February 3, 2022

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. G008/M-21-377

Dear Mr. Seuffert:

Attached are the Comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

Petition by CenterPoint Energy and the City of Minneapolis to Introduce a Tariffed on Bill Pilot Program

The Petition was filed on September 1, 2021 by:

Amber Lee
Director, Regulatory Affairs
CenterPoint Energy
505 Nicollet Mall
PO Box 59038
Minneapolis, MN 55459-0038

The Department recommends that the Minnesota Public Utilities Commission (Commission) **deny the petition**. The Department is available to answer any questions that the Commission may have.

Sincerely,

/s/ SUSAN L. PEIRCE
Rate Analyst Coordinator

SLP/ar
Attachment

Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce
Division of Energy Resources

Docket No. G008/M-21-377

I. BACKGROUND INFORMATION

On March 1, 2021, the Minnesota Public Commission (Commission) issued its ORDER ACCEPTING AND ADOPTING AGREEMENT SETTING RATES, AND INITIATING DEVELOPMENT OF CONSERVATION PROGRAMS FOR RENTERS. [March 1 Order] In the Order, the Commission directed CenterPoint Energy (CPE or the Company) and the City of Minneapolis (City) to file a Pilot Program to provide Tariff on Bill Financing (TOBF) for the provision of energy efficiency measures to low-income rental customers.

On September 1, 2021, CPE and the City of Minneapolis filed a TOBF Pilot Program.

On September 17, 2021, the Commission issued a *Notice of Comment Period* seeking comment on the proposed TOBF Pilot, and requesting comment on:

1. Should the Commission allow deferred accounting for costs to be incurred to develop and operate the 3-year TOBF pilot program as requested by CenterPoint/City? If deferred accounting is approved, who should bear the cost burden?
2. Should the Commission approve the tariff language, agreements, and other exhibits to implement the pilot offered in the proposal?
3. Is the CenterPoint/City TOBF pilot proposal a program that (1) is likely to facilitate substantial energy savings, (2) is efficient at delivering energy savings, (3) is operationally sound, and (4) is consistent with Minnesota law?
4. What other factors could be relevant to the Commission's inquiry?

II. SUMMARY OF THE FILING

A. COMMISSION DIRECTIVE ON TOBF PILOT

In its March 1 Order, the Commission required that any proposal by CPE/City address the objectives and potential viable pilot options to meet those objectives including the use of a TOBF program, Conservation Improvement Program options or a combination of the two programs. In addition, the Commission directed that any proposed pilot program addresses the following:

1. Describe the program's scope, including participation enrollment goals,
2. Identify a goal and a cap for the number of participants under the pilot program.
3. Describe program costs and cost cap.
4. Describe how the pilot program will be administered.
5. Describe the customer consent process.

6. If applicable, describe the process for informing future participants.
7. Describe the cost-effectiveness calculation for determining participant eligibility.
8. Describe the disconnection policy for participants, if applicable.
9. Describe the process to review and confirm annual energy savings and corrective steps if energy savings are not realized, if applicable.

Finally, the Commission set forth requirements for reporting on and evaluating the pilot program.

B. SUMMARY OF TOBF PILOT PROGRAM

1. Program Scope and Participation Goals

The TOBF Pilot is a three-year pilot intended to offer an alternative affordable means for weatherizing homes for low-income renters and households in the City of Minneapolis with a goal of serving 500 customers per year. CPE currently offers Low-income Weatherization and Rental Efficiency programs through its Conservation Improvement Program (CIP) program. The TOBF Pilot is aimed at broadening weatherization and efficiency opportunities in Minneapolis to underserved low- and moderate-income households and renters.

2. Pilot Program Goals and Caps

The TOBF has a goal of serving 500 customers per year, but does not have a cap on the number of customers it will serve. As detailed in Item 3, below, the proposed budget includes cost caps.

3. Program Costs and Cost Cap

CenterPoint estimates the total cost of the Pilot at $14.8 million, and proposes an overall spending cap of $25.6 million. Table 1, below summarizes the estimated costs of the Pilot

Table 1: Summary of TOBF Budget and Cost Caps

Category	Total Spending Estimate		Spending Cap.	
	Participant Cost	Ratepayer Cost	Participant Cost	Ratepayer Cost
Energy Upgrades	$7,500,000		$15,000,000	
Start-Up Activities:		$1,756,500		
Pilot Delivery Costs[1]:	$900,000	$1,321,500	$900,000	$1,321,500
Utility Rate of Return[2]:	$1,125,000	$2,214,000	$2,250,000	$4,429,000
Total before Defaults	$9,525,000	$5,292,000	$18,150,000	$7,506,000
4% Est. Default	$(345,000)			
Total Program Cost				

