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April 3, 2009

**RECEIVED**

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**PUBLIC SERVICE COMMISSION**

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 Dr. 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  
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Enclosure

cc: Parties on Service List

AG: #2417810-v1

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MN PUC Docket No. G-002 - CI-08-871 Comments of  
MN Office of the Attorney General

Public Service Commission

PSC Staff

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 and Investigation into Northern States Power Company, a Minnesota corporation, 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**

**I. INTRODUCTION.**

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") March 11, 2009 Notice Requesting Comments regarding Xcel Energy's ("Xcel") January 12, 2009 *Update and Response to Commission Order* and its March 6, 2009 *Amended Petition and Proposed Resolution* in the above-entitled matter.

**II. BACKGROUND.**

Xcel contracts with Cellnet Technology Midwest, Inc. ("Cellnet") for meter reading services. Cellnet designed and manufactured automated meter reading modules to provide meter reading services to Xcel.<sup>1</sup> Cellnet supplied approximately 64,500 1074 v.2 model automated meter reading modules ("1074 module") for installation in Minnesota.<sup>2</sup>

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<sup>1</sup> Xcel's Reply Comments, *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 (September 19, 2008) at 7.

<sup>2</sup> Response to Commission Notice and Rebilling Plan, *In the Matter of an Investigation into Northern States Power Company, a Minnesota Corporation, Inaccurate Gas Meters,*

In August 2007, Cellnet distributed a Product Information Letter (“PIL”) informing Xcel that the 1074 module could experience issues that might “exacerbate the fail-safe design of the 1074 module.”<sup>3</sup> According to Xcel, the PIL indicated that the 1074 module, as designed, might permit water to enter the module and freeze, causing the module to fail.<sup>4</sup> Cellnet recommended four actions to prevent module failure: (1) ensure that the module is properly installed, which Cellnet was responsible for; (2) allow Cellnet to complete a module cover redesign; (3) allow Cellnet to complete a drive-dog assembly redesign; and (4) allow Cellnet to complete a re-specification of material for the drive dog assembly.<sup>5</sup> Xcel chose not to take any action in response to the warning,<sup>6</sup> nor did it conduct its own tests to determine the fitness of the modules.<sup>7</sup> In mid-August of 2007, Xcel deployed most of the 64,500 1074 modules in its Minnesota service territory.<sup>8</sup>

In January 2008, Xcel received some indication that the 1074 modules were failing.<sup>9</sup> By February 2008, field investigations confirmed that an “unusual” number of the 1074 modules

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*Recalculation of Bills, and Related Issues*, MPUC Docket No. G-002/CI-08-871 (August 21, 2008) at 2. (“Xcel’s Original Response”).

<sup>3</sup> UPDATE AND RESPONSE TO COMMISSION ORDER, *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 (January 12, 2009) at Attachment A, page 2 of 14. (“January 12, 2009 Update”).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* (it is not clear from Xcel’s description whether the PIL indicated that all 4 actions were necessary or if a single action, such as a module cover redesign would have prevented the failures).

<sup>6</sup> *See Id.*

<sup>7</sup> *Id.* at 1 (noting that under Xcel’s December 2006 AMR Agreement with Cellnet, Xcel had no right to conduct acceptance review on any Cellnet module types which had been installed prior to December 2006. Of course, this means Xcel did have the right to test those that were installed after December 2006, when a majority of the 1074 modules were deployed.)

<sup>8</sup> Xcel’s Original Response (August 21, 2008) at Attachment 2, page 2 of 43.

<sup>9</sup> *Id.* at 2.

were indeed experiencing a mechanical failure.<sup>10</sup> Despite the “unusual” number of failures, which caused thousands of Xcel customers to receive inaccurate and unreliable bills for months, 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.”<sup>11</sup>

Upon learning that Xcel had commenced rebilling its affected customers prior to providing notice to anyone, the Commission opened this docket to further investigate the issue.<sup>12</sup> On July 29, 2008, Xcel personnel informed Commission staff that Xcel had suspended its rebilling efforts and would not continue rebilling without Commission approval.<sup>13</sup> On August 1, 2008, the Commission published its notice directing Xcel to submit a filing to the Commission for approval of its plan for rebilling affected customers by August 21, 2008.<sup>14</sup>

Xcel filed its proposed rebilling plan and the OAG and Office of Energy Security (“OES”) filed initial comments. Xcel, the OAG and the Suburban Rate Authority (“SRA”) filed reply comments and the OAG subsequently revised its reply comments. The Commission met on November 6, 2008 to hear the matter. The Commission determined that it required additional

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<sup>10</sup> *Id.*

<sup>11</sup> St. Cloud Times, “Xcel Energy meters cause billing error,” (July 18, 2008). Attached to the OAG’s Initial Comments (September 9, 2008).

