

**STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Valerie Means	Commissioner
Matt Schuenger	Commissioner
Joseph K. Sullivan	Commissioner
John Tuma	Commissioner

**In the Matter of the Petition of  
Northern States Power Company  
d/b/a Xcel Energy for Approval of  
Amendments to its Natural Gas and  
Electric Service Quality Tariffs  
Originally Established in Docket No.  
E, G-02/CI-02-2034 & Investigation  
and Audit of Service Quality  
Reporting-Fraud wise Report**

**MINNESOTA SOLAR ENERGY  
INDUSTRIES ASSOCIATION'S  
(MnSEIA) REPLY COMMENTS**

**Docket No. CI-02-2034/M-12-383**

**August 10, 2020**

**MnSEIA's COMMENTS**

The Minnesota Solar Energy Industries Association (MnSEIA) is a 501(c)(6) nonprofit trade association that represents our state's solar businesses, with over 110 member companies, which employ over 4,000 Minnesotans.

**BACKGROUND**

In December, 2019 Xcel Energy ("Xcel" or "the Company") received over one hundred interconnection application Complaints through the Consumer Affairs Office that were initiated by a solar installer. The installer was a designated Application Agent for various interconnection customers, as per Minnesota Distributed Energy Resources Interconnection Process (MN DIP) guidelines.

These complaints put Xcel above a customer complaint performance threshold determined in the Quality of Service Plan (QSP) tariff, which compels a \$1 million penalty for underperformance. The Company requested on May 1, 2020, that the Commission find that 129 of the complaints

submitted to the Commission's Consumer Affairs Office ("CAO") should not be counted in the Customer Complaints metric in its Quality of Service Plan ("QSP") tariff.

On May 6, 2020, the Minnesota Public Utilities Commission ("Commission") identified one issue and five topics open for comment in a Comment period closing on July 1, 2020. The question identified was, "Should the Commission find that 129 complaints submitted to the Commission's Consumer Affairs Office be counted in the customer complaints metric in Xcel Energy's Quality of Service Plan tariff?" The Topics Open for Comment were as follows:

- Should the Commission grant Xcel Energy's request that 129 individual interconnection application complaints from one solar installer not be considered "customer complaints", and not be included in the customer complaints metric in the Company's Quality of Service Plan (QSP) tariff, as requested by Xcel?
- Should the threshold for Xcel Energy's customer complaints performance be re-evaluated?
- Should complaints from solar installers be tracked, not as "customer complaints" for QSP purposes, but instead, in a separate tracking mechanism?
- How should the definition of "customer" in Xcel's QSP tariff be interpreted?
- Are there other issues or concerns related to this matter?

#### A. The Department of Commerce

The Minnesota Department of Commerce, Division of Energy Resources ("the Department," or "Commerce") filed Comments on July 2, 2020, after requesting an extension, which the Commission granted. The Department concluded that the Commission should not consider the 129 Complaints as "customer complaints under the QSP tariff."<sup>1</sup> The Department declined to re-evaluate Xcel Energy's customer complaints performance metric.<sup>2</sup> Commerce agreed with the Company's proposal that complaints from solar installers should instead be tracked in Docket No. E999/M-16-521, but "recognizes that Xcel botched the MN DIP roll-out and that the Company should be held accountable for this lack. Specifically, the Commission should require Xcel to identify all of the steps it will take to prevent any similar reoccurrence."

The Department further suggested a legal test in response to the Commission Topic for Comment regarding the definition of "customer" in Xcel's QSP tariff. The Department suggests that:

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<sup>1</sup> COMMENTS OF THE MINNESOTA DEPARTMENT OF COMMERCE, DIVISION OF ENERGY RESOURCES, Docket Nos. E,G002/CI-02-2034 and E,G002/M-12-383 at 3 [*hereinafter* Commerce filing].

<sup>2</sup> *Id.* at 7.

[...] vendors like the solar installers in this proceeding should not be automatically allowed to file a customer complaint for an autonomous retail customer under the “or an individual authorized by the Customer to act on his/her account” unless it can be shown that the vendor is unambiguously lodging the complaint for the **financial benefit** of affected retail customers.<sup>3</sup> (Emphasis added.)

