

**State of Minnesota
Before the Public Utilities Commission**

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

In the Matter of Xcel Energy's Tariff Revisions
Updating Community Solar Garden Tariff
Providing Additional Protection in Subscription
Eligibility

Docket No. E002/M-21-695

In the Matter of the Petition of Northern States
Power Company, D/B/A Xcel Energy, for
Approval of its Proposed Community Solar
Garden Program

Docket No. E002/M-13-867

Comments of the Citizens Utility Board of Minnesota

The Citizens Utility Board of Minnesota ("CUB" "we" "us" "our") submits these Initial Comments in response to the Commission's November 22, 2022 Notice of Comment Period¹ (the "Commission Notice") regarding customer protections for tenants in premises that are subject to Community Solar Gardens ("CSGs") subscriptions.

In its June 24, 2022 order² (the "Commission Order"), the Commission declined to approve tariff modifications jointly proposed by Xcel, Energy CENTS Coalition ("Energy CENTS"), Mid-Minnesota Legal Aid, and CUB (the "Joint Petitioners"). In this Order, the Commission also ordered Xcel to convene a stakeholder process to further discuss the issues raised by the Joint Petitioners and other parties that had commented on the Joint Petitioners' proposal. CUB participated in the stakeholder process. We continue to communicate with Xcel and the other Joint Petitioners in this proceeding. However, these comments reflect CUB's individual position on the questions in the Commission Notice. We may refine and narrow our recommendations in Reply Comments after considering other participants' initial comments.

At the outset, we acknowledge and appreciate that several participants in this docket who support the Building Subscription Model (as defined below) are motivated by a genuine interest in helping renters—and specifically low-income renters—benefit from community solar. We want to make clear that the proposals we support herein allow renters, including low-income renters, the choice to participate in the Solar*Rewards program—including through participation in the Building Subscription Model. We intend for

¹ *In the Matter Xcel Energy's Tariff Revisions Updating Community Solar Garden Tariff Providing Additional Customer Protections in Subscription Eligibility*, Notice of Comment Period, Docket No. E002/M-21-695 (Nov. 22, 2022) ("Commission Notice").

² *In the Matter Xcel Energy's Tariff Revisions Updating Community Solar Garden Tariff Providing Additional Customer Protections in Subscription Eligibility*, Order, Docket No. E002/M-21-695 (June 24, 2022) ("Commission Order").

our comments to help ensure renters retain that choice while being fully aware of how the Building Subscription Model affects their eligibility for fundamental consumer protections.

CUB generally supports an opt-in/opt-out approach to the Building Subscription Model, as reflected in Xcel's proposed tariff revisions included in Xcel's November 11, 2022 Compliance Filing³ (the "Compliance Filing") and discussed in more detail below. Additionally, CUB recommends that the Commission eliminate the minimum monthly usage level a customer must exceed to qualify for Xcel's PowerOn program. Finally, we recommend that the Commission reopen Order Point 2b of the Commission Order to reconsider whether and how it addresses the underlying challenges associated with the Building Subscription Model.

ANALYSIS

The root issue in dispute in this proceeding is the legality and appropriateness of the "Building Subscription Model," which we will define as follows:

Under a Building Subscription Model, the landlord becomes the customer of record for the tenants' meters; that is, the landlord or its agent acts as a [re-biller], receiving all the tenants' CSG charges and credits as well as Xcel electricity bills for the entire building. The landlord then provides a single bill to each tenant which often combines rent, CSG costs and credits, and any remaining electricity service charges.⁴

This definition of the Building Subscription Model is identical to that provided on page 3 of the Commission Order, except that we have replaced the Commission's use of "third-party billing agent" with "[re-biller]". We agree with the distinction Xcel draws between a "third-party biller" and a "re-biller"⁵ and find it important to keep that distinction in mind when considering the Building Subscription Model. Like Xcel, we see a "third-party billing agent" as a third-party *designated by the account holder* to manage a bill on behalf of that account holder (e.g., an adult child managing an account at the request of her aging parent). A "re-biller," on the other hand, is an entity that completely takes over the tenant's Xcel account, pays amounts owed on that account to Xcel, and re-bills the tenant for the amount owed to Xcel.⁶ In this context, if a tenant falls behind on paying electricity charges to the re-biller, he is indebted to the re-biller, not to Xcel. Therefore, it is the re-biller, not Xcel, that bears the burden and motivation to recover arrearages. In this sense, the use of a re-biller renders consumers more vulnerable to harm by entrusting their protection to entities that are not regulated under Minn. Stat. Chapter 216B—and, in many instances described in this proceeding, where the end-user has not *chosen* to designate the re-biller to take over the account.

Parties who utilize and/or support the Building Subscription Model have justified its use for three primary reasons: (1) it increases subscriptions in community solar gardens,⁷ (2) it makes it less confusing for tenants to participate in, and benefit from, community solar;⁸ and (3) it allows for community solar credits to be

³ See *In the Matter Xcel Energy's Tariff Revisions Updating Community Solar Garden Tariff Providing Additional Customer Protections in Subscription Eligibility*, Compliance Filing, Docket No. E002/M-21-695 (Nov. 11, 2022) ("Xcel Compliance Filing").

⁴ See Commission Order at 3.

⁵ Xcel Compliance Filing at 5.

⁶ See *In the Matter Xcel Energy's Tariff Revisions Updating Community Solar Garden Tariff Providing Additional Customer Protections in Subscription Eligibility*, TBR, LLC Initial Comments, Docket No. E002/M-21-695 (Nov. 15, 2021) ("TBR Initial Comments"), p. 4.

⁷ TBR Initial Comments at 3.

⁸ TBR Initial Comments at 4.

passed through to tenants “at no expense to the tenant.”⁹ We understand these benefits, and we agree that many renters may prefer an option to participate in a community solar garden (“CSG”) without having to, themselves, sign a long-term contract or to deal with multiple bills. However, we continue to conclude that the benefits of the Building Subscription Model do not outweigh the concerns we, and others, have raised in this docket unless and until renters retain meaningful choice as to whether to participate in that model.

