STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

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In the Matter of a Formal Complaint and Petition by SunShare, LLC Under Minn. Stat. 216B.164 and Sections 9 and 10 of Xcel Energy's Electric Rate Book	**MINNESOTA SOLAR ENERGY INDUSTRY ASSOCIATION'S COMMENTARY ON SUNSHARE'S COMPLAINT**
Docket No. E-002/M-15-786	**August 24, 2015**

I. INTRODUCTION

The Minnesota Solar Energy Industries Association (MnSEIA) is a 501c6 non-profit with 82 different member companies doing solar related business in Minnesota. Our members include installers, manufacturers, developers, distributors, utilities, educational non-profits, ancillary service providers, trade unions, electricians and other solar affiliated companies and individuals.

Today we comment not for the purposes of creating conflict with Xcel. Instead, we seek only to support SunShare and to encourage the development of a Community Solar Garden (CSG) program that will create gardens in accordance with Xcel's own tariff.

II. BACKGROUND

In March of this year several MnSEIA members started noting that their customers were having issues with utility interconnection. Issues included undue delay, costly upgrades, excessive technical requirements, improper rates for energy purchases, excessive fees, lack of a statewide contract and other troublesome behaviors not permitted under Minnesota law.

MnSEIA brought these issues to the Department of Commerce (DOC). After some discussion DOC asked MnSEIA staff to informally start tracking solar interconnection issues. MnSEIA began tracking issues associated with CSGs, net-metered systems and other solar installations. The tracking process is voluntary, and so any information we provide should be considered an estimate. Our data likely underrepresents the actual number of interconnection complaints our members have.

In mid-August this year, SunShare informed us of over 100 complaints they had with Xcel Energy (Xcel). Some issues involved actual Section 9 and 10 tariff violations. Other issues involved programmatic problems, such as excessive or arbitrary upgrade costs, extremely long

buildout periods, and other problems that, if left unchecked, will results in significantly fewer gardens by 2017.

After SunShare brought these issues to our attention we started polling our other member developers for interconnection issues. The results of those comments, as well as several developer accounts, are provided in our commentary today.

On August 28, 2015 SunShare opened a new docket with the assistance of Public Utilities Commission (the "Commission") staff. Their initial filing focuses primarily on the tariff violations but highlights several of the other issues that SunShare raised with us and our members.

On September 1, 2015 the Commission published a notice of comment period and sought the answer to five different questions. We write today in response to the Commission's request.

III. COMMENTS

A. The Commission Has Jurisdiction Over This Issue.

1. The Commission has Jurisdiction pursuant to the Small Power Production and Cogeneration Statute.

Minnesota Statute 216B.164, subd. 5 gives the Commission jurisdiction to hear and determine disputes between utilities and qualifying facilities (QF). Minn. Stat. 216B.164, subd. 5 states in pertinent part, "[i]n the event of disputes between an electric utility and a qualifying facility, either party may request a determination of the issue by the commission. In any such determination, the burden of proof shall be on the utility."[1] Because Xcel is a utility and SunShare currently has a dispute with them, the issue is whether SunShare or its CSGs are also QFs for the purposes of this statute.

We will first address the gardens themselves. As part of the settlement agreement and its adopting Order, SunShare was required to provide 3 of 7 milestones for each of their colocated gardens that are greater than 5 MWs. One of the milestones was the self-registration of the garden to the Federal Energy Regulatory Commission (FERC) for QF status by completing FERC Form 556.[2]

Our understanding is that SunShare completed FERC Form 556 as one of their milestones for many of the colocated gardens that are in dispute in this docket, and can complete the form for the other gardens if necessary to establish Commission jurisdiction over those gardens. The gardens are QFs and the Commission has jurisdiction over disputes between QFs and Xcel.

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1 Minn. Stat. § 216B.164, subd. 5.

2 *See* ORDER ADOPTING PARTIAL SETTLEMENT AS MODIFIED, PUC, Docket No. E-002/M-13-867, Doc. ID 20158-113077-01 at 19 (8/6/2015).

The next question is whether SunShare can bring the dispute resolution proceeding on behalf of their gardens. In Commission Docket E132/CG-15-255 Alan Miller, the owner of a small wind turbine, brought a dispute against People's Energy Cooperative.[3] Alan Miller, however, was not the QF in that dispute, because his 10 kW wind turbine was. But Alan Miller was allowed to bring the dispute on behalf of the QF, because he owned the QF.

