable basis to investigate the complaint? Or, is it in the public interest for the Commission to investigate these allegations upon its own motion?
- 3) If the Commission chooses to investigate the Complaint, what procedures should be used to do so?

II. Background

On December 21, 2020¹, Sunrise Energy Ventures LLC (Sunrise) filed a Formal Complaint and Petition for Expedited Relief against Xcel Energy. The Complaint pertains to the interconnection review process for three CSG projects: SolarClub 11 LLC (SC 11), SolarClub 26 LLC (SC 26), and Solar Club 34 LLC (SC 34) (collectively, SolarClubs).

On January 11, 2020, the Department of Commerce-Division of Energy Resources (Department), Xcel Energy (Company), and Nokomis Energy Partners filed initial comments.

On January 19, 2020, Sunrise, Xcel Energy, Interstate Renewable Energy Council, Inc. (IREC), and Minnesota Solar Energy Industry Association (MNSEIA) filed reply comments.

Staff provides a detailed timeline of the dispute in Sunrise's Formal Complaint as these dates were provided by the parties in **Attachment A**.

Structure of Briefing Papers

After providing an overview of Sunrise's Formal Complaint, these briefing papers use Minn. Rules 7829.1800 - .1900 as an outline for the summary of the record. Per Minn. Rule 7829.1800; Subp. 1, the Commission's initial consideration of a Formal Complaint is to determine whether:

- the Commission has jurisdiction over the matter; and
- there are reasonable grounds to investigate the allegation.

The Commission shall dismiss the complaint if there is no reasonable basis to investigate the complaint² unless the Commission determines it is in the public interest to investigate the related matters on its own motion.³ If the Commission chooses to proceed with the Formal Complaint, the final issue to address is the type of proceeding: a contested case proceeding, informal proceeding, or expedited proceeding.⁴ Or, as Xcel Energy alternatively proposes, a general docket that applies to all utilities.

¹ Dec. 21, 2020 is the date the filing was posted in e-dockets. The Formal Complaint document is dated Dec. 18, 2021.

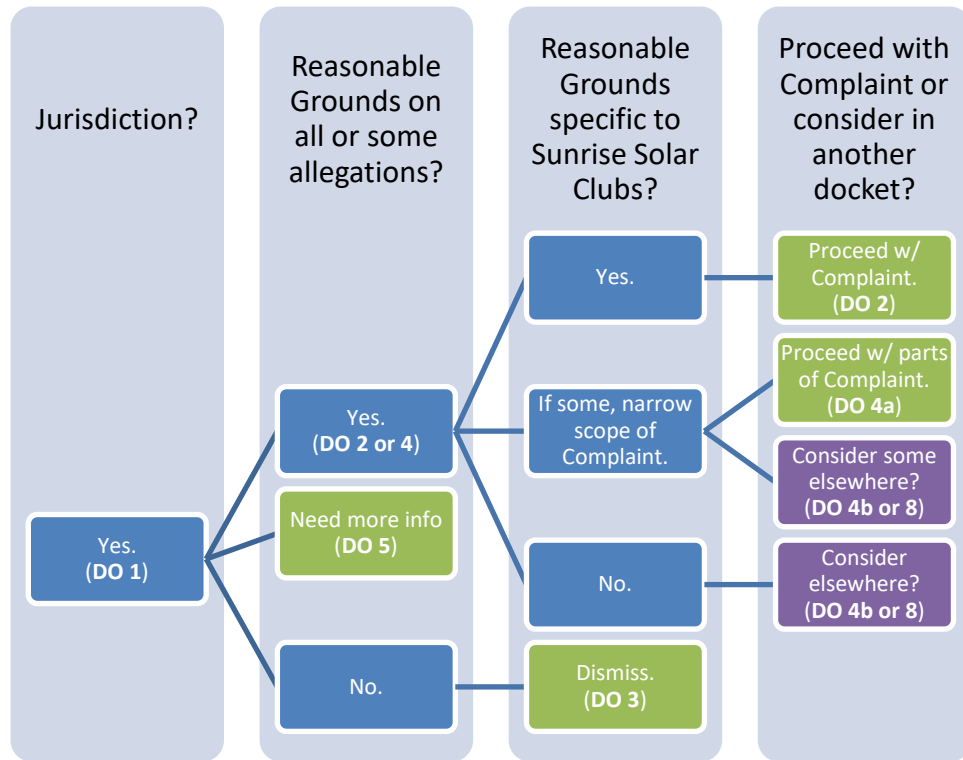
² Minn. Rule 7829.1800; Subp. 1

³ Minn. Stat. 216B.17; Subd. 1

⁴ Minn. Rule 7829.1900; Subp. 1

1. Summary of Decision Options

Staff offers a visual of the Decision Options before the Commission at this time. The green represents the proceeding with the specifics of the Sunrise Formal Complaint. The purple represents options for the Commission to consider broader policy issues raised in a venue other than a Formal Complaint proceeding.



III. Sunrise Energy Ventures’ Formal Complaint

A. Summary of Sunrise’s Facts

Sunrise Energy Ventures alleges Xcel Energy failed to follow reasonable methodologies, policies and practices regarding the interconnection of distributed generation; specifically, for Sunrise’s three Solar Club projects (SC 11, 26, 34) on the same feeder (SCL 322) and the same substation transformer (SCL TR02). Sunrise alleges Xcel Energy opposed the Solar Club projects before studies began “constantly changing the reason there wasn’t any capacity throughout the process only after Sunrise questioned each unreasonable justification.”⁵

Despite the pre-application report data showing available capacity⁶, Xcel Energy communicated, in May 2020, prior to proceeding with a System Impact Study that there may be

⁵ Sunrise Formal Complaint, p. 2

⁶ Staff Note: MN DIP 1.4.2.4 describes “available capacity” as total capacity of the substation/area bus, bank or circuit based on normal or operating ratings likely to serve the proposed Point of Common

a thermal issue with all projects which were studied in a batch. Sunrise proceeded with a System Impact Study at their expense; wherein, Xcel Energy communicated no capacity was available without upgrading the transformer. Sunrise requested Xcel Energy connect one of the projects (Solar Club 11) to a different feeder. Xcel Energy declined and cited a slide from the Company's Initiate Application Training which noted substation/feeder assignment is determined by closest proximity to application location. Xcel Energy then communicated the results of the batch System Impact Study that there was no capacity available on the feeder due to thermal overloading of the largest feeder conductor available for DER interconnections (336 AL). Sunrise alleges Xcel Energy agrees that a larger conductor (556 AL) would resolve the thermal overloading but refuses to use that size of conductor citing a policy not in tariff or in the Company's Technical Specification Manual.⁷

Sunrise attempted to resolve the dispute with Xcel Energy by reviewing the batch study for (SC 11, 26, 34) and requesting a complete System Impact Study done with corrected or additional information (e.g. transformer size, location of peak daytime minimum load on the feeder, and 8760 load curve). Sunrise reports Xcel Energy stated the study was complete and the Company would not re-run a new study but would provide a version of the study with corrected information.⁸ Sunrise received initial System Impact Study results on June 26, 2020 and the redacted and corrected study on December 3, 2020.⁹

B. Sunrise Allegations

Sunrise's Formal Complaint alleges the following:

- 1) Xcel Energy'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.¹⁰
- 2) Xcel Energy'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. The Company has not provided sufficient information for Sunrise to analyze either the load and generation curves to determine if Xcel Energy's determination is accurate.¹¹

Coupling less the sum of existing aggregate installed and in queue distributed generation. This is different from hosting capacity which factors in criteria violation thresholds (e.g. thermal limits) that would trigger upgrades or limits to DER interconnection. Both pre-application reports and hosting capacity analysis are meant to help inform Interconnection Customers but do not replace the MN DIP interconnection review.

