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May 5, 2014

Tammy Pust
Chief Judge and CEUD Workgroup Facilitator
Minnesota Office of Administrative Hearings
600 N. Robert Street
St. Paul, MN 55164

RE: INFORMAL CEUD WORKGROUP COMMENTS
PRIVACY POLICIES OF RATE-REGULATED ENERGY UTILITIES
DOCKET NO. E,G999/CI-12-1344

Dear Judge Pust:

Northern States Power Company, doing business as Xcel Energy, submits these Comments regarding Steps 1 through 4 of the Minnesota Public Utilities Commission Customer Energy Usage Data (CEUD) Workgroup Outline. At the Workgroup's April 18, 2014 meeting, you requested that any participant comments not already reflected in submitted CEUD Workgroup materials or Commission Meeting Notes in the Docket to-date be submitted via email no later than May 5, 2014.

The Commission's objective for the Customer Energy Usage Data (CEUD) Workgroup is for it to make recommendations on the appropriate use and limitations on use of CEUD, balancing customer privacy and the state's energy goals. Steps 1-4 of the Outline the Workgroup developed to achieve its charge has involved examination of issues related to expanded access to utility CEUD and Customer Program Participation Data (CPPD), including its definition(s), requesters, uses that support state energy goals, and the identification and mitigation of issues and risks associated with such expanded access and use.

We believe the Workgroup has been a valuable process to begin the exploration of important issues related to expanding access to utility customer data for purposes of furthering state energy goals. While the Workgroup may not be in a position to provide a fully-developed set of recommendations to the Commission, the meaningful

dialogue and exploration of issues has resulted in some areas of consensus – and, we believe, a greater appreciation by all parties of each other’s perspectives and the complexities involved in this issue.

In these Comments, we outline a couple of issues that we believe are important to the Commission’s consideration of this issue, but have not been discussed as part of Steps 1-4 of the Outline. We additionally offer a couple of additional or alternative paths that may warrant further exploration of these issues – paths that have some level of existing legal and/or regulatory framework that may form a helpful base from which the Commission could build its customer data access and privacy framework.

Specifically, we believe:

- The Commission must provide clear and objective guidance specifying its criteria for utilities to release CEUD and/or CPPD to parties outside of the provision of regulated utility service;
- Expanding utility customer data access must be balanced with commensurate levels of accountability;
- The concerns and risks associated with expanded access to customer information may vary by type of customer, and therefore, actions to appropriately maintain privacy and confidentiality may also need to vary; and
- There may be substantial benefits associated with utilizing existing legal and regulatory frameworks to form the basis of Minnesota’s customer data access and privacy framework.

A. Background

The Workgroup developed a matrix that contains “use cases” portraying the current and reasonably foreseeable uses of CEUD and CPPD, specifying the requesting entity, data desired, whether the data is available from the customer(s), state energy goal(s) supported, and other elements that define the purpose of the request and use of the data. The utilities noted whether the requested data for each use case is readily available from their current systems. This Use Case Matrix has formed the basis of the Workgroup’s examination of the issues contained in Steps 1-4 of the Workgroup Outline.

To-date, it is our understanding that the Workgroup has agreed that: (1) obtaining

customer consent or identifying a legal ability to compel data production is necessary prior to utilities providing individual customer data to third parties that are not involved in the provision of regulated utility service; and (2) the desired granularity of the non-individual customer data to support state energy goals is no finer than monthly information.

While we believe cost recovery is an important factor as the Commission considers what it will require of utilities regarding data access, we note that the Workgroup has not yet discussed this aspect of utility fulfillment activities associated with expanded access to customer data. Therefore, at this point in the process, we highlight this issue as an important consideration for the Commission as it evaluates expanding required access to CEUD and CPPD, but focus these comments on other issues associated with utility fulfillment of data requests, balancing requester access with requester accountability, and possible other paths to explore to the same end.

B. Clear Rules of the Road are Needed

One of the areas of concern noted by non-utility Workgroup Participants has been differing data release policies and practices across Minnesota's utilities, which can compromise their ability to conduct a meaningful analysis if the requested data spans multiple utilities. Ensuring utilities have consistent practices and are acting consistent with the Commission's direction will require the Commission to provide clear and objective criteria against which the utilities can measure their actions – to either fulfill a request, deny a request, or fulfill the request in a modified way.

