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September 2, 2021

VIA ELECTRONIC FILING

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

**Re: Petition for Amendment, Vacation or Reconsideration Sunrise Energy Ventures LLC,
SolarClub 12 LLC and SolarClub 14 LLC**

*In the Matter of the Formal Complaint and Request for Expedited Relief by Sunrise Energy
Ventures LLC, SolarClub 12 LLC and SolarClub 14 LLC Against Northern States Power
Company d/b/a Xcel Energy*
Docket No. E-002/C-21-160

Dear Mr. Seuffert,

Pursuant to Minn. Stat. § 216B.27 and Minn. R. 7829.3000, Curtis Zaun, Esq., on behalf of Sunrise Energy Ventures LLC, SolarClub 12 LLC and SolarClub 14 LLC, submits this Petition for Amendment, Vacation or Reconsideration in the above-referenced docket.

Pursuant to Minn. R. 7829.0400, this document has been filed electronically for service on the parties.

Respectfully Submitted,

/s/ Curtis Zaun

CURTIS P. ZAUN

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

Docket Number E-002/C-21-160

*In the Matter of the Formal Complaint and
Request for Expedited Relief by Sunrise
Energy Ventures LLC, SolarClub 12 LLC
and SolarClub 14 LLC Against Northern
States Power Company d/b/a Xcel Energy*

**PETITION FOR AMENDMENT,
VACATION OR RECONSIDERATION
OF SUNRISE ENERGY VENTURES
LLC, SOLARCLUB 12 LLC AND
SOLARCLUB 14 LLC**

Pursuant to Minn. Stat. § 216B.27 and Minn. R. 7829.3000, Sunrise Energy Ventures LLC (“Sunrise”), SolarClub 12 LLC (“SC 12”) and SolarClub 14 (“SC 14”) (collectively “the SolarClubs”) respectfully submit this Petition for Amendment, Vacation or Reconsideration of the Minnesota Public Utilities Commission’s (“Commission”) Order Dismissing Complaint issued on August 13, 2021, in the above-referenced matter.

Sunrise and the SolarClubs (“Petitioners”) filed a formal complaint against Xcel Energy (“Xcel”) pursuant Section 5.3.8 of the State of Minnesota Distributed Energy Resources Interconnection Process (“MN DIP”), adopted at Sheet 10-196 of Xcel’s Tariff, Minn. Stat. § 216B.164, subd. 5(a), Minn. R. 7835.4500, and Minn. R. 7829.1700. The complaint alleged that Xcel violated its Tariff, specifically Sheet 10-233, Minn. Stat. § 216B.03, and Minn. Stat. § 216B.07, by failing to provide the System Impact Study (“SIS”) for the SolarClubs that is required by Xcel Tariff Sheet 10-233. It is undisputed that Xcel did not provide the SIS¹ that the explicit

¹ While what Xcel provided is called an SIS throughout this petition and in other filings in this docket for simplicity, in reality, because it did not provide the information required by Xcel’s Tariff, it really should not be considered an SIS under the Tariff or SIS Agreement. A more accurate description of the document that Xcel provided to SunShare for the SolarClubs is a No Capacity Letter, which is not something that is authorized, allowed, discussed, mentioned or found anywhere in Xcel’s Tariff, the SIS Agreement, or any other authority.

language of Tariff Sheet 10-233 requires.

The Commission determined that there was not a public interest to investigate Xcel's refusal to provide the SIS for the SolarClubs required by Xcel's Tariff. Petitioners request amendment, vacation or reconsideration of the Commission's order because the Commission misapplied the standard for considering formal complaints and improperly determined that Xcel did not need to provide an SIS that includes the information required by its Tariff. The Commission's decision does not provide any legal or factual basis that supports its decision to not enforce the explicit language of Xcel's Tariff. As such, Petitioners request that the Commission vacate/amend its dismissal of Petitioner's complaint, and order Xcel to respond to each of the allegations in Petitioner's complaint.

