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STATE OF MINNESOTA

BEFORE THE

MINNESOTA PUBLIC UTILITIES COMMISSION

Comments by Roger Colton on Behalf of Community Action Partnership Ramsey &Washington Counties (CAPRW) Energy Assistance Program – Program Director Sandra Pyles	*	
Petition for an Automatic Bill Credit Pilot Program	* * *	Docket Nos. E002/M-22-266 and E002/RP-19-368

STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION

Katie Sieben Chair
Joseph Sullivan Vice Chair
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Hwikwon Ham Commissioner
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Comments

Introduction

Xcel Energy should be commended for proposing its two year "Automatic Bill Credit Pilot Program" ("ABC Pilot"). There can be little question but that access to energy assistance, even when that assistance is offered, has been an ongoing issue facing both utilities and advocates for many years. The primary energy assistance program in Minnesota, as elsewhere, is the federal Low-Income Home Energy Assistance Program (LIHEAP). In 2022, Minnesota received $267,299, 058 in LIHEAP appropriations, and served 127,784 households. Even with that, however, the program served only 21% of the state's income-eligible population (613,035). This low participation rate extends to utility programs, as well, which often rely on households applying for LIHEAP in order to access utility-funded affordability benefits.

These low participation rates do not represent criticisms of either the federal LIHEAP program or the corresponding utility programs. LIHEAP is a federal Block Grant program. Through a block grant program, participation is limited by the amount of funding appropriated by Congress for the program in any given year. When the money runs out, participation ceases. For example, any increase in LIHEAP participation in Minnesota would not be matched with a corresponding increase in LIHEAP funding to the State. Other federal Block Grant programs (such as Women

Infants and Children [WIC] and Temporary Assistance to Needy Families [TANF]) also suffer from low participation.

In addition to the limited funding, as with many assistance programs, the lack of participation in energy affordability programs can be attributed to any number of understandable reasons. Some households do not know about the program(s). Other households know about the program, but don't know how to apply for it. Some customers mistakenly do not believe they qualify (perhaps, for example, believing that owning a home disqualifies them). Some fear the risk of being stigmatized should they receive public assistance. And, perhaps most worrisome, research has shown that the very stress caused by having insufficient income is a barrier unto itself: the old adage that "when you're up to your neck in alligators, its hard to remember your goal is to drain the swamp."

Barriers to participation need not even be program-specific. British research, for example, has found that if households have found that any one program has been particularly impenetrable, those households tend to impute those difficulties to all programs (and thus don't even attempt to navigate other programs).

Given all this, there should be nothing but kudos to Xcel Energy for seeking to develop a new way to deliver benefits.

With this introduction, I offer comments on several specific issues below.

Targeting based on burdens at median income.

The one concern I have about the proposed ABC Pilot is the extent to which it relies on "median income" as the basis for the distribution of bill credits. For all the reasons presented above, it is understandable *why* Xcel seeks to avoid an "application" process through which the Company would seek to document individual household incomes. Nonetheless, it would seem that a more precise measurement of "need" would be possible while still incorporating the utility's proposed CBG approach.

Not having access to the list of CBGs that comprise the Xcel service territory, I undertook an inquiry into CBGs for Minnesota as a whole. I ranked each CBG on three different metrics: (1) the level of Median Household Income ("1" is the lowest MHI); (2) the percentage of population with income at or below 200% of Federal Poverty Level ("1" is the highest percentage); and (3) the percentage of households with income below $35,000 ("1" is the highest percentage. I then selected the 150 CBGs with the *lowest* Median Household Income and compared that list to the other two metrics to determine the overlap. The data is in the Table below:

Overlap Between Census Block Groups with the Lowest Median Household Income,
Highest Percentage of Population below 200% FPL,
and Highest Percentage of Households with Annual Income <$35,000

	150 Lowest MHI	All Other MHI

Lowest MHI	150	0
Highest %<$35,000	59	91
Highest % <200% FPL	90	60

As can be seen, while there is some association between those CBGs statewide and CBGs with the highest percentage of population with income below 200% of Poverty Level, the association is not substantial. Looking at the CBGs with the lowest Median Household Income picks up only a fraction of the CBGs with the lowest incomes as measured by Poverty Level.

While I do not recommend a change in the proposed structure of the two-year ABC Pilot, I encourage the Commission to require Xcel to devote particular attention to the impacts of its ABC Pilot in those Census Block Groups with high percentages of low-income households. In this regard, I discuss "data collection" in more detail below.

