

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

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**Northern States Power Company,
d/b/a Xcel Energy, In the Matter of
Xcel Energy’s Tariff Revisions
Updating Community Solar Garden
Tariff Providing Additional Customer
Protections in Subscription Eligibility,
Docket No. E002/M-21-695,**

**INITIAL COMMENTS of the
MINNESOTA SOLAR ENERGY
INDUSTRIES ASSOCIATION
(MnSEIA) and COALITION FOR
COMMUNITY SOLAR ACCESS
(CCSA)**

Docket No. E002/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. E002/M-13-867

December 21, 2022

**INITIAL COMMENTS OF
THE JOINT SOLAR ASSOCIATIONS**

The Minnesota Solar Energy Industries Association (“MnSEIA”) is a 501(c)(6) nonprofit trade association that represents our state’s solar businesses, with 135 member companies, which employ roughly 4,000 Minnesotans.

The Coalition for Community Solar Access (“CCSA”) is a 501(c)(6) and is the national trade organization specifically focused on the community solar industry, representing over 110 member companies with active operations in over 20 states as well as at the Federal level.

Collectively, MnSEIA and CCSA offer these comments as the Joint Solar Associations (“JSA” or “Associations”).

As an initial matter, the JSA would like to thank the Minnesota Public Utilities Commission (“Commission”) and the other stakeholders for the time and attention devoted to this important matter. As the Commission and Minnesota Legislature have made clear, low-income residential ratepayers should be provided as much assistance as possible to pay their energy bills. These customers already have access to the Low-Income Home Energy Assistance Program (“LIHEAP”), which qualifies them for Xcel’s affordability programs.¹ They should also have access to renewable energy programs like Xcel’s community solar garden (“CSG”) program. As the Commission stated at the May 5 Hearing on this matter, low-income ratepayers should not have to choose one or the other.² They should be eligible to receive both because they, more than anyone, would benefit from participating in ALL of these programs. And they would not have to choose one or other if it was not for Xcel’s extremely narrow definition of a customer, which is limited to only the party that is directly paying Xcel’s bill. The crux of this entire docket centers around Xcel’s restrictive and regressive definition. A definition it conceded at the May 5 Hearing it did not have any legal authority to support,³ and which, after months of considering the issue, was only able to provide an inapposite authority in its Compliance Filing to support. As both the Commission and Minnesota law make clear, low-income tenants who are receiving and paying for Xcel’s services, whether directly or indirectly, are ratepayers that should be considered customers by Xcel, entitling them to all of the affordability and renewable energy programs Xcel provides. Accordingly, the JSA respectfully request that Xcel’s Compliance Filing be considered deficient and that it be ordered to propose the changes necessary to provide its affordability programs to these customers as the Commission previously ordered.⁴

BACKGROUND

On September 23, 2021, Northern States Power Company, d/b/a Xcel Energy (“Xcel” or the “Company”), Mid-Minnesota Legal Aid, Energy CENTS Coalition, and the Citizens Utility

¹ See Minn. Stat. § 216B.16, subds. 14 & 15.

² See Minn. Pub. Util. Comm., Hearing, *In the Matter of Xcel Energy’s Tariff Revisions Updating Community Solar Garden Tariff Providing Additional Customer Protections in Subscription Eligibility*, Docket No. E002/M-21-695, and *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. E002/M-13-867, 3:17:25-3:17:39 (May 5, 2022) (“May 5 Hearing”) (Commissioner Sieben stating, “Really, it’s like, in my mind, everybody wants the same thing here . . . well, maybe not everybody, but a lot of people want the same thing here. Which is low-income people should be able to access all programs that they are eligible for.”), and, 3:21:09-3:21:14 (Commissioner Tuma stating, “I want to make sure that your customers can participate in both LIHEAP and community solar gardens.”).

³ *Id.* at 3:05:41-3:05:52 (Xcel’s attorney responding to Commissioner Tuma’s request for legal authority to support their position, “I don’t have for you a specific cite on that-a specific case where this has come up. I don’t know a specific case where this has come up.”).

⁴ Because Xcel’s request that the Commission “amend and reopen its original Order point 2b” is untimely and not a petition as required by Minn. R. 7829.3000, it should be denied even without considering its lack of merit.

Board of Minnesota (collectively, “Joint Parties”) petitioned the Commission to modify the Company’s Standard Contract for Solar*Rewards Community at sheets 0-661, 9-74, and 9-76.⁵

The stated purpose of the petition was “to create proposed tariff modifications that we believe will help ensure tenants in rental premises that are the subject of CSG subscriptions will retain consumer protections and full access to state and utility assistance programs.”⁶ The Joint Parties solution to the problem created by Xcel’s extremely narrow definition of a consumer was to exclude low-income tenants from participating in third-party billing, which also excluded them from participating in CSGs.

On October 14, 2021, the Commission issued a Notice of Comment Period,⁷ to which the JSA and numerous other parties responded.

On May 5, 2022, the Commission held the hearing on this matter. At the hearing, it became obvious that the issue in this matter centered around Xcel’s narrow definition of customer. Responding to Xcel’s attorney, Commissioner Tuma stated, “Mr. Harris [Xcel’s attorney], I just fundamentally disagree with you that a third-party customer is not a customer.”⁸ He reiterated, “There is still a customer Mr. Harris. How can they not be?”⁹ “With a third party there is still a customer under the statute.”¹⁰ In response to Commissioner Tuma’s request for some legal authority to support Xcel’s position that the consumer who ultimately uses and pays for the electricity is not the customer, Xcel’s attorney replied:

At least for our purposes, they are the ultimate consumer of the electricity, but the third party-I think here the landlord-becomes the customer. They have taken over the account. That’s what happens when, you know, you have someone. The example you’ve got, have, you know, children who have their accounts transferred to their parents. And that parent then becomes the customer of record. Here the situation is that the landlord became, as I understand it, the customer of record. And, so, I agree that we want to be providing the protection to those

⁵ See Xcel Energy, Petition, *In the Matter of Xcel Energy’s Tariff Revisions Updating Community Solar Garden Tariff Providing Additional Customer Protections in Subscription Eligibility*, Docket No. E002/M-21-695, and *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. E002/M-13-867 (September 23, 2021) (“Petition”).

