

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	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-002/M-13-867

Mid-Minnesota Legal Aid/Legal Services Advocacy Project Comments Regarding Xcel Energy's Compliance Filing

Introduction

On September 23, 2021, Xcel Energy, the Energy CENTS Coalition, Mid-Minnesota Legal Aid, and the Citizens Utility Board of Minnesota (collectively, "the Joint Petitioners") filed a petition to modify Xcel's tariffs in a way designed to protect low-income residential tenants in multi-unit buildings who subscribe to a Community Solar Garden ("CSG").

On June 24, 2022, the Minnesota Public Utilities Commission ("the Commission") issued an order ("Order") directing Xcel convene a stakeholder process "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."¹

¹ Minnesota Public Utilities Commission, ORDER DENYING PETITION, ADDRESSING LOW-INCOME ENERGY ASSISTANCE PROGRAMS, AND REQUIRING FURTHER PROCEEDINGS, Dockets No. E-002/M-21-695 and E-002/M-13-867 (Issued: June 24, 2022).

On November 11, 2022, Xcel Energy submitted its Compliance Filing (“Compliance Filing”) in the matter, after fulfilling the requirements in the Order.² On November 22, 2022, the Commission issued a Notice of Comment Period, requesting interested parties’ responses to the question posed: “What action should the Commission take on Xcel Energy’s requests in the Company’s November 11, 2022 compliance filing (Compliance Filing).”³

Mid-Minnesota Legal Aid (MMLA) and the Legal Services Advocacy Project (LSAP)⁴ respectfully submit these comments in strong support of Xcel Energy’s Compliance Filing and urge the Commission to approve the modifications contained in the filing.

Overview

The Commission ordered Xcel to modify its tariff filing to, among other things, to ensure:

1. Tenant rights under [rebilling] systems, **including any right to claim control over the utility account;**
2. Low-income tenant access to utility energy assistance programs such as PowerOn even when receiving service under a [rebilling] system; and
3. 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.**⁵

² Xcel Energy, PROPOSED COMMUNITY SOLAR GARDEN PROGRAM AND TARIFF REVISIONS UPDATING COMMUNITY SOLAR GARDEN TARIFF PROVIDING ADDITIONAL CUSTOMER PROTECTIONS IN SUBSCRIPTION ELIGIBILITY, Docket Nos. E002/M-13-867 & E002/M-21-695, **Compliance Filing** (Nov. 11, 2022)

³ Minnesota Public Utilities Commission, Notice of Comment Period, Docket Nos. E002/M-21-695 and E002/M-13-867 (issued Nov. 22, 2022).

⁴ MMLA is a nonprofit organization that provides civil legal services to low-income clients in 20 counties across central Minnesota. It is one of six regional civil legal services programs around the state providing free legal services to income-eligible clients, and, regardless of income elder clients and clients with disabilities. LSAP is a statewide division of MMLA, providing legislative and administrative advocacy on behalf of low-income clients.

⁵ ORDER DENYING PETITION, ADDRESSING LOW-INCOME ENERGY ASSISTANCE PROGRAMS, AND REQUIRING FURTHER PROCEEDINGS, *supra* note 1 (emphasis added).

MMLA and LSAP assert that, without approval of Xcel's filing, the tariff would not comply with the Commission's Order of June 24, 2022, and tenants will be severely disadvantaged and suffer irremediable harm (including loss of statutory and regulatory utility protections, loss of vital energy benefits, and eviction). Without approval, tenants would "have access to solar energy" but only by becoming unwilling or unwitting participants in CSG. Access would not only be illusory but, under the Building Subscription Model (BSM), also cause substantially more harm to tenants than benefit.

Expanding consumer access to solar energy is a laudable goal. However, this goal must not be accomplished if the result is to the detriment of a tenant. It must be furthered *only* if it provides a benefit and does not place the tenant at risk of additional cost, a net financial detriment, loss of protections or loss of housing. Expanding access in a way that strips utility end-users of consumer protections, including access to critical payment assistance -- and also increases the likelihood of eviction and homelessness -- is clearly not in the public interest. Further, if the BSM retains its mandatory tenant participation requirement, it would "subject [tenants] to...unreasonable prejudice or disadvantage," in contravention of Minnesota law.⁶

In sum, the modified tariff contained in Xcel Energy's Compliance Filing maintains tenant control over their utility account, ensures: (1) their continued receipt of energy program benefits to which they are statutorily and regulatorily entitled; and (2) that the CSG program for these tenants may continue without causing more harm than benefit for them.

