

## Staff Briefing Papers

Meeting Date	August 25, 2022	Agenda Item 5**
Company	Northern States Power d/b/a Xcel Energy	
Docket No.	<b>E002/C-22-212</b>	
	<b>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</b>	
Issue	Should the Commission investigate the Formal Complaint by Nokomis Energy LLC and Union Garden LLC Against Northern States Power Company dba Xcel Energy?	
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### Relevant Documents

### Date

Nokomis Energy, LLC, Formal Complaint	May 2, 2022
Department of Commerce- Division of Energy Resources, Comments	June 1, 2022
Xcel Energy, Initial Comments	June 3, 2022
Nokomis Energy, LLC, Reply Comments	June 14, 2022
Nokomis Energy- Appendix to Filed Reply Comments	July 14, 2022

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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.

## I. Statement of the Issues

Should the Commission investigate the Formal Complaint and Petition for Relief by Nokomis Energy LLC and Union Garden LLC Against Northern States Power Company dba Xcel Energy?

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

## II. Background

On May 2, 2022, Nokomis filed a Formal Complaint against Xcel Energy requesting relief regarding interconnection costs in the Union Garden 1 MW solar project.

On June 1, 2022, the Department of Commerce-Division of Energy Resources filed Comments addressing this docket.

On June 3, 2022, Xcel Energy filed Initial Comments addressing this Formal Complaint.

On June 14, 2022, Nokomis filed reply comments.

On June 15, 2022, Nokomis filed an Appendix to its Reply Comments filed June 14, 2022.

All parties acknowledge Union Garden interconnected under Xcel's Community Solar Garden Program and pre-MN DIP interconnection standards found in Sections 9 and 10 of Xcel Energy's ratebook. The relevant provision for dispute resolution states the following:<sup>1</sup>

The following is the dispute resolution process to be followed for problems that occur with the implementation of this process.

1. Each Party agrees to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner.
2. In the event a dispute arises under this process, and if it cannot be resolved by the Parties within thirty (30) days after written notice of the dispute to the other Party, the Parties shall submit the dispute to mediation by a mutually acceptable mediator, in a mutually convenient location in the State of Minnesota. The Parties agree to participate in good faith in the mediation for a period of 90 days. If the parties are not successful in resolving their disputes through mediation, then the Parties may refer the dispute for resolution to the Minnesota Public Utilities Commission, which shall maintain continuing jurisdiction over this process.

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<sup>1</sup> Xcel Energy Rate Book, Sec. 10; Sheet No. 85

Additionally, the parties agree that Nokomis and Xcel Energy were unsuccessful in mediation and the Commission has jurisdiction to resolve or dismiss the Formal Complaint. As discussed later, parties disagree on the legal standard the Commission should apply.

### **III. Nokomis Complaint**

Nokomis alleges that the increased interconnection costs of the 1 MW Union Garden Project are unreasonable.

#### *Summary of Nokomis's Facts*

Specifically, Nokomis argues that Xcel Energy violated Minn. Stat. § 216B.164, Minn. R. 7829.1700, and Section 10 of the Company's tariff because (1) the increased interconnection costs of the CSG project are unreasonable under the circumstances; and (2) Xcel Energy failed to provide adequate notice that the interconnection costs increased from the initial cost estimate of \$457,796.00 to \$665,819.28, a difference of \$208,000, or roughly 45%.

First, Nokomis asserts that Xcel failed to provide Nokomis with updated cost estimates. The initial cost estimate of the project was \$457,796.00, as set by the Interconnection Agreement on May 28, 2019. The service date for this project was set for January 21, 2021. However, Nokomis asserts that information of the cost increase was made available five months after the project was completed, and fourteen months after a detailed cost estimate was requested.

Nokomis asserts that a "Solar Detailed Design Result Communication," (hereinafter "SDDRC") was requested via email on June 26, 2020, and that Xcel never responded to this request. Without a detailed design cost estimate or updated cost estimate, Nokomis began construction in the fall of 2020.

During the fall of 2020, Nokomis became aware of issues in the construction process. First, Xcel informed Nokomis that the in-service date for the Union Garden project will be moved to March 1, 2021, due to construction delays. Second, in response to a November 11, 2020, email, Nokomis alleges that an Xcel engineer informed Nokomis that design was "about 5 weeks out."<sup>2</sup> Additionally, in December of 2020, Nokomis and Xcel Energy worked to place an additional 170 feet of power line underground based on the landowner's preferences.