[1] Excludes $450,000 for the CIP Home Energy Squad that will be provided by CIP
[2] Participant rate of return = 2.5%; Ratepayer rate of return = 4.92%
Source: Exhibit L: Pilot Cost Estimate Details, CPE filing

Because of the overlap in some activities, CPE proposes to leverage CIP funds in providing some of the activities for the TOBF. CPE will use its CIP Home Energy Squad to provide energy audits and direct install measures such as pipe insulation and low-flow aerators. The Company estimates the total cost of utilizing CIP Home Energy Squad services to be $450,000 or approximately $300 per TOBF participant. In addition, the Company proposes to use applicable rebates from its CIP program, as well as from the customer's electric utility to reduce the total cost to be financed. CPE estimates using $750,000 - $1,500,000 of its CIP Air Sealing & Insulation Instant Rebates, or between $500 and $1,000 per TOBF participant.

CenterPoint's current rate of return is 7.42 percent.[1] The Company proposes to allocate recovery of its rate of return between participants and ratepayers, with participants paying 2.5 percent and ratepayers paying 4.92 percent.

4. Administration of the Pilot

CenterPoint plans to select a third-party entity to administer and operate its TOBF Pilot through an RFP process. The program operator will be responsible for educating customers and property owners about the TOBF Pilot, as well as CIP and other no-cost energy options available for low-income customers. In addition, the program operator will perform on-site energy assessments, develop a cost-effectives model for the property, and identify eligible energy upgrades. For customers choosing to participate in the TOBF, the program operator will ensure that all appropriate consent forms are completed, arrange for installation of energy upgrades, and conduct a billing analysis within 1-2 years after installation of the upgrades to confirm energy savings. In the event, energy savings are not being realized, the program operator will investigate and determine a cause, and arrange for repairs of any malfunctioning upgrades that were installed under the Pilot.

5. Customer Consent Process

Both the property owner and tenants at a location where energy upgrades will be installed are required to sign a Participant Owner or Participant Renter Agreement. The Company states it will make agreements available in English, Spanish, Somali and Hmong.

6. Process for informing customers when a property turns over

As proposed, financial obligations under the TOBF Pilot would pass to new tenants and property owners as tenants move or homeowners sell their homes. To address concerns about notification and transparency, the Participant Owner Agreement, which applies to both rental property owners and homeowners, requires that successor owners and renters be notified of their obligations under the TOBF, and sign an acknowledgment that they have been notified of their obligations. Should the

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[1] I*n the Matter of the Application by CenterPoint Energy Resources Corporate d/b/a CenterPoint Energy Minnesota Gas for Authority to Increase Natural Cas Rates in Minnesota,* ORDER ACCEPTING AND ADOPTING AGREEMENT SETTING RATES AND INITIATING DEVELOPMENT OF CONSERVATION PROGRAMS FOR RENTERS, Docket No. E008/GR-19-524, March 1, 2021.

Participant Owner fail to obtain the new tenant or owner's signature, the Agreement includes the possibility of "consequential damages" and permission for the new renter or purchases to break their lease or purchase agreement without penalty.

7. Cost-effectiveness calculation

The TOBF Pilot evaluates the cost-effectiveness of an energy efficiency measure based on the participating customers annual program charges relative to the estimated weather-normalized annual electric and gas bill savings resulting from the energy upgrade. Upgrades will be considered cost-effective if the participants annual program charges are 80 percent or less of the estimated annual bill savings resulting from the upgrade. Although CPE is a natural gas utility, the TOBF Pilot proposes to include ancillary electric energy savings in its estimate of the cost-effectiveness for determining eligibility. The Company asserts that electric energy savings will result from many of the energy upgrades included in the Pilot along with the primary decrease in natural gas usage.

8. Disconnection policy for participants

CenterPoint considers payments made under the TOBF Pilot to be a part of utility service. Consequently, failure to pay their TOBF payment on their bill could result in disconnection of service.

9. Process if energy savings are not realized

The program operator will conduct at least one billing analysis for each participant following one year of participation in the Pilot, or if a participant is in danger of disconnection. The analysis will review gas and electric bills for each location and confirm the total energy savings resulting from participation. If savings were not achieved, the program operator will investigate the cause, and if a malfunction of the energy equipment is found to be the cause arrange for repairs to be made.

Failure to achieve energy savings may also be the result of changes in participant behavior or damage to the energy upgrade by the participant. In such instance, TOBF charges will remain in place. CPE states that any reasonable uncertainty about the cause will be resolved in favor of the customer.

If expected energy savings do not occur, and no cause can be determined, participation in the Pilot will be terminated, and the remaining charges waived.

