

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
David C. Boyd	Commissioner
Marshall Johnson	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

ISSUE DATE: July 16, 2007

DOCKET NOS.  
G-002/CI-07-541

In the Matter of a Commission Investigation  
into Xcel Energy's Fixed Monthly Payment  
Pilot Program

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

G-002/M-05-393

In the Matter of a Commission Investigation  
into CenterPoint Energy's No Surprise Bill  
Program

G-008/CI-07-542

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

G-008/M-05-602

ORDER MODIFYING PRIOR ORDERS,  
SUSPENDING AUTHORITY TO OFFER  
FIXED BILL PROGRAMS, ALLOWING  
LIHEAP CUSTOMERS TO IMMEDIATELY  
OPT OUT OF FIXED BILL PROGRAMS,  
AND OTHER RELIEF

**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 d/b/a Xcel Energy (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 (the Fixed Bill programs), 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. The Department of Commerce (the Department), CenterPoint, Xcel, Energy CENTS Coalition (ECC or Energy CENTS), and WeatherWise USA, Inc.<sup>1</sup> ("WeatherWise") filed comments. CenterPoint, Energy CENTS, RUD-OAG and Xcel filed reply comments.

On April 19, 2007, the Commission met to consider the matter. The parties had reached agreement to request the Commission to temporarily defer action on RUD-OAG's request for interim relief. The parties agreed that the companies each would provide information regarding, *inter alia*, stranded costs and proposals for recovery of stranded costs.

By Order of April 27, 2007,<sup>2</sup> the Commission opened investigations into Xcel's and CenterPoint's Fixed Bill programs, and designated Commissioner Thomas Pugh to serve as Lead Commissioner in the two investigative dockets.

On May 24, 2007, the Commission met a second time on these matters. At that meeting, Xcel reported it had reached a settlement in principle with the Office of the Attorney General that would include terminating its pilot program at the end of the current program year, and requested additional time to reduce the agreement to writing for filing with the Commission.

On June 5, 2007, Energy CENTS submitted its Request for Protective Agreement and Order, to enable it to review information submitted to the RUD-OAG by WeatherWise.

On June 7 and June 21, 2007, pretrial hearings before the Lead Commissioner occurred.

Both Xcel and CenterPoint have attempted to resolve the Complaint through negotiation with the RUD-OAG. As of the July 3, 2007 Commission meeting, neither party has come to an agreement with the RUD-OAG to present to the Commission.

On July 3, 2007, the Commission met to consider the matter.

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<sup>1</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.

<sup>2</sup> Docket Nos. G-002/M-05-393 and G-008/M05-602.

## FINDINGS AND CONCLUSIONS

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

The general purpose of the Fixed Bill programs, as proffered by the companies, was to give customers predictability and stability in their natural gas costs. The companies claimed that the programs better allowed customers to manage weather and natural gas price risks, thus stabilizing monthly payments.

On September 26, 2001, the Commission issued an order approving CenterPoint's "No Surprise Bill" pilot program.<sup>3</sup> In 2003 and 2004, the Commission issued orders authorizing CenterPoint to expand and modify the pilot program.<sup>4</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.<sup>5</sup>

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

### **II. The Complaint**

RUD-OAG's 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
- 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."

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<sup>3</sup> Docket No. G-008/-01-974.

<sup>4</sup> Docket Nos. G-008/M-03-795 and G-008/M-04-649.

<sup>5</sup> Docket No. G-008/M-05-602.

<sup>6</sup> Docket No. G-002/M-05-393.

### **III. Commission Action and Analysis**

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 alleged problems associated with the Fixed Bill programs, as identified by the RUD-OAG investigation to date, raise serious and significant doubts as to the continued viability of the programs in their present form. While the parties have discussed possible settlement of the RUD-OAG claims, neither has yet been able to come to an agreed-upon resolution to present to the Commission.<sup>7</sup>

The Commission is acutely aware that, absent action from the Commission, CenterPoint's program is authorized to continue on a permanent basis, and Xcel's pilot program is presently authorized to continue for another year. After consideration, and in an effort to protect the public, the Commission will resolve certain issues raised at this time. The Commission will:

- 1) Suspend Xcel's and CenterPoint's authority to offer the Fixed Bill programs at the conclusion of the 2006-2007 program year;
- 2) Modify its prior decisions authorizing commencement and/or continuation of the Fixed Bill programs;
- 3) Permit Low Income Heating and Energy Assistance Program ("LIHEAP") customers to immediately withdraw from the Fixed Bill programs without payment of penalties or administrative fees;
- 4) Issue Protective Orders in the two dockets authorizing Energy CENTS to review information received by the RUD-OAG and other parties.

