

**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. _____

APPENDIX



Reconciled Cost Summary for Final Invoice (or Credit)

IMPORTANT NOTE: Remainder of actual costs, incurred by Xcel Energy, shall be due within 30 days from the date the bill is mailed by Xcel Energy after project completion. See also Section 10, Sheet 117.

Enclosed you will find the Substation and Distribution costs summary, broken down by labor, transportation and material, as well as by site (where applicable).

Nokomis Wenonah 2639 Nicollet Ave., Ste. 200 Minneapolis MN 55408-1629
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SITE NAME: Union Garden LLC
COMMUNITY: Northfield

SRC Number(s): SRC068270

	Labor	Material	Transportation
Distribution			
Telemetry			
Substation			

Total Costs: \$665,819.28

Less Payment 1: (434,906.20)

Less Payment 2: (22,889.80)

Less Payment 3:

AMOUNT DUE:	<u><u>\$208,023.28</u></u>
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~ See breakdown of costs per site on next page, including labor, transportation, material. ~

Contact:

IMPORTANT NOTE: Please notify your Xcel Energy designer listed above, and the program management team at SRCMN@xcelenergy.com, if you any questions at this time.

Nokomis Wenonah
Union Garden LLC
Northfield

Page 2 of 2

DISTRIBUTION	TOTAL
SRC068270 SITE 1	665,819.28
LABOR	
MATERIALS	
TRANSPORTATION	-
TELEMETRY*	-
SUBSTATION*	
Grand Total	665,819.28

*NOTE: Any actual costs for Substation work and Telemetry, where applicable, were distributed evenly above to each site.

Thank you!

SRC068270 SITE 1	Total
LABOR- CONTRACT	
LABOR- REG TIME	
LABOR- OT/PREMIUM	
LABOR- EMPL EXP	
LABOR- OVERHEAD	
MATERIAL	
MISCELLANEOUS	
TRANSPORTATION	
Subtotal- D-Line Site 1	

SUBSTATION	Total
LABOR- CONTRACT	
LABOR- REG TIME	
LABOR- OT/PREMIUM	
LABOR- EMPL EXP	
LABOR- OVERHEAD	
MATERIAL	
MISCELLANEOUS	
TRANSPORTATION	
Subtotal- Substation	

TELEMETRY	Total
LABOR- CONTRACT	
LABOR- REG TIME	
LABOR- OT/PREMIUM	
LABOR- EMPL EXP	
LABOR- OVERHEAD	
MATERIAL	
MISCELLANEOUS	
TRANSPORTATION	
Subtotal- Telemetry	

Grand Total	665,819.28
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RE: Solar Detailed Design Results Communication

Enclosed you will find the Substation and Distribution detailed design results, broken down by labor, transportation and material. If you have questions regarding the results of the design, please see the respective contact information below.

Distribution:

Rebuild existing 3ph to 556 AAC (~.82 miles), replace transformers and fusing, install switches, extend primary, and install padmount transformer.

Substation:

Bus conductor: Replacement of 336AL jumper reconductoring to 556AL

	Labor	Transportation	Material
Distribution			
Telemetry			
Substation			
Total			<u>\$605,862</u>

Distribution contact: [REDACTED]

Substation contact: [REDACTED]

****Important note:** Please notify your Xcel Energy designer and the program management team at SRCMN@xcelenergy.com if you are considering not proceeding with this project at any time.

Dispute Regarding Union Garden LLC Final Cost Invoice

We are writing to formally dispute Xcel Energy's (Xcel) final cost invoice of \$665,819.28 for the interconnection cost of Union Garden, LLC (Project), a 1MW solar garden system. The dispute concerns Xcel's unreasonable cost increase of approximately \$200,000 from that of the original cost estimate for the Project. This sudden cost increase is (1) unreasonable because the final cost was not reasonable under the circumstances of a 1MW solar garden system, and (2) Xcel failed to provide us with an accurate cost estimate in the Solar Detailed Design Results Communication (SDDRC) before we committed to the Project. Section 10 of Xcel's Tariffs provides for the parties to "attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner" for up to 30 days. *See* Interconnection Process for Distributed Generation Systems, Section B. If the parties cannot resolve the dispute within thirty (30) days after written notice of the dispute, the Parties shall submit the dispute to mediation for a period of 90 days. *Id.*

Disputing Parties' Position

First, the original interconnection agreement between Nokomis Wenonah and Xcel had an original cost estimate of \$457,796.00 for the Project. Yet, on August 31, 2021, we received a final invoice cost of \$665,819.28, an increase of approximately \$200,000. This sharp rise in cost is both unreasonable and inconsistent with Section 10 of Xcel's Tariffs.

