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PUBLIC SERVICE COMMISSION

STATE OF MINNESOTA

LORI SWANSON
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL

BREMER TOWER, SUITE 900
445 MINNESOTA STREET
ST. PAUL, MN 55101-2127
TELEPHONE: (651) 297-1075

September 9, 2008

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 East Seventh Place, Suite 350
St. Paul, MN 55101-2147

Re: *In the Matter of an Investigation into Northern States Power Company d/b/a Xcel
Energy Inaccurate Gas Meters, Recalculation of Bills, and Related Issues*
Docket No. G-002/CI-08-871

Dear Mr. Haar:

Enclosed herewith for filing please find Comments of the Office of the Attorney General -- Residential and Small Business Utilities Division and an affidavit of service. By copy of this letter service is made upon all parties.

Sincerely,

s/ William T. Stamets

WILLIAM T. STAMETS
Assistant Attorney General

(651) 297-5902 (Voice)
(651) 297-4139 (Fax)

Enclosure

cc: Parties on Service List

AG: #2303494-v1

STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

David C. Boyd	Chair
J. Dennis O'Brien	Commissioner
Tom Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy Wergin	Commissioner

In the Matter of an Investigation into Northern
States Power Company d/b/a Xcel Energy
Inaccurate Gas Meters, Recalculation of Bills,
and Related Issues

Docket No. G-002/CI-08-871

**COMMENTS OF THE OFFICE OF THE
ATTORNEY GENERAL -- RESIDENTIAL
AND SMALL BUSINESS UTILITIES
DIVISION**

The Office of the Attorney General -- Residential and Small Business Utilities Division ("OAG") offers these Comments in response to the Minnesota Public Utilities Commission's ("Commission") August 1, 2008 *Notice Directing Xcel Energy to Make a Filing and Establishing a Comment Period* in the above referenced docket.

I. Introduction

This docket arose from the discovery of widespread mechanical failures of Xcel's recently installed automated gas metering equipment (the "1074 v.2 model module") in the St. Cloud and Fargo/Moorhead areas affecting thousands of Minnesota residential and small commercial ratepayers. Xcel contracted with Cellnet Technology Midwest, Inc. ("Cellnet") to design, manufacture and supply approximately 64,500 of the 1074 v.2 model module for installation in Xcel's service territory.¹ According to Xcel, the modules were installed beginning

¹ Response to Commission Notice and Rebilling Plan, *In the Matter of an Investigation into Northern States Power Company, a Minnesota Corporation, Inaccurate Gas Meters, Recalculation of Bills, and Related Issues*, MPUC Docket No. G-002/CI-08-871 (August 21, 2008) at 2. ("Xcel's Response").

in August 2007, with most being installed in the St. Cloud, Fargo/Moorhead and Grand Forks/East Grand Forks areas.² Most of the modules were installed in late 2007.³ A smaller number of the modules were also installed in the Twin Cities Metropolitan area.⁴ Xcel indicates that as early as January 2008 Xcel had some indication that the modules were defective and field investigations in early February confirmed that an “unusual” number of the 1074 v.2 modules were experiencing a mechanical failure.⁵ As a result of the mechanical failure, many Xcel meters were not recording actual consumption over a period of months.

Despite the magnitude of the meter failures, Xcel failed to notify its affected customers, the Commission, or the OAG of the problems for approximately six months. Xcel finally notified the Commission and the OAG about the failures on July 17, 2008, one day before the St. Cloud Times was set to publish an article informing Xcel customers that “Some Xcel Energy customers in St. Cloud are about to get an unpleasant surprise in the mail: a bill for natural gas they were never charged for last winter because of faulty meters.”⁶

Upon learning that Xcel had already commenced re-billing its affected customers prior to providing notice to anyone, the Commission opened this docket to further investigate the issue.⁷ On July 29, 2008 Xcel personnel informed Commission staff that Xcel had suspended its re-

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ St. Cloud Times, “Xcel Energy meters cause billing error,” (July 18, 2008). *See* attached article.