⁷ Sunrise Formal Complaint, pp. 7-10 at pars. 11-39

⁸ *ID*, pp. 11-18 at pars. 43-58. See also Xcel Energy Reply, pp. 2-3

⁹ *ID*, p. 8 at par. 23 and p. 19 at par. 59.

¹⁰ *ID*, p. 21 at par. 67

¹¹ *ID* at par. 68

- 3) Xcel Energy's unwritten policy to not allow 556 AL conductor 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.... parties agree use of 556 AL would eliminate the thermal amperage issue.¹²
- 4) Xcel Energy'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.¹³
- 5) Xcel Energy'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.¹⁴
- 6) Xcel Energy as a monopoly provider 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 Energy could provide inaccurate studies and require Interconnection Customers to pay exorbitant fees for unnecessary studies to exercise its dispute rights.¹⁵

Sunrise suggests the Commission apply Minn. Stat. 216B.164; Subd. 5 arguing:¹⁶

... the burden of proof in this dispute is on Xcel Energy 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 neither discriminatory, discouraging of the development of distributed generation or otherwise in violation of Minnesota law or policy, its tariff or its agreements....

Given the Commission's focus is on whether to proceed with the docket and what process to use, staff does not summarize the facts; however, staff has briefly summarized the timeline as provided by Sunrise and Xcel Energy (**Attachment A**) and the current state of the record on the specific issues of Sunrise's Formal Complaint (**Attachment B**).

C. Sunrise's Request for Relief

The Commission is not asked to determine whether the relief Sunrise seeks is appropriate until after the Commission opens the investigation and further develops the record. For context only, the relief Sunrise Energy Venture seeks:¹⁷

¹² *ID* at par. 69 & 70

¹³ *ID* at par. 69

¹⁴ *ID* at par. 72

¹⁵ *ID*, p. 22 at par. 74

¹⁶ *ID* at par. 75

¹⁷ *ID*, pp. 3, 25

- (1) find 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....

Sunrise Energy Ventures also offers an alternative request of relief where the Commission requires Xcel Energy to work in good faith and with best effort to identify additional sites where Solar Club 11 project could be constructed without paying any additional costs or fees.¹⁸ Sunrise Energy Ventures further requests that its costs, disbursements, and reasonable attorney fees be paid by Xcel pursuant to Minn. Stat. § 216B.164, subd. 5.¹⁹ Sunrise reserves the right to timely modify or expand its request for relief as supported by additional relevant information that becomes known to Sunrise after the filing of the Complaint with the Commission.²⁰

IV. Parties’ Comments

A. JURISDICTION

Sunrise, Xcel Energy and the Department agree that the Commission has jurisdiction over the issues raised in Sunrise’s Formal Complaint (**Decision Option 1**).²¹ Parties do not agree on which statutes, rules, and tariffs should be applied in the investigation of Sunrise’s Formal Complaint. This issue is discussed in **Section C. Commission Procedure** of these briefing papers.

¹⁸ *ID*, pp. 3, 24

¹⁹ *ID*, p. 3

²⁰ *ID*, p. 25

²¹ Department Initial, p. 1; IREC Reply, pp.2-3; Xcel Initial, p. 4; Sunrise Complaint, p. 4.

Sunrise filed its Formal Complaint and Request for Expedited Relief pursuant to Minn. Stat. § 216B.164, the Minnesota DER Interconnection Process (MN DIP), and Minn. R. Ch. 7829.²²

B. REASONABLE GROUNDS OR PUBLIC INTEREST TO INVESTIGATE

Staff notes the Commission may investigate a Formal Complaint under Minn. Rule 7829.1900 if there are reasonable grounds or, on its own motion, under Minn. Stat. § 216B.17, if it finds it is in the public interest. As noted above, additional legal authority may apply once a Formal Complaint is underway.

Xcel Energy argues neither reasonable grounds nor public interest in continuing with the specific Sunrise Formal Complaint and recommends dismissal (**Decision Option 3**).

Xcel Energy claims the Company was consistent in communicating to Sunrise that there was no capacity available for the proposed projects at the proposed sites, and alleges Sunrise continues to press for irregular treatment that the Company cannot accommodate. The feeder in question has 35 MW of CSG interconnected and the Company's hosting capacity analysis shows no capacity available on the feeder.²³ Xcel Energy notes most utilities limit DER capacity per feeder to a range between Daytime Minimum Load and Peak Load which if applied to this feeder would limit DER below 35 MW. Xcel Energy has been able to interconnect DER beyond Peak Load using System Impact Studies and reconductoring or equipment installation at the DER customer's expense. Xcel Energy claims the Company's DER interconnection policies, including limiting DER interconnection reconductoring to 336 AL, are not unreasonably discriminatory and are necessary utility practice to manage a safe and reliable grid.

Sunrise, IREC, MNSEIA, and Nokomis argue there are reasonable grounds and public interest to investigate the Formal Complaint. The Department does not address either specifically but recommends the Commission open an investigation (**Decision Option 2**).

The visual summary of decision options above and **V. Staff Analysis** outline options for the Commission if you determine either to move forward with a part of the Formal Complaint (**Decision Option 4a and/or 4b**) or to defer a decision and seek additional record development (**Decision Option 5**.)

2. Xcel Energy Policy and Interconnection Review

Sunrise suggests Minn. Rule 7829.1800's threshold to order an investigation is relatively low: once jurisdiction is determined; the Commission shall dismiss only if there is "no reasonable basis to investigate the matter." Sunrise argues reasonable grounds are met because, according to Sunrise, Xcel Energy has admitted adopting policies, without notice or approval by the Commission, that discourage or discriminate against the development of distributed generation

²² Sunrise Complaint, cover page and p. 1. Specifically, Sunrise identifies MN DIP Section 5.3.8, Minn. Stat. 216B.164; Subd. 5; Minn. R. 7829.1700, and Section 10 of Xcel's tariff.

²³ Xcel Energy Initial, pp. 1-2

(including the specific projects named in this Formal Complaint).²⁴ Sunrise responds to Xcel Energy suggesting Sunrise proceeding with the System Impact Study was unreasonable claiming Sunrise was “simply utilizing the only mechanism that Xcel has told it can accurately determine whether there is capacity on Xcel’s system for a project.”²⁵

Sunrise states the parties agree the technical solution (556 AL reconductoring) would resolve the engineering issue (thermal ampacity) with interconnecting the Solar Club projects and that Xcel Energy’s policy to not apply this technical solution for DER interconnection is an unwritten policy (i.e. not in tariff or TSM).

