

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
Ellen Gavin	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayner	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Complaint of  
SchlumbergerSema against Northern States  
Power Company

ISSUE DATE: December 23, 2002

DOCKET NO. E-002/C-02-1169

ORDER DISMISSING COMPLAINT

**PROCEDURAL HISTORY**

On July 2, 2002, SchlumbergerSema (Schlumberger) filed a complaint against Northern States Power Company d/b/a Xcel Energy (NSP) alleging that NSP was violating Minnesota Statutes §§ 216B.03, 216B.06 and 216B.07, as well as its tariffs and rules. Schlumberger asked the Commission to direct NSP to stop any future violations and to refund any overpayments.

On July 7, 2002, the Commission invited comments on whether the Commission has jurisdiction over the case, whether the Commission could grant the relief requested, whether the Commission should initiate an investigation, and what procedures would be appropriate for such an investigation.

On July 30, 2002, the Commission received comments from NSP and the Minnesota Department of Commerce (the Department). The Department filed reply comments on August 8.

The Commission met on September 12, 2002 to consider this matter. At the hearing the parties stated that a settlement proposal was under consideration.

**FINDINGS AND CONCLUSIONS**

**I. BACKGROUND**

Schlumberger offers the following chronology. NSP did not dispute this account, although NSP reserved the right to answer Schlumberger's complaint if the Commission were to decide to open an investigation.

In 1996 NSP contracted with CellNet Data Services, Inc., predecessor to Schlumberger, to build and operate a wireless network to read the meters of more than one million NSP customers. Equipment installed on each meter in the network reads the meter and transmits the information via radio signals to larger transmission equipment known as microcell controllers (MCCs), which transmits the information to larger equipment known as CellMasters, which transmits the information to Schlumberger's control center.

The parties also signed ancillary agreements, including an electric service agreement (ESA) establishing the terms under which Schlumberger would pay NSP for the electricity to power the MCCs and CellMasters. Because metering the consumption of thousands of low-usage devices would be impractical, Schlumberger agreed to be billed according to a negotiated formula that would not depend upon metering. NSP's tariff provides for this type of arrangement where metering is impractical.

On March 24, 2000, NSP and Schlumberger amended their ESA. According to Schlumberger, the amendment was intended to achieve two purposes:

- First, the amendment sought to change Schlumberger's rate classification from Small General Service to Small Time-of-Day Service.<sup>1</sup> Under the amended ESA, the parties agreed that –
  - a) a MCC demands 20 watts of power, resulting in energy consumption of 14,000 watt-hours per month at a charge of roughly \$1 per month, and
  - b) a CellMaster demands 350 watts of power, resulting in energy consumption of 255,500 watt-hours per month at a charge of roughly \$17.50 per month.
- Second, the amendment sought to expand the ESA to address the "repeaters" Schlumberger uses to boost the transmission signals of MCCs and CellMasters in certain locations. The agreement provides that "Schlumberger will be billed based on estimated usage for each device...." But, while a repeater requires less energy than a MMC, the amendment provides for billing Schlumberger for its repeaters on the same basis as CellMasters.

Notwithstanding the terms of the agreement, during the three years that Schlumberger was installing the repeaters NSP billed Schlumberger as if they were MCCs, at roughly \$1 per month. But in late 2001 NSP started billing for the repeaters in accordance with the ESA, at roughly \$17.50 per month. This change increased Schlumberger's monthly bill by tens of thousands of dollars. By February 2002 the parties had begun discussions, and on May 24 Schlumberger asked NSP to modify the ESA to reduce the charge associated with repeaters. NSP declined, and Schlumberger filed the current complaint.

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<sup>1</sup>Under time-of-day service, a customer pays more for electricity consumed between 9:00 a.m. and 9:00 p.m. on business days (when demand for electricity is high), and less for electricity consumed at other times.

## II. PARTY POSITIONS

### A. Schlumberger

The current dispute centers on the fact that the ESA's estimate of a repeater's electric consumption differs from its actual consumption. Schlumberger characterizes the number in the ESA as a mistake, analogous to a typographical error, and cites the doctrine of mutual mistake as a basis for seeking a remedy.<sup>2</sup>

In addition, Schlumberger argues that its ESA establishes "rates" as defined by Minnesota Statutes § 216B.02, subd. 5, and a rate based on a formula is still a rate.<sup>3</sup> Rates must be just, reasonable and nondiscriminatory pursuant to §§ 216B.03, 216B.06 and 216B.07. Because the charge for powering a repeater is disproportionate to the electricity used by a repeater, Schlumberger argues that NSP's practice is unreasonable. Schlumberger further argues that NSP's behavior is discriminatory, assuming that NSP does not generally charge customers in this manner. Schlumberger adds that NSP's conduct violates Minnesota Rules part 7820.3200 which requires bills to be based on meter readings or estimated usage corresponding as closely as possible to actual usage. In effect, according to Schlumberger, NSP is billing Schlumberger for energy it is not consuming.