For Xcel Energy, the Workgroup's use case exercise highlighted this need, and its likely complexity. As currently stated in the Use Case Matrix, the state energy goals cited by the Third Party Entities are quite broad.¹ For example, the Energy Benchmarking by Customer Segment Use Case states the state energy goal it supports as, "Minn. Stat. § 216B.241, 216B.2401, 216B.2422 [CIP and IRP]." Several other Use Cases state, "Next Generation Energy Act of 2007." To the extent the data access criteria will be based on the request's correlation to achievement of state energy goals, it will be necessary to provide significantly more specificity with regard to whom data may be released, and for what purpose data may be released.

¹ For purposes of these Comments, Third-Party Entity is defined as: (1) entities who do not support the provision of regulated service, and therefore, utilities have no contractual relationship; and, (2) governmental entities that do not have statutory ability to compel the requested customer data from utilities.

Broad guidance would require utilities to make subjective decisions that are likely to differ across utilities, and that may conflict with the Commission's intent. Therefore, if the Commission wishes to limit (or promote) the release of CEUD and/or CPPD to certain entities or for specific purposes, it must provide specific criteria for the utilities to apply when evaluating a data request. Otherwise, virtually anyone could request any data by generally stating its correlation to a broad state energy goal, and utilities may have no recourse but to provide the data.

We note that we believe a combination of the alternatives outlined in Section E of these Comments could eliminate the need for specific guidance if all general/broad data requests utilize publicly available data, and specific requests for data are subject to the rigor of the alternate CIP programs process.

C. Requester Accountability

We believe our customers have reasonable expectations of privacy and confidentiality of the information we collect and maintain to provide regulated utility service. We have been good stewards of this information, and have put rigorous data privacy and security protocols in place to protect the information that our customers entrust to us every day and to maintain their trust. Recognizing that further dissemination of data can create new risks, we further extend these protocols and obligations to our contractors that help us provide utility service to our customers.²

We recognize that providing parties outside of the provision of regulated utility service with access to CEUD and CPPD has the potential to further important public policy goals. Pursuit of these goals, however, should not supersede reasonable customer protections and principles of customer autonomy. We believe that granting access to utility CEUD and/or CPPD must be balanced with commensurate levels of accountability regarding its use and maintenance. For example, appropriate elements of accountability may include:

² This practice is consistent with regulations in other jurisdictions. For example, California Public Utilities Code provides that utilities must use reasonable security procedures and practices to protect a customer's electric or natural gas consumption data from unauthorized access, destruction, use, modification or disclosure. See Sec. 8380(d). In addition to explicitly recognizing the customer's interest in the privacy and confidentiality of energy consumption data, the Public Utilities Code also recognizes that energy consumption data is important for the utility's energy efficiency programs, and allows data release and limited use to support these types of programs so long as certain customer protections are in place.

- Limitations on the use of customer-specific data by requestor to the purpose identified in the request;
- Availability of data to requestors conditioned on demonstrating its fulfillment of a public purpose, such as meeting state energy goals;
- Agreement to undertake measures to reasonably protect the security and retention/destruction of the data, and/or incident response, should customer privacy or confidentiality be compromised while the data is within the requestor's control; and
- Tracking and reporting progress toward the identified state energy goal(s), and the costs associated with achieving that progress or achievement (including any utility costs to fulfill the data requests).

Assigning these types of accountability to requestors as conditions for access to utility customer data is reasonable, and balances the public benefit of data access with privacy and confidentiality rights of customers. With no accountability for data use and security, customer privacy and confidentiality is unnecessarily at risk, requestors would be free to request any data in the name of any state energy goal, and the Commission and the State of Minnesota would lack a complete picture of all state energy goal progress achieved and its associated cost. Further, it will be important to establish protocols to ensure goal achievement is not counted by both the utility and the data requester for the same or overlapping customer populations, and for any utility costs to fulfill the data requests to be factored into the overall costs of the goal achievement.

However, as outlined in our April 18, 2014 Reply Comments in this docket, we believe the Commission may be limited in its ability to impose these or other requirements directly on parties that fall outside of its explicit jurisdiction of certain energy utilities. Once again, however, we note that we believe a combination of the alternatives outlined in Section E of these Comments could mitigate this potential jurisdictional issue if all general/broad data requests utilize publicly available data, and specific requests for data are directed through the alternate CIP programs process.