Similarly here, SunShare owns the QFs and the Limited Liabilities Companies that the gardens are registered under. Much like how a wind turbine cannot bring its own dispute resolution request, neither can a CSG. So its owner must be the party that brings the request. SunShare is representing its QF gardens, and so the Commission has jurisdiction over a dispute between SunShare and Xcel.

2. The Commission has jurisdiction because many of SunShare's CSGs have, or will have, 50 impacted consumers, and SunShare is bringing this dispute on their behalf.

Minn. Stat. § 216B.17 allows any 50 customers to bring an investigation against a utility for virtually any issue related to electric services.[4] The statute states the following:

> On its own motion or upon a complaint made against any public utility, by the governing body of any political subdivision, by another public utility, by the department, or by any 50 consumers of the particular utility that any of the rates, tolls, tariffs, charges, or schedules or any joint rate or any regulation, measurement, practice, act, or omission affecting or relating to the production, transmission, delivery, or furnishing of natural gas or electricity or any service in connection therewith is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with notice, to make such investigation as it may deem necessary.[5]

Because SunShare's CSGs will include high percentages of residential subscribers, the gardens that are in dispute here today will all have more than 50 consumers upon construction. Xcel's tariff violations harm SunShare, its financers, its subscribers, its landowners, etc. as well as, the general Xcel ratepayer who is deprived of additional clean, distributed energy deployed onto their grid. SunShare is bringing this complaint on behalf of all the impacted Xcel customers. The Commission has jurisdiction to hear SunShare's consumer's complaints under Minn. Stat. § 216B.17.

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3 *See* RE: Request for Dispute Resolution Under the Cogeneration and Small Power Production Statutes and Rules, Alan Miller, Docket No. E132/CG-15-255, Doc. ID 20153-108114-01 (3/7/2015).

4 *See* Minn. Stat. § 216B.17.

5 *Id.*

B. There are Reasonable Grounds to Investigate SunShare's Complaint.

Minn. Stat. § 216B.17 gives the Commission the ability to hear the Complaint if it feels an investigation is "necessary."[6] SunShare's complaint alleges well over 100 different instances of Xcel Energy poor conduct. The volume of complaints alone should be sufficient for the Commission to hear SunShare's complaint and to make a determination on the various issues.

SunShare, however, is not alone. We've asked our member CSG developers to provide us with how many of their gardens have also exceeded the Section 9 and 10 deadlines and to provide us with other interconnection complaints.

As of today, five member developers – not including SunShare - have reported a total of 206 potential tariff violations. The developers that have provided us with complaints are of various sizes. We only have fourteen CSG developers in our association. So a little over forty percent of our CSG developers have provided us with tariff violation complaints.[7]

More troubling is the percentage of potential tariff violations relative to the applications our members have filed. Our developers have reported to us that on average 87% of their studies have had some tariff violation associated with the study's processing. This percentage can also only grow for those reporting developers, as some of the complaints are not yet ripe and several studies have yet to be returned and examined for work quality issues.

It should also be noted that the bulk of the complaints are largely those with applications at the front of the queue. But those further back in the queue are being delayed as well, despite not having tariff violations to report. These developers have not had their studies started yet, because Xcel is requiring that the first in queue developers finish up prior to starting the second study.[8] So Xcel's tariff violations are likely delaying every CSG developer in our association and are harming the public's interest in CSG deployment in the process.

Furthermore, these problems are only exacerbated with time. If there are consistent delays within the application process, it will have a cascading effect on those developers that are lower in the queue. For instance, if Xcel routinely misses a 90 working day deadline by an average of 5 days, then the company that is first in the queue will be delayed 5 days. But the second company will be delayed ten days, because the first company was delayed five days and then they were delayed an additional five days. The effect will be additive to each company lower in the queue.

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6 *Id.*

7 Some of our developers may divulge information later in this docket or in further proceedings like this one. Several members, however, have suggested to us that they would like to remain anonymous in order to avoid Xcel retaliation in the form of further interconnection issues.

8 Some developers have suggested to us that Xcel's unwillingness participate in "parallel studies" is itself a tariff violation. This may be true or an interpretation issue requiring a determination and may be a problem that the Commission would like to alleviate.