We remain specifically concerned that, when tenants of multi-unit, multi-metered buildings have their accounts transferred out of their name and into a third party’s name, such tenants lose important legal and bill protections. Specifically, such tenants lose: (1) protections under the Cold Weather Rule,¹⁰ (2) protection ensuring continuation of service when a customer is experiencing a medical emergency or is reliant on life-sustaining medical equipment that requires electricity;¹¹ (3) access to the Commission’s complaint-handling and dispute resolution process;¹² (4) protection requiring Xcel to offer customers in arrears the ability to enter into a payment plan,¹³ and (5) eligibility to participate in Xcel’s affordability programs. These concerns are what initially motivated (and continue to motivate) our participation in this proceeding. For the reasons discussed further below, we also believe that these concerns are not alleviated solely by reading the definition of “customer”¹⁴ broadly enough to include an end-user whose account is held in the name of a third party, and/or by amending Xcel’s tariffs to state that they allow low-income renters who are subject to third-party billing to access Xcel’s Affordability Programs.

1. The Building Subscription Model has led to, and may continue to lead to, unintended consequences that can be harmful to consumers who have no meaningful ability to opt-in and opt-out of that model.

We are concerned that even well-intentioned building owners and re-billers may overlook unintended consequences of adopting the Building Subscription Model. Indeed, it is our understanding that TBR, LLC and Solar Holdings LLC (hereinafter, the “Building Owners”) initially underappreciated unintended consequences of the Building Subscription Model on certain renters, including low-income customers and others struggling to pay their bills. We appreciate that the Building Owners have taken action to resolve some of these issues. However, we remain concerned that additional issues continue to arise and, if the Building Subscription Model becomes more prevalent, other building owners may not be so careful.

In attempting to address these concerns, there has been some focus on the legal definition of “customer” and whether that definition should be read broadly enough to include an end-user whose Xcel account is held in the name of a third-party.¹⁵ However, we do not see this as the primary issue that must be addressed in this proceeding. Clarifying the definition of “customer” does not, itself, solve the underlying administrative

⁹ See, e.g., *In the Matter Xcel Energy’s Tariff Revisions Updating Community Solar Garden Tariff Providing Additional Customer Protections in Subscription Eligibility*, Solar Holdings LLC Initial Comments, Docket No. E002/M-21-695 (Nov. 15, 2021) (“Solar Holdings Initial Comments”), p. 2

¹⁰ Minn. Stat. 216B.096.

¹¹ Minn. Stat. § 216B.098, subd. 5.

¹² Minn. Stat. § 216B.098, subd. 6; see also Minn. R. 7829.1500; and Minn. R. 7829.1600.

¹³ Minn. Stat. 216B.098 Subd. 3.

¹⁴ Minn. R. 7820.0700, subp. 1. defines “customer” as “any person, firm, association or corporation, or any agency of the federal, state, or local government, being supplied with service by a utility, subject to the jurisdiction of this commission.”

¹⁵ See, e.g., *In the Matter Xcel Energy’s Tariff Revisions Updating Community Solar Garden Tariff Providing Additional Customer Protections in Subscription Eligibility*, Department Reply Comments (Dec. 6, 2021), Docket No. E002/M-21-695, p. 3; webcast of Commission Agenda Meeting (May 5, 2022) at 3:03:50 and 3:19:40.

and practical problems that arise under the Building Subscription Model, or change the fact that a landlord or re-biller is not a utility subject to statutory obligations applicable to utilities.

Some of the written responses that Sagiliti and the Building Owners provided in response to questions raised by the Joint Petitioners¹⁶ demonstrate how these challenges arise in practice. For example, when asked how Xcel can ensure compliance with its obligation to offer payment plan arrangements to customers in arrears, these parties responded:

Payment arrangements are currently accommodated and provided by [Sagiliti] and would continue to be offered. Note that there is no law requiring landlords to offer payment plans. Perhaps the EAP Policy Manual could be updated to incorporate a payment plan policy that energy vendors would have to follow. In summary, Xcel would not have to comply with the requirement, but a third-party biller would.¹⁷

In response to a similar question about how budget billing plans, and medically based deferments or payment plans, will be accessed by tenants in the existing Building Subscription Model, the parties responded: "Landlords could offer payment plans and budget billing plans to tenants that mirror those offered in the statute but it is not required. The EAP Policy Manual could be updated to require energy vendors/third-party billers to offer the same to the extent it is not required already."¹⁸

These answers describe actions building owners and re-billers "could" take while specifically noting that building owners are not required to take those actions. This is inherently problematic: it dilutes the enforceability (and therefore the effectiveness) of the consumer protections a regulated utility is obligated, by statute, to provide. Further, while CUB understands that Sagiliti is an approved Energy Assistance vendor and is, therefore, subject to the requirements set by the Department of Commerce in the EAP Policy Manual, those requirements are not directly relevant to the matter before the Commission. Further, it is CUB's understanding that other third-party rebilling companies exist that are not EAP vendors, and so are not subject to the EAP Policy Manual. Finally, even if updating the EAP Policy Manual could help, we are not convinced this action would effectively replicate the statutory requirements applicable to regulated utilities.

For example, Minn. Stat. 216B.098 Subd. 2 requires "a utility" to offer a customer a budget billing plan. Subd. 3 requires "a utility" to "offer a payment agreement for the payment of arrears." Subd. 5 requires "a utility" to "reconnect or continue service to a customer's residence where a medical emergency exists or where medical equipment requiring electricity necessary to sustain life is in use[.]" We see nothing in Minn. Stat. 216B.098 that would require a re-biller that is not a utility to provide these same consumer protections, or that provides the Commission enforcement authority over a re-biller should it refuse to take such actions. We do not believe it is in the public interest to entrust non-utility entities to voluntarily offer consumer protections that the Minnesota legislature intended to be obligatory—*particularly* when a tenant in a multi-metered building is not given a meaningful choice to opt-in or opt-out of such an arrangement.

Reading the definition of "customer" broadly to include tenants whose Xcel bills are held in the name of a landlord or re-biller does not solve this problem. Such a reading puts the onus on Xcel to comply with

¹⁶ See generally Xcel Compliance Filing, Attachment E.

¹⁷ Xcel Compliance Filing, Attachment E at 6.

¹⁸ Xcel Compliance Filing at 13.

