

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair  
Commissioner  
Commissioner  
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Commissioner

In the Matter of the Petition of Xcel Energy for  
a Declaratory Ruling Regarding Shared  
Metering Tariffs

ISSUE DATE: August 16, 2005

DOCKET NO. E,G-002/M-04-1682

ORDER APPROVING AGREEMENT

**PROCEDURAL HISTORY**

On October 11, 2004, Northern States Power Company d/b/a Xcel Energy (Xcel or the Company) petitioned the Commission to rule on how Xcel's new Shared Meter tariffs would apply in specific circumstances.

By December 13, 2004, the Commission had received comments on Xcel's petition from the Energy CENTS Coalition (ECC); Robert P. Schwartz on behalf of a group of landlords; the Legal Aid Society of Minneapolis (LASM); the Minnesota Multi-Housing Association (MMHA); Quality Residences, LLC; and the Residential and Small Business Utilities Division of the Office of Attorney General (RUD-OAG).

On December 27, 2004, the Commission received reply comments from MMHA, the Minnesota Department of Commerce (the Department) and Xcel.

On July 14, 2005, this matter came before the Commission.

**FINDINGS AND CONCLUSIONS**

**I. Background**

In 1995 the Legislature mandated that where a utility meter measures service being provided to multiple apartments in a building, or to an apartment and common areas in the building, then the landlord must be the party responsible for paying the utility bill:

**504B.215 Billing; loss of services.**

**Subdivision 1. Definitions.** For the purposes of this section, "single-metered residential building" means a multiunit rental building with one or more separate residential living units where the utility service measured through a single meter provides service to an individual unit and to all or parts of common areas or other units.

**Subd. 2. Single-meter utility service payments.** In a residential leasehold contract entered into or renewed on or after August 1, 1995, 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. The landlord

must advise the utility provider that the utility services apply to a single-metered residential building. A failure by the landlord to comply with this subdivision is a violation of sections 504B.161, subdivision 1, clause (1), and 504B.221. This subdivision may not be waived by contract or otherwise.... This subdivision does not prohibit a landlord from apportioning utility service payments among residential units and either including utility costs in a unit's rent or billing for utility charges separate from rent.

**Subd. 2a. Conditions of separate utility billing to tenant in single-meter buildings.** If the landlord of a single-metered residential building bills for utility charges separate from the rent, the following conditions apply: (1) prospective tenants must be provided notice of the total utility cost for the building for each month of the most recent calendar year; and (2) an equitable method of apportionment and the frequency of billing by the landlord must be predetermined and put in writing for all leases....

Subsequently, in response to tenants complaining that they had been charged for electricity provided beyond their apartments,<sup>1</sup> Xcel proposed tariffs stating how it would bill for electricity and gas under such circumstances. The Commission approved these “Shared Meter” tariffs with modifications.<sup>2</sup>

In brief, the tariffs make the landlord liable for the cost of all gas and electricity serving an apartment building except to the extent a residential tenant receives electricity through a meter dedicated solely to his or her apartment. Investigations to determine the areas being served by a meter may be triggered by a tenant’s suspicion about paying for service beyond his or her apartment (a “shared meter situation”), concern about unusually high bills, difficulty in paying the utility bill generally, or other circumstances. If a shared meter situation is discovered, Xcel would cancel any overdue bills and reimburse the tenant for one year’s worth of bills. Xcel would then have the discretion to bill the landlord for any unpaid bills previously charged to the tenant, and for the cost of the investigation.

## **II. Xcel’s Petition**

In response to questions raised by various parties about how these new tariffs would apply, Xcel petitioned the Commission to rule on how it interprets the tariffs. For example, if a landlord discovers that his or her building was wired to cause a tenant to bear the cost of an electric outlet in a central hallway, does the tariff make the landlord liable for the cost of all of the tenant’s past utility consumption at that premises?

Xcel suggests three possible resolutions. First, the Commission might apply the tariffs as written, causing Xcel to refund a year’s worth of utility bills to the tenants and bill the landlord for this

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<sup>1</sup> *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.

<sup>2</sup> *In the Matter of Xcel Energy’s Miscellaneous Tariff Filing Addressing Shared Meter Charges*, Docket No. E-002/M-02-129 ORDER APPROVING TARIFF WITH MODIFICATIONS AND CLOSING DOCKET 00-1563 (August 1, 2002); ORDER ACCEPTING COMPLIANCE FILING, AMENDING AUGUST 1, 2002 ORDER AND GRANTING VARIANCE (April 21, 2003).

amount, plus the cost of the investigation. Second, the Commission might conclude that some *de minimis* defects in wiring or plumbing might not trigger the application of the Shared Meter tariffs. Third, the Commission could suspend Xcel's Shared Meter tariffs pending further review, or rescind them outright.

