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STATE OF MINNESOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION

Katie Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John Tuma	Commissioner

In the Matter of the Formal Complaint and Request for Expedited Relief by Sunrise Energy Ventures LLC Against Northern States Power Company d/b/a Xcel Energy	DOCKET NO. E002/C-20-892

REPLY COMMENTS OF THE INTERSTATE RENEWABLE ENERGY COUNCIL, INC. ON THREE ISSUES FROM COMMISSION'S JANUARY 4, 2021 NOTICE

On December 18, 2020, Sunrise Energy Ventures LLC (Sunrise) filed a Formal Complaint and Petition for Expedited Relief (Complaint) against Xcel Energy (Xcel) challenging Xcel policies and practices involving interconnection of community solar garden (CSG) projects.[1] Sunrise alleges in the Complaint that Xcel's methodologies, policies, and practices have discouraged the interconnection of CSGs and other distributed energy resources (DERs), in violation of Minnesota law and policy.[2] In particular, Sunrise contends that several internal Xcel policies, which were applied to Sunrise's interconnection application for three CSG projects, are unreasonable and discriminatory.[3] These challenged policies include Xcel's methodology for

[1] MN Pub. Util. Comm., Dkt. E002/C-20-892, In the Matter of the Formal Complaint and Request for Expedited Relief by Sunrise Energy Ventures LLC Against Northern States Power Company d/b/a Xcel Energy ("Dkt. E002/C-20-892"), Complaint of Sunrise Energy Ventures LLC (Dec. 18, 2020) ("Complaint").

[2] Complaint, p. 20.

[3] Complaint, pp. 20-22.

determining available interconnection capacity, Xcel's unwritten policy not to install 556 AL conductor on feeder lines to accommodate DER interconnection, and Xcel's unwritten policy not to allow DER customers to choose which feeder will interconnect a project to the network.[4]

On January 4, 2021 the Minnesota Public Utilities Commission (Commission) issued a Notice of Comment Period requesting initial comments by January 11, 2021 and replies on January 19, 2021.[5] The Notice asked whether the Commission should open an investigation into Sunrise's Complaint and seeks comments on (1) whether the Commission has jurisdiction over the subject matter of the Complaint, (2) whether it is in the public interest for the Commission to investigate these allegations, and (3) what procedures the Commission should use to the investigate the Complaint if it chooses to do so. On January 11, 2021, Xcel submitted opening comments on the three issues raised in the Commission's Notice.[6] The Interstate Renewable Energy Council, Inc. (IREC) is submitting these limited reply comments in response to Xcel's opening comments.

I. The Commission Has Jurisdiction.

IREC agrees with all parties that the Commission has jurisdiction over the subject matter of the Complaint.[7] Sunrise's Complaint relates to Xcel Energy's compliance with the interconnection procedures adopted by this Commission. The State of Minnesota Distributed Energy Resources Interconnection Process (MN DIP) Section 5.3, regarding disputes, provides that if the parties to an interconnection dispute cannot resolve their dispute through the

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[4] *Id*., p. 21.

[5] Dkt. E002/C-20-892, Notice of Comment Period (Jan. 4, 2021) ("Notice").

[6] Dkt. E002/C-20-892, Comments of Xcel Energy on Three Issues from January 4, 2021 Notice (January 11, 2021) ("Xcel Comments").

[7] *See* Complaint, p. 4 (citing Minn. Stat. §§ 216A.05, 216B.164; Minn. R. Ch. 7829); Xcel Comments, p. 4 (citing Minn. Stat. § 216B.09).

procedures identified therein, the dispute shall proceed to the Commission's Formal Complaint process. It appears from Sunrise's Complaint that the procedures in the MN DIP were followed, as the parties met and attempted to resolve the dispute pursuant to MN DIP section 5.3 before Sunrise filed its Formal Complaint.[8] It is therefore appropriate for the Commission to take jurisdiction over, and resolve, this dispute.

II. It is in the Public Interest for the Commission to Investigate Sunrise's Allegations.

IREC takes no position at this time on the merits of the allegations in Sunrise's Complaint. However, the issues raised by the Complaint clearly warrant investigation by the Commission. It is important that the Commission provide a forum for resolution of disputes about interconnection projects as was envisioned by section 5.3.8 of the MN DIP. The Commission should investigate Sunrise's allegations.

A. Xcel's Comments Inappropriately Seek to Litigate the Issues in the Complaint Before the Commission Has Determined Whether to Open an Investigation.