Minnesota Statutes 216B.096 and 216B.098 when serving end-users whose accounts are held in the name of a third-party but does not grant Xcel authority over a landlord or re-biller to require that entity to comply with these regulations on Xcel's behalf, or to provide the cooperation Xcel would need to remain compliant. Even if Sagiliti or the Building Owners are willing to voluntarily provide similar consumer protection arrangements to tenants, these parties cannot speak for or bind other landlords or entities involved in re-billing to ensure they will take a similar approach. We do not understand what recourse Xcel has, or the end energy-user/tenant has, if a building owner or re-biller does not, itself, voluntarily comply with consumer protection regulations applicable to Xcel—or if Xcel and the Commission lack transparency into a re-biller's practices to confirm that the re-biller has cooperated with Xcel's efforts to remain in compliance with those regulations.

2. Sagiliti's expressed willingness to share data with Xcel, Energy CENTS and others does not solve the broader administrative and logistical challenges underlying the Building Subscription Model.

When a re-biller takes over the account of an Xcel customer, Xcel's ability to see information and data about the end-user is disrupted. When a re-biller takes over the account of an Xcel customer who is enrolled in the PowerOn or Medical Affordability programs, Energy CENTS' (which administers Xcel's PowerOn and Medical Affordability programs) ability to see information and data about the end-user is disrupted. These are not problems of Xcel's or Energy CENTS' creation, but they fundamentally impact the existing system and mechanisms through which Xcel and Energy CENTS exchange information to facilitate the administration of these programs.

Throughout the stakeholder process, Sagiliti has expressed a willingness to work with other parties, including Energy CENTS and Xcel, to share data. We appreciate this willingness. However, a willingness to share data does not alleviate the administrative challenges introduced via the Building Subscription Model. And, again, Sagiliti's willingness to share data does not necessarily suggest that other building owners and re-billers will be similarly willing and able to share data. Joint Petitioners raised several questions requesting clarification on when and how re-billers intend to share data.¹⁹ For example:

- If customers are removed from their accounts and replaced by landlords, how will income eligibility be determined and relayed to Xcel Energy?
- How can Xcel Energy comply with applicable tariff provisions when they cannot see if a customer has made an electric bill payment to their landlord?
- How can Xcel offer arrearage forgiveness if the landlord's account does not include the resident's past-due balance?
- How will Xcel know when a unit ceases to be occupied by the PowerOn participant?
- Will the landlord notify Xcel Energy when enrolled tenants move? If so, how?

These are all important questions (and are only a few examples of several, equally important questions) that remain unresolved to our satisfaction after the stakeholder process. We appreciate Xcel's and Energy CENTS's concerns about the complexity that would be introduced by attempting to address these concerns through data sharing—particularly if such data sharing would need to occur with multiple re-billers that each must navigate and come to understand the complexities raised in this proceeding.²⁰ Further, we believe it is likely that delays or errors in the data sharing would cause problems in program execution that would, ultimately, be harmful to participating customers.

¹⁹ See generally, Xcel Compliance Filing, Attachment E.

²⁰ See, e.g., Xcel Compliance Filing at 12.

3. Recommendations

In light of the above concerns, CUB has three primary recommendations.

- i. The Commission should approve an opt-in/opt-out approach to the Building Subscription Model.

We believe there is a clear, simple, and reasonable modification to the Building Subscription Model that would resolve several of the concerns discussed above: tenants should be allowed to opt-in and opt-out of the Building Subscription Model at any time, for any reason, and without penalty. We see no valid reason why tenants should not have these choices available to them. As a matter of public policy, we believe tenants living in a separately-metered property should have the right to claim and retain their Xcel account in their own name and to feel assured that the consumer protections regulated utilities are required to provide remain available to them. In its Compliance Filing, Xcel noted—and we agree—that parties to the stakeholder discussions “generally agree to support an Opt-In/Opt-Out approach.”²¹ We support this solution.

- ii. The Commission should eliminate the average monthly consumption threshold included in the Low-Income Discount Rider on tariff sheet 5-95 as outlined in Attachment F of the Compliance Filing.

In its Compliance Filing, Xcel noted—and we agree—that parties to the stakeholder discussions “generally agree to support ... decreas[ing] the minimum monthly usage levels required to qualify for the PowerOn program.”²² Accordingly, Xcel has proposed to adjust the eligibility requirements for its PowerOn program by making the following change to tariff sheet 5-95:

The Company will offer customers with the lowest income, and a history of electric consumption that exceeds the residential average of ~~750~~300 kWh per month, an affordable monthly bill.

We appreciate this change, as lowering the consumption-based eligibility threshold permits more low-income Xcel customers to participate in, and benefit from, the PowerOn program. However, it is our understanding that, in practice, eligibility for PowerOn is currently determined by LIHEAP participation and energy burden, only. For these reasons, we would prefer to see the consumption-based eligibility threshold eliminated entirely. We have spoken with Xcel and understand that the Company supports this change, and that it aligns with current Company practice of making PowerOn available to all LIHEAP recipients whose energy bills exceed 3% of income. Thus, we recommend that tariff sheet 5-95 be amended as follows:

PowerOn PROGRAM

Eligible Seniors and / or Disabled, and Customers Under 62 Years of Age with no Disability. A customer using more than 3% of their annual household income for electric use may be eligible for the Company's PowerOn affordability program. Customers must be certified annually by an authorized agency as receiving assistance from the Low Income Home Energy Assistance

²¹ Xcel Compliance Filing at 2.

²² *Id.*

Program. The Company will offer customers with the lowest income, ~~and a history of electric consumption that exceeds the residential average of 700 kWh per month,~~ an affordable monthly bill. For a customer to be eligible for a supplemental reduction in their electric bill, the customer must agree to affordable monthly payments.

iii. The Commission should reopen Order Point 2b from the Commission Order.

To be clear, CUB strongly believes that all Minnesotans should receive affordable utility service. Renters should be eligible for the same consumer protections and affordability programs as homeowners—particularly because renters are more likely to be lower-income and/or behind on their bills than homeowners.²³ It is our understanding that all participants in this proceeding—along with the Commission, itself—agree with these sentiments. However, we are not convinced that Order Point 2b is as helpful as it may seem in serving this common interest.

Order Point 2b requires Xcel to “propose a modification to its tariffs for [the PowerOn Program, Medical Affordability Program, Gas Affordability Program, and Low-Income Discount Program (collectively the “Affordability Programs”)] to allow low-income renters who are subject to third-party billing to access these programs.”²⁴ In its Compliance Filing, Xcel noted that the Company “do[es] not believe there is a practical, cost and time-efficient modification that can be made that will allow low-income renter’s subject to re-billing, access to [Xcel’s] Affordability Programs.”²⁵ We agree that Order Point 2b contemplates actions that will likely be impractical and challenging to implement in a way that fully addresses the key problems underlying the Building Subscription Model.

