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June 14, 2022

Via Electronic Filing

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

RE: DOCKET NO. E002/CI-22-212

Dear Mr. Seuffert:

Nokomis Energy submits to the Minnesota Public Utilities Commission these Reply Comments in response to the Commission's May 6, 2022 Notice of Comment Period. We have electronically filed this document with the Minnesota Public Utilities Commission, and copies have been served on the parties on the attached service list. Please contact me at matthew@nokomisenergy.com or (612) 999-8600 if you have any questions regarding this filing.

Regards,

Matthew D. Melewski
General Counsel

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

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

Docket No. E002/CI-22-212

REPLY COMMENTS

Nokomis Energy (“Nokomis”) respectfully submits these Reply Comments in response to the Notice of Comment Period, dated May 6, 2022.

INTRODUCTION

On May 1, 2022, Nokomis filed a Formal Complaint against Xcel Energy (“Xcel”) regarding the final interconnection costs for the Union Garden solar project. The Commission issued a notice of comment period on May 6, 2022, on the following topics:

- Does the Commission have jurisdiction over the subject matter of the Complaint?
- Are there reasonable grounds for the Commission to investigate these allegations?
- Is it in the public interest for the Commission to investigate these allegations upon its own motion?
- If the Commission chooses to investigate the Complaint, what procedures should be used to do so?

On June 4, 2022, Xcel submitted Comments arguing that there are no reasonable grounds for the Commission to investigate the allegations, nor is it in the public interest for the Commission to further investigate the allegations upon its own motion.

These Reply Comments respond to only two aspects of Xcel’s Comments. First, Xcel seems to be rewriting the plain language of the applicable Tariff provision. Second, Xcel makes two inter-related factual claims that it knows to be false: (i) that Nokomis did not request a Solar Detailed Design Results Communication, and (ii) that Xcel does not recognize the acronym “SDDRC.”

COMMENTS

I. Xcel is Attempting to Rewrite the Tariff Language

Nokomis' Complaint alleges that, contrary to Xcel Tariff 10, Sheet No. 10-116, the final interconnection costs Xcel has sought it impose are not "reasonable under the circumstances of the design and construction." Xcel addresses this allegation as follows:

Nokomis is stating the legal standard incorrectly, and therefore no actionable allegations have been submitted. Under the tariff language, Nokomis is responsible for paying the actual costs of interconnection even if these costs exceed the indicative cost estimate in the IA. Further, the tariff in fact states that the Interconnection Customer is responsible for all actual costs, which "must be reasonable under the circumstances of the design and construction." **Therefore, the correct legal standard is whether the upgrades (and their costs) were reasonable requirements for interconnection design and construction.** And Nokomis has not claimed that any of the required upgrades were unreasonable under this standard.¹

Xcel later expands on this statement:

Nokomis does not cite to any provision in the tariff that would excuse payment of the actual costs. Nokomis instead relies on a phrase within a sentence, but not the whole sentence, to argue that it should not be required to pay the actual costs. Nokomis cites the following from our tariff sheet 10-116: "All costs, for which the Interconnection Customer is responsible for, must be reasonable under the circumstances of the design and construction." Nokomis emphasizes "reasonable under the circumstances" but ignores the modifying phrase "of the design and construction." **This is consistent with the description on how Xcel Energy is to carry out the design and construction referenced on IA sheet 10-116 in Section IV.C as set forth above. Nokomis has not challenged the reasonableness of the design and construction.**²

The Tariff language at issue provides that the interconnection customer is responsible for the costs of interconnection, even if they exceed the estimated amounts. There is, however, a following caveat, that "[a]ll costs, for which the Interconnection Customer is responsible for, must be reasonable under the circumstances of the design and construction."³ The meaning of the language here is plain: the interconnection customer is responsible for the costs of interconnection, *so long as* those costs are reasonable under the circumstances of the design and construction.

Xcel's interpretation does violence to the plain language. Under Xcel's reading, the phrase "must be reasonable" is not directed at "costs," but rather the "design and construction," such

¹ Xcel Comments at 8 (emphasis added).

² Xcel Comments at 17 (emphasis added).

³ Xcel Tariff 10, Sheet No. 10-116.

that the design and construction, not the costs, must be reasonable. This is obviously incorrect. If we remove the modifiers in the sentence for the sake of exposition, the sentence reads: “All costs must be reasonable.” Which costs are those? The ones for which the Interconnection Customer is responsible. In what way must they be reasonable? Under the circumstances of the design and construction.

Xcel appears to be rewriting this provision of the Tariff.

II. Xcel’s Factual Claims Are False

The Complaint notes that: “On June 26, 2020, Nokomis requested the SDDRC from Xcel via email. Xcel never responded to this request.”⁴ That email request, attached in the Appendix, asks of the Xcel engineer for the project: “Let me know when the SDDRC is ready.”⁵ Xcel does not directly respond to this claim, but generically states that Xcel “has no record or recollection of Nokomis ever requesting the detail design cost estimate until November 11, 2020.”⁶

Separately, Xcel includes a curious statement in a footnote:

“Nokomis uses the confusing term SDDRC which it made up to refer to the Detailed Design cost estimate. To avoid confusion, in our comments we do not use the Nokomis coined term but instead stick with the term that developers in the industry know and use.”

This is a very odd statement. The Complaint initially refers to Xcel’s detailed design cost estimate as the “Solar Detailed Design Results Communication,” because that is the title of the document that Xcel has given it.⁷ The complaint then proposed to use the acronym “SDDRC” instead of typing “Solar Detailed Design Results Communication” throughout the Complaint.⁸

Nothing about this is “confusing.” Business documents, correspondence, and legal filings routinely use acronyms. For example, Xcel’s Comments use “IA” in place of Interconnection Agreement, “DER” instead of Distributed Energy Resources, and “CSG” in lieu of Community Solar Garden. This practice is entirely typical and easy to understand.

Moreover, SDDRC is not a new term that Nokomis just coined. It is an acronym for the title of a document that Xcel routinely provides to developers in the industry. The Appendix contains some examples of other SDDRCs⁹ and communications with Xcel using the acronym SDDRC, including with the Xcel engineer assigned to the Union Garden project. The SRC meeting agenda between Nokomis and Xcel commonly uses the phrase SDDRC.¹⁰ There are other emails from Nokomis asking for the SDDRC for other projects, to which the Xcel designer responds

⁴ Complaint ¶ 15.

⁵ Appendix at 2.

⁶ Xcel Comments at 14.

⁷ Complaint ¶ 9; *see* Appendix at 4.

⁸ Complaint ¶ 9.

⁹ Appendix at 5-7.

¹⁰ Appendix at 8-9 (highlight added).

with a date or the SDDRC.¹¹ This acronym is commonly used in communications between Nokomis and Xcel, and Xcel is fully aware of its use.

In light of this, why would Xcel claim that SDDRC is confusing and something Xcel does not recognize? The only conclusion Nokomis can reach is that Xcel is claiming not to know what Nokomis means by “SDDRC” in order to deny ever receiving a request for the “detailed design cost estimate” for the Union Garden project.

¹¹ Appendix at 10-15. (highlight added).

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, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at Minneapolis, Minnesota.

Docket No. E002/CI-22-212

Dated this 14th day of June, 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
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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
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