⁶ See Petition, p. 1.

⁷ See Minnesota Public Utilities Commission, Notice of Comment Period, *In the Matter of Xcel Energy’s Tariff Revisions Updating Community Solar Garden Tariff Providing Additional Customer Protections in Subscription Eligibility*, Docket No. E002/M-21-695, and *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. E002/M-13-867 (October 14, 2021).

⁸ May 5 Hearing at 3:03:46-3:03:49.

⁹ *Id.* at 3:04:07-3:04:11.

¹⁰ *Id.* at 3:04:39-3:04:43.

ultimate consumers. *I don't have for you a specific cite on that-a specific case where this has come up. I don't know a specific case where this has come up.*¹¹

He then goes on to say, “In our tariff, the landlord, under section 41 of our general rule, the landlord is allowed to redistribute or submeter. They have to charge tenants the same amount or no more than they are charged by the company for electricity. But I think in that situation the landlord actually becomes the customer and is providing that energy further on to their tenants.”¹² In support of Commissioner Sullivan’s motion, Commissioner Tuma stated, “I would hope that as we go forward Xcel recognizes and goes to the space where you have a meter and a ratepayer paying based on their consumption of electricity in a multi-unit residence and they just happen to assign a bill paying process to a third-party vendor like we have talked about today. ... That is clearly a ratepayer-utility relationship that we can regulate.”¹³ This echoed Commissioner Sieben’s prior statement about, “how Xcel can modify their tariffs for their low-income programs in some way so that it’s clear for people that they can be a subscriber to a CSG and also access these programs.”¹⁴

On May 24, 2022, JIT submitted a letter to the Commission providing some suggestions on how Xcel’s affordability programs could be changed to provide access for low-income renters because no contact had been made by Xcel to start the planning for the stakeholder process required by the Commission.¹⁵

On June, 24, 2022, the Commission denied Xcel’s petition stating that it wanted Xcel to “further develop the record on these matters, to work with the OAG and landlords to ensure eligible customers are able to maintain their energy assistance, and to propose tariff changes expanding eligibility of several of its energy assistance programs.”¹⁶ The Commission noted that it was “persuaded that at least one appropriate strategy for managing the problems identified in this docket is to ensure that, to the greatest extent practicable, low-income utility customers are not needlessly disqualified from energy assistance programs by the need to be a customer of record.”¹⁷ It also stated that it would direct Xcel to modify its tariffs “to ensure that low-income tenants can qualify for these programs even if they receive service via third-party billing.”¹⁸

¹¹ *Id.* at 3:05:02-3:05:52 (emphasis added).

¹² *Id.* at 3:06:05-3:06:38

¹³ *Id.* at 4:13:36-4:14:22.

¹⁴ *Id.* at 3:17:08-3:17:24.

¹⁵ JIT Services, Inc., Letter, *In the Matter of Xcel Energy’s Tariff Revisions Updating Community Solar Garden Tariff Providing Additional Customer Protections in Subscription Eligibility*, Docket No. E002/M-21-695, and *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. E002/M-13-867 (May 24, 2022).

¹⁶ Minn. Pub. Util. Comm., Order, *In the Matter of Xcel Energy’s Tariff Revisions Updating Community Solar Garden Tariff Providing Additional Customer Protections in Subscription Eligibility*, Docket No. E002/M-21-695, and *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. E002/M-13-867, p. 2 (June 24, 2022) (“PUC Order”)

¹⁷ PUC Order, p. 5.

¹⁸ *Id.*, p. 5.

Accordingly, the Commission ordered Xcel to “propose a modification to its tariffs for these programs to allow low-income renters who are subject to third-party billing to access these programs.”¹⁹ It also ordered Xcel to convene a stakeholder process to address the following issues:

- A. Transparency about Community Solar Garden offerings serving their residential unit under third-party billing systems.
- B. Tenant rights under third-party billing systems, including any right to claim control over the utility account.
- C. Low-income tenant access to utility energy assistance programs such as PowerOn even when receiving service under a third-party billing system.
- D. Ensuring that a landlord who has tenant accounts in the landlord’s name may continue to participate in Xcel’s CSG program, assuming the implementation of this model does not cause more harm than benefit to the tenants.
- E. Ensuring that any penalties to CSG developers who violate Xcel’s tariff are based on developer-caused violations or known omissions, and are commensurate with the timeframe of the violation/known omission.²⁰

On July 26, 2022, Xcel filed a notice that it would be convening the first stakeholder meeting on August 9, 2022, stating that it would address the issues cited above.²¹ Interestingly, when the first stakeholder meeting was held on August 9, 2022, the meeting focused on order points 2B, and 6C and 6E. Order Point 2B had not been listed in Xcel’s July 26 Notice.²² It was also not an issue that the Commission ordered Xcel to address in the stakeholder process. The Commission had simply ordered Xcel to “propose a modification to its tariffs for these programs to allow low-income renters who are subject to third-party billing to access these programs.”²³ Nonetheless, the stakeholder meeting began with the Joint Petitioner’s proposal to allow “tenants to opt out to continue receiving Xcel Energy’s low-income programs or opt in, acknowledging they will forfeit assistance benefits.”²⁴ According to the notes Ms. Marshall stated, “Considerable time

¹⁹ *Id.*, p. 7 (Order Point 2).

²⁰ *Id.*, p. 7 (Order Point 6).

²¹ Xcel Energy, Letter, *In the Matter of Xcel Energy’s Tariff Revisions Updating Community Solar Garden Tariff Providing Additional Customer Protections in Subscription Eligibility*, Docket No. E002/M-21-695, and *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. E002/M-13-867, p. 1-2 (July 26, 2022).

²² *See id.*

²³ PUC Order, p.7.