### **III. Party positions**

#### **A. Tariff Proponents**

ECC, LASM and RUD-OAG support retaining the tariffs.

ECC suggests that the Commission could authorize exceptions for *de minimis* deviations from the policy that meters provide service exclusively to a single apartment. LASM and RUD-OAG, in contrast, conclude that Minnesota law does not provide for a *de minimis* exception, although the RUD-OAG suggests that the Commission could seek a statutory change for this purpose. LASM also argues that providing exceptions to the tariffs could create conflicts with Minnesota Rules part 7820.1400(B) which bars a utility from attempting to recover a landlord's bills from tenants.

To the extent that the tariffs induce landlords to become the customer of record for their residential buildings, ECC expresses concern that low-income tenants may lose some of the benefits of Xcel's Low Income Discount Rider,<sup>3</sup> the Commission's Cold Weather Rule,<sup>4</sup> and the federal Low Income Home Energy Assistance Program.<sup>5</sup>

ECC and RUD-OAG acknowledge the challenge posed by the cost of remedying shared meter situations. ECC recommends permitting landlords to refrain from paying funds to Xcel under the Shared Meter tariffs, and instead to apply those funds to the cost of rewiring or replumbing their buildings. RUD-OAG suggests that Xcel may seek Conservation Improvement Program (CIP)<sup>6</sup> funds for the purpose of rewiring or replumbing non-conforming apartment buildings.

Finally, RUD-OAG recommends that Xcel amend its Natural Gas Shared Meter tariff to state that a landlord may not charge a tenant more than the landlord is charged by the utility, just as stated in Xcel's Electric Shared Meter tariff. LASM supports this recommendation.

#### **B. Tariff Opponents**

Various landlords and property managers, including the MMHA, Quality Residences, and those represented by Mr. Schwartz recommend that Xcel's Shared Meter tariffs be repealed or suspended pending further review. MMHA and Quality Residences argue that the tariffs exceed the Commission's authority and unduly impinges on the landlord/tenant relationship. Moreover, Quality Residences argues, Xcel's tariffs create remedies out of proportion to the alleged harm,

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<sup>3</sup> See, for example, *In the Matter of a Petition to Revise Xcel's Low-Income Discount Program to Comply with Modifications in Minnesota Statutes § 216B.16, Subdivision 14*, Docket No. E-002/M-04-1956.

<sup>4</sup> Minn. Rules part 7820.1500 *et seq.*

<sup>5</sup> 42 U.S.C. §§ 8621-8629.

<sup>6</sup> Minn. Stat. § 216B.241, Minn. Rules Chap. 7690.

potentially resulting in inequitable burdens to landlords and windfalls for tenants.

MMHA and Mr. Schwartz argue that Xcel's tariff remedies go beyond what statute requires. MMHA argues that the tariffs actually conflict with Minnesota Statutes Chapter 504B by making Xcel the judge and jury in landlord/tenant disputes, displacing the judicial role prescribed by statute.

These parties also argue that strict application of Xcel's Shared Meter tariffs, or even § 504B.215, is impractical. MMHA argues that Xcel is not well equipped to adjudicate landlord/tenant disputes. MMHA argues that landlords are unlikely to be aware of the provisions of Xcel's tariffs. MMHA notes that, while § 504B.215 applies state-wide, Xcel's tariffs apply only to Xcel's customers, creating the possibility for § 504B.215 to be implemented differently in different parts of the state.

Moreover, while the statute was intended to promote tenant interests, MMHA and Mr. Schwartz express concern that Xcel's tariffs will produce the opposite effect: by inducing more landlords to become the customer of record for their rental properties, low-income tenants will lose certain benefits available only to utility customers.

If the Commission will not rescind or suspend the Shared Meter tariffs, MMHA and Mr. Schwartz argue, then the Commission should at least grant an exception for *de minimis* violations. According to these parties, a *de minimis* exception could help avoid consequences that were beyond the Legislature's intent in adopting § 504B.215.

### **C. The Department**

While the Department has not participated in the discussions that prompted Xcel's petition in this docket, the Department acknowledges the challenges that confront the parties in that discussion. The Department takes no position except to question the merit of financing repairs to a landlord's wiring or plumbing through either utility revenues or the CIP.

### **D. Xcel**

Without advocating any specific resolution, Xcel commented on solutions offered by others.

Xcel acknowledges the appeal of creating a *de minimis* exception to its tariffs, but notes two challenges to this resolution. First, some parties argue that this resolution is precluded by statute. Second, no party articulated any standard for determining what constitutes a *de minimis* violation of the prohibition on shared meters. Xcel states that it has neither the desire nor any unique expertise required to make such judgments.

