

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben	Chair
Dan Lipschultz	Commissioner
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
John A. Tuma	Commissioner

In the Matter of Xcel Energy’s Petition for
Approval of Electric Vehicle Pilot Programs

ISSUE DATE: October 7, 2019

DOCKET NO. E-002/M-18-643

ORDER DENYING
RECONSIDERATION, DENYING
STAY, AND APPROVING
COMPLIANCE FILINGS

PROCEDURAL HISTORY

On October 12, 2018, Northern States Power Company, d/b/a Xcel Energy (Xcel), filed a petition requesting approval of two electric vehicle (EV) pilot programs: a Fleet EV Service Pilot and a Public Charging Pilot.

On February 1, 2019, in its docket investigating electric vehicle charging and infrastructure, the Commission issued an order making findings and requiring filings.¹ The order required three electric utilities, including Xcel, to “file proposals, which can be pilots, intended to enhance the availability of or access to charging infrastructure”

On July 17, 2019, the Commission issued an order approving Xcel’s pilots with modifications, approving deferred accounting for certain pilot expenses, and establishing reporting requirements.²

On August 6, 2019, an ad hoc consortium of some of Xcel’s large industrial customers comprising Covia Holdings Corporation; Flint Hills Resources Pine Bend, LLC; Gerdau Ameristeel US Inc.; Marathon Petroleum Company LP; and USG Interiors, Inc. (the Xcel Large Industrials or XLI) filed a petition for reconsideration of the July 17 Order, and moved that the Commission stay the order “until the ultimate conclusion of the issues outlined in this Petition, including any related appeal.”³

¹ *In the Matter of a Commission Inquiry into Electric Vehicle Charging and Infrastructure*, Docket No. E-999/CI-17-879, Order Making Findings and Requiring Filings (February 1, 2019) (the General EV Order).

² This docket, Order Approving Pilots with Modifications, Authorizing Deferred Accounting, and Setting Reporting Requirements (July 17, 2019) (the July 17 Order).

³ XLI’s Petition for Reconsideration and Motion, at 16.

On August 16, 2019, Xcel filed updated tariff sheets reflecting the decisions in the July 17 Order.

By August 21, 2019, the Commission received comments opposing XLI's reconsideration request from:

- Xcel
- The Minnesota Department of Commerce, Division of Energy Resources (the Department)⁴
- Fresh Energy, Minnesota Center for Environmental Advocacy, Natural Resources Defense Council, Sierra Club, and Union of Concerned Scientists
- Alliance for Transportation Electrification
- ChargePoint, Inc.
- Siemens, Greenlots, and Plug in America
- Russ Stark, Chief Resilience Officer of the City of St. Paul, and HOURCAR

On September 5, 2019, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

The Commission concludes that its July 17 decision is consistent with the facts, the law, and the public interest, and will therefore deny the petition for reconsideration. The Commission will also deny the requested stay. However, XLI's petition presented questions to the Commission squarely for the first time in this docket that, although they do not persuade the Commission to reconsider, warrant discussion.

Finally, the Commission will approve Xcel's tariff sheets implementing the July 17 Order.

II. Background

This docket addresses two Xcel-proposed pilot programs intended to enhance the availability of or access to electric vehicle charging infrastructure. One would facilitate the installation of public electric vehicle charging stations, and the other would facilitate charging facilities for entities operating fleets of light-, medium-, and heavy-duty electric vehicles (EVs).⁵ These pilots received the support of a majority of commenters and are generally consistent with the

⁴ The Department had filed a letter in this docket on August 2, 2019, requesting that the July 17 Order be stayed and a comment period be opened. However, the Department's August 21 comments recommended that the Commission affirm its July 17 Order "with the understanding that the Fleet EV Service Pilot is approved as reflected in Xcel's August 16, 2019 filing."

⁵ In a separate docket the Commission has considered and approved a third Xcel pilot program for residential electric vehicle charging. *In the Matter of Xcel Energy's Petition for Approval of a Residential EV Subscription Service Pilot Program*, Docket No. E-002/M-19-186, Order Approving Pilot with Modifications and Setting Reporting Requirements (October 7, 2019).

