STATE OF MINNESOTA

BEFORE THE PUBLIC UTILITIES COMMISSION

In the Matter of a Petition by CenterPoint Energy and the City of Minneapolis to Introduce a Tariffed On-Bill Financing Pilot Program	**PUC Docket No. G008/M-21-377**

REPLY COMMENTS

On Behalf Of
Fresh Energy
Sierra Club
Minnesota Center for Environmental Advocacy
and
The Community Stabilization Project

May 13, 2022

INTRODUCTION

The Clean Energy Organizations[1] and the Community Stabilization Project (referred to collectively as "CEOs") appreciate the opportunity to offer reply comments on the proposal by CenterPoint and the City of Minneapolis for a Tariffed On-Bill Pilot Program ("TOB Pilot" or "Pilot"). After reviewing the comments of other parties to the docket, the CEOs continue to support the TOB Pilot subject to the key program modifications included in our initial comment.[2] In reviewing the comments of other parties, we have identified a number of inaccuracies and misunderstandings that we seek to clarify in this reply comment. Specifically, CEOs will discuss the Commission's legal authority to approve the TOB Pilot, will respond to commenters' legal concerns and misunderstandings about program operation, and will explain why existing programs or proposed alternatives do not address the barriers to participation that the TOB Pilot succeeds in addressing.

However, before responding to comments, CEOs would like to identify the core principles that have guided our thinking about this Pilot, which may assist other parties or the Commission in their assessment.

- We need to dramatically increase adoption of energy efficiency measures in order to meet our climate goals and limit warming to 1.5°C. The IPCC Pathways Report, which identifies how emissions can be reduced to limit global warming to 1.5°C, notes that, "[t]ogether with the decarbonization of the supply side, ambitious policies targeting fuel switching and energy efficiency improvements on the demand side play a major role across mitigation pathways . . . The combined evidence suggests that aggressive policies addressing energy efficiency are central in keeping 1.5°C within reach."[3]

- Existing energy efficiency programs in Minnesota are highly successful in serving specific sectors and have recently been expanded further to serve even more

[1] In this docket, the Clean Energy Organizations consist of Fresh Energy, Minnesota Center for Environmental Advocacy, and Sierra Club.
[2] *See* CEOs' Initial Comments at 46-47 (Feb. 4, 2022).
[3] Joeri Rogelj et al., *Mitigation Pathways Compatible with 1.5℃ in the Context of Sustainable Development*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, 149 (2018), https://www.ipcc.ch/site/assets/uploads/sites/2/2019/02/SR15_Chapter2_Low_Res.pdf.

Minnesotans. Even so, there are still many Minnesotans that cannot take advantage of existing programs. Moreover, existing programs are not serving the need at the rate required to address climate change. For example, at current it would take 291 years to weatherize all eligible Minnesota homes through the Weatherization Assistance Program ("WAP").[4] Indeed, nearly all commenters have recognized that there is a need to develop solutions beyond the status quo in order to meet Minnesota's energy efficiency need.

- Even if existing programs are fully funded so that all eligible residents that wished to participate could, many Minnesotans still would not have access to energy efficiency upgrades due to barriers such as income, credit score, cash liquidity, and others.

- It is important to center the requests of the community members that will utilize these energy efficiency programs when deciding on a solution. As shown by the public comments in this docket and docket GR-19-524, community members have overwhelmingly requested a TOB program.

- A TOB program should not be aimed at individuals who are income-eligible for free or lower-cost programs, and prospective participants in TOB should be both informed of, and connected to, other programs they believe they are eligible for.

- Any viable energy efficiency solution needs to expand access to energy efficiency while maintaining consumer protections and watching for cost-inflation by the utility. CEOs believe this balance can be struck through a well-designed TOB program that incorporates the modifications suggested by CEOs and others in this docket.

With these guiding principles in mind, CEOs respond to other parties' comments below.

