

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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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

ISSUE DATE: August 24, 2001

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

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In the Matter of an Investigation into Allowing Submetering by Building Owners in Multi-unit Residential Buildings Already Individually Metered by an Electric Utility

ORDER DISMISSING PETITION, OPENING AN INVESTIGATION AND REQUIRING REPORTING

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 now d/b/a Xcel Energy (NSP or Xcel) was in violation of Minn. Stat. § 216B.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 had jurisdiction over this matter;
- whether the Commission had authority to grant the relief requested;
- whether there were reasonable grounds for the Commission to investigate the allegations; and
- what procedural vehicle the Commission should use to resolve the complaint.

Comments in response to the August 1, 2000 notice were filed by the Department of Commerce (DOC), the Legal Services Advocacy Project and Energy CENTS coalition (LSAP/ECC), NSP, the Dakota Electric Association (Dakota), and the Complainants.

On October 26, 2000, the Commission held a hearing on the complaint.

On November 21, 2000, the Commission issued its ORDER OPENING INVESTIGATION, requiring NSP, the Complainants and other interested parties to provide comments and answers to specific legal and factual questions.

On December 26, 2000, a group of building owners and managers filed a petition in support of the Complainants.

On January 5, 2001, comments were filed by LSAP/ECC, NSP, the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG), and the DOC.

On January 8, 2001, comments were filed by Dakota and the Complainants.

On January 25, 2001, reply comments were filed by LSAP/ECC, NSP, RUD-OAG, DOC, the Complainants, and the Minnesota Multi Housing Association (MMHA).

The matter came before the Commission on June 28, 2001.

FINDINGS AND CONCLUSIONS

I. Background/Summary of Initial Complaint

A. Factual Background

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.

B. Complainants' Allegations

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

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

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

C. The Commission's November 21, 2000 ORDER OPENING INVESTIGATION

In its November 21, 2000 Order, the Commission found that there was nothing in the Minnesota Statutes that required NSP to comply with ConServe's request to submeter these apartment buildings nor was the Commission required to order NSP to do so. The Commission determined that the question then became a public policy question of whether it was in the public interest to require submetering in this instance. In order for the Commission to evaluate whether it would be in the public interest to allow the changes requested by the Complainants, the Commission directed the parties to address several questions raised by ConServe's complaint.

D. Scope of the Present Order

The Order herein specifically addresses whether the petition of Complainants should be approved as being in the public interest. Several issues that were considered by the Commission include service quality and consumer protections, reasonableness of rates, incentives for conservation, revenue impacts, cost of conversion, Commission oversight, customer choice and customer notice. Each will be addressed below.

The Order is specifically limited to this situation where there is no existing master meter in the building and the utility is being asked to remove the utility's separate metering and install a master meter instead. The rate for electricity to the master meter would then be billed at the utility's commercial rate rather than the residential rate previously charged each tenant. The building owner, in this instance, would become the customer of the utility, not each tenant individually.

II. Service Quality and Consumer Protections

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 ..."

A. Comments of DOC, OAG-RUD, NSP, LSAP/ECC and Dakota (Parties Opposing Complainant's Request)

The various parties that opposed the granting of ConServe's request indicated that the tenants are presently customers of a regulated utility and as such have a right to reasonable rates, have a statutory guarantee of safe, adequate, reliable, efficient, and reasonable service.² They also have statutory protections against disconnections during cold weather.³ By rule they are entitled to adequate customer information, have access to Commission dispute resolution processes, are entitled to reasonable notice before disconnection, have certain protections against deposit and delinquency charges, are covered by basic standards with respect to meter reading, billing, and bill standards and have rights in situations of back billing. Further, they have remedies if meters are found to be inaccurate.⁴ In addition, they may participate in various payment options offered by NSP. If the Commission were to grant the Complainants' petition, the parties argued that the tenants would no longer have these rights.

Specific concerns mentioned were whether tenants would have any protections against unreasonable rates, the possibility of customer confusion as to who to call if there was a service problem: NSP, ConServe, or the landlord; the implications of the loss of protection of the cold weather rules and the possibility that tenants could face eviction for inability to pay electric bills.