Sunrise suggests Xcel Energy has not substantiated reasonable grounds to believe there will be a decrease in load on this feeder in the future that warrants Xcel Energy withholding a technical solution which would allow DER interconnection and upgrade the conductor. Further, Sunrise postulates at least some of the relief sought would benefit ratepayers by allowing for the upgrading of the conductor, at Sunrise’s expense, the feeder would be able to support future load growth from electric vehicles.²⁶

Sunrise argues Minnesota law and policy on DER require the utility to “study the application based on then-current network conditions” and not “unsubstantiated facts, speculative hypotheticals or arbitrary policies.”²⁷ Otherwise, Sunrise suggests Xcel would be allowed to discriminate, unreasonably prejudice or disadvantage, and discourage the development of DER in violation of the goals, requirements and very purpose of the MN DIP with impunity. Sunrise states the request is not to change the law or Xcel Energy’s tariff; rather, the ask is for the Commission to enforce it.²⁸

MNSEIA disagrees with Xcel Energy’s assessment that it is not unreasonably discriminatory and argues it is arbitrary and discriminatory to allow the Company to use a technical solution for load, but not DER interconnection.²⁹

Nokomis offers a 2019 example of Xcel Energy approving a Nokomis CSG interconnection using the technical solution (reconductoring to 556 AL) requested by Sunrise in the Formal Complaint. Nokomis believes the Commission should “bring Xcel’s written and unwritten policies under its oversight, to ensure technical competency, consistency with legal obligations, and propriety within the various programs overseen by the Commission.”³⁰

Xcel Energy points to the Nokomis interconnection as an example of the Company’s policy acting as a safety valve for reliability. Xcel Energy’s use of 556AL near the Nokomis

²⁴ Sunrise Reply, p. 2, 5

²⁵ Sunrise Reply, p. 14

²⁶ Sunrise Reply, pp. 15-16

²⁷ Sunrise Reply, pp. 16-17 citing Xcel Energy Initial, p. 7.

²⁸ Sunrise Reply, p. 17

²⁹ MNSEIA Reply, p. 2

³⁰ Nokomis Initial, pp. 1-2

interconnection was because, after approving interconnection agreements for DER ahead of Nokomis in queue, a wind turbine (DER) was discovered and unaccounted for in the Company's legacy DER records. The technical solution allowed Xcel Energy to honor the signed interconnection agreements while maintaining reliability.

The Company further highlights the CSG program is the largest in the nation with 786 MW of solar added on less than 15% of the Company's feeders since 2015. Xcel Energy argues granting the relief sought by Sunrise would remove important discretion and tools from the Company's management of a safe and reliable grid. The Company concludes it is not in the public interest to investigate the issues identified in Sunrise's Formal Complaint.³¹

IREC argues accepting Xcel Energy's claim would leave the Company "... essentially unchecked, and would allow the utility to establish arbitrary policies that could discriminate against disfavored programs, projects, or developers and dramatically and unnecessarily increase the cost of interconnection."³²

3. System Impact Study Details

MNSEIA highlights a second issue from the complaint: the lack of transparency in the System Impact Studies conducted for CSGs. According to MNSEIA and its members, Xcel Energy's System Impact Study reports often do not include relevant assumptions and requirements or impediments to interconnection. MNSEIA acknowledges this is an issue under review in the DGWG, but that it requires attention until the process is improved.³³ Sunrise concurs suggesting situations like Nokomis's example cause developers to question the information Xcel Energy provides and push for more information and transparency.³⁴

4. Dispute Resolution

Sunrise reasons the public interest and due process requires Interconnection Customers have the legal recourse of the Commission's investigation of Formal Complaints. In support of the Commission investigating and resolving the dispute, IREC notes Sunrise appears to have followed the MN DIP Section 5.3 on Disputes with the parties meeting and attempting to resolve the dispute before filing a Formal Complaint with the Commission.³⁵ IREC cautions the Commission should not consider the merits of the Complaint until the Commission opens an investigation and after Xcel Energy has answered the factual allegations per the Commission's formal complaint rules.³⁶ IREC does not comment on the merits of the complaint, but argues the Commission should investigate because it is "clearly in the public interest for the Commission to ensure that the policies and practices of Xcel Energy in the interconnection process are being applied in a fair and reasonable manner."³⁷

³¹ Xcel Initial, pp. 6-8

³² IREC Reply, p. 5

³³ MNSEIA Reply, p. 3

³⁴ Sunrise Reply, p. 14

³⁵ IREC Reply, p. 3

³⁶ IREC Reply, p. 4. Citing Minn. Rule 7829.1800; Subd. 2

³⁷ IREC Reply, pp. 5,14

Staff has briefly summarized the timeline as provided by Sunrise and Xcel Energy (**Attachment A**) and the current state of the record on the specific issues of Sunrise's Formal Complaint (**Attachment B**). This detail would be supplemented by further record development if the Commission chooses to investigate Sunrise's Formal Complaint.

C. COMMISSION PROCEDURE

Minnesota Rules 7829.1900 subpart 5 states that persons commenting on a formal complaint shall specify whether they recommend a contested case proceeding, informal proceeding, expedited proceeding, or other treatment, together with their reasoning.

The Department recommends the Commission proceeds as outlined in Minn. Rule 7829.1900; however, vary the comment periods to allow 30 days for Xcel Energy's Answer and 30 days for reply (**Decision Option 6**). Minn. Rule 7829.1275 allows for the Commission to vary time periods.

Sunrise claims, without Xcel Energy's support³⁸, that there are no material facts in dispute and suggests the Complaint should be handled as an expedited proceeding.³⁹ Sunrise supports the Department's recommendation (**Decision Option 6**) as the process for the expedited proceeding.⁴⁰

Xcel Energy recommends the Commission dismiss the Formal Complaint and take no further action (**Decision Option 3**). Xcel Energy highlights the Commission has dismissed a Formal Complaint and opened a new docket when what is disputed is more an industry-wide issue. The Company suggests if the Commission wants to further address the engineering issues a general docket. Xcel Energy argues engaging all utilities is most appropriate for consistent, statewide resolution and because depending on the resolution could have cascading impacts (**Decision Option 8**).⁴¹ If moving forward with the Complaint, Xcel Energy asks the Commission to address seven issues (see **Attachment B** for a summary).⁴² The Company does not address the Department's recommendation on procedure.⁴³

Sunrise does not support Xcel Energy's suggestion of a general docket. Sunrise argues nothing in the record suggests any other utility has adopted and enforced practices or policies that prevent the development of distributed energy without notice to or approval by the Commission.⁴⁴ IREC also notes the examples Xcel provided were dismissed for failure to meet statutory criteria, not because broad policy issues were implicated. Further, IREC suggests a

³⁸ Xcel Energy Initial, p. 10

³⁹ Sunrise Reply, p. 19

⁴⁰ Sunrise Reply, p. 1

⁴¹ Xcel Energy Initial, p. 9

⁴² Xcel Energy Initial, pp. 9-13 citing an Aug. 24, 2001 Order (Docket No. E002/CI-00-954 and -01-1128) and Sept 11, 2011 Order (Docket No. E002/C-11-423).

⁴³ Xcel Energy Reply, p. 1

⁴⁴ Sunrise Reply, p. 19

complaint pertaining to an individual project may present an opportunity for the Commission to consider whether a utility policy is fair and reasonable.⁴⁵

Legal Authority Cited by Commenters

The parties recognize the Commission has broad authority under several statutes, rules, and tariffs to investigate complaints against public utilities and highlight several possible legal standards. The following chart shows which legal authority and which parties mention it as applicable:

Applicable Statute, Rule, Tariff	Party	Topic
Minn. Stat. §216B.05	Sunrise	Tariffing requirement
Minn. Stat. §216B.09	Xcel Energy	PUC authority, just and reasonable rates and terms of service
Minn. Stat. §216B.17	Department	Procedural
Minn. R. Ch. 7829	Sunrise, Xcel Energy, Department	Commission's Rules of Practice and Procedure
Minn. Stat. §216B.164	Sunrise	Cogeneration, Small Power Production
Minn. R. Ch. 7835	Sunrise	Commission's Rules on Cogeneration and Small Power Production
Minn. Stat. §216B.1611	Sunrise, MNSEIA, Xcel	Statewide Interconnection Standards
MN DIP (Sec. 10*)	Sunrise, Xcel Energy, Department, IREC	Commission Order; Commission Approved Tariff
Minn. Stat. §216B.1641	Sunrise, IREC	Community Solar Gardens
Solar*Rewards Community (Sec. 9*)	Xcel Energy	Commission Approved Tariff
*Refers to tariff sections of Xcel Energy's Ratebook		