10. *Cost Recovery*

CenterPoint requests the use of a tracker account and deferred accounting. CPE would track ongoing O&M expenses, depreciation expenses, and return on investments less any costs are recovered from Pilot participants, and uncollectible participant expense. Following one year of operation of the Pilot, the Company proposes to establish a rider for recovery of the deferred costs based on the tracker balance and forecasted Pilot costs and revenues.

III. DEPARTMENT ANALYSIS

The Department considers improving outreach and access to low-income households (both homeowners and renters) to energy efficiency programs to be a laudable goal. Nonetheless, the Department has both legal and operational concerns with the proposed TOBF Pilot as set forth below.

A. LEGAL CONCERNS

The TOBF Pilot was first proposed in CenterPoint's 2019 rate case.[2] In its Initial Brief and Reply Brief, the Department set out its concerns that the Pilot was inconsistent with state law because it does not qualify as a "service" under Minn. Stat. § 216B.02, subd. 6 or a CIP program under Minn. Stat. § 216B.241. As discussed below, the Department continues to have these same concerns with the current iteration of the TOBF Pilot.

1. *The TOBF Pilot does not qualify as a utility "service" eligible for recovery in "rates" under state law*

The Commission is responsible for setting just and reasonable public utility "rates." As part of this determination, the Commission must give due consideration to the cost of furnishing "service."[3] The Legislature has defined both "rate" and "service" in statute. The term "service" means:

> natural, manufactured, or mixed gas and electricity; the installation, removal, or repair of equipment or facilities for delivering or measuring such gas and electricity.[4]

Because CenterPoint is a gas utility, the meaning of "service" is limited to natural gas itself, equipment used to deliver natural gas to customers, and the activities associated with providing this natural gas.

The term "rate" means the costs of providing service. Specifically, the Legislature listed the following: "every compensation, charge, fare, toll, tariff, rental, and classification, or any of them, demanded, observed, charged, or collected by any public utility for any service . . . ."[5]

The term "rate" also describes the terms and conditions applicable to the service contract or tariff: "any rules, practices, or contracts affecting any such compensation, charge, fare, toll, rental, tariff, or classification."[6] All together, these definitions created by the Legislature do not allow rate recovery of costs not directly associated with delivering utility service. In this instance, the contemplated TOBF

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[2] *In the Matter of the Application by CenterPoint Energy Resources Corporate d/b/a CenterPoint Energy Minnesota Gas for Authority to Increase Natural Cas Rates in Minnesota,* Initial Brief of the Minnesota Department of Commerce at 5, Docket No. G008/GR-19-524, October 7, 2020.
[3] Minn. Stat. § 216B.16, subd. 6.
[4] Minn. Stat. § 216B.02, subd. 6.
[5] *Id.*, subd. 5.
[6] *Id*.

charges are not recoverable in "rates" because they are neither collected for natural gas costs nor the costs of "equipment or facilities for delivering or measuring" natural gas. Importantly, the Minnesota Court of Appeals came to a similar conclusion that energy-efficiency improvements do not constitute "service" absent an express statutory exception in 1985.[7]

Over the past 35 years, the Legislature has created express exceptions for specific programs to overcome this limitation rather than amend the definitions of "service" and "rate." Minnesota's CIP program statute overcomes this limitation, for example, by treating energy efficiency investments and expenses "*as if* . . . [they] were directly made or incurred by the utility in furnishing utility service."[8] The Legislature also has expressly authorized other energy efficiency programs like the PACE program and On-Bill Repayment program in statute.[9] The upshot of these definitions, court decisions, and past Legislative action is that the Legislature likely needs to expressly authorize the TOBF pilot program too.

2. The TOBF Pilot does not qualify as a CIP program under state law

The TOBF Pilot also cannot be approved as a CIP program at this time. The Legislature created a two-step process for the CIP program approval. First, utilities submit program design proposals to the Department for approval. The Department's review is limited to assessing the efficacy of the proposal based on criteria codified in its administrative rules.[10] If the Department approves the program design, then the utility may seek cost recovery approval from the Commission.[11] In this instance, however, CenterPoint has not submitted to the TOBF Pilot to the Department for consideration as a CIP program proposal. Without program design approval, any cost recovery for a TOBF Pilot as a CIP program is premature.

B. INTERACTION WITH CIP

The Department has a number of concerns regarding the potential overlap between the TOBF Pilot and CenterPoint's CIP programs. CenterPoint's CIP portfolio includes a number of dedicated low-income programs aimed at improving energy efficiency for low-income customers, including

- **The Low-Income Renter Efficiency Program** (LIRE) – LIRE provides energy efficiency, weatherization and equipment repair and replacement for rental properties with 1 – 4 residential units in which at least 50 percent of the units are occupied by low-income renters. Under the LIRE program, costs are split between the Company and building owners.

