

**STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

Katie J. Sieben	Chair
Valerie Means	Commissioner
Hwikwon Ham	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

In the Matter of Xcel Energy’s Tariff Revisions
Updating Community Solar Garden Tariff Providing
Additional Customer Protections in Subscription Eligibility

DOCKET NO. E-002/M-21-695

In the Matter of the Petition of Northern States
Power Company, d/b/a Xcel Energy, for Approval
of its Proposed Community Solar Garden Program

DOCKET NO. E-003/M-13-867

**Comments of Mid-Minnesota Legal Aid and Legal Service Advocacy Project
Regarding Xcel Energy's Compliance Filing of January 16, 2024**

Background

On June 24, 2022, the Minnesota Public Utilities Commission ("the Commission") issued an Order denying a petition of various stakeholders to modify Xcel Energy's tariffs in a manner intended to protect low-income residential tenants in multi-unit buildings where solar energy is available. That Order also required further action to improve low-income solar energy tenants' access to energy assistance programs. Previously, the practice of landlords taking over directly metered tenant electricity accounts and unilaterally transferring those accounts to landlords to satisfy the account-listing requirements of the Solar Garden solar energy distribution and billing system had resulted in large-scale loss of tenant access to utility-based benefit programs and other consumer protections because their utility accounts were no longer in their names, and they were now paying utility-related charges as reimbursements to landlords, instead to directly to Xcel Energy.

On August 11, 2023, the Commission issued an Order requiring the reopening of paragraph 2B of the June 24 Order, which states: "B. Xcel shall propose a modification to its tariffs for these¹ programs to allow low-income renters who are subject to third-party billing to access these programs." The August 11 Order also required Xcel Energy to report back to the Commission by January 15, 2024 "...on details (of progress in this regard) including but not limited to: the necessary changes to its billing system, the incremental costs thereof, an analysis of what data sharing requirements will be necessary, and the estimated number of tenants/households that would benefit."

On January 16, 2024, Xcel Energy submitted a Compliance Filing ("Compliance Filing") proposing, *inter alia*, implementation of an "in care of" billing method that would leave accounts directly metered by Xcel Energy in a tenant's name, but bills would be sent to landlords "in care of" the tenant, for payment by the landlord. No paper bill would be sent to tenants, but tenants could access and print electricity bills for their accounts on an Xcel Energy electronic portal called *My Account*.

On February 9, 2024, the Commission issued a Notice of Comment Period relative to the January 16 Xcel Energy Compliance Filing, and opened the below issues and topics for Comment, with an initial deadline of March 8, 2024:

+Does Xcel Energy's January 16, 2024 compliance filing meet the requirements of the Commission's August 11, 2023 Order?

+Are there other issues or concerns related to this matter?

Mid-Minnesota Legal Aid ("Legal Aid" or "MMLA") and Legal Service Advocacy Project ("LSAP") welcome this opportunity to submit this Comment following the February 9 Notice.

¹ The programs specified in the June 24 Order are: PowerOn Program, Medical Affordability Program, Gas Affordability Program, and Low-Income Discount Program. Order, 8/11/2023, p. 7, para. 2, 2b.

Discussion

I. Xcel Energy's January 16 Compliance Filing Does Not Meet the Requirements of the Commission's August 11, 2023 Order.

Legal Aid and LSAP participated in, and appreciate the efforts of Xcel Energy and the stakeholders in attempting to address benefits-access and consumer protection problems that have arisen in the current Community Solar Garden ("CSG") metro area solar energy delivery and billing model. The stakeholder group focused primarily on loss of consumer access – and particularly loss of low-income tenant access – to utility-benefits programs resulting from landlords taking over separately metered tenant accounts as part of the CSG's Building Subscription Model ("BSM"). As will be developed further below in the discussion of the second issue contained in the Comment Notice, as testified to by tenants in this docket at the May 5, 2022 hearing and as acknowledged by Xcel Energy Compliance Filing, there are significant unresolved consumer protection problems that remain with this solar energy delivery and billing model. In short, there are billing problems for tenants ranging from, generally, indecipherable bills, runaway charges creating debt traps, and increased threats of eviction – in fact settings where these problems would not occur if the regulated utility provider were including solar energy billing in its existing billing infrastructure and process.

In its June 24 Order, the Commission identified the need to address problems faced by CSG-model low-income tenants in accessing "Energy Assistance Programs" (Order title), and accessing the PowerOn, Medical Affordability, Gas Affordability, and Low-Income Discount programs (June 24 Order, p. 7 para. 2). The problems CSG tenants have had accessing the latter four programs has been characterized generally as a technical billing or administrative problem.

Respectfully to, particularly, Compliance filer Xcel Energy, the undersigned do not know as fact whether the proposed "in care of" billing method will, in practice, result in a tenant's

having access to these latter four programs identical to before a tenant electricity account is shifted out of a tenant's name into the "in care of" billing status. Critically however, the "in care of" billing method apparently *does not* restore lost Energy Assistance (LIHEAP) fuel or Crisis benefits. On March 6, 2024, undersigned Legal Aid attorney Gary Van Winkle called a local LIHEAP vendor, and spoke with a supervisor. Attorney Van Winkle described the "in care of" billing method and was informed, because the tenant is paying the landlord and not the regulated provider (as before), the tenant would be eligible for only one \$200 Energy Assistance grant per season – when before a tenant may have been eligible for a four-figure total Energy Assistance grant payable twice in a cold weather season – and the tenant would be categorically ineligible for Crisis funds, which can be used to prevent evictions.