I. The Commission Has Authority To Approve Energy Efficiency Programs, Including The TOB Pilot.

Various commenters have raised the question of whether the Commission has the legal authority to approve the TOB Pilot, or instead, whether additional legislation is required to grant the Commission that authority. The Commission has clear existing authority to approve energy efficiency programs—including the TOB Pilot—under the rate authority granted it in Minn. Stat. § 216B.16, subd. 6b(a), and no additional legislation is necessary.

[4] Minnesota Department of Commerce, *Minnesota's Low-Income Weatherization Assistance Program*, 2 (2020), https://www.cleanenergyresourceteams.org/sites/default/files/2020-08/WeatherizationWorks_MNFacts_0.pdf.

A. Arguments that the Pilot is not a "service" under Minn. Stat. § 216B.02, subd. 6 are irrelevant to the issue of the Commission's authority.

Both Legal Services Advocacy Project ("LSAP") and Department of Commerce, Division of Energy Resources ("DOC") argue that the Commission lacks legal authority to approve the TOB Pilot because the Pilot is not a utility "service" eligible for recovery in rates pursuant to Minn. Stat. § 216B.02, subd. 6.[5] LSAP cites *In re Implementation of Utility Energy Conservation Improvement Programs* to bolster this argument, asserting that the Minnesota Court of Appeals has held that "[e]nergy conservation improvements are not 'service' as defined by [Minnesota statute]."[6] However, the Court did not hold that such improvements are not a utility "service" *broadly*, but rather that "[e]nergy conservation improvements are not 'service' as defined by Minn. Stat. § 216B.02, subd. 6."[7] As discussed below, whether the TOB Pilot meets the definition of a "service" under Minn. Stat. § 216B.02 is not determinative of the Commission's Authority because Minn. Stat. § 216B.16, subd. 6b(a) specifically brings energy conservation improvements under the definition of "service" and thereby under the Commission's authority.

It is true that the definition of "service" under Minn. Stat. § 216B.02 is narrow—energy efficiency programs were likely not contemplated when this statutory definition was created. But, as energy efficiency programs became a legislative priority, the legislature ensured the Commission had the authority to approve such programs by passing Minn. Stat. § 216B.16, subd. 6b(a). This provision gives the Commission rate authority over energy efficiency programs *as if* those programs fall within the definition of "service" under Minn. Stat. § 216B.02. Specifically, Minn. Stat. § 216B.16, subd.6b(a) states:

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[5] LSAP Initial Comments at 33-34 (Feb. 4, 2022); DOC-DER Initial Comments at 5-6 (Feb. 3, 2022).
[6] LSAP Initial Comments at 24 (Feb. 4, 2022) (quoting *Matter of Implementation of Util. Energy Conservation Improvement Programs*, 368 N.W.2d 308, 313 (Minn. Ct. App. 1985)).
[7] *Matter of Implementation of Util. Energy Conservation Improvement Programs*, 368 N.W.2d 308, 313 (Minn. Ct. App. 1985)).

> Except as otherwise provided in this subdivision, all investments and expenses of a public utility . . . incurred in connection with energy conservation improvements shall be recognized and included by the commission in the determination of just and reasonable rates as if the investments and expenses were directly made or incurred by the utility in furnishing utility service.

In light of this statutory authority, the only question for the Commission is whether the TOB Pilot constitutes "investments and expenses of a public utility . . . incurred in connection with energy conservation improvements."

Fortunately, many of the terms in Minn. Stat. § 216B.16, subd. 6b(a) are legal terms of art with specific definitions. This makes the Commission's interpretation and application of Minn. Stat. § 216B.16, subd. 6b(a) to the TOB Pilot significantly easier. When a word is defined in statute, the Commission is guided by that definition.[8] Indeed, a statutory definition should generally be applied each time the defined word is used in a statute.[9]

The following statutory definitions are key to understanding the meaning of Minn. Stat. § 216B.16, subd. 6b(a):

- "Investments and expenses of a public utility" are defined as "the investments and expenses incurred by a public utility in connection with an energy conservation improvement."[10]
- "Energy conservation improvement" is defined as "a project that results in energy efficiency or energy conservation."[11]
- "Energy efficiency" is further defined as "measures or programs, including energy conservation measures or programs, that: (1) target consumer behavior, equipment, processes, or devices; (2) are designed to reduce the consumption of electricity or natural gas on either an absolute or per unit of production basis; and (3) do not reduce the quality or level of service provided to an energy consumer."[12]