D. Risk Mitigation Methodologies

Our experience from interacting with customers is that the scope of their privacy and confidentiality interests will vary from one to another. Some customers are very

concerned about who may have access to their unique data, and therefore want control over that access; others are less concerned. For this reason, we are transparent with our customers regarding data access, and have put in place policies and processes for both notifying and obtaining customer consent prior to release of customer-specific data.³ This gives customers the autonomy to select the level of privacy or confidentiality they desire for their unique data.

We believe that the concerns and risks associated with expanded access to customer data may also vary by type of customer, and therefore, actions to appropriately maintain its privacy and confidentiality may also need to vary. For example, we are aware that at least a portion of our business customers believe that the exposure of their unique CEUD could compromise information that they consider to be proprietary and market sensitive. These concerns reinforce the need for an approach that protects the unique interests of our customers, but at the same time, is practical for utilities to administer.

Where data has been appropriately aggregated or anonymized, we believe that our customer's sensitivity and the potential risks are greatly diminished. Determining reasonable levels or methods of aggregation and anonymization is important, because if the data released can be reverse-engineered or otherwise re-identified, then the customer's control and privacy and confidentiality interests were inappropriately compromised. For this reason, we also believe that a multi-faceted approach to data aggregation and data requests may be necessary to prevent the exposure or re-identification of individual customer information through layering of requests or blending utility-provided data with other data.

To gain greater certainty regarding what may be an appropriate aggregation and/or anonymization standard, we support the statistical study and draft scope that the Workgroup developed. However, in the absence of such a study to inform the record in this proceeding, we continue to support use of our current 15/15 standard, as it is the only definitive data aggregation method established in a regulatory proceeding

³ Our Privacy Policy outlines for customers how we use their data, and under what circumstances it is accessed by others. See Xcel Energy Web Privacy Policy, *available at* <http://www.xcelenergy.com/staticfiles/xcel/Online%20Privacy%20Policy.pdf>. Additionally, we have information on our website that identifies how customers can authorize third party access, *available at* http://www.xcelenergy.com/My_Account/Billing_&_Payment/Understanding_Your_Bill/Customer_Data_Access.

focused on customer data privacy.⁴ As noted in our April 18, 2014 Reply Comments in this docket, we are also open to a limited opt-out option for a defined and manageable group of customers having unique characteristics with respect to CEUD, such as large industrials.

Again, we believe there may be significant benefit from the Commission basing its customer data access and privacy framework on existing legal and regulatory frameworks within Minnesota, as well as have been established in other state regulatory proceedings that have explored these issues, which we discuss in Section E of these Comments. Specifically with regard to establishing aggregation or anonymization protocols, we believe there would be benefits from exploring the recently-approved decision by the California Public Utilities Commission in their multi-year examination of the potential establishment of a centralized energy information center.⁵

Requiring utilities to post a set of sufficiently aggregated customer data to their websites, which was one of the results from the California proceeding, would eliminate individual requests for utilities to produce aggregated sets of data for a specific geographical subset of a utility's service area, such as zip code, and may be sufficient for numerous parties to achieve their energy and/or environmental objectives. As we have previously noted, we believe combining this with directing other, more specific data requests through the alternate CIP programs process may

⁴ The 15/15 standard was adopted by the Colorado Public Utilities Commission in a rulemaking proceeding, and requires each data request to contain a minimum of 15 customers (per customer class or other grouping), with no one customer making up more than 15 percent of the data. *See 4 Code of Colorado Regulations (CCR) 723-3-3131(b).*

⁵ On May 1, 2014, the California Public Utilities Commission approved a proposed decision that will require utilities to make available from their websites at the zip code level the total monthly sum and average of customer electricity and natural gas usage, and the number of customers in each rate class (*See Proposed Decision of Commissioner Peevey, Rev. 1, Rulemaking 08-12-009, at 152-154 (redline version) at <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M090/K597/90597208.PDF>*). This requirement is subject to the following minimum aggregation standards:

- *Residential*: 100 or more customers. Where a zip code does not contain 100 residential customers, the utility is directed to aggregate with a bordering zip code until the aggregation reaches at least 100 residential customers.
- *Commercial or Agricultural*: at least 15 or more customers with no single account constituting more than 15% of the total consumption in any month. For zip codes that do not meet this standard, the utility is directed to aggregate with a bordering zip code.
- *Industrial*: at least 15 or more customers with no single account constituting more than 15% of the total consumption. For zip codes that do not meet this standard, the utility is directed to aggregate with a bordering zip code.

have the potential to greatly reduce the administrative burden for both utilities and numerous data requestors, while maintaining utility customer privacy and confidentiality interests.