The Commission anticipates that the RUD-OAG investigations, pursuant to Minn. Stat. § 216B.17, subd. 1, into the Fixed Bill Programs will proceed apace.

### **IV. Suspension of the Fixed Bill Program**

As currently authorized, the CenterPoint "No Surprise Bill" program is authorized to continue indefinitely. The Xcel fixed bill pilot program is authorized for one more year. The companies have indicated that purchases of natural gas for use in next year's program would typically begin this summer for purposes of next year's programs.

While the Commission has attempted to provide the parties with some leeway to resolve the complaint short of a full investigation and litigation, it does not appear that will happen, if at all, in the time frame mandated herein.

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<sup>7</sup> Xcel did not reach agreement with the RUD-OAG and on July 6, 2007, submitted a unilateral proposal to resolve the Complaint allegations against it.

The concerns raised in the RUD-OAG's complaint are serious, and the Commission will now take immediate action to address those concerns. The Commission hereby suspends Xcel's and CenterPoint's authority to offer these fixed bill programs at the conclusion of the 2006-2007 program year.<sup>8</sup> The programs will remain suspended until the Commission is satisfied that it is in the public interest for Xcel and CenterPoint to resume offering these programs, or after the Commission proceedings involving these Fixed Bill investigations have concluded, and there is a finding that these programs are in the public interest.

## **V. LIHEAP Customers**

CenterPoint has over 40,000 customers enrolled in its "No Surprise Bill" program, approximately 2% of whom (844) have received LIHEAP grants from the State to assist with home energy costs. Xcel has approximately 14,000 customers enrolled in its program, approximately 4.2% of whom (593) have received LIHEAP grants.

Low income persons entitled to LIHEAP funds are receiving government dollars to help pay their heating costs. The Commission believes that LIHEAP customers, therefore, stand in a different position than other Fixed Bill customers.

Based on the RUD-OAG investigation of these programs to date, and the likelihood that nearly all Fixed Bill program participants have paid more than they would have under standard billing practices, the Commission does not believe that it is in the public interest for LIHEAP participants to be forced to expend monies to complete the Fixed Bill program year (which ends October 31), or risk facing exit penalties and costs. Thus, the Commission will allow LIHEAP participants the option of immediately opting out of the Fixed Bill programs.

Further, the Commission will order that LIHEAP recipients enrolled in the Fixed Bill programs be allowed to exit the programs without payment of administrative penalties or administrative fees. As persons receiving public funds, customers receiving LIHEAP funds fall under the financial hardship

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<sup>8</sup> Accordingly, the Commission will also modify its prior orders authorizing the Fixed Bill programs:

- 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, Docket No. G-008/M-05-602, Order Approving Tariff for No Surprise Bill Program, As Revised (September 6, 2005); and
- 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, Docket No. G-002/M-05-393, Order Granting Petition With Modifications and Reporting Requirements (September 6, 2005).

exit language from CenterPoint's<sup>9</sup> and Xcel's<sup>10</sup> tariffs. Therefore, the Commission will order Xcel and CenterPoint to permit LIHEAP customers to immediately withdraw from the fixed bill programs pursuant to the "hardship" provisions of the Xcel tariff and the "extraordinary or unusual circumstances" provision of the CenterPoint tariff, retroactive to the start of the 2006-2007 program year, without payment of exit costs, administrative penalties or fees.

The Commission will direct CenterPoint and Xcel to send LIHEAP customers a letter, to be approved by the Commission, notifying LIHEAP customers of the option, with an explanation, to immediately withdraw from the programs without payment of exit costs, administrative penalties or fees.

Finally, the companies have asserted that they will face a significant financial issue with stranded costs incurred as a result of having LIHEAP customers exit the program. The Commission directs Xcel and CenterPoint to attempt to resolve the stranded costs issue associated with discontinuing the fixed bill program for LIHEAP customers through settlement with the RUD-OAG. In the event settlement with respect to this issue is not reached, Xcel and CenterPoint may submit proposals for resolution of the issue to the Commission.

## **VI. ISSUANCE OF PROTECTIVE ORDER**

On June 5, 2007. Energy CENTS petitioned for a protective order to enable it to review the data submitted in this investigation by WeatherWise, regarding usage estimate and customer quotes provided to Fixed Bill participants by Xcel and CenterPoint. WeatherWise asserted that 1) it is not a party to the proceeding, and thus cannot be compelled to provide the information; and 2) the information is the company's intellectual property and hence, trade secret under the Minnesota Data Practices Act, Chapter 13.37.

