

**STATE OF MINNESOTA  
BEFORE THE PUBLIC UTILITIES COMMISSION**

Nancy Lange	Chair
Dan Lipschultz	Vice Chair
Matt Schuerger	Commissioner
Katie Sieben	Commissioner
John Tuma	Commissioner

In the Matter of Alternative Rate Design  
Stakeholder Process for Xcel Energy/MPUC

DOCKET NO. E002/CI-15-662

**COMMENTS OF THE OFFICE  
OF THE ATTORNEY GENERAL**

The Office of the Attorney General – Residential Utilities and Antitrust Division (“OAG”) submits these Comments in response to the Notice of Comment Period issued on April 19, 2017. In its Notice, the Commission seeks comment on three issues: (1) what procedural action should the Commission take with respect to Xcel’s proposal to file a rate design pilot by November 2017? (2) Should the record in this docket eventually be incorporated into the record for Xcel’s pilot? (3) Should this generic docket continue in parallel to Xcel’s pilot?

**I. THE COMMISSION SHOULD MOVE FORWARD WITH DEVELOPMENT OF A TIME OF USE RATE.**

In response to a Notice of Comment Period issued by the Commission, on March 31, 2017, the OAG filed Comments recommending that the Commission obtain the services of an expert to develop an opt-out Time-of-Use (“TOU”) rate design pilot for Xcel’s residential customers. On the same date, Xcel filed comments suggesting that it was developing a TOU rate outside of this docket.

At the outset, it is important to communicate that the OAG intends to participate in the development of a TOU rate for Xcel’s customers wherever it takes place, but that its preference would be a process led and directed by the Commission. The public interest would be better served by having a TOU pilot proposal developed by an independent expert than one working for

Xcel. As the OAG explained in its earlier comments, Xcel has a financial conflict of interest because a well-designed TOU rate will reduce the amount of capital investments required to serve customers, which will reduce the return on those investments that are earned by shareholders.<sup>1</sup> Xcel's fiduciary duty to act in the interests of its shareholders is thus in conflict with the primary goals of a TOU rate. Xcel's recommendation would give the Company the opportunity to act on that incentive outside of the Commission's view. As a result of this conflict, the OAG suggested that the Commission should obtain the services of an independent expert to develop a TOU rate for Xcel.

The Commission is thus faced with at least two competing, mutually exclusive recommendations. Allowing Xcel to move forward with its alternative process, even by remaining silent on the company's actions, would effectively decline the recommendation that a TOU pilot be developed by an independent expert reporting to the Commission. In light of these competing recommendations, the Commission should decide how to move forward—and provide its rationale in a written order—just as it does in all other instances in which parties have asked the Commission to take specific action.

## **II. IF THE COMMISSION DECLINES TO DEVELOP A RESIDENTIAL TOU PILOT, IT SHOULD ORDER XCEL TO DO SO.**

In its filing and presentation, Xcel indicated that it intends to develop a residential TOU pilot program and propose it later this year. While it would be preferable for the TOU pilot to be developed through a Commission-led process, the OAG does agree that there should be a TOU pilot for Xcel's residential customers.

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<sup>1</sup> A basic principal of utility ratemaking is that utilities are allowed the opportunity to earn a return upon capital investments, or rate base. This means that returns earned for shareholders increase as a utility's rate base increases. A rate designed to reduce the amount of rate base investments necessary to serve customers is good for ratepayers because it reduces rate base and returns; it would, in contrast, have the impact of reducing returns earned for shareholders.

At this time, however, Xcel has not provided any details of its proposal and has not actually put a proposal on the table. While Xcel has signaled that it intends to follow through on its plan to develop a pilot program, it is not currently under any obligation to do so. The Commission could provide more clarity and certainty to the process by creating an order point directing Xcel to develop a pilot. The record in this proceeding demonstrates that a residential TOU rate could provide significant benefits for Xcel's customers. If the Commission declines to move forward by obtaining independent assistance to develop a TOU pilot, the Commission should ensure that these benefits are realized by ordering Xcel to propose a residential time of use pilot no later than December 31, 2017.

**III. REGARDLESS OF THE VENUE, THE INFORMATION GATHERED IN THIS PROCEEDING SHOULD BE USED TO INFORM THE COMMISSION'S DECISIONS ON ALTERNATIVE RATE DESIGNS FOR XCEL.**

Over the course of the two years this docket has been open, parties have provided useful insight regarding alternative rate design options and the Commission has held several workshops that also provided information from broad perspectives. Regardless of the arena in which the Commission's decisions are made, it is important that this information inform any decisions regarding alternative rate designs. There does not appear to be any reason to exclude this information from future alternative rate design records, or any objection to including it. For that reason, the Commission should ensure that the information in this record is used to inform its decision about alternative rate designs for Xcel, regardless of which dockets those decisions are made in.

**IV. THIS DOCKET SHOULD REMAIN OPEN.**

The Commission should leave this docket open and direct that Xcel's TOU rate design pilot be developed with the most transparency possible in an officially sanctioned Commission proceeding. Regardless of the Commission's decision on this recommendation, however, this

proceeding should remain open because there is still not an actual proposal for a residential TOU pilot. While Xcel has suggested it has begun developing one, that process is not yet complete and it would seem premature to close the proceeding at this stage.

This proceeding should also remain open because it is a useful avenue to discuss other alternative rate design issues. For example, the OAG's Comments on March 31, 2017 recommended that the Commission continue to investigate opt-in Critical Peak Pricing rates for residential customers, as well as Time-of-Use rates for Small General Service customers, in this proceeding. The Administrative Law Judge who presided over the evidentiary portion of Xcel's pending rate case also recommended that several other issues be rolled into this docket, including the definition of "peak period" for C&I customers, the "Renew-a-Source" recommendation of the Xcel Large Industrials, and the design of Xcel's interruptible rates.

Dated: May 15, 2017

Respectfully submitted,

LORI SWANSON  
Attorney General  
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**s/ Ryan P. Barlow**

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May 15, 2017

Mr. Daniel Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 Seventh Place East, Suite 350  
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**RE:** *In the Matter of Alternative Rate Design Stakeholder Process for Xcel Energy/MPUC*  
**Docket No. E002/CI-15-662**

Dear Mr. Wolf

Enclosed and e-filed in the above-referenced matter please find Comments of the Office of the Attorney General – Residential Utilities and Antitrust Division

By copy of this letter all parties have been served. An affidavit of service is also enclosed.

Sincerely,

*s/ Ryan P. Barlow*

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