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[8] *See* W*ayzata Nissan, LLC v. Nissan N. Am., Inc.*, 875 N.W.2d 279, 286 (Minn. 2016); *see also* Minn. Stat. 645.08.
[9] *Wayzata*, 875 N.W.2d at 286.
[10] Minn. Stat. § 216B.2402, subd. 11.
[11] Minn. Stat. § 216B.2402, subd. 6.
[12] Minn. Stat. § 216B.2402, subd. 7.

Given these legal terms of art, the TOB Pilot undoubtedly fits within the Commission's authority under Minn. Stat. § 216B.16, subd. 6b(a). First, the Pilot is an investment or expense incurred by CenterPoint—a public utility.[13] That investment or expense is incurred "in connection with an energy conservation improvement" given that the TOB Pilot upgrades are projects that result in energy efficiency.[14] Consequently, because the TOB Pilot is an investment and expense of a public utility incurred in connection with an energy conservation improvement, Minn. Stat. § 216B.16, subd. 6b(a) requires that the TOB Pilot *shall* be recognized and included by the Commission in the determination of just and reasonable rates *as if* the Pilot's investments and expenses were directly made or incurred by CenterPoint in furnishing utility service. The legislature's use of the word "shall" indicates its intention that this exercise of the Commission's authority not be discretionary. In other words, the Commission must treat investments and expenditures of a public utility incurred in connection with an energy conservation improvement as if those investments and expenses were incurred in furnishing utility service.

It is clear then that Minn. Stat. § 216B.16, subd. 6b(a) includes energy efficiency projects under the Commission's authority just as if those projects meet the definition of "service." As a result, whether the Pilot *actually* meets the definition of "service" under Minn. Stat. § 216B.02, subd. 6 is a moot point when Minn. Stat. § 216B.16, subd. 6b(a) explicitly tells us that the Pilot must be treated as if it does.

B. The Commission's authority under Minn. Stat. § 216B.16, subd. 6b(a) is not limited to projects under CIP.

Next, LSAP, DOC, and The Office of the Attorney General ("OAG") argue that the Commission's authority under Minn. Stat. § 216B.16, subd. 6b(a) is limited to the CIP program

[13] *See* Minn. Stat. § 216B.2402, subd. 11.
[14] *See* Minn. Stat. § 216B.2402, subds. 6, 7 (defining energy conservation improvement as a project that results in energy efficiency and defining energy efficiency as programs that target consumer equipment, processes, and devices in order to reduce natural gas consumption).

and would not extend to the Pilot at issue here.[15] However, this reading of Minn. Stat. § 216B.16, subd. 6b(a) cannot be supported.

1. Applying the technical definitions of terms established by the legislature shows Minn. Stat. § 216B.16 subd. 6b(a) is not limited to CIP.

The plain language of Minn. Stat. § 216B. 16, subd. 6b(a) unambiguously shows that the authority granted the Commission thereunder is not limited to CIP. All the critical terms used in the statute have technical definitions established by the legislature. For example, all the bold terms below in Minn. Stat. § 216B.16, subd. 6b(a) are defined by statute:

> Except as otherwise provided in this subdivision, all **investments and expenses of a public utility**[16] . . . incurred in connection with **energy conservation improvements**[17] shall be recognized and included by the commission in the determination of just and reasonable rates as if the **investments and expenses** were directly made or incurred by the utility in furnishing utility **service**.[18]

By law, these technical definitions must be applied.[19] When they are applied, it is clear the authority granted the Commission is not limited to CIP projects only. CIP is not mentioned anywhere in the statute itself. There is no express limitation that the statute only applies to energy efficiency projects that are part of CIP. Furthermore, none of the defined terms reference CIP. Given that the plain language contains no mention or limitation to CIP, either in the definitions or in the statute itself, there can be no question whether the statute applies exclusively to CIP. Clearly, it does not.