Summary of Argument

The Petitioners filed a formal complaint against Xcel Energy on March 8, 2021. The complaint alleged that Xcel violated its Tariff, specifically Sheet 10-233, Minn. Stat. § 216B.03, and Minn. Stat. § 216B.07, by failing to provide the SIS for the SolarClubs that is required by Xcel Tariff Sheet 10-233. Xcel Tariff Sheet 10-233 states, among other things:

A system impact study shall state the assumptions upon which it is based, state the results of the analyses, and provide the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. A system impact study shall provide a list of facilities that are required as a result of the Interconnection Application and non-binding good faith estimates of cost responsibility and time to construct.

Xcel has confirmed that it has not provided Sunrise with the SIS required by Tariff Sheet 10-233, stating, "The SIS looks for the primary limiting factor and does not analyze any potential further issues beyond the limiting factor."² The Commission recognized that Xcel does not provide the

² *In the Matter of the Formal Complaint and Request for Expedited Relief by Sunrise Energy Ventures LLC,*

information required by its Tariff stating:

Xcel argues that the System Impact Study reached completion when it demonstrated that Sunrise's proposal would trigger a limiting factor, and that there were no remaining mitigation strategies within the scope of the study that would resolve the problem. According to Xcel, it studied Sunrise's proposals in the same manner that it has studied other developer's proposals under the MN DIP.

Xcel acknowledged that the feeder's constraints could be resolved by replacing portions of the feeder with a larger gauge conductor, such as a 556 AL conductor. But Xcel explains that it refrains from using such large conductors for DER projects except when needed to address unanticipated reliability and service quality issues. By standardizing its design, construction, operating processes, tools and practices, Xcel states that it can address issues more quickly and efficiently to the benefit of all customers.

As Petitioners noted in their Reply Comments, the explicit language of the Tariff provision quoted above does not allow Xcel to stop analyzing issues once it finds a "primary limiting factor." Xcel's Tariff clearly requires it to "provide the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection" and "a list of facilities that are required as a result of the Interconnection Application and non-binding good faith estimates of cost responsibility and time to construct."³ The Commission, however, appears to have held that Xcel can violate its Tariff for several reasons, none of which actually support its decision. First, the Commission appears to accept Xcel's unsupported argument that its refusal to provide information was "grounded in safety, reliability and efficiency."⁴ It then says its decision is "bolstered by three uncontested facts."⁵

First, Xcel already hosts the most fertile distribution grid in the nation for

SolarClub 12 LLC and SolarClub 14 LLC against Northern States Power d/b/a Xcel Energy, Docket E-002/C-21-160, Xcel Comment on March 23, 2021 Notice ("Xcel Comments"), p. 10 (April 5, 2021).

³ See Xcel Tariff Sheet 10-233.

⁴ *In the Matter of the Formal Complaint and Request for Expedited Relief by Sunrise Energy Ventures LLC, SolarClub 12 LLC and SolarClub 14 LLC against Northern States Power d/b/a Xcel Energy*, Docket E002/C-21-160, Order Dismissing Complaint, p. 7 (August 13, 2021) ("Order Dismissing Complaint").

⁵ *Id.* at p. 7.

community solar gardens, as measured by installed capacity; this fact supports the argument that Xcel's interconnection process is workable. Second, Xcel is acting as a pioneer in interconnecting this level of DER; this fact helps explain why Xcel might adopt policies that other utilities have not yet found a need to adopt. Third, most solar gardens are interconnected to only 15 percent of Xcel's feeders; this fact supports the reasonableness of the argument that these feeders are reaching the limits of their capacity.⁶

The Commission then appears to rely on "Good Utility Practice," stating,

The MN DIP recognizes that utilities must exercise discretion in managing their distribution grids. The MN DIP specifies that utilities must operate in a manner consistent with "Good Utility Practice," a concept that emphasizes the utility's need to exercise judgment based on each project's unique circumstances.⁷

It is undisputed that Xcel did not provide the SIS that is required by its Tariff, and neither the facts noted by the Commission nor "Good Utility Practice," support or allow Xcel's violation the explicit terms of its Tariff. Moreover, even if "Good Utility Practice" could be used to violate the explicit requirements of a Tariff, the facts do not support that Xcel exercised "Good Utility Practice." Thus, there is a reasonable basis to investigate the allegations in the complaint. Accordingly, Petitioners respectfully request that the Commission follow the procedures it has established for handling formal complaints and, pursuant to Minn. R. 7829.1800, subp. 2, serve the complaint on Xcel and require it to respond to each of the allegations in the Petitioners' complaint.

