

**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMITTEE**

**Formal Complaint and Petition for Relief
by Nokomis Energy LLC and Union
Garden LLC Against Northern States
Power Company d/b/a Xcel Energy**

MNPUC Docket No. _____

COMPLAINT

Nokomis Energy LLC and Union Garden LLC (“Nokomis”) respectfully submit this Formal Complaint against Northern States Power Company, d/b/a Xcel Energy (“Xcel”) to the Minnesota Public Utilities Commission (“Commission”), pursuant to the applicable Interconnection Agreement, Section 10 of Xcel’s Tariff, Minn. Stat. § 216B.164, and Minn. R. 7829.1700.

This dispute concerns Xcel’s failure to provide advance notice to Nokomis that the cost to interconnect its 1 MW Union Garden project had risen from the initial cost estimate of \$457,796.00 to \$665,819.28; a dramatic increase of approximately \$208,000. Nokomis was first made aware of the cost increase in August, 2021, five (5) months *after* the project was interconnected to Xcel’s grid, and fourteen (14) months after Nokomis first requested a detailed cost estimate. Xcel’s failure to provide advance notice of the dramatic cost increase deprived Nokomis of the opportunity to make informed decisions about the economic viability of the project as designed, and even whether to move forward with the project altogether. These dramatic cost increases without prior notice were not reasonable under the circumstances, and Nokomis should not be obligated to pay for the entirety of such costs.

Nokomis requests that the Commission issue an order (1) finding that Xcel was required to provide advance notice of the increased costs; (2) directing Xcel to delineate the causes of the cost increase from \$457,796.00 to \$665,819.28; and (3) relieving Nokomis of the obligation to pay those costs for which Nokomis did not receive advance notice.

I. PARTIES AND JURISDICTION

1. Complainant Nokomis Energy LLC is a renewable energy developer based in Minnesota, developing community solar gardens, customer-sited solar arrays, and other renewable energy projects.

2. Complainant Union Garden LLC is a wholly owned subsidiary of Nokomis Energy and is the Interconnection Customer.

3. Respondent Northern States Power Company, d/b/a Xcel Energy, is a Public Utility under Minn. Stat. § 216B.02, Subd. 4.

4. Addresses for Complainants and Respondents, and their Counsel, is as follows:

Complainants: Nokomis Energy LLC and Union Garden LLC
2836 Lyndale Ave S, Suite 132
Minneapolis, MN 55408

Complainants' Counsel: Matthew Melewski (#0329819)
The Boutique Firm PLC
5115 Excelsior Blvd. #431
St. Louis Park, MN 55416

Respondent: Northern States Power Company d/b/a Xcel Energy
414 Nicollet Mall
Minneapolis, MN 55401

Respondent's Counsel: James Denniston (#0390949)

Assistant General Counsel
Northern States Power Company, d/b/a Xcel Energy
414 Nicollet Mall
Minneapolis, MN 55401

5. The Commission has jurisdiction to hear this matter, make findings of fact, and order all appropriate relief under, *inter alia*, sections 216A.05 and 216B.164 of Minnesota Statutes, and Chapter 7829 of the Minnesota Rules.

II. APPLICABLE STATUTES AND REGULATIONS

6. The Union Garden project predated the adoption of the Minnesota Distributed Energy Resources Interconnection Process (“MNDIP”) in 2019. The interconnection process relevant to the Union Garden project is set forth in Section 10 of Xcel’s Tariff.

7. Section 10 of Xcel’s Tariff contains a standard form Interconnection Agreement, which provides that the interconnection customer is responsible for the costs of interconnection, but that “[a]ll costs, for which the Interconnection Customer is responsible for, **must be reasonable under the circumstances of the design and construction.**”¹

8. The Interconnection Agreement for the Union Garden project contained an initial cost estimate, which indicates that detailed design will begin after the interconnection agreement is executed.

9. Xcel’s interconnection process includes providing the interconnection customer with those detailed design results, including updated cost estimates, before the project proceeds to construction and interconnection. This communication is titled a “Solar Detailed Design Results Communication” (“SDDRC”).

¹ Xcel Tariff 10, Sheet No. 10-116 (emphasis added).

III. FACTUAL ALLEGATIONS

10. Union Garden LLC is a 1 MW AC distributed generation community solar garden.

11. On May 28, 2019, Union Garden executed an Interconnection Agreement with an initial cost estimate of \$457,796.00.

12. Xcel did not begin the detailed design process until February, 2020, approximately nine (9) months later.

13. In April, 2020, an Xcel engineer informed Nokomis that the City of Northfield would require certain route changes for the interconnection of Union Garden.

