

ISSUE DATE: November 21, 2000

DOCKET NO. E-002/C-00-954

ORDER OPENING INVESTIGATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**Gregory Scott
Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendraye**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

In the Matter of the Complaint Regarding Northern States Power Company's Refusal to Allow ConServe Corporation, Park Point Apartments, and Riverwood Apartments to Convert Their Buildings to Master-Metered Commercial Service and to Submeter

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PROCEDURAL HISTORY

On July 21, 2000, a Complaint and Petition for Declaratory Relief and Order was filed by ConServe Corporation (ConServe) individually and on behalf of Park Point Apartments and Riverwood Apartments (collectively Complainants). The Complaint alleged that Northern States Power Company (NSP) is in violation of Minn. Stat. § 216.B.022 and related tariffs and rules by refusing to permit ConServe to submeter Park Point and Riverwood apartment buildings.

On August 1, 2000, the Commission issued its Notice of Receipt of Complaint and Request for Comments, asking for comments by August 21, 2000 on several issues:

- whether the Commission has jurisdiction over this matter;**
- whether the Commission has authority to grant the relief requested;**
- whether there are reasonable grounds for the Commission to investigate the allegations; and**
- what procedural vehicle the Commission should use to resolve the complaint.**

On August 18, 2000, the Department of Commerce (DOC) filed comments.

On August 18, 2000, the Legal Services Advocacy Project and Energy CENTS Coalition (LSAP/ECC) filed joint comments.

On August 21, 2000, NSP filed comments.

On August 22, 2000, Dakota Electric Association (Dakota) filed comments.

On August 21, 2000, the Commission issued its Notice of Extended Comment Period for ConServe, asking for comments by September 5, 2000, in recognition of the fact that the Commission had inadvertently failed to serve its August 1, 2000 notice on Complainants.

On September 1, 2000, Complainants filed their comments.

This matter came before the Commission on October 26, 2000.

FINDINGS AND CONCLUSIONS

I. Background Information

ConServe is engaged in the business of installing and operating electric submetering equipment in multifamily residential buildings and providing related billing services. The owners of Park Point Apartments (St. Louis Park, Minnesota) and Riverwood Apartments (Lilydale, Minnesota) have entered into agreements with ConServe providing, among other things, that ConServe install submetering equipment to measure usage in each apartment unit in the buildings, and provide the related billing and collection services to the owner.

Point Park Apartments consists of 132 residential units and is an all-electric building. Demand is estimated to be 8-10 kW per unit, or 1.2 MW, cumulatively. Riverwood Apartments contains 153 individual units, with estimated demand of 4 kW per unit or 612 kW, cumulatively, exclusive of common areas.

At the present time, each unit, in each apartment complex, is individually metered by meters owned by NSP. NSP also provides billing services to each unit.

ConServe installed its submetering equipment at both apartments and requested that NSP remove its meters and reconfigure the utility's service to the buildings by installing one meter to allow for commercial service (as opposed to residential service) to each building. NSP has refused to make the requested changes to the services it provides.

II. Relevant Statutes

Minn. Stat. § 216B.02, subd. 6a sets forth the definition of Submetering as follows:

Subd. 6a. Submetering. "Submetering" means measuring, by a building's owner, through mechanical or electronic devices, the use of electricity by occupants in multiple-unit residential or commercial buildings to fairly apportion the entire electrical costs for the building among its occupants.

Submetering is further addressed in Minn. Stat. 216B.022 Submetering. It states:

Nothing in this chapter grants the commission or a public utility the authority to limit the availability of submetering to a building occupant when the building is served by a public utility's master meter which measures the total electric energy delivered to the building.

Minn. Stat. § 216C.27, Subd. 8, Energy Conservation in Existing Residence states:

Subd. 8. Separate metering for electric service. The standards concerning heat loss, illumination, and climate control adopted pursuant to section 216C.19, subdivision 8, shall require that electrical service to individual dwelling units in buildings containing two or more units be separately metered, with individual metering readily accessible to the individual occupants. The standards authorized by this subdivision shall only apply to buildings constructed after the effective date of the amended standards....