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[7] *In the Matter of the Implementation of Utility Energy Conservation Improvement Programs*, 368 N.W.2d 308, 313 (Minn. Ct. App. 1985) (explaining that "energy conservation improvements are not "service"); *see also In the Matter of Xcel Energy's Petition for Approval of Elec. Vehicle Pilot Programs*, No. A19-1785, 2020 WL 5626040, at *9 (Minn. Ct. App. Sept. 21, 2020) (distinguishing items included in "services" as customer premise improvements such as conduit, wiring, and electrical chargers from "ultimate power-consuming items" such as appliances).
[8] Minn. Stat. § 216B.16, subd. 6b.
[9] Minn. Stat. § 216C.437; Minn. Stat. § 216B.241, subd. 5d(b).
[10] Minn. R. 7690.0100–.1600.
[11] Minn. Stat. § 216B.241, subd. 2b.

- **The Low-Income Weatherization Program** (LIW) –The LIW provides no-cost major weatherization services to low-income residential customers by using the Company's CIP funds to leverage federal funding from the Department of Energy Weatherization Assistance Program.

- **Low-Income Free Heating System Tune-Up –** Provides free low-income furnace or boiler tune-ups and safety check services.

- **Non-Profit Affordable Housing Rebates (NPAH)** – Provides incentives for energy efficiency measures in new construction and retrofit low-income housing projects by partnering with affordable housing non-profit organizations.

- **Low-Income Multi-Family Housing Rebates** – Offer bonus rebates to qualifying multi-family buildings.

- **EZ-Pay On-Bill Financing and Repayment Loan Program** – Finally, CenterPoint offers the EZ-Pay on-bill financing and repayment loan program through its CIP program. EZ-Pay is available to residential natural gas customers, including property owners and non-resident owners of rental properties. Renters are not eligible to participate. Under the EZ-Pay Program customers work with Company authorized trade allies to obtain financing for energy efficiency improvements to their property. Financing is provided by a third-party vendor. Loan repayment is billed on the customer's CenterPoint bill.

The recently adopted Energy Conservation and Optimization Act (ECO Act) more than doubles the CIP low-income spending requirement for all IOUs. ECO requires natural gas public utilities to "spend at least one percent of its most recent three-year average gross operating revenue from residential customers in the state on low-income programs."[12] As a result of the ECO Act, CPE's 2022-2023 minimum low-income spending requirement increase by approximately $3.6 million.[13]

To help meet the new ECO low-income spending requirements and increase participation in its CIP programs, CPE has been working been working to expand its existing CIP low-income program offerings. On September 1, 2021, CenterPoint requested to modify the eligibility requirements for its LIRE program to automatically qualify rental properties as low-income if the property is located within Minneapolis Green Zones[14] and Areas of Concentrated Poverty.[15] The Company's proposal to expand LIRE eligibility was approved by the Department on November 1, 2021.[16]

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[12] Minn. Stat. §216B.241, Subd. 7(a)
[13] *In the Matter of CenterPoint Energy's 2021-2023 Natural Gas Conservation Improvement Program Triennial Plan,* Docket No. G008/CIP-20-478, November 1, 2021.
[14] Green Zones Initiative - City of Minneapolis (minneapolismn.gov)
[15] Areas of Concentrated Poverty are defined as areas where the overall poverty rate is over 40 percent.
[16] *In the Matter of CenterPoint Energy's 2021-2023 CIP Modification Request,* DECISION OF THE MINNESOTA DEPARTMENT OF COMMERCE, Docket No. G008/CIP-20-478, November 1, 2021.

Additionally, on November 1, 2021, CenterPoint submitted modifications to some of its CIP low-income programs. Among the proposed changes was expanding the low-income eligibility requirements for its LIW Program, as it did with the LIRE Program, to include all 1-4 unit rental properties in Minneapolis Green Zones starting in 2022 and Areas of Concentrated Poverty, as identified by census tract, starting in 2023.[17]

In a number of these programs, the cost of installing energy efficiency measure is shared between the Company and the property owner. In contrast, the TOBF Pilot targets renters, including future tenants to pay the cost of the Program. Although the Pilot costs are intended to be offset by the energy savings, the length of the program and turnover in renters may not fully accomplish this goal, as will be discussed comments below.

Given the expansion of low-income spending required by the ECO Act and CenterPoint's expanded eligibility for certain CIP low-income programs to rental properties in Minneapolis Green Zones and Areas of Concentrated Poverty, the Department is concerned that many of the low-income customers that the TOBF Pilot proposes to target will be covered by existing CIP programs. In addition, for moderate income customers who may not be eligible for the existing CIP Programs, the Company's existing EZ-Pay Program may be a reasonable alternative. Finally the Department has concerns with asking ratepayers to pay the Company's rate of return for customers and or landlords who may be able to contribute more towards the cost of the upgrades.