#### B. The City of Minneapolis

The City of Minneapolis (“Minneapolis” or “the City”) filed Comments on July 1, 2020. Minneapolis asserted that the Commission should deny Xcel’s request to exclude the 129 interconnection application complaints.<sup>4</sup> Minneapolis further suggested a two-part test to determine whether CAO Complaints from solar installers should be valid:

- 1) The customer was aware that their contracted solar installer was filing a complaint on their behalf and supported this action
- 2) CAO accepted the complaint as filed, or if CAO had requests to clarify the legitimacy of a complaint, the complainant was responsive to these requests.<sup>5</sup>

The City of Minneapolis also characterized the Company’s proposal to track Complaints from solar installers through a separate tracking mechanism from the QSP as unfair and potentially discriminatory,<sup>6</sup> and further reiterated that solar interconnection customers should be included in any definition of “customer” in Xcel’s QSP tariff.<sup>7</sup>

Lastly, Minneapolis highlighted the Company’s Solar\*Rewards annual compliance filing,<sup>8</sup> which shows 286 withdrawn solar projects in 2019. The City noted that the Company “**excludes dates for the Company’s critical review milestones, such as ‘Date deemed complete’, ‘Date initial review complete’, ‘Date supplemental review complete’, etc.**” (Emphasis original.)

#### C. The Joint Commenters

The Interstate Renewable Energy Council, Inc. Fresh Energy, The Environmental Law & Policy Center, and Vote Solar (“Joint Commenters”) filed initial Comments on July 1, 2020. The Joint

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<sup>3</sup> *Id.* at 7.

<sup>4</sup> COMMENTS OF THE CITY OF MINNEAPOLIS, Docket Nos. E,G002/CI-02-2034 and E,G002/M-12-383, Doc. Id 20207-164577-01 at 3 [*hereinafter* Minneapolis filing].

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Id.* at 3.

<sup>8</sup> IN THE MATTER OF THE PETITION OF DOCKET NO. E002/M-13-1015 NORTHERN STATES POWER COMPANY FOR APPROVAL OF SOLAR\*REWARDS 2019 ANNUAL REPORT PROGRAM, Docket No. E002/M-13-1015, Doc. Id 20206-163647-02 Jun 1, 2020.

Commenters held that the 129 Complaints should be included in the QSP tariff.<sup>9</sup> The Joint Commenters reasoned that interconnecting customer-sited solar installations is a function of the Company’s customer service, and is therefore the kind of “provision of service” that may prompt a legitimate customer Complaint under the QSP tariff.<sup>10</sup>

The Joint Commenters also refuted the Company’s argument that solar installers could not legitimately submit customer Complaints by reference to the MN DIP’s Application Agent provisions as evidence of a sufficient principal-agent relationship.<sup>11</sup>

Furthermore, the Joint Commenters made the case that neither the MN DIP dispute resolution process, nor the Solar\*Rewards reporting process would be an adequate substitute for the CAO Complaint process counted in the Company’s QSP tariff<sup>12</sup>—the former being too long and onerous for many of the rooftop projects at issue, and the latter being toothless.<sup>13</sup>

The Joint Commenters also declined to support Xcel’s request to re-evaluate the threshold for QSP performance, citing both the Company’s participation in the MN DIP and in setting its own threshold for adequate QSP performance.

Similarly, the Joint Commenters declined to support Xcel’s request to segregate Complaints from solar installers into a separate mechanism,<sup>14</sup> but instead proposed an *additional* tracking mechanism that would “require utilities to provide the maximum, mean, and median processing times for the milestones [already required by reporting].”<sup>15</sup>

#### D. Novel Energy Solutions

Novel Energy Solutions (“Novel”) filed Comments on July 1, 2020. Novel, which is a solar development and installation company, and a member of MnSEIA, offered evidence that Xcel has been consistently months, if not years, late to complete interconnection agreements—both under MN DIP and before. Novel explained succinctly to the Commission the financial impact

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<sup>9</sup> INITIAL COMMENTS OF THE INTERSTATE RENEWABLE ENERGY COUNCIL, INC., FRESH ENERGY, THE ENVIRONMENTAL LAW & POLICY CENTER, AND VOTE SOLAR ON XCEL ENERGY’S ANNUAL REPORT AND REQUEST FOR COMMISSION FINDING REGARDING THE CUSTOMER COMPLAINT PERFORMANCE SERVICE QUALITY PLAN, IN THE MATTER OF THE PETITION OF NORTHERN STATES POWER COMPANY d/b/a XCEL ENERGY FOR APPROVAL OF AMENDMENTS TO ITS NATURAL CASE AND ELECTRIC SERVICE QUALITY TARIFFS ORIGINALLY ESTABLISHED IN DOCKET NO. E, G-02/CI-02-2034 & INVESTIGATION AND AUDIT OF SERVICE QUALITY REPORTING-FRAUD WIS REPORT, Docket No. E,G002/M-12-383, Doc. Id 20207-164520-01, July 1, 2020 at 10 [*hereinafter* Joint Commenters].