Xcel appreciates RUD-OAG's suggestion that Conservation Improvement Program funds could finance rewiring or replumbing apartment building to remedy shared meter situations. But Xcel doubts that any remedy would produce sufficient conservation benefits to warrant the use of CIP funds.

Xcel acknowledges that most landlords are likely unaware of the Shared Meter tariffs. Xcel declared its intent to publicize the tariffs' terms to landlords, assuming the Commission does not suspend the tariffs. Similar to Mr. Schwartz and MMHA, Xcel predicts that landlords will respond by becoming the customer of record for all their residential properties and then

apportioning the utility bill among tenants as provided by § 504B.215, subdivision 2. While many parties have expressed concerns about this outcome, Xcel states, it would achieve the benefits of creating a *de minimis* exception while clearly complying with statute.

Xcel notes with approval the arguments of LASM and the RUD-OAG that lease terms cannot alter the application of tariffs. Whatever policy is ultimately adopted, Xcel asks that the Commission not require Xcel to evaluate the terms of leases governing the unique circumstances of each landlord/tenant relationship.

Finally, Xcel acknowledges the merit of RUD-OAG's proposal to amend the Natural Gas Shared Meter tariff to state that a landlord may not charge a tenant more than the landlord is charged by the utility, just as stated in the electric tariff.

#### **IV. Settlement**

At hearing, in lieu of seeking a ruling on its petition, Xcel asked the Commission to approve an agreement reached by Energy CENTS, LASM, MMHA, RUD-OAG and Xcel dated July 12, 2005. In brief, they jointly ask the Commission to approve the following policies:

- Temporarily suspend the back-billing requirement of Xcel's gas and electric Shared Meter tariffs.
- If a Shared Meter situation is discovered as a result of a Shared Meter investigation, a High Bill investigation, or a credit shut-off, make the landlord the bill payer of record at the date of discovery.
- Immediately restore service to a customer if a Shared Meter situation is discovered when service is terminated due to a customer credit issue.
- Make the landlord responsible for paying any arrears arising from usage at a single-metered residence if a Shared Meter situation is discovered, but leave the customer responsible for arrears arising from service at any previous residence.
- Initiate a Commission work group to recommend a legislative or statutory solution to the shared meter issue for all Minnesota utilities within a year, with the understanding that work group participants would not be precluded from bringing concerns directly to the Commission even during the course of the year.
- Add the following underlined text to Xcel's Minnesota Gas Rate Book, MPUC No. 2, Section 6 (General Rules and Regulations), to conform Xcel's gas tariff to its electric tariff: "The Company permits redistribution and submetering where allowed by law, but a landlord may not charge the tenants more than the landlord is charged by the Company."

The parties also proposed tariff pages to implement these changes. The agreement and accompanying tariff pages are attached to this Order.

At hearing, no party objected to this proposal.

## V. Commission Action

The Commission acknowledges the complexities of the issues presented in this docket. The Commission appreciates the parties' past efforts to find an appropriate resolution, and their willingness to continue their collaboration in this pursuit.

For some intervening period while these discussions continue, the parties propose to suspend the operation of the back-billing provisions which triggered many of the objections, and to make certain uncontroversial corrections. The Commission finds the proposed agreement reasonable, and will adopt it.

To facilitate the work group process, the Commission will also authorize its Executive Secretary to give notice of the work group's first meeting and to provide procedural support as required.

### ORDER

1. The July 12, 2005 Shared Meter Agreement and proposed tariff pages are approved.
  - A. The back-billing requirements in Xcel's gas and electric Shared Meter tariffs are hereby suspended.
  - B. If a Shared Meter situation is discovered as a result of a Shared Meter investigation, a High Bill investigation, or a credit shut-off, the landlord shall become the bill payer of record at the point of discovery.
  - C. If Xcel has terminated a customer's service due to a customer credit issue, and a Shared Meter situation is discovered, Xcel shall immediately restore the customer's service.
  - D. Landlords shall be responsible for paying any arrears arising from a customer's usage at a single-metered residence if a Shared Meter situation is discovered, but the customer shall remain responsible for arrears arising from service at any previous residence.
  - E. A work group shall convene to establish a legislative or statutory solution to the Shared Meter issue for all Minnesota utilities. The group shall report the solution to the Commission within one year. However, if any work group participant becomes concerned that his or her constituents are suffering too adversely during the proceedings of the work group, he or she may raise these issues directly with the Commission outside of the work group process anytime during the one-year study.
  - F. Xcel shall amend its Minnesota Gas Rate Book, MPUC No. 2, Section 6 (General Rules and Regulations) to conform Xcel's gas tariff to its electric tariff as follows: "The Company permits redistribution and submetering where allowed by law, but a landlord may not charge the tenants more than the landlord is charged by the Company."

2. The Commission authorizes its Executive Secretary to give notice of the work group's first meeting and to provide procedural support as required.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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