With the expectation that the Federal Investment Tax Credit (ITC) will not be extended in 2016, we are troubled that Xcel is delaying the onset of these gardens. If the problems are not alleviated, then fewer gardens can be installed in the next few years.

C. The Commission Should Hear These Issues as Quickly As Possible, Establish A Penalty Provision for Future Tariff Violations, And Provide As Much Guidance As Possible.

1. Expediency is of the utmost importance.

The crux of the issue that the Commission is facing here today is what should we do when faced with the large amount of complaints and a limited period of time? The first thing that should be noted is that while there are about 306 complaints that we are aware of (SunShare's approximate 100 complaints plus the other 206 developer complaints), the bulk of the complaints really center on the single issue of whether Xcel is allowed to take longer than its Section 9 and 10 tariffs state.

Generally tariff violations of this nature would be annoying but not crippling. The primary problem our industry is facing, however, is that the ITC is set to expire at the end of 2016. Many CSG projects are financeable only because the ITC exists. Our industry and this CSG program are on the clock, so resolving these interconnection delays quickly is of the utmost priority.

Additionally, Xcel has agreed to a 50 day fast track approach for gardens in the queue.[9] Xcel is about to start providing these 50 days study periods for any deemed complete applications. We are concerned that if Xcel is unable to handle a standard 90 day study period, it seems even more unlikely Xcel can handle a 50 day study period without some immediate program adjustments.

Because of the urgency, we believe the Commission should determine these issues through an expedited proceeding as Minn. Rule 7829.1900, subpart 1 provides.[10] If this issue was referred to the Administrative Law Judge hearing for other program alterations, then the process would take at least six months and that would result in substantially fewer gardens being built. The same is true about Grid Modernization programs. A stakeholder discussion is likely too slow of a venue for alleviating SunShare's concerns.

An expedited Commission determination is the quickest route to programmatic change.

2. The Commission should create an enforcement mechanism to protect against future tariff violations and poor study quality.

The next problem is there is no form of relief available for the developer. If Xcel does not meet a 90 tariff deadline, there is no real recourse for the developer. All they can do is wait for Xcel to finish. Furthermore, we don't believe this problem is currently solved by the independent dispute

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9 *See* ORDER ADOPTING PARTIAL SETTLEMENT AS MODIFIED, PUC, Docket No. E-002/M-13-867, Doc. ID 20158-113077-01 at 20 (8/6/2015).

10 Minn. Rule 7829.1900, subpart 1.

resolution process laid out in the most recent order, because the process only highlights Xcel's interconnection delays.[11] It does not solve them.

For instance, let's assume that a developer brings a complaint against Xcel for an untimely processing of their application. The independent investigator determines that Xcel is indeed acting slowly. Then let's assume Xcel does not make any changes. What happens? The answer is probably nothing, because the independent arbitrator has no real ability to ensure compliance.

In addition to delayed work, Xcel is also providing low quality, conflicting or incomplete work when it does provide it. SunShare highlighted instances of receiving documents with the wrong developer name on them, receiving other information that doesn't allow them to make informed decisions and still further documentation that was otherwise incomplete.[12] Other developers have informed us of similar problems, and other instances of directly conflicting information.[13]

While poor quality work may not always be a tariff violation *per se*, it frequently leads to tariff violations, because it requires additional time to fix the mistakes. Other times it is a tariff violation, because Xcel has failed to deliver all the information Section 10 requires.

In lieu of the litany of tariff violations we recommend that the Commission create a penalty provision for delays and poor work quality that is a tariff violation itself or results in a violation. Specifically, we suggest that there be two different penalty provisions.

First, Xcel should be fined whenever it produces inadequate or tardy work. A fine is required to encourage tangible action on the issue.

Historically, the Commission has handled disputes between QFs and Utilities through Minn. Stat. § 216B.164, subd. 5 dispute resolution. Assuming the Commission finds in favor of the QF, the Commission requires the utility to pay the "prevailing party's costs, disbursements, and reasonable attorneys' fees."[14] The issue with applying this remedy to SunShare's case, however, is that SunShare is looking in large part for specific performance from Xcel. They primarily want Xcel to process their applications according to the tariff.

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11 *See* ORDER ADOPTING PARTIAL SETTLEMENT AS MODIFIED, PUC, Docket No. E-002/M-13-867, Doc. ID 20158-113077-01 at 20 (8/6/2015).