<sup>10</sup> *Id.* at 11.

<sup>11</sup> *Id.* at 13.

<sup>12</sup> *Id.* at 17.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 21.

<sup>15</sup> *Id.* at 23.

that these delays have on that company and customers: “Without IAs, we still have all our costs, but none of our revenues. Consumers are being denied access to a program that was promised to them via Xcel and legislation.”<sup>16</sup> (Emphasis original.) Novel also offered evidence to support their claims.

Novel asked the Commission to “Demand that Xcel follow tariff and return IA’s to developers so that projects can be built.”<sup>17</sup> (Emphasis original.)

#### E. All Energy Solar

All Energy Solar (“All Energy” or “the Complainant”) filed Comments on July 1, 2020. All Energy, which is a solar developer and installer primarily for residential customers, and a member of MnSEIA, offered some background and rationale for the 128 Complaints they submitted to the CAO on behalf of their customers.

All Energy made clear that the decision to file Complaints was not taken lightly or arrived at in a fit of thoughtless zeal.<sup>18</sup> Furthermore, All Energy stated that the batch of Complaints actually submitted, “is just a small sample of the great amount of issues we have come across.”<sup>19</sup> The fact that the Complaints were submitted *at all* can be traced to the Minnesota Department of Commerce, which All Energy states directed them “as to the proper CAO submission process.”<sup>20</sup>

The Complainant illustrated the financial impact the Company’s delays had on them and their customers. All Energy stated that it needed to dedicate, “two of our team members to monitor Xcel Energy’s Solar Rewards portal and double enter data into our software”<sup>21</sup> just to track the Company’s adherence MN DIP deadlines. All Energy also noted that Xcel’s delays caused a hit to their reputation, stating, “When something gets delayed or there is a holdup in the process, we do not blame the utility or try to hide behind the utility caused delays, we typically apologize on behalf of the utility, but of course the customer doesn’t want to hear excuses, they just want noticeable action.”<sup>22</sup> Finally, All Energy stated that they themselves paid out over \$150,000 to customers to make up for missed commitments—including a 4% loss in Investment Tax Credit revenue—that were made to customers on the reasonable reliance that Xcel would meet its mandated MN DIP deadlines.<sup>23</sup> Broadly stated, “Xcel customers were delayed in their projects and we were penalized financially because of it.”<sup>24</sup>

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<sup>16</sup> COMMENTS, NOVEL ENERGY SOLUTIONS, Docket No. E,G002/M-12-383, Doc. Id 20207-164545-01, July 1, 2020 at 2 [*hereinafter* Novel].

<sup>17</sup> *Id.* at 1.

<sup>18</sup> COMMENTS, ALL ENERGY SOLAR, Docket No. E,G002/M-12-383, Doc. Id 20207-164567-01, July 1, 2020 at 1 [*hereinafter* All Energy].

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 2.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

All Energy strongly urged the Commission to deny Xcel’s request to set aside the Complaints in any way—doing so would leave no recourse to hold the Company accountable.<sup>25</sup>

## COMMENTS

### **I. CAO Complaints do not Require Financial Harm**

Complaints made to the CAO about a utility’s service do not—as a matter of law and practice—require a showing of financial damages, but if they did, delayed interconnection of a distributed energy resource should be *prima facie* evidence of financial damages.

#### A. The Department of Commerce’s Proposed Legal Test Does Not Follow the Intent of the QSP.

As discussed above the Department proposed a legal test to determine the legitimacy of a given Customer Complaint by a solar installer at the Consumer Affairs Office:

[...] vendors like the solar installers in this proceeding should not be automatically allowed to file a customer complaint for an autonomous retail customer under the “or an individual authorized by the Customer to act on his/her account” unless it can be shown that the vendor is unambiguously lodging the complaint for the **financial benefit** of affected retail customers.<sup>26</sup> (Emphasis added.)

The proposed test, then, would exclude *at the point of filing* any and all Complaints made by vendors or other authorized representatives that could not show—unambiguously—that the Complaint was made for the purpose of financially benefiting the customer. It is not clear whether the Department believes whether any other reasons are permissible for vendor-submitted Complaints in addition to the financial benefit component. It is implied that the financial benefit to the customer should be the predominant factor.

This test runs contrary to the plain meaning of both the QSP tariff itself and the CAO Complaint portal.