As discussed above, we believe that entrusting building owners and re-billers to voluntarily provide or help facilitate consumer protections that utilities are required to provide dilutes the enforceability (and therefore the effectiveness) of those protections. Amending Xcel’s affordability tariffs as described in Order Point 2b does not directly address this problem. Further, the data sharing challenges discussed above introduce administrative and practical hurdles that may be masked or impossible to fully address through the tariff revisions contemplated in Order Point 2b.

Because Xcel’s Affordability Programs are funded by ratepayers, it is essential that the Commission retain oversight and authority of the use of these funds. However, the Commission does not have direct, clear oversight or authority over third-party re-billing companies. While we appreciate Sagiliti’s willingness to provide reporting, such reporting is, in CUB’s view, insufficient to ensure the appropriate use of ratepayer funds. If Xcel were to transfer Affordability Program funds to a third-party re-billing company, it would be with the understanding that the re-billing company would then appropriately apply credits to each participating renter’s account on the re-billing company’s ledger. Xcel would have no visibility into the application of these credits, and, CUB believes, the Commission lacks the legal authority to audit a re-billing company should discrepancies arise. For these reasons, CUB recommends that the Commission reopen this Order Point to reconsider how/whether the actions contemplated therein can be effective in addressing the challenges that arise under the Building Subscription Model.

²³ See, e.g., Laurie Goodman and Bhargavi Ganesh, “Low-Income Homeowners and Renters are Similarly Burdened by Housing Costs,” Housing Matters, an Urban Institute initiative (June 29, 2017), available at <https://housingmatters.urban.org/articles/low-income-homeowners-and-renters-are-similarly-burdened-housing-costs>

²⁴ Commission Order at 7.

²⁵ Xcel Compliance Filing at 15.

CONCLUSION

In summary, we recommend that the Commission take the following actions:

1. Approve tariff modifications that grant customers reasonable choice to opt-in and opt-out of the Building Subscription Model for any reason at any time;
2. Eliminate the minimum monthly usage level a customer must exceed to qualify for Xcel's PowerOn program; and
3. Reopen Order Point 2b of the Commission Order to reconsider that requirement.

Thank you for considering these comments.

Sincerely,

December 21, 2022

/s/ Brian Edstrom

Senior Regulatory Advocate
Citizens Utility Board of Minnesota
briane@cubminnesota.org
651-300-4701, ext. 6

/s/ Annie Levenson-Falk

Executive Director
Citizens Utility Board of Minnesota
annielf@cubminnesota.org
651-300-4701, ext. 1

cc: Service Lists

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Ross	Abbey	ross.abbey@us-solar.com	United States Solar Corp.	100 North 6th St Ste 222C Minneapolis, MN 55403	Electronic Service	No	OFF_SL_21-695_21-695
Michael	Allen	michael.allen@allenergysolar.com	All Energy Solar	721 W 26th st Suite 211 Minneapolis, Minnesota 55405	Electronic Service	No	OFF_SL_21-695_21-695
David	Amster Olzweski	david@mysunshare.com	SunShare, LLC	1151 Bannock St Denver, CO 80204-8020	Electronic Service	No	OFF_SL_21-695_21-695
Laura	Beaton	beaton@smwlaw.com	Shute, Mihaly & Weinberger LLP	396 Hayes Street San Francisco, CA 94102	Electronic Service	No	OFF_SL_21-695_21-695
Sara	Bergan	sebergan@stoel.com	Stoel Rives LLP	33 South Sixth Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-695_21-695
Ingrid	Bjorklund	ingrid@bjorklundlaw.com	Bjorklund Law, PLLC	855 Village Center Drive #256 North Oaks, MN 55127	Electronic Service	No	OFF_SL_21-695_21-695
Kenneth	Bradley	kbradley1965@gmail.com		2837 Emerson Ave S Apt CW112 Minneapolis, MN 55408	Electronic Service	No	OFF_SL_21-695_21-695
Elizabeth	Bremer	Elizabeth.B@Sagiliti.com	JIT Services Inc	23505 Smithtown Rd Ste 280 Excelsior, MN Excelsior	Electronic Service	No	OFF_SL_21-695_21-695
Gabriel	Chan	gabechan@umn.edu	University of Minnesota	130 Hubert H. Humphrey Center 301 19th Ave S Minneapolis, Minnesota 55455	Electronic Service	No	OFF_SL_21-695_21-695
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	Yes	OFF_SL_21-695_21-695

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Kevin	Cray	kevin@communitysolaraccess.org	CCSA	1644 Platte St Denver, CO 80202	Electronic Service	No	OFF_SL_21-695_21-695
Timothy	DenHerder Thomas	timothy@cooperativeenergyfutures.com	Cooperative Energy Futures	3500 Bloomington Ave. S Minneapolis, MN 55407	Electronic Service	No	OFF_SL_21-695_21-695
James	Denniston	james.r.denniston@xcenergy.com	Xcel Energy Services, Inc.	414 Nicollet Mall, 401-8 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_21-695_21-695
Brian	Edstrom	briane@cubminnesota.org	Citizens Utility Board of Minnesota	332 Minnesota St Ste W1360 Saint Paul, MN 55101	Electronic Service	No	OFF_SL_21-695_21-695
Ron	Elwood	relwood@mnlisap.org	Legal Services Advocacy Project	970 Raymond Avenue Suite G-40 Saint Paul, MN 55114	Electronic Service	No	OFF_SL_21-695_21-695
Betsy	Engelking	betsy@nationalgridrenewables.com	Geronimo Energy, LLC	8400 Normandale Lake Blvd Ste 1200 Bloomington, MN 55437	Electronic Service	No	OFF_SL_21-695_21-695
Catherine	Fair	catherine@energycents.org	Energy CENTS Coalition	823 E 7th St St Paul, MN 55106	Electronic Service	No	OFF_SL_21-695_21-695
John	Farrell	jfarrell@ilsr.org	Institute for Local Self-Reliance	2720 E. 22nd St Institute for Local Self-Reliance Minneapolis, MN 55406	Electronic Service	No	OFF_SL_21-695_21-695
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_21-695_21-695