I. Standard for Reviewing Formal Complaints

The Commission's rules establish the standard that the Commission must use when reviewing the allegations of a formal complaint. Minn. R. 7829.1800, subp. 1, states:

Initial commission review. The commission shall review a formal complaint as soon as practicable to determine whether the commission has jurisdiction over the matter and to determine whether there are reasonable grounds to investigate the allegation. On concluding that it lacks jurisdiction or that there is no reasonable basis to investigate the matter, the commission shall dismiss the complaint.

⁶ Order Dismissing Complaint, p. 7.

⁷ Order Dismissing Complaint, p. 8.

However, according to the Commission’s “Summary of Commission Action,” the Commission dismissed the complaint based on its determination it was “not persuaded that investigating this complaint would be in the public interest.”⁸ The Commission reaffirmed it applied this standard when it later stated again that “the Commission is not persuaded that launching a formal investigation into this matter would be in the public interest.”⁹

While the Commission has the authority to dismiss a complaint brought under Minn. Stat. § 216B.17, subd. 1, if it is not in the public interest, the Petitioners did not bring their complaint under Minn. Stat. § 216B.17. As noted above, the complaint was brought pursuant MN DIP Section 5.3.8, as adopted at Sheet 10-196 of Xcel’s Tariff, Minn. Stat. § 216B.164, subd. 5(a), Minn. R. 7835.4500, and Minn. R. 7829.1700. Accordingly, the Commission must find that there is “no reasonable basis to investigate the matter” to dismiss the complaint, not a lack of public interest.¹⁰ And, as Commissioner Tuma and Commissioner Means correctly noted recently, this standard is very low.¹¹ For the reasons discussed below, the Commission should have held that Petitioners’ complaint met this very low standard.

II. Reasonable Basis to Investigate the Complaint

Xcel does not dispute and the Commission apparently recognizes that the SIS for the SolarClubs did not provide “the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that

⁸ Order Dismissing Complaint, p. 2.

⁹ Order Dismissing Complaint, p. 8.

¹⁰ See Minn. R. 7829.1800, subd. 1.

¹¹ See *In the Matter of the Formal Complaint and Request for Expedited Relief by SunShare LLC against Northern States Power d/b/a Xcel Energy*, Docket E002/C-21-125, Hearing on August 12, 2021, Recording at 2:51:19-2:52:44 (Commissioner Tuma stated, “It doesn’t seem like the standard is very high,” standard is “very low,” standard is not “all that high,” stating “it doesn’t take a lot to get there,” and noting it was a “lower standard”), and Recording at 3:35:22-3:35:32 (Commissioner Means stated, “I do agree that there’s a reasonable basis to proceed. As discussed earlier, that’s a very low bar.”).

would be necessary to correct any problems identified in those analyses and implement the interconnection” and “a list of facilities that are required as a result of the Interconnection Application and non-binding good faith estimates of cost responsibility and time to construct,” as required by Xcel Tariff Sheet 10-233. That alone should be sufficient to meet the low standard of a “reasonable basis to investigate the matter.” The Commission even recognizes that “further investigation would doubtless uncover many facts related to the topic.”¹²

While the factual or legal basis for the Commission’s decision to allow Xcel to violate the explicit language of its Tariff is not entirely clear to Petitioners, the Commission makes numerous statements regarding its decision. For the reasons discussed below, those statements do not support the Commission’s decision to dismiss Petitioners’ complaint.

Safety and Reliability of Distribution System

The first basis that the Commission appears to use to support its decision is its apparent acceptance of Xcel’s unsupported argument that its refusal to provide the information required by its Tariff is “grounded in safety, reliability and efficiency.”¹³ As an initial matter, Petitioners’ note that the parties dispute whether the SolarClubs can be safely and reliably interconnected to Xcel’s distribution system. Based on the Pre-Application Report received from Xcel and discussions with its prior engineers, Petitioners believe that the SolarClubs can be safely and reliably interconnected.¹⁴ Xcel, however, has said that the only way to determine whether a project can be safely and reliably interconnected to its system is by doing an SIS, stating:

[T]he Pre-Application Report is not an engineering analysis, but a list of data points of the distribution system, such as feeder characteristics, substation characteristics,

¹² *In the Matter of the Formal Complaint and Request for Expedited Relief by Sunrise Energy Ventures LLC, SolarClub 12 LLC and SolarClub 14 LLC against Northern States Power d/b/a Xcel Energy*, Docket E002/C-21-160, Order Dismissing Complaint, p. 7 (August 13, 2021).