ConServe agreed that the cold weather protections would no longer apply to tenants but argued that other parts of Minnesota law extended protections to tenants of master-metered buildings. The DOC argued, in response, that even if there were adequate protections in landlord-tenant law, tenants would have to pursue enforcement through the courts rather than being able to simply contact the Commission. The Commission would not have any enforcement authority over ConServe unless ConServe were determined to be a regulated utility.

LSAP/ECC specifically disagreed that other parts of Minnesota law would give tenants protections similar to the protections customers of utilities receive. LSAP/ECC stated that other parts of Minnesota law do not protect tenants from disconnection during cold weather. Other parts of Minnesota law provide protections only in circumstances where the owner fails to pay the utility bill,⁵ provide for the right to recovery of damages for interruptions of utility service⁶ and provide access to the court for relief in cases of emergency involving the loss of utility service.⁷

² Minn. Stat. § 216B.01 thru § 216B.04

³ Minn. Stat. § 216B.095

⁴ Minn. Rules, Chapter 7820.

⁵ Minn. Stat. § 504B.215.

⁶ Minn. Stat. § 504B.221.

⁷ Minn. Stat. § 504B.381.

B. ConServe's Position

ConServe indicated that it would install new meters and related equipment and maintain and operate the meters, except in cases where owners elect to purchase, install and maintain the meters. ConServe would provide meter reading and billing services and would be the main contact for tenants experiencing any difficulty with service or bills, so that there should be no confusion to tenants. ConServe would generally collect payments, but if a tenant had a payment issue or delinquency, the owner might elect to retain control and the issue then would become one of lease compliance and landlord-tenant relations.

ConServe agreed that the protections of the Cold Weather Rule would be lost. ConServe and MMHA argued that other parts of Minnesota law, especially the landlord-tenant protections in Minnesota Statutes § 504B, provided protection to tenants of master-metered buildings with respect to disconnection by the utility.

III. Rates

A. Comments of ConServe

The building owner, not ConServe would establish building rates. However, ConServe stated that the rates would never exceed rates which would otherwise have been charged by the utility if the tenant were still a retail residential utility customer, and that the rates have the potential to be less because commercial rates are lower than residential rates. Any difference between what the utility would charge the owner and what the owner would charge the tenants would be to cover initial costs of meters and related conversion equipment and ongoing costs for metering, billing and related services.

B. Comments of the DOC, OAG-RUD, NSP, LSAP/ECC and Dakota

It was argued that although ConServe indicated that rates to tenants would not exceed rates which would otherwise have been charged by the utility if the tenant were still a retail residential customer, since ConServe would most likely not be subject to regulation by the Commission any rate promises made to the Commission would not be enforceable by the Commission.

Further, it was suggested that the Complainants would attempt to recover from the tenants the costs incurred in converting the buildings to master metering.

The parties questioned whether there would be actual savings to tenants given that ConServe has stated that the owners would bill tenants at the residential rate that was billed by the utility.

IV. Conservation Incentives

A. Comments of NSP and Dakota

There was concern expressed that tenants would not be able to benefit from load management programs being offered by utilities. Tenant participation in renewable energy programs might also not be possible.

B. Comments of ConServe

ConServe argued that a significant issue in promoting conservation by tenants was the fact that landlords did not receive any incentive to reduce tenant bills. ConServe indicated that under the Complainant's proposal the utility would be able to work directly and more effectively with building owners to manage the load of the entire building, rather than merely individual units. Owners could use accumulated usage data to design and implement cost-effective demand side management activities for the whole building, including individual units.

V. Revenue Impacts

A. NSP's Comments

NSP indicated that it would be required to serve the same electrical load at the two apartment complexes in question while receiving lower revenues, due to charging commercial rates, for both the energy and the capacity it provides to the facilities. A significant portion of this revenue shortfall would need to be recovered from other ratepayers.

NSP stated that if all of the existing residential apartment customers in NSP's service area in Minnesota were to be metered and billed by the Complainant, NSP's residential revenues would decrease by approximately \$50 million. Although the Company's commercial and industrial revenues would go up by approximately \$44 million per year, the loss of net revenues to NSP would be approximately \$6 million per year.

B. ConServe's Comments

ConServe argued that the \$6 million in lost revenue to NSP is not significant relative to NSP's overall revenues. It argued that this type of expense or change in revenue flows could and does occur on a regular basis for NSP, due to changes in customer base and other numerous reasons. To the extent the loss in revenues is significant, there are remedies for relief.