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Nathan	Franzen	nathan@nationalgridrenewables.com	Geronimo Energy, LLC	8400 Normandale Lake Blvd Ste 1200 Bloomington, MN 55437	Electronic Service	No	OFF_SL_21-695_21-695
Hal	Galvin	halgalvin@comcast.net	Provectus Energy Development llc	1936 Kenwood Parkway Minneapolis, MN 55405	Electronic Service	No	OFF_SL_21-695_21-695
Allen	Gleckner	gleckner@fresh-energy.org	Fresh Energy	408 St. Peter Street Ste 350 Saint Paul, Minnesota 55102	Electronic Service	No	OFF_SL_21-695_21-695
Jenny	Glumack	jenny@mrea.org	Minnesota Rural Electric Association	11640 73rd Ave N Maple Grove, MN 55369	Electronic Service	No	OFF_SL_21-695_21-695
Sean	Gosiewski	sean@afors.org	Alliance for Sustainability	2801 21st Ave S Ste 100 Minneapolis, MN 55407	Electronic Service	No	OFF_SL_21-695_21-695
Scott	Greenbert	scott@nautilussolar.com	Nautilus Solar Energy, LLC	396 Springfield Aver, Ste 2 Summit, NJ 07901	Electronic Service	No	OFF_SL_21-695_21-695
Kim	Havey	kim.havey@minneapolismn.gov	City of Minneapolis	350 South 5th Street, Suite 315M Minneapolis, MN 55415	Electronic Service	No	OFF_SL_21-695_21-695
Jan	Hubbard	jan.hubbard@comcast.net		7730 Mississippi Lane Brooklyn Park, MN 55444	Electronic Service	No	OFF_SL_21-695_21-695
Reuben	Hunter	bhunter@madisonei.com	Madison Energy Investments	8100 Boone Blvd Suite 430 Vienna, VA 22182	Electronic Service	No	OFF_SL_21-695_21-695
John S.	Jaffray	jjaffray@jjrpower.com	JJR Power	350 Highway 7 Suite 236 Excelsior, MN 55331	Electronic Service	No	OFF_SL_21-695_21-695

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julie	Jorgensen	juliejorgensen@greenmark solar.com	Greenmark Solar	4630 Quebec Ave N New Hope, MN 55428-4973	Electronic Service	No	OFF_SL_21-695_21-695
Ralph	Kaehler	Ralph.Kaehler@gmail.com		13700 Co. Rd. 9 Eyota, MN 55934	Electronic Service	No	OFF_SL_21-695_21-695
Cliff	Kaehler	cliff.kaehler@novelenergy.biz	Novel Energy Solutions LLC	4710 Blaylock Way Inver Grove Heights, MN 55076	Electronic Service	No	OFF_SL_21-695_21-695
Michael	Kampmeyer	mkampmeyer@a-e-group.com	AEG Group, LLC	260 Salem Church Road Sunfish Lake, Minnesota 55118	Electronic Service	No	OFF_SL_21-695_21-695
William D	Kenworthy	will@votesolar.org	Vote Solar	332 S Michigan Ave FL 9 Chicago, IL 60604	Electronic Service	No	OFF_SL_21-695_21-695
Brad	Klein	bklein@elpc.org	Environmental Law & Policy Center	35 E. Wacker Drive, Suite 1600 Suite 1600 Chicago, IL 60601	Electronic Service	No	OFF_SL_21-695_21-695
Aaron	Knoll	aknoll@greeneespel.com	Greene Espel PLLP	222 South Ninth Street Suite 2200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-695_21-695
Michael	Krause	michaelkrause61@yahoo.com	Kandiyo Consulting, LLC	433 S 7th Street Suite 2025 Minneapolis, Minnesota 55415	Electronic Service	No	OFF_SL_21-695_21-695
Dean	Leischow	dean@sunrisenrg.com	Sunrise Energy Ventures	315 Manitoba Ave Ste 200 Wayzata, MN 55391	Electronic Service	No	OFF_SL_21-695_21-695
Alice	Madden	alice@communitypowermn.org	Community Power	2720 E 22nd St Minneapolis, MN 55406	Electronic Service	No	OFF_SL_21-695_21-695

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Jason	Maur	jason.maur@renesolapower.com	Renesola Power Holdings, LLC	850 Canal Street 3rd Floor Stamford, CT 06902	Electronic Service	No	OFF_SL_21-695_21-695
Matthew	Melewski	matthew@nokomisenergy.com	Nokomis Energy LLC & Ole Solar LLC	2639 Nicollet Ave Ste 200 Minneapolis, MN 55408	Electronic Service	No	OFF_SL_21-695_21-695
Thomas	Melone	Thomas.Melone@AllcoUS.com	Minnesota Go Solar LLC	222 South 9th Street Suite 1600 Minneapolis, Minnesota 55120	Electronic Service	No	OFF_SL_21-695_21-695
Brian	Meloy	brian.meloy@stinson.com	STINSON LLP	50 S 6th St Ste 2600 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-695_21-695
Mike	Menzel	Mike.M@Sagilitti.com	J-I-T Services, Inc.	N/A	Electronic Service	No	OFF_SL_21-695_21-695
Marc	Miller	mmiller@soltage.com	Soltage, LLC	66 York Street, 5th Floor Jersey City, NJ 07302	Electronic Service	No	OFF_SL_21-695_21-695
Marcus	Mills	Marcus@communitypowermn.org	Community Power	2720 E 22nd St Minneapolis, MN 55406	Electronic Service	No	OFF_SL_21-695_21-695
Andrew	Moratzka	andrew.moratzka@stoel.com	Stoel Rives LLP	33 South Sixth St Ste 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-695_21-695
Rolf	Nordstrom	rnordstrom@gpisd.net	Great Plains Institute	2801 21ST AVE S STE 220 Minneapolis, MN 55407-1229	Electronic Service	No	OFF_SL_21-695_21-695
Logan	O'Grady	logrady@mNSEIA.org	Minnesota Solar Energy Industries Association	2288 University Ave W St. Paul, MN 55114	Electronic Service	No	OFF_SL_21-695_21-695