The Company’s tariff<sup>27</sup> states the following criteria regarding exclusions—i.e. what would and would not be “automatically allowed”<sup>28</sup> to be filed through the CAO portal:

Customer complaints **will be recorded and reported with no exclusions.**  
The Company may request exclusion of Customer Complaints that the Company can demonstrate are the result of an event beyond the

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<sup>25</sup> *Id.* at 3.

<sup>26</sup> *Commerce, supra note 1* at 7.

<sup>27</sup> QSP Tariff, Xcel Energy Rate Book, Section 6, Sheets 7.7-7.11 [*hereinafter* Rate Book].

<sup>28</sup> *Commerce, supra note 1* at 7.

Company's control, which the Company took reasonable steps to address.  
(Emphasis added.)

The Company's own tariff is unambiguous that all Complaints will be recorded, or rather automatically allowed. This inclusive posture does not envision an unending stream of Complaints, with no regard to reasonableness, however. Rather, the Rate Book specifies a test to exclude Complaints *after the point of filing*. Exclusions are allowed for Complaints that both 1) are not caused by the Company's actions, and 2) the Company mitigates through "reasonable steps." Xcel, in its Annual Report, made exactly that kind of *post facto* request.<sup>29</sup>

The CAO Complaint portal<sup>30</sup> does not seem to contemplate financial harm or benefit to the consumer—or else that kind of harm is either assumed or immaterial. Nowhere in the boxes or drop-down menus on the portal do the words "financial," "monetary," "money," or "amount" appear. The initial instructions on how to fill out a Consumer Complaint are as follows:

First, contact your utility company to try and resolve your complaint. If you are unable to resolve the problem with your utility company, complete and submit this form. On the complaint form, write details about your concerns, the steps you have taken to try and fix the problem, the utility company's response, and what would you like the utility company do to fix it. **Attach a copy of the bill(s) in question or any other information that helps describe the situation.** State law requires your signature in order for us to contact the utility company about your complaint. We may share the information you send - complaint form, bill copies, etc. - with the utility company.<sup>31</sup>

The instructions to the portal characterize the only financial document referenced—the customer's bill—as potentially *descriptive* evidence, and not necessarily the fundamental question at issue. Surely, bill disputes must comprise a significant portion of the Complaints subject to the QSP, but not all of them.<sup>32</sup> Nowhere does the portal prompt the complainant to calculate monetary damages.

Rather (aside from identifying information) the portal only instructs the customer to "Write details about your concern, the steps you have taken to try and fix the problem, the company's response, and the action you would like the utility company to take." The portal leaves open the

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<sup>29</sup> See COMPLIANCE FILING - ANNUAL REPORT AND REQUEST OR COMMISSION FINDINGS REGARDING THE CUSTOMER COMPLAINT PERFORMANCE SERVICE QUALITY PLAN, XCEL ENERGY, Docket No.E,G002/M-12-383, Doc. Id 20205-162847-01 (May 4, 2020) [hereinafter *Xcel Filing*].

<sup>30</sup> Minnesota Public Utilities Commission, Consumer Complaint/Inquiry Form, at <https://mn.gov/puc/consumers/help/complaint/> Accessed August 4, 2020 [hereinafter *Complaint Portal*].

<sup>31</sup> *Id.*

<sup>32</sup> See also, Rate Book.

possibility of every kind of Complaint under the sun—so long as the customer (if they have read the instructions) has first tried to resolve the issue with the utility.

Lastly, the instructions in the portal explain in plain language the purpose of and potential cures that follow from filing a Complaint:

Finally, **if your concerns are within our jurisdiction, we will review your concerns and respond to you.** We may ask the utility company to investigate your complaint and report the results to us and to you. If so, we review the utility company's response to make sure the company addresses your concerns. We also review the company's actions to make sure they follow Minnesota state statutes and rules and Commission orders. **If it looks like the company is not following the statutes, rules, or orders, we will take additional action.** Most complaints are resolved within 30 business days. Some will take more or less time, depending on the complexity of the situation.<sup>33</sup> (Emphasis added.)

The portal promises a reply from the CAO if “your concerns” are within Commission jurisdiction—no more is required for a reply, and much less is required to be “automatically allowed.” Furthermore, the portal makes explicit the policing function of the Complaint by promising that, “If it looks like the company is not following the statutes, rules, or orders, we will take additional action.”

#### B. The Commission Should Not Adopt the Test

The Department’s proposed test either misreads or maladapt the text of both the QSP and the CAO portal. Neither text requires a customer to show financial harm or excludes Complaints made by customer agents unless shown to be for the financial benefit of the customer. The Commission should not adopt Commerce’s test.