Finally, in CenterPoint's, most recent November 1, 2021, CIP modification request, the Company outlined some potential new CIP low-income program offerings it is exploring:

> CenterPoint Energy is exploring several new program ideas over the coming months for proposal by Q3 in 2022. For example, an important new program the Company is considering is a dedicated low-income program serving low-income customers in 5+ unit multi-family buildings based of our Multi-Family Building Efficiency program. The Company is considering other potential ideas, such as a dedicated low-income behavior program or hybrid behavioral program providing unique services to our low-income customers using the existing mechanism of the Home Energy Reports program. Another idea would be a dedicated low-income program (or service across existing programs) focused on enhancing partnerships with non-profits on outreach to low-income customers. The Company has found success working with organizations such as food shelves, the Salvation Army, religious organizations, and school districts to engage shared customers/clients in CIP and Energy Assistance programs.[18]

[17] *In the Matter of CenterPoint Energy's 2021-2023 Natural Gas Conservation Improvement Program Triennial Plan,* Docket No. G008/CIP-20-478, November 1, 2021.

[18] *In the Matter of CenterPoint Energy's 2021-2023 Natural Gas Conservation Improvement Program Triennial Plan,* Docket No. G008.CIP-20-478. September 1, 2021.

The Department concludes that changes and/or additions to CIP programs may better serve the needs of the targeted customers.

C. FINANCING

CenterPoint proposes to finance the program, and to earn its rate of return on the energy upgrades made under the program. Loans would be repaid over a 12 year period, and prepayment would not be permitted. The Company's current authorized rate of return is 7.42 percent[19] of which 2.5 percent would be recovered from participants and the remaining 4.92 percent would be recovered from ratepayers. The Department asked the Company if adjustments to the authorized rate of return as a result of a rate case would be made. (DOC IR No. 12 – Attachment A) In response the Company stated, the participant rate of return would remain at 2.5 percent with ratepayers absorbing any increase or decrease from the current 7.42 percent. CenterPoint currently has a rate case (Docket No. G008/GR-21-435) pending before the Commission, and typically files a rate case approximately every two years which could affect ratepayer costs over the twelve year repayment period of the Pilot.

The Department has concerns with the use of the Company's authorized rate of return in financing the Pilot. In a rate case, the rate of return is calculated as the weighted average cost of short-term and long-term debt, and the cost of equity. The cost of equity is intended to reflect the return needed to attract capital relative to investments in comparably risked companies. The rate of return is applied to the Company's rate base of capital assets. In this instance, CenterPoint is seeking to earn the same return on its capital expenditures for energy efficiency upgrades in properties owned and maintained by a third party. CenterPoint will not own any of these assets. Permitting CenterPoint to earn a return on assets that it will not own, and will not be part of its rate base would be a departure from traditional ratemaking, and how similar expenditures for energy efficiency measures are handled in CIP. Consequently, the Department does not support the use of the authorized rate of return in the calculation of financing costs.

The Center for Energy and the Environment (CEE) serves as the vendor providing financing for CenterPoint's EZ Pay[20] on-bill financing program. In discussions with CEE, the Department understands that the current interest rate on loans through the EZ Pay program is 5.25 percent, the length of time for loan repayment may vary depending on the loan amount, and early repayment is not prohibited.

The Department is also concerned by the Pilot's 12-year repayment plan, and the inability to prepay the TOBF Pilot service charges in order to reduce interest paid over the full term, or simply to eliminate this payment obligation on the customer's bill. As noted above, the Company's EZ Pay CIP program allows shorter repayment periods, and prepayment of the loan. While renter participants may not

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[19] *In the Matter of the Application by CenterPoint Energy Resources Corporate d/b/a CenterPoint Energy Minnesota Gas for Authority to Increase Natural Cas Rates in Minnesota,* ORDER ACCEPTING AND ADOPTING AGREEMENT SETTING RATES AND INITIATING DEVELOPMENT OF CONSERVATION PROGRAMS FOR RENTERS, Docket No. E008/GR-19-524, March 1, 2021.

[20] The EZ Pay program provides homeowners loans for the installation of energy efficiency equipment. Third-party financiers provide the loans and repayment is made through the customer's CenterPoint bill. The program is not available to renters, but is available to owners of rental property to install energy efficient measures in their rental property.

have an incentive to repay a loan early, homeowners participating in the program may wish to pay off their service charge principal balance early with the intent to save some money, or with the goal of making the property more attractive to a future buyer.

In addition, CPE has a revenue decoupling program in place for residential revenues which will allow the Company to offset some of the revenue loss resulting from reduced energy sales due to energy efficiency measures.