2. A limitation to CIP cannot be read into Minn. Stat. § 216B.16, subd 6b(a) where it does not exist.

The statute also cannot be interpreted to include a limitation to CIP that does not exist. As established above, the language of the statute is unambiguous, especially in light of the many terms

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[15] LSAP Initial Comments at 33-34 (Feb. 4, 2022); DOC-DER Initial Comments at 5-6 (Feb. 3, 2022); OAG Initial Comments at 10-11 (Feb. 04, 2022).
[16] Minn. Stat. § 216B.2402, subd. 11.
[17] Minn. Stat. § 216B.2402, subd. 6.
[18] Minn. Stat. § 216B.02, subd. 6.
[19] *Wayzata*, 875 N.W.2d at 286.

included within it that have a specific statutory definition. When statutory language is unambiguous, the plain meaning controls and the PUC (or reviewing court) cannot look beyond the express language of the statute.[20] In this instance, that means a limitation to CIP cannot be written into the statute where no such language exists. This would require the PUC to add words to the statute or re-write it under the guise of statutory interpretation—which the PUC (and reviewing courts) are prohibited from doing.[21]

Moreover, a limitation to CIP cannot be read into the statute in an attempt to prevent an unintended consequence. For example, this statute cannot be read as limited to CIP based on a belief that the legislature did not foresee all the potential future applications of a broadly worded statute. Instead, the law requires that even if the literal language of the statute yields what the decisionmaker believes to be an unintended result, it is up to the legislature to correct it.[22] It is not for the PUC or courts to "supply that which the legislature purposefully omits or inadvertently overlooks."[23]

Thus, a limitation to CIP is obviously absent from Minn. Stat. § 216B.16, subd. 6b(a), and Minnesota law mandates it cannot be inserted or read into the statute where it does not exist.

3. The legislature has instructed the PUC to encourage energy conservation to the maximum reasonable extent.

The legislature has also clearly intended the PUC have rate authority over energy efficiency programs like the TOB Pilot. The legislature has directed the Commission to use its rate-setting

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[20] *Haghighi v. Russian–Am. Broad. Co.*, 577 N.W.2d 927, 929 (Minn. 1998) *see also* Minn. Stat. § 645.16 ("When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.").
[21] *See Laase v. 2007 Chevrolet Tahoe*, 776 N.W.2d 431, 438 (Minn. 2009) (citing *Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114, 119 (Minn. 2001)).
[22] *Haghighi*, 577 N.W.2d at 930.
[23] *Id.*

authority to encourage energy conservation "[t]o the maximum reasonable extent."[24] It would be illogical to read the legislature's intent as mandating that the PUC use its rate authority to encourage conservation to "the maximum reasonable extent" while simultaneously limiting the PUC's rate authority over conservation and efficiency projects.

4. An "energy conservation improvement" under Minn. Stat. § 216B.16, subd 6b(a) has a meaning distinct from an "energy conservation and optimization plan" under the CIP statute.

Finally, it is clear the Commission's authority under Minn. Stat. § 216B.16, subd 6b(a) is not limited to CIP programs because the terms used in this statute and the CIP statute are different. The jurisdictional keyword in Minn. Stat. § 216B.16, subd 6b(a) for the PUC's authority— "energy conservation improvement"—simply means "a project that results in energy efficiency or energy conservation." But the CIP statute talks about an *energy conservation and optimization plan*. While not defined directly in either Minn. Stat. §§ 216B.241 or 216B.2402, Minn. Stat. § 216B.241 indicates that an "energy conservation and optimization plan" is a plan submitted to the Department to achieve a public utility's annual energy-savings goals.[25] Such established energy savings goals may be achieved through energy savings from energy conservation improvements, certain electric utility infrastructure projects, and certain demand-side energy displaced by use of waste heat recovered and used as thermal energy.[26]

Thus, an "energy conservation improvement" is not synonymous with an "energy conservation and optimization plan," but is simply one possible component of said plan. As a result, the Commission does indeed have authority under § 216B.16, subd. 6b(a) to approve a TOB Pilot as an "energy conservation improvement" *outside* of the procedures for a Department-approved "energy conservation and optimization plan."