Targeting based on a 4% electric burden

Xcel explains that it targeted its CBGs based on whether the energy burden resulting from the Median Household Income and average energy bills (by CBG) resulted in an electric energy burden of 4% of income or more. Xcel explained that a threshold of 3% would have resulted in the selection of 190 CBGs (and about 68,000 households), while the 4% threshold resulted in the selection of 77 eligible CBGs and about 23,000 households.

The selection of 4% of income is a reasonable decision, even setting aside the impact of that choice on the size of the pilot project. Starting with an affordable burden of 6% for *total* home energy, the question becomes what proportion of that 6% to allocate to non-heating electricity and what proportion to allocate to natural gas (or other non-utility fuels). According to the Energy Information Administration (EIA), home electric bills tend to be somewhat higher for households than are natural gas bills. Accepting the principle that it is appropriate to limit choices to whole percentages –being both easily explainable and acknowledging the fact that the chosen measure is not more precise than it really is—the choice of how to allocate the 6% comes down to a choice between 3%/3%, or 4%/2%. Given the EIA data I note above, the 4% burden which forms the basis of the ABC Pilot is appropriate.

Balancing "Over-Inclusion"

Xcel acknowledges that its proposed ABC Pilot will result in a certain degree of "over-inclusion." The utility states that "under this pilot, within qualifying CBGs, there ill be households who will still receive a bill credit." (Petition, at 10) Xcel continues that "similarly, within CBGs that do not qualify for the pilot –because CBG-level median incomes are higher and energy burden lower—there could be households with electric burden exceeding 4 percent who will not receive a bill credit." (Id.)

Accepting that a certain degree of "over-inclusion" will occur is reasonable for the following reasons. First, within the construct of a *pilot*, the fact of some degree of over-inclusion will allow Xcel to test whether that degree is reasonable or unreasonable. In this regard, the Commission's decision would be to direct Xcel to explicitly acknowledge the "over-inclusion" result and to develop metrics by which to measure the "reasonableness" of the degree to which that occurs.

Second, the "over-inclusion" (and, conversely, "under-inclusion") which Xcel acknowledges cannot be avoided irrespective of the program type which the Company might propose. Whatever program design is adopted will involve some degree of "line-drawing." If Xcel offered a tiered rate discount, for example, there would be decisions on where to draw the lines demarcating one "tier" from another. Discounts are then directed toward achieving an affordable burden at the mid-point of each tier. Within each tier, therefore, there would be a degree of "over-inclusion" (at the top of the tier) and "under-inclusion" (at the bottom). In addition, no matter what the "top" of the tier is defined to be, there will be *someone* who is $1 over that top, and who would thus either receive a lower discount or (if looking at the top tier) receive no discount at all. A certain amount of "over-inclusion" and "under-inclusion," in other words, is inherent in "line-drawing." And line-drawing is inherent in program design.

Even within a percentage of income program (PIPs), which arguably is the most precisely drawn program available, there is a certain degree of "over-inclusion" and "under-inclusion." Most PIPs, in addition to capping bills at an affordable percentage of income, have program design features such as maximum bill credits and minimum monthly charges. Each of those design features creates a degree of "over-inclusion" and/or "under-inclusion."

Xcel presented an appropriate design. It did not ignore, nor did it deny, the possible presence of "over-inclusion." It instead acknowledged the issue. The next step in those appropriate actions would be to identify that issue as one to be explicitly considered in the program evaluation.