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Patty	O'Keefe	patty.okeefe@sierraclub.org		2525 Emerson Ave S Apt 2 Minneapolis, MN 55405	Electronic Service	No	OFF_SL_21-695_21-695
Jeff	O'Neill	jeff.oneill@ci.monticello.mn.us	City of Monticello	505 Walnut Street Suite 1 Monticello, Minnesota 55362	Electronic Service	No	OFF_SL_21-695_21-695
Carol A.	Overland	overland@legalelectric.org	Legalelectric - Overland Law Office	1110 West Avenue Red Wing, MN 55066	Electronic Service	No	OFF_SL_21-695_21-695
Eric	Pasi	ericp@ips-solar.com	IPS Solar	2670 Patton Rd Roseville, MN 55113	Electronic Service	No	OFF_SL_21-695_21-695
Dan	Patry	dpatry@sunedison.com	SunEdison	600 Clipper Drive Belmont, CA 94002	Electronic Service	No	OFF_SL_21-695_21-695
Jeffrey C	Paulson	jeff.jcplaw@comcast.net	Paulson Law Office, Ltd.	4445 W 77th Street Suite 224 Edina, MN 55435	Electronic Service	No	OFF_SL_21-695_21-695
Kristel	Porter	kristel@mnrenewablenow.org	MN Renewable Now	N/A	Electronic Service	No	OFF_SL_21-695_21-695
Paula	Prahl	paula.prahl@dominiuminc.com	Dominium	2905 Northwest Blvd Ste 150 Plymouth, MN 55441	Electronic Service	No	OFF_SL_21-695_21-695
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	Yes	OFF_SL_21-695_21-695
Isabel	Ricker	ricker@fresh-energy.org	Fresh Energy	408 Saint Peter Street Suite 220 Saint Paul, MN 55102	Electronic Service	No	OFF_SL_21-695_21-695

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Jonathan	Roberts	jroberts@soltage.com	Soltage	66 York St 5th Floor Jersey City, NJ 07302	Electronic Service	No	OFF_SL_21-695_21-695
Delaney	Russell	delaney@mnipl.org	Just Solar Coalition	4407 E Lake Street Minneapolis, MN 55407	Electronic Service	No	OFF_SL_21-695_21-695
Kyle	Samejima	kyle@mplsclimate.org	Minneapolis Climate Action	N/A	Electronic Service	No	OFF_SL_21-695_21-695
Christine	Schwartz	Regulatory.records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	Yes	OFF_SL_21-695_21-695
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th PI E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-695_21-695
Christopher L.	Sherman	csherman@sherman-associates.com	Solar Holdings LLC	233 Park Ave S Ste 201 Minneapolis, MN 55415	Electronic Service	No	OFF_SL_21-695_21-695
Doug	Shoemaker	dougs@charter.net	Minnesota Renewable Energy	2928 5th Ave S Minneapolis, MN 55408	Electronic Service	No	OFF_SL_21-695_21-695
Ralph J	Solar Consulting	N/A	IPS Solar	821 Raymond Ave Ste. 400 St. Paul, MN 55114	Paper Service	No	OFF_SL_21-695_21-695
Russ	Stark	Russ.Stark@ci.stpaul.mn.us	City of St. Paul	390 City Hall 15 West Kellogg Boulevard Saint Paul, MN 55102	Electronic Service	No	OFF_SL_21-695_21-695
Eric	Swanson	eswanson@winthrop.com	Winthrop & Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_21-695_21-695
Whitney	Terrill	whitney@mnipl.org	Minnesota Interfaith Power & Light	N/A	Electronic Service	No	OFF_SL_21-695_21-695

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Anna	Tobin	atobin@greeneespel.com	Greene Espel PLLP	222 South Ninth Street Suite 2200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-695_21-695
Zack	Townsend	zachary.townsend@brookfi eldrenewable.com	Brookfield Renewable	200 Liberty St FL 14 New York, NY 10281	Electronic Service	No	OFF_SL_21-695_21-695
Pat	Treseler	pat.jcplaw@comcast.net	Paulson Law Office LTD	4445 W 77th Street Suite 224 Edina, MN 55435	Electronic Service	No	OFF_SL_21-695_21-695
Gary	Van Winkle	gvanwinkle@mylegalaid.or g	Mid-Minnesota Legal Aid	111 N Fifth St Ste 100 Minneapolis, MN 55403	Electronic Service	No	OFF_SL_21-695_21-695
John	Vaughn	jvaughn@rreal.org	Rural Renewable Energy Alliance	3963 8th Street SW Backus, MN 55435	Electronic Service	No	OFF_SL_21-695_21-695
Kevin	Walker	KWalker@beaconinterfaith. org	Beacon Interfaith Housing Collaborative	N/A	Electronic Service	No	OFF_SL_21-695_21-695

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Ross	Abbey	ross.abbey@us-solar.com	United States Solar Corp.	100 North 6th St Ste 222C Minneapolis, MN 55403	Electronic Service	No	OFF_SL_13-867_Official
Michael	Allen	michael.allen@allenergysolar.com	All Energy Solar	721 W 26th st Suite 211 Minneapolis, Minnesota 55405	Electronic Service	No	OFF_SL_13-867_Official
David	Amster Olzweski	david@mysunshare.com	SunShare, LLC	1151 Bannock St Denver, CO 80204-8020	Electronic Service	No	OFF_SL_13-867_Official
Laura	Beaton	beaton@smwlaw.com	Shute, Mihaly & Weinberger LLP	396 Hayes Street San Francisco, CA 94102	Electronic Service	No	OFF_SL_13-867_Official
Sara	Bergan	sebergan@stoel.com	Stoel Rives LLP	33 South Sixth Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-867_Official
Ingrid	Bjorklund	ingrid@bjorklundlaw.com	Bjorklund Law, PLLC	855 Village Center Drive #256 North Oaks, MN 55127	Electronic Service	No	OFF_SL_13-867_Official
Kenneth	Bradley	kbradley1965@gmail.com		2837 Emerson Ave S Apt CW112 Minneapolis, MN 55408	Electronic Service	No	OFF_SL_13-867_Official
Jessica	Burdette	jessica.burdette@state.mn.us	Department of Commerce	85 7th Place East Suite 500 St. Paul, MN 55101	Electronic Service	No	OFF_SL_13-867_Official
Gabriel	Chan	gabechan@umn.edu	University of Minnesota	130 Hubert H. Humphrey Center 301 19th Ave S Minneapolis, Minnesota 55455	Electronic Service	No	OFF_SL_13-867_Official
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	Yes	OFF_SL_13-867_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Kevin	Cray	kevin@communitysolaraccess.org	CCSA	1644 Platte St Denver, CO 80202	Electronic Service	No	OFF_SL_13-867_Official
Timothy	DenHerder Thomas	timothy@cooperativeenergyfutures.com	Cooperative Energy Futures	3500 Bloomington Ave. S Minneapolis, MN 55407	Electronic Service	No	OFF_SL_13-867_Official
James	Denniston	james.r.denniston@xcenergy.com	Xcel Energy Services, Inc.	414 Nicollet Mall, 401-8 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_13-867_Official
Betsy	Engelking	betsy@nationalgridrenewables.com	Geronimo Energy, LLC	8400 Normandale Lake Blvd Ste 1200 Bloomington, MN 55437	Electronic Service	No	OFF_SL_13-867_Official
Catherine	Fair	catherine@energycents.org	Energy CENTS Coalition	823 E 7th St St Paul, MN 55106	Electronic Service	No	OFF_SL_13-867_Official
John	Farrell	jfarrell@ilsr.org	Institute for Local Self-Reliance	2720 E. 22nd St Institute for Local Self-Reliance Minneapolis, MN 55406	Electronic Service	No	OFF_SL_13-867_Official
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_13-867_Official
Nathan	Franzen	nathan@nationalgridrenewables.com	Geronimo Energy, LLC	8400 Normandale Lake Blvd Ste 1200 Bloomington, MN 55437	Electronic Service	No	OFF_SL_13-867_Official
Hal	Galvin	halgalvin@comcast.net	Provectus Energy Development llc	1936 Kenwood Parkway Minneapolis, MN 55405	Electronic Service	No	OFF_SL_13-867_Official