The Commission's Notice asked whether the Commission should open an investigation into Sunrise's Complaint, and requested comments on only three specific issues: (1) whether the Commission has jurisdiction over the subject matter of the Complaint, (2) whether it is in the public interest for the Commission to investigate these allegations, and (3) what procedures the Commission should use to the investigate the Complaint if it chooses to do so.[9] The Commission did not request comments on the merits of Sunrise's allegations.

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[8] Complaint, pp. 4, 11-20.

[9] *See* Minn. R. § 7829.1800 Sub. 1 ("The commission shall review a formal complaint as soon as practicable to determine whether the commission has jurisdiction over the matter and to determine whether there are reasonable grounds to investigate the allegation.").

However, Xcel's comments stray far beyond the questions presented in the Commission's Notice. Xcel inappropriately seeks to argue the merits of the Complaint before the Commission has opened an investigation and before Xcel has properly answered the factual allegations in the Complaint.[10] For example, in its response to the question of whether an investigation is in the public interest, Xcel contests the substance of Sunrise's claim regarding Xcel's refusal to use AL 556 conductor to facilitate interconnection, Sunrise's demand that Xcel study interconnection via alternate feeders, and Sunrise's request that Xcel propose alternative CSG locations.[11] To the extent that Xcel's comments address the merits of the Complaint, the Commission should not consider those comments at this time. The merits of the Complaint should be addressed only after the Commission has opened an investigation and after Xcel has answered the Complaint's factual allegations.

B. The Commission Must Exercise its Regulatory Authority to Ensure a Fair and Reasonable Interconnection Process in Minnesota.

In responding to each of the three issues raised in the Commission's Notice, Xcel essentially argues that it is not in the public interest for the Commission to ensure that the internal policies that Xcel applies to the interconnection process are fair and reasonable. Xcel contends that "[t]here is no public interest for the Commission to dictate utility practices on the protocols involved" in the issues raised in the Complaint because "[d]oing so would take important discretion and tools away from the Company," and that the Commission should therefore dismiss the complaint.[12]

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[10] *See* Minn. R. § 7829.1800 Sub. 2 ("On concluding that it has jurisdiction over the matter and that investigation is warranted, the commission shall serve the complaint on the respondent, together with an order requiring the respondent to file an answer either stating that it has granted the relief the complainant requests, or responding to the allegations of the complaint.")
[11] Xcel Comments, pp. 4-8.

[12] Xcel Comments, pp. 6-8.

This is a bold argument that, if accepted, would leave Xcel 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. It is squarely within the Commission's mandate to review Xcel's internal policies for fairness and reasonableness, and the Commission has broad discretion to conduct investigations.[13] If the Commission does not ensure that Xcel's policies are fair and reasonable, this lack of accountability could result in discriminatory or arbitrary policies that could significantly reduce the cost effectiveness of Minnesota's DER programs.

IREC takes no position at this time on whether any of the policies that Xcel cites in its comments are fair and reasonable in general, or as applied to Sunrise. However, the question of whether those interconnection policies are fair and reasonable is clearly a matter of public interest.[14] The Commission should take the Complaint, open an investigation into the issues it raises, and require Xcel to properly respond to the Complaint's allegations, so that all relevant facts and information are properly before the Commission before it makes a determination.

C. The Complaint Should Not Be Dismissed on the Ground that it Raises Broad Policy Issues that Implicate Multiple Projects.

Xcel argues that if the Commission decides to consider the issues raised in the Complaint, it should dismiss the Complaint and instead open a separate docket, because the

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[13] *See* Minn. Stat. Ann. § 216B.17 ("On its own motion or upon a complaint made against any public utility" that "any regulation, measurement, practice, act, or omission affecting or relating to the production, transmission, delivery, or furnishing of natural gas or electricity or any service in connection therewith is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with notice, to make such investigation as it may deem necessary.")

[14] *See* Minn. Stat. § 216B.1641 Subd. (e) (utility CSG programs approved by the Commission must "reasonably allow for the creation" of CSGs, must include "uniform" interconnection standards, and must "be consistent with the public interest.").

Complaint raises broad, industry-wide policy issues that will implicate multiple projects.[15] This argument is somewhat ironic because it essentially concedes that the issues at play in Sunrise's complaint are a matter of public interest. Xcel cites two prior Commission orders in support of its claim that the existence of broad policy issues is grounds to dismiss a complaint, but it misreads those orders. Neither order indicates that a complaint should be dismissed simply because it raises broad policy issues.

In a September 12, 2011 order, a consumer complaint regarding electric billing was dismissed because it did not meet any of the statutory criteria for consideration by the Commission (i.e. it was not filed by another public utility, the Department of Commerce, or 50 of Xcel's customers).[16] The Commission referred the dispute to the Consumer Affairs Office and asked staff to open a new docket to examine the issues raised in the complaint on an industry-wide basis.[17] The reason for dismissal was the complaint's failure to meet statutory criteria, not the existence of broad policy issues meriting creation of the new docket.