E. Potential Existing Frameworks to Leverage

As we have discussed throughout these Comments, we believe there may be substantial benefits associated with utilizing existing legal and regulatory frameworks in Minnesota – and looking to established customer data access and privacy/confidentiality legal and regulatory frameworks to form the basis of Minnesota’s customer data access and privacy/confidentiality framework. In this section, we outline three frameworks that we believe can help mitigate some of the issues identified within this document.

1. Regulated Utility Service Option

The Commission could direct parties seeking utility customer data to further specific state energy goals to engage in a dialogue with utilities to develop new offerings under a new or existing regulated service offering. This would lend the rigor of existing regulatory frameworks to ensure that the proposal would indeed further the stated goal(s), and additionally address the need for accountability to track and demonstrate results and associated costs.

2. Minnesota’s Existing Alternate Conservation Improvement Program Project Option

The Existing Alternate Conservation Improvement Program Project Option Enabled by Minn. Stat. § 216B.241, and as defined in Minn. R. 7690.1430 allows interested persons, including political subdivisions and nonprofit and community organizations, to submit alternative energy efficiency projects for inclusion in a utility’s conservation improvement program.

Directing parties that seek utility customer data to further specific state energy goals through this existing statutory and regulatory framework would again lend rigor to ensure that the proposal would indeed further the stated goal(s), and address accountability for the proposing party to track and demonstrate results and associated costs. Finally, because the program would fall under a utility CIP plan, the Commission could require utilities to impose secondary use limitations and data security provisions on the approved program administrator, avoiding the potential jurisdictional issue we discussed previously.

3. *Utility Publication of a Sufficiently Aggregated Dataset*

As we noted previously, we believe there would be benefits from exploring the recently-approved decision by the California Public Utilities Commission in their multi-year examination of the potential establishment of a centralized energy information center. Specifically, we believe there may be benefits associated with requiring utilities to publish a set of appropriately aggregated customer data to their websites using a specific geographical grouping, such as zip code. The Workgroup touched on this subject at its April 18, 2014 meeting, and likened it to how Census Data is published for query.

This would still require the Commission to establish data aggregation and/or other risk mitigation standards and strategies to protect customer privacy and confidentiality. However, various standards for different customer types were established in the California proceeding that could form a helpful foundation on which the Commission could base its standards.

As we have also discussed throughout these Comments, we believe this approach has the potential to greatly reduce the administrative burden for both utilities and data requestors while appropriately balancing utility customer privacy and confidentiality interests. And, by directing other, specific data requests through energy efficiency programs, we believe the Commission may be able to ensure the specificity needed by utilities, accountability for data requestors, and appropriate protections of the customer data.

We believe these mechanisms should be explored in parallel – and should function in parallel – and may serve to mitigate some of the issues that have been raised, and provide a sound basis on which the Commission could base its customer data access and privacy framework.

CONCLUSION

Xcel Energy believes utility customers have reasonable expectations of privacy and confidentiality related to the individually-identifiable information we collect and maintain in order to provide regulated utility service. Further, we believe utilities sharing customer data with their contractors to support regulated service is necessary and appropriate, as long as there are adequate use limitations and security provisions in place. Finally, we believe that customers should have access to their own

information, and have an interest in controlling who has access to information specific to them.

We appreciate this opportunity to submit these Comments, and believe:

- The Commission must provide clear and objective guidance specifying its criteria for utilities to release CEUD and/or CPPD to parties outside of the provision of regulated utility service;
- Expanding utility customer data access must be balanced with commensurate levels of accountability;
- The concerns and risks associated with expanded access to customer information may vary by type of customer, and therefore, actions to appropriately maintain privacy and confidentiality may also need to vary; and
- There may be substantial benefits associated with utilizing existing legal and regulatory frameworks to form the basis of Minnesota's customer data access and privacy framework.

Dated: May 5, 2014

Northern States Power Company