²⁴ Xcel Energy, Compliance Filing, *In the Matter of Xcel Energy’s Tariff Revisions Updating Community Solar Garden Tariff Providing Additional Customer Protections in Subscription Eligibility*, Docket No. E002/M-21-695, and *In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of its*

has been spent trying to find a solution to extend Xcel Energy's low-income programs to customers who are not account holders. A simplified option has been identified as an opt-in, opt-out proposal."²⁵ Xcel's notes do not identify the particular issues or who spent time trying to find a solution, but it clearly was not the stakeholder group at this point. Stakeholders like Mr. Menzel noted that "Its hard to understand where issues are without seeing specifics to comment upon."²⁶ While Stakeholder Denherder-Thomas's position was that a "response to PUC of 'this isn't possible' - does not move the needle forward. Same arguments as in testimony. If we want to try and resolve this rather than fighting same argument, need to roll up sleeves."²⁷ However, instead of providing more information about Xcel's programs so that stakeholders could better understand them, the notes indicate that Ms. Marshall's position was, "Affordability program extensions- don't assume we can get there. Suspend that idea for now. Where are people at? If people in a building decide not to participate in a CSG- would parties consider that?"²⁸ Stakeholder Bjorkland responded noting:

There already are conditions to which people can opt out. The opt-in/opt-out discussion, tenants' rights, and CSG transparencies will happen on 14th. We were only notified a couple days ago, and those issues will be discussed on the 14th. Currently, the tenant can opt out for several reasons including subscribing to another solar garden, need certain energy assistance, and if they don't realize annual savings on their electric bills (they are getting monthly discounts).²⁹

So, the first stakeholder meeting began addressing an issue that the Commission did not direct Xcel to address and established Xcel's position that it would not comply with the Commission's order.

The second stakeholder meeting was held on September 14, 2022. During this meeting it appears from the notes that the parties started to actually discuss the mechanics of third-party billing and the issues that Xcel believed they create. Xcel noted "Concern is that statutory and reporting requirements that Xcel Energy has, and the current billing system precludes this from happening. Cost prohibitive to make the necessary changes to our billing system for a small number of participants."³⁰ Xcel did not identify the specific statutory or reporting requirements that were problematic. Stakeholder Menzel responded, "We don't understand this-isn't it just sharing information which is already typical? Doesn't seem to be a major hurdle. Seems like it

Proposed Community Solar Garden Program, Docket No. E002/M-13-867, p. 21 (Attachment A p. 1) (Nov. 11, 2022) ("Xcel Compliance Filing").

²⁵ *Id.*

²⁶ *Id.* at 23 (Attachment A p. 3).

²⁷ *Id.*

²⁸ *Id.* at 25 (Attachment A p. 5).

²⁹ *Id.*

³⁰ *Id.* at 30 (Attachment A p. 10)

should be very easy.”³¹ To which Xcel responded, “they are no longer our customer-not in system. Not equitable for our other customers to pick up these additional costs. There is also the who is a ‘customer’ conversation.”³²

Following the second stakeholder meeting a list of questions were provided to the stakeholders from Xcel addressing their concerns regarding changing their affordability programs to allow low-income ratepayers to access them when using third-party billing. JIT provided detailed responses.³³ JIT noted that in light of the definitions found in Minn. Stat. § 216B.16, subd. 14, Minn. Stat. § 216B.16, subd. 15, and Minn. R. 7820.0700, subp. 1, “a customer eligible for low-income discounts under Xcel’s program is someone who is being supplied with electric service from Xcel and received LIHEAP benefits.”³⁴ JIT went on to state:

Xcel and ECC could use the same processes tying assistance, credits, and information to LIHEAP’s Household number to Xcel’s Account number (i.e., the building) combined with the Premise number (i.e., apartment number). Referenced above is automated sharing of data between Xcel and ECC. As a registered energy vendor, those data could be shared with JIT, along with the fields that are captured, and JIT, Xcel, and ECC can collectively best determine how to automate data flow back and forth. Many of the issues raised in this document would be resolved with data file sharing (such as occupancy, move-out, payments, balances, etc.).³⁵

Additional responses were provided to other questions as well.³⁶

The third stakeholder meeting was held on September 28, 2022. A review of the notes for this meeting demonstrates that the major source of disagreement between the parties appears to be that Xcel continued to maintain the position that the tenants who consume and pay for the electricity are not the customers because they do not pay the bill directly to Xcel.

The fourth stakeholder meeting was held on October 26, 2022. The focus of the meetings was walking through the stakeholder’s concerns on the redlined CSG contract.

Xcel filed its compliance filing on November 11, 2022. In its filing, Xcel stated that all of the parties agreed on the Commission’s goal of “reconciling 1) policies designed to promote access to solar energy generation with 2) policies designed to assist low-income ratepayers.”³⁷ Xcel, however, believes that “the simultaneous pursuit of both objectives would require a combination

³¹ *Id.*

³² *Id.*

³³ See Xcel Compliance Filing, p. 62 (Exhibit E).

³⁴ *Id.* at p. 63 (Exhibit E p. 2)

³⁵ *Id.*

³⁶ See *id.* (Exhibit E).

³⁷ Xcel Compliance Filing, p. 2.

of changes to current statutes or prior Commission rulings. It also presents logistical barriers in low-income assistance program administration.”³⁸

The stakeholders were able to agree to support an opt-in/opt-out approach and decrease the minimum monthly usage charges to qualify for the PowerOn program.³⁹ The stakeholders also agreed to exempt landlords that pay the electric bill but do not pass the cost to the tenant from the Standard Contract for Solar*Rewards Community.⁴⁰ Because of its refusal to consider the tenants who ultimately consume and pay its electricity customers, Xcel requested that the Commission reopen and remove its original order point 2B that required it to “propose a modification to its tariffs for these programs to allow low-income renters who are subject to third-party billing to access these programs.”⁴¹

The Commission issued a Notice of Comment Period on November 22, 2022, listing the topics open for comment as:

- Should the Commission approve the proposed modifications to the Community Solar Garden Program (Solar*Rewards Community) on tariff sheets 9-74, 9-76, and 9-99.1 through 99.3 as outlined in Attachment F of the Compliance Filing?
- Should the Commission approve the proposed modifications to the Solar*Rewards Community tariff sheet 9-66.1 as outlined in Attachment F of the Compliance Filing?
- Should the Commission approve the proposed modifications to the Low-Income Discount Rider on tariff sheet 5-95 as outlined in Attachment F of the Compliance Filing?
- Should the Commission amend and reopen Order Point 2b from the June 24, 2022 Commission Order?
- Does Xcel’s compliance filing, and tariff revisions adequately address all of the order points from the June 24, 2022 Commission Order?
- Are there other issues or concerns related to this matter?