III. The Allegations of ConServe Corporation, Park Point Apartments, and Riverwood Apartments

The Complainants allege that NSP is in violation of Minn. Stat. § 216B.022, by refusing to allow the submetering proposed by the Complainants. They also allege that NSP’s interpretation of its tariffs regarding use of service is at odds with the statute. They argue that the building owner owns the wiring and equipment inside its building and is entitled to determine how that wiring and equipment is configured. Further, they argue that as the utility customer, the owner is entitled to receive service under tariffs which provide the most economical rates available,¹ and to alter its load, usage pattern or other characteristics to reduce its usage and costs.

Further, the Complainants argue that the utility cannot interfere with a customer’s action to qualify for service under different or lower cost tariffs for the customer’s benefit. If others customers are allowed to change their service configurations (e.g., to take advantage of interruptible rates or time-of day rates), to the extent that multi-unit building owners are not permitted to do so, there is impermissible discrimination.

They further argue that NSP’s refusal to allow the submetering as proposed by the Complainants undermines significant public policies promoting demand-side management and proactive customer behavior to monitor and control energy costs.

The Complainants indicated that the individual units will continue to be separately metered; therefore, the submetering proposed is not in violation of Minnesota law. Further, it is their position that Minnesota law does not require that the utility be the entity conducting the metering or billing.

IV. Positions of Other Parties

A. NSP

NSP denied that it was in violation of Minnesota Statutes. It argued that the plain language of Minn Stat. § 216B.022 clearly indicates that the statute applies only “when the building is served by a public utility’s master meter.” In the present case, each of the units of the two apartment buildings under consideration is individually metered and there is no master meter present. NSP further indicated that its review of the statutory history of submetering indicated that the changes in the law over time were focused on achieving individual metering in cases where the individual units were master metered.

¹ See Minn. Rule 7820.3200, which in part states ...When a customer is eligible to take service under more than one rate, the utility shall advise the customer in the selection of rate or rates which in its judgment result in the lowest cost of projected consumption ...

NSP claimed that it was not acting in a discriminatory manner or in violation of Minnesota Rules by refusing to make the changes that the Complainants have requested. NSP indicated that the Complainant’s request would change who the actual customer is from the individual residential customer to the building owner. This is, in effect, an aggregation of customers. Neither the rules nor NSP’s tariffs provide for the aggregation of customers. NSP further distinguished the present situation from the situation where an individual customer was, for example, changing from a standard rate to a time of use rate. In the present case there is no more favorable rate that was being denied to the current retail customer.

NSP stated that the Commission had jurisdiction and authority to make a determination on this complaint. NSP was not advocating a generic investigation into submetering. However, NSP recommended that if there was to be further exploration by the Commission of the policy implications of submetering it should be in the context of a broader, industry-wide examination of the issues rather than through a complaint against NSP.

B. The DOC

The DOC stated that the Commission has jurisdiction over the subject matter of the Complaint and has authority to grant the relief requested.

The DOC also indicated that the Complainants have not met the requirements for filing a complaint under Minnesota Statutes² because the actual Complainants in this instance are three entities, ConServe Corporation, Park Point Apartments and Riverwood Apartments, not the 50 consumers of NSP as required by statute. However, the DOC indicated that the Commission may investigate a complaint on its own motion if it finds that the allegations merit such an investigation.³

The DOC further indicated that there are reasonable grounds to investigate the issues raised due to public policy questions pertaining to NSP and possibly other utilities. Some of the statutory and public policy questions the DOC raised included:

- whether ConServe falls under the definition of “public utility” under Minn. Stat. § 216B.02 subd.4;**
- whether the tenant’s leases with the apartment building owners contain provisions that conflict with the relief requested;**
- whether there are public interest benefits from the arrangement proposed by the Complainants such as lower rates, more accurate meter service or better billing service;**
- whether there are public interest detriments such as tenants losing Cold**

² Minn. Stat. § 216B.17, subd.1, providing, in part, that a complaint may be brought 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...”

³ Id.

Weather Rules protection or tenants losing the jurisdiction of the Commission. The DOC recommended an informal proceeding that allows the DOC and other interested parties time to gather information and submit written comments on factual and legal issues.