¹³ See Order Dismissing Complaint, p. 7.

¹⁴ See *In the Matter of the Formal Complaint and Request for Expedited Relief by Sunrise Energy Ventures LLC, SolarClub 12 LLC and SolarClub 14 LLC against Northern States Power d/b/a Xcel Energy*, Docket E002/C-21-160, Initial Filing-Formal Complaint, p. 12 (March 8, 2021).

and loading data. The report is based on best available data, but there is no field verification for the data. Most importantly, since the Pre-Application Report is not an analysis, it cannot detect such issues as steady state overvoltage or voltage fluctuation. *These types of voltage issues can only be detected and analyzed through engineering study, in this case the SIS.*¹⁵

It, however, then refuses to provide the SIS required its Tariff, which means the question of whether the SolarClubs can be interconnected safely and reliably remains unanswered and in dispute.

Second, it is unreasonable to determine that providing the information required by Xcel's Tariff could affect the safety, reliability or efficiency of the distribution system. As discussed above, the SIS is the only piece of information that could determine whether the SolarClubs could be safely and reliably interconnected to Xcel's distribution system.¹⁶ As such, it is illogical for the Commission to base its decision on such grounds. Petitioners agree that Xcel is responsible for providing safe and reliably electric service at a reasonable cost. Xcel simply hasn't provided the Commission with any evidence other than its own self-serving testimony that providing the information required by its Tariff would negatively impact any of those responsibilities, which is likely why the Commission was not able to cite any evidence that directly relates to the facts of this matter in its order supporting this alleged basis for Xcel violating its Tariff. The fact is, the only evidence that would support or discount Xcel's claims is the SIS that the Commission refused to require Xcel to provide.¹⁷

¹⁵ Xcel Comments, p. 7 (emphasis added).

¹⁶ *In the Matter of the Petition of Northern States Power Company, dba Xcel Energy, for Approval of its Proposed Community Solar Garden Program*, Docket No. E-002/M-13-867, Order Resolving Independent-Engineer Appeals and Establishing Procedures for Future Disputes, p. 2 (Nov. 1, 2016) (The Commission stated, "The purpose of an engineering study is to determine whether modifications to the interconnecting facility or upgrades to Xcel's system will be necessary to maintain safe and reliable service.").

¹⁷ *See id.*; Xcel Comments, p. 7 (noting that "the Pre-Application Report is not an engineering analysis, but a list of data points of the distribution system, such as feeder characteristics, substation characteristics, and loading data. The report is based on best available data, but there is no field verification for the data. Most importantly, since the Pre-Application Report is not an analysis, it cannot detect such issues as steady state overvoltage or voltage fluctuation. *These types of voltage issues can only be detected and analyzed through engineering study, in this case the SIS.*") (emphasis added).

Further, as noted by the Commission, Xcel's safety and reliability argument is grounded on the premise that "if Xcel installed the larger conductor to accommodate a new DER, and the load subsequently declined, service quality and reliability might be imperiled."¹⁸ Xcel, however, admitted in Information Requests to Petitioners that it "did not have any facts or information that established that there would be a subsequent drop in load on feeder WEF071,¹⁹ a change in the loading profile of feeder WEF071, or a need to reconfigure feeder WEF071" at the time it performed the SIS for the SolarClubs or at the time it completed the Information Requests in May 2021.²⁰ There is simply no hard evidence in the record that interconnecting the SolarClubs would negatively impact the safety or reliability of Xcel's distribution system.