COMMENTS

A review of this docket demonstrates that almost everyone believes that it is in the public interest that low-income residential ratepayers have access to energy assistance programs and CSGs. The JSA strongly support this goal. Half the population of the Twin Cities are renters and the

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at p. 4.

largest population of low-income individuals are renters.”⁴² Low-income renters should not be excluded from the benefits of both low-income energy assistance programs and CSG subscriptions. If anyone needs them, they do, and there is no legal reason why they cannot have both.

The record also demonstrates Xcel’s two bill system for CSG subscriptions creates a barrier for renters in general.⁴³ In response to the problem created by Xcel, the industry created a solution that increased renter participation, including low-income renters.⁴⁴

However, rather than working with a solution that made it easier for renters, including low-income renters, to receive the benefits of a CSG subscription, Xcel is trying to force them to make a choice that they legally shouldn’t have had to-between a CSG subscription and low-income energy assistance. And instead of simply modifying their definition of a customer to include the ultimate consumer and payer of the electricity, someone Xcel said they wanted to protect, they refused to broaden the narrow definition of customer they had created, which limited a customer to only the person to was directly paying them. Such a narrow definition is without legal support, defies common sense and is completely unnecessary. As such, the Commission should not reopen Order Point 2B, but, rather, once again, direct Xcel to “propose a modification to its tariffs for these programs to allow low-income renters who are subject to third-party billing to access these programs.”

The JSA do not oppose the opt-in/opt-out agreement that the stakeholders have reached and believe that Xcel’s tariff should be modified to reflect that agreement. However, because several of the proposed tariff changes reflect Xcel’s refusal to comply with the Commission’s order to modify its low-income affordability programs, those changes should not be adopted.

Finally, the JSA agree that the energy threshold for Xcel’s PowerOn should be lowered so that more of Xcel’s low-income ratepayers will have access to this program.

I. The Commission Should Not Reopen Order Point 2B because there is No Legal Support for Xcel’s Position that it Cannot Change its Affordability Programs

It appears from the record in this docket that Xcel has simply refused to change its position regarding who it considers a customer since it filed its petition. Neither the statute that directly addresses Xcel’s low-income affordability programs, Minn. Stat. § 216B.16, subd. 14 and 15, or

⁴² May 5 Hearing, 1:32:25-1:32:31 (“The largest population of low-income individuals are renters and are often already in some sort of third-party arrangement.”).

⁴³ JIT Services, Inc., Reply Comments, *In the Matter of Xcel Energy’s Tariff Revisions Updating Community Solar Garden Tariff Providing Additional Customer Protections in Subscription Eligibility*, Docket No. E002/M-21-695, and *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. E002/M-13-867, p. 3-4 (Dec. 6, 2021) (“JIT Reply Comments”).

⁴⁴ JIT Reply Comments, p. 8.

any other statute or rule establishes or requires Xcel's low-income affordability program to limit its applicability to only the customer that is directly paying Xcel's bill-Xcel's customer of record. Subdivision 14 states, "A public utility shall fund an affordability program for low-income customers at a base annual funding level of \$8,000,000."⁴⁵ It goes on to define a "low-income" customer as a "a customer who is receiving assistance from the federal low-income home energy assistance program."⁴⁶ Subdivision 15 states that the Commission "must consider ability to pay as a factor in setting utility rates and may establish affordability programs for low-income residential ratepayers in order to ensure affordable, reliable, and continuous service to low-income utility customers."⁴⁷ And it defines "low-income residential ratepayers" as "ratepayers who receive energy assistance from the low-income home energy assistance program (LIHEAP)."⁴⁸ As such, every person who is receiving federal low-income home energy assistance program should be considered a low-income ratepayer by Xcel regardless of whether the low-income ratepayer is directly paying its bill. Nothing in this statute requires that the low-income ratepayer be directly responsible for the utility bill.

To the extent that Xcel argues that subdivision 14 defines low-income, but not customer, the Legislature required the public utility affordability program to "be designed to target participating customers with the lowest incomes and highest energy costs in order to lower the percentage of income they devote to energy bills, increase their payments, lower utility service disconnections, and decrease costs associated with collection activities on their accounts."⁴⁹ Creating an extremely narrow definition of low-income customer that limits it to only customers who are directly responsible for their utility bills, when low-income customers are more likely to be renters where third-party billing is more common, is definitely not the way to design an affordability program to target "participating customers" It addition, the renter who is consuming Xcel's electricity and ultimately paying for it should be considered the "participating customer," not the landlord or billing agent who is neither consuming the electricity or ultimately paying for it. If the Legislature had wanted to limit the program to only the "customer of record" like Xcel has done, it could have done that, but it did not. "Participating customer" was surely meant to be an inclusive term, not an exclusive one, because the purpose of the program is to help low-income ratepayers, which is another term that the Legislature used. Under subdivision 15, the Legislature used the term ratepayer in discussing the requirements of low-income affordability programs, which further supports the Legislature's intent to be inclusive, not exclusive because a ratepayer would commonly be understood as anyone who is paying Xcel's rates, which renters are doing. Commissioner Sullivan recognized this important point in response to Ms. Marshall's use of Xcel's narrow definition of customer, stating, "I believe the statute, Ms. Marshall, that you

⁴⁵ Minn. Stat. § 216B.16, subd. 14.

⁴⁶ *Id.*

⁴⁷ Minn. Stat. § 216B.16, subd. 15.

⁴⁸ *Id.*

⁴⁹ Minn. Stat. § 216B.16, subd. 14.

are referring to uses ratepayer, it doesn't say customer. And I think ratepayer may be more inclusive. A larger category.”⁵⁰

In addition, third-party billing models help accomplish the program's goal of lowering disconnections and collection activity because, as discussed Thus, Xcel appears to be trying to eliminate the use of a billing model that may actually help it accomplish some of the goals of its affordability programs.

Further, “any affordability program the commission orders a utility to implement must,” among other things, “coordinate the program with other available low-income bill payment assistance and conservation resources.”⁵¹ Xcel does not appear to be attempting to coordinate its programs with LIHEAP or any other program. Renters who are receiving LIHEAP are not prohibited from participating in a CSG in order to continue receiving LIHEAP benefits.

