

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye  
Marshall Johnson  
Thomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Petition of CenterPoint Energy for Approval to Continue the No Surprise Bill and Revise the No Surprise Bill Tariff to Allow for the Inclusion of Planned Rate Increases in the Bill

ISSUE DATE: April 27, 2007

DOCKET NO. G-008/M-05-602

DOCKET NO. G-002/M-05-393

In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy for Approval of a Fixed Bill Option Tariff and Rule Variance

ORDER APPOINTING LEAD COMMISSIONER, COMMENCING INVESTIGATIONS AND REQUIRING FURTHER DATA

**PROCEDURAL HISTORY**

On February 15, 2007, the Office of the Attorney General - Residential Utilities Division (RUD-OAG) filed a Complaint and Request of the Minnesota Attorney General for a Summary Investigation, Interim Relief, and an Expedited Hearing, against CenterPoint Energy Minnesota Gas (CenterPoint) and Northern States Power Company, a Minnesota Corporation and wholly owned subsidiary of Xcel Energy Inc. (Xcel).

In its complaint, the RUD-OAG requested that the Commission open a new docket to consider alleged problems associated with CenterPoint's "No Surprise Bill" program and Xcel's Fixed Monthly Payment pilot program, and to determine whether the programs should be changed or disallowed entirely as not in the public interest.

On February 20, 2007, the Commission issued a request for comments.

On March 1, 2007 the Department of Commerce (the Department) filed its response.

On March 2, 2007, CenterPoint, Xcel, Energy Cents Coalition (ECC or Energy Cents), and WeatherWise, USA, Inc. (WeatherWise) filed comments.

On March 9, 2007, CenterPoint, Energy Cents and RUD-OAG filed reply comments.

On March 16, 2007, Xcel filed reply comments.

On April 19, 2007, the Commission met to consider the matter. The following parties appeared: RUD-OAG; the Department; CenterPoint; Xcel; Energy Cents Coalition; and WeatherWise USA, Inc.

At the hearing, the RUD-OAG indicated that the parties had reached agreement to temporarily defer action on RUD-OAG's request for interim relief. The parties agreed that the companies each would provide information within two weeks of the Commission meeting on:

- preliminary estimates of stranded costs (if any) that may arise should the Commission order interim relief;
- proposals for recovering stranded costs; and
- comparison data that can be provided to current fixed bill program participants to enable consumers to make an informed choice regarding the relative merits of participating in the fixed bill programs.

## **FINDINGS AND CONCLUSIONS**

### **I. The Fixed Bill Programs**

On September 26, 2001, the Commission issued an order approving CenterPoint's "No Surprise Bill" pilot program.<sup>1</sup> In 2003 and 2004, the Commission issued orders authorizing CenterPoint to expand and modify the pilot program.<sup>2</sup> In 2005, the Commission, authorized CenterPoint to continue the "No Surprise Bill" program as part of its tariff, with a cap of 70,000 participants.

On September 6, 2005, the Commission approved Xcel's petition for a Fixed Monthly Payment program as a three-year pilot program.<sup>3</sup>

### **II. The Complaint**

The complaint alleged that CenterPoint customers who participated in CenterPoint's "No Surprise Bill" program and Xcel customers who participated in Xcel's Fixed Monthly Payment pilot program:

- generally paid more than had they not participated in these programs;
- were unable to freely exit the programs;
- were subject to automatic re-enrollment in the programs absent an affirmative opt-out; and

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<sup>1</sup> Docket No. G-008/M-01-974.

<sup>2</sup> Docket Nos. G-008/M-03-795 and G-008/M-04-649.

<sup>3</sup> Docket No. G-002/M-05-395.

- were provided with confusing or misleading marketing information about the nature and terms of the two programs by the companies.

The complaint alleged that CenterPoint’s “No Surprise Bill” program and Xcel’s Fixed Monthly Payment pilot program violated, *inter alia*, Minn. Stat. § 216B.23, which provides that rates shall not be “unjust, unreasonable, insufficient, or unjustly discriminatory or preferential or otherwise unreasonable or unlawful.”

### **III. Positions of the Parties**

#### **A. RUD-OAG**

At hearing, the RUD-OAG requested that, in addition to ordering the companies to provide data regarding stranded costs and comparison data within two weeks of the hearing, the Commission open an investigation into the allegations of its Complaint. RUD-OAG suggested that if the Commission opened an investigation, that it investigate the companies separately in different dockets.

RUD-OAG also asked that the Commission appoint a lead commissioner to deal with such issues as discovery, consideration of a protective order to enable WeatherWise, USA, to share information it has alleged to be trade secret, and time lines.

#### **B. Energy Cents Coalition**

At the hearing Energy Cents Coalition reiterated its concerns with respect to the potential impact of the programs on low and fixed income utility customers. ECC requested that the Commission take the immediate step of ordering the companies to provide customers with information regarding stranded costs as well as comparable billing data.

At the hearing Energy Cents also argued that the Commission allow LIHEAP<sup>4</sup> customers to exit the program immediately without payment of stranded costs.

#### **C. The Department**

At hearing the Department generally supported the position of the RUD-OAG, and agreed that the allegations merited investigation.