As Petitioners have noted throughout these proceedings, Minn. Stat. § 216B.164, subd. 5(a),²¹ and Minn. R. 7835.4500,²² explicitly place the burden of proof in a dispute between a public utility and a qualifying facility on the public utility. Minn. R. 7835.0100, subp. 19, defines a "qualifying facility" as a small power production facility that satisfies the conditions of title 18, part 292 of the Code of Federal Regulations. 18 C.F.R. § 292.203 defines a qualifying facility that is exempt from filing requirements of the rule as a facility that has capacity of 1 MW or less whose primary fuel source is, among other things, renewable resources. The SolarClubs satisfy the definition under part 292 because each of them have a capacity of just 1 MW and generate power by a renewable resource.²³ Accordingly, by the definition of a qualifying facility established in

¹⁸ Order Dismissing Complaint, p. 6.

¹⁹ Feeder WEF071 is the feeder that Xcel determined that the SolarClubs would be interconnected to.

²⁰ See *In the Matter of the Formal Complaint and Request for Expedited Relief by Sunrise Energy Ventures LLC, SolarClub 12 LLC and SolarClub 14 LLC against Northern States Power d/b/a Xcel Energy*, Docket E002/C-21-160, Xcel IR Response 1 and Xcel IR Response 2 (May 27, 2021).

²¹ Minn. Stat. 216B.164, subd. 5(a), states, in relevant part, "In the event of disputes between a public 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 public utility."

²² Minn. R. 7835.4500 states, "In case of a dispute between a utility and a qualifying facility or an impasse in the negotiations between them, either party may request the commission to determine the issue. **When the commission makes the determination, the burden of proof must be on the utility.**" (Emphasis added).

²³ See 18 C.F.R. § 292.203(a).

Minnesota law, both Minn. Stat. § 216B.164, subd. 5(a), and Minn. R. 7835.4500, apply to the SolarClubs and place the burden of proof on Xcel. Surely, Xcel’s self-serving statements to the Commission are insufficient to meet this burden, especially when its responses to Petitioner’s Information Requests undermine their alleged justification and it would be unreasonable to accept that providing information about the safety and reliability of interconnecting the proposed projects could undermine the safety or reliability of Xcel’s distribution system.

Uncontested Facts

The Commission also appears to rely on “uncontested facts” to support its decision. None of the “uncontested facts” listed in the Commission’s order have any relevance to whether Xcel can violate its Tariff. Whether “Xcel hosts the most fertile distribution grid in the nation for community solar gardens” has no rational connection to whether Xcel can refuse to provide the SIS required by its Tariff. Considering Xcel’s admission that it has treated other developers similarly, it only supports a finding that Minnesota’s CSG program would be larger than it currently is if Xcel was complying with its Tariff. While Xcel’s current CSG program is large, the Legislature clearly intended it to be large when it didn’t place a cap on its size.²⁴ If Xcel complied with its Tariff, the CSG program would be even bigger, providing more renewable energy jobs and a cleaner environment for Minnesotans.

And clearly Xcel has adopted policies that other utilities have not.²⁵ That is the problem. While other states such as California, Hawaii, New York, and Massachusetts also have high levels

²⁴ See Minn. Stat. § 216B.1641(a) (“There shall be no limitation on the number or cumulative generating capacity of community solar garden facilities other than the limitations imposed under section 216B.164, subdivision 4c, or other limitations provided in law or regulations.”).

²⁵ See *In the Matter of the Formal Complaint and Request for Expedited Relief by Sunrise Energy Ventures LLC, SolarClub 12 LLC and SolarClub 14 LLC against Northern States Power d/b/a Xcel Energy*, Docket E002/C-21-160, Xcel IR Response 10 (June 10, 2021) (when asked to identify any entities that are part of the electric industry that stop their analysis once a “limiting factor” is identified, Xcel responded, “We have not researched other utilities, cooperatives, municipal utilities or other entities that are part of the electric industry regarding their System Impact Studies.”).

of distributed generation, neither Xcel nor the Commission have been able to identify another utility that has adopted the same or even similar policies. However, both Xcel and Petitioners agree that Xcel cannot adopt policies that violate its Tariff.²⁶ So while Xcel might adopt policies that other utilities have not yet adopted, those policies cannot violate its Tariff or Minnesota law.

Finally, whether “feeders are reaching the limits of their capacity” is irrelevant to whether Xcel should be required to provide the SIS required by its Tariff for a particular CSG. In fact, the purpose of an SIS is to determine whether a particular CSG can be safely and reliably interconnected to Xcel’s distribution system. As such, only an SIS can determine whether a particular feeder is reaching the limits of its capacity.