Union Garden received permission to operate on March 25, 2021. Thereafter, on August 17, 2021, Nokomis asserts that it was informed that interconnection costs had risen to a total of \$665,819.28. Nokomis asserts that on September 15, 2021, Xcel provided Nokomis with an SDDRC dated August 19, 2021, with a detailed design cost of \$605,862.00.

#### *Nokomis's Allegation*

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<sup>2</sup> Nokomis Complaint, p. 4

Nokomis relies on the language in Xcel Energy's tariff, which states that "All costs, for which the Interconnection Customer is responsible [sic] for, must be reasonable under the circumstances of the design and construction."<sup>3</sup>

Nokomis argues that because Xcel Energy failed to provide prior notice of the cost increase, and because Xcel Energy has not provided sufficient information around the reasons for the increased interconnection costs, Nokomis could not accurately evaluate the economic viability of the Union Garden project and was unable to modify or withdraw from the project. Thus, the price increase is not reasonable under the circumstances.

Nokomis first notes that it has historically relied on receiving SDDRCs from Xcel when constructing several prior community solar gardens. Xcel's historic role has been to provide an SDDRC after completing the detailed design of the project, and before construction. Xcel's failure to provide an SDDRC until six months after the project was interconnected to Xcel's grid and given permission to operate deprived Nokomis of crucial information about the Union Garden project.

Nokomis further asserts that following the initiation of this dispute, Xcel altered its policy of providing SDDRCs to developers. In the 2021 Q4 MN DER Stakeholder Workgroup presentation Xcel indicated that Detailed Design Cost Estimates are provided voluntarily, and it is the responsibility of the developer to reach out to the assigned designer to receive one.

Additionally, Xcel did not provide detailed information of cost increases even after construction, and Xcel provided vague responses indicating the cost increase was due to rebuild variances, winter construction, requirements by the City of Northfield for an alternative route, and Design changes requested by Nokomis. Nokomis asserts that it repeatedly asked Xcel for information regarding the portion of the cost increases attributed to the route change for the City of Northfield, Nokomis' request for additional underground line, or additional winter work, and that Xcel refused to provide those details.

#### Relief Requested and Process

Nokomis requests the Commission issue an order:<sup>4</sup>

- (1) Finding that Xcel Energy was required to provide advance notice of 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 the costs for which Nokomis did not receive prior notice.<sup>5</sup>

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<sup>3</sup> Xcel Energy Ratebook, Sec. 10, Sheet 116.

<sup>4</sup> As noted above, at this stage the Commission is determining only whether to further investigate the complaint and need not make determinations on these questions at this time.

<sup>5</sup> Nokomis Complaint, p. 2.

#### IV. Parties' Comments

The parties do not dispute the Commission has jurisdiction over this complaint. (**Decision Option 1**). The parties disagree on whether there are reasonable grounds or a public interest to investigate the complaint, and the legal standard applicable to the dispute.

Staff notes that 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.

##### Xcel Energy

Xcel's response first describes the significant expense of the CSG program in Minnesota for ratepayers and how Xcel is a national leader in interconnecting solar gardens.

Xcel Energy argues that it is not in the public interest, nor are there reasonable grounds for the Commission to investigate Nokomis's Union Garden Complaint because all claims for relief requested by Nokomis are inappropriate. Xcel provides several arguments in support of that assertion: 1) Xcel completed its Detailed Design estimate in January of 2021, promptly after Nokomis provided all changes to Xcel Energy; (2) Xcel Energy provided Nokomis with explanations of the facts contributing to cost increase; (3) Xcel's tariff requires the Interconnection Customer to be responsible for the actual cost so long as the construction and design are reasonable; (4) an award of the requested relief would result in a non-standard interconnection process in violation of Minn. Stat. §216B.1611, subd. 2; and (5) the requested relief would discriminate against other interconnection customers in violation of Minn. Stat. §216B.06, Minn. Stat. §216B.07, Minn. Stat. §216B.03 and Minn. Stat. §216B.23.