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[24] Minn. Stat. § 216B.03.
[25] Minn. Stat. § 216B.241, subds. 1c, 2.
[26] *Id.* at subd. 1c.

For the foregoing reasons, CEOs believe it is clear that the Commission has authority to approve the TOB Pilot under Minn. Stat. § 216B.16, subd. 6b(a).

II. Other Legal Concerns With The TOB Pilot Are Inaccurate And Unfounded.

Aside from questions about the Commission's authority to approve an energy efficiency program, commenters have raised questions about how a TOB program would interact with existing law, including questions about compliance with CenterPoint's obligation to serve, whether the Pilot requires the Commission to grant legal rights it cannot, and whether the Pilot requires tenants to fulfill habitability requirements instead of landlords. These legal concerns are based on either a misunderstanding of the TOB Pilot's operation or a misreading of the law, and CEOs clarify these legal issues below.

A. The TOB Pilot does not contravene CenterPoint's obligation to serve.

Commenter LSAP asserts that the Pilot will violate CenterPoint's "obligation to serve" because LSAP argues utility service cannot be refused to successor customers who do not want to "take a debt the previous customer has incurred."[27] However, successor customers in the TOB program would never be in the position of taking on a previous customer's debt. First, a successor customer would never be responsible for TOB charges due and owing that a previous customer failed to pay. Instead, the successor customer is only responsible for the forthcoming monthly TOB charge once they take possession of the property. Second, the TOB charge is not a "debt," but a monthly utility service charge for increased efficiency at the property. It is the successor customer's choice whether they want to reside in a home subject to that utility service, which is designed to save more money than it costs. If the successor customer does not want utility service that includes the TOB program, then they simply choose not to purchase or lease that residence. Thus, TOB does not create any instance in which a successor customer would be denied service

[27] LSAP Initial Comments at 7 n.14 (Feb. 4, 2022).

because they refused to take on the debt of a previous customer. CenterPoint's obligation to serve is not violated.

B. The TOB Pilot does not require legislative approval for securing debt because there is no secured debt in the Pilot.

LSAP also asserts that there is no legislative approval for securing debt through a utility meter. But such legislation is not required, because under a TOB program, there is no debt that is secured through the utility meter. One of the foundational pieces of a TOB program is that there is no loan (and therefore, no debt). Because the program is implemented through a *tariff* (not a promissory note), the bill charge is treated as a charge for utility service, not a loan payment. In other words, there is no loan and there is no security interest. Non-payment of the TOB charge does not result in repossession of a customer's utility meter, nor the installed upgrades, which would be the remedy if this was a secured loan. Instead, non-payment of the charge is considered non-payment of utility service and the customer is subject to applicable disconnection rules for non-payment. Because this Pilot is new to Minnesota, CEOs and other parties have also made clear that for the duration of the Pilot (at a minimum) disconnections for non-payment should not be permitted.

C. The Pilot does not ask the Commission to create new tenant rights.

Commenter LSAP further argues that approving the Pilot's tariff would require the Commission to create new rights for tenants to break rental leases that the Commission does not have the power to create. LSAP appears to argue that only the legislature can specify when a lease may be broken, and that per the legislature, there are only two ways to break a lease: (1) upon a tenant's death, or (2) if the tenant is a victim of domestic or sexual violence.[28]

However, this cannot be true. People legally break leases all the time for reasons beyond the two specified in the statute. This is because the law firmly recognizes an individual's right to

[28] LSAP Initial Comments at 9 (Feb. 4, 2022).

enter into contracts with whatever terms are mutually and voluntarily agreed upon.[29] This means landlords and tenants have the freedom to enter into contracts where the occurrence of a specified scenario would allow one or both of them to terminate the lease prematurely.

This is exactly what occurs with the TOB Pilot. When a landlord agrees to have their property enrolled in the program, they sign a *contract* that gives future tenants the right to terminate their leases if the landlord does not inform the tenant about the program and obtain their signature on the required notice form. There is no right for a tenant to break a lease until the landlord decides to enroll the property in the program and affirmatively signs the Participant Owner Agreement which contains this right.[30] Thus, the right of a tenant to terminate their lease upon certain conditions occurring is being created by the signed contract, not the Commission's approval of the Pilot.