⁷ Notice Directing Xcel Energy to Make a Filing and Establishing Comment Period, *In the Matter of an Investigation into Northern States Power Company, a Minnesota Corporation, Inaccurate Gas Meters, Recalculation of Bills, and Related Issues*, MPUC Docket No. G-002/CI-08-871, (August 1, 2008).

billing efforts and would not commence re-billing without Commission approval.⁸ Xcel also indicated that it had suspended for 60 days credit and collections activities on accounts which had already been re-billed.⁹ On August 1, 2008, the Commission published its notice directing Xcel to submit a filing to the Commission for approval of its plan for re-billing affected customers by August 21, 2008. The Commission's Notice directed Xcel to clearly explain: (1) the nature and scope of the metering equipment failures; (2) the proposed method(s) for estimating usage; (3) the proposed methods for calculating re-billings; (4) the terms and conditions for repayment by customers; and (5) how Xcel is complying with Minn. Rules, Part 7820.3900, including subp. 4.¹⁰

On August 21, 2008, Xcel filed its response to the Commission's Notice. The OAG now submits its Comments for the Commission's consideration.

II. Discussion

The OAG recognizes that a meter, like other mechanical equipment, can fail. For this reason, the Commission has promulgated rules to allow utilities to back-bill for the unregistered, estimated amount of gas or electricity used when a meter fails to register the ratepayer's consumption.¹¹ However, the OAG believes that the Minnesota Rules do not contemplate such

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Minn. R. 7820.3700. subp. 2:

Meter fails to register or registers intermittently. When the average error cannot be determined by test because the meter is not found to register or is found to register intermittently, the utility may charge for an estimated amount of electricity used, which shall be calculated by averaging the amounts registered over corresponding periods in previous years or in the absence of such information, over similar periods of known accurate
(Footnote Continued on Next Page)

widespread failure of metering equipment, and, in particular, do not contemplate failures due to design or manufacturing defects or where the company fails to notify anyone of the problem, such as what appears to be the case here.

Xcel indicates that it purchased approximately 64,500 of the 1074 v.2 model modules for installation on certain Minnesota residential and small commercial customers' meters.¹² Xcel estimates that as of July 28, 2008, 23,100 of the 1074 v.2 model modules installed in Minnesota have been replaced due to mechanical failures, and more modules continue to fail.¹³ This overwhelming failure rate will undoubtedly affect many Minnesota residential and small commercial ratepayers. The OAG believes that Xcel's problem is far too widespread to be construed as a simple meter failure, as contemplated by Minn. R. 7820.3900. The OAG urges the Commission to address this situation by determining whether the rule requirements for re-billing based on estimated usage is appropriate in this situation.¹⁴

(Footnote Continued From Previous Page)

measurement preceding or subsequent thereto, but in no event shall such charge be for a period longer than one year.

Minn. R. 7820.3900, subp. 2:

Meter fails to register or registers intermittently. When the average error cannot be determined by test because the meter is not found to register or is found to register intermittently, the utility may charge for an estimated amount of gas used, which shall be calculated by averaging the amounts registered over corresponding periods in previous years or in the absence of such information, over similar periods of known accurate measurement preceding or subsequent thereto, but in no event shall such charge be for a period longer than one year.

¹² Xcel's Response, Attachment 2, at 2.

¹³ *Id.* at 4.

¹⁴ The OAG notes that this is not the first time the Commission has dealt with billing issues that resulted from inaccurate Xcel gas meters. In *In the Matter of the Petition of Xcel Energy for Approval of Customer Refund Plan and Variance to Allow Refunds Arising from Programming Errors*, MPUC Docket No. G-002/M-04-1072, the Commission approved a refund plan and variance to allow refunds arising from programming errors of Xcel's automated meter reading (Footnote Continued on Next Page)

Moreover, Xcel indicates that a Cellnet design defect was the root cause of the malfunctioning meters.¹⁵ To date it is unclear, and apparently unknown, what relief Xcel will obtain from Cellnet for the defective metering equipment. In response to the Commission's inquiry as to what recourse Xcel has under its contract with Cellnet if the cause of the failures were determined to be faulty hardware, software, or installation provided by Cellnet, Xcel seemed to avoid answering directly and stated:

We are working with Cellnet to determine what, if any, additional remedies may be appropriate under the circumstances. To the extent Xcel Energy and Cellnet ultimately do not agree upon the appropriate remedies available to us, we can invoke the contractually-prescribed dispute resolution mechanism.¹⁶

In the absence of any meaningful information regarding what remedies Xcel has under its contract with Cellnet, the apparently culpable party, it is premature for Xcel to seek approval to recoup all of its business losses from ratepayers. The OAG opposes Xcel's re-billing efforts when it is yet to be determined whether Xcel may recoup the losses from Cellnet, the party apparently responsible for the defective equipment. The OAG recommends that the Commission suspend any approval to re-bill until Xcel has exhausted all efforts to recoup any business losses for the defective equipment from Cellnet. If Xcel does have recourse against Cellnet, the Commission should then determine how ratepayers' bills will be affected.

