

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner
Betsy Wergin	Commissioner

November 2, 2015

**In the Matter of a Formal Complaint and Petition
by SunShare, LLC for Relief Under Minn. Stat. §216B.1641
and Sections 9 and 10 of Xcel Energy's Tariff Book**

Docket No. E002/M-15-786

**REPLY COMMENTS BY
SUNSHARE, LLC**

SunShare respectfully submits these Reply Comments to:

- (1) Address topics raised in the Department's October 15, 2015 Comments;
- (2) Respond to Xcel's October 30, 2015 letter in this docket; and
- (3) Reiterate our commitment to achieving a reasonable, fair, expedited resolution to this matter.

DISCUSSION

(1) Regarding the Department's October 15, 2015 Comments

We wish to acknowledge the Department of Commerce for its efforts to assist the Commission by developing the record in this docket through information requests (IRs) and its October 15, 2015 Comments and attachments.

While the Department's Comments summarized each party's IR responses and suggested further investigatory steps that the Commission could take, they did not address the adequacy or credibility of either party's IR responses. We also note that, despite its burden of proof, NSP specifically declined to admit, deny, or dispute any of the numbered Complaint allegations in its responses to the Department's IRs.^{1,2}

¹ Under Minn. Stat. 216B.164, NSP bears the burden of proof in this matter.

Unfortunately, NSP's response did include a number of misleading implications and mischaracterizations.³ For example, NSP mischaracterizes our complaint as "backward-looking," wrongly implying that there are no remaining violations, and that SunShare has not suffered real damages.⁴ To the contrary, SunShare continues to suffer from tariff and timeline violations as to 27 of our projects (none of which is co-located over 5 MW).⁵ In the aggregate, the active SunShare projects subject to this complaint have experienced a cumulative delay of over 7,000 days due to NSP's alleged violations. Based on the impact of NSP's tariff violations and delays on SunShare's project development and financing, we project our potential damages at over one million dollars.

As a regulated investor owned utility, NSP is largely sheltered from the revenue implications of interconnection delays and underperformance. Meanwhile, SunShare and other third-party solar developers and are required by current policy to depend on NSP as a monopoly provider of interconnection engineering, design, and construction services – without which we cannot generate solar energy or revenue under the standard Solar*Rewards Community contract.

(2) Regarding NSP's October 30, 2015 letter in this docket

On Thursday, October 29, 2015 NSP informed SunShare (for the first time) that the utility intended to "cancel and remove from the queue" five of SunShare's CSG active applications that are subject to our pending Complaint in this docket.⁶ Distressingly, NSP's notice to SunShare stated that the Company would take this unilateral action the very next day.⁷ On October 30, 2015, NSP filed a letter in this docket, notify the Commission of NSP's intent to take this unilateral action.

At the same time that NSP threatens to unilaterally cancel these projects for non-compliance with Section 10, Step 6, we note that our initial and amended complaints alleges that NSP has failed to comply with its Step 5 obligations under the Section 10 tariff. Our Complaint specifically requests that the

² See NSP response to Department IR #1, at 1 (explaining that the Company is too focused on "program administration and . . . facilitating the interconnection of" CSGs to investigate problems with its program administration and its failure to facilitate the interconnection of SunShare's CSGs).

³ See Department of Commerce Oct. 15, 2015 Comments, 15-867, at Attachment 5 (SunShare's initial markup of NSP's Information Request 1 response).

⁴ *Id.* Attachment 5, at 1.

⁵ Amended Complaint, at 2 (current as of October 27, 2015). *See id.* at Exhibit 4 for a breakdown by each project subsection to this complaint.

⁶ These projects are referred to as Site A (1-5) in our Amended Complaint.

⁷ We understand that NSP has since provided a verbal assurance that it will not unilaterally cancel these project applications prior to the Commission's November 5 hearing in this docket.

Commission toll any relevant Section 10, Step 6 clock until NSP complies with, *inter alia*, its Step 5 obligations.⁸ (We also note that NSP’s Section 10 tariff does not appear provide the Company with explicit authority to cancel interconnection application due to non-compliance with Step 6.)

For these reasons, we respectfully request that the Commission clarify, as soon as possible, that NSP does not have the authority to unilaterally cancel any CSG application subject to an active dispute in this Complaint docket without prior Commission approval. We hope that the Commission will choose take testimony on this matter at its November 5 procedural hearing.

(3) SunShare’s commitment to a workable, near-term solution

SunShare is committed to achieving a reasonable, fair, expedited resolution to this matter, including on behalf of our hundreds of subscriber-customers. Toward this end, SunShare submitted an Amended Complaint to the Commission earlier today.⁹ This Amended Complaint, which is intended to replace and supersede our earlier complaint, brings our allegations up to date, clarifies our requests for relief, notes the Commission’s authority to issue penalties, and reduces the number of overall issues requiring resolution by the Commission.¹⁰ SunShare has also continued to engage in direct discussion with NSP, in the hope of reaching a mutually agreeable resolution of this matter.

At the risk of oversimplification, the core outstanding issue (which must be resolved before SunShare can move forward on construction) is NSP’s unwillingness despite SunShare’s good-faith requests to proffer interconnections study results and Interconnection Agreements (“IAs”) that allow for project-specific construction financing, including;

- a reasonable utility-construction timeline that would allow for project financing and commissioning under the current federal ITC; and
- removal of unjustified equipment upgrades (*i.e.*, that lack supporting technical information), which account for the majority the NSP’s estimated construction costs.

A second key outstanding issue in our Complaint is NSP’s refusal to deliver SunShare interconnections study results (which SunShare has already paid for) and other relevant technical information to support its position that the NSP distribution system can only accommodate 2 or 3 MWs at

⁸ SunShare, LLC Nov. 2, 2015 Second Amended Formal Complaint and Petition (Public Version), 15-786, at paragraphs 2(f), 28(c), 44(a), 54(c), and 54(d).

⁹ Filed November 2, 2015 in Docket No. 15-786 and titled “Second Amended Formal Complaint and Petition by SunShare, LLC Against Northern States Power Company - a Minnesota Corporation d/b/a Xcel Energy”, or “Amended Complaint” for short.

¹⁰ For example, SunShare has revoked its requests for relief regarding any CSG applications co-located over 5 MW (since we’ve recently agreed withdraw these applications).

two of SunShare's CSG sites subject to this complaint. Despite the lack of resolution on this engineering dispute in our Complaint (which will control the site's scale, and thus project economics), NSP is now pressuring SunShare to make an immediate go/no-go decision as to these CSG sites, or else suffer unilateral cancellation by the Company.

Finally, we understand that five other CSG developers have experienced on the order of 200 additional NSP tariff violations.¹¹ To employ a metaphor, the 27 continuing violations alleged in SunShare's Amended Complaint may therefore represent merely the visible portion of a much larger iceberg. Our hope is that, by enabling a fair and expedited resolution of SunShare's complaint, the Commission can also help to advance the larger cohort of CSG projects that are striving to achieve project financing and commissioning under the current Federal ITC.

Sincerely,

/s/ Ross Abbey .
Ross Abbey

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On behalf of SunShare, LLC

¹¹ MnSEIA Aug. 24, 2015 Comments, 15-786, at 4.

CERTIFICATE OF SERVICE

I, Ross Abbey, hereby certify that on November 2, 2015, I served copies of the preceding document on the Public Utilities Commission by electronic filing, certified mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at Minneapolis, Minnesota.

Reply Comments by SunShare, LLC

Certified this 2nd day of November, 2015

s/ *Ross Abbey*
Ross Abbey

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