Xcel's narrow definition of a customer is also not allowing for the accessibility of CSGs. Minnesota law requires Xcel's CSG program to “reasonably allow for the creation, financing, and accessibility of community solar gardens.”⁵² Xcel's position is effectively eliminating access to CSGs for many, possibly a significant portion of, low-income customers, something as odds with the goals of the Commission since the beginning of the CSG program. The Building Subscription Model (“BSM”) is an industry solution to a problem that simplifies a CSG subscription in a way that appeals to a significant number of renters, including low-income renters. Expecting low-income renters to deal with the difficulty, complexity, and financial risk of an individual CSG subscription is perhaps unrealistic in light of all the other challenges they may have to overcome. While they still have that option because they can opt-out at any time for any reason without penalty, the BSM allows them to more easily participate in the clean energy economy. Something low-income renters may understandably not consider if the barriers to participation are more difficult, complex or risky.

Considering the lack of legal support for Xcel's position, it is not surprising that when Commissioner Tuma asked Xcel's attorney at the May 5 Hearing for legal authority to support its restrictive definition of customer, he had to reply that he didn't have any.”⁵³ Xcel was likewise unable to provide any specific legal authority in the stakeholder meetings to support its refusal to change its tariff as directed by the Commission. Instead, it simply continued to make vague references to statutes and reporting requirements without any specific reason why changes to its program or collaboration with stakeholders couldn't resolve its issues.

⁵⁰ May 5 Hearing at 3:19:40-3:19:52.

⁵¹ Minn. Stat. § 216B.16, subd. 15.

⁵² Minn. Stat. § 216B.1641(e)(1).

⁵³ Hearing at 3:05:44-3:05:52 (“I don't have for you a specific cite on that-a specific case where this has come up. I don't know if there is a specific case where this has come up.”)

In its Compliance Filing, Xcel cites Minn. R. 7820.1400 to support its position even though this rule does not provide a definition for customer. Rather, it simply provides the renter/occupant the right to become the customer responsible for payment when the landlord, as the customer who was responsible for paying, has not been paying its bills and becomes subject to disconnection. This provision, rather than limiting who is the customer, clearly recognizes that both the landlord and the renter/occupant can be the customer. No language in this rule supports or even suggests that if the landlord is the account holder, then the renter/occupant should lose its access to Xcel's low-income affordability programs. It should be very telling that Xcel is relying on an inapplicable Minnesota Rule to support a legal position that has such a significant impact on its low-income ratepayers. One would reasonably expect that any legal position that a public utility would have that could have a significant impact on its ratepayers, especially its most vulnerable ratepayers, would be firmly grounded in the law.

Moreover, while citing an inapplicable provision of Chapter 7820, Xcel appears to ignore another provision of Chapter 7820 that explicitly provides a definition of a customer, Minn. R. 7820.0700. This rule states, "'Customer' means any person, firm, association or corporation, or any agency of the federal, state, or local government, being supplied with service by a utility, subject to the jurisdiction of this commission."⁵⁴

While neither Minn. R. 7820.1400 nor Minn. R. 7820.0700 explicitly apply to public utility affordability programs, Minn. R. 7820.0700 is more consistent with the common understanding and usage of the term "customer," something the Commission clearly recognized. It is also more consistent with the Legislature's mandate that Xcel's low-income affordability programs apply to every customer who is receiving low-income home energy assistance.⁵⁵

Several Commissioners made it abundantly clear to Xcel that Xcel customers/ratepayers were not limited to only those persons who are directly paying the utility bill.⁵⁶ As Xcel's attorney recognized at the May 5 Hearing, the tenant is the ultimate consumer of the electricity⁵⁷ and the person who ultimately pays for it. To provide an example that Xcel referenced at the May 5 Hearing, with a situation that Commissioner Tuma referenced, if a parent, instead of paying for its child's electricity bill, paid for its gym membership, no reasonable person would consider the parent the customer of the gym. The parent is never using the gym. The child is the one receiving the services of the gym and the one who benefits from it. The child is clearly the customer of the gym. This distinction is even more clear if the child reimburses his/her parent for the gym membership. No reasonable person in that situation would consider the parent the

⁵⁴ Minn. R. 7820.0700, subp. 1.

⁵⁵ See Minn. Stat. § 216B.16, subds. 14 & 15(a).

⁵⁶ May 5 Hearing at 2:52:07-2:52:17 (Commissioner Sieben stating, "I can't imagine that the company doesn't want PowerOn and these low-income programs to go to the very customers that they are intended to serve."; 3:04:08-3:04:11 (Commissioner Tuma stating, "There is still a customer Mr. Harris. How can they not be? They still have a meter."));

⁵⁷ May 5 Hearing at 3:05:02-3:05:05.

customer of the gym, just like no reasonable person should consider the landlord who pays for the electricity that a tenant uses, and whom is reimbursed by the tenant, the customer.

The Commission's interpretation of customer is consistent with Minnesota law, while Xcel's is not. Minnesota's Canons of Construction require that "words and phrases are construed according to rules of grammar and according to their common and approved usage."⁵⁸ Further, every Minnesota law "shall be construed, if possible, to give effect to all its provision."⁵⁹ In applying a law, the words of a law should be applied unless doing so creates ambiguity.⁶⁰ To the extent there is ambiguity, the intention of the Legislature can be ascertained by considering, among other things, "the occasion and necessity for the law;" "the mischief to be remedied;" the object to be attained;" "the consequences of a particular interpretation;" and, "legislative and administrative interpretations of the statute."⁶¹

The Commission's interpretation of low-income ratepayer/customer is consistent with the statutory language and would provide energy assistance to more of those in need, while also allowing them to participate in the CSG program. Xcel's will not, unnecessarily excluding them solely because Xcel's billing system is apparently as inflexible as Xcel's definition of customer.