“Good Utility Practice”

Finally, the Commission appears to rely on the doctrine of “Good Utility Practice” to justify its decision. “Good Utility Practice” is defined in Xcel’s Tariff at Sheet 10-206, as:

Any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and act which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

In short, “Good Utility Practice” is either what “a significant portion of the electric industry during the relevant time period” is doing or have approved, OR “any of the practices, methods and act which, in the exercise of reasonable judgment *in light of the facts known at the time the decision*

²⁶ See TIIR, p. 3-4 (“In the event of an inconsistency between various laws, rules, standards, contracts, or policies over interconnection requirements, the resolution to this inconsistency shall be resolved by assigning an order of precedence from highest to lowest as follows: 1. State of Minnesota statutes 2. Minnesota Public Utilities Commission approved standards, tariffs or orders 3. National Standards, Codes, and Certifications 4. Agreements between the Area EPS Operator and the DER Operator 5. Area EPS Operator published documents”); *see also*, Xcel Comments, p. 17 (stating, “Good Utility Practice cannot violate current existing statutes, rules, standards, Company tariff, TIIR, Company Technical Specifications Manual (TSM), or national electric standards, codes, or certifications.”).

was made.”

“Good Utility Practice” cannot be used as a basis to justify Xcel’s violation of its Tariff. First, there is nothing in Minnesota law, the Minnesota Technical Interconnection and Interoperability Requirement (“TIIR”), the MN DIP, or Xcel’s Technical Specifications Manual (“TSM”) that establishes or even implies that “Good Utility Practice” is a doctrine that can be used to ignore the explicit requirements of a tariff and stop an SIS analysis once a “primary limiting factor” is identified. On the contrary, these authorities establish that “engineering judgment” is meant to be used to “interconnect” a project based on the unique “characteristics and designs” of the system and the project based on the “facts known at the time of the decision.”²⁷ These authorities discuss using “engineering judgment” when no generic rule, practice or standard applies to the unique facts of a particular interconnection, not to create one that conflicts with the explicit requirements of a tariff.²⁸ Using it to support such action could be contrary to its very purpose. In this case, providing an SIS with the information required by its Tariff will not affect the safety or reliability of Xcel’s distribution system. There is no cost to Xcel because the CSG is responsible for all study costs. And applying the doctrine in such a situation would not be expeditious because it likely results in unnecessary and piecemeal disputes.²⁹

Moreover, it would seem self-evident that violating the explicit terms of a tariff could never be considered a “Good Utility Practice.” “Good Utility Practice,” as it is defined, would

²⁷ See TIIR, p. 1-4; Xcel Tariff Sheet 10-275.

²⁸ See TIIR, p. 1-4

²⁹ For example, if the upgrades to safely and reliably interconnect the SolarClubs cost too much for the SolarClubs to bear, then a dispute about Xcel’s unwritten conductor policy will never arise because it is the cost of the upgrades that make the projects unfeasible, not Xcel’s unwritten policy. Conversely, if the Commission requires Xcel to provide an SIS that meets the requirements of Tariff Sheet 10-233 and additional issues are identified, then that may necessitate another complaint, which could have been avoided if the SIS initially identified all the relevant requirements and potential impediments to interconnection, which could have then been disputed all at once. Unnecessary and piecemeal disputes are inefficient and waste the time and resources of the parties and the Commission.

necessarily be complying with the terms of a tariff because it is what “a significant portion of the electric industry” does during the relevant time period. Thus, Xcel’s admission that it is unaware of any other utility that is acting similarly³⁰ and the Commission’s recognition that Xcel is adopting policies that other utilities have not,³¹ would clearly take its actions outside of the first part of this doctrine’s requirements.

Further, as discussed previously, the basis for Xcel’s refusal to provide an SIS with the information required by its Tariff for the SolarClubs is allegedly its safety and reliability concerns. As noted by the Commission, Xcel’s safety and reliability argument is grounded on the premise that “if Xcel installed the larger conductor to accommodate a new DER, and the load subsequently declined, service quality and reliability might be imperiled.” Xcel, however, admitted in Information Requests to Petitioners that it “did not have any facts or information that established that there would be a subsequent drop in load on feeder WEF071, a change in the loading profile of feeder WEF071, or a need to reconfigure feeder WEF071” at the time it performed the SIS for the SolarClubs or at the time it completed the Information Requests in May 2021.³² Thus, Xcel cannot meet the second basis provided by this doctrine’s definition because it is not based on “facts known at the time the decision was made.”