In an August 24, 2001 order, a complaint was dismissed because the Commission found that the record failed to demonstrate that a company's submetering proposal met the public interest standards of the Public Utilities Act.[18] The Commission decided to open a broader

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[15] Xcel Comments, pp. 8-9.

[16] Dkt. E002/C-11-423, In the Matter of a Complaint by Three Customers and Community Action of Minneapolis Against Xcel Energy Regarding Various Tariffs and Billing Practices, Order Dismissing Complaint and Requiring Cooperation with Consumer Affairs Office, p. 4 (Sept. 12, 2011).

[17] *Id.*

[18] Dkt. E002/C- 00-954, In the Matter of the Complaint Regarding Northern States Power Company's Refusal to Allow ConServe Corporation, Park Point Apartments, and Riverwood Apartments to Convert Their Buildings to Master-Metered Commercial Service and to Submeter, Order Dismissing Petition, Opening an Investigation and Requiring Reporting, p. 8 (Aug. 24, 2001).

investigation because the complaint raised "significant practical and public policy issues that [could not] be resolved on the basis of the current record" and were "likely to recur in other contexts."[19] While the Commission did open a new docket, the complaint was dismissed because it failed to meet statutory criteria, not because it implicated broad policy issues.

A complaint pertaining to an individual project may present an appropriate opportunity for the Commission to consider whether a utility policy is fair and reasonable. The unfairness or inappropriateness of utility policies is often not realized until they are applied to a particular project. This is especially true for policies such as those at issue here. It does not appear that the policies cited by Xcel are written down or published, nor are they policies that have been reviewed or approved by the Commission. If the complainant was specifically seeking to change a written policy contained in the MN DIP, the Technical Interconnection and Interoperability Requirements (TIIR) or Technical Standards Manuals (TSMs) that had been previously approved by the Commission, it *might* be more appropriate to evaluate them in a generic industry-wide docket rather than via an individual project-specific complaint. However, because the policies at issue are unwritten, they would be difficult to evaluate in the abstract without application to a project. Moreover, even if it is assumed that the challenged Xcel policies are reasonable in principle, the Commission must also determine whether these policies are being fairly applied in a non-discriminatory manner.[20] This latter determination requires consideration of the specific factual allegations in Sunrise's complaint.

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[19] *Id*.

[20] The Forward to MN DIP this Commission just recently adopted is explicit that the Commission's intent is that the interconnection process be "non-discriminatory" and also that it maintain "fair and reasonable" rates and give "maximum possible encouragement of distributed energy resources" amongst other priorities. MN DIP at 1.

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. However, the Commission should not dismiss the Complaint on the basis that it implicates industry-wide policy issues.

III. The Commission Should Apply A Uniform Burden of Proof in All DER Interconnection Disputes.

Sunrise and Xcel disagree as to which party bears the burden of proof in this dispute. IREC urges the Commission to resolve this question by establishing and applying the same burden of proof to all interconnection disputes.

Sunrise's Complaint asserts that the burden of proof in this dispute lies with Xcel, citing Minn. Stat. § 216B.164 Subd. 5 (a), which provides that "[i]n the event of disputes between a public utility and a qualifying facility,[21] either party may request a determination of the issue by the commission. In any such determination, the burden of proof shall be on the public utility." MN DIP § 5.3.8 references this section, providing that "[a]t any time, either Party may file a complaint before the Commission pursuant to Minn. Stat. §216B.164, if applicable, and Commission rules outlined in Minn. Rules Ch. 7829." The implementing regulations for Minn. Stat. §216B.164 in Minn. Rules Ch. 7835 contain similar language, providing that "[i]n case of a dispute between a utility and a qualifying facility or an impasse in the negotiations between

[21] Minn. Rules Ch. 7835.0100 Sub. 19 defines "qualifying facility" as "a cogeneration or small power production facility which satisfies the conditions established in Code of Federal Regulations, title 18, part 292." *See* 18 C.F.R. 292.203.

them, either party may request the commission to determine the issue. When the commission makes the determination, the burden of proof must be on the utility."[22]

Xcel contends that Minn. Stat. § 216B.164 does not apply to CSGs, and that the burden of proof therefore lies with Sunrise.[23] In support, Xcel cites an unpublished Minnesota Court of Appeals opinion which concludes that the purpose of Minn. Stat. § 216B.164 is to implement the Public Utility Regulatory Policies Act (PURPA), and that the CSG program creates an "alternative" to this section, which governs cogeneration and small power production.[24] The Court's opinion says nothing about burdens of proof, nor does it expressly state that the implementing statute never applies to the CSG program. However, if Xcel's argument were accepted, there would be two different burden of proof standards for interconnection disputes: one for CSG projects, and another for other DER projects governed by Minn. Stat. § 216B.164.