In short, there is no legal support for Xcel's extremely narrow definition of a low-income customer/ratepayer. In fact, both the statutory language and legislative intent of the statute would support an extremely broad definition of customer/ratepayer such that every "low-income" customer/ratepayer would be able to participate in Xcel's affordability programs. Fortunately, it is not up to Xcel to determine who is included in its affordability programs. Minn. Stat. § 216B.16 clearly gives the Commission the authority to "*issue orders necessary to implement, administer, and recover the costs of the program on a timely basis.*"⁶² And because the Commission has already told Xcel that low-income renters who use third-party billing are its customers/ratepayers, the Commission should order Xcel to define low-income customer/ratepayer as any person being supplied with service by a utility whether or not that person is directly responsible for the payment of the service.

A. Stakeholder Process

It becomes apparent from the hearing and the Joint Petitioner's filings that Xcel's affordability programs and the systems that implement them are based on Xcel's narrow definition of a customer.⁶³ Because of this, the Commission appears to have recognized that it would likely be

⁵⁸ Minn. Stat. § 645.08(1).

⁵⁹ Minn. Stat. § 645.16.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Minn. Stat. § 216B.16, subd. 14 & subd. 15(d) (emphasis added).

⁶³ See Xcel Compliance Filing, p. 22 (Attachment A, p. 2) ("Andy Hawkins- we bill based on the customer, its not premise based.").

difficult to unwind the situation that Xcel had created to allow low-income ratepayers to benefit from both Xcel's affordability programs and CSGs. To make sure that tenants understood what was going on and to address some minor ancillary issues, the Commission wanted stakeholder meetings to be conducted, which is typically a reasonable way to enhance communication between parties and resolve differences. However, it would be understandably difficult for an interested party to conduct a meeting in such a way as to do this when it had such a strong position on the issues, especially considering its position was at odds with most of the other stakeholders. Which is likely why one would assume that the Commission preferred to have the Office of the Attorney General or the Department of Commerce conduct the meetings. Either, as disinterested stakeholders who are guided by the public interest, would have likely had a better chance at improving communication and resolving differences. Unfortunately, neither wanted to assume this role so the Commission was forced to leave it to Xcel. Accordingly, the Commission directed Xcel to conduct a stakeholder process that addressed the following issues:

- A. Transparency about Community Solar Garden offerings serving their residential unit under third-party billing systems.
- B. Tenant rights under third-party billing systems, including any right to claim control over the utility account.
- C. Low-income tenant access to utility energy assistance programs such as PowerOn even when receiving service under a third-party billing system.
- D. Ensuring that a landlord who has tenant accounts in the landlord's name may continue to participate in Xcel's CSG program, assuming the implementation of this model does not cause more harm than benefit to the tenants.
- E. Ensuring that any penalties to CSG developers who violate Xcel's tariff are based on developer-caused violations or known omissions, and are commensurate with the timeframe of the violation/known omission.⁶⁴

A review of the meeting notes demonstrates that rather than attempting to resolve their outstanding differences as directed by the Commission, Xcel decided to relitigate an issue already decided by the Commission-the inclusivity of Xcel's low-income affordability programs. Instead of proposing how its programs must change to allow low-income renters to receive all the benefits of those programs while still subscribing to a CSG, Xcel refused to make any changes to its programs. In response to Ms. Bremer reminding Xcel that the Commission had already decided this issue, Ms. Marshall responded, "that is open to legal challenge. If 3rd party billing used, there is no customer account-legal issue with that interpretation."⁶⁵ Thus, Xcel

⁶⁴ PUC Order, p. 7 (Order Point 6).

⁶⁵ Xcel Compliance Filing, p. 24 (Attachment A, p. 4)

began the stakeholder meeting by effectively proposing the relief that the Commission had denied it. And ended the meeting saying that its position would not change.⁶⁶ This is not surprising considering Xcel's attorney indicated its position even before the stakeholder process even began stating, "We may not be able to get to some sort of consensus through a stakeholder process. And may end up proposing, you know, a solution here that addresses the issues we have been talking about here today that isn't satisfactory to everyone."⁶⁷

Thus, the stakeholder meetings progressed with Xcel simply refusing to consider any position other than its own. Xcel sent a number questions to the stakeholders, which were thoughtfully addressed by JIT.⁶⁸ The arguments raised by JIT and other stakeholders do not appear to have been considered by Xcel because of its steadfast position that only the person who directly pays the bill is the customer. This is understandable considering that Xcel has apparently created a system that does not provide it the flexibility to adopt some of the solutions proposed by the stakeholders.⁶⁹ Low-income renters, however, should not be penalized because Xcel decided to make system investments based on a limited definition of a customer that is not only unsupported by Minnesota law or policy, but contrary to it.

B. Xcel's Alleged Consumer Concerns Appear to be Caused by its Restrictive and Regressive Customer Definition

Xcel raises several alleged concerns regarding consumer protections for "vulnerable low-income tenants who are involuntarily conscripted into the CSG program by a landlord or re-biller."⁷⁰ First, this statement appears to ignore the fact that stakeholders agreed that, going forward, tenants will have to opt-in to CSG subscriptions. So, no one will be involuntarily conscripted. Second, it appears that its concerns largely stem from its limited definition of consumer. For example, it says that tenants who use third-party billing will lose protection "requiring regulated utilities to offer payment agreements generally, which "must consider a customer's financial circumstances and any extenuating circumstances of the household;" "requiring regulated utilities to offer budget payment plans;" and access to the Commission's complaint handling and dispute resolution process."⁷¹ It, however, doesn't explain why low-income ratepayers would lose any these protections. Nothing, other than Xcel's unwillingness to talk to tenants who are not directly paying Xcel's bill, would stop Xcel from establishing a payment plan with a tenant. That payment plan would then be reflected in the bill that was sent to the landlord or third-party

⁶⁶ *Id.*, p. 25 (Attachment A, p. 5) (Marshall stating, "Affordability program extensions- don't assume we can get there. Suspend that idea for now.").

⁶⁷ May 5 Hearing 4:21:20 - 4:21:34.

⁶⁸ See Xcel Compliance Filing, p. 62-77 (Attachment E).

⁶⁹ The JSA note that it does not appear that Xcel has documented or provided any support for its position that its billing system could not be updated to implement any of the solutions made by JIT. And it would be surprising if there was a technical limitation to making updates considering the advancements in software today.

⁷⁰ Xcel Compliance Filing, p. 17.