Missed Payments

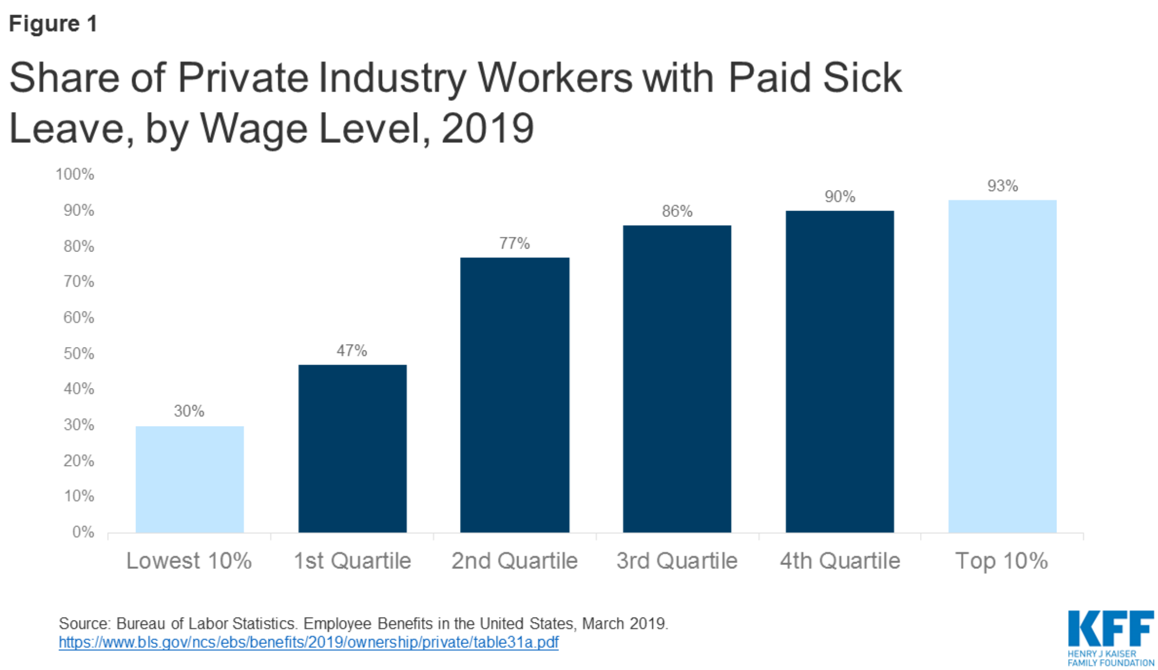
Xcel presented an appropriate resolution of the question of what should occur in the event that a customer receiving bill credits through the ABC Pilot should miss one or more of their monthly payments. According to Xcel, "customers would continue receiving an Automatic Bill Credit unless they are disconnected or move out of an eligible CBG." (Petition, at 13).

This program design is not merely reasonable, but appropriate for both procedural and substantive reasons. Procedurally, one question to be tested by the pilot is the degree to which, if at all, the bill credits will make bills more sustainably payable by participating customers. To allow this proposition to be tested, program participants should be subject to the same credit and collection practices as any other residential customer. They should not be treated more strictly, nor should they be treated more leniently. Indeed, even if a program participant is disconnected for nonpayment, any reconnection should reinstate the program participant along with their participant status.

The Automatic Bill Credits are designed not to be an "incentive" to make payments. They are instead designed to address the underlying unaffordability of bills. The question of how offering these credits affects customers over the period of the ABC Pilot should be allowed to play out.

Substantively, allowing program participants to continue their participation acknowledges that there are elements of "income" in addition to the "level" of income. One of the essential elements of income is also the "fragility" of income.

Low-income workers in particular can have their ability to pay utility bills threatened due to unavoidable disruptions in their economic lives. A personal illness requiring time off or the illness of a child requiring time off generally represents a permanent loss of income. The jobs of low-wage workers simply do not provide the paid leave required to respond to such circumstances.[1] The Chart below, for example, shows the percentage of workers with paid sick leave by wage level as reported by the U.S. Census Bureau.



[1] Claxton and Levitt (March 2020). Paid Sick Leave is Much Less Common for Lower-Wage Workers in Private Industry, Kaiser Family Foundation.

The vulnerabilities faced by low wage workers to economic disruptions due to the lack of paid leave has been well-documented.[2] The difference is particularly evident for women. The Kaiser Family Foundation reports that "across the board, low-income women and those with part-time employment are less likely to be offered any of these benefits compared to their higher income and full-time counterparts."[3] The KFF data is set forth in the Table below. KFF reports that "low-income mothers who must miss work when their child is sick are far more likely to lose pay (75%) compared to higher income mothers (33%).[4]

Working Women who are low-income or in part-time jobs are less likely to be offered employer benefits such as paid sick leave and parental leave

	Paid Vacation	Paid Sick Leave	Paid Parental Leave	Paid Family and Medical Leave
Income				
<200% FPL	51%	46%	27%	28%
=>200% FPL	74%	73%	48%	45%
Work Status				
Part-time	37%	35%	20%	19%
Full-time	78%	75%	50%	48%