C. Dakota Electric Association

Dakota Electric contended that the Commission has jurisdiction in this matter. Dakota Electric indicated that the Commission should investigate the allegations in this complaint in order to clarify the rights and obligations of customers and utilities regarding this matter. Dakota recommended an informal process that allows for solicitation of comments from all potentially interested parties.

D. Legal Services Advocacy Project (LSAP) and Energy CENTS Coalition (ECC)

LSAP/ECC indicated that the Commission has jurisdiction over this matter and has the authority to grant the relief requested. The Complainants, however, have not met the required statutory filing threshold of 50 signatures under Minn. Stat. § 216B.17. For this reason, LSAP/ECC stated the complaint should be summarily dismissed.

If the Commission should decide to resolve this complaint LSAP/ECC indicated that it preferred an informal proceeding.

E. ConServe, Park Point Apartments, Riverwood Apartments

The Complainants indicated that the Commission has jurisdiction over this matter, has the authority to grant the relief requested, and that there are reasonable grounds for further investigation. They admit that the Complaint does not contain the 50 signatures required in Minn. Stat. § 216B.17 but argue that the Commission has jurisdiction and authority under other statutes.⁴

The Complainants indicated that there are adequate grounds to merit an investigation and agree that an informal proceeding is the appropriate procedural vehicle for such an investigation.

V. Commission Action

The Commission is in agreement with the parties that the Commission has jurisdiction over this matter. Minnesota Statutes grant the Commission broad authority over public utilities.⁵ In addition Minnesota Statutes provide the DOC with the responsibility of enforcing the provisions of the Public Utilities Act and the Commission with the responsibility of

⁴ See Minn. Stat. § 216A.05 subd. 1 providing, in part, “ ... It may adjudicate all proceedings brought before it in which the violation of any law or rule administered by the department is alleged.”

⁵ Minn. Stat. § 216B.08.

adjudicating claims that a utility is violating the Act.⁶ The statute also gives the Commission general authority to review and determine the reasonableness of a utility's tariffs, services and practices.⁷ The Complainants have alleged that NSP is in violation of Minn.Stat. § 216B.022 and NSP's own General Rules. This clearly falls within the Commission's jurisdiction.

The statute in question, Minn Stat § 216B.022, on its face, prohibits the Commission or a public utility from limiting the availability of submetering when a master meter is present. The statute is silent on submetering in other circumstances. The Commission does not agree with the Complainants that NSP has violated Minnesota Statutes or its own General Rules in refusing to remove the meters to each individual unit and convert the buildings in question to master metering. Although the Commission finds no violations of law or tariff by NSP, the facts in this case have raised the question of whether it may be in the public interest for the changes requested by the Claimants to occur.

The record before the Commission does not allow the Commission to adequately evaluate the legal, factual and policy issues that arise when considering whether NSP should be required to allow ConServe to submeter the apartment buildings in question even if Minn. Stat. § 216B.022 does not require it. For this reason the Commission will order further investigation of the allegations in the Complaint.

Many of the legal, factual and policy issues that are raised by the Complaint are set forth and attached to this Order as Attachment A. The Commission will direct NSP and/or the Complainants to answer specific questions set forth in Attachment A and will invite interested parties to address specific issues, such as some or all of those set forth in Attachment A.

The investigation will focus on the facts of this Complaint. At the present time the Commission will not open a generic proceeding to examine broader issues. The Complaint before the Commission involves specific facts upon which to base an interpretation of current law and policy and is a reasonable way to proceed at the present time.

Finally, the Commission agrees with the parties that an informal hearing with a period for information gathering to be followed by written comments would be a reasonable way to proceed at this time. After the record is further developed, the Commission will be in a better position to determine what further procedures, if any, are necessary.

ORDER

1. NSP and the Complainants are each directed to provide answers to specific questions set forth on Attachment A, attached to and hereby made a part of this Order.

⁶ Minn. Stat. § 216A.05, subd. 1.

⁷ Minn. Stat. § 216A.05, subd. 2(2).