The language within the interconnection agreement, which is the agreement template set forth in Section 10 of Xcel 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."
(emphasis added) (Sheet No. 10-117)

The last sentence quoted above functions as a governing principle to protect developers from unreasonable cost increases. It may be reasonable for the final cost to differ slightly from the original estimated cost, but it is completely unreasonable for the cost to increase by approximately \$200,000 for a 1MW solar garden system.

Secondly, Xcel failed to communicate the cost increase by not providing us with an SDDRC before we could withdraw from the Project. Despite requests from Nokomis for the SDDRC during the months leading up to the project's construction in Q4'20-Q1'21, Xcel only produced the SDDRC on September 15th, 2021, 6 months after the project was connected to their grid by Xcel. The Interconnection Process outlined in Section 10 of Xcel's Tariffs provides clear steps on when we have to commit or withdraw from the Project. (Sheet No. 10-96 & 97). Step 6 was our last opportunity to withdraw from the Project and we chose not to withdraw based on the original cost estimate. Without receiving the SDDRC with an updated cost estimate before our opportunity to withdraw from the Project, we were not given full and accurate information to

consider our commitment to the Project. Therefore, we should not be asked to pay for an unreasonable cost increase when we were not presented with an updated cost estimate before we had the opportunity to withdraw from the Project.

Again, a \$200,000 increase from the last estimate we were provided, is unreasonable for a 1MW solar garden system and unreasonable because we were not provided an opportunity to withdraw from the project. We should not be expected to pay for an unreasonable cost increase that is inconsistent with the interconnection agreement and Section 10 of Xcel's Tariffs.

We are happy to participate with Xcel in good faith negotiations to resolve this dispute. Assuming the parties are unable to reach a resolution, we have included a list of potential mediators for this dispute that we believe would be acceptable to Xcel. Please let us know if you have any potential mediators that you would add to this list:

- Phyllis Reha
- Rolf Nordstrom
- Beverly Heydinger

We look forward to working with Xcel to find an acceptable solution to this dispute. We also reserve our right under Minn. Stat. 216B.164 Subd. 5 and Minn. Stat. 7835.4500 to seek review of this dispute directly with the commission.

Finally, please confirm that the invoice dated September 15, 2021 for the final amount due will be held in abeyance pending resolution of this dispute, notwithstanding the requirements of Tariff 10, Sheet 117.

Sincerely,



Matthew Melewski
General Counsel, Nokomis Energy



Chris Frantz
Excelsior Energy Capital

RE: Union Garden, LLC, Case # 3124715
Notice of Dispute (received October 3, 2021)

Matthew,

We are writing to provide Nokomis Energy (Nokomis) with relevant regulatory and/or technical details and analysis regarding the interconnection costs currently under dispute. In regard to the dispute resolution process for a pre-MN DIP application, the Company's tariff sheets 10-121 to 122 provides for each party to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner for up to 30 days. If the parties cannot resolve the dispute within thirty (30) days after written notice of the dispute, the Parties shall submit the dispute to mediation for a period of 90 days.

The Notice of Dispute submitted by Nokomis on October 3, 2021 (Notice), discussed the following disputed matters for case number 3124715:

1. Xcel Energy was "unreasonable and inconsistent" with the Company's tariff sheet 10-117 regarding a \$200,000 cost increase from the original cost estimate to the final invoice cost; and
2. During Step 6 of the interconnection process, Xcel Energy failed to communicate the detail design cost estimate, and this allegedly deprived Nokomis of the opportunity to cancel this project.

Our mutual goal is to resolve the dispute in hand for Nokomis' Union Garden, LLC (SRC # 068270), however, we do note that the allegations made within the Notice are incorrect. The Company provides further discussion on these two disputed matters below.

1. Cost Increase between the original estimate and final invoice

There are a number of factors that contributed to the approximate \$200,000 increase from the original indicative cost estimate provided in the Interconnection Agreement (IA) to the final invoice cost. The cost increases consist of the following:

- Rebuild variances and winter construction;
- Requirement by the City of Northfield for an alternative route; and
- Design changes requested by Nokomis.

We provide further details into these factors below.