### **II. Nevertheless, These Complaints Are Evidence of Financial Harm**

Even though the QSP and CAO tests do not require financial harm to be valid, the Complaints at issue would nonetheless meet Commerce’s stricter, if incorrect, test. The installer in this case—and the solar community at large—has made quite clear the financial burden imposed both on customers and installers by Xcel’s failure to comply with the MN DIP.

#### A. Harm to Customers

Despite Commerce’s claims to the contrary, All Energy’s customers suffered financial harm from Xcel delays. The Complaints made on their behalf were, *at Commerce’s direction*, even, made as a last resort to mitigate that harm.<sup>34</sup>

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<sup>33</sup> Complaint Portal.

<sup>34</sup> See All Energy, *supra* note 18.



The Commerce filing demonstrates a willingness to interrogate the Company as to the harm its customers may or may not have suffered as a result of its “botched”<sup>35</sup> MN DIP roll-out, but evidently asked neither the customers nor All Energy.<sup>36</sup> Xcel’s response to Commerce makes a good faith effort to imagine what kinds of financial harm may have occurred as a result of delays, but carefully delineates what the Company knows and does not know:

We do not know if any customer authorized the filing on their behalf of any of these 129 complaints. Notwithstanding this, the Solar\*Rewards program team has **no record or recollection of any communication from any of these 129 customers showing that they have suffered financial harm.** We do note that for Application #: OID 3988984, the installer, in an email dated **December 23, 2019**, states that **the customer had missed the 30 percent 2019 tax credit** and implies that it would receive the **26 percent 2020 tax credit instead**; however, our understanding is that the 2019 tax credit would apply if, in 2019, the project commenced construction and has been placed in service prior to the end of 2023. See, for example, <https://www.energy.gov/sites/prod/files/2019/08/f65/investment-tax-credit.pdf>.

Further that application had other delays, including incomplete information by the installer. There may have been time to incur associated costs and begin construction for this project; **we do not know whether, in fact, the customer was still able to obtain the 2019 tax credit.**<sup>37</sup> (Emphasis added.)

Xcel would not know or have a “record or recollection of any communication from any of these 129 customers showing that they have suffered financial harm,” because *the CAO portal does not ask for such information*. Xcel no doubt answered in good faith; MnSEIA doubts, however, whether the Company was given an appropriate Information Request.

Xcel may not know the full circumstances of the All Energy customer, who—with eight days left in the year and no word on the the status of their Solar\*Rewards application—probably reasonably concluded that their chances for the 2019 ITC had passed, but the Company could nonetheless state that “we do not know whether, in fact, the customer was still able to obtain the 2019 tax credit.” The discussion around commencement of construction and in service date (where the IRS considers the former to be a placeholder for a project’s vintage year, so long as the latter follows by 2023<sup>38</sup>) probably misapprehends the nature of a residential project, which MnSEIA members have anecdotally told MnSEIA takes 1-3 days to complete. It is MnSEIA’s understanding that that sort of gap between commencement and in service is, if not routine, then acceptable, for larger commercial projects, but infeasible for residential ones, like those eligible for the Company’s Solar\*Rewards program.

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<sup>35</sup> Commerce, *supra note 1* at 7.

<sup>36</sup> See *Id.*, Attachments A, B and C.

<sup>37</sup> *Id.* Attachment A.

<sup>38</sup> See <https://www.energy.gov/sites/prod/files/2019/08/f65/investment-tax-credit.pdf>.

Commerce declined to accept All Energy’s claim that Application #OID 3988984 had missed the 2019 tax credit, but instead took the sliver of doubt allowed by Xcel’s Response to Information Request 5 as evidence that “this information does not support the contention that the two Solar Installers were attempting to keep their customers from suffering financial harm.”<sup>39</sup> Such analysis abandons any pretense of consumer advocacy.

Commerce also declined to take into consideration All Energy’s Comments in this Docket, which were available in the e-Docket July 1st, a full day before Commerce submitted Comments, and a week before the expiration of Extension that Commerce requested. In that filing All Energy described straightforwardly the financial harm caused by missed ITC deadlines:

The Federal Tax Credit reduced from 30% in 2019 to 26% in 2020. Xcel failed to meet many deadlines in 2019 causing projects to get pushed to 2020, thereby causing customers to lose out on 4% of their tax credit incentive. Had the deadlines been met on many of those projects, they would have qualified for the larger tax credit.<sup>40</sup>

While All Energy did not provide in their Comments details as to which projects and how many missed the 2019 ITC deadline as a result of Xcel delays, they do plainly state that more than one customer suffered a reduction in tax credit benefits—i.e. financial harm—as a result of utility delays. Despite this claim’s presence in the record for a full day before it filed, Commerce ignored it entirely, stating that, “there is not information in this proceeding to indicate that any of the customers were harmed.”<sup>41</sup>