[2] Claxton (March 2020). Paid Sick Leave is much less common for lower-wage workers in private industry, Kaiser Family Foundation (Lower wageworkers are much more likely to lack access to paid sick leave. "Among the 25% of private industry occupations with the lowest wages ($13.25 per hour or less) 47% have access to paid sick leave; for the 10% of private industry occupations with the lowest wages ($10.48 per hour or less), the percentage with access to paid sick leave falls to 30%. Workers in higher-wage occupations are much more likely to have access to this benefit. For example, 77% of private industry workers with occupations in the second wage quartile ($13.25 to $19.00 per hour) have access to paid sick leave, with the percentage rising up to 90% of private industry workers with occupations in the top wage quartile.") See also, Ranji, et al. (Dec. 2020). Coronavirus puts a spotlight on paid leave policies, Kaiser Family Foundation; Boyens, Karpman, and Smalligan (July 2022). Access to paid leave is lowest among workers with the greatest needs: Findings from the December 2021 well-being and basic needs survey, Urban Institute.

[3] Ranji, et al. (April 2021). Difficulty Tradeoffs: Key Findings on Workplace Benefits and Family Health Care Responsibilities from the 2020 KFF Women's Health Survey, Kaiser Family Foundation.

[4] Id.

It is not, however, simply the lack of paid leave that presents situations leading to a potential inability to pay utility bills at a particular time. It is the lack of flexible work arrangements. One study reports that "many lower-wage workers are caring for multiple children, generally in homes where both parents are working or in single parent homes. Many also are providing care to elderly relatives or other family members with significant health conditions. Yet others have acute or chronic medical conditions themselves that often require medical treatment or time away from work. Thus, like higher-wage worker, many lower-wage workers need flexible scheduling, alternative start and end times, compressed workweeks, and the ability to work some hour at home (providing the job can be done at home)."[5] Nonetheless, "lower wage and lower-income workers have fewer options and less access to flexible work arrangements than higher-wage and higher-income workers."[6]

In sum, allowing ABC Pilot participants to continue in the program should they miss payments recognizes the ongoing economic challenges which they face. To the extent that program participants miss sufficient payments to merit the disconnection of service for nonpayment, they should also face the same consequences that any other residential customer would face.

Layering Energy Assistance Benefits

Xcel made an appropriate decision when it proposes to allow the "layering" of energy assistance benefits. In allowing this "layering" of benefits, Xcel avoids running afoul of the federal LIHEAP statute.

Neither Xcel (nor the Commission) may reduce the level of discounts because of the availability of LIHEAP. The federal LIHEAP statute is quite explicit in this regard. The statute states that "the amount of any home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible house-hold under this title shall not be considered income or resources of such household (or any member thereof) for any purpose under any Federal or State law. . ."[7] Moreover, the federal LIHEAP office has found that using the existence of a LIHEAP grant as the basis to reduce the level of a discount offered to low-income households has the inappropriate effective impact of redirecting that grant away from benefitting the recipient to the benefit of other utility ratepayers.

The statute may not be avoided by characterizing the LIHEAP grant as a reduction in prices rather than as income or resources to the LIHEAP recipient. The federal Food Stamp statute has

[5] Danziger and Boots (2008). Lower-Wage Workers and Flexible Work Arrangements, Urban Institute, Georgetown University Law Center.

[6] Id.

[7] 42 U.S.C. section 8623(f)(1).

an identical provision to that which is in the LIHEAP statute. That provision states that "The value of benefits that may be provided under this chapter, whether through coupons, access devices, or otherwise, shall not be considered income or resources for any purpose under any Federal, State or local laws, including but not limited to, laws relating to taxation, welfare, and public assistance programs. . ."[8]

> The legislative history of the Act makes clear that the intent of Congress was not to provide a substitute for other forms of aid to low-income persons but to supplement that aid in order to improve their level of nutrition. It is evident that if welfare assistance is reduced to take into account the value of food stamps received under the Act, the ultimate effect of the Act will be not to raise, but merely to maintain pre-existing levels of nutrition and the purpose of the Act will be frustrated. Such, however, is the effect of the actions of the defendants in these cases."[9]

The courts have further held:

> The Secretary of Agriculture argued in [a prior case] that it was permissible to disallow fuel expenses in calculating food stamp benefits for families receiving (low-income fuel assistance) funds because those funds were not being considered a resource; rather, an expense was being disallowed. . .We see no logical reason why it should be permissible for a state to achieve a net effect contrary to Congress' intent merely by subtracting from one side of an equation instead of the other.[10]

Whether one agrees or disagrees with the impact of the federal LIHEAP statute on program design is not an issue presented by the Xcel petition. By allowing the layering of energy assistance benefits, neither the Company nor the Commission need be concerned about the restrictions of the federal LIHEAP statute.