Additionally, the OAG opposes any ratepayer cost recovery for the costs for the replacement and retrofitting of the defective Cellnet 1074 v.2 model modules. In response to the

(Footnote Continued From Previous Page)

modules. Of note, these programming errors under-billed approximately 200 Minnesota ratepayers. In that case, however, Xcel did not attempt to apply Minn. R. 7820.3900 to re-bill for the under-billed amounts.

¹⁵ The particulars of the design defect are detailed in the Trade Secret Version of Xcel's Response at Attachment 2, page 6.

¹⁶ Xcel's Response, Attachment 2, at 26 (emphasis added).

Commission's question whether Cellnet provided the replacement modules at no cost to Xcel,

Xcel stated:

Cellnet has replaced the 1074 v.2 model modules that have failed. A plan is in place to retrofit all of the 1074 v.2 model modules that have been installed on NSPM and NSPW systems. We are reviewing our contract with Cellnet to determine what remedies may be available to address the situation.¹⁷

Ratepayers should not be held responsible for Xcel's failure to negotiate a contract that included a materials or workmanship warranty making Cellnet solely responsible for the replacement of defectively designed equipment. The OAG urges the Commission to deny Xcel rate recovery for any costs associated with the replacement and retrofitting of the defective Cellnet 1074 v.2 model modules.

The OAG further opposes any ratepayer cost recovery of administrative and customer service costs associated with the Cellnet 1074 v.2 model modules failures and this related investigation. Xcel's ratepayers should not be held responsible for the additional costs Xcel will incur as a result of any defect in the 1074 v.2 model modules, including the administrative, customer service, and other investigative costs. The OAG recommends that the Commission order Xcel to create a separate account to record all expenses incurred as a result of any defect in the meters that can be easily tracked by regulators to ensure these expenses are never included in rates.

Finally, the OAG is concerned that if the Commission grants Xcel approval to begin re-billing customers affected by the design defect in Cellnet's meter reading equipment, Xcel's re-billing effort will commence shortly before, or simultaneously with Minnesota's Cold Weather Period. If Xcel is permitted to re-bill before the Cold Weather Period commences, the OAG

¹⁷ Xcel's Response, Attachment 2, at 25.

requests that the Commission prohibit Xcel from disconnecting a ratepayer for failure to make timely payments of the re-billed amounts.¹⁸ If a Commission approved re-billing effort coincides with the Cold Weather Period, the OAG recommends that the re-billing effort be suspended during the Cold Weather months of October 15, 2008 - April 15, 2009. Xcel's natural gas price outlook for the winter of 2008-2009 indicates that "heating bills for Xcel Energy's residential natural gas customers will be 30 percent to 50 percent higher than last year if we have a normal winter."¹⁹ The OAG believes it is unfair to require ratepayers affected by the Cellnet 1074 v.2 model module defects to suffer the pains of budgeting for a substantial increase in natural gas prices this winter while also attempting to pay for natural gas consumed last winter.

III. Recommendations

- The Commission should determine whether Minnesota Rule 7820.3900 contemplates the widespread failure of metering equipment, and, in particular, meter failures due to design or other manufacturing defects.
- Xcel should be required to exhaust all efforts to recoup any business losses directly from Cellnet, the apparently culpable third-party responsible for the design or manufacturing defect.
- The Commission should deny any request for ratepayer cost recovery of the costs for replacement and retrofitting of the defective Cellnet modules and the administrative,

¹⁸ Xcel indicates that "no credit or collection activities will be undertaken for any amount associated with the rebilling prior to expiration of the payment plan." Xcel's Response, Attachment 2, at 23. The OAG assumes that Xcel considers disconnections to be "collection activities." Nonetheless, the OAG requests that this be made clear in the event the Commission permits Xcel to continue with its re-billing efforts.