⁶ Minn. Stat. § 216B.07.

Discussion

The proposed modification of the CSG consists of two major components. First, the modifications provide tenants the choice of determining whether they want to enroll in a CSG program as well as whether they want to discontinue that CSG subscription at any time and for any reason. Second, where a tenant in a separately metered rental unit does enroll in a CSG program, the modifications provide that the tenant shall be -- and shall remain -- the sole customer of record on that utility account.

Giving tenants the right to opt-in or opt-in maintains their control over their utility account and avoids the absurd and dangerous result of their being involuntarily conscripted into a program without their knowledge or against their will, a circumstance that precipitates the loss of benefits, rights, consumer protections, and possibly their housing.

Allowing the tenant to remain as the customer of record provides statutory and regulatory protections afforded them by law and rule, such as protection from disconnection during the Cold Weather Rule period, the right to payment agreements, the right to protection against disconnection in the event of medical emergencies, the right to complain and have disputes resolved by Commission staff, and the right to participate in Affordability Programs.

The Compliance Filing accomplishes all the requirements of the Commission's Order, enables access to the CSG program for low-income tenants, and preserves existing rights, protections, and access to benefits, all while avoiding placing tenants in jeopardy of financial loss or eviction.

I. The Current BSM is Incompatible with the Statutorily Required Affordability Program

Minnesota Statutes mandate that Xcel Energy offer its low-income customer an Affordability Program.⁷ It is jointly administered by Xcel Energy and Energy Cents Coalition (ECC). The Affordability Program provides many services and benefits for its tenant-ratepayers, among them: an affordable monthly payment; a bill credit; disclosure of a billing credit balance; the provision of the Xcel Energy phone number to call if a discount does not appear on a bill; an explanation as to the difference between the total payment due on an account and the amount of the budget payment; and a running tabulation of application of monthly payments, credits, and discounts, as well as a reminder that missing two consecutive payments results in an end user's being dropped from the Affordability Program.

The existing Affordability Program structure is based upon the Department of Commerce's identification of affordability program- eligible utility service end users via LIHEAP records, as well as administering and applying discounts and benefits and tracking such accounts in the name of the end user customer of record.

Under the BSM, which has never been approved by the Commission, current low-income customers (i.e., account holders/ratepayers) lose their status as customers and thus **are no longer eligible** for the statutorily created Affordability Program. Neither the landlord in a BSM building nor the landlord's rebilling agent is eligible under the statute and rules for the Affordability Program.

⁷ Minn. Stat. § 216B.16, subd. 14 (providing that public utilities "shall fund an affordability program for low-income customers...."). In Xcel's service territory, the program is called the "PowerOn Program."

Only “customers” are eligible for the Affordability Program. Under Minnesota Rules, a person or entity is a customer only if that person or entity is “subject to the jurisdiction of [the] Commission.”⁸ Once the tenant is removed as an account holder and the account is switched into the landlord’s name, the tenant is no longer a customer and thus “no longer subject to the [Commission’s] jurisdiction...” Consequently – and alarmingly – under BSM, tenants in these circumstances are (involuntarily) stripped of their eligibility for the Affordability Program.

A landlord or the landlord’s rebilling agent is ineligible to participate in the Affordability Program to receive any of the program’s benefits. To be eligible for the Affordability Program, a customer must be: (1) low-income; (2) a ratepayer; **and** (3) receiving LIHEAP.⁹ A landlord or rebiller is neither low-income nor receiving LIHEAP.

In sum, under a BSM, low-income tenants lose their status as customers and consequently their eligibility to receive benefits to which they would otherwise be entitled under law. Further, they cannot indirectly receive those benefits because the landlord and the landlord’s rebilling agent are prohibited by the plain language of the law to participate in or receive benefits under the Affordability Program.

II. Landlords Cannot Administer LIHEAP Crisis Grants

BSM proponents claim that they are allowed to administer state funds directed to low-income energy customers under the LIHEAP Crisis Grant program. They are wrong. The Department of Commerce has confirmed that landlords and rebillers are not authorized to

⁸ Minn. R. 7820.0700, subp. 1.