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<sup>4</sup> Low Income Heating and Energy Assistance Program.

#### **D. WeatherWise USA, Inc.<sup>5</sup>**

At the hearing WeatherWise indicated that it had agreed to provide the RUD-OAG with its technology and methods of calculation of the billing estimates sought. WeatherWise asserted, however, that this information reflected the intellectual property of WeatherWise, and constituted trade secret data under Chapter 13.37 of the Minnesota Data Practices Act. WeatherWise indicated that for parties other than RUD-OAG to gain access to the information submitted, the company would assert trade secret protection.

#### **E. CenterPoint and Xcel**

At hearing, both companies indicated their agreement to provide the preliminary information requested with respect to stranded costs and comparison data within two weeks. Further, the companies voiced no objection to cooperation in the investigation process.

Xcel reiterated its commitment to allow LIHEAP participants to opt out of its fixed-rate program at any time without payment of stranded costs, as any LIHEAP participant would qualify for the “hardship” category under its tariff.

#### **IV. Commission Action**

The Commission originally authorized implementation of CenterPoint’s “No Surprise Bill” option and Xcel’s Fixed Monthly Payment option to give customers who value certainty over precision a tool to stabilize their energy costs. Unfortunately, the information that has thus far come to light with respect to this form of customer billing raises disturbing questions regarding the relative value to customers of participation in such programs.

The concerns raised in the RUD-OAG’s complaint are serious, and the Commission will take immediate action to address those concerns. In this way, consumers can better determine the relative merits of participating in a fixed bill program such as those employed by CenterPoint and Xcel.

The companies have agreed to provide the preliminary data requested within two weeks of the Commission meeting, or May 3, 2007. Parties will have two weeks to respond to the companies’ preliminary data. The Commission will proceed as expeditiously as possible in light of the content of those filings and parties’ procedural recommendations.

The Commission will open two investigations, under Minn. Stat. § 216B.17, subd. 1, into CenterPoint’s “No Surprise Bill” program and Xcel’s Fixed Monthly Payment pilot program to address the problems outlined herein and contained in the RUD-OAG’s complaint. The Commission finds that there is good cause to open such investigations.

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<sup>5</sup> WeatherWise USA, Inc. provides both CenterPoint and Xcel with various financial modeling support systems utilized by the companies in their fixed bill programs, including the calculation of individual fixed bill quote amounts for customers participating in the programs.

Complaints from participants in both programs, received by the RUD-OAG, indicate that customers who participated in the programs may not have received sufficient, clear information to allow them to make an educated decision about whether to participate; customers allegedly have been unable to leave the programs without significant financial consequences; and customers are automatically renewed for succeeding periods unless they affirmatively opt out of the program. Finally, it appears that customers almost certainly will pay significantly more for natural gas at a fixed rate pursuant to these programs. For all these reasons, the Commission has good cause to investigate this matter further and will do so.

The Commission recognizes that these investigations may take some time, which the companies urge is in short supply as the companies indicated at the hearing that purchases of natural gas for use in next year's programs will begin as early as July. The Commission is cognizant of these time concerns, and will proceed promptly with its inquiries.

The Commission designates Commissioner Thomas Pugh to serve as lead commissioner in these dockets. Minn. Stat. § 216A.03, subd. 9 states that after allowing interested persons to be heard on a proposed designation prior to making the designation, the Commission may appoint a lead Commissioner for a docket, a type of docket, or for a particular subject area. A lead Commissioner may be authorized to exercise the Commission's authority to develop an evidentiary record for a proceeding, including holding hearings and requesting written or oral comments.

The type of authority requested for the lead Commissioner in this instance is the authority to assist in the development of the record by conducting the investigations, setting a pre-hearing meeting, receiving and deciding discovery disputes, consideration of a protective order to enable WeatherWise to share information it has alleged to be trade secret, and time lines. The Commission hereby grants Commissioner Pugh such authority.

Because of the urgent nature of this matter, the Commission will request the RUD-OAG to take primary responsibility for conducting the investigation.

### **ORDER**

1. The Commission hereby opens investigations into CenterPoint and Xcel's fixed natural gas billing programs with the goal of determining whether they should be eliminated or modified as set forth herein. The Commission encourages joint proceedings to the extent they are administratively feasible and useful to the parties.
2. The Commission hereby designates Commissioner Thomas Pugh to serve as lead Commissioner for the investigations into these dockets under Minn. Stat. § 216A.03, subd. 9, with authority to exercise the Commission's authority to, *inter alia*, decide discovery disputes, issue protective orders, set time lines, etc.

3. CenterPoint and Xcel shall provide by May 3, 2007:
  - A. Preliminary estimates of stranded costs (if any) that may arise should the Commission order interim relief. This data should be provided for LIHEAP grant recipients who are participating in these programs, and for all of the non-LIHEAP grant recipients in these programs. The companies should also provide relevant information about the per customer average cost of exiting these programs.
  - B. Proposals for recovering stranded costs.
  - C. Comparison data that may be provided to current program participants to enable them to make an informed choice regarding the relative merits of participating in the fixed bill programs.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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