

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of Xcel Energy's Miscellaneous
Tariff Filing Addressing Shared Meter Charges

ISSUE DATE: April 21, 2003

DOCKET NO. E-002/M-02-129

ORDER ACCEPTING COMPLIANCE
FILING, AMENDING AUGUST 1, 2002
COMMISSION ORDER AND GRANTING
VARIANCE

PROCEDURAL HISTORY

On January 30, 2002, Northern States Power Company d/b/a Xcel Energy (Xcel or the Company) filed its proposed shared meter tariff. This tariff was in response to a complaint brought by Ila Whittaker and Priscilla Harris et al.¹(Complainants). The complaint challenged Xcel's decision that each of these individuals was responsible for metered charges for services not only to each individual's own living area but also to other parts of the apartment building in which each of them lived. The proposed tariff was the result of efforts by the parties to reach a settlement of this "shared-meter" issue.

On August 1, 2002, the Commission issued its ORDER APPROVING TARIFF WITH MODIFICATIONS AND CLOSING DOCKET 00-1563. In this Order the Commission approved Xcel's proposed shared meter tariff incorporating modifications proposed by the Department of Commerce (DOC), and accepted by the Company and modifications proposed by the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG), and accepted or accommodated by the Company. Xcel was required to file revised tariff pages.

On August 26, 2002, Xcel submitted its compliance filing.

¹ *In the Matter of the Complaint of Ila Whittaker, Priscilla Harris and Community Action of Suburban Hennepin County Against Northern States Power Regarding Responsibility for Shared Meter Charges*, Docket No. E-002/C-00-1563.

On October 23, 2002, Xcel filed another compliance filing and requested to withdraw the August 26, 2002 compliance filing. In addition, Xcel requested that the Commission modify its August 1, 2002 Order to approve Xcel's revised tariff language and that the Commission clarify its August 1, 2002 Order regarding the handling of accounts that are in arrears of more than one year in the shared meter situation.

On November 4, 2002, the EnergyCents Coalition filed comments supporting Xcel's October 23, 2002 requests.

On November 7, 2002, the Legal Aid Society of Minneapolis² filed comments supporting Xcel's October 23, 2002 requests.

On December 3, 2002, the DOC filed comments supporting the withdrawal of Xcel's August 26, 2002 compliance filing and opposing Xcel's other requests made in its October 23, 2002 filing regarding modifying the Commission's August 1, 2002 Order and clarifying the issue related to shared meter situations.

On December 11, 2002, the Legal Aid Society of Minneapolis filed reply comments in support of Xcel's October 23, 2002 requests.

On March 20, 2003, this matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Background

The Commission's August 1, 2002 Order approved, with modifications, a tariff submitted by Xcel in an attempt by the parties to reach a settlement of this "shared meter" issue. The compliance filings submitted in response to this Order and Xcel's request for further clarification and modification of the Commission's August 1, 2002 Order are the subject of the present Order.

II. Xcel's October 23, 2002 Compliance Filing

Xcel, in its October 23, 2002 filing, requested: 1) that its earlier filing of August 26, 2002 be withdrawn; 2) that the Commission modify its Order of August 1, 2002 to approve revised proposed tariff changes that do not match the August 1, 2002 Order; and 3) that the Commission clarify its Order of August 1, 2002 regarding the issue of the handling of accounts that are in arrears of more than one year in a shared meter situation. Each of these will be addressed below.

² Representing Ila Whittaker, Priscilla Harris, and Community Action of Suburban Hennepin County.

III. Uncontested Issues

A. Withdrawal of the August 26, 2002 Compliance Filing

The parties support the withdrawal of Xcel's August 26, 2002 compliance filing.

The DOC indicated that the October 23, 2002 filing by Xcel duplicates and adds to the information in the August filing and therefore the DOC supports Xcel's request to withdraw the earlier filing.

B. Modifications to Xcel's Tariff on Which the Parties Agree

The Commission's Order of August 1, 2002, required that Xcel incorporate into its tariff the modifications recommended by the DOC and RUD-OAG and agreed to by the Company. In most of these instances the proposed tariff language used by Xcel was either specified by the DOC or the RUD-OAG. On some occasions the wording was left to the Company. There was no disagreement that these specific modifications reflected provisions in the Commission's Order.

Further, in the Commission's August Order, there were several tariff modifications recommended by the RUD-OAG that were ordered by the Commission, with minor modifications accommodating comments by Xcel. In Xcel's proposed tariff, the exact wording suggested by the RUD-OAG for some of these items was not incorporated in the proposed tariff. On occasion Xcel agreed to more in the proposed tariff than it did at the time of the hearing before the Commission. Xcel argued that the alternative language it selected was to meet the RUD-OAG concerns and make the tariff consistent with Minn. Stat. §504B.215.

Xcel asked that the Commission modify its Order of August 1, 2002, to approve these specific modifications that it believed did not match the Commission's Order. There were no objections to these proposed tariff modifications. The DOC viewed these proposed modifications as being in compliance with the Commission's August 1, 2002 Order.