<sup>12</sup> 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).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

information before it could rule on Xcel's rebilling request. Consequently, the Commission ordered Xcel to make a subsequent filing responding to several Commission inquiries.<sup>15</sup>

On January 12, 2009, Xcel filed its responses to the Commission inquiries. In its response, Xcel explained that it may not have identified the extent of the inaccurate bills associated with the 1074 module failures and asked that its request for approval of its rebilling plan be held in abeyance until it more fully understood the scope of the 1074 module failure issues.<sup>16</sup>

On March 6, 2009, Xcel filed its Amended Petition and Proposed Resolution ("Amended Petition").<sup>17</sup> In its Amended Petition, Xcel seeks approval of a rebilling plan and proposes the following remedies and commitments to resolve the Commission's current investigation:

- Xcel will provide financial remedies through service quality credits to Minnesota customers affected by the 1074 module failures amounting to approximately \$520,000 (eliminating Xcel's entire distribution margin from the 1074 module failure).
- Xcel proposes adjustments to natural gas supply costs amounting to at least \$424,000 to ensure other Xcel customers are not harmed by these issues.
- Xcel will forgo any future cost recovery of 1074 module remediation costs.
- Xcel provides a commitment to return to customers their share of any future damages received from Cellnet.
- Xcel offers amended customer communications and billing.

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<sup>15</sup> ORDER REQUIRING FILINGS, *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, (November 14, 2008).

<sup>16</sup> January 12, 2009 Update at 2.

<sup>17</sup> AMENDED PETITION AND PROPOSED RESOLUTION, *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, (March 6, 2009) ("Xcel's Amended Petition")

- Xcel agrees to ongoing monitoring and reporting to improve the quality of service to its customers.<sup>18</sup>

The OAG now submits these Comments to address Xcel's Amended Petition.

### **III. XCEL'S PROPOSAL FOR RESOLUTION**

The widespread failure of Xcel's automated meter reading equipment created a unique situation, the likes of which have not been experienced by any other utility operating in this state. Minnesota statutes and Minnesota rules do not provide clear direction to the Commission on how to resolve this matter. Minnesota Rule 7820.3900 instructs utilities on how to rebill a customer when the utility discovers that a customer's meter has failed to register consumption because of normal wear and tear on the meter or similar anticipated mechanical issues associated with the expiration of the expected working life of the meter. Rule 7820.3900, however, does not contemplate the widespread failure of automated meter reading equipment caused by a third-party design defect, where the defective module is affixed to the utility's meter and results in thousands of meters failing and consequently inaccurately measuring consumption. Because of the uniqueness of this service quality deficiency, the appropriate resolution of this matter will not be restrained by the strictures of existing statutes and Commission rules.

The OAG recommends that an appropriate resolution to this matter will: (1) recognize the inadequate service Xcel provided its customers affected by the widespread failures of the 1074 modules; (2) recognize the difficulty that affected customers may experience in paying the rebilled amounts; (3) ensure that costs associated with the widespread failures and the subsequent remediation efforts are not borne by Xcel customers; and (4) commit to develop

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<sup>18</sup> Xcel's Amended Petition at 1-2.

systems and processes that will prevent similar widespread failures and accompanying billing issues from occurring again.

While the OAG believes that Xcel's proposed resolution generally recognizes the above-mentioned interests, the OAG requests clarification and commitments from Xcel on certain issues that will impact a determination as to whether Xcel's proposal is in the public interest.

**A. Remedial Measures**

**1. The Service Quality Credit**

Xcel acknowledges that its automated meter reading module failures resulted in deficient service quality and an inconvenience to its customers. As a result, Xcel proposes to provide a \$50 service quality credit to each of the estimated 10,400 affected Minnesota customers in the rebilling hold queue.<sup>19</sup> Xcel claims that the \$50 service quality credit will eliminate the margins it would otherwise collect on natural gas sales to these customers.<sup>20</sup>

The OAG supports Xcel's proposal to provide a service quality credit to customers affected by Xcel's module failures. The provision of a timely and accurate billing statement is an essential part of a utility's obligation to render adequate service to its customers. The module failures resulted in affected customers receiving inaccurate and untimely billing statements and as a result the affected customers will now be forced to pay additional, estimated and unexpected amounts for previous gas consumption. Xcel provided these affected customers deficient service quality. It would be unjust and discriminatory to charge these inadequately served customers the

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<sup>19</sup> Xcel's Amended Petition at 10-11.