But, delay itself should be evidence of financial harm. The residential solar installations that are the subject of the 129 Complaints offset energy use from the grid, thereby offering energy—and therefore financial—savings. Because of the time value of money, which is to say, a dollar today is worth more than a dollar tomorrow, a delay in accruing those savings is *ipso facto* financial harm to a customer. To show specific financial harm to any individual customer would involve projecting solar production over the course of the Xcel-caused delay. Between the burdensome nature of documentation for a specific showing of harm<sup>42</sup> and the generally-accepted financial axiom of the time value of money, MnSEIA suggests to the Commission that, for the purposes of a CAO Complaint, any delay in the installation of a solar project should imply a financial harm to the beneficiaries of that project.

Furthermore, MnSEIA urges the Commission to accept that a Complaint filed by an authorized representative of a solar customer that seeks to rectify a utility-caused delay is *prima facie* intended for the financial benefit of that customer.

#### B. Harm to Installers and Developers

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<sup>39</sup> Commerce, *supra note 1* at 5.

<sup>40</sup> All Energy, *supra note 18* at 2.

<sup>41</sup> Commerce, *supra note 1* at 3.

<sup>42</sup> See MN DIP Dispute Resolution process, MN DIP §5.3.

In their Comments All Energy states three ways that delay causes financial harm to them. First, staff time and resources were dedicated to tracking and double-entering application steps to monitor Xcel's compliance with MN DIP.<sup>43</sup> Second, All Energy suffered reputational harm as projects were not completed on the MN DIP timelines, on which All Energy relied and represented to their customers as reasonable estimates.<sup>44</sup> Third, All Energy suffered \$150,000 worth of actual economic damages that they paid out to customers to mitigate customer financial harm suffered as a result of Xcel's delays.<sup>45</sup>

Fourth, All Energy suffered financial losses as a result of delayed revenue, though they did not articulate this harm in their filing. By the same logic above that there is a time value of money, company income deferred until a later date would cause financial harm.

Novel, which unlike All Energy, is also developer of community solar gardens through Xcel's Solar\*Rewards Community program, underlined the financial impact that delays have on that company: "Without IAs, [completed Interconnection Agreements] we still have all our costs, but none of our revenues."<sup>46</sup> (Emphasis original.) Novel contended that more than 85% of Interconnection Agreements, for both CSGs and smaller projects, are late—and sometimes by months.<sup>47</sup> Garden developers own or manage the Community Solar Garden LLC during the interconnection process and are therefore a commercial customer, the authorized representative of a commercial customer, or they are an equivalent to one or or the other.

Other MnSEIA member companies have documented the financial harm caused by Xcel's failure to meet MN DIP timelines.<sup>48</sup> MnSEIA conducted an informal survey of membership to collect information that might constitute a CAO Complaint, were the companies comfortable lodging them. The survey relied on the CAO portal so as to collect similar data. Many forms of financial harms as a result of Xcel's inability or unwillingness to conform to MN DIP requirements were described in the results. Among those harms were: cancelled customer contracts; \$100,000+ in delay costs for a single CSG project; submitting developers to additional application steps prior to and addition to MN DIP; and, innumerable other delays.

MnSEIA wishes to point out that in the case of CSGs, the project entity, which is by industry practice a Limited Liability Company (LLC) owned and/or controlled by the parent developer, is itself the interconnection customer. While for behind-the-meter projects like those in the Solar\*Rewards program, the customer is more distinct from the installer/developer, with CSGs,

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<sup>43</sup> All Energy, *supra note 18* at 2.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Novel, *supra note 16* at 2.

<sup>47</sup> *Id.* at 3.

<sup>48</sup> See MINNESOTA SOLAR ENERGY INDUSTRIES ASSOCIATION'S (MnSEIA) COMMENTS, MnSEIA, Docket Nos. CI-02-2034/M-12-383, Doc. Id. 20207-164547-01, July 1, 2020 at 10-14. [*hereinafter* MnSEIA Comments].

the agency problem through which Commerce analyzes the legal issues in this case is diminished. The interests of a developer and a CSG project entity are very closely aligned, and delay creates financial harm for both parties.

These delays, as Novel has argued, mean that installers and developers must bear overhead costs—including, for CSGs, costly deposits and System Impact Studies—while deferring income until the project is in service. There are real financial costs associated with bearing these delays. MnSEIA asks the Commission to recognize that delays beyond the agreed-upon timelines in MN DIP create *prima facie* evidence of financial harm to solar installers and developers.