C. Commission Action

The Commission accepts Xcel's proposal to withdraw its August 26, 2002 compliance filing. It finds that the proposed changes in the Company's October 23, 2002 filing, related to the modifications proposed by the DOC and the RUD-OAG as approved by the Commission, comply with the Commission's August 1, 2002 Order and will be approved.

V. Modifications Addressing the Handling of Accounts in Arrears Over One year in a Shared Meter Situation

A. Background

During the settlement of the complaint that led to the present docket,³ the parties found that there were differences in interpretation of the tariff that was approved with modifications by the

³ See footnote number 1, above.

Commission on August 1, 2002, as it applied to tenants who had been billed for accounts in a single-metered residential building and who were also in arrears for periods greater than one year in these accounts.

Under one interpretation these customers would have a credit applied to their account for the period one year prior to the date of discovery of the shared meter, but would not receive a credit towards any arrearage for the period beyond one year.

Under an alternative interpretation, the tenant would receive a refund of any amounts paid during the one year period prior to discovery and would no longer be responsible for any arrearage, including any arrearage owing for periods greater than one year prior to discovery.

B. Xcel's Position

Xcel and the Complainants agreed to the alternative interpretation giving the tenant a refund of any amounts paid during the one year period prior to discovery and relieving the tenant of any responsibility for any arrearage, including arrearage owing for periods over one year prior to discovery.

Xcel proposed additional language to the tariff to clarify this interpretation. Specifically, Xcel added to the tariff: "The Company shall strike from the tenant's account any outstanding charges billed for usage at the single-metered residential building address no matter how old the charges." Xcel asked that the Commission approve this additional tariff language since it had not been previously considered by the Commission.

Xcel stated that this addition would eliminate continuing collection efforts for these tenants who, Xcel argued, never would have been established as the customer had the shared metering arrangement been known (because the service would have been in the landlord/building owner's name consistent with the law).

Xcel also proposed additional language to its tariff to clarify that the amounts stricken could be billed to the landlord, who, Xcel argued was the bill payer of record pursuant to the statute. Xcel proposed adding: "The Company may rebill all or part of these charges to the landlord/building owner's account." Xcel indicated that this additional language clarified that this would allow Xcel to collect from landlord/owners for the period beyond one year.

Xcel stated that the number of instances where Xcel would collect from landlords for the period beyond one year is small. Practically, Xcel might end up writing off these amounts because collection might be too costly or unachievable.

C. DOC's Position

The DOC argued that Xcel's approach, which forgives tenants for arrearages at the single-metered residential building address no matter how old the charges, may save on collection efforts for

outstanding bills, but, it argued, it also discriminates in its treatment of customers by punishing customers who pay their bills on time. It argued that tenants who had higher balances over one year old would benefit more from this proposed tariff provision than the tenants who paid their bills on time. The DOC argued that this approach could lead to situations which might cause higher debt write-offs which, in turn, could lead to higher rates for all other customers.

Further, the DOC did not believe that the issue of arrearage forgiveness needed clarification. It argued that all parties recognized that amounts billed to a tenant prior to the one-year-period were considered overcharges whether the tenant paid that bill or not. It argued that all parties had agreed that a credit/refund of one-year was reasonable since both tenants and landlords had access to other processes (negotiation with the landlord, arbitration actions, the Commission complaint process) through which they could seek additional redress, if warranted.

At oral argument before the Commission, the DOC argued that the change Xcel was requesting the Commission to approve regarding shared meter charges more than one year old, was not appropriate in a compliance filing. Rather, the DOC recommended that the Commission accept the October 23, 2002 compliance filing without the changes regarding the issue of accounts in arrears over one year in a shared-meter situation. Xcel could then make a further filing with the Commission requesting a change to its tariff. At that time the DOC and other interested parties would have an opportunity to fully comment on this issue (the DOC indicated that it had not fully addressed the issue in its comments). The DOC indicated concern that if the Commission proceeded today as Xcel and the Complainants requested, parties such as the landlords would not have had proper notice and the opportunity to comment.

D. Position of Complainants

Complainants are in agreement with Xcel's request that the issue relating to the tariff language regarding shared-meter charges over one year old be clarified. Complainants agree with Xcel that amounts stricken from a tenant's name in a shared-meter account, no matter how old should be rebilled to the account-holder-landlord, if Xcel chooses to do so.

They argued that leaving or potentially leaving a tenant responsible for shared-meter charges simply because those charges predate discovery by more than one year would be contrary to Minn. Stat. § 504B.215.⁴ They argued that the statute does not limit the landlord/owner's shared-meter liability to charges incurred within a year of the date of discovery and that if the landlord/owner is the "bill payer responsible" and "customer of record," the tenant cannot be.

⁴ Minn. Stat. § 504B.215, Subd. 2 states in part:

.....the landlord of a single-metered residential building shall be the bill payer responsible, and shall be the customer of record contracting with the utility for utility services.

