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April 3, 2009

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VIA ELECTRONIC FILING

Burl W. Haar, Executive Secretary
 Minnesota Public Utilities Commission
 350 Metro Square Bldg
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APR 06 2009

PUBLIC SERVICE COMMISSION

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**

Docket No. **G-002/M-09-224**

In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy, for Approval of Modifications to the Service Rules of the Company's Natural Gas and Electric Tariffs

Dear Mr. Haar:

Enclosed herein for filing in the above matter please find the Suburban Rate Authority's Comments pursuant to the Commission's order dated March 11, 2009, following the Company's January 12 and March 6, 2009 submissions. The representatives identified on the attached list are being served the same via U.S. first class mail.

Please contact our office if you have any questions.

Yours truly,

KENNEDY & GRAVEN, CHARTERED

/s/ James M. Strommen

James M. Strommen
 JMS:mmh

cc: All persons on the attached Service List

31 **PU-08-627** Filed: 4/6/2009 Pages: 16
MN PUC Docket No. G-002 - CI-08-871 Suburban Rate Authority's Comments to MN PUC

Investigation into Northern States Power for
Inaccurate Gas Meters, Recalculation of Bills
and Related Issues.

G002/CI-08-871
12-31-2008

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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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**

Docket No. **G-002/M-09-224**

In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy, for Approval of Modifications to the Service Rules of the Company's Natural Gas and Electric Tariffs

**COMMENTS OF THE
SUBURBAN RATE AUTHORITY**

INTRODUCTION

The Suburban Rate Authority ("SRA") submits these comments pursuant to the Commission's order dated March 11, 2009, following the Company's January 12 and March 6, 2009 submissions.

The Company's proposals appropriately acknowledge its responsibilities in this matter, including the SRA's primary concern, potential ratepayer subsidy of replacement costs that should be recovered from third parties or borne by the Company.

COMMENTS

A. COST OF MODULE REPLACEMENT.

The gas meter failures and billing problems described by the Company affect a number of customers within SRA cities, as well as many others in the Company's service territory. These failures have raised issues regarding the quality of products used in the delivery of gas, as well as the Company's own level of prudence in purchasing, contracting for and utilizing the facilities necessary to deliver gas to customers. Similar utility prudence-cost recovery issues were raised after a series of tragic events involving faulty gas lines purchased by CenterPoint Energy from Midwest Gas Company. See, In the Matter of the Application of CenterPoint Energy Minnesota

Gas, for Authority to Increase Natural Gas Rates in Minnesota, Docket No. G-008/GR-05-1380, Findings of Fact, Conclusions of Law, and Order, pp. 6-10 (attached). In GR-05-1380, the SRA objected to a “full recovery from ratepayers now – see what you can get from negligent third parties later” approach to CenterPoint’s recoupment of gas line replacement expenses. The problem with such an approach is that the less prudent a utility is in contractually protecting itself from misrepresentation or other breaches of a third party or the more culpable the utility is itself in the transaction, the less it will recover for the ratepayers. Further, the utility has less incentive in such a recovery effort, which is solely for ratepayers who have already reimbursed the utility. This formula waters down prudence standards and tends to signal to a regulated utility that it need not be as diligent in its transactions with third parties because ratepayers will cover much of the damage, up front.

The Company’s cost of investigation, module replacement and dispute resolution raised the same potential: immediate ratepayer funded recoupment and later recovery in inverse proportion to the Company’s diligence in protecting itself. For example, in the January 12, 2009 Company submission, it “did not conduct acceptance testing on the 1074v2 module prior to its deployment by Cellnet”; the Company asserts that it had no right to conduct such testing. (January 12, 2009 Xcel filing, p.1 of 14). Cellnet also distributed a Product Information Letter noting the potential for freezing and recommending preventive action, which the Company did not pursue. (*Id.* p. 2 of 14). It is unclear whether those facts, and potentially others, will affect the Company’s right to recover damages from Cellnet or other third parties.