D. The Pilot does not contravene a landlord's legal responsibilities.

Finally, LSAP notes that Minnesota landlord-tenant law places a duty on landlords to maintain their properties (covenants of habitability), and argues that improvements installed through the TOB program would contravene the landlord's responsibilities. LSAP's argument that the proposed tariff illegally shifts landlords' statutory burden to tenants is flawed for several reasons.

First, tenants would not, as LSAP asserts, finance energy efficiency measures that the landlord is obligated to install. Under Minn. Stat. § 504B.161, subd. 1(a)(3):

> [T]he landlord . . . covenants . . . to make the premises reasonably energy efficient by installing weatherstripping, caulking, storm windows, and storm doors when any such measure will result in energy procurement cost savings, based on current and projected average residential energy costs in Minnesota, that will exceed the cost

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[29] *See Lyon Financial Services, Inc. v. Illinois Paper and Copier Co.*, 848 N.W.2d 539, 545 (Minn. 2014) ("Minnesota policy favors the freedom to contract. We have long held that 'public policy requires that freedom of contract remain inviolate except only in cases when the particular contract violates some principle which is of even greater importance to the general public.'").
[30] *See* Petition, Exhibit G at 2-3.

> of implementing that measure, including interest, amortized over the ten-year period following the incurring of the cost.[31]

However, the landlord is covenanting to make the premises reasonably energy efficient by installing *only* the specifically listed items, namely, weatherstripping, caulking, etc. This list is far from inclusive of the possible energy efficiency upgrades under the TOB program. Moreover, the landlord is not obligated to install the listed measures in every property or unit; they are only obligated to do so under certain circumstances based on energy savings. Clearly then, the upgrades in the TOB Pilot go much further than what the landlord is obligated to do.

Second, LSAP states that, under Minn. Stat. § 504B.161, subd. 2, a tenant may agree to perform specified repairs or maintenance only if the agreement is supported by adequate consideration and set forth in a conspicuous writing.[32] However, the energy efficiency improvements eligible under the TOB pilot are not repairs or maintenance to the property. Rather, they are upgrades or improvements to the property that the tenant is choosing to implement, the same way a tenant may choose to invest in new paint for the walls of their apartment. As a result, Minn. Stat. § 504B.161, subd. 2 is wholly inapplicable to the TOB Pilot.

Thus, for the foregoing reasons, CEOs believe the legal concerns raised about the TOB Pilot are without merit.

III. Remaining Pilot Concerns Misunderstand How The Program Operates.

The majority of commenters' remaining concerns about the Pilot stem from misunderstandings or confusion about how the TOB Pilot would operate. CEOs respond to these comments below.

[31] Minn. Stat. § 504B.161, subd. 1(a)(3).
[32] LSAP Initial Comments at 11 (Feb. 4, 2022).

A. The TOB Pilot is not a low-income program.

Commenters frequently point to hypothetical scenarios involving low-income individuals to argue that TOB will be detrimental and should not be approved. CEOs disagree with the accuracy of the assumptions built into many of these hypotheticals, but note that more broadly, these hypotheticals are not informative to the TOB discussion as no one in the docket has advocated for TOB to be used for low-income individuals that qualify for lower-cost or free programs. CEOs certainly agree with other commenters that this program should not be targeted at low or income-eligible populations who are eligible for free services. However, CEOs also do not feel it is the role of the CEOs or other parties in this docket to tell individuals that they cannot participate in the TOB pilot simply because they are low-income. For that reason, CEOs support adding measures to the Pilot to ensure individuals that are eligible for free or lower-cost programs are aware of them and connected with them as suggested by the reply comments of Energy Access Commenters, the Peer Learning Energy Efficiency Cohort, and CEOs' initial comments.[33]