CenterPoint proposes to charge a flat $475 program operation fee which it includes in the calculation of the monthly participant payment. CenterPoint includes this flat administrative expense in its calculation of the participant's required return. The Company's proposal defines program operation services as "the cost of coordinating installation of energy upgrades, customer follow-up, post-installation billing analysis, and tracking and reporting program progress for 500 TOB Pilot participants per year." The Department views these costs as expenses, not capital expenditures on which a rate of return is warranted. The Department recommends that the program operation fee be excluded from the calculation of the participant rate of return.

CenterPoint requests that the Commission grant it deferred accounting for its start-up costs. In total, the Company states it expects to defer the total Pilot Costs borne by ratepayers or an estimated $5.6 million depending on participation, the energy measures installed and the actual default rate. In response to Department IR No. 17, the Company stated it would establish an Internal Order to track costs associated with the TOBF Pilot. When asked to explain how CenterPoint would determine and demonstrate that all the deferred costs are incremental costs, and not already reflected in base rates, the Company responded, "since the TOB pilot is a proposed new program any costs charged to this Internal Order would be incremental to what we are already incurring in FERC Account 923." [21]

Consistent with the Department's recommendation to deny CenterPoint's request for a Tariff On-Bill Pilot Program, the Department also recommends the Commission deny the Company's request for deferred accounting. Additionally, the Department notes that in the past proceedings deferred accounting has been reserved for costs that are unusual, unforeseeable and large enough to have a significant impact on the utility's financial condition. Deferred accounting has also sometimes been permitted when utilities have incurred sizeable expenses to meet important public policy mandates, such as the farm tap inspection program required by the Commission. Based on our review, the Department concludes that CenterPoint has not met these deferred accounting criteria. Finally, if despite the Department's recommendation to deny CenterPoint's request for a Tariff On-Bill Pilot Program, the Commission decided to approve it, the Department recommends the Commission at a minimum limit deferred accounting to true net incremental costs and not allow any labor costs (both CenterPoint's and outside service costs) since a representative level of labor costs is reflected in the base rates of CenterPoint's current rate case proceeding. This is consistent with past Commission decisions including most recently in Xcel's Load Flexibility Pilot Program in Docket No. E002/M-21-101

[21] DOC IR No. 17 – Attachment A.

A. PROGRAM OPERATIONS

1. 80/20 Rule

Consumer protections for participants in the TOBF Pilot appear to be limited to setting annual program charges at no more than the expected energy savings (both natural gas and electricity) that would occur as a result of the energy upgrades. (80/20 Rule) Costs above the 80 percent threshold would be paid as an upfront payment by the participant. CenterPoint will estimate the energy savings resulting from various upgrade measures using software provided by its program operator.

The Company proposes to evaluate the energy savings to determine if actual energy savings materialized. In the event the energy savings are found to be less than expected under the TOBF payment calculation, the Company will investigate to determine the cause. If energy upgrade equipment is found to be malfunctioning, corrective actions will be taken. If the cause is determined to be the result of a change in the participant's usage, or due to participant negligence or damage to equipment, TOBF charges will remain in place. Finally, if savings did not materialize and no cause is found, CenterPoint will terminate the location's participation in the Pilot and waive remaining charges. CenterPoint indicates that uncertainty about the cause for lack of energy savings will be resolved in favor of the customer.[22]

The 80/20 rule used to evaluate customer payments and energy savings, however, only applies to the first participant in the Pilot. Subsequent tenants may be lower income (i.e. had they been in the property at the time of implementation, they would have qualified for no cost CIP improvements). Alternatively, subsequent tenants may be burdened with a payment that worked for the first tenant, but results in a payment to subsequent tenants that exceeds the 80/20 rule. For example, the payment and energy savings for a family of five may have met the 80/20 rule, but be burdensome if the next household to live there only has two tenants. Future tenants taking on the TOBF who find the payment burdensome may result in an increase in payment defaults, increasing the cost to ratepayers.

2. Disconnection

CenterPoint states that failure to pay the TOBF portion of a bill may result in disconnection of service. Minn. Stat. § 216B.241, subd. 5d sets out parameters for CIP on-bill repayment program. Minn. Stat. § 216B.241, subd. 5 d(g) states,

> If a public utility customer makes a partial payment on a utility bill that includes a loan installment, the partial payment must be credited first to the amount owed for utility service, including taxes and fees. A public utility may not suspend or terminate a customer's utility service for delinquency or default on a loan serviced through the public utility's on-bill repayment program.

[22] Filing, page 19.

This protection is included in the Company's CIP EZ-Pay on-bill repayment program. The Department similarly recommends the Commission require the TOBF Pilot to provide the same statutory protections to consumers for partial payments and disconnection as afforded to participants in CIP Programs.