### **III. These Complaints Vastly Understate the Extent of the Problem**

In our initial Comments, MnSEIA endeavored to show the Commission that Xcel’s failures to conform to MN DIP requirements and timelines were widespread and severe. Xcel’s Compliance Filings for the second quarter of this year show exactly the breadth and depth to which the MN DIP roll-out was botched.

Xcel’s most recent compliance report for the Community Solar Gardens program showed that the utility only delivered Interconnection Agreements (IA) on time only 12% of the time in the second quarter of this year.<sup>49</sup> This is an improvement from a 9% on-time rate in the previous quarter.<sup>50</sup> Because Xcel’s interpretation of MN DIP allows the utility to study gardens serially, any project at the front of the queue needs to move through engineering before Xcel will begin studying the next application in line. Thus any delay on an IA will result in delay not just for the developer receiving the IA, but every developer in line.

The compounding impact of chronically missed deadlines is incredibly problematic for projects that are deeper in queue, because the wait time for an IA according to tariff can be 300 days for each project ahead of it in the queue.<sup>51</sup> The addition of systematic processing, study and IA delivery delays means that projects deeper in the queue can lose years due to utility reticence and tariff infraction.

Xcel’s interpretation of the serial review process creates the necessity to develop a new status for the interconnection queue that has been dubbed “On Hold.” Effectively the project is paused until the project at the front of the queue either drops out or signs an interconnection agreement. All utility timeline requirements are set aside while a project is On Hold. Currently 60% of Community Solar Gardens are bucketed as On Hold at the moment, which means that more

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<sup>49</sup> See Xcel Energy, QUARTERLY COMPLIANCE FILING COMMUNITY SOLAR GARDENS DOCKET NO. E002/M-13-867, Doc.Id. 20207-165179-01 at 4-5 (July 22, 2020) (adding the number of studies “delivered on time” and dividing it by the total number of “studies due in Q2).

<sup>50</sup> COMPLIANCE FILING -- Q2 COMPLIANCE REPORT, XCEL ENERGY, Docket No. E002/M-13-867, Doc. Id. 20204-162152-01 at 4 (Apr. 16, 2020) (adding the number of studies “delivered on time” and dividing it by the total number of “studies due in Q1).

<sup>51</sup> See Xcel Energy, QUARTERLY COMPLIANCE FILING COMMUNITY SOLAR GARDENS DOCKET NO. E002/M-13-867, Doc. Id. 20207-165179-01 at 5, (July 22, 2020).

project applications are sitting idly than being studied or processed.<sup>52</sup> This rate is up from the 22% that Xcel reported in its April compliance filing.<sup>53</sup> If Xcel's processes and investment in staff time and resources remain the same, the disparity between the number of projects On Hold and the number of projects moving through the queue will only continue to grow as applications are submitted.

Currently only 2% of the applications are in the IA delivery phase,<sup>54</sup> which suggests that of the 133 applications currently moving through the MN DIP process, Xcel has only issued a handful this year. This information also illustrates how developers have little culpability in why this process has ground to a halt, as the step for which they are required (i.e. making a determination on whether they want to execute the IA) has very few applications idling. Because the 2020 Value of Solar tariff (VOS) is higher than both the 2019 VOS and Xcel's 2021 proposed VOS, this problem will compound, as the difference incentivizes developers to submit project applications this year.

Furthermore, while there is no commensurate quarterly report for Xcel's rooftop programs,<sup>55</sup> Xcel's Community Solar Gardens compliance report touches upon the challenges that other solar industry segments are facing. To that end the Company's filing states:

Serial studies have caused some concern with our smaller solar installers as some of their rooftop systems were positioned in queue behind a number of larger projects, which can significantly delay their application process. In order to address these concerns, the Company established a process to evaluate these smaller systems simultaneously when there is not material impact. For instance, all Simplified Process track applications ( $\leq 20$  kW), where the aggregate of existing and ahead-in-queue generation does not exceed the feeder or substation rating, may be able to move forward in the interconnection process and be reviewed simultaneously with projects ahead in queue. Most small solar projects are now moving through this process.<sup>56</sup>

The above segment shows that the Community Solar Gardens program is backlogged with projects and that smaller projects have been and are still backlogged because of the CSG backlog. While we commend Xcel for re-evaluating its application process for smaller projects, and for reinterpreting MN DIP to permit batch studies,<sup>57</sup> the fact that these projects were ever

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<sup>52</sup> *Id.*

<sup>53</sup> COMPLIANCE FILING -- Q2 COMPLIANCE REPORT, XCEL ENERGY, Docket No. E002/M-13-867, Doc. Id. 20204-162152-01 at 4 (Apr. 16, 2020).