Rebuild Variances

At the time of the IA, it was estimated that rebuild would be for 4,277 ft. while the Detailed Design determined that 4,850 ft. was actually required. The IA estimation of the labor costs associated with the rebuild was lower than actual costs due to variances to the rebuild length,

actual work conditions and the addition of winter construction. Winter construction by itself typically increases the overall final costs by approximately 10-30 percent¹. The Detailed Design process also identified the need to extend the primary line.

Separately, there were multiple corners that required additional extension of 556 conductor to the other side of the road in order to properly guy the poles.

These changes in aggregate led to cost increases in ways that were not predictable at the time of the original indicative cost estimate.

Requirement by the City of Northfield

A portion of the cost increase was due the City of Northfield requiring an alternative route. As communicated to Nokomis (Julian White) in February and April 2020, the City of Northfield is particular about utility construction in their city and the Company was upfront on the complexities with permitting for this project. Nokomis was made aware that there would be a different design that would affect costs, due to the City of Northfield's requirement for an alternative path.

Design Changes Requested by Nokomis

In Q4 2020, Nokomis and Xcel Energy were involved in multiple discussions regarding changes to the Union Garden LLC project as requested by Nokomis. In December 2020, Nokomis (Julian White) had requested for the Company to move poles closer to the right of way (ROW) while also running additional underground cable to the Union Garden, LLC site, in order to accommodate what Nokomis stated as "the landowner's strong preference of going underground for as much of the run as possible."

This change altered the way that the site was originally studied, where it had originally assumed overhead all the way to the padmount transformer. The Company made note of this to Nokomis along with explaining that overhead is our standard, is the most cost effective, has higher reliability, and generally has better accessibility. However, Nokomis insisted that the above noted changes be made along with making note that "the additional cost of construction is for Nokomis to bear." The Company agreed to allow the additional underground, which turned out to be 60 ft overhead and 420 ft underground, compared to the original estimate of 230 ft overhead and 250 ft underground, and move the proposed poles closer to the ROW on December 21, 2020. Nokomis responded the same day, noting that their site was mechanically complete.

Nokomis was fully aware that the costs were going to be higher than the original estimate provided in the IA, due to the scope of work being changed as described above.

¹ See Xcel Energy's September 12, 2018 Workgroup Meeting Minutes, PDF page number 7, Docket No. E002/M-13-867 (filed November 16, 2018).

Additionally, Nokomis' allegation that the sharp rise in cost "is both unreasonable and inconsistent" with the Company's tariff sheet 10-117 is inaccurate. The language noted in our tariff sheet 10-117 is substantially different from what Nokomis cited and states instead as follows:

The payment for the costs outlined in Exhibit B, shall be as follows:

- i. 1/3 of estimated costs, outlined in Exhibit B, shall be due upon execution of this agreement.
- ii. 1/3 of estimated costs, outlined in Exhibit B, shall be due prior to initial energization of the Generation System, with Xcel Energy.
- iii. Remainder of actual costs, incurred by Xcel Energy, shall be due within 30 days from the date the bill is mailed by Xcel Energy after project completion.

The quote Nokomis provided is from tariff sheet 10-116 which refers to the costs for the design and construction being reasonable under the circumstances. Here, the actual costs align with the costs for the design and construction. The costs associated with the changes described above are reasonable, as these costs increased due to the local permitting authority's requirements, changes to the site requested by Nokomis, as well as winter construction and rebuild variances.

2. Failed to communicate the cost increase by not providing a detailed design cost estimate before the project could be withdrawn

There is no tariff requirement for the Company to provide detailed design cost estimates. The Company has been voluntarily providing detailed design costs for projects in the CSG program and for larger DER projects.

Nokomis alleges that it had requested a detailed design cost estimate during the months leading up to the project's construction in Q4'20 – Q1'21. The Company, however, has no record or recollection of Nokomis ever requesting the detail design cost estimate during this timeframe. As a standard business practice, if a detailed design cost is requested by a developer, the Company will provide those costs once they have been finalized. Our records show that Nokomis requested the detailed design costs on August 17, 2021, and the Company provided them to Nokomis on September 15, 2021.