However, the Commission and the state agencies have pursued these issues and, in the SRA’s view, the Company has responded appropriately in its proposal. It is the SRA’s understanding that the Company will not seek any recovery from ratepayers, at any time, for the

loss the Company has incurred or will incur associated with the replacement of the faulty modules. (March 6, 2009 Xcel filing, p. 2). Accordingly, the SRA has no further comments on this aspect of the Company's proposal other than to commend it for doing the right thing on these facts.

B. REBILLING AND NOTICE ISSUES

The SRA has no specific objection to Xcel's proposals regarding the rebilling of customers. The Company acknowledges that all affected customers have been inconvenienced and appears to have resolved all doubts in favor of the ratepayer in calculating proposed collected amounts. The SRA recognizes that the affected customers received and used the gas at issue and have yet to pay for it. Thus, when an indisputable amount of use is determined, a fair and accommodating repayment plan is appropriate.

To that end, notices to customers must be clear and understandable. The SRA notes one of the Company's proposed letters that could highlight its important provisions more than it does in current form. (March 6, 2009 filing, Att. 3 p. 1 of 1). The letter advises the customer of its "rights and responsibilities" in regard to the Installment Payment Plan. Because this letter confirms a contract made between the customer and the Company for repayment, it should have more bold text or numbered paragraphs to prominently identify to the customer, its obligations,

1. You must pay each installment in addition to the amount of your new monthly billings by the due date of each new bill.
2. If we do not receive full payment by the end of the prescribed timeframe of the payment plan, interest and late fees may be charged.
3. If your circumstances change, you have the right to renegotiate your installment payment plan arrangement provided you are not behind in your payments and

your new bill is not past due.

Important customer requirements such as these should not be lost in the body of a letter, as they may be for some in the submitted sample.

Dated: April 3, 2009

Respectfully submitted,

KENNEDY & GRAVEN, CHARTERED

By: /s/ James M. Strommen
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**ATTORNEYS FOR THE
SUBURBAN RATE AUTHORITY**

2009 SUBURBAN RATE AUTHORITY MEMBER CITIES

Bloomington	Maple Grove
Brooklyn Park	Maple Plain
Burnsville	Maplewood
Chanhassen	Minnetonka
Circle Pines	Mound
Columbia Heights	Oakdale
Deephaven	Orono
Eden Prairie	Plymouth
Edina	Robbinsdale
Fridley	Roseville
Golden Valley	Shakopee
Hastings	Shoreview
Hopkins	Spring Lake Park
Lauderdale	Spring Park
Long Lake	Wayzata
	Woodbury

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of CenterPoint
Energy for Authority to Increase Natural Gas
Rates in Minnesota

ISSUE DATE: November 2, 2006

DOCKET NO. G-008/GR-05-1380

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

PROCEDURAL HISTORY

I. Initial Filings

On November 2, 2005, CenterPoint Energy (CenterPoint or the Company), a division of CenterPoint Energy Resources Corp. (CERC), filed a general rate case. CenterPoint issues no publicly traded stock, since it is a division of CERC, which itself is a wholly owned subsidiary of CenterPoint Energy, Inc. (CPE). CenterPoint requested a rate increase of \$40,878,000, or approximately 2.4 percent, over existing rates.

On December 21, 2005, the Commission issued three Orders in which it accepted CenterPoint's filing as being in proper form and substantially complete, suspended CenterPoint's proposed final rates until the end of this case, and referred this matter to the Office of Administrative Hearings for a contested case proceeding.¹ The Commission also approved CenterPoint's request for interim rates, and authorized CenterPoint to increase its revenues by \$34,719,000 annually, or approximately 2.07 percent, subject to refund, beginning with service provided on and after January 1, 2006. The Commission directed CenterPoint to impute revenues to all of its customers on an equal percentage basis.

II. The Parties and their Representatives

The Commission's December 21, 2005 NOTICE AND ORDER FOR HEARING identified the Minnesota Department of Commerce (the Department) and the Minnesota Office of Attorney General-Residential and Small Business Utilities Division (RUD-OAG) as parties to this proceeding. On January 20, 2006, Administrative Law Judge Beverly Jones Heydinger issued the FIRST PREHEARING ORDER in this matter, granting intervenor status to Energy CENTS

¹ This docket, 1) ORDER ACCEPTING FILING AND SUSPENDING RATES;
2) NOTICE AND ORDER FOR HEARING; and 3) ORDER SETTING INTERIM RATES.