<sup>20</sup> *Id.*

same rate as customers that received adequate service.<sup>21</sup> It is therefore appropriate that these customers receive a service quality credit if the Commission approves a rebilling plan.

## **2. Natural Gas Cost True-up Adjustment and Remediation Costs**

Xcel commits that unaffected customers will not experience any costs associated with the 1074 module failures. The OAG supports this commitment and recommends that the Commission include the commitment in any Commission approved resolution to ensure that any and all costs associated with the widespread failure of the modules are not borne by Xcel customers.

## **3. Cellnet Remedies**

Xcel commits that if it is allowed to rebill and it subsequently obtains damages from Cellnet or a settlement related to the 1074 module failures, Xcel will “provide customers with their share of these proceeds.”<sup>22</sup> It is unclear what Xcel believes would be Xcel’s share of damage or settlement proceeds and what it believes would be its customers’ share. To this end, it is not clear what incentive Xcel has to pursue litigation against Cellnet for the defective design of the 1074 model module. The OAG recommends that this issue be addressed before deciding on the appropriateness of Xcel’s petition and proposed resolution.

### **B. The 1074 v.4 Replacement Model Modules**

Xcel indicates that its amended rebilling proposal seeks to ensure that “unaffected customers will not experience any costs associated with the 1074 module failures.”<sup>23</sup> Xcel

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<sup>21</sup> Xcel’s electric tariff recognizes the inappropriateness of charging inadequately served customers the same rate as those adequately served. For example, Xcel provides a \$50 annual credit to customers who experience at least 6 service interruptions and a \$50 credit to individual customers for each outage that lasts more than 24 hours. *See* Xcel’s Minnesota Electric Rate Book, Section 6 Rules and Regulations, at 1st Revised Sheet No. 7.10.

<sup>22</sup> Xcel’s Amended Petition at 12.

<sup>23</sup> *Id.* at 11.

further commits that it will not seek recovery of costs associated with the automated meter reading module failures and remediation effort in any future natural gas rate case.<sup>24</sup>

The OAG recommends that Xcel's commitments to ensure that unaffected customers will not experience any costs associated with 1074 module failures and that Xcel will not seek recovery of costs associated with the 1074 module failures and the remediation effort in a future rate case include a commitment not to seek recovery of the same or similar costs associated with 1074 v.4 failures. The OAG notes that in Xcel's January 12, 2009 update to the Commission, Xcel indicated that the 1074 v.4 model modules that were used in the remediation effort failed Xcel's First Article Testing, but were nonetheless deployed. Xcel stated, "[a]lthough the 1074 v.4 module failed our process, it did not pose the same failure risk as the drive-related issues of the 1074 v.2 model module."<sup>25</sup> In a footnote, Xcel explained that as of January 12, 2009 about 30-40 1074 v.4 model modules had failed.<sup>26</sup>

The OAG is concerned that Xcel replaced a defectively designed module with a product that failed its First Article Testing. For this reason, the OAG recommends that Xcel be required to provide the same remedies to customers that may experience the same or similar service quality issues with the 1074 v.4 model modules as it is required to provide to customers affected by the 1074 v.2 model module.

**C. Verifiable Changes in Gas Consumption.**

Xcel indicates that when it determines the appropriate rebilling amount for an affected customer it will first estimate the affected customer's natural gas usage by looking at customer-specific consumption information for the same period in the prior two years, and then use the

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<sup>24</sup> *Id.* at 12.

<sup>25</sup> January 12, 2009 Update at Attachment A, page 4 of 14.