Monthly Bill Credit

Xcel made an appropriate decision to "not […] vary the CBG eligibility testing or size of the bill credit by month." (Petition,at 12). Providing a single bill credit from month to month would avoid the "significant complexity" associated with recalculating energy burdens each month. To *not* provide a single bill credit, would, in fact, seem to undo much of what Xcel is seeking to accomplish in offering the ABC Pilot with which to begin.

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[8] 7 U.S.C. 2017(b).

[9] Dupler v. City of Portland, 421 F. Supp. 1314 (D. Me. 1976)

[10] Clifford v. Janklow, 733 F.2d 534 (8th Cir. 1984).

The one concern about Xcel's treatment of monthly bill credits, however, is with its statement that the Company

> Propose[s], however, that the Automatic Bill Credit should not cause a customer's bill to become negative (i.e., a refund). In the event receiving the Automatic Bill Credit on top of other discounts or bill credits already received would cause a customer's electricity bill to go below zero, the Automatic Bill Credit will be limited to what would result in a zero bill.

(Petition, at 10). This recommendation will have the same effect as subtracting LIHEAP from the bill credit with which to begin. Moreover, it limits the effectiveness of the program over the course of the year. On the one hand, during the month in which a customer may receive a LIHEAP benefit posted against the customer's account, and possibly for months after the receipt of LIHEAP, the bill credit will be reduced. As a result, customers who receive LIHEAP will receive fewer benefits than customers who do ***not*** receive LIHEAP, in direct conflict with the federal LIHEAP statute.

On the other hand, and unrelated to LIHEAP, during lower cost months, the odds of a monthly credit exceeding the monthly bill increase. The amount by which the bill credit is reduced in those low cost months is not then recaptured in the months in which bills might be seasonally higher. Accordingly, the ***annual*** credit that is provided to program participants is less than the program is designed to provide. The 4% target burden, however, is an ***annual*** burden and the bill credits are intended to reduce bills to that level on an annual basis. By not allowing any bill credits at any point over the course of the year, the Company is creating a program design feature that will prevent it from achieving the affordable 4% burden which it seeks to achieve.

Having said that, the fundamental principle of the Company to not allow bill credits could be achieved with a slight modification of its proposal. Rather than not allowing a bill credit in any given month, the Company should treat the ABC Pilot in the same fashion that it treats Budget Billing. At the end of each 12-months of participation, Xcel should be allowed to true-up the credits it has provided. If the application of the ABC Pilot credits has resulted in a credit on a participant's bill at the end of the 12-month period, the credit can and should be applied to adjust the bill for the coming year. As a result, the Company does not "overpay" a customer who might have lower annual bills. However, neither does it artificially reduce the annual credits that a customer might otherwise experience due simply to the seasonal nature of electricity bills.

Finally, it should be self-evident that if a customer leaves the system, or becomes ineligible for continued ABC Pilot participation because they move, any bill credit existing at the time of the final bill should be recaptured by the Company and not refunded to the customer. The purpose of the pilot is to reduce a customer's bill, not to provide cash benefits to the customer.

Data Collection

Xcel makes a reasonable proposal that provides for an independent third-party evaluator to assess the impacts of the ABC Pilot at the end of the two-year period. Two aspects of that proposal, however, are somewhat disappointing. First, the Petition is somewhat disappointing in that, while it recommends a third-party evaluation, it presents no evaluation plan even on an initial basis. At a minimum, the Commission should require the Company to continue to engage in its collaborative to: (1) articulate the specific outcomes it hopes to achieve through the Pilot; and (2) the specific metrics it proposes to track by which to measure those outcomes. Specifying the data collection which the Company intends to pursue, in other words, is not a task to be delayed until "later." Specifying the outcomes, along with the data by which those outcomes will be measured, should be an element of program design that is articulated at the very beginning and agreed to by the Company, the Commission, and the relevant stakeholders.

Summary and Conclusion

Based on the data and discussion above, the ultimate conclusion is that Xcel should be commended for presenting an innovative, well thought-out, proposal for its ABC Pilot. The ABC Pilot directly addresses an issue that has been acknowledged for years (if not longer) amongst stakeholders involved with attempting to address home energy unaffordability. With the exception of adopting the few modifications that have been recommended above, the Xcel ABC Pilot should be adopted.

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