Coalition (ECC),² Suburban Rate Authority (SRA), and Legal Services Advocacy Project (LSAP), and participant status to Cornerstone Energy (Cornerstone).³

The parties were represented as follows:

Eric Swanson and David Aafedt, Attorneys at Law, Winthrop & Weinstine, 225 South Sixth Street, Minneapolis, MN 55402, appeared for CenterPoint Energy Resources Corp. (CenterPoint or the Company).

Karen Finstad Hammel and Valerie Smith, Assistant Attorneys General, 1400 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared for the Minnesota Department of Commerce (Department).

Ron Giteck and Steve Alpert, Assistant Attorneys General, 900 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared for the Minnesota Office of the Attorney General-Residential Utilities Division (RUD-OAG).

Pam Marshall, Executive Director, and Chris Duffrin, Assistant Director of the Energy CENTS Coalition (Energy CENTS or ECC), 823 East 7th Street, Saint Paul, Minnesota 55106, appeared on behalf of Energy CENTS.

James Strommen, Attorney at Law, Kennedy & Graven, 200 South Sixth Street, Suite 470, Minneapolis, Minnesota 55402, appeared for the Suburban Rate Authority (SRA).

III. Proceedings Before the Administrative Law Judge (ALJ)

A. Evidentiary Hearings

Parties filed direct, rebuttal, and surrebuttal testimony in writing, and Administrative Law Judge (ALJ) Heydinger held evidentiary hearings on April 11, 2006 in the Large Hearing Room at the offices of the Public Utilities Commission (Commission) in St. Paul, Minnesota. The evidentiary hearing continued until April 13, 2006.

B. Public Hearings

Public hearings were held by videoconference on March 29, 2006, between St. Paul, Brainerd, Plymouth, North Mankato, and Willmar. Additional public hearings were held in Minneapolis at the Minneapolis Community and Technical College on March 28, 2006; in Coon Rapids on March 30, 2006; in Bloomington on April 5, 2006; and in Minneapolis at the Sabathani Community Center on April 11, 2006.

² On March 6, 2006, the Commission granted ECC's request for a preliminary determination of eligibility and issued its ORDER MAKING PRELIMINARY DETERMINATION OF ELIGIBILITY FOR INTERVENOR COMPENSATION in this matter.

³ LSAP and Cornerstone did not participate any further in this case.

1. CenterPoint is entitled to increase gross annual revenues in the manner and in an amount consistent with the terms of this Order.
2. Within 30 days of the service date of this Order, the CenterPoint shall file with the Commission for its review and approval, and serve on all parties in this proceeding, revised schedules of rates and charges reflecting the revenue requirement for annual periods beginning with the effective date of the new rates, and the rate design decisions contained herein. CenterPoint shall include proposed customer notices explaining the final rates. Parties shall have 14 days to comment.⁵

Having examined the record and carefully considered the report of the ALJ, together with the parties' exceptions to the ALJ's Report and their oral arguments on October 3 and 5, 2006, the Commission accepts, adopts, and incorporates herein nearly all of her findings and conclusions of law. At a few points, however, the Commission has reached different conclusions, in whole or in part, as delineated and explained below in the text of this Order.

In addition to discussing the issues on which the Commission did not adopt the ALJ's recommendations, in whole or in part, the Order also addresses issues on which a party filed exceptions to the ALJ's recommendation. In discussing those issues, the Order explains why the Commission has rejected the position taken in the party's exceptions and adopted the ALJ's recommendation.

VI. Statutory Deadline

On May 1, 2006 and May 19, 2006, CenterPoint filed two motions with the ALJ for extension of the deadline established in Minn. Stat. § 216B.16, subd. 2 for the Commission to take final action on its rate request, stating its willingness to extend the deadline to November 2, 2006. On May 24, 2006, the ALJ forwarded to the Commission a recommendation that the Commission grant the Company's two motions.