Additionally, Nokomis alleges that per the Company's Section 10 tariff that outlines the interconnection process, Step 6 (Final Go-No Go decision by applicant) (tariff sheets 10-96 to 10-97) was their last opportunity to withdraw from the Project, and that they chose not to withdraw because no detailed design cost estimate was provided as required by this tariff provision. Nokomis is misreading the tariff. Step 6 includes the requirement that the Interconnection Agreement be signed. The signature on this shows the decision to proceed. As stated in that tariff provision, "Should the Applicant decide to proceed, a more detailed design,

if not already completed by the Applicant, must be done and the following is to be supplied to [Xcel Energy] ... Signed Interconnection Agreement.” Step 6 only includes action required by the Applicant, and contains no action required by Xcel Energy. Additionally, after the IA is signed, Nokomis can still cancel their project at any time (see tariff sheet 10-118).

Further, as previously noted above, Nokomis in December 2020 requested that the Company move poles closer to the Right of Way (ROW) while also running additional underground cable to the Union Garden, LLC site, in order to accommodate “the landowner’s strong preference of going underground for as much of the run as possible” and that “the additional cost of construction is for Nokomis to bear.” The Company’s detailed design cost estimate should not be expected until after the design for our work has been finalized, and the design was still a moving target up to December 2020 due to design changes being requested by Nokomis that we accommodated. By that time, Nokomis had already completed its own work on this project.

Per the Company’s records, Nokomis’ Union Garden, LLC site was mechanically completed by Nokomis on October 7, 2020. Detailed design cost estimates for the work to be done by Xcel Energy had not been finalized until January 2021, after the above-described changes from Nokomis had been requested.

The Company respectfully requests that within 30 Days of the Notice of Dispute (meaning on or before November 2, 2021) the parties’ authorized representatives meet and confer and try to resolve the dispute. We’ve proposed a few times we are available for discussion below. Can you please let us know which option works best for your team, and who from Nokomis should be in attendance?

- Tuesday, October 26th: 8:30am – 9:00am CST
- Thursday, October 28th: 8:00am – 8:30am CST
- Monday, November 1st: 3:00pm – 3:30pm CST

Thank you.

Brandon Stamp

Hi Matthew,

As a follow-up to our November 1, 2021 dispute resolution call regarding the Union Garden, LLC project (Union Garden), I wanted to provide some additional clarity on the indicative cost estimates/final invoice, along with our proposed resolution to the dispute in hand.

Clarity on Cost Estimates and Final Invoice:

The Company would like to further clarify the relationship between the detail design cost estimate and final invoice. The dates on the PDF documents for both the detail design cost estimate and final invoice are auto populated based on the dates that the underlying documents were last accessed, rather than the dates that the detailed cost estimate or final bill were finalized. Below are the following costs that have been communicated to Nokomis, regarding the Union Garden project:

- Indicative Cost Estimate from IA: \$457,796.00
- Detail Design Cost Estimate (January 2021): \$605,862.00
- Final Actual Cost (August 2021): \$665,819.28
- Difference from Final Actual Costs
to Indicative Cost Estimate from IA: **\$208,023.28**

The detail design cost estimate was finalized by the Company in January 2021 and was based on estimates that did not detail the full extent of the work that was completed (because the project was completed in March 2021). The detail design cost estimate was inadvertently not sent to Nokomis at the time it was finalized in January 2021. Had a PDF version of this document been sent to Nokomis in January 2021, it would be identical to the content of the PDF version of this document sent to Nokomis in September, but it would have had a January 2021 date instead. Later, the detail design cost estimate had been requested by Nokomis and was sent on September 15, 2021. The PDF document that was sent to Nokomis had an August 19, 2021 date because that was the date the underlying document had last been accessed, not the date the detailed design estimate was actually finalized.

- **Detail Design Cost Estimate:**
 - These costs were estimates.
 - **Finalized: January 2021**
 - **Last Accessed (date shown on the PDF document): August 19, 2021**
 - **Sent to Nokomis: September 15, 2021**
- **Final Invoice:**
 - These costs were actual true ups, based on the work that was performed.
 - **Finalized: August 2021**
 - **Last Accessed (date shown on the PDF document): August 13, 2021**
 - **Sent to Nokomis: August 17, 2021**

The final invoice was finalized in August 2021 (approximately 120 days after the Union Garden site was given permission to operate (PTO),¹ well after the January 2021 detail design cost estimate had been finalized. The final invoice was based on the actual work that had been performed, rather than the

¹ A final invoice typically takes approximately 120 day to complete from the date a project is granted PTO.

estimates that were reflected in the earlier detail design cost estimate. The Company sent the final invoice to Nokomis on August 17, 2021.