14. By June, 2020, Xcel had reached a resolution with the City of Northfield, and established an in service date of January 31, 2021 for the Union Garden project.

15. On June 26, 2020, Nokomis requested the SDDRC from Xcel via email. Xcel never responded to this request.

16. Nokomis and Xcel continued to correspond regarding the Union project, but no detailed design or updated cost estimate was provided to Nokomis.

17. In reliance on Xcel's January 31, 2021 in service date, Nokomis began construction on the Union Garden project in the fall of 2020.

18. On November 11, 2020, after Nokomis had begun construction, Xcel informed Nokomis that they would be moving the in service date for the Union Garden project to March 1, 2021 due to Xcel construction delays.

19. In response to that email, Nokomis again asked "When do you expect to have completed the detailed design?" An Xcel engineer responded that detailed design was "probably about 5 weeks out."

20. On December 8, 2020, Nokomis wrote “Per your last communication you thought you'd have designs done by xmas. Are you still tracking to that?” Xcel never responded to the request for an SDDRC.

21. Also, in that December 8, 2020 email, Nokomis indicated that it was the landowner’s preference to place as much of the power line underground as possible. After additional email exchanges, Xcel agreed to place approximately an additional 170 feet of power line underground on December 21, 2020.²

22. Xcel never provided an SDDRC, or any further indication of a cost increase related the reroute with the City of Northfield, the additional underground line, or Xcel’s delay in starting construction.

23. Xcel performed the interconnection work on Union Garden in the Spring of 2021 and Union Garden received permission to operate on March 25, 2021.

24. Approximately five (5) months later, on August 17, 2021, Xcel provided Nokomis with notice that the interconnection costs had risen approximately \$208,000 in excess of the initial design estimate, to a total of \$665,819.28.³

25. Only after this, on September 15, 2021, did Xcel provide Nokomis with an SDDRC. The SDDRC was dated August 19, 2021, and indicated a detailed design cost of \$605,862, approximately \$60,000 less than the final invoice Xcel had provided a month prior.⁴

26. After discussions between the parties, Nokomis submitted a notice of dispute to Xcel on October 4, 2021.⁵ Xcel provided a written response on October 18, 2021.⁶

² Appendix at 9 (Xcel Response to Notice of Dispute).

³ App. at 2 (Reconciled Cost Summary for Final Invoice).

⁴ App. at 5 (Solar Detailed Design Results Communication).

⁵ App. at 6 (Nokomis Notice of Dispute).

⁶ App. at 8 (Xcel Response to Notice of Dispute).

27. Xcel's response explained that the cost increase was due to "rebuild variances and winter construction; requirement by the City of Northfield for an alternative route; and Design changes requested by Nokomis."⁷ Xcel's response did not indicate how much of each of these causes contributed to the additional \$208,000, other than to say that "Winter construction by itself typically increases the overall final costs by approximately 10-30 percent."⁸

28. Xcel also denied that Nokomis had ever requested a detailed design cost estimate prior to construction, writing that Xcel "has no record or recollection of Nokomis ever requesting the detail design cost estimate during this timeframe."⁹

29. The parties met and conferred in an attempt to resolve the dispute on November 1, 2021. During the meeting, Nokomis requested additional information about the causes of the increases.

30. After the meeting, Xcel provided an additional written response, purporting to provide "some additional clarity on the indicative cost estimates/final invoice."¹⁰ No additional information about the causes of the increases was provided. Instead, Xcel explained that "The detail design cost estimate was inadvertently not sent to Nokomis at the time it was finalized in January 2021."¹¹ This additional response also clarified that the final invoice, not the SDDRC, was the accurate final cost required of Nokomis.

31. The parties met again on November 23, 2021. During the meeting, Nokomis again requested additional information about the causes of the increases.

⁷ *Id.*

⁸ App. at 9. (Xcel Response to Notice of Dispute).

⁹ App. at 10 (Xcel Response to Notice of Dispute).

¹⁰ App. at 12 (Xcel Supplemental Response to Notice of Dispute).