Commission's February 1, 2019, order requiring Xcel to propose pilot programs of this nature. With some changes, the Commission approved the pilot programs and Xcel's requested accounting treatment for some of the costs.⁶

Some of Xcel's large industrial customers have requested that the Commission reconsider its decision.

III. XLI's Petition for Reconsideration and Motion for Stay

The XLI group raises several arguments in favor of reconsideration of the July 17 Order. These arguments include, broadly, that

- the Commission lacks authority to approve the pilots;
- if utility ownership of EV charging stations is allowed, private ownership must necessarily be prohibited;
- the pilots are not good public policy and a departure from Commission precedent; and
- the accounting methods approved in the order are also unlawful departures from prior Commission practice and established ratemaking principles.

The Commission will address these arguments below.

IV. Standard for Reconsideration

Petitions for reconsideration of Commission orders are governed by Minn. Stat. § 216B.27 and Minn. R. 7829.3000. The Commission generally reviews such petitions to determine whether the petition (i) raises new issues, (ii) points to new and relevant evidence, (iii) exposes errors or ambiguities in the underlying order, or (iv) otherwise persuades the Commission that it should rethink its decision.

V. Commission Action

A. The petition does not present a basis for reconsideration.

The Commission has reviewed the entire record and the arguments of all parties.

Based upon this review, the Commission finds that the petition does not raise new issues, does not point to new and relevant evidence, does not expose errors or ambiguities in the July 17 Order, and does not otherwise persuade the Commission that it should rethink the decisions set forth in its Order.

Specifically, the Commission has considered the arguments raised by XLI and does not find a persuasive reason to revisit its July 17 decision. As discussed below, the July 17 Order is both consistent with state law and supported by the record.

⁶ See, generally, the July 17 Order.

B. Approval of the pilots is consistent with law and within the Commission’s discretion.

XLI argues that there is no basis in law for the Commission to regulate behind-the-meter EV charging infrastructure.⁷ This is incorrect. Minn. Stat. § 216B.08 vests the Commission with the powers, rights, functions, and jurisdiction to regulate every public utility. “Public utility” is defined in Minn. Stat. § 216B.02, subd. 4, and there is no dispute in this docket that Xcel Energy meets the definition.

XLI argues that “[a]uthorization for ownership of behind-the-meter EV infrastructure is not expressly stated [in the Minn. Stat. § 216B.02 definition of ‘service’] and cannot be implied from this definition.”⁸ Because EV charging infrastructure is a facility for delivering electricity, the Commission disagrees.

XLI essentially argues that unless a state statute specifically grants authority over a particular type or manner or facility for furnishing electric service the Commission cannot regulate it. The Commission finds this argument unpersuasive. The Commission’s regulatory authority over public utilities is expressly and intentionally comprehensive—except, where deemed appropriate by the legislature, certain subject areas are carved out, limited, or modified.⁹ The authority to regulate electric vehicle chargers and related make-ready infrastructure owned by Xcel is implicit in a comprehensive reading of Minn. Stat. Ch. 216A and 216B, particularly the express authorizing language of §§ 216A.05, 216B.08, and definition of “public utility” in § 216B.02, subd. 4.

In this case, Xcel, a public utility, has proposed pilot programs that would include Xcel’s control of certain equipment or facilities for furnishing electricity service for the purpose of charging electric vehicles. The Commission has appropriately reviewed the proposals and ensured that they are consistent with the public and ratepayer interests.

XLI alludes to the traditional Commission and industry practice of using a customer’s meter to demarcate the boundary between utility and customer equipment ownership. That boundary demarcation point is not required by statute; the Commission is not bound to apply it in all circumstances. XLI’s effort to imbue the customer-meter demarcation point with the gravitas of a legislative mandate lacks any statutory support, and so the Commission finds it unpersuasive. The Commission finds XLI’s reliance on prior decisions and cases equally unpersuasive, as those situations are not similar to the issues at hand in this proceeding.¹⁰

⁷ XLI Reconsideration Petition, at 3.