Reiterating that the stakeholder meetings and communications in this docket has been a deliberative and cooperative process, the undersigned appreciatively acknowledge Xcel Energy's candor in its Compliance Filing in stating that the "in care of" billing method will not solve – and there is at this point no resolution for – the loss of a series of consumer protections that will result from tenant participation in this CSG model. Echoing the tenant testimony at the May 5, 2022 hearing, these unresolved problems include lack of billing transparency and oversight, which would include verifying the pass-through to the end-user of solar energy credits. (Compliance Filing p. 9). Recalling, the above tenants testified to monthly solar credits of \$2.70 and \$3.70 per month, as those consumers lost access to far greater sums in benefits, and their utility-related balances grew to hundreds of dollars and became unmanageable, leading to threats of eviction.

The lack of access to LIHEAP and Crisis benefits, as well as the failure of stakeholders to identify a solution to the issues raised by tenants at the May 5, 2022 hearing are serious flaws in

this CSG approach. Legal Aid and LSAP cannot at this time support approval of either the Compliance Filing or the CSG model in its current form due to these unresolved flaws.

2. Additional Unresolved Issues and Concerns Related to Third-Party Billing and Re-Billing have Emerged in a Spate of Litigation Since Mid-2023; the CSG Model should be Re-Examined and Re-Assessed to Determine Whether this Approach to Delivery of and Billing for Solar Energy is in the Public Interest.

It cannot be overemphasized that the stakeholders have done their best to address issues and concerns over the many years that this docket and the related E-003/M-13-867 docket have been open. While the undersigned realize it is beyond the scope of this docket to address the broader issue of landlord and third-party billing and re-billing of regulated utility service, by now it is clear that this non-provider billing practice is the common denominator in the unresolved problems herein that plague, especially, the low-income utility end-user. Again, while it is beyond the scope of this docket to address non-provider utility billing issues that have arisen outside the solar energy context, these other cases do raise a question whether the CSG model – which incorporates such non-provider billing into its structure – should be approved. More specifically, Legal Aid and LSAP submit it is not in the public interest to approve the CSG model as currently configured – i.e., allowing non-provider utility billing. A brief description of current or recent litigation involving non-provider utility billing illustrates the breadth of problems that result when a landlord or third-party entity controls tenant billing for utility service.

On October 18, 2023, the Minnesota Attorney General sued a large landlord operating in Minnesota for numerous violations of Minnesota's shared meter / apportioned billing statute, section 504B.215. Apportioned billing is estimated utility billing to a tenant by a landlord or other third-party agent. Allegations were varied, but included systematic overcharges and numerous related, but baseless, evictions. A Stipulated Temporary Injunction and Order was

entered November 7, 2023, enjoining apportioned billing practices and halting numerous evictions. *Minnesota v. Investment Property Group, et al.*, 27-CV-23-16187 (Dist. Minn.).

Kindt v. Investment Property Group, et al., 27-CV-HC-23-3340 (Dist. Minn.) filed April 27, 2023 -- in Hennepin County Housing Court, alleging overcharging and failure by landlord to disclose billing information as required by the apportioned billing statute, section 504B.215. Liability has been established and that case is now in the damages phase.

Hook & Ladder Apartments, L.P. vs. Nichole Nalewaja, A23-1048 (Minn. App. [pending]), is an eviction case where one of the defenses is alleged illegal landlord / agent billing and alleged illegal termination of electricity in a sub-metered building. (Undersigned Legal Aid attorney Gary Van Winkle represents the tenant in the foregoing appellate matter). Van Winkle has been practicing consumer-side utility law since 1987 and has been in the Minneapolis Legal Aid office since 1990. He has observed a significant rise recently in Legal Aid intakes in which non-provider utility billing has been at least one of the main issues.

Even only a brief snippet of current utility billing litigation in Minnesota illustrates the variety of serious consumer – and housing-related – problems that increasingly result from non-provider utility billing. It has been established in this Commission docket, without resolution, that non-provider utility billing poses a series of consumer concerns, for which no solutions have been identified.

Accordingly, particularly considering this recent spate of utility-billing litigation, in response to the second issue / topic point stated in the Notice of Comment Period herein, Legal Aid and LSAP respectfully request a re-examination of the CSG model, at least to the extent it incorporates utility billings by landlords or their agents, instead of by Xcel Energy. The undersigned cannot help but add that it appears that removal of this landlord / third-party billing /

re-billing element of the CSG model – and returning tenants to direct-paying customers of the regulated provider – will resolve the myriad additional problems identified as still unresolved in the Compliance Filing.

Conclusion

Difficulty or inability of direct-metered low-income tenants to access a full Energy Assistance benefit, continuing problems with lack of transparency and oversight in non-provider utility billing, and recent court developments calling attention to problems with non-provider utility billing in other contexts, raise serious questions as to whether approving the Compliance Filing or the CSG model as currently configured – is in the public interest. For these reasons, at this time, Legal Aid respectfully opposes approval of either the Compliance Filing or the CSG model as currently configured, and requests specifically that the Commission re-examine the question whether landlord or other third-party billing or re-billing should remain a part of the CSG model.

March 8, 2024

Respectfully submitted:

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March 8, 2024

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