<sup>54</sup> See Xcel Energy, QUARTERLY COMPLIANCE FILING COMMUNITY SOLAR GARDENS DOCKET NO. E002/M-13-867, Doc. Id. 20207-165179-01 at 4-5, (July 22, 2020).

<sup>55</sup> See generally Xcel Energy, 2019 ANNUAL REPORT SOLAR\*REWARDS DOCKET NO. E002/M-13-1015, Document Id. 20206-163647-02, June 1, 2020.

<sup>56</sup> Xcel Energy, QUARTERLY COMPLIANCE FILING COMMUNITY SOLAR GARDENS DOCKET NO. E002/M-13-867, Doc. Id. 20207-165179-01 at 8, (July 22, 2020).

<sup>57</sup> If Xcel can choose to implement batch studies for smaller systems when the added capacity is clearly under the available capacity limitations for the local feeder (and we agree that they can),

delayed adds significant credibility to the 129 complaints at issue in this docket, and amounts to an admission of culpability regarding the poor processing of small projects. The data shows that developers both large and small have faced significant challenges interconnecting with Xcel.

Every party from the Joint Commenters, to the Department, and apparently even Xcel itself seems to agree—clearly, this was a botched rollout of the new Interconnection Standards. The fact that Xcel had to fix things as important as how the Company studies projects reveals the depth of the problem. MnSEIA and our members can collaboratively work through a problematic rollout, and we have done our best through work at the S\*RC Work Group and the Distributed Generation Advisory Group.

But a botched rollout is no longer the challenge here. Over the last year, the problems have existed, persisted, and worsened all without recourse—and all the while, the 129 complaints at issue have slowly worked their way through the QSP review. Since the Complaints were filed in December, Xcel has continued to miss tariff deadlines, even while potentially facing a \$1 million fine for missing tariff deadlines. As All Energy and Novel have attested to in this docket, jobs are at stake in the solar industry as potential revenue is lost every day to the Company's nonperformance. Damage is being done to businesses, the climate, and the state while hundreds of MW of solar sit idly in Xcel's queue. It is time that the utility is held accountable for these frequent and on-going tariff violations and quality of service breaches.

#### **IV. Recommendations and Conclusion**

The alternative measures of accountability proposed by the Company and the Department—to track MN DIP violations in a separate mechanism—would strip the industry and its customers of the one tool that imposes real penalties on the Company for noncompliance. Such a departure from the established QSP tariff would also segregate solar customers from non-solar customers, thereby creating a second class of ratepayer.

The record is clear that there have been systemic and continuing problems with Xcel's implementation of MN DIP. The entire distributed generation arm of the solar industry in Minnesota recognizes and bears the financial impact of these problems. Something needs to be fixed so the queue can start processing applications again in a timely fashion. **Retention of the 129 Complaints under the umbrella of the QSP is a good place to start.**

**The Commission should reject the Department's proposed exclusionary test for vendor-submitted Complaints to the CAO.** Acceptance of that test would require revision to Xcel's QSP tariff and CAO processes, as the text and practice of neither supports such limits on how and why Complaints are made. Complaints covered by the QSP are just that—complaints about *quality of service*, not disputes over financial harm.

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then this same approach should be permissible for solar gardens seeking to interconnect near feeders with substantial available capacity. The difference seems to be Xcel's interpretation of MN DIP, and not an actual limitation of MN DIP.

MnSEIA wishes to restate that the Commission should **require Xcel Energy to make the necessary investments in staff and software to meet its MN DIP obligations**. The problems MnSEIA members have conveyed about Xcel's implementation of the MN DIP are not in the quality of its staff, who are often reasonable and responsive, but in their numbers and institutional guidelines.

#### **V. Example MnSEIA Decision Options**

1. Deny Xcel Energy's request to dismiss or set aside in another track these or further complaints from solar installers.
2. Require Xcel Energy to make the necessary investments in staff and software to meet its MN DIP obligations.
3. Initiate a reinvestigation in MN PUC Docket 16-521 into whether the timelines for projects are an appropriate length.
4. Require Xcel Energy to implement cluster studies or batch studies when appropriate to eliminate the need for On-Hold status in both simplified projects and CSGs.
5. Require Xcel Energy to pay an additional financial penalty of 1.3¢/kWh, which is based on an estimate of the harm done to the average array, to all the impacted DER customers.

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