¹¹ *Id.*

32. After that meeting, Nokomis sent Xcel a spreadsheet of questions about the interconnection costs that might help Nokomis understand the dramatic cost increase.¹² Xcel responded by filling in answers to the questions posed in the spreadsheet.¹³

33. The Parties thereafter engaged in a mediation with a third party mediator on March 4, 2022, but were unable to resolve the dispute.

IV. COMPLAINT

Costs Must Be Reasonable Under The Circumstances

34. The language in the interconnection agreement, as stated in the template agreement in Section 10 of Xcel's Tariffs provides:

"While estimates, for budgeting purposes, have been provided in Exhibit B, the actual costs are still the responsibility of the Interconnection Customer, even if they exceed the estimated amount(s). All costs, for which the Interconnection Customer is responsible for, **must be reasonable under the circumstances** of the design and construction."¹⁴

35. This section prohibits Xcel from charging CSG developers for costs that are unreasonable under the circumstances.

36. For example, if Xcel charged an additional \$1,000,000 for interconnecting a 1 MW project, without providing prior notice, that would not be reasonable under the circumstances.

37. On the other end, an increase of \$25,000 for unforeseen costs would likely be reasonable with prior notice to the project developer.

38. The question posed in this Complaint is whether the costs Xcel is attempting to impose on Nokomis for the Union Garden project are reasonable under the circumstances.

¹² App. at 15 (spreadsheet of specific cost questions).

¹³ Xcel labeled the response "Non-Public" and "Confidential and the subject of settlement discussions," so the contents are not described here and the document is not included in the Appendix.

¹⁴ Sheet No. 10-117 (emphasis added)

39. Nokomis does not believe that under the circumstances of the Union Garden project, which are explained in more detail below, an increase of approximately \$208,000 is reasonable.

Nokomis And Other Developers Have Relied On SDDRCs

40. Nokomis had constructed several community solar gardens prior to the Union Garden project. In each case, before proceeding with the construction of the project, Xcel provided Nokomis with an SDDRC.

41. Nokomis understands that this has been the regular practice and course of conduct by Xcel for all CSG development.

42. The role of the SDDRC is to allow the CSG developer to understand how the costs and design of the system might have changed after Xcel performs the detailed design process. This provides the CSG developer with notice and the opportunity to decide whether or not to proceed with the project as designed, or at all.

43. Xcel has complete control over the interconnection, as the administrator of the interconnection process and owner of the distribution system. Xcel is also paid to perform the studies, and paid to perform the interconnection work itself. Xcel controls all actions and information regarding the interconnection of a project, and therefore has an obligation to ensure that the CSG developer has the information necessary to make informed decisions about the project.

44. Xcel has historically managed this responsibility, in part, by providing an SDDRC after completing the detailed design, before construction of the project.

45. In this case, Xcel did not provide an SDDRC until six (6) months after the project had been completely interconnected to Xcel's grid and received permission to operate. This deprived Nokomis of crucial information about the Union Garden project.

46. After Nokomis initiated this dispute, Xcel changed their policy of providing SDDRCs to CSG developers.

47. In their 2021 Q4 MN DER Stakeholder Workgroup presentation, Xcel explained that they are going to discontinue providing SDDRC's unless requested by the developer:

"MNDIP does not provide for Detailed Design Cost Estimates, Xcel Energy provides these **voluntarily**. We have contemplated discontinuing these. If you are expecting a Detailed Design Cost Estimate and have not yet received one, it is your responsibility to reach out to your Xcel Energy assigned Designer."¹⁵

A Dramatic Cost Increase Without Prior Notice Is Not Reasonable

48. Xcel reached an agreement with the City of Northfield to modify the route in June, 2020, but did not provide Nokomis an updated cost estimate or SDDRC. As of the filing of this Complaint, Xcel has not provided Nokomis with the cost of this route modification. This was true for all changes to the interconnection of Union Garden.

49. Despite Nokomis's numerous requests, Xcel did not provide cost increase information about the reroute with the City of Northfield, Xcel's construction delays, or Nokomis' underground request. Xcel did not produce the SDDRC until September 15, 2021, six (6) months after the Union Garden project was connected to the electric grid by Xcel.

50. Xcel's failure to provide prior notice of the dramatic cost increase prevented Nokomis from accurately evaluating the economic viability of the Union Garden project.

51. By the time Nokomis had received any detailed design or any information about the dramatic cost increase, Nokomis was unable to modify or withdraw from the project.

¹⁵ App. at 17 (Xcel 2021 Q4 MN DER Stakeholder Workgroup presentation, excerpt) (emphasis in original).