VI. Cost of Conversion

A. NSP's Comments

NSP estimated its incremental (new) costs to remove, test and restock existing residential meters for the two facilities in question, as well as the incremental costs to install master meters and to reconfigure the meter cabinets to accommodate ConServe's metering equipment to be approximately \$14,000. Estimated overhead or indirect costs for these two facilities would be approximately \$6,500.

NSP identified 8500 apartment buildings with approximately 200,000 apartment units in its service area. NSP projected that it would have to invest approximately \$36 million if it were required to convert all of the remaining apartment buildings from individual meters to master meters.

NSP argued that these costs would negatively impact both residential and commercial/industrial rates.

B. Comments of Complainants

Complainants stated that they have agreed to reimburse utilities for the reasonable costs incurred in converting buildings to master-metering. Since such costs as removal of existing meters, installing new master meters, and reconfiguration of meter cabinetry would be reimbursed by Complainants, there would be no net loss to NSP.

C. Comments of Parties Opposing Complainant’s Proposal

The parties expressed concern that the Complainants would pass along to the tenants the one time costs of NSP that the Complainants have agreed to pay.

VII. Commission Oversight

A. ConServe’s Position

ConServe argues that it is not a “public utility” under the definition contained in Minn. Stat. § 216B.02, subd. 4 and would not be subject to Commission jurisdiction.

B. Position of Parties Opposing Complainant’s Proposal

If it is assumed that ConServe is not a public utility, as it argues, then the Commission does not have jurisdiction to regulate ConServe’s activities and conduct and would have no oversight of its activities.

If ConServe is a public utility under the Commission’s jurisdiction, the parties argue that ConServe should be prohibited from submetering these apartment buildings because the buildings are located within NSP’s exclusive territory.

VIII. Customer Choice, Customer Notification

A. Position of LSAP/ECC

The tenant-ratepayers residing in the two apartment complexes directly affected by the ConServe petition were not informed that this petition was before the Commission. They have had no opportunity to have provided their comments. It is LSAP/ECC’s position that the Complainants should have given notice to the tenants of their intentions and afforded the tenants the opportunity to be heard.

B. Position of Complainants

The Complainants stated that they did not believe the building owners were required to inform the tenants of this proposal. Decision making authority belonged to the building owners, not the tenants.

IX. Commission Analysis and Action

The Commission finds that the record fails to demonstrate that ConServe's submetering proposal meets the public interest standards of the Public Utilities Act. ConServe's proposal does not appear to provide any real benefits to tenants and may make them worse off. Among other things, it is not clear that ConServe customers would have readily enforceable rights to fair and reasonable rates or to protection from cold weather shut-off in the event of an inability to pay. Further, it appears that other ratepayers may be adversely impacted. The Commission will therefore deny the petition.

At the same time, however, it would be premature to conclude that proposals such as ConServe's cannot benefit Minnesota consumers. ConServe has argued that it can offer rates below those charged by the utility and that it can provide conservation services that will be based on the building as a whole. These are significant public interest benefits.

ConServe's petition raises significant practical and public policy issues that cannot be resolved on the basis of the current record. These issues are likely to recur in other contexts. The Commission will therefore open an investigation to develop criteria for the Commission to evaluate future petitions for submetering, under similar circumstances. The record from this proceeding will be incorporated into that investigation.

The Commission will ask the parties, under the leadership of the DOC, to explore developing an analytical framework or set of criteria for evaluating any future submetering petitions in situations where there is current submetering by a utility which the landlord and third party vendor propose to change to master metering. At a minimum the parties should address the issues discussed in the body of this Order as well as any other issues or criteria they consider crucial to a full understanding of this complex subject.

The Commission will request a preliminary report from the parties within 120 days of this Order.

ORDER

1. The Complaint and Petition for Declaratory Relief filed by ConServe is dismissed.
2. The Commission hereby opens an investigation to explore the potential for developing a set of criteria under which the Commission would evaluate future petitions for submetering.
3. The record in the current proceeding shall become part of the record in the above mentioned generic proceeding.
4. The parties shall file an update with the Commission within 120 days of the date of this Order.

5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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