Xcel Energy asserts that Nokomis had opportunities to receive the Detailed Design cost estimate before making the decision to begin construction, and that the Company has no record or recollection of Nokomis requesting a detailed design cost estimate prior to November 11, 2020. Nokomis and Xcel Energy had bi-weekly calls to discuss the progress of several projects, during which Nokomis was directed to reach out directly to their Designer.

Xcel asserts that Nokomis chose to proceed with the construction of the Union Garden project without seeing the Detailed Design cost estimate. Xcel Energy additionally disputes Nokomis' assertion that a Detailed Design cost estimate was provided six months after the project was interconnected- Xcel asserts that design cost estimates for the work to be done by Xcel Energy were finalized in January of 2021.

Further, Xcel disputes Nokomis' interpretation of the relevant tariff, arguing that because the increase in price was reasonable in its design and construction, Nokomis is responsible for the actual cost of the project. Xcel asserts that Nokomis does not dispute the reasonableness of the construction of the Union Garden project, which was built according to Company standards and was not overbuilt. Xcel includes numerous examples of other projects with cost-estimate

variances of similar or larger cost increases in support of this argument.<sup>6</sup> Xcel argues that as such, the construction and design of the project is reasonable under the tariff standard and Nokomis' requested relief is a claim for special treatment by asking the Commission for an order discriminating in favor of Nokomis compared to other developers who paid the actual costs of interconnection.

Xcel Energy also alleges that the Commission has no authority to grant the requested relief, which is essentially an award for compensatory damages. Xcel cites to several Minnesota Supreme Court cases articulating that the Commission does not enjoy the power to award monetary damages.

Lastly, Xcel argues that an award of the requested relief would violate the filed rate doctrine. Xcel cautions that the tariff would first need to be revised to allow monetary consequences for violation of the tariff, and that changed tariff would only have prospective effect. Xcel cites to several court cases, Minn. Stat. §216B.23, subd. 1 (1984), and the April 22, 2021, Commission hearing on the Solar\*Rewards Community program to support this argument.

#### *Commission Process*

Xcel Energy requests the Commission dismiss the Complaint and deny all requests for relief **(Decision Option 3)**.

Xcel also asks that if the Commission determines it is in the public interest to further examine the issues, the Commission broker a settlement wherein Nokomis pays a total of 120% of the indicative cost estimate for the Union Garden project less previous amounts paid (asserted to be \$91,559) within 20 business days. **(Decision Option 5)**. The remaining amount owed by Nokomis (cited as \$116,464.00) would be applied to Nokomis projects that do not have a final bill.

#### Department of Commerce

The Department does not address the specific issues raised by Nokomis or Xcel. Instead, the Department recommends the Commission find jurisdiction over the complaint and establish a process for filing comments and reply comments. **(Decision Option 2)**.

#### Nokomis' Reply

Nokomis argues that Xcel appears to rewrite the plain language of the applicable Tariff provision, which states that an interconnection customer is responsible for all costs, which "must be reasonable under the circumstances of the design and construction."<sup>7</sup> Nokomis states

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<sup>6</sup> Xcel Energy Reply Comments, pg. 10-11, Table 2.

<sup>7</sup> Xcel Tariff 10, Sheet No. 10-116.

that Xcel's interpretation "does violence to the plain language" in interpreting the "reasonable" standard of the tariff to apply to "design and construction" instead of "costs."<sup>8</sup>

Nokomis also asserts that Xcel makes two false factual claims. The first regards whether or not Nokomis requested a Solar Detailed Design Results Communication. Nokomis asserts that Xcel's statement indicating it does not have any record or recollection of Nokomis' request for a Detailed Design estimate is false because Nokomis sent an email to the Xcel engineer on the project on June 26, 2020, to "Let me know when the SDDRC is ready."<sup>9</sup>

The second refers to Xcel's recognition and use of the acronym "SDDRC." Nokomis argues that Xcel has coined and historically used the acronym "SDDRC" and initially referred to the detailed design estimate as the "Solar Detailed Design Result Communication." Nokomis indicates that Xcel is attempting to deny receiving a request for the detailed design cost estimate by refusing to recognize the acronym "SDDRC."