⁸ XLI Reconsideration Petition, at 4.

⁹ See, e.g., Minn. Stat. § 216B.02, subd. 4, where the legislature has expressly excluded from the definition of “public utility” non-public-utility sales of electricity for charging electric vehicles. If the legislature intended to preclude the Commission from regulating these sales when made by a regulated entity entirely, it could have done so.

¹⁰ For a fuller discussion distinguishing the context here—i.e., pilots for electric vehicle charging infrastructure at this point in time—from the contexts in which the Commission has recognized the customer meter as a reasonable demarcation point, see *In the Matter of Xcel Energy’s Petition for*

While the customer meter is often a convenient, consistent, and easy to understand boundary between utility and customer facility ownership, in this case the Commission believes the potential benefit to the public of these specific pilots outweighs the justifications for inflexibly constraining the utility's facility ownership to its side of the customer meter.

XLI asserts that "Xcel's ownership of behind-the-meter infrastructure does not benefit the public." This is contradicted by the record. The General EV Order indicated how pilots of this nature could be in the public interest,¹¹ and the July 17 Order discussed at length the anticipated public benefits of these specific pilots. Xcel's ownership of certain behind-the-meter infrastructure is essential to the effectiveness of these pilots,¹² and is likely to facilitate increased availability of charging infrastructure and adoption of electric vehicles, among other public benefits.¹³

C. XLI's argument construing the word "service" in Chapter 216B is flawed; accordingly, the Commission declines to adopt it.

XLI argues that "if Xcel can provide 'service' behind-the-meter, then 'electric service' extends there as well, and therefore the service monopoly granted to utilities in Minnesota Statutes § 216B.40 extends behind-the-meter."¹⁴ The Commission does not agree with this interpretation of the relevant statutes. XLI misconstrues Chapter 216B by conflating two defined terms in order to draw a reductive conclusion.

XLI's interpretation of Chapter 216B provides no meaningful distinction between "service" as defined in Minn. Stat. § 216B.02 and "electric service" as defined in Minn. Stat. § 216B.38. The Commission is not persuaded by this approach.

Minn. Stat. § 216B.02 defines "service" as "natural, manufactured, or mixed gas and electricity; the installation, removal, or repair of equipment or facilities for delivering or measuring such gas and electricity." Minn. Stat. § 216B.38 separately defines "electric service" as "electric service furnished to a customer at retail for ultimate consumption, but does not include wholesale electric energy furnished by an electric utility to another electric utility for resale." The scope of the definition of electric service in § 216B.38 extends from 216B.37 to 216B.44.¹⁵

Approval of a Residential EV Subscription Service Pilot Program, Docket No. E-002/M-19-186, Order Approving Pilot with Modifications and Setting Reporting Requirements, at 7 (October 7, 2019).

¹¹ See General EV Order, at 7 – 9.

¹² July 17 Order, at 13.

¹³ Anticipated public benefits include reduced transportation sector emissions and system-wide ratepayer benefits such as downward pressure on electric rates resulting from increased electric sales and better alignment of electric usage with low cost wind generation.

¹⁴ XLI Reconsideration Petition, at 7. *But see* the discussion of "behind the meter," *supra* Section (V)(B).

¹⁵ Minn. Stat. § 216B.38, subd. 1.

The legislature has directed that “[e]very law shall be construed, if possible, to give effect to all its provisions.”¹⁶ In general, where a statute defines and uses different terms it is reasonable to infer that the legislature intended for those terms to have distinct meanings. This is especially the case where a more specific defined term with a narrowly targeted scope of application is contained in a statute with a more general defined term of more general application.¹⁷ These statutory interpretation principles support a conclusion that “electric service” in the context of Minn. Stat. § 216B.40 must have a different meaning than “service.”

Moreover, section 216B.02, subd. 4 excludes from the definition of public utility “a retail seller of electricity used to recharge a battery that powers an electric vehicle, as defined in section 169.011, subdivision 26a, and that is not otherwise a public utility under this chapter.” The Legislature clearly contemplated the possibility that electric vehicle charging could be provided by both utilities and non-utilities.