⁷¹ *Id.*, p. 17-18.

billing agent, who would then pass it on to the tenant. And considering the Commission has stated that it considers tenants who are using third-party billing to be customers, it is unreasonable to believe that the Commission would not allow such a tenant to file a dispute against Xcel.

C. Xcel's Request Violates Minnesota Rule 7829.3000

In its November 11, 2022, Compliance Filing Xcel requested that “the Commission amend and reopen its original Order point 2b.”⁷² In addition to the fact that, as discussed above, this request lacks any legal support, it is also not in the proper form and untimely under Minn. R. 7829.3000. This rule states, among other things, “A party or a person aggrieved and directly affected by a commission decision or order may file a petition for rehearing, amendment, vacation, reconsideration, or reargument within 20 days of the date the decision or order is served by the executive secretary.”⁷³ It also states, “A petition for rehearing, amendment, vacation, reconsideration, or reargument must set forth specifically the grounds relied upon or errors claimed. A request for amendment must set forth the specific amendments desired and the reasons for the amendments.”⁷⁴

The order that Xcel is requesting be amended was served on the parties on June 24, 2022, making Xcel's petition due by July 11, 2022. Rather than filing a petition by this deadline, Xcel tucked its request into its compliance filing far beyond the deadline established by the Commission's rules. For these reasons alone the Commission should deny its request. If Xcel wanted the Commission to reconsider its legal position that it could restrict its definition of a customer to only parties who directly paid its bills, it should have filed a petition with the Commission by the rule's deadline instead of re-litigating the issue at the stakeholder meetings. Thus, Xcel's actions demonstrate not only a disregard for the Commission's order and Minnesota law, but also the Commission's rules.

II. The Commission Should Not Approve the Proposed Modifications to tariff sheets 9-74, 9-76 and 9-99.1 through 9-99.3 as drafted.

The Commission should not approve the modifications to tariff sheets 9-74, 9-76 and 9-99.1 through 9-99.3 as drafted because some portions of them are inaccurate, unnecessary, or overly punitive.

A. Proposed Changes to Tariff Sheet 9-74

Xcel's proposed tariff change states:

⁷² Xcel Compliance Filing, p. 4.

⁷³ Minn. R. 7829.3000, subp. 1.

⁷⁴ Minn. R. 7829.3000, subp. 2.

Consistent with this, in the event that any Subscription is not eligible because it violates the provisions on tariff sheet 9-76 (par. 6.D.), 9-66.1 (par. m), or violates any applicable provision of the “Landlord as Subscriber” Addendum (and such Subscription is then an “Ineligible Subscription”), and Bill Credits have been applied to the Ineligible Subscription, then for a period beginning on the first date of it being an Ineligible Subscription for the duration of it being an Ineligible Subscription the Company may recoup these funds and obtain payment solely from the Community Solar Garden Operator the difference between the Bill Credits provided to the Ineligible Subscription and the Unsubscribed Energy rate. Failure of the Community Solar Garden Operator to make this payment within thirty (30) days of demand shall be considered a breach of this contract.

Order Point 6E mandated that any penalties were “based on developer-caused violations or known omissions, and are commensurate with the timeframe of the violation/known omission.”⁷⁵ While this provision appears to limit the penalty to an appropriate timeframe, it does not adequately limit it to “developer-caused violations or known omissions.”

Also, allowing the Community Solar Garden Operator only 30 days to make payment or be deemed to be in breach of the contract seems to be unnecessarily punitive. The time period for paying should be extended and the language regarding it being a breach of contract removed.

B. Proposed Changes to Tariff Sheet 9-76

Xcel’s proposed tariff change states:

The decision whether to become or remain a Community Solar Garden subscriber is left entirely to an individual tenant. This decision shall not be subject to pressure or influence of any kind – direct or indirect – from a landlord or landlord agent. Beginning on [the first calendar day of the first month following the Commission order approving this tariff revision], Subscriber eligibility requirement shall also include that in the event the premise associated with a Subscription is occupied by a residential tenant, and where the Landlord (as defined in the “Landlord as Subscriber” Addendum) is the named customer on the Company account, then the Subscription is subject to the “Landlord as Subscriber” Addendum. However, notwithstanding this, if the premise is part of a multi-unit single-meter building and if the landlord is the existing Company account holder, or if the building for the premise has a single meter for the whole building and if the landlord is the existing Company account holder, or if the Company account for the unit continuously since January 1, 2015 has been in the name of a landlord, or if the landlord pays the electric bill and does not pass the

⁷⁵ PUC Order, p. 7.

electrical bill costs to the tenant, then a landlord may have a Subscription in its name without the need for the Community Solar Garden being subject to the “Landlord as Subscriber” Addendum.

The objectionable language of this part states, “The decision whether to become or remain a Community Solar Garden subscriber is left *entirely* to an individual tenant. This decision *shall not be subject to pressure or influence of any kind – direct or indirect– from a landlord or landlord agent.*” (Emphasis added). The word *entirely* is unnecessary and could be subject to overly restrictive interpretations that could have a chilling effect on CSG subscriptions. And the phrase “shall not be subject to pressure or influence of any kind – direct or indirect– from a landlord or landlord agent,” is overly restrictive and could likewise have a chilling effect on CSG subscriptions. When offered, it is reasonable to expect that a potential CSG subscriber will ask the landlord or agent questions about CSGs. Simply responding that being a subscriber is easy to sign up for, will save the tenant money, or is good for the environment, among other things, could be interpreted as influence or pressure to subscribe to the CSG. Anything that unnecessarily has a chilling effect on CSG subscriptions likely violates the requirement that CSG programs “reasonably allow for the creation, financing, and accessibility of community solar gardens” and that they be “promoted.”⁷⁶

Rather than trying to prohibit providing relevant and useful information to the tenant, this provision should require the landlord or agent to provide fair and accurate information while prohibiting providing false, misleading or deceptive information. This type of language is more consistent with, Minn. Stat. § 216B.1641(e)(5), which requires the information provided to potential CSG subscribers ensures the “fair disclosure” of the benefits of a subscription, and Minnesota’s consumer protection laws.⁷⁷

C. Proposed Changes to Tariff Sheet 9-99.1

Xcel’s proposed tariff changes to Tariff Sheet 9-99.1 are the “Landlord as Subscriber” Addendum. While the JSA support the opt-in/opt-out agreement reached by the stakeholders, the JSA oppose any contract language that is inconsistent with the arguments made in these comments or landlord/tenant law. To the extent that any language is not clearly illegal, it questions whether the Addendum illegally intrudes into the landlord/tenant relationship, which extends far beyond the furnishing of electricity.