No party has objected to these extensions, either to the ALJ or to the Commission. The Commission finds that it is in the public interest to approve these extension requests since they allowed the parties to develop the record and to brief the relevant issues without unduly constraining the Commission's review and decision herein.

Accordingly, the Commission's statutory deadline to take final action on the Company's rate request has been extended at the Company's request and for good cause to November 2, 2006.

VII. Midwest Replacement Project

A. Background

On December 28, 2004, a natural gas fitting on a service line at a business in Ramsey, Minnesota failed, resulting in an explosion that killed three persons, seriously injured another and destroyed the

⁵ *In the Matter of the Application of CenterPoint Energy for Authority to Increase Natural Gas Rates in Minnesota*, PUC Docket No. G-008/GR-05-1380, OAH Docket No. 15-2500-17032-2, Findings of Fact, Conclusions of Law, and Recommended Order (September 8, 2006) at 65.

building. The subsequent investigation determined that a fitting had been improperly installed in such a manner that a sudden, catastrophic failure could occur. The improper fittings had been installed in 1980 by North Central Public Service Company, a predecessor company to Midwest Gas Company, which in turn transferred the service lines in question to CenterPoint. Records of the installations indicated that a large number of service lines could be affected by the improper fittings.

In May 2005, the Minnesota Office of Pipeline Safety (MNOPS) issued a Compliance Order to address the problem identified in the Ramsey Incident. The MNOPS Order required that CenterPoint replace or visually inspect all plastic service lines installed prior to 1984 by North Central Public Service Company. CenterPoint was also obligated to maintain detailed records of what was found and what remedial measures were taken.

Under the direction of the MNOPS Order, CenterPoint initiated the Midwest Gas Replacement Project. The Midwest Gas Replacement Project inspected over 30,000 service lines and replaced those lines where needed.

B. CenterPoint's Position

1. Recoverability

CenterPoint included \$38,000,000 as estimated 2005 and \$700,000 as projected 2006 tangible capital expenditures in its rate base arising from the Midwest Gas Replacement Project. CenterPoint maintained that the rate base treatment of those expenses was required under Minn. Stat. § 216B.16, subd. 11, which states:

Pipeline safety programs. All costs of a public utility that are necessary to comply with state pipeline safety programs under sections 216D.01 to 216D.07, 299F.56 to 299F.64, or 299J.01 to 299J.17 must be recognized and included by the commission in the determination of just and reasonable rates as if the costs were directly incurred by the utility in furnishing utility service.

2. Third Party Recovery

CenterPoint has identified several sources of compensation for the replacement project's cost. These include: (1) the Asset Exchange Agreement dated December 23, 1992 between Arkla, Inc. and Midwest Power Systems, Inc. which contains various provisions including an "Indemnification" provision and an "Assumption of Certain Liabilities" provision; (2) CPE's third party action against MidAmerican Energy Co., the successor to Midwest Gas and North Central Public Service; and (3) CPE's notice to the Claims Department of AEGIS Insurance Services, Inc. regarding the Ramsey explosion which resulted in the insurance company putting on notice Performance Pipe (a division of Chevron), MidAmerican Energy, Dresser Piping Specialties, and other relevant parties that their products may have been involved in the Ramsey explosion.

CenterPoint agreed with the Department's recommendation that the Commission require the Company to report to the Commission all third party recovery obtained, together with a proposal for returning any such recovery to ratepayers.

C. The ALJ's Recommendation

1. Recoverability

The ALJ concluded that CenterPoint has demonstrated that the costs of the Midwest Gas Replacement Project were necessary to comply with a State pipeline safety program and that by statute, the costs must be recognized and included in the Commission's determination of just and reasonable rates.

2. Third Party Recovery

The ALJ found that the approach agreed upon by the Department and the Company for tracking recoveries is a reasonable method of refunding to customers the amounts collected in a timely fashion, without unduly burdening CenterPoint, and without causing confusion to customers by generating multiple adjustments to their billings. The ALJ stated that the refund mechanism would ensure that the money recovered (if any) will be returned to customers. The ALJ concluded that the tracking/refund proposal is reasonable, will prevent double recovery, and is appropriate for approval by the Commission.