However, parties do not agree on which should apply. For instance, parties disagree on whether the standards in Minn. Rules Ch. 7835 apply. Sunrise filed the Formal Complaint pursuant, in part, to Minn. Stat. §216B.164. Further, Sunrise points to Minn. Rules Ch. 7835 as placing the burden of proof on the utility and allowing for recovery of attorney fees, and notes these features of the Commission's dispute resolution for an Interconnection Customer are important to address the power and/or resource disparity. Xcel Energy counters that neither the statute nor the rules apply to Community Solar Gardens because the Minnesota Court of

⁴⁵ IREC Reply, p. 7

Appeals decision determined CSG were not PURPA qualifying facilities and could be offered a different compensation rate as required by Minnesota statute.⁴⁶

IREC acknowledges uncertainty as to whether Minn. Stat. 216B.164 and Minn. Rules Ch. 7835 apply to CSG disputes. IREC highlights the Commission's December 1, 2015 Order which directed the Independent Engineer to rely on Minn. Rule 7835.0800 in considering a dispute between a CSG and Xcel Energy as an example where Minn. 216B.164 was applied to interconnection of CSG projects.⁴⁷ Further, IREC argues the burden of proof on the public utility is appropriate because of "significant informational and resource advantages of the utility" and alignment "with the Commission's states preference that the interconnection process 'give maximum possible encouragement of [DER] consistent with protection of the ratepayers and the public..'"⁴⁸

V. Staff Analysis

The record before you appears to expand the scope of this specific Formal Complaint to address broader policy. The Commission does not need to make decisions on those suggestions and, if action is desired, should proceed with caution as described below.

The focus of the Commission's current decision is on three issues:

- 1) Does the Commission have jurisdiction over the subject matter of the Complaint?
- 2) Is there a reasonable basis to proceed to investigate the complaint (i.e. specific to Sunrise's allegations and request for relief)? Or, is it in the public interest for the Commission to investigate these allegations upon its own motion?
- 3) If the Commission chooses to investigate the Complaint, what procedures should be used to do so?

Discussed below is also the possibility that the Commission needs more record development to decide whether to proceed with the investigation.

A. JURISDICTION

Parties and staff agree the Commission has jurisdiction and broad authority to investigate the issues raised in Sunrise's Formal Complaint. The Commission should adopt **Decision Option 1**.

B. REASONABLE GROUNDS OR PUBLIC INTEREST

At the core of the Formal Complaint and the record in this docket, the question is:

⁴⁶ Xcel Energy Initial, p. 12

⁴⁷ IREC Reply, p. 10 citing Order Finding Jurisdiction and Referring Complaint to Independent Engineer (Dec. 1, 2015), Docket No. E002/M-15-786.

⁴⁸ IREC Reply, p. 11

Is Xcel Energy unreasonably discriminating or discouraging Sunrise’s Solar Club projects by failing to follow established statutes and tariffs, or reasonable methodologies, policies, and practices regarding the interconnection of distributed generation?

Behind this core question, the record highlights additional questions, such as:

- How much detail must a utility commit to tariff, or conversely, how much discretion may a utility have to implement reliability and other standards not in tariff?
- Are the alleged violations of existing law limited to two discrete parties, or are these broader matters deserving of Commission guidance and clarification going forward?
- To what extent do the issues in the Formal Complaint overlap with topics already being discussed in the DGWG or the CSG ongoing meetings, and what would the impact of proceeding with the Formal Complaint have on resolving issues?

These additional questions help highlight that in determining which path is appropriate, the Commission should keep in mind that investigation of the allegations in a Formal Complaint is specific to that Complainant and set of circumstances. Broader policy can be considered in an existing docket or venue or through the creation of a new Commission investigation.

The Commission has three procedural paths forward: 1) Dismiss the Formal Complaint if there are no reasonable grounds or public interest in investigating Sunrise’s allegations in a Complaint docket (**Decision Option 3**; see DISMISS below); 2) Determine there are reasonable grounds or public interest to investigate all Sunrise’s allegations in either a Complaint or on broader policy (**Decision Option 2**, see PROCEED below); or 3) Determine some allegations warrant investigation and either narrow the focus of a Complaint or broader policy docket at this time or ask for additional comment on scope prior to making a determination (**Decision Option 4**, see NARROW SCOPE below).

If the Commission does not have enough information to make a determination on whether there are reasonable grounds or public interest to investigate Sunrise’s allegation, the Commission could seek a fourth path forward and seek additional comment before making a determination on reasonable grounds or public interest (**Decision Option 5**).

1. DISMISS

It may be useful to the Commission to consider the purpose of Minnesota’s statewide interconnection standards in determining whether there are reasonable grounds. Minnesota’s statewide interconnection standards support the purpose of Minn. Stat. § 216B.1611 which includes, but is not limited to: “... enhanc[ing] both the reliability of electric service and economic efficiency in the production and consumption of electricity; and promot[ing] the use of DER to provide electric system benefits during periods of capacity constraints.”⁴⁹

Minnesota’s statewide interconnection standards also establish a tariffed interconnection

⁴⁹ Minn. Stat. 216B.1611; Subd. 1

process for a rate-regulated utility consistent with the statewide standards (MN DIP). MN DIP and the tariffed interconnection process allows for “Good Utility Practice” which is defined as:⁵⁰

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.

In other words, one view could be that the MN DIP specifically acknowledges that not every detail of a utility’s practices must be committed to tariff; this may be one argument to dismiss without further proceedings. An alternate view, articulated by MNSEIA argues that, because the MN DIP does not adequately address utility practice, Commission guidance is necessary and in the public interest. MNSEIA points to the requirement in Minn. Stat. §216B.1611 that tariff standards “... allow for reasonable terms and conditions, consistent with the cost and operating characteristics of the various technologies, so that a utility can reasonably be assured of the reliable, safe and efficient operation of the interconnected equipment.”⁵¹ Xcel Energy argues their practices, methods and acts are necessary for grid reliability and quality of service and have changed over time as the Company has more experience with DER interconnection and higher penetrations of DER in some areas of the distribution grid.

If the Commission has a reasonable basis to question whether Xcel Energy’s practices, methods or actions highlighted in this record are “Good Utility Practice”, then an investigation of all or part of Sunrise’s Formal Complaint is warranted, in some manner (**Decision Option 2 or 4**). If not, then dismissal is appropriate (**Decision Option 3**).

Xcel is correct on the point that the Commission has dismissed filings made as Formal Complaints if they implicate broad policy issues or more than one utility. Two examples are Legal Aid’s formal complaint related to the utility billing of tenants, and MERC’s formal complaint against Xcel on gas competition issues.⁵² In both instances, the Commission acknowledged there were issues to investigate, explore, and clarify, but decided that a broader group of stakeholders were necessary to build a record. Thus, it dismissed each complaint and opened a broader docket. Staff also notes that opening a Commission Investigation (CI) docket does not have to include all utilities but could just include Xcel. In a Commission Investigation, the Commission plays a more active role in choosing what topics parties should comment on; however, this would be a resource intensive way to proceed for the Commission and parties.

⁵⁰ MN DIP, Glossary of Terms, p. 2

⁵¹ MNSEIA Reply, p. 2

⁵² G011, 022/C-17-305 In the Matter of Minnesota Energy Resources Corporation’s Complaint Against Northern States Power Company and G999/CI-17-499 In the Matter of a Commission Investigation into Parameters for Competition Among Natural Gas Utilities Involving Duplication of Facilities and Use of Promotional Incentives and Payments.