2. All interested parties are invited to address specific issues, such as some or all of those listed on Attachment A.
3. NSP, the Complainants and all interested parties shall have 45 days from the date of this Order for initial comments followed by a 20 day reply comment period.
4. The Executive Secretary is hereby delegated the authority to vary these time frames.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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ATTACHMENT A

Legal Questions/Issues—for all interested parties

1. Does Minn. Stat. §216B.022 require NSP to allow the submetering as requested by the Complainants? Does this statute prohibit such submetering?
2. Are NSP’s tariffs, particularly Section 4 of its Use of Service Rules, consistent with the requirements of Minn. Stat. §§216B.022, 216C.27, subd. 8, and any other relevant statutes with respect to submetering?
3. Is NSP correctly interpreting its existing tariffs in denying the submetering requested by the Complainants?
4. If ConServe were to provide the metering and related services as proposed in the complaint, would ConServe fall within the definition of “public utility” under Minn. Stat. §216B.02, subd. 4? Does the answer to this question depend on whether the bills are sent by, and payment made to, the building owners or to ConServe?
5. Would the definition of submetering in Minn. Stat. §216B.02, subd. 6a, allow the building owners or ConServe to charge to the residents of Park Point and Riverview Apartments more than the “entire electrical costs for the building” billed to the owners by the public utility?
6. Are there local ordinances in NSP’s service area that require that the building owner/landlord of master-metered buildings be the customer of the utility, or that otherwise restrict billing for submetering?

Factual Questions/Issues—primarily for NSP

7. What categories and what estimated dollars amount of costs would NSP incur to reconfigure its equipment in these two apartment buildings as requested by the Complainants? Who would be responsible for those costs? Who should be?
8. Using actual information for a recent annual period (if available, or a reasonable estimate if actual data not available), what was the aggregate total electric bill for the residents for each apartment building under NSP’s current individual metering at residential rates? What would the comparable figure for each building have been had they been billed through a master meter at the best applicable commercial rate? Please provide supporting data that

shows what figures and assumptions were used for demand, energy, fuel clause, rate schedules and other relevant factors.

9. To the best of NSP's knowledge: How many residential dwelling units in its service territory (other than senior, handicapped and other units exempt from the individual metering requirements of 216C.27, subd. 8) are master-metered? How many of those residential dwelling units are submetered by, and receive their electric bills from, the building owner or other entity?

Factual Questions/Issues—primarily for Complainants

10. Do the Complainants intend to collect more money from tenants in aggregate than the total amount billed to the building by the utility each month?
11. Will tenants' bills for electric service be less under the arrangements proposed by Complainants than those tenants' current bills from NSP for the same level of consumption and usage pattern?
12. **What are the specific division of responsibility between ConServe and the building owners for the provision of electric service to the tenants? Please provide a copy of the contracts between ConServe and the building owners referred to on page 4 of the July 21, 2000 complaint.**
13. What categories and estimated dollar amount of one-time costs would ConServe and building owners incur to be able to meter and bill as requested in the complaint? What level on-going monthly or annual costs would ConServe and building owners incur for meter and related equipment maintenance, billing, collection customer information, and other recurring costs to provide the services requested in the complaint?
14. Do current tenant leases contain provisions that would conflict with the relief requested? What changes, if any would be made to current leases if ConServe began to provide the metering, billing, and collection services? Would ConServe or the building owners require separate contracts, service agreements, or similar arrangements with tenants with respect to their electric service?
15. What procedures do ConServe and the building owners intend to put in place to: respond to customer inquires? resolve billing, metering, collection, or other related disputes? provide electric service to those unable to pay their bills in full each month? provide information on and opportunities for conservation and other demand-side management?
16. To how many residential buildings and dwelling units in NSP's service territory does ConServe provide submetering service? To how many residential buildings and dwelling units in Minnesota outside NSP's electric service territory? Is any of this submetering service provided to buildings and tenants that were formerly individually metered by a public utility, cooperative, or municipal utility?

Policy Questions/Issues—for all interested parties

17. What potential benefits to the tenants or the public interest in general may result from permitting ConServe, rather than NSP, to provide metering and related services?
18. What potential detriments to the tenants or the public interest in general may result from permitting ConServe, rather than NSP, to provide metering and related services?
19. What recourse would NSP have under Minn. Stat. § 216B.162, the Competitive Rate Statute, if ConServe, rather than NSP, were permitted to provide metering and related services?