D. The RUD-OAG's Exception to the ALJ's Recommendation

In its exceptions to the ALJ's report, the RUD-OAG argued that the ALJ had insufficient basis in the record to conclude that Minn. Stat. § 216B.16, subd. 11 applied, i.e., that the costs asserted by the Company as "necessary to comply with state pipeline safety programs" (in this case, the MNOPS Order) were in fact expended for that purpose.

As a further exception, the RUD-OAG argued that the ALJ's approved approach to the third party recovery issue (recovery now followed by tracking and reporting third-party recovery) was insufficient in that it did not give CenterPoint an incentive to zealously seek third-party recovery.

E. The Suburban Rate Authority's Exception

The SRA objected to what it characterized as the ALJ's ratepayer payment now/possible reimbursement later approach. The SRA argued that Minn. Stat. § 216B.16, subd 11 does not supercede a prudence review of the utility expenditures in question before CenterPoint is allowed to recover the \$40 million replacement expenses. The SRA stated that CenterPoint's prudence at the time it acquired the pipeline assets in question in 1993 is relevant to its request for recoverability of replacement project costs in this docket, must be determined before CPE's right to recover is decided, and, along with other factors affecting CenterPoint's right to recover from MEC, is currently being litigated.

In short, the SRA argued that the MEC litigation should run its course and the incentive for CenterPoint to win the highest possible settlement should remain on CenterPoint's shareholders. Only when the outcome of the MEC litigation, including appeals, is known should the Commission evaluate CenterPoint's prudence and, hence, the rate treatment of the Replacement Project costs.

F. Commission Analysis and Action

The Commission finds the ALJ's recommendation correct and will adopt it with one modification, as explained below.

Minn. Stat. § 216B.16, subd. 11 states:

All costs of a public utility that are necessary to comply with state pipeline safety programs under sections 216D.01 to 216D.07, 299F.56 to 299F.64, or 299J.01 to 299J.17 must be recognized and included by the commission in the determination of just and reasonable rates as if the costs were directly incurred by the utility in furnishing utility service.

The Commission finds that the action proposed by the RUD-OAG and the SRA in their exceptions (denial of recovery or substantial delay in that recovery) is not consistent with the requirements of Minn. Stat. § 216B.16, subd. 11.

First, the Commission rejects the RUD-OAG's assertion that the record is inadequate to support recovery of the costs in question. In the context of the statute's specific mandate, the record established by CenterPoint is indeed adequate to invoke the statute's mandate and justify recovery in this case. In addition, there are sound public policy reasons for interpreting the statute's mandate to allow recovery of the specific category of expenses identified (state pipeline safety program-related expenses). The record supports that these costs were incurred in direct response to a directive from the Office of Pipeline Safety. Pipeline safety is a paramount concern (even more so after the tragic explosion on December 28, 2004) and a narrow interpretation of what is required for recovery may discourage or impede utilities from making expenditures to meet directives of the Office of Pipeline Safety. In addition, as a practical consideration, the RUD-OAG did not identify any particular expenditure which it challenged as inappropriate for recovery.

Second, in light of the statute, placing all recovery of these expenses on hold pending the outcome of litigation between CenterPoint and the third parties as advocated by the RUD-OAG and the SRA is not warranted.

At the same time, the RUD-OAG and the SRA have a good point that if the Company is allowed to recover all these expenditures from ratepayers at once, the Company may well lose motivation to litigate sound claims they have against third-parties to recover those expenditures.⁶ No party disputes that in this case, any moneys recovered from these sources against third parties should be returned to the rate payers to avoid the Company double-collecting these expenses, once from the

⁶ CenterPoint has identified several sources of compensation for the replacement project's costs. These include: 1) the Asset Exchange Agreement dated December 23, 1992 between Arkla, Inc. and Midwest Power Systems, Inc. which contains indemnification provisions; 2) CenterPoint's third party action against MidAmerican Energy Co. (MEC), the successor to the companies that sold the defective pipelines to CenterPoint; and 3) CenterPoint's notice to the Claims Department of AEGIS Insurance Services, Inc. regarding the Ramsey explosion which resulted in the insurance company putting on notice Performance Pipe (a division of Chevron), MEC, Dresser Piping Specialties, and other relevant parties that their products may have been involved in the Ramsey explosion.

rate payers and again from the third-party defendants. Indeed, the Company has proposed to turn over any such recovery not to the Company's shareholders but to the rate payers and the ALJ specifically accepted this.