Chapter 216B can therefore reasonably be read to allow utility and non-utility retail electric vehicle charging facilities to coexist within an assigned service area. This interpretation appears to have the support of several participants in this docket. For example, Xcel disclaims any exclusive right to provide retail service through EV charging infrastructure in its service territory except as to another electric utility.¹⁸

Accordingly, and contrary to XLI’s interpretation, Chapter 216B does not unambiguously preclude retail EV charging competition within an assigned electric service area. Because XLI’s statutory argument concerning the application of the term “service” is flawed, and in light of the reasonable interpretation that Minn. Stat. § 216B.40 does not preclude coexistence of utility and non-utility retail electric vehicle charging within a service area, the Commission is not persuaded that the specter of statutory exclusivity is a reason to reject these pilots.

D. The pilots are consistent with the public interest and approval is justified by the record concerning transportation electrification.

As stated above, the Commission disagrees with XLI that these pilots are not in the public interest. Instead, the Commission finds persuasive the arguments of the many participants that consider these pilots to be a public benefit, including Xcel, the Department, and the many nonprofit and industry participants that provided comments on Xcel’s proposals.

In particular, the Commission does not give great weight to the arguments of XLI that the pilots would doom the economics of privately financed, owned, and/or operated electric-vehicle-charging facilities.¹⁹ On this subject, the comments of those more closely connected with the

¹⁶ Minn. Stat. § 645.16.

¹⁷ See Minn. Stat. § 645.08 (3) (“General words are construed to be restricted in their meaning by preceding particular words”).

¹⁸ Xcel’s Comments on XLI’s Petition for Reconsideration and Motion and the Department of Commerce’s Request for Rehearing (August 21, 2019), at 4. See also *In the Matter of Xcel Energy’s Petition for Approval of a Residential EV Subscription Service Pilot Program*, Docket No. E-002/M-19-186, Xcel’s Reply Comments (May 16, 2019), at 17– 18.

¹⁹ XLI’s Petition for Reconsideration and Motion, at 7–10.

potentially affected industry deserve greater weight. Supporters of the pilot include private competitive charging companies such as ChargePoint and Greenlots, along with other private companies and organizations involved in EVs such as Siemens, Plug in America and the Alliance for Transportation Electrification. These companies and organizations, including the private charging companies, asserted that the pilots are consistent with the public interest and are not meaningfully detrimental to the development of a robust market for EV charging or its infrastructure.

Further, XLI's argument that the Commission "cannot rely on"²⁰ its own findings, conclusions, and requirements articulated in the General EV Order is baseless. The General EV Order is a duly issued and effective order of the Commission.²¹ The order arose from a Commission investigation initiated in late 2017 to "gain a better understanding of . . . [t]he degree to which utilities and utility regulatory policy can impact the extent and pace of EV penetration in Minnesota."²² The General EV order, and particularly the findings and requirements contained therein, are unquestionably relevant to this proceeding.

The General EV Order provides a great deal of discussion and findings concerning the benefits of EV adoption and particularly pilots of this nature, including a recognition that "[p]ilot programs can be useful in the EV context because they allow utilities to experiment with different approaches to rate design, emerging technologies, infrastructure build-out, and other EV issues." It required three electric utilities, including Xcel, to

file proposals, which can be pilots, intended to enhance the availability of or access to charging infrastructure, increase consumer awareness of EV benefits, and/or facilitate managed charging or other mechanisms that optimize the incorporation of EVs into the electric system.²³

Though Xcel filed its pilot programs before the General EV Order was issued, the company participated in the investigation docket and modified its proposals to incorporate the direction of the General EV Order. Given the direct relevance of the General EV Order, the Commission did not disregard its own discussion, findings, and direction on this issue—and contrary to XLI's contention, it would be inappropriate to have done so.