⁹ Minn. Stat. §§ 216B.16, subds. 14 and 15 (emphasis added).

administer these funds and thus, under a BSM, tenants would lose their eligibility and their ability to receive funds to which they otherwise might be legally eligible.

III. Under BSM, Tenants Lose All Their Statutory and Regulatory Protections

One of the most serious problems with the CSG BSM model is that it necessarily results in the complete elimination of statutory and regulatory consumer protections for vulnerable low-income tenants who are compulsorily enlisted into the CSG program by a landlord or re-biller. Once tenants are stripped of their status as Xcel customers, they are no longer protected under Minnesota statutes and rules or Xcel's tariffs. Among the protections they lose are:

- Cold Weather Rule protection, which guards against disconnection during the winter by allowing eligible low-income customers to enter into payments agreements, which cannot exceed 10% of monthly income, for the period between October 1 and April 30 of the following year;¹⁰
- The requirement that regulated utilities offer payment agreements generally, which "must consider a customer's financial circumstances and any extenuating circumstances of the household;"¹¹
- The requirement that regulated utilities offer budget payment plans;¹²
- Protection ensuring continuation of service when a customer is experiencing a medical emergency or needs service to operate life-sustaining medical equipment;¹³
- Access to the Commission's complaint handling and dispute resolution process;¹⁴

¹⁰ Minn. Stat. § 216B.096.

¹¹ Minn. Stat. § 216B.098, subd. 3.

¹² Minn. Stat. § 216B.098, subd. 2.

¹³ Minn. Stat. § 216B.098, subd. 5.

¹⁴ Minn. Stat. § 216B.098, subd. 5; Minn. R. 7829.1500; and Minn. R. 7829.1600

In addition, there are regulatory protections regarding the imposition of late payment charges. Under Minnesota Rules, “late payments” are defined.¹⁵ Further, late payment charges may not exceed 1½% and may not be imposed on amounts of \$10 or less.¹⁶ By contrast, Minnesota Statutes permit late fees of 8% on delinquent rent.¹⁷ Landlords frequently bundle utility charges (in this case, the CSG charge along with usage and other fees) with rent and impose the higher late fee. A customer who loses their status as a regulated utility customer would be subject to this higher amount.

Moreover, as testimony in this docket has demonstrated, tenants who are receiving multiple months’ of CSG charges in a lump sum and are unable to cover these payments – which are over and above rent – have been subject to threats of eviction. It is noteworthy that in the course of all the Stakeholder Meetings following the Commission’s Order, the BSM proponents failed to offer modifications that would alleviate these problems to which tenants testified at the Commission hearing on this tariff held on May 5, 2022. Without the protections afforded under statute and rule, tenants in CSG BSM buildings would be particularly vulnerable to eviction and homelessness.

Any suggestion that a landlord could “voluntarily” provide these protections is both disingenuous and dangerous. First, even if the parties to this proceeding claim they will provide these protections, there is no way that they could bind nonparticipating CSG BSM subscribers or future landlords or re-billers who are CSG BSM subscribers. Second, the Commission lacks jurisdiction or authority to enforce any promise by a landlord or re-biller. Third, the

¹⁵ A payment is not late if it is made within 25 days of the billing date. Minn. R. 7820.5300.

¹⁶ Minn. R. 7820.5500.

¹⁷ Minn. Stat. § 504B.177.

Commission has no jurisdiction or authority over lease agreements that could require waiver of any and all tenant access to such protections. That said, the Commission does have authority – in fact, the duty – to configure a solar energy delivery model that benefits tenants, even if that model is objected to by BSM proponents.

It bears repeating that tenant participation in the original solar delivery model was to be voluntary. The BSM proponents' creation of a mandatory subscription BSM model was imposed without the Commission's consideration or approval. MMLA and LSAP respectfully submit that, while the modifications proposed in the Compliance Filing are important to protect and maintain tenants' statutory and regulatory rights and protections, if significant modification to this solar energy delivery model is found to be necessary, then the BSM proponents' failure to address tenant concerns raised here and at the May 5, 2022 Commission hearing on this tariff highlights broader concerns about the role of third party, for-profit entities using this delivery model for commercial purposes, especially with respect to billing and collection of utility charges of service that is traditionally billed by regulated utility providers under the umbrella of the Commission's oversight.