¹⁹ Xcel's Natural Gas Price Outlook for Winter 2008-09, *available at*: http://www.xcelenergy.com/XLWEB/CDA/0,3080,1-1-1_15531_51081_52252-48387-0_0_0-0,00.html. See attached News Release.

customer service, and investigative costs associated with the mechanical failures of the Cellnet 1074 v.2 model modules.

- The OAG recommends that the Commission order Xcel to create a separate account to record all expenses incurred as a result of the defective meters that can be easily tracked by regulators to ensure these expenses are never included in rates.
- If the Commission allows Xcel to begin re-billing, all customers should be allowed the option of a payment plan that is temporarily suspended during the Cold Weather Period of October 15, 2008 - April 15, 2009.
- If the Commission allows Xcel to begin re-billing ratepayers, the Commission should prohibit Xcel from disconnecting ratepayers for failure to make timely payments on the unanticipated re-billed amounts.

Dated: September 9, 2008

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota

s/ William T. Stamets

WILLIAM T. STAMETS
Assistant Attorney General
Atty. Reg. No. 0387944

445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2127
(651) 297-5902 (Voice)
(651) 296-1410 (TTY)



July 18, 2008

Xcel Energy meters cause billing error

By Kirsti Marohn
kmarohn@stcloudtimes.com

Some Xcel Energy customers in St. Cloud are about to get an unpleasant surprise in the mail: a bill for natural gas they were never charged for last winter because of faulty meters.

The company has discovered that about 8,700 of the 90,000 automatic meters it installed in the St. Cloud area since last August recorded no gas usage for two or three months last winter.

The problem began in late January or early February and affected mostly residential customers, said Pat Boland, Xcel's credit policy manager.

Xcel is working with the meter manufacturer to figure out what went wrong, Boland said. In the meantime, the company will try to recoup the missed payments.

Corrected bills will be mailed out within the next two months along with a letter explaining the situation, Boland said.

Xcel will estimate the customer's bill by looking at the two previous years' bills and using the year with the least usage, he said.

That should benefit customers, Boland said, because last winter was significantly colder than 2006 and 2007, so most customers' 2008 bills were probably higher.

Still, the unexpected bill likely will take many customers by surprise at a time when they're bracing for anticipated higher heating costs this winter. The typical bill likely will range from \$300 to \$320, Boland said.

Xcel will work with customers who need extra time to pay. Those customers won't be tagged with credit flags or late charges, Boland said.

"We want to make sure we work with them to get it taken care of," he said.

Xcel has had some occasional failures of automatic meters in the past, Boland said. About 4,400 Fargo-area customers had to pay back bills earlier this year because their meters didn't send readings.

The scope of the St. Cloud problem is "unacceptable," Boland said.

Despite the problems, Xcel still believes that automatic meters will improve customer service and allow customers to better analyze their gas use, he said.

"We think this is the direction we need to go," Boland said

Natural Gas Price Outlook for Winter 2008-09

Based on wholesale prices and other conditions in mid-July, it appears that heating bills for Xcel Energy's residential natural gas customers will be 30 percent to 50 percent higher than last year if we have a normal winter.

A hot end to the summer, a cold start to the winter and a busy hurricane season all could put upward pressure on natural gas prices. Additionally, while it doesn't appear likely now that prices will fall back significantly, a quiet hurricane season and a mild start to the winter could prompt the market to give up gains quickly.

Although Xcel Energy purchases gas at market prices for this upcoming winter, we also use a hedging program to provide a level of protection against significant price spikes in the winter. Our hedging program combines the use of financial hedging instruments and storage to provide protection against significant price spikes during the winter heating season.

Xcel Energy passes along the market price of natural gas to customers with no markup. The fuel cost makes up the majority of your gas bill.

Other Factors that Impact the Price of Natural Gas

Natural gas storage levels are running significantly below last year's levels (about 15 percent below) and below the five-year average (about 2 percent below).

U.S. imports of liquefied natural gas are down significantly year over year because U.S. prices aren't high enough to compete with the international market. If we had more LNG coming in, our storage would be significantly improved.

Oil and natural gas prices are somewhat linked because of the ability of large users -- primarily electric power generators -- to switch fuels.

Energy-saving Tips and Other information:

- Read more about [Save Energy and Money](#)
- Read more about [Energy Assistance information](#).