IREC cautions the Commission⁵³:

The dismissal of the Complaint simply because it raises broad policy issues would be fundamentally unfair to the complainant, leaving Sunrise with no avenue for resolution of the dispute. If it so wishes, the Commission may decide to rule on the disputed Xcel policies in the limited context of the Sunrise Complaint without deciding those policy issues more broadly.

In fact, in reviewing several of the Commission's more recent Formal Complaint dockets, staff notes it was not uncommon for the Commission to dismiss a filed Formal Complaint in favor of exploring the issues in a different type of proceeding. This is not an indication that the formal complaints filed with the Commission are deficient, but rather that Formal Complaints are best-suited for individualized types of disputes.

2. PROCEED

a. *Proceed with Formal Complaint Investigation of All Allegations*

If the Commission determines there is reasonable grounds or public interest to proceed with an investigation of the allegations specific to Sunrise's Solar Clubs projects named in the Complaint, the Commission needs to determine the type of proceeding (see **C. COMMISSION PROCEDURE FOR A FORMAL COMPLAINT** below).

Staff takes no position on whether or not to proceed with the Formal Complaint at this time (**Decision Options 2 or 3**); however, staff does support limiting the scope of the proceeding if the Commission moves forward with the Complaint as described below.

b. *Proceed with Formal Complaint Investigation of Some of the Allegations*

If the Commission moves forward with an investigation of Sunrise's allegation and relief sought, staff believes there is no reasonable basis to investigate elements of the Sunrise Formal Complaint, or consider granting requested relief, which conflict with the statewide MN DIP. Staff offer insights in **Attachment B** as to which elements of the Formal Complaint and record may be impacted by such a limitation.

3. NARROW SCOPE⁵⁴

If the Commission does not feel comfortable investigating all of Sunrise's allegations (**Decision Option 2**), dismissing the Complaint in its entirety (**Decision Option 3**), nor opening a generic

⁵³ IREC Reply, p. 8.

⁵⁴ Staff Note: The decision option chart at p. 3 of briefing papers provides a visual of the options before the Commission.

docket either with all utilities in the state (**Decision Option 8**), the following procedural path could scope or narrow the allegations the Commission wants to investigate while moving forward with either a Formal Complaint proceeding (**Decision Option 4a**) or, alternatively, consider through referring the issues to another proceeding (**Decision Option 4b**). Staff also provide Commissioners the option to not make a determination on whether there are reasonable grounds at this time and seek further record development (**Decision Option 5**).

The Commission could narrow the scope of the Formal Complaint investigation to the specific issues that the Commission finds have reasonable grounds (**Decision Option 4a**). The remaining issues could be referred for consideration, possibly as part of other proceedings (**Decision Option 4b**). Narrowing the issues investigated in a Formal Complaint proceeding would allow the Commission to focus and resolve some issues in a timelier manner and may utilize Commission and party resources more effectively. The Commission should note that both Sunrise and the Department have proposed expedited treatment of issues in the Complaint (**Decision Option 6**); whereas, Xcel Energy has alluded to the potential need for a contested case (**Decision Option 7**).

The Commission may eventually determine that the Formal Complaint process is not the most appropriate procedural path to resolve some of the allegations in the Complaint. For example, CSG program-related issues and DER interconnection issues that have broad policy considerations may be better resolved via those workgroups or dockets.

Under this procedural option (**Decision Option 4a and/or 4b**), the Commission could proceed with a subset of Sunrise's allegations. These might include:

- whether Xcel Energy followed an appropriate utility practice regarding the use of 556 AL reconductoring in this instance (see **Sunrise Allegation 3**)⁵⁵;
- whether the utility had full authority to choose the feeder for the project and deny Sunrise's request to move to a new feeder and restudy (see **Sunrise Allegations 4 & 5**);
- whether the concerns flagged by Sunrise about Xcel Energy's System Impact Study (SIS) in this case impacted Sunrise's ability to make an informed decision (see **Sunrise Allegations 1, 2 & 6**).

The Commission may or may not wish to dictate policy on utility practices and protocols related to Sunrise's allegations, but it may find it in the public interest to ensure that Xcel Energy's policies are transparent. Once the record on these issues is developed, the Commission would decide whether the allegation warrants relief, and whether the relief Sunrise requests is appropriate.

With respect to Xcel Energy's proposal to open a generic docket (**Decision Option 8**), the Commission might not want to open a generic docket to include all utilities in the state because the aim would be to clarify and make the Company's policies more transparent on certain

⁵⁵ Staff Note: Sunrise's allegations are summarized on pp. 4-5 of these briefing papers.

technical engineering issues that relate specifically to CSGs. This may be another reason not to defer interconnection specific allegations to the DGWG if they are specific to Xcel Energy.

a. *Refer Consideration of Issues Raised in Some or All Allegations to Another Docket*

To the extent these issues involve interconnection policies that should be standardized across all DER facilities and utilities, they may be best addressed in the context of the MN DIP. The Commission has a standing Distributed Generation Workgroup “... to review implementation and technical issues that arise with implementation of the MN DIP, Minnesota DER Interconnection Agreement (MN DIA), TIIR, or emerging DER technology.”⁵⁶ In fact, several of the larger issues raised by commenters are already being addressed in the DGWG: dispute resolution, system impact study details, and technical requirements for DER. The DGWG is a statewide effort and relatively resource-intensive for Lead Participants and the Commission, so is not the appropriate venue to address the specific dispute between Xcel Energy and Sunrise. If greater priority or expedited resolution of issues raised in these briefing papers is desired the Commission could set that direction to the DGWG, but it comes at the cost of other priorities both for the Commission and stakeholders. All commenters in this record participate as a Lead Participant or, in Nokomis’s case, Observer in the DGWG. The Solar*Rewards Community Program also has ongoing stakeholder engagement, including on technical issues unique to CSG and Xcel Energy.

C. COMMISSION PROCEDURE FOR A FORMAL COMPLAINT

1. Type of Proceeding

In any Formal Complaint docket, the Commission and its rules routinely consider three possible processes: a contested case, an informal process, and an expedited process. Staff notes that in reviewing past Formal Complaint dockets, the Commission tended to take one of three narrow, procedural paths:

- 1) Finding it had jurisdiction and grounds to investigate, sent the matter to the Office of Administrative Hearings (OAH) for a contested case;⁵⁷
- 2) Finding it had jurisdiction and grounds to investigate, required further comment periods on the merits;⁵⁸ and

⁵⁶ ORDER ESTABLISHING UPDATED INTERCONNECTION PROCESS AND STANDARD INTERCONNECTION AGREEMENT (August 13, 2018), Docket Nos. E999/CI-16-521 and E999/CI-01-1023, Ordering Par. 21, p. 32. Staff Note: This language is reaffirmed in the Commission’s ORDER ESTABLISHING UPDATED TECHNICAL INTERCONNECTION AND INTEROPERABILITY REQUIREMENTS (January 22, 2020) in the same dockets, Ordering Par. 13, p. 12.

⁵⁷ See E017/CG-16-1021 In the Matter of a Complaint by Red Lake Falls Community Hybrid LLC Regarding Potential Purchased Power Agreement Terms and Pricing with Otter Tail Power Company

⁵⁸ See E002/C-20-749 In the Matter of a Formal Complaint and Petition for Relief by New Energy Equity LLC Against Northern States Power Company d/b/a Xcel Energy. Staff Note: Xcel Energy and New Energy Equity LLC settled the dispute and withdrew the Complaint.