Similarly, Minn. R. 7820.1300(B) forbids disconnection for "failure to pay for merchandise, appliances, or services not approved by the commission as an integral part of utility service." The Department's legal analysis as set forth in Section III above, concludes that the TOBF Pilot does not qualify as utility service. The Department recommends CenterPoint be prohibited from disconnecting a TOBF participant solely for non-payment of their TOBF payment.

In Docket No. E002/M-13-867, a concern arose regarding the use of third-party billing by property managers. Property managers may hire a third-party billing company to administer rent statements and payments for their properties. Tenant utility bills would be directed to the billing company and passed through to the tenants on a monthly rental statement. In such instances, the billing company, not the individual tenant pays the utility bill. Failure by the tenant to make their utility payment to the billing company could result in an eviction notice, not disconnection. The Pilot fails to address third-party billing arrangements entirely.

3. Other Consumer Protections

The TOBF Pilot's sole reliance on the 80/20 rule to protect customers also is unusual. Similar programs authorized by the Legislature offer far more significant protection. The Residential PACE (Property Assess Clean Energy) Loan Program, a loan program aimed at enabling homeowners to finance cost-effective energy improvements, for example, provides the following types of customer protections:

- Setting a maximum interest rate (Minn. Stat. § 216C.436, subd. 16(a)(7);
- Protecting vulnerable adults (Minn. Stat. § 216C.437, subd. 16(d)(1);
- Unscrupulous building contractors – Minn. Stat. § 216C.437, subd. 6;
- Surety bonds to cover contractor losses – Minn. Stat. § 216C.437, subd. 14;
- Prepayment of investment balance – Minn. Stat. § 216C.437, subd. 16(a)(9), (c)(3)
- Ensure participants understand key terms/scope of work – Minn. Stat. § 216C.437, subd. 18
- Right to rescind prior to construction/installation – Minn. Stat. § 216C.437, subd. 19
- Prohibition on installation cost inflation – Minn. Stat. § 216C.437, subd. 21(c)
- Prohibition on false, unfair, unlawful, deceptive, abusive, or misleading statements – Minn. Stat. § 216C.437, subd. 24(a)(1);
- Prohibition on claims that improvements will pay for themselves or offset or exceed the investment amount – Minn. Stat. § 216C.437, subd. 24(a)(2)
- Screen potential participants for referral to other relevant no- or low-cost programs known to the administrator or contractor – Minn. Stat. § 216C.437, subd. 26(a);
- Plain language disclosures – Minn. Stat. § 216C.437, subd. 27;
- Compliance with state and federal laws, rules, and regulations related to lending practices and consumer protection – Minn. Stat. § 216B.241, subd. 5d(e);
- Prioritization of partial payments to utility service – Minn. Stat. § 216B.241, subd. 5d(g)

While some of the consumer protections provided under the PACE statute are discussed in CenterPoint's filing, others such as the maximum interest rate permitted are not. Other protections such as assurances that potential participants are referred to alternative lower-cost or no-cost programs such as CIP, will need to be incorporated in the agreement between CenterPoint and Program Operator. The Department recommends that the Commission require the Company to file the final contract with the Program Operator to ensure that the contract does not include any payment provisions that might provide an incentive to bypass referrals to other CIP programs.

IV. SUMMARY OF DEPARTMENT ANALYSIS

The Department has concerns with multiple aspects of the proposed TOBF Pilot, including legal (inconsistent with state law), financial (the proposed rate of return), and operational (lacks adequate consumer protections) aspects. CenterPoint has existing low-income CIP programs, and a directive under the recently passed ECO Act to increase spending on these programs. The Department concludes that ratepayers and customers would be better served by revising existing CIP programs, and proposing new CIP programs to address specific areas not currently being covered, than by the TOBF Pilot. The Department recommends denial of the TOBF Pilot.

V. DEPARTMENT RECOMMENDATIONS

The Department recommends the Commission deny CenterPoint's request for a Tariff On-Bill Pilot Program, and deny the Company's request for deferred accounting.

/ar

State of Minnesota
Minnesota Department of Commerce

<u>Utility Information Request</u>

Docket Number: G008/M-21-377 - Tariffed On Bill Pilot Program	Date of Request: 1/6/2022
Requested From: CenterPoint Energy Minnesota Gas	Response Due: 1/18/2022

Analyst Requesting Information: Susan Peirce

Type of Inquiry: Other

If you feel your responses are trade secret or privileged, please indicate this on your response.