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Allen	Gleckner	gleckner@fresh-energy.org	Fresh Energy	408 St. Peter Street Ste 350 Saint Paul, Minnesota 55102	Electronic Service	No	OFF_SL_13-867_Official
Jenny	Glumack	jenny@mrea.org	Minnesota Rural Electric Association	11640 73rd Ave N Maple Grove, MN 55369	Electronic Service	No	OFF_SL_13-867_Official
Sean	Gosiewski	sean@afors.org	Alliance for Sustainability	2801 21st Ave S Ste 100 Minneapolis, MN 55407	Electronic Service	No	OFF_SL_13-867_Official
Scott	Greenbert	scott@nautilussolar.com	Nautilus Solar Energy, LLC	396 Springfield Aver, Ste 2 Summit, NJ 07901	Electronic Service	No	OFF_SL_13-867_Official
Kim	Havey	kim.havey@minneapolismn.gov	City of Minneapolis	350 South 5th Street, Suite 315M Minneapolis, MN 55415	Electronic Service	No	OFF_SL_13-867_Official
Jan	Hubbard	jan.hubbard@comcast.net		7730 Mississippi Lane Brooklyn Park, MN 55444	Electronic Service	No	OFF_SL_13-867_Official
Reuben	Hunter	bhunter@madisonei.com	Madison Energy Investments	8100 Boone Blvd Suite 430 Vienna, VA 22182	Electronic Service	No	OFF_SL_13-867_Official
John S.	Jaffray	jjaffray@jjrpower.com	JJR Power	350 Highway 7 Suite 236 Excelsior, MN 55331	Electronic Service	No	OFF_SL_13-867_Official
Julie	Jorgensen	juliejorgensen@greenmark solar.com	Greenmark Solar	4630 Quebec Ave N New Hope, MN 55428-4973	Electronic Service	No	OFF_SL_13-867_Official
Cliff	Kaehler	cliff.kaehler@novelenergy. biz	Novel Energy Solutions LLC	4710 Blaylock Way Inver Grove Heights, MN 55076	Electronic Service	No	OFF_SL_13-867_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Ralph	Kaehler	Ralph.Kaehler@gmail.com		13700 Co. Rd. 9 Eyota, MN 55934	Electronic Service	No	OFF_SL_13-867_Official
Michael	Kampmeyer	mkampmeyer@a-e-group.com	AEG Group, LLC	260 Salem Church Road Sunfish Lake, Minnesota 55118	Electronic Service	No	OFF_SL_13-867_Official
William D	Kenworthy	will@votesolar.org	Vote Solar	332 S Michigan Ave FL 9 Chicago, IL 60604	Electronic Service	No	OFF_SL_13-867_Official
Brad	Klein	bklein@elpc.org	Environmental Law & Policy Center	35 E. Wacker Drive, Suite 1600 Suite 1600 Chicago, IL 60601	Electronic Service	No	OFF_SL_13-867_Official
Aaron	Knoll	aknoll@greeneespel.com	Greene Espel PLLP	222 South Ninth Street Suite 2200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-867_Official
Michael	Krause	michaelkrause61@yahoo.com	Kandiyo Consulting, LLC	433 S 7th Street Suite 2025 Minneapolis, Minnesota 55415	Electronic Service	No	OFF_SL_13-867_Official
Dean	Leischow	dean@sunrisenrg.com	Sunrise Energy Ventures	315 Manitoba Ave Ste 200 Wayzata, MN 55391	Electronic Service	No	OFF_SL_13-867_Official
Alice	Madden	alice@communitypowermn.org	Community Power	2720 E 22nd St Minneapolis, MN 55406	Electronic Service	No	OFF_SL_13-867_Official
Jason	Maur	jason.maur@renesolapower.com	Renesola Power Holdings, LLC	850 Canal Street 3rd Floor Stamford, CT 06902	Electronic Service	No	OFF_SL_13-867_Official
Matthew	Melewski	matthew@nokomisenergy.com	Nokomis Energy LLC & Ole Solar LLC	2639 Nicollet Ave Ste 200 Minneapolis, MN 55408	Electronic Service	No	OFF_SL_13-867_Official