IREC notes that there is some uncertainty as to whether Minn. Stat. § 216B.164 and Minn. Rules Ch. 7835 apply to CSG interconnection disputes, but rejects Xcel's contention that these provisions definitively do not apply.[25] On at least one occasion prior to the above cited decision, the Commission expressly ordered that the cogeneration and small power production standards in Minn. Rules Ch. 7835, which implement the statutory provisions of Minn. Stat. § 216B.164, be applied to CSG projects. In a CSG interconnection dispute that was referred to an

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[22] Minn. R. § 7835.4500.

[23] Xcel Comments, p. 12.

[24] *In re N. States Power Co.*, No. A15-1831, 2016 WL 3043122, pp. *8–9 (Minn. Ct. App. May 31, 2016).

[25] *See* Dkt. E-002/M-13-867, In the Matter of the Petition of N. States Power Co., DBA Xcel Energy, for Approval of Its Proposed Cmty. Solar Garden Program, Order Approving Tariffs as Modified and Requiring Filing, p. 6 (Dec. 15, 2015) ("[T]he Department [of Commerce] argued that the Commission's cogeneration and small-power-production rules, Minn. R. ch. 7835, prohibit solar-garden interconnection requirements that are more restrictive than industry standards or that otherwise discourage distributed generation.")

independent engineer, the Commission ordered the engineer to "rely on industry standards, Commission orders, and Commission rules, including Minn. R. 7835.0800, in considering the disputes."[26] Minn. Rules § 7835.0800 provides that "[n]o standard or procedure may be established to discourage cogeneration or small power production." Thus, contrary to Xcel's suggestion, there is at least some precedent for the application of the cogeneration and small power production standards to interconnection of CSG projects.

More broadly, however, the applicable burden of proof for interconnection disputes such as this one should not depend on the type of project at issue or the procurement process followed. There should not be a different burden of proof for interconnection of CSG projects than for interconnection of rooftop solar installations or for other DERs. Rather, there should be a uniform burden of proof that applies to all DER interconnection disputes before the Commission. MN DIP § 5.3 already provides a uniform dispute resolution process for interconnection disputes involving DERs up to 10 MW, and MN DIP § 5.3.8 expressly references Minn. Stat. § 216B.164's complaint procedure. There is no reason to carve out an exception for CSG projects as Xcel suggests.

IREC urges the Commission to dispel any uncertainty about this issue by setting a clear and uniform burden of proof rule in all DER interconnection disputes. Regardless of whether Minn. Stat. § 216B.164 Subd. 5 (a) already applies to the dispute at issue, as Sunrise contends, the Commission should employ equivalent reasoning in adopting a uniform burden of proof rule here. IREC recommends that the Commission establish that the burden of proof shall be on the public utility in all DER interconnection disputes before the Commission, as is already the case

[26] Dkt. E-002/M-15-786, In the Matter of A Formal Complaint & Petition by Sunshare, LLC for Relief Under Minn. Stat. S 216b.1641 & Sections 9 & 10 of Xcel Energys Tariff Book, Order Finding Jurisdiction and Referring Complaint to Independent Engineer, p. 4 (Dec. 1, 2015).

for projects subject to Minn. Stat. § 216B.164. This burden is appropriate in light of the significant informational and resource advantages of the utility, and also aligns with the Commission's stated preference that the interconnection process "give maximum possible encouragement of distributed energy resources consistent with protection of the ratepayers and the public. . ."[27]

IV. The Commission Should Apply a Uniform Standard of Review in All DER Interconnection Disputes.

The Complaint alleges that Xcel's practices (e.g. not allowing 556 AL conductors to be used to interconnect DERs despite using 556 ALs elsewhere in the network) discriminate against CSGs, in violation of the MN DIP's mandate that the interconnection process be "non-discriminatory."[28] Xcel takes issue with Sunrise's articulation of the standard, asserting that the correct standard is whether the challenged practices are *unreasonably* discriminatory.[29] IREC takes no position at this time on whether or not Xcel's challenged policies are, in fact, discriminatory, but urges the Commission to open an investigation into the allegations in the complaint. In that investigation, the Commission should employ a standard of review which should be applied uniformly to all DER interconnection disputes.