<sup>26</sup> *Id.* at note 3.

actual consumption from the lower of those two years as the estimated usage for the period of time that the 1074 module malfunctioned.<sup>27</sup> Then, Xcel indicates that it will consider individual circumstances that may affect the affected customers' estimated usage amount.<sup>28</sup> For instance, Xcel notes that if it does not have historical usage for the customer, Xcel will use the usage data it does have available from the current customer along with consumption data from prior customers at the same premise and adjust it for known or verifiable usage differences.<sup>29</sup>

It is unclear from Xcel's Amended Petition whether it will consider verifiable changes in usage if Xcel does have historical usage for the customer. The OAG believes that Xcel should be required to take consumption changes into consideration for all potentially rebilled customers, not just those where Xcel does not have historical usage for the customer. For example, an affected customer who has resided in the same premise for the last five years may have installed a high-efficiency furnace shortly before the 2007-2008 heating season. This conservation improvement can be verified and would presumably impact the amount of gas consumed during the heating season. Similarly, an affected customer may have left Minnesota and headed south for the 2007-2008 winter and set his or her thermostat at a relatively lower temperature. These types of conservation measures or similar verifiable changes in usage should be considered for all potentially rebilled customers.

#### **D. Outbound Call Scripts**

In its Amended Petition, Xcel included drafts of its Outbound Call Scripts that it intends to use when contacting affected customers to inform them of the rebill.<sup>30</sup> There are significant inconsistencies in these scripts regarding when and to whom Xcel provides information

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<sup>27</sup> Amended Petition at Attachment C, page 6 of 11.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Amended Petition at Attachment 8-12.

concerning the customers' right to present verifiable changes in usage that could affect Xcel's estimated rebilling amount. The scripts associated with outbound calls to Xcel's E-bill customers<sup>31</sup> and Low-Income customers<sup>32</sup> are the only scripts that appear to reference the ability to present information regarding a customer's verifiable change in usage patterns.

Further, the Low-Income customer script instructs the Xcel associate to "Tell the customer that if he/she has had a verifiable change in usage, such as installing a new energy efficient furnace, [Xcel] can have the rebilling amount reviewed for possible adjustments."<sup>33</sup> The outbound script for E-bill customers does not instruct the Xcel associate to tell the customer about the opportunity for a review of the rebilling amount if the customer has a verifiable change in usage. Instead, it appears to allow the Xcel associate to have a discussion about this if the customer raises a question about the rebilling amount.<sup>34</sup>

The outbound scripts for calls to affected customers that participate in the Average Monthly Payment Plan,<sup>35</sup> the AutoPay<sup>36</sup> option or to customers that have an Existing Payment Arrangement<sup>37</sup> do not include any instruction that the Xcel associate discuss verifiable changes in usage. The OAG believes all scripts should be consistent and mirror the instruction in Xcel's outbound script to Low-Income customers to "Tell the customer that if he/she has had a verifiable change in usage, such as installing a new energy efficient furnace, [Xcel will] have the rebilling amount reviewed for possible adjustments."<sup>38</sup>

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<sup>31</sup> Attachment 10.

<sup>32</sup> Attachment 12.

<sup>33</sup> Attachment 12 at 2.

<sup>34</sup> Attachment 10 at 1.

<sup>35</sup> Attachment 8.

<sup>36</sup> Attachment 9.

<sup>37</sup> Attachment 11.

<sup>38</sup> Attachment 12 at 2.

Additionally, while Xcel claims that it will allow extended, 18-24 month repayment plans for certain customers experiencing financial hardship,<sup>39</sup> this option is not offered to any customer, nor do the scripts include a discussion on whether a 12 month repayment is feasible. The OAG believes that some customers would benefit from the 18-24 month extended repayment option. The OAG recommends that language be included in the outbound call scripts to allow for a discussion about the customers individual circumstances that may necessitate an extended repayment plan.

#### **IV. CONCLUSION.**

Before making a determination on whether Xcel's proposed rebilling plan is in the public interest, the OAG recommends that Xcel should:

- Clarify, with respect to Cellnet remedies, what Xcel believes would be Xcel's share of damage or settlement proceeds and what it believes would be its customers' share.
- Clarify whether Xcel intends to provide the same remedies to customers that may experience the same or similar service quality issues with the 1074 v.4 model modules as it is required to provide to customers affected by the 1074 v.2 model module.
- Clarify whether it will consider all customers' verifiable changes in usage when determining an appropriate rebilled amount.
- Commit to including language in all outbound calling scripts that instructs the Xcel associate to tell the customer that if he/she has had a verifiable change in usage Xcel will have the rebilling amount reviewed for possible adjustments.

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<sup>39</sup> Attachment C at page 10 of 11.

- Commit to including language in all outbound calling scripts that allows for a discussion about the affected customers individual circumstances that may necessitate an extended repayment plan.

Dated: April 3, 2009

Respectfully submitted,

LORI SWANSON  
Attorney General  
State of Minnesota

s/ **William T. Stamets**

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