In addition, Xcel’s Tariff explicitly states how “Good Utility Practice” is used in relation to conducting SISs, and it doesn’t say that Xcel can stop the SIS analysis once it hits its own self-imposed “limiting factor.” Xcel Tariff Sheet 10-232 states, in part, “The Area EPS Operator reserves the right to request additional technical information from the Interconnection Customer

³⁰ See Xcel IR Response 10 (“We have not researched other utilities, cooperatives, municipal utilities or other entities that are part of the electric industry regarding their System Impact Studies.”).

³¹ See Order Dismissing Complaint, p. 7 (“Xcel is acting as a pioneer in interconnecting this level of DER; this fact might help explain why Xcel might adopt policies that other utilities have not yet found a need to adopt.”).

³² See Xcel IR Response 1 and Xcel IR Response 2.

as may reasonably become necessary consistent with Good Utility Practice during the course of the system impact study.” So, Xcel can use “Good Utility Practice” to ask for more information to conduct the SIS, but neither Xcel nor the Commission cite any authority that states or even implies that “Good Utility Practice” can be used to stop the analysis required by Xcel’s Tariff.

Further, as discussed in Petitioners’ Reply Comments, that policy is not relevant at this stage of the interconnection process because Sunrise is not attempting to actually interconnect the SolarClubs. It is simply asking Xcel to study them and provide the SIS required by Tariff Sheet 10-233 so that it can determine if the projects are financially viable. Providing the information required by Xcel Tariff Sheet 10-233 cannot negatively impact the safety or reliability of Xcel’s distribution system. To the contrary, providing this information is the only way to ensure the Legislature’s intent to have as many CSGs as possible safely and reliably interconnected to Xcel’s distribution system.³³

In summary, “Good Utility Practice” is not applicable at this stage of the interconnection process except to the extent Xcel requests additional information to conduct the SIS analysis for the SolarClubs; is not applicable based on the facts of this case because Xcel is not engaging in a practice that is approved by a significant portion of the utility industry or exercised reasonable judgment based on facts known at the time of its decision; and, cannot be used to violate the explicit terms of Xcel’s Tariff because it is only meant to fill in when there are no standards that are applicable. In this case, there is a standard that is applicable, Xcel Tariff Sheet 10-233.

Conclusion

Petitioner’s complaint is about the SolarClubs and the known facts of those projects, not

³³ See Minn. Stat. § 216B.1641(a) (“There shall be no limitation on the number or cumulative generating capacity of community solar garden facilities other than the limitations imposed under section 216B.164, subdivision 4c, or other limitations provided in law or regulations.”).

the CSG Program or other CSG projects. The Petitioners' complaint does not raise any technical issues. The issue raised by Petitioners' complaint is a simple one that only requires a plain reading of the clear language of Xcel's tariff. The parties agree that the only way to determine whether a CSG can be safely and reliably interconnected is to do an SIS, and Xcel's Tariff requires Xcel to provide an SIS that includes "the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection" and "a list of facilities that are required as a result of the Interconnection Application and non-binding good faith estimates of cost responsibility and time to construct." As evident from the Commission's order, no one disputes that the document provided by Xcel for the SolarClubs failed to include all of this information. Neither Xcel nor the Commission have cited any authority that allows Xcel to violate the clear language of Xcel's Tariff. It would be absurd to determine that Xcel does not need to provide an SIS for safety or reliability reasons when the parties agree that an SIS is the only piece of information that can determine whether any safety or reliability concerns are raised by the interconnection of the SolarClubs. Accordingly, Petitioners respectfully request that the Commission vacate/amend its order dismissing Petitioners' complaint and require Xcel to answer the complaint so that an investigation can be initiated and the Commission can determine whether Xcel has a basis that is supported by known facts or established law as it relates to the SolarClubs that would allow Xcel to violate the explicit language of its Tariff.

Respectfully Submitted,

Dated: September 2, 2021

/s/ Curtis Zaun

CURTIS P. ZAUN