3) Finding the specific Complaint did not meet grounds to investigate but the issues raised did, dismissed the Formal Complaint and opened a Commission Investigation (CI) or similar broader proceeding.⁵⁹

Xcel Energy supports the third path if not an outright dismissal of the Complaint (**Decision Option 3 or, alternatively, 3 and 8**). Sunrise and the Department suggest the second proceeding for a Formal Complaint (**Decision Option 2 and 6**). No party is currently recommending a contested case; however, given the complexity of the allegations and that Xcel Energy has alluded to material facts which may be in dispute, the Commission may wish to proceed with a contested case (**Decision Option 7**).

The Commission may wish to seek parties' comments at the hearing or in a comment period on the docket's scope and what, if any, material facts are contested.

2. Legal Authority cited by Commenters

Lastly, as described in the record, the parties presented several legal citations as support for their positions. Some of these were procedural, others were jurisdictional and substantive. The Commission is not bound to one statute, rule, or order as it continues to consider this Formal Complaint and as with many dockets, more than one law may apply. As the docket continues, parties can continue to develop the record on their positions as it relates to legal standards. To the extent the Commission solicits additional comments to determine how to handle this Complaint, it could seek additional comments on the legal authorities cited by parties. Staff notes that in the Red Lake Falls contested case⁶⁰, the ALJ solicited legal briefs twice during the course of the proceeding, to help focus the legal issues. Similar procedures could be employed in this docket if needed.

⁵⁹ G011, 022/C-17-305 and G999/CI-17-499. Staff Note: In support of their positions, Xcel Energy and IREC also offer their perspectives on other Complaint Dockets before the Commission that were dismissed and investigated in another proceeding (See Xcel Initial at p. 8 and IREC Reply at pp. 5-8 respectively.)

⁶⁰ Docket No. E017/CG-16-1021

VI. Decision Options

JURISDICTION

1. Find the Commission has jurisdiction over the issues raised in Sunrise Energy Venture LLC's Formal Complaint (*All*)

REASONABLE GROUNDS OR PUBLIC INTEREST

2. Find that there are reasonable grounds to investigate the allegations made in the Sunrise Energy Venture LLC's Formal Complaint and proceed with the Complaint pursuant to Minn. Stat. 7829.1900. (*Sunrise, Department, IREC, MNSEIA, Nokomis*)

[OR]

3. Dismiss Sunrise Energy Venture LLC's Formal Complaint. (*Xcel*)

[OR]

4. Find that there are reasonable grounds to investigate some of the allegations in Sunrise Energy Venture LLC's Formal Complaint. The Commission will:

a) Proceed with Sunrise's Formal Complaint limited to the following allegations:

[AND/OR]

b) Delegate to the Executive Secretary to refer the following allegations to either the Distributed Generation Workgroup (Docket No. E999/CI-16-521), Xcel Energy's Community Solar Garden Stakeholder Group (Docket No. E002/M-13-867), or Xcel Energy's tariff implementing the MN DIP (Docket No. E002/M-18-714).

[If 4a and/or 4b, choose from **Sunrise's six allegations** from p. 4 of briefing papers.]

[OR]

5. Make no determination on reasonable grounds at this time. Delegate authority to the Executive Secretary to solicit further comments to ascertain the most appropriate venue for the matters raised in Sunrise Energy Venture LLC's Formal Complaint; including potentially narrowing the scope of an investigation into Sunrise Energy Venture's Formal Complaint. (*Staff alternative*)

COMMISSION PROCEDURE (if Decision Option 2 or 4 is adopted)

6. Vary the comment periods outlined in Minn. Rule 7829.1900 to allow 30 days for Xcel Energy's Answer and 30 days for reply. (*Department, Sunrise*)
7. Refer the dispute to the Office of Administrative Hearings for contested case proceedings.
8. Open a general docket for all utilities on the issues within the scope of the Commission investigation. (*Xcel-Alternative*) [*Alternative to 4b and would open a new docket*]

Staff supports: 1. Staff opposes: 8 Staff takes no position on: 2-7.

Att. A: Timeline of the Solar Club Projects
(as provided in the record by Sunrise and/or Xcel Energy)

Date	Description
Nov. 25, 2019	Sunrise received Pre-App report for Substation Transformer (SCL TR02) and Feeder (SCL322).
Mar. 4, 2020	Submitted application for SC 11 and SC 26
Apr. 7, 2020	SC 26 Interconnection Application deemed complete
Apr. 8, 2020	Submitted application for SC 34
Apr. 14, 2020	SC 11 Interconnection Application deemed complete
Apr. 21, 2020	SC 34 Interconnection Application deemed complete
May 5, 2020	Xcel Energy flagged potential for thermal issue with all projects in the batch study on feeder SCL322 during biweekly engineering call.
May 12, 2020	SIS Agreement signed
May 2020	TR02 transformer upgraded
Jun. 12, 2020	Sunrise alleges SIS Agreement made this deadline for SIS results.
Jun. 25, 2020	Automated email from Xcel stating SIS results "will be available for your review in the portal within 5 Business Days."
Jun. 26, 2020	Sunrise email asking why 5 days to receive results already overdue
Jun. 26, 2020?	Xcel quickly responded... 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." Sunrise and Xcel exchanged communication re: reduced solar capacity..Xcel said no capacity without upgrades to substations. "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"
Jun. 30, 2020	Sunrise request Xcel connect SC 11 to feeder SDX311 based on SIS results from a Sunrise project (SC 15)
Jul. 2, 2020	Xcel informs Sunrise the Jun 24, 2020 dated letter was incorrect during biweekly engineering call.
Jul. 7, 2020	Sunrise requested Xcel's authority for refusing to allow SC 11 to be connected to a feeder with capacity, SDX 311.
Jul. 10, 2020	Xcel responds... says location has been reviewed multiple times and closest feeder is SCL322. Slide provided includes "*Substation/Feeder assignment determined by closest proximity to application location.*"
Jul. 22, 2020	Sunrise informs Xcel to complete the SIS study in process
Aug. 25, 2020	Sunrise requested the complete SIS (batch study)
Sep. 8, 2020	Sunrise submits NDA
Sep. 22, 2020	Sunrise receives letter from Xcel (dated Sept 18) stating no capacity without upgrades, and reconductoring is 336AL for the feeder which is largest size they allow.

Sep. 25, 2020	Sunrise sent dispute to Xcel regarding request to connect SC 11 to a nearby feeder with capacity.
Oct. 6, 2020	Sunrise received redacted copy of the SIS performed on the relevant substation and feeder.
Oct. 26, 2020	Parties met and attempted to resolve the dispute. Sunrise alleges Xcel agreed with Sunrise's engineer that 556 AL conductor would resolve the alleged thermal overloading issues.
Nov. 2, 2020	Sunrise sent a Notice of Dispute for SC 26 and SC 34 re: study results for all projects. ... 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. Sunrise asked pending deadlines be stayed until the dispute was resolved.
Nov. 4, 2020	Xcel acknowledged Notice of Dispute, but did not explicitly respond to stay pending deadlines; rather sent language re: CSG not MN DIP deadlines
Nov. 5, 2020	Sunrise responded reiterating the MN DIP deadlines and whether needed to pay for Transmission Impact Study deposit (\$30,000) which was due Nov. 10. (see Complaint at p. 12-13 for full language)
Nov. 9, 2020	Xcel responds offering to suspend the Nov 10 Transmission Impact Study deadline [treats it like a deadline extension request]
Nov. 9, 2020	Sunrise reiterates request for stay on deadlines until resolution or 5 days after impasse.
Nov. 19, 2020	Xcel emailed asking "specifically what would like to review and your suggested resolution for this project"
Nov. 19, 2020?	Sunrise responded with request for a complete SIS for three projects...[claimed] breach of agreement.
Nov. 19, 2020	Parties met. 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. Sunrise asked Xcel to run a complete study using 556 conductor. Sunrise suggested a complete SIS with the new conductor size would resolve the dispute. "Xcel" took the issue to "leadership team" and said no additional deposit at this time.
Nov. 20, 2020	Continued discussion on dispute until this date, unable to reach a resolution
Dec. 1, 2020	Xcel responds to Sunrise request offering to update existing study, but not run new study with 556AL. (see extended response in Complaint at pp. 16-19)
Dec. 3, 2020	Sunrise responded saying they would evaluate their options. Asked how many mediations regarding CSG resulted in a settlement.
Dec. 11, 2020	Xcel responded the Company had 5 mediations in 2020; 2 were currently in process...no timeline for mediation in MN DIP, but Xcel has 90-day period in Sec. 10 tariff.
Dec. 18, 2020	Sunrise informed Xcel it would file a formal complaint with PUC and a refund of the SIS would not be prudent until after the PUC made a decision.