⁷⁶ See Minn. Stat. § 216B.1641(e)(1) & (8).

⁷⁷ See, e.g., Minn. Stat. § 3258D.44, subd. 1 (prohibiting any person from engaging in a deceptive trade practice); Minn. Stat. § 332.37(a)(5) (prohibiting debt collectors from communicating with a debtor in a “misleading or deceptive manner”).

D. Proposed Changes to Tariff Sheet 9-99.3

Xcel's proposed tariff changes to Tariff Sheet 9-99.3 are the Attachment "A" to "Landlord as Subscriber" Addendum Opt-In Form. As noted above, the JSA do not object to requiring subscribers to opt-in to CSG subscriptions. This form, however, is inaccurate because it states that if the tenant opts into the CSG, then the tenant will "no longer be eligible for any Xcel Energy Affordability Programs (PowerOn, Medical Assistance Program, Senior Low Income Discount) or will not have protection by the Minnesota Public Utilities Commission under laws governing payment plans, budget billing and payment plan offerings, including medically necessary equipment and Cold Weather Rule protections." As discussed above, that statement is inaccurate because low-income tenants who subscribe to a CSG should still have access to Xcel's programs and the protections afforded by Minnesota law to residential customers of a utility.

III. The Commission Should Not Approve the Proposed Modifications to tariff sheets 9-66.1 as drafted.

While the JSA do not oppose the opt-in/opt-out agreement that the stakeholders have agreed to because it addresses concerns that Commissioners expressed at the May 5 Hearing, the proposed modification should not be approved as drafted because, as noted above, it contains unnecessary language that could have a chilling effect on participation and could be abused by anyone who opposes CSGs.

The proposed language states:

M. The decision whether to become or remain a Community Solar Garden subscriber is left entirely to an individual tenant. This decision shall not be subject to pressure or influence of any kind – direct or indirect – from a landlord or landlord agent. Beginning on [the first calendar day of the first month following the Commission order approving this tariff revision], Subscriber eligibility requirement shall also include that in the event the premise associated with a Subscription is occupied by a residential tenant, and where the Landlord (as defined in the "Landlord as Subscriber" Addendum) is the named customer on the Company account, then the Subscription is subject to the "Landlord as Subscriber" Addendum. However, notwithstanding this, if the premise is part of a multi-unit single-meter building and if the landlord is the existing Company account holder, or if the building for the premise has a single meter for the whole building and if the landlord is the existing Company account holder, or if the Company account for the unit continuously since January 1, 2015 has been in the name of a landlord, or if the landlord pays the electric bill and does not pass the electrical bill costs to the tenant, then a landlord may have a Subscription in its

name without the need for the Community Solar Garden being subject to the “Landlord as Subscriber” Addendum.

As discussed above, the objectionable language of this part states, “The decision whether to become or remain a Community Solar Garden subscriber is left *entirely* to an individual tenant. This decision *shall not be subject to pressure or influence of any kind – direct or indirect– from a landlord or landlord agent.*” (Emphasis added). The word *entirely* is unnecessary and could be subject to overly broad interpretations that could have a chilling effect on CSG subscriptions. And the phrase “shall not be subject to pressure or influence of any kind – direct or indirect– from a landlord or landlord agent,” is overly restrictive and could, likewise, have a chilling effect on even offering a CSG subscription to a tenant because that could be argued by some as direct or indirect pressure or influence to subscribe. Moreover, if offered, it is reasonable to expect that a potential CSG subscriber will ask the landlord or agent about CSGs. Simply responding that being a subscriber is easy to sign up for, will save the tenant money, or is good for the environment, among other things, could be interpreted as influence or pressure to subscribe to the CSG.

Rather than trying to prohibit providing relevant and useful information to the tenant, this provision should require the landlord or agent to provide accurate information and prohibit them from providing false, misleading or deceptive information. This type of approach is more consistent with Minnesota’s consumer protection laws.⁷⁸

IV. JSA Agrees with the Proposed Modifications to the Low-Income Discount Rider.

Because the JSA support providing assistance to low-income customers, it believes that the proposed modification to Xcel’s PowerOn program is in the public interest.

V. Xcel’s Compliance Filing Did Not Adequately Address All of the Order Points from the June 24, 2022, Commission Order.

Because Xcel did not propose changes to its affordability programs that would allow low-income customers access to its low-income affordability programs who are subject to third-party billing,

⁷⁸ See, e.g., Minn. Stat. § 3258D.44, subd. 1 (prohibiting any person from engaging in a deceptive trade practice); Minn. Stat. § 332.37(a)(5) (prohibiting debt collectors from communicating with a debtor in a “misleading or deceptive manner”).

Xcel's Compliance Filing did not adequately address all of the order points from the June 24, 2022, Commission Order.

CONCLUSION

The JSA share the concerns of the Commission and other stakeholders that low-income residential ratepayers be provided the energy assistance and choice they are entitled to and deserve. Xcel's low-income ratepayers should have access to both its affordability programs and CSGs, which are both effective tools in reducing a customer's energy burden. By insisting that only ratepayers that directly pay Xcel's bills are its customers, Xcel is creating problems for the thousands of renters who are using third-party billing. It is also effectively eliminating access to CSGs for many, if not all, of its low-income ratepayers, which is a key avenue to address energy poverty. Such a position is fundamentally unfair and inequitable. It is also contrary to Minnesota law and policy, and the Commission's position on the issue. As such, Xcel's position seems more tied to maintaining its programs and systems as they are than protecting its low-income residential ratepayers. Accordingly, the JSA believe that the Commission should find Xcel's Compliance Filing inadequate, reject its proposed tariff changes as drafted⁷⁹ and order it to comply with its June 24 Order.

Respectfully submitted,

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⁷⁹ Except for its proposed change to Tariff Sheet 5-95 modifying the Low-Income Discount Rider.