52. It is not reasonable to expect Nokomis to pay for the entire dramatic cost increase when it had no advance notice of the cost increase from any of the causes cited by Xcel.

Xcel Should Delineate The Causes Of The Cost Increases

53. The SDDRC and the final cost invoice allocate the total interconnection cost into a few categories, like labor, materials, distribution, and substation. They do not set forth, however, which design changes caused which part of the dramatic cost increase above the original estimate.

54. None of the information provided by Xcel explains what portion of the cost increases were caused by the route change for the City of Northfield, Nokomis' request for additional underground line, or additional winter work from Xcel's construction delay.

55. Nokomis has repeatedly asked Xcel for this information. Xcel has refused to provide those details.

56. Nokomis believes that this information is essential for determining which portions of the cost increase should be borne by Nokomis.

57. For example, how much did the additional 170 feet of underground power lines cost? Was it \$20,000 or \$200,000? Xcel won't say.

58. Did the additional winter work as a result of Xcel's construction delays cost an additional 10% or an additional 30%? Xcel had said that it "typically increases the overall final costs by approximately 10-30 percent," but not whether it actually increased costs 10%, or 30%, or somewhere in between.

59. How much did the reroute with the City of Northfield contribute to the cost increase? Xcel knew about the reroute months before Nokomis began construction on the project, but has never explained how much this reroute cost.

60. Nokomis believes that it is responsible for certain cost increases, like the additional 170 ft of underground line, but without more information, there is no way to determine which costs were reasonable, and which were not.

V. REQUEST FOR RELIEF

For the reasons detailed above, Nokomis respectfully requests that the Commission issue an order (1) finding that Xcel was required to provide advance notice of the increased costs; (2) directing Xcel to delineate the causes of the cost increase from \$457,796.00 to \$665,819.28; and (3) relieving Nokomis of the obligation to pay those costs for which Nokomis did not receive advance notice.

Respectfully Submitted,

NOKOMIS ENERGY LLC & UNION GARDEN LLC




Matthew Melewski (#0329819)
The Boutique Firm PLC
5115 Excelsior Blvd. #431
St. Louis Park, MN 55416
Telephone: (612) 999-8600
Email: matthew@theboutiquefirm.com

Attorney for Complainants

CERTIFICATE OF SERVICE

I, Matthew Melewski, hereby certify that I have this day, served copies of the foregoing document on the attached list of persons by electronic filing at Minneapolis, Minnesota.

Dated this 1st day of May, 2022

/s/  _____

Matthew Melewski

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	No	GEN_SL_Nokomis Energy_Formal Complaint Union Garden
James	Denniston	james.r.denniston@xcelenergy.com	Xcel Energy Services, Inc.	414 Nicollet Mall, 401-8 Minneapolis, MN 55401	Electronic Service	No	GEN_SL_Nokomis Energy_Formal Complaint Union Garden
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	GEN_SL_Nokomis Energy_Formal Complaint Union Garden
Matthew	Melewski	matthew@theboutiquefirm.com	The Boutique Firm PLC	5115 Excelsior Blvd #431 St Louis Park, MN 55416	Electronic Service	No	GEN_SL_Nokomis Energy_Formal Complaint Union Garden
Matthew	Melewski	matthew@nokomisenergy.com	Nokomis Energy LLC & Ole Solar LLC	2639 Nicollet Ave Ste 200 Minneapolis, MN 55408	Electronic Service	No	GEN_SL_Nokomis Energy_Formal Complaint Union Garden
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	No	GEN_SL_Nokomis Energy_Formal Complaint Union Garden
Daniel	Rogers	dan@nokomispartners.com	Nokomis	2639 Nicollet Ave Ste 200 Minneapolis, MN 55408	Electronic Service	No	GEN_SL_Nokomis Energy_Formal Complaint Union Garden
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th PI E Ste 350 Saint Paul, MN 55101	Electronic Service	No	GEN_SL_Nokomis Energy_Formal Complaint Union Garden
Brandon	Stamp	brandon.j.stamp@xcelenergy.com	Xcel Energy	401 Nicollet Mall Minneapolis, MN 55401	Electronic Service	No	GEN_SL_Nokomis Energy_Formal Complaint Union Garden
Lynnette	Sweet	Regulatory.records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	No	GEN_SL_Nokomis Energy_Formal Complaint Union Garden