Att. B: Further Detail on the Complaint and Investigation Considerations

Xcel Energy delineates Sunrise's complaint into three issues: **1)** 556 AL issue; **2)** feeder choice issue; and **3)** utility to propose DER locations issue. The Company suggests the remainder of the issues raised in the Complaint would only be addressed if these three engineering issues were pursued. MNSEIA and Sunrise argue the issue of timeliness of detailed information from the System Impact Study is also a key concern. (Issue **4)** below). In addition, Xcel Energy raises seven topics for the Commission to consider if an investigation on Sunrise's Formal Complaint is opened (see Subsection **Xcel Energy's Requested Considerations** below).

A. 556 AL vs. 336 AL

The Company suggests this issue is tied to Sunrise's Request for Relief points 1, 2, 3, 4, and 7.

During interconnection review (in this case, the MN DIP System Impact Study), engineering concerns can be resolved by replacing segments of the feeder with a larger gauge conductor (i.e. reconductoring). As described in the briefing papers, Sunrise requests Xcel Energy use 556 AL reconductoring as a technical solution to the thermal ampacity issues which led Xcel Energy to deny interconnection of the Solar Club projects.

Xcel Energy states the Company's policy is to only allow reconductoring up to 336 AL for overhead lines for DER interconnections. The Company reserves 556 AL, the largest standard conductor used on their distribution system, to mitigate potential future changes; such as, drops in load on a feeder, changes in loading profile, or a need to change the feeder configuration. Alternatively, such changes to the feeder could require curtailment of larger DER systems for potentially a period of years to preserve quality and reliability of electric service. Xcel Energy notes the use of 556 AL for load, even with potential future load changes, does not impact quality or reliability of service; thus, a different approach is required. Xcel Energy argues the correct legal standard under Minn. Stat. 216B.03 is whether there is an unreasonably discriminatory practice, and that the Company's practice is appropriate. The Company cautions there is no public interest for the Commission to dictate utility practices. Doing so would take discretion and tools away from the Company's management of a reliable and safe grid.⁶¹

Nokomis supports Sunrise's request for 556 AL reconductoring. Nokomis highlights an experience in 2019 where Xcel Energy's initial notification that no capacity existed for their DER interconnection application was based on the false assumption that the current conductor in the field was 336 AL. Once confirmed the conductor was 556 AL, Xcel Energy provided Nokomis an Interconnection Agreement. Nokomis believes the Commission should "bring Xcel's written and unwritten policies under its oversight, to ensure technical competency, consistency with legal obligations, and propriety within the various programs overseen by the Commission."⁶²

⁶¹ Xcel Energy Initial, pp. 4-6

⁶² Nokomis Initial, pp. 1-2

Xcel Energy suggests the Nokomis example is an example of the benefit of the Company's policy on the use of 556 AL. The Nokomis project was on a feeder fully reconducted to 336 AL with substantial DER; however, in studying DER applications in the queue the Company noticed an older wind turbine that was not in the Company's legacy records on installed DER. This discovery occurred after Interconnection Agreements were already signed so, to honor the agreements and provide reliable and quality service, the Company reconducted with 556 AL. Xcel continues the decision to allow the Nokomis project to use the 556 AL in 2019 when DER policy was still nascent. The Company has since determined the better practice is to reserve 556 AL as a safety valve for reliability purposes. Xcel notes the CSG program has grown from 36 MW in 2016 to 784 MW in 2020 all located on less than 15% of feeders.⁶³

Sunrise claims Xcel Energy's rationale for why capacity was not available shifted first from a substation transformer to ultimately the thermal capacity of the feeder and 336AL reconducting limit. Sunrise notes the 336AL limit for reconducting is not in Xcel Energy's tariff or the Technical Specification Manual for DER interconnections. Sunrise alleges the parties agreed that reconducting to 556 AL would address the issue.

B. Feeder Choice

The Company suggests this issue is tied to Sunrise's Request for Relief point 5.

Xcel Energy does not allow an Interconnection Customer to choose the feeder to which it will interconnect, and notes the feeder assigned to Solar Club 11 crosses the project's property. Xcel Energy highlights the Commission's Nov. 1, 2016 Order where the Commission affirmed an Independent Engineer determination that it was proper for Xcel Energy to assign the CSG (DER) to the nearest feeder over the objection of the developer who wanted to interconnect to a different feeder. Xcel Energy provides examples that inform the Company's policy including concern about feeders crossing each other being unsafe in outages or difficult to identify for maintenance and repair. The Company points to Minn. Stat. §216B.01 which states in part "avoid unnecessary duplication of facilities which increase the cost of service to the consumer." Xcel Energy states re-assigning customers to feeders to avoid the duplication while allowing the DER to connect to another feeder could lead to restudy of installed or pending DER on the feeders due to a change in load which could increase interconnection costs or change the capacity available for existing DER. The Company also cautions even if the Commission allowed for feeders to cross, local governments may refuse permits based on their own standards.⁶⁴

Sunrise considers Xcel Energy's policy of connecting the DER to the nearest feeder as "arbitrary." For Solar Club 11, the difference between the feeder assigned by Xcel Energy and the one requested now by Sunrise is about a mile along the same road. Sunrise takes issue with the examples Xcel Energy provides as hypothetical and not the facts or circumstances of the Solar Club projects.⁶⁵

⁶³ Xcel Energy Reply, pp. 2-3

⁶⁴ Xcel Energy Initial, pp. 6-7

⁶⁵ Sunrise Reply, p. 17

C. Utility to propose DER location

Xcel Energy suggests this topic relates to Sunrise's Request for Relief 8.