Minnesota's statutory provision authorizing CSGs provides that utility CSG programs approved by the Commission must, among other things, "(1) reasonably allow for the creation, financing, and accessibility of community solar gardens; (2) establish uniform standards, fees, and processes for the interconnection of community solar garden facilities that allow the utility to recover reasonable interconnection costs for each community solar garden; (3) not apply

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[27] MN DIP, p. 1.

[28] Complaint, pp. 2, 11, 20; MN DIP, p. 1.

[29] Xcel Comments, p. 5 (emphasis added).

different requirements to utility and nonutility community solar garden facilities; [and] (4) be consistent with the public interest."[30]

Xcel's comments assert that "[t]he correct legal standard [for reviewing Sunrise's allegations of discrimination] is set forth in Minn. Stat. 216B.03, and the standard is whether this is a *unreasonably* discriminatory practice."[31] Xcel cites Minn. Stat. § 216B.03, which provides that "[e]very rate made, demanded, or received by any public utility . . . shall be just and reasonable. Rates shall not be unreasonably preferential, unreasonably prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to a class of consumers." However, the cited statutory section concerns ratemaking, not interconnection, and it's not clear that it would apply to the Xcel interconnection practices challenged in the Complaint.[32] The language of the CSG authorizing statute requires Xcel to "reasonably allow for the creation" of CSGs, applying "uniform" interconnection standards and processes.[33] The statute's requirement that utilities "not apply different requirements to utility and nonutility community solar garden facilities" makes clear that Xcel cannot discriminate against the interconnection of non-utility CSG facilities such as those proposed by Sunrise.[34] The statute appears to prohibit *any* utility discrimination against CSG interconnection, not only "unreasonable" discrimination as Xcel suggests.

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[30] Minn. Stat. § 216B.1641 Subd. (e).

[31] Xcel Comments, p. 5 (emphasis added).

[32] We also note that contrary to Xcel's suggestion, the word "unreasonably" does not modify "discriminatory" in the phrase "[r]ates shall not be unreasonably preferential, unreasonably prejudicial, or discriminatory."

[33] Minn. Stat. § 216B.1641 Subd. (e).

[34] *Id*.

In order to resolve this disagreement over the appropriate standard, and to prevent similar ones from arising in the future, IREC recommends that the Commission adopt a uniform standard of review that will apply equally to all DER interconnection disputes before the Commission, not only those involving CSGs. The applicable standard of review for interconnection disputes should not depend on the type of project at issue, and there should not be a different standard for interconnection of CSG projects than for interconnection of other DERs. The applicable standard could be articulated in a variety of ways, but the Commission should apply a standard of review that functionally requires a utility's DER interconnection policies and practices to be fair, reasonable, and non-discriminatory. Such a standard would be consistent with the MN DIP's stated goals that the DER interconnection process be "non-discriminatory."[35] It would also be consistent with Minn. Stat. Ann. § 216B.17, which authorizes the Commission to investigate complaints that a public utility's "regulation, measurement, practice, act, or omission affecting or relating to the production, transmission, delivery, or furnishing of . . . electricity or any service in connection therewith is in any respect unreasonable, insufficient, or unjustly discriminatory," and with Minn. Stat. § 216B.23, Subd. 2, which provides:

> Whenever the commission shall find any regulations, measurements, practices, acts, or service to be unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise unreasonable or unlawful, or shall find that any service which can be reasonably demanded cannot be obtained, the commission shall determine and by order fix reasonable measurements, regulations, acts, practices, or service to be furnished, imposed, observed and followed in the future in lieu of those found to be unreasonable, inadequate, or otherwise unlawful, and shall make any other order respecting the measurement, regulation, act, practice, or service as shall be just and reasonable.

[35] MN DIP, p. 1.

Consistent with the above-cited provisions, IREC urges the Commission to apply a uniform standard of review requiring utility DER interconnection policies and practices to be fair, reasonable, and nondiscriminatory, both in this CSG dispute and in all other DER interconnection disputes.

V. Conclusion

The Commission has jurisdiction over the subject matter of Sunrise's Complaint, and 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. All Minnesotans benefit from the existence of fair and reasonable utility policies governing interconnection of CSGs and other DERs. For the foregoing reasons, IREC respectfully requests that the Commission open an investigation into the allegations contained in the Complaint.

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Respectfully submitted,

By: /s/ Sky Stanfield

Sky C. Stanfield
Patrick Woolsey
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
San Francisco, CA 94102
Telephone: (415) 552-7272
Facsimile: (415) 552-5816
stanfield@smwlaw.com
pwoolsey@smwlaw.com

Attorneys for INTERSTATE RENEWABLE ENERGY COUNCIL, INC.

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