While WeatherWise has agreed to provide data to the RUD-OAG, it has to date refused to provide such data to Energy CENTS or Commission staff.<sup>11</sup> CenterPoint and Xcel have stated that by virtue of their respective contracts with WeatherWise, they do not have access to WeatherWise's methodology for computing customers' quotes.

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<sup>9</sup> (6) CenterPoint Energy may allow a customer to exit the rider before the completion of the 12 month term in the event of extraordinary or unusual circumstances such as dramatic reductions in usage due to an extended hospital stay." No Surprise Bill Rider, Special Conditions No. 4 and 5, and CenterPoint Energy, Gas Rate Book, Section V, Second Revised Page 12a.

<sup>10</sup> Xcel has interpreted its Fixed Monthly Payment Pilot Program Rider, Other Terms and Conditions No. 1, Xcel Energy, Gas Rate Book, Section 5, Original Sheet 66 to apply to LIHEAP participants.

<sup>11</sup> WeatherWise has in fact agreed to cooperate with the RUD-OAG investigation and has provided some data. RUD-OAG, which is bound by the Minnesota Data Practice Act regarding confidentiality of documents, is not free to disclose the information to others without the benefit of the protective order requested by Energy CENTS.

The parties met with the Lead Commissioner on June 7 and June 21, 2007, to discuss the status of the investigation and Energy CENTS' request. At the Commission meeting on July 3, 2007, the Lead Commissioner recommended that the Commission issue a protective order to allow Energy CENTS to examine such information as is available to RUD-OAG. The full Commission then authorized the issuance of such protective order(s).

The Commission concurs with the Lead Commissioner. Denying Energy CENTS access to the WeatherWise data held by RUD hampers Energy CENTS' ability to participate in this proceeding and deprives the Commission of its informed advocacy. It compromises the reliability and thoroughness of the record and the fact-finding process the record supports. The Commission has therefore, by separate Orders dated July 11, issued the protective orders sought by Energy CENTS and recommended by the Lead Commissioner.

By separate Orders issued on July 11, 2007, the Commission has issued protective orders in these matters.

### **ORDER**

1. The Commission hereby suspends Xcel's and CenterPoint's authority to offer these fixed bill programs at the conclusion of the 2006-2007 program year until the Commission is satisfied that it is in the public interest for Xcel and CenterPoint to resume offering these programs, or after the Commission proceedings involving these fixed bill investigations have concluded, and there is a finding that these programs are in the public interest.
2. By this Order the Commission modifies the Commission's orders in:
  - 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, Docket No. G-008/M-05-602, Order Approving Tariff for No Surprise Bill Program, As Revised (September 6, 2005); and
  - 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, Docket No. G-002/M-05-393, Order Granting Petition With Modifications and Reporting Requirements (September 6, 2005) to reflect the immediate suspension of the Fixed Bill programs.
3. Xcel and CenterPoint shall send customers a Commission-approved notice of the suspension with an explanation of the reason for the suspension based on the language in this Order.
4. Xcel and CenterPoint shall permit LIHEAP customers to immediately withdraw from the fixed bill programs pursuant to the "hardship" provisions of the Xcel tariff and the "extraordinary or unusual circumstances" provision of the CenterPoint tariff, retroactive to the start of the 2006-2007 program year, without payment of exit costs, administrative penalties or fees.

5. Xcel and CenterPoint shall send LIHEAP customers a letter, approved by the Commission, notifying them of the option, with an explanation, to immediately withdraw from the programs without payment of exit costs, administrative penalties or fees.
6. The Commission hereby delegates to the Executive Secretary the authority to approve the notice(s) and letter, referenced in Order paragraphs 3 and 5 above.
7. Xcel and CenterPoint shall attempt to resolve the stranded costs issue associated with discontinuing the fixed bill program for LIHEAP customers through settlement with the RUD-OAG. In the event settlement with respect to this issue is not reached, Xcel and CenterPoint may submit proposals for resolution of the issue to the Commission.
8. The Commission, by separate Orders, has issued protective orders based on Energy CENTS' petition, covering trade secret data, proprietary data and private data on individuals.
9. Xcel and CenterPoint shall file revised tariff language reflecting the suspension of the fixed bill programs within 20 days of the Commission's Order in this docket.
10. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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