Sunrise requests the Commission require Xcel Energy to identify additional sites where the Solar Club project could be constructed without paying any additional costs or fees. Sunrise agrees to pay for the new System Impact Study; as well as the Facilities Study and any necessary upgrade costs. Sunrise interprets the MN DIP Sec. 5.3 on Disputes to allow this relief if the Commission determines Xcel Energy's policies at issue in this complaint are allowed.⁶⁶

Xcel Energy argues having the utility propose sites for DER projects run counter to the MN DIP noting only after an interconnection application is submitted does the utility study the application based on then-current network conditions; queue position; location, size and type of DER; and cost-causer pays principle for utility upgrades needed for the interconnection. Xcel Energy notes the Company's public webpage includes information to help inform developers: hosting capacity analysis and monthly updated interconnection queues by feeder.⁶⁷

Sunrise and Xcel Energy disagree on the legal standard that applies to this issue. Sunrise suggests the Commission use Minn. Rule 7829.3200 to waive the Company's tariffed version of the MN DIP. Xcel Energy disagrees, but argues even it were to apply it is not warranted because: 1) it would impose excessive burden on the utility by shifting interconnection costs from developers to the utility; 2) Sunrise has not demonstrated how the selective waiver is in the public interest; and 3) it provides Sunrise with a preferred position compared to other developers.⁶⁸

Staff Note

The MN DIP defines the Point of Common Coupling (PCC) as the point where the Interconnection Facilities connect with [Xcel Energy's] Distribution System.... Equivalent, in most cases, to "service point" as specified by [Xcel Energy] and described in the National Electrical Code and the National Electrical Safety Code.⁶⁹ The System Impact Study Agreement includes the Interconnection Customer's designation of the PCC.⁷⁰ A change to the PCC is considered a Material Modification.⁷¹ After an Interconnection Application is deemed complete, a Material Modification of the Interconnection Application requires a new application to be filed and the project goes to the back of the queue, if one exists.⁷²

⁶⁶ Sunrise Reply, p. 18

⁶⁷ Xcel Energy Initial, pp. 7-8

⁶⁸ Xcel Energy Initial, p. 7

⁶⁹ MN DIP, Glossary of Terms, p. 4

⁷⁰ MN DIP, Att. 6 (Att. A), p. 6

⁷¹ MN DIP, Glossary of Terms, p. 3

⁷² MN DIP 1.6

Sunrise's Request for Relief #5 asks the Commission to study Solar Club 11 connected to a new feeder based on its queue position as of June 30, 2020, the date Sunrise made this request initially to Xcel Energy.⁷³ Staff caution while it is not clear to staff whether the MN DIP precludes the Interconnection Customer suggesting an alternative PCC than the nearest feeder at the time of the System Impact Study, the MN DIP is clear that a change in PCC is a Material Modification and would require a new application and new place in queue.

D. Detail in System Impact Study Results

Sunrise refers to an inaccurate and incomplete batch System Impact Study for the Solar Club projects, and notes it took five months and a non-disclosure agreement from receiving the initial study results to receiving a redacted, corrected copy of the study. Sunrise further alleges the study was not complete which Xcel Energy contests. Sunrise acknowledges Xcel Energy communicated that the corrections made to the study did not change the study results.⁷⁴

According to MNSEIA and its member, Xcel Energy's System Impact Study reports often do not include relevant assumptions and requirements or impediments to interconnection. MNSEIA acknowledges this is an issue under review in the DGWG, but that it requires attention until the process is improved.⁷⁵ Sunrise concurs suggesting situations like Nokomis's example cause developers to question the information Xcel Energy provides and push for more information and transparency.⁷⁶

E. Xcel Energy's Requested Considerations⁷⁷

1. Mediation

Xcel Energy notes MN DIP 5.3 is ambiguous on whether or not mediation is required priority to bring a formal complaint to the Commission. Xcel Energy suggests the Commission may want to make a determination that mediation is required.⁷⁸ Sunrise disagrees saying the plain language of MN DIP says a formal complaint may be filed "at any time." Further, Sunrise argues voluntary mediation is futile with Xcel Energy for CSG.⁷⁹

Staff Note

⁷³ Sunrise Formal Complaint, p. 3

⁷⁴ Sunrise Formal Complaint, p. 8, 18-19

⁷⁵ MNSEIA Reply, p. 3

⁷⁶ Sunrise Reply, p. 14

⁷⁷ Xcel Energy Initial, pp. 9-13

⁷⁸ Xcel Energy Initial, p. 9

⁷⁹ Sunrise Reply, p. 8

MN DIP 5.3 addresses disputes, and as the parties explain in the record the language has ambiguity, or flexibility, in how to handle disputes because it applies to all DER interconnections (e.g. residential, commercial, and CSG.) Prior to the MN DIP, mediation was required prior to bring a dispute to the Commission and the Community Solar Garden Program had an Independent Engineer dispute resolution process. The DGWG reviewed DER dispute resolution first in July 2017 and is taking up the issue at the March 19, 2021 DGWG meeting.

2. Parent Company Issue

Xcel Energy notes the legal entities for the Solar Club Projects should be included as complainants as they are the real parties, not the parent company (Sunrise.)⁸⁰

3. Should expedited relief be granted

Sunrise and Xcel Energy disagree on whether expedited relief should be granted with Xcel Energy alluding to further record development needed and does not rule out the potential need for a contested case.⁸¹ Sunrise argues the record is sufficient and Xcel should not be allowed to delay the proceedings.⁸²

4. MN DIP timelines During a Dispute

Sunrise and Xcel Energy agree to stay the MN DIP timelines while the engineering issues identified above are pending at the Commission.⁸³ Thus, Sunrise withdraws its request for relief on this issue.⁸⁴

5. Minn. Stat. 216B.164 and Minn. Rules Ch. 7835 as Part of the Legal Standard

Sunrise and Xcel Energy disagree on whether Minn. Stat. 216B.164 should apply.

Sunrise filed the Formal Complaint pursuant, in part, to Minn. Stat. §216B.164. Sunrise points to Minn. Rules Ch. 7835 as placing the burden of proof on the utility and allowing for recovery of attorney fees, and notes these features of the Commission's dispute resolution for an Interconnection Customer is important to address the power and/or resource disparity.

Xcel Energy counters and asks that the Commission exclude Sunrise's request for relief that costs, disbursements, and reasonable attorney fees be paid by Xcel. Xcel Energy states neither the statute nor the rules apply to Community Solar Gardens because the Minnesota Court of Appeals decision determined CSG were not PURPA qualifying facilities and could be offered a different compensation rate as required by Minnesota statute.⁸⁵

⁸⁰ Xcel Energy Initial, p. 10

⁸¹ Xcel Energy Initial, p. 10

⁸² Sunrise Reply, p. 9

⁸³ Xcel Energy Initial, pp. 10-11

⁸⁴ Sunrise Reply, p. 10

⁸⁵ Xcel Energy Initial, p. 12

Sunrise responds the Minnesota Court of Appeals decision is not applicable noting that the Solar Clubs project are eligible for the alternative rate (Value of Solar) established in Minn. Stat. 216B.164; Subd. 10 among other arguments.⁸⁶

IREC acknowledges uncertainty as to whether Minn. Stat. 216B.164 and Minn. Rules Ch. 7835 apply to CSG disputes. IREC highlights the Commission's December 1, 2015 Order which directed the Independent Engineer to rely on Minn. Rule 7835.0800 in considering a dispute between a CSG and Xcel Energy as an example where Minn. 216B.164 was applied to interconnection of CSG projects.⁸⁷ Further, IREC argues the burden of proof on the public utility is appropriate because of "significant informational and resource advantages of the utility" and alignment "with the Commission's states preference that the interconnection process 'give maximum possible encouragement of [DER] consistent with protection of the ratepayers and the public..'"⁸⁸

6. Amending a Complaint

Sunrise and Xcel Energy agree to amend the Complaint would require a Motion and chance for Xcel Energy to respond before a Commission ruling.⁸⁹

7. Scope of the Commission Investigation

Xcel Energy requests the Company be required to respond only to those allegations related to Sunrise's projects that directly tie to the Request for Relief in the Complaint.⁹⁰

⁸⁶ Sunrise Reply, pp. 10-12

⁸⁷ IREC Reply, p. 10 citing Order Finding Jurisdiction and Referring Complaint to Independent Engineer (Dec. 1, 2015), Docket No. E002/M-15-786.

⁸⁸ IREC Reply, p. 11

⁸⁹ Xcel Energy Initial, pp. 12-13; Sunrise Reply, p. 13

⁹⁰ Xcel Initial, p. 13