

January 11, 2022

Commissioners
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, MN 55101

Re: Docket No. G-008/M-21-377
In the Matter of a Petition by CenterPoint Energy and the City of Minneapolis to
Introduce a Tariffed On-Bill Financing Pilot Program

Dear Commissioners:

Minnesota Realtors® (MNR) was founded in 1919 and is the largest professional trade association in Minnesota with over 21,000 members involved in all aspects of the real estate industry. Our members work with property owners and aspiring property owners every day.

MNR supports policies that recognize and protect the rights of all Minnesotans to own, use and transfer real property and opposes policies that unreasonably and unnecessarily increase the cost of the real estate transaction, thereby increasing the cost of housing and homeownership, and policies that adversely affect the timeliness of the real estate transaction.

On August 20th, 2020, MNR submitted a comment letter urging the Public Utilities Commission (Commission) to reject the City of Minneapolis' request to establish a "tariffed on-bill financing (TOBF) program."

On September 1st, 2021, CenterPoint Energy and the City of Minneapolis filed a petition requesting that the Commission approve a "Tariffed On-Bill Financing Pilot Program."

MNR has reviewed the September 1st, 2021 petition and nothing in the proposed TOBF pilot program resolves the concerns we raised in our previous comment letter. On the contrary, a close reading of the details reveal the extent to which this TOBF pilot program would violate existing contract law and unreasonably interfere with the real estate transaction, harming both current owners/sellers and successor owners/buyers/tenants.

Therefore, MNR respectfully urges the Commission to deny the TOBF pilot program petition.

In MNR's August 20th letter, we stated our belief that there are enough similarities between the Property Assessed Clean Energy Loan (PACE) program and the proposed

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TOBF program to warrant caution and denial of the proposed TOBF program. Those concerns also apply to the TOBF pilot program petition.

Again, the proponents assert that the obligation for the improvements is not a “loan” nor a “lien” and repayment runs with the property/meter. However, the TOBF pilot program would allow CenterPoint Energy to initiate real property improvements, have the property owner/renter pay for them for up to 12 years and, most problematic, have the authority to pass that obligation on to a subsequent owner/renter who was not a party to the original contract without the ability for the property owner to prepay and with no publicly recorded notice of such obligation for a prospective buyer. An owner participating in the pilot and who wants to sell the property will likely encounter difficulties finding a buyer that understands and is willing to assume the ongoing responsibility for maintaining and paying for the previously completed upgrades.

The most problematic aspect of this TOBF pilot proposal for property owners is how it interferes with their ability to freely transfer their property. That interference takes the form of the “Participant Owner Agreement” and the “Participant Renter Agreement” requirements, where the owner must obtain a signed “Successor Owner Notice and Acknowledgment” / “Successor Renter Notice and Acknowledgment” prior to the execution of a purchase agreement or lease. Failure to obtain the necessary signature from a successor owner/renter would, according to the TOBF pilot program petition, *“...constitute the Owner’s acceptance of consequential damages in any action by a successor renter or owner related to [Program Name] and permission for a tenant or purchaser to break their lease or purchase agreement without penalty.”*

Proposing that the Commission approve creating a new cancellation of purchase agreement, new cancellation of lease agreement, and new liability for incurring “consequential damages” outside of what currently exists in Minnesota Statutes as part of a petition to the Commission to establish a pilot program is breathtaking. This is clearly outside the scope of the Commission’s power and authority prescribed by the Minnesota Legislature and the Commission’s ability to allow such a proposal is very likely unconstitutional. Not only does this proposal impair the obligation of contracts, but it also attempts to establish a private right of action and restrict legal remedies. These extremely significant policy questions are appropriately reserved for the Legislature to consider and to explore all the potential consequences through the deliberative committee process.

Setting aside the obvious lack of legal authority and constitutionality for a moment, it is also important to consider the impact this TOBF pilot program would have on typical owners/sellers and successor owners/buyers, as it relates to the real estate transaction, which will become more complicated and difficult if this pilot program is approved:

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- Owners/sellers may not adequately understand the requirement to provide notice to subsequent owners/buyers, or simply forget their obligation to provide notice to the successor owner/buyer if the property is sold years after enrolling in the pilot program and there is no public recordation of this ongoing fee that transfers to the new property owner/renter and no ability to prepay
- Some successor owners/buyers may not be comfortable taking on obligations they were not party to in the original contract and decline to purchase the property. This is harmful to owners/sellers because it reduces the number of potential buyers for their property
- Creating a new opportunity to cancel a purchase agreement and the ability to claim “consequential damages” that are inconsistent with current law will limit rights, create delays, add cost, and increase litigation in what should be routine real estate transactions
- Seems unlikely that successor owners/sellers (think of the third successor owner), who were not the original enrollees in the TOBF pilot program, will recall all the important maintenance and notice requirements and follow them precisely, for which CenterPoint is the sole judge of compliance
- Family circumstances differ and may change over time. If an individual owner upgrades their property to meet the needs of one individual, those upgrades may not necessarily work when the number of occupants in the home increases to four or five. Related, upgrades an owner/seller makes to the property may not be acceptable to a family of four or five resulting in fewer interested buyers in the property

Again, MNR urges the Commission to deny the petition by CenterPoint Energy and the City of Minneapolis to introduce a tariffed on-bill financing pilot program.

Thank you for the opportunity to comment on this important matter.

Sincerely,



Paul Eger
Senior Vice President, Governmental Affairs
Minnesota Realtors®