Schlumberger acknowledges that it lacks standing to bring a complaint under Minnesota Statutes § 216B.17, but asks that the Commission take jurisdiction of this matter nevertheless.

### B. NSP

In responding to the Commission's notice soliciting comments, NSP argues that this case is not a good candidate for Commission involvement. The case arises from a dispute between two commercial parties that are sophisticated in utility metering; indeed, Schlumberger is more knowledgeable about the energy demands of a repeater than NSP is. Ultimately, NSP regards this complaint as little more than an attempt to exploit the Commission's processes to negotiate a more favorable contract with NSP.

NSP acknowledges that the Commission has the discretion to take jurisdiction over an allegation that NSP is billing a customer inappropriately. But NSP asks the Commission to refrain from

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<sup>2</sup>*Winter v. Skoglund*, 404 N.W.2d 786 (Minn. 1987); Restatement (2d) of Contracts § 152(1) (1981).

<sup>3</sup>Citing *Northern States Power v. Minnesota Public Util. Comm'n*, 344 N.W.2d 374, 382 (Minn. 1984).

doing so, noting that the parties have not yet exhausted the procedures provided in the ESA to amend the contract or resolve disputes.<sup>4</sup>

And NSP argues that the Commission is not the appropriate forum to address the allegation that the ESA represents a mutual mistake by NSP and Schlumberger. The remedy for a mutual mistake is reformation of the contract; NSP questions whether the Commission is the best entity to provide this remedy.

Additionally, NSP suggests that if Schlumberger were permitted to pursue its claim of mutual mistake, NSP may allege an offsetting mistake. In particular, NSP notes that the price it pays to Schlumberger for meter reading is designed to recover the cost of providing this service, including the cost of electricity. If Schlumberger is able to reduce its cost of reading meters, NSP may seek to reduce the price it pays Schlumberger for that service.

In any event, if the Commission decides to initiate an investigation then NSP asks for an opportunity to reply to Schlumberger's complaint, and asks that the matter be referred for a contested case proceeding to resolve factual disputes.

### **C. The Department**

The Department concludes that Schlumberger's pleading, even if accurate, fails to support the allegation that NSP violated its tariff. NSP's tariff provides for billing a customer based on a mutually-accepted formula where metering is impractical. Schlumberger is not alleging that NSP is acting in a manner inconsistent with their agreement, so the Department cannot find support for the argument that NSP is violating its tariff.

The Department observes that Schlumberger's pleading fails to fulfill the requirements of a complaint pursuant to Minnesota Statutes § 216B.17. Consequently the Commission need not take jurisdiction over this matter, although the Commission has the discretion to initiate an investigation on its own initiative.

The Department concluded that Schlumberger raises doubts about whether the terms of the ESA are too high. This may provide a topic for a Commission investigation, although the Department does not advocate for an investigation. Instead, the Department recommends that the Commission direct the parties to negotiate and to report back on the matters that were resolved, the matters that remain unresolved, and how any resolution will affect ratepayers.

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<sup>4</sup>Citing *In the Matter of the Petition of Northern States Power Company for Approval of the Koch Refining Company Distribution and Transmission Service Tariff*, Docket No. E-002/M-98-988 ORDER APPROVING AGREEMENT UNDER MINN. STAT. § 216B.1621 (September 29, 1998) (leaving to the mediator a dispute over the interpretation of an electric service agreement between NSP and a large industrial company); ORDER DENYING RECONSIDERATION ON THE MERITS (December 22, 1998).

#### **D. COMMISSION ACTION**

While the subject of Schlumberger's complaint touches upon utility service, the Commission finds that it is at its heart a contractual dispute between commercial parties. Moreover, the contract in question provides a dispute resolution mechanism that has not yet been exhausted. Finally, the Commission is encouraged to learn that the parties are already pursuing negotiations to bring this matter to resolution. Under these circumstances, the interest of administrative efficiency prompts the Commission to decline to take jurisdiction over this matter at this time.

Without passing judgment on the merits of the arguments raised by any party,<sup>5</sup> the Commission will dismiss the complaint.

#### **ORDER**

1. Schlumberger's complaint is dismissed.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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<sup>5</sup>As the Commission remarked in its ORDER APPROVING AGREEMENT UNDER MINN. STAT. § 216B.1621, *id.* at 5:

The Commission takes no position on the ... dispute between the parties and urges mediators, arbitrators and other decisionmakers involved in the dispute resolution process to draw no inference from this Order as to the Commission's position.