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Thomas	Melone	Thomas.Melone@AllcoUS.com	Minnesota Go Solar LLC	222 South 9th Street Suite 1600 Minneapolis, Minnesota 55120	Electronic Service	No	OFF_SL_13-867_Official
Brian	Meloy	brian.meloy@stinson.com	STINSON LLP	50 S 6th St Ste 2600 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-867_Official
Mike	Menzel	Mike.M@Sagiliti.com	J-I-T Services, Inc.	N/A	Electronic Service	No	OFF_SL_13-867_Official
Marc	Miller	mmiller@soltage.com	Soltage, LLC	66 York Street, 5th Floor Jersey City, NJ 07302	Electronic Service	No	OFF_SL_13-867_Official
Marcus	Mills	Marcus@communitypowermn.org	Community Power	2720 E 22nd St Minneapolis, MN 55406	Electronic Service	No	OFF_SL_13-867_Official
Andrew	Moratzka	andrew.moratzka@stoel.com	Stoel Rives LLP	33 South Sixth St Ste 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-867_Official
Pouya	Najmaie	pouya@cooperativeenergyfutures.com	Cooperative Energy Futures	3416 16th Ave S Minneapolis, MN 55407	Electronic Service	No	OFF_SL_13-867_Official
Rolf	Nordstrom	rnordstrom@gpisd.net	Great Plains Institute	2801 21ST AVE S STE 220 Minneapolis, MN 55407-1229	Electronic Service	No	OFF_SL_13-867_Official
Logan	O'Grady	logrady@mnseia.org	Minnesota Solar Energy Industries Association	2288 University Ave W St. Paul, MN 55114	Electronic Service	No	OFF_SL_13-867_Official
Patty	O'Keefe	patty.okeefe@sierraclub.org		2525 Emerson Ave S Apt 2 Minneapolis, MN 55405	Electronic Service	No	OFF_SL_13-867_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Jeff	O'Neill	jeff.oneill@ci.monticello.mn.us	City of Monticello	505 Walnut Street Suite 1 Monticello, Minnesota 55362	Electronic Service	No	OFF_SL_13-867_Official
Carol A.	Overland	overland@legalelectric.org	Legalelectric - Overland Law Office	1110 West Avenue Red Wing, MN 55066	Electronic Service	No	OFF_SL_13-867_Official
Eric	Pasi	ericp@ips-solar.com	IPS Solar	2670 Patton Rd Roseville, MN 55113	Electronic Service	No	OFF_SL_13-867_Official
Dan	Patry	dpatry@sunedison.com	SunEdison	600 Clipper Drive Belmont, CA 94002	Electronic Service	No	OFF_SL_13-867_Official
Jeffrey C	Paulson	jeff.jcplaw@comcast.net	Paulson Law Office, Ltd.	4445 W 77th Street Suite 224 Edina, MN 55435	Electronic Service	No	OFF_SL_13-867_Official
Kristel	Porter	kristel@mnrenewablenow.org	MN Renewable Now	N/A	Electronic Service	No	OFF_SL_13-867_Official
Paula	Prahl	paula.prahl@dominiuminc.com	Dominium	2905 Northwest Blvd Ste 150 Plymouth, MN 55441	Electronic Service	No	OFF_SL_13-867_Official
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	Yes	OFF_SL_13-867_Official
Isabel	Ricker	ricker@fresh-energy.org	Fresh Energy	408 Saint Peter Street Suite 220 Saint Paul, MN 55102	Electronic Service	No	OFF_SL_13-867_Official
Jonathan	Roberts	jroberts@soltage.com	Soltage	66 York St 5th Floor Jersey City, NJ 07302	Electronic Service	No	OFF_SL_13-867_Official

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Delaney	Russell	delaney@mnipl.org	Just Solar Coalition	4407 E Lake Street Minneapolis, MN 55407	Electronic Service	No	OFF_SL_13-867_Official
Kyle	Samejima	kyle@mplsclimate.org	Minneapolis Climate Action	N/A	Electronic Service	No	OFF_SL_13-867_Official
Ian	SantosMeeker	ians@ips-solar.com	IPS Solar	N/A	Electronic Service	No	OFF_SL_13-867_Official
Christine	Schwartz	Regulatory.records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	No	OFF_SL_13-867_Official
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th PI E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_13-867_Official
David	Shaffer	david.shaffer@novelenergy.biz	Novel Energy Solutions	2303 Wycliff St Ste 300 St. Paul, MN 55114	Electronic Service	No	OFF_SL_13-867_Official
Christopher L.	Sherman	csherman@sherman-associates.com	Solar Holdings LLC	233 Park Ave S Ste 201 Minneapolis, MN 55415	Electronic Service	No	OFF_SL_13-867_Official
Doug	Shoemaker	dougs@charter.net	Minnesota Renewable Energy	2928 5th Ave S Minneapolis, MN 55408	Electronic Service	No	OFF_SL_13-867_Official
Ralph J	Solar Consulting	N/A	IPS Solar	821 Raymond Ave Ste. 400 St. Paul, MN 55114	Paper Service	No	OFF_SL_13-867_Official
Russ	Stark	Russ.Stark@ci.stpaul.mn.us	City of St. Paul	390 City Hall 15 West Kellogg Boulevard Saint Paul, MN 55102	Electronic Service	No	OFF_SL_13-867_Official
Eric	Swanson	eswanson@winthrop.com	Winthrop & Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_13-867_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Whitney	Terrill	whitney@mnipl.org	Minnesota Interfaith Power & Light	N/A	Electronic Service	No	OFF_SL_13-867_Official
Anna	Tobin	atobin@greeneespel.com	Greene Espel PLLP	222 South Ninth Street Suite 2200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-867_Official
Zack	Townsend	zachary.townsend@brookfi eldrenewable.com	Brookfield Renewable	200 Liberty St FL 14 New York, NY 10281	Electronic Service	No	OFF_SL_13-867_Official
Pat	Treseler	pat.jcplaw@comcast.net	Paulson Law Office LTD	4445 W 77th Street Suite 224 Edina, MN 55435	Electronic Service	No	OFF_SL_13-867_Official
John	Vaughn	jvaughn@rreal.org	Rural Renewable Energy Alliance	3963 8th Street SW Backus, MN 55435	Electronic Service	No	OFF_SL_13-867_Official
Kevin	Walker	KWalker@beaconinterfaith. org	Beacon Interfaith Housing Collaborative	N/A	Electronic Service	No	OFF_SL_13-867_Official
Jessica	Welk	jwelk@sherman- associates.com	Sherman Associates	233 Park Avenue South Suite 201 Minneapolis, Minnesota 55415	Electronic Service	No	OFF_SL_13-867_Official
Curtis P	Zaun	curtis@cpzlaw.com	Attorney At Law	3254 Rice Street Little Canada, MN 55126	Electronic Service	No	OFF_SL_13-867_Official