Request No.	
DOC 017	Each response must be submitted as a text searchable PDF, unless otherwise directed. Please include the docket number, request number, and respondent name and title on the answers. If your response contains Trade Secret data, please include a public copy. Topic: Tariff on-bill financing Regarding CPE's deferred accounting request discussed on page 21 to 23 of CPE's Petition, please answer the following questions: a. Please describe and provide a detailed break out of what operating and maintenance (O&M) costs will be deferred and tracked. Please include what percentage of O&M costs are labor costs. b. Please explain why the $475 program operation fee will not cover the operating and maintenance costs? c. Since CPE has a pending rate case, please explain what CPE labor costs and FERC Account 923 - Outside Services Employed, would not already recovered in base rates? d. Please explain how CPE will determine and show that all of the deferred costs are incremental costs, and are not already reflected in base rates. e. Please explain what depreciation expenses CPE is referring to on page 21? Please explain why it is reasonable to charge depreciation expenses to other ratepayers that are not in the TOB financial program? What does CPE estimate will be the expected deferred accounting amount for this three-year pilot? Would it be the amount reflected in Table 6, Total with Defaults of $5.6 million? Please explain your response. **Response:**

Response By: Emma Schoppe
Title: Local Energy Policy Manager
Department: Mng Smr Reg Svc Enrgy Prog
Telephone: 612-321-4318

a. Please refer to Exhibit L, Table 6, for a break out of Pilot Delivery or O&M costs that will be deferred and tracked. Exhibit L, Page 6, provides a brief description of these items. Utility Administration of the three year pilot includes $205,000 in utility labor costs or approximately 9% of total Pilot Delivery O&M costs. The rest of the Pilot Delivery costs are for services that may include labor from service providers.
b. As described in Exhibit L, Page 6, the $475 charge covers program operator services for coordinating installation of energy upgrades, customer follow-up, post-installation billing analysis, and tracking and reporting program progress per TOB pilot participant. This amount was quoted by an existing PAYS® provider for similar services, it does not include costs for cost-effectiveness modeling services, utility administration, marketing, education & outreach, or pilot evaluation services.
c. The Company would create an Internal Order to track TOB pilot costs. Since the TOB pilot is a proposed new program any costs charged to this Internal Order would be incremental to what we are already incurring in FERC Account 923. The start-up costs included in the 2021 rate case, as identified in CenterPoint Energy witness Ms. Nicole Gilcrease's Direct Testimony on Page 74 and Schedule 35, will not be included in future deferred accounting.
d. As described above, the Company would create a separate Internal Order to track TOB pilot costs.
e. Depreciation Expense associated with the start-up costs to develop the billing system will be incurred as part of the TOB pilot. These costs are similar to current conservation program costs in that not all ratepayers directly benefit from the program, but indirect benefits of energy conservation benefit all customers.

Yes, the expected deferred accounting amount is the total TOB Pilot Costs Borne by Ratepayers, or an estimate of $5.6 million in Table 6, page 15, of the TOB Pilot petition. However, the actual amount deferred will be dependent on the number of participants, energy efficiency measures installed, and the actual default rate.

Response By: Emma Schoppe
Title: Local Energy Policy Manager
Department: Mng Smr Reg Svc Enrgy Prog
Telephone: 612-321-4318

State of Minnesota
Minnesota Department of Commerce

Utility Information Request

Docket Number: G008/M-21-377 - Tariffed On Bill Pilot Program	Date of Request: 12/16/2021
Requested From: CenterPoint Energy Minnesota Gas	Response Due: 12/27/2021

Analyst Requesting Information: Susan Peirce

Type of Inquiry: Other

If you feel your responses are trade secret or privileged, please indicate this on your response.

Request No.	
DOC 012	Each response must be submitted as a text searchable PDF, unless otherwise directed. Please include the docket number, request number, and respondent name and title on the answers. If your response contains Trade Secret data, please include a public copy. Topic: Tariff on bill financing Does CenterPoint propose to adjust its Rate of Return for payments under the TOBF based on the outcome of any change approved in future rate cases? If so, please explain how that adjustment would occur. Would the adjustment apply to both participant payments and ratepayer costs, or to only one of those groups? **Response:** The Company and Minneapolis propose to recover a 2.5% rate of return from TOB pilot participants, as described on page 11 of the TOB petition. The Company would recover the remaining portion of its rate of return (4.92% calculated in the petition) from ratepayers. The Company would only adjust the ratepayer portion of the rate of return based on approved outcomes of future rate cases, and apply that rate of return, less 2.5%, for the duration it is in effect.

Response By: Emma Schoppe
Title: Local Energy Policy Manager
Department: Mng Smr Reg Svc Enrgy Prog
Telephone: 612-321-4318

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

Minnesota Department of Commerce
Comments

Docket No. G008/M-21-377

Dated this 3rd day of February 2022

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-377_M-21-377

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