## **V. Staff Analysis**

### Jurisdiction

Staff agrees with the parties that the Commission has jurisdiction over the complaint (**Decision Option 1**). Parties cite to various statutes, rules and tariffs for the Commission's legal authority.

### Reasonable Grounds or Public Interest

The core question before the Commission is whether there are reasonable grounds or a public interest for the Commission to further investigate:

- 1) Whether Xcel Energy is required to provide advance notice of the increased interconnection costs of the Union Garden project;
- 2) Whether Xcel Energy should delineate the causes of the increased costs; and
- 3) Whether Nokomis should be relieved of the obligation to pay those costs for which it did not receive advance notice.

Xcel Energy is the only party arguing for dismissal based on no reasonable grounds or a public interest for further investigation of this Complaint. The Department does not address the issue.

A finding that there are reasonable grounds to investigate (**Decision Option 2**) requires that the Commission review the current record and evaluate arguments and allegations made by Nokomis together with Xcel's reply. An important consideration is whether the Commission finds reasonable Nokomis' allegation that Xcel has violated the Company's tariff by charging Nokomis for costs that are unreasonable under the circumstances.

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<sup>8</sup> Nokomis Reply at p. 2.

<sup>9</sup> Appendix, filed June 15, 2022, at 2.

As noted below, if the Commission finds that there is not a reasonable basis to investigate further, it should dismiss the Complaint (**Decision Option 3**) but could still direct further consideration of the issues on its own motion. Xcel's main argument in support of this decision option results from its claim that all three of Nokomis's requests for relief are inappropriate.

The Commission should also consider whether it is in the public interest to investigate, on its own motion, any of the issues raised in the Complaint. If the Complaint raises issues the Commission wants to explore further, it could identify them and direct appropriate action.

### Applicable Interconnection Standards

As a pre-MN DIP interconnection application for a Community Solar Garden project, Union Garden's interconnection process and agreement is subject to Sec. 10 of Xcel Energy's Ratebook. The applicable provision on cost responsibility states the following:

V. A. The Interconnection Customer is responsible for the actual costs to interconnect the Generation System with Xcel Energy, including, but not limited to any Dedicated Facilities attributable to the addition of the Generation System, Xcel Energy labor for installation coordination, installation testing and engineering review of the Generation System and interconnection design. Estimates of these costs are outlined in Exhibit B. 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 [sic] for, must be reasonable under the circumstances of the design and construction.

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Additionally, Sheet 10-116, IV.C. requires that Xcel "carry out the construction of the Dedicated Facilities in a good and workmanlike manner, and in accordance with standard design and engineering practices."

In deciding whether Xcel violated Tariff Sheet 10-116, the Commission must evaluate Nokomis's core argument: that the costs of interconnecting the Union Garden project are unreasonable under the circumstances because they exceeded the initial cost estimate by \$208,000.00 and Nokomis was not given appropriate notice of the increased cost.

Nokomis disputes several facts as stated in Xcel Energy's Reply Comments. Nokomis's Complaint requests three items of requested relief but does not recommend any other next steps for the Commission.

The parties appear to have fundamental disagreements on the legal interpretations of the relevant tariff sheets as well as the application of the standard on the interconnection process of the Union Garden project. Xcel argues that Nokomis misconstrues the tariff by asking the

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<sup>10</sup> Xcel Energy Ratebook, Sheet 10-116, (V)(A)



Commission to determine that the final cost of interconnecting the Union Garden project is not reasonable under the circumstances. Xcel asserts the correct legal standard is whether the upgrades and their costs were reasonable based on the interconnection design and construction.

Similarly, Nokomis argues that Xcel's interpretation "does violence" to the plain language of the tariff by arguing that the design and construction of the project must be reasonable, as opposed to the costs being reasonable.<sup>11</sup> The parties apply their individual interpretations of the standard set forth in tariff sheet 10-116 to the facts of the Union Garden project. It may be beneficial for the Commission to have more information in order to understand the full extent of these areas of disagreement and the expertise informing each party's position.

Staff notes again that the Tariff explicitly provides that "All costs, for which the Interconnection Customer is responsible [sic] for, must be reasonable under the circumstances of the design and construction."

The parties also appear to differ on several facts of the case, namely (1) the use of the acronym "SDDRC" in reference to the detailed design rate of CSG projects; and (2) whether Nokomis requested a detailed design estimate from Xcel Energy prior to November 11, 2020.