12 *See* FORMAL COMPLAINT (REFERENCING 13-867), SUNSHARE, LLC, Docket No. E-002/M-15-786, Doc. ID 20158-113587-02 at 9, 14, 20, 24, 29, 33, 37, 40 (8/28/2015).

13 A developer has informed us that in one instance the first engineer required meter to be inserted in the diagram, thereby delaying the process and requiring a fix, then the second engineer delayed the application further by requiring them to remove the meter the first engineer requested be inserted into the diagram.

14 Minn. Stat. 216B.164, subd. 5.

So we would suggest that the Commission create a standard fine amount that should appropriately dissuade Xcel from missing Tariff deadlines.[15] It should be high enough to encourage Xcel to staff enough engineers to handle the CSG queue and to make it clear that the cheaper option is not violating the tariff. The fine amounts could go back to the developer or wherever else the Commission feels the money would best assist the deployment of CSGs. The fine should also, if possible, be recovered from Xcel shareholders, like a prudency disallowance. This would prevent Xcel from shifting the fines onto ratepayers.

In addition to a fine for tariff violations, the other penalty provision we would suggest is that those developers who have CSGs that would have been installed but for Xcel's undue delays should get compensation for their losses under Minn. Stat. § 216B.164, subd. 5. Those QFs that were wronged should be made financially whole, if the wrong caused them harm. It should make no difference whether the QF is a 1 MW CSG or a 10 kW wind-turbine.[16]

Establishing a general enforcement mechanism should also prevent the Commission from receiving future developer complaints. If the Commission doesn't take some meaningful action here, then it seems likely that at least five other developers will have no other choice but to file similar complaint proceedings. Creating a streamlined enforcement process should reduce the amount of time the Commissioners need to evaluate complaints and render individual decisions.

3. The Commission should provide as much Clarity as Possible in this Docket and Elsewhere.

The next problem is that there seems to be some interpretation issues leading to confusion about Section 9 and Section 10 tariff language. The primary point of confusion has been the appropriate time period for studies. Initially our developers assumed that each 1 MW application would be treated as a 1 MW application for the purposes of the tariff, regardless of whether they are colocated. This would require a 40 working day turn around on study times for all gardens.[17]

After Xcel never returned a colocated garden study in 40 days or less, it became clear they were treating colocated gardens as greater than 1 MW for the purposes of the tariff.[18] Our members begrudgingly accepted Xcel's interpretation on this issue.

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15 The Legislature gave the Commission the ability to create this fine by using Minn Stat. § 216B.1641, subd. (e)'s broad ability to allow the commission to modify the program to allow for the creation, financing and accessibility of Community Solar Gardens and to promote the public interest.

16 *See* RE: Request for Dispute Resolution Under the Cogeneration and Small Power Production Statutes and Rules, Alan Miller, Docket No. E132/CG-15-255, Doc. ID 20153-108114-01 (3/7/2015).

17 NSP Rate Book Section 10, Sheet No. 95; *See also* REPLY COMMENTS, MINNESOTA SOLAR ENERY INDUSTRIES ASSOCIATION, Docket No. E-002/M-13-867, Doc. ID 20154-109771-01 at 5 (4/28/2015).

18 There is some developer feedback that suggests Xcel was applying a 90 tariff

Then Xcel started missing 90 working day deadlines. Our members first started voicing their complaints to Xcel and then after they did not get relief, they started reporting their issues to us. When we discussed these complaints with Xcel they continued to represent to MnSEIA staff that they had not yet missed a tariff deadline. Xcel seemed to be suggesting that developers and Xcel engineers do not have a common understanding on the following issues 1) when the 90 day period starts and 2) what is included in "90 working days." We, and our members, accepted that there may be some variation in the developer's understanding of the schedule and Xcel's.

While the allegations that SunShare has alleged are clearly much more egregious than a misunderstanding of "90 working days," there would be some benefit for the Commission to require that the S*RC Working Group formally define these items promptly. Having a common understanding for when the next steps start should streamline the process and should be mutually beneficial for Xcel and Developers. The group has quickly talked about some of these issues, but it may require a formal order from the Commission before the group embarks on this topic.

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interpretation to all gardens in the queue, regardless of size. Some number of developers with systems under 1 MW did not receive their Statements of Work until after a 90 day study period elapsed.