IV. Suggestions to Have Two "Customers" on the Account is Impossible

It has been suggested that there could be more than one "customer" on a separately metered tenant electricity account (i.e., both the tenant and the landlord and/or rebiller would be "customers" on the account). For a number of reasons this is infeasible.

First, Xcel Energy's billing system tracks the distinction in Minnesota law between those who might be called a "customer" of a utility provider and – in contrast with and distinct from – those who are factually and as a matter of law payors, that is customers of record. Section

504B.215 of Minnesota Statutes expressly recognizes that as between a landlord and a tenant in a shared meter dwelling -- apart from whether either may be considered a “customer” of a utility provider -- only the landlord can be the payor and customer of record.

Second, the agencies that administer the Affordability Program and other statutory programs (e.g., the discount program) for the benefit of end user utility consumers rely upon a single entity being identified as the customer of record on a utility account eligible for discounts, payments, credits, or other protections. In short, it is administratively unrealistic, if not impossible, for Xcel Energy to restructure its billing, accounting, verification, and payment-tracking systems to accommodate multiple customers of record on single accounts. But even if it were feasible for Xcel Energy to do so, it does not follow that it will be factually or economically feasible for other agencies and governmental entities involved in the utility affordability program field to accommodate the same change in their systems.

The BSM model was not created to afford access to solar energy for their low-income tenants and to suggest that is the purpose is simply not credible. It was created to enable landlords, rebillers, and developers to reap profits by using vulnerable tenants to involuntarily compel them to participate in a program for the monetary benefit of the landlords, rebillers, and developers. CSG was never intended as a profit center for private sector actors. Using CSG in this manner turns the CSG and clean energy policy on its head.

Turning once again to the record and the tenant testimony at the May 5, 2022 hearing on this tariff, it bears repeating that the average tenant solar energy monthly credit is about \$4.00. That amount is considered *de minimis* under the shared meter statute¹⁸ and points to something other than maximizing solar energy benefits for end users as a motivating factor for private sector actors embracing the CSG program.

Under the current BSM, a landlord or rebiller is substituted for the tenant as the customer of record and the tenant loses his or her customer of record status, both with Xcel Energy and also with any other agency or governmental entity involved in utility Affordability Programs or administration of other utility protections for tenant end users. This problem is not resolved – and is in fact exacerbated – by simply adding more than one “customer of record” per separately metered tenant utility account.

As a practical matter, as the BSM is currently configured, with the landlord or the rebiller as the customer of record paying on a utility account to Xcel Energy on behalf of tenants, neither Xcel Energy nor any other agency nor governmental entity can track the address, household, or income changes that might affect Affordability Program eligibility or payment of discounts or credits. As stakeholders have seen, the result is that end user tenants -- who were once customers of record with Xcel Energy -- now are essentially invisible, and lose access to affordability payments, credits, and discounts.

¹⁸ Minn. Stat. § 504B.215.

It could not be clearer that is in the interest of Minnesota's most vulnerable utility service end users – as well as being in the public interest – that the two basic steps contained in the proposed tariff should be approved by the Commission. The specific provisions – requiring an opt-in/opt-out option for tenants and retaining their status as customers – will protect these utility consumers while still allowing the CSG program to operate in the settings in which they reside.

Conclusion

For all the reasons articulated above, MMLA and LSAP strongly support Xcel Energy's Compliance Filing and urge the Commission to approve the modified tariff as submitted.

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Respectfully submitted:

/s/ Ron Elwood
RON ELWOOD
Supervising Attorney
Atty. Lic. No. 0349835
Legal Services Advocacy Project
Mid-Minnesota Legal Aid
970 Raymond Avenue, Suite G40
St. Paul, MN 55114
(612) 636-2114
relwood@mnlsap.org

/s/ Gary Van Winkle
GARY VAN WINKLE
Staff Attorney
Atty. Lic. No. 170458
Mid-Minnesota Legal Aid
111 N. Fifth St., Suite 100
Minneapolis, MN 55403-1604
(612) 746-3601
gvanwinkle@mylegalaid.org