The Company insisted that having filed the lawsuits against MEC and others to recoup the expenditures in question, no additional motivation to thoroughly pursue these claims is necessary. Its attorneys, the Company stated, are bound by professional obligation to pursue those suits through vigorously to the end. The Commission acknowledges the Company's representation that the suits will be pursued vigorously to the end and factors that representation into its ultimate decision on this matter. Having done so, however, the Commission still finds it prudent on behalf of ratepayers to defer some meaningful level of recovery as additional motivation to promote the Company's full exploration of the Company's rights to recover against the third parties.

Applying the rule of reasonableness to the broad terms of the statute, therefore, the Commission finds that in these circumstances it is consistent with the requirements of Minn. Stat. § 216B.16, subd. 11 to modify the ALJ's recommendation by deferring recovery of 10 percent of the capitalized costs in question pending the Company's exhaustion of its legal remedies against the third parties.

VIII. The Plant in Service Component of Rate Base/Revenue Requirement

A. Background

In setting rates for a public utility, the Commission must determine the total level of investment by the utility in its "utility property used and useful in rendering service to the public." Minn. Stat. § 216B.16, subd. 6. In utility rate cases, such investments are referred to as the utility's rate base. CenterPoint's initial filing maintained that the test year rate base for the 12 month period ending December 31, 2006 amounted to \$626,844,000.

B. CenterPoint's Proposal and the Department's Recommendations

However, CenterPoint's actual 2005 plant placed in service was \$7.3 million less than what the Company had forecasted. Since the Company's test year rate base and revenue requirement are dependent upon, among other items, the forecasted additions to plant in service, the Department argued that the known difference between forecasted and actual expenses should be taken into consideration in setting the Company's test year rate base and revenue requirement. The Department also argued that the Company had not shown that it is reasonable to add \$1,991,000 of inspection and clerical expenses related to the Midwest Replacement Project into the 2005 actual plant balance.

C. The ALJ's Recommendations

1. Adjustments to the Test Year Expenses

The ALJ agreed with the Department's proposal to adjust to what is now known to be the actual rate base beginning balance, specifically adjusting CenterPoint's projected beginning of test year figure to recognize the actual 2005 ending plant balance. The ALJ reasoned that because the rates being set are carried forward over a period of years, there is a need to ensure that the starting point is as accurate as possible. Where known significant changes can be identified, the ALJ stated, adjusting the starting point is appropriate.

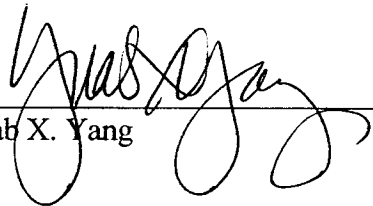
AFFIDAVIT OF SERVICE BY U.S. MAIL

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Yuab X. Yang of Minneapolis, Minnesota, being first duly sworn, deposes and says that on the 3rd day of April, 2009, she served the following document:

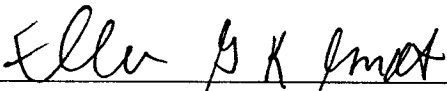
1. Comments of the Suburban Rate Authority

upon the following parties on the attached list by placing a copy in an envelope addressed to each addressee and depositing the same in the United States Mail at Minneapolis, Minnesota.

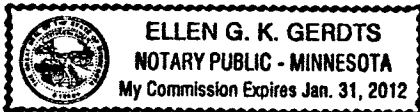


Yuab X. Yang

Subscribed and sworn to before me
this 3rd day of April, 2009.



Notary Public



Investigation into Northern States Power for
Inaccurate Gas Meters, Recalculation of Bills
and Related Issues.

G002/CI-08-871
12-31-2008

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