To summarize, the detail design cost estimate was finalized in January 2021 and sent to Nokomis on September 15, 2021. The final invoice should be used to discuss final actual costs/work that was actually performed, rather than earlier estimates reflected in the detail design cost estimate.

Proposed Dispute Resolution:

The amount owed to Xcel Energy is the amount in the final invoice (\$665,819.28) less previously paid amounts. The previously paid amounts equal the indicative cost estimate in the Interconnection Agreement (IA) (\$457,796). This brings the amount owed for the Union Garden project totaling **\$208,023**. As part of the dispute resolution, the Company proposes the following:

1. Nokomis to pay within 20 Business Days a total 120 percent of the indicative cost estimate for the Union Garden project less previous amounts paid. This would be a payment for **\$91,559**. Nokomis to-date has paid the indicative cost estimate (\$457,796) for the Union Garden project.
2. The remaining amount owed to Xcel Energy (\$208,023 - \$91,559 = **\$116,464**) would be applied to projects that do not yet have a final bill. For these projects, the Company would take the difference between 120 percent of the indicative cost estimate in each applicable IA and the final costs for these projects, and apply the difference as a settlement adder to these other Nokomis projects (until the full amount owed to Xcel Energy has been recovered). The maximum amount that would be charged to any one project would not exceed 120 percent of the indicative cost estimate noted in the applicable IA. For example, as shown in Table 1 below, for the future/existing project no. 1 and 2, the Company would subtract 120 percent cap of the indicative cost estimate in IA from the final costs (column C – column D) and apply the difference as a settlement adder (column E) until the remaining amount owed to the Company (\$116,464) has been fully recovered. We may have some flexibility to allow Nokomis to choose the projects subject to this settlement adder, but we would not want to see this drawn out.

Table 1: Cost Recovery Example

A.	B.	C.	D.	E.
Project	Indicative Cost Estimate in IA	120% Cap of Indicative Cost Estimate in IA ²	Final Costs	Settlement Adder
Future/Existing Project No. 1 (Proxy)	\$400,000	\$480,000	\$420,000	\$60,000 ³
Future/Existing Project No. 2 (Proxy)	\$400,000	\$480,000	\$380,000	\$56,464 ³
Cost Recovery to Xcel Energy (with the addition of the above \$91,559)				\$208,023

² Calculated by taking the Indicative Cost Estimate in IA (column B) and multiplying by 1.20

³ Settlement Adder for this project is calculated by subtracting 120% Cap of Indicative Cost Estimate in IA (column C) from Final Costs (column D). This difference is then offset against the remaining amount owed to Xcel Energy.

There will be a tracker used to ensure that a good process is used as we move this forward. Due to system limitations, the additional settlement adder line item cannot be broken out of the total project costs. Due to this limitation, a subsequent email will be sent for the applicable projects that the settlement adder is applied to, breaking out a separate line item for the settlement adder. Nokomis would see an additional line item (Union Garden settlement adder) on other projects that would be capped at 120 percent of the indicative cost estimate in the IA.

We look forward to further discussing this matter with you on Tuesday, November 23, 2021 and welcome any proposed resolutions that Nokomis may have.

Thank you.

Brandon Stamp
Xcel Energy

Union Garden LLC	IA	Final	% Δ	Questions	Answer
Substation Materials			-96%	What material was originally forecast?	
Substation Labor			-14%	What material was actually installed?	
Substation Equipment			-96%		
Substation Subtotal			-33%		
Distribution Materials			-62%	What material was originally forecast?	
Distribution Labor			1331%	What materials were actually installed?	
Distribution Equipment			-100%	How many labor hours were originally forecast?	
Distribution Subtotal			61%	How many total hours were actually worked?	
Metering Materials			-100%		
Metering Labor			-100%		
Metering Equipment			-100%		
Metering Subtotal			-100%	Why was the metering line item removed and where is this accounted for?	
Total	457,796	665,819	45%	Xcel damaged our road during the build and fixed the damage. How can we collectively confirm where is that cost accounted for?	



2021 Q4 MN DER STAKEHOLDER WORKGROUP

Solar*Rewards Community

Solar*Rewards

Distributed Generation

November 10, 2021

Design & Construction

Detailed Design Cost Estimate

- 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
- If you are not getting these from your Designers, **please ask** your Designer

We recommend you track your field change requests after receiving estimates. This would avoid many cost disputes as field changes are not always well communicated throughout the developer organization and contractors, leading to corporate surprises of costs caused by requested field changes. It's up to you to manage your projects and changes / cost implications.