While Xcel asserts that it has "no record or recollection of Nokomis ever requesting the detail design cost estimate until November 11, 2020- well after it had completed its project."<sup>12</sup> Nokomis asserts that Xcel's statement is untrue as Nokomis sent Xcel an email on June 26, 2020 stating "Let me know when the SDDRC is ready."<sup>13</sup> The parties disagree on whether this email constitutes a request of the detailed design cost estimate. Xcel believes it does not and indicates that Nokomis first requested the detailed design costs on August 17, 2021, and the Company provided those costs on September 15, 2021.

Staff notes that the email sent by Nokomis was sent prior to the project's construction, which Nokomis asserts began in the fall of 2020. Additionally, Xcel, indicates that design costs estimate for the work to be done by Xcel Energy was finalized in January 2021 due to changes in interconnection required, in part, by Nokomis.

Xcel proposes additionally that if the complaint is not dismissed, the Commission has an opportunity to broker a settlement between the parties. Specifically, the proposed settlement is one wherein Nokomis pays Xcel a total of \$91,559.00, or 120% of the indicative cost estimate minus previous amounts paid, and the remaining amount owed to Xcel Energy (\$116,464.00) is applied to Nokomis projects that do not yet have a present bill. Xcel further acknowledges that this proposal falls outside of the tariff, and under the Filed Rate Doctrine cannot be forced on any party. Nokomis did not object or reply to this proposed relief in its subsequent Reply Comments.

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<sup>11</sup> Nokomis Reply at 2.

<sup>12</sup> Xcel Reply at 14.

<sup>13</sup> Nokomis Appendix at 2.

Alternatively, but in the spirit of encouraging settlement, the Commission may wish to simply order the parties to continue settlement discussions that would involve Nokomis' ultimate withdrawal of the complaint. **(Decision Option 5)**. In other words, the Commission may not wish to formally serve as a broker to resolving a complaint on specific terms at this stage of the proceedings.

### Procedure

#### *Dismissal or Expedient Resolution*

If the Commission does not find reasonable grounds or a public interest to investigate the complaint, it may dismiss the Petition and take no further action **(Decision Option 3)**.

#### *Minn. R. 7829.1800*

The Department recommends using the formal complaint process set forth in Minn. R. 7829.1800 to investigate and resolve the Complaint. **(Decision Option 4)**.

If the Commission decides to proceed with an investigation of the Complaint pursuant to Minn. R. 7829.1900, the Commission may wish to offer parties a chance for further comment to develop the record with specific, contested material facts or significant issues for the scope and evaluation of whether a contested case is warranted **(Decision Option 2)**.

The next step in that process, pursuant to Minn. Rules 7829.1800, subp. 2, is to serve Nokomis's Complaint on Xcel and require Xcel to provide an Answer within 20 days of the Commission's Order establishing jurisdiction. Other parties will have an additional 20 days to respond.

#### *Contested Case*

No party explicitly addresses the possibility of a contested case proceeding.

If the Commission believes there are contested material facts or that all significant issues have not been resolved to its satisfaction, the Commission can refer this issue to the Office of Administrative Hearings (OAH) for contested case proceedings **(Decision Option 6)**. The Commission may request but cannot order the OAH to resolve a contested case on an expedited timeframe.

## **VI. Decision Options**

### Jurisdiction

1. Find the Commission has jurisdiction over the issues raised in the Union Garden Complaint filed by Nokomis. *(Nokomis, Xcel Energy, Department)*.

### Reasonable Grounds or in the Public Interest

2. Find that there are reasonable grounds to investigate the allegations in the Complaint and proceed with an investigation (*Nokomis, Department*).

[or]

3. Find that there are not reasonable grounds to proceed with an investigation of the Complaint and dismiss the Complaint. (*Xcel Energy*).

Commission Procedure if the Complaint is not dismissed

4. Open further investigation of Nokomis's Formal Complaint and require Xcel Energy to file an Answer (*Nokomis, Department*).

[or]

5. Order the parties to continue settlement discussions and file a status report on or before August 31, 2022. (*Staff*).

[or]

6. Refer Nokomis' Formal Complaint to the OAH for a contested case.