Further, they argued that the tariff that was approved by the Commission (on the issue of returning to the tenants the amounts paid on a shared-meter account) limited the credit or refund to tenants to the period up to one year. They argued that the tariff was not a limitation on the landlord/owner liability for shared-meter charges, but was only a limitation on the credit or refund.

Further, in response to the DOC's argument that the proposed tariff language that directs that shared-meter charges be stricken from a tenant's account no matter how old discriminates against customers who pay their bills on time, the Complainants argued that the point of the statute and the proposed tariff was to motivate landlords and building owners to notify the utility provider at the outset of the existence of a shared-meter situation. They argued that public policy was not furthered by motivating tenants to pay utility bills recorded in their name where such bills were later discovered to be the legal responsibility of the landlord. Further, they argued that there could be no discrimination between tenants, whether an account listed in their name was current or 18 months in arrears, where payment on the account was not their legal responsibility.

Finally, the Complainants argued that by giving the utility the opportunity to rebill the charges, no matter how old, that were previously billed to the tenant against the landlord/owner there will be less likelihood of bad-debt write-off.

In response to the DOC's comment at the hearing that landlords did not have notice of Xcel's filings, the Complainants stated that they had sent copies of the filings to the landlords. They argued that the landlords had been notified of the proceedings before the Commission and had not made any filings.

E. Position of the RUD-OAG

The RUD-OAG stated that Xcel's filing brings it into compliance with Minn. Stat. § 504B.214 and should be approved.

F. Position of EnergyCents Coalition

EnergyCents Coalition supported Xcel's requests.

V. Commission Action

The Commission agrees with Xcel and the Complainants that the proposed changes regarding credits/refunds beyond one year, which clarify that the tenant is not responsible for any outstanding charges billed for usage at the single-metered residential building no matter how old the charges, and which allow Xcel to bill the landlords/owners for those amounts, are consistent with Minnesota law and should be accepted. The statute requires that the landlord shall be the bill payer responsible and the changes proposed reflect this statutory requirement. For this reason, the Commission will amend its Order of August 1, 2002 to allow the proposed changes.

The proposed changes clarify that the tenants would not be responsible for any arrearage, including

any arrearage owing for periods greater than one year prior to discovery, and puts the responsibility for these amounts squarely on the landlord, the person with the ability to know or determine any shared wiring situation. The proposed changes clarify that there is no distinction between liability for charges incurred prior to one year of discovery and liability for charges incurred within one year of discovery. They allow the Company to rebill the Landlord for any of these charges. The Commission agrees with the Company and the Complainants that distinguishing between charges that were incurred prior to one year of discovery of the shared meter situation and charges incurred within one year of discovery as to the responsible party is inconsistent with the statute, which draws no such distinction.

Further, the Commission agrees that there is no discrimination between tenants when the statute assigns liability for shared meter situations to the landlord. The Commission cannot hold a tenant responsible for payments of amounts for which the tenant does not have legal responsibility.

The Commission recognizes that all parties herein, including the landlords, have been fully informed of the changes proposed by the Company and have had an opportunity to comment on the matter. It will not require that this issue be addressed in another filing.

VI. Variance to Minnesota Rules

The Commission's August 1, 2002 Order permitted Xcel to require a deposit from the landlord when a shared meter situation was discovered, but limited the amount of the deposit. Xcel's requiring a deposit was reasonable under the circumstances and was based on the past behavior of the landlord.

Since Minnesota Rules,⁵ require that a deposit must be based upon standards which bear a reasonable relationship to the assurance of payment, allowing a deposit in the current circumstances requires a rule variance.

The Commission may grant a variance to any of its rules upon finding that the following conditions apply:

1. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule:
2. Granting the variance would not adversely affect the public interest; and
3. Granting the variance would not conflict with standards imposed by law.

Minn. Rules, part 7829.3200.

The Commission finds that the requirements for a variance are met in this case.

In shared meter circumstances, when the landlord is the party with knowledge of the building's wiring, requiring the utility to bear the payment risk without requiring participation from the landlord places an excessive burden on the utility.

⁵ Minn. Rules, part 7820.4200

Granting the variance would not affect the public interest. In fact it would serve the public interest by ensuring that the party with knowledge be held accountable and will provide protection to tenants who, of necessity, must rely on the landlord's determination.

Finally, requiring a deposit from the landlord will not conflict with any standards imposed by law.

For these reasons the Commission will vary Minn. Rules, part 7820.4200 to allow Xcel to require a deposit from the landlord, as provided in the August 1, 2002 Commission Order.

ORDER

1. The Company's request to withdraw the August 26, 2002 compliance filing is accepted.
2. The changes proposed by the Company and set forth in its October 23, 2002 filing, addressed in Paragraph III, herein, are in compliance with the Commission's August 1, 2002 Order.
3. The August 1, 2002 Commission Order is hereby amended to allow Xcel's proposed changes regarding credits/refunds beyond one year and to allow the Company to bill landlords/owners for those amounts.
4. The provisions of Minn. Rules part 7820.4200 are hereby varied to enable the Company to require a deposit from the landlord as set forth in the Commission's August 1, 2002 Order.
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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