The General EV Order established the Commission's expectations and requirements for developing a fuller understanding of the role utilities could and should play in transportation

²⁰ XLI's Petition for Reconsideration and Motion, at 14.

²¹ The Commission received no request to reconsider the General EV Order within the statutory timeframe. *See* Minn. Stat. § 216B.27.

²² *In the Matter of a Commission Inquiry into Electric Vehicle Charging and Infrastructure*, Docket No. E-999/CI-17-879, Notice of Commission Inquiry into Electric Vehicle Charging and Infrastructure (December 28, 2017). The deliberative, year-long engagement process conducted by the Commission to investigate the issue contradicts XLI's characterization that the Commission is in a "rush" to support transportation electrification, as does the decision in this case to approve pilot programs of limited size, scope, and duration.

²³ General EV Order, at 13.

electrification. The pilots proposed by Xcel are consistent with the General EV Order. The public benefits when regulators and regulated parties explore creative ways to accelerate transportation electrification within the Commission's existing legal and regulatory structure; pilots such as those proposed by Xcel will help the Commission and stakeholders better understand the appropriate role for public utilities in transportation electrification.

E. Deferred accounting and the CIAC waiver are consistent with law and within the Commission's discretion to approve.

XLI also objected to two decisions concerning how Xcel will account for certain pilot costs.

The July 17 Order articulated the Commission's reasons for approving these requests, and XLI has not raised new issues, pointed to new and relevant evidence, exposed errors or ambiguities in the underlying order, or otherwise persuaded the Commission that it should rethink its decision. These requests fall clearly within the Commission's authority to approve or disapprove,²⁴ and the Commission's basis for doing so remains unchanged.

XLI's concern about deferred accounting requests in future cases is well taken, but is speculative and is not a basis to alter the Commission's determination to approve deferred accounting in this case under these facts.

F. The relevant factors weigh against staying the July 17 Order.

XLI has requested that the Commission stay the July 17 Order

until the ultimate conclusion of the issues outlined in this Petition, including any related appeal, because allowing the EV Pilot Programs to go forward prematurely may result in the expenditure of funds that cannot be recovered. There will be no adequate way to recoup behind-the-meter investments if the EV Pilot Programs go into effect and the Commission (or a judicial body) subsequently reverses the Order.²⁵

The Commission does not find this to be a persuasive basis to grant a stay, and so will deny the request. Even if XLI is correct that Xcel may make expenditures that cannot be recovered if the Commission's July 17 Order is reversed, the risk is Xcel's to take. The Commission is not inclined in this case to grant a stay to protect Xcel's interests over Xcel's opposition.²⁶

Other relevant factors also weigh against granting the request. No great or irreparable damage to XLI is likely (or clearly identified). There is no apparent risk that absent a stay an appeal would be meaningless. And a stay would harm parties relying on the timely implementation of the pilots as well as the public interest.

²⁴ See Minn. Stat. § 216A.05, subd. 2(2) and § 216B.03; Minn. R. 7825.0300, subp. 4.

²⁵ XLI's Petition for Reconsideration and Motion, at 16.

²⁶ If XLI's argument about unrecoverable expenditures and inability to recoup behind-the-meter investments concerns expenditures and investments by XLI rather than Xcel, the Commission is not persuaded that XLI could not be made whole in the event that the July 17 Order is modified or reversed.

A stay is not necessary or appropriate to equitably balance the interests of the parties. Accordingly, the requested stay will be denied.

G. Xcel’s compliance filing meets the requirements of the July 17 Order.

Finally, the Commission will approve Xcel’s August 16, 2019 compliance filings. The Commission has reviewed the filings and finds that they appropriately reflect and incorporate the requirements of the July 17 Order.

H. Conclusion

For the reasons stated above, as well as for the reasons articulated in the July 17 Order, the Commission will deny the petition for reconsideration, deny the requested stay, and approve the tariff sheets filed by Xcel on August 16, 2019.

ORDER

1. The petition for reconsideration is hereby denied.
2. The motion for stay is denied.
3. Xcel’s modified tariff pages filed on August 16, 2019, are approved.
4. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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