B. TOB does not penalize customers for cold weather or having a family.

Commenters misunderstand or overstate the consequences of changes in behavior or occupancy for participants in the program.[34] If a resident enrolls in the program and then consistently sets their thermostat ten degrees higher than they had before, the savings they see on their bill from participation in the program may be less than original estimates. Naturally, this change in the resident's behavior would not result in the elimination of the resident's obligation to make their monthly TOB payments. Instead, if the predicted savings were not being realized, the program operator would visit the residence, identify that the issue was the resident's usage behavior, and would share that information with the resident so they could adjust that behavior if desired to realize the predicted savings. This makes sense. Remaining TOB payments should be

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[33] *See* CEOs' Initial Comments at 45-46 (Feb. 4, 2022).
[34] *See* LSAP Initial Comments at 19-20 (Feb. 4, 2022).

forgiven if the upgrades are not functioning as expected, or the estimation of savings was simply incorrect. But it does not make sense to forgive remaining TOB payments due to a change in behavior that is within the resident's control.

Some commenters express concern that there is no consumer education built into the program to avoid this scenario.[35] CEOs certainly support energy efficiency education being built into the program operation so residents can make usage decisions that will support the greatest savings. However, commenters that believe residents will be left in the dark about the effect of their usage are simply incorrect. Residents *will* be informed if their behavior is affecting their savings at the time of the program operator's audit.

Commenters also express concern about participants being penalized by spikes in energy usage due to factors outside the resident's control, such as a prolonged period of extreme cold weather.[36] However, in that situation the program will be a significant benefit, not a burden. By participating in the program, the resident will have energy efficiency upgrades like weatherization and insulation already installed. These upgrades will help the home hold its heat better than it otherwise would have during extreme cold weather, thereby significantly reducing the impact of a cold snap on the customer's utility bill. While the customer's total bill may still be greater than it otherwise would have been had the weather been more typical, this would not be due to the program. Every customer's bill will increase as a result of additional energy use associated with extreme weather. However, customers enrolled in TOB are actually better off in those instances than those without energy efficiency upgrades as their home is now better insulated and better able to mitigate the effect of those extreme weather events.

[35] *Id*. at 20-21.
[36] *Id*. at 20.

Commenters further express concern about savings if occupancy of a location changes dramatically.[37] For example, if a home goes from a family of five to a single occupant. Dramatic occupancy changes like these are not typical given that most apartments have a limit on the number of residents that may live in one location, and homes that are suited to a single occupant are usually not spaces that would work for a large family. Nevertheless, in a situation where the TOB estimated savings were calculated based on the usage of a family of five, and the next occupant is only one person, the savings resulting from the program may not be as large as they were for the larger family, but the 80/20 Rule provides a buffer to accommodate this change.

C. The Pilot does not encumber property or chill real property transactions.

Two commenters (LSAP, Minnesota Realtors) express concerns that a property enrolled in the TOB Pilot will be more difficult to sell because home buyers will not want to purchase a home enrolled in the program and/or mortgage lenders will be reluctant to lend unless the TOB obligation is paid off.[38] However, these concerns misunderstand a few key points.

First, TOB does not create a lien on the property. As discussed previously, TOB is a utility service, not a loan. Therefore, there is no security interest. There is nothing to physically repossess in the event of non-payment, and there is no claim or lien against the real property title at any time, even in the event of non-payment. The only remedy for non-payment is utility disconnection (which CEOs recommend be prohibited during the time of the Pilot). Because TOB is not a loan and there is no lien on the property, there is nothing recorded against the property's title. Therefore, there is no encumbrance to title that mortgage lenders could insist be cleared.

Second, the idea that homeowners will be reluctant to purchase a home that is enrolled in the program misunderstands the program entirely. A Minnesota home that has been weatherized

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[37] *Id.*
[38] *See* LSAP Initial Comment at 15-16 (Feb. 4, 2022); Minnesota Realtors Initial Comment (Jan. 11, 2022).

and optimized for energy efficiency is an *asset*. A home that is more energy secure would be a value-add to every Minnesota homebuyer. Moreover, the program is designed to ensure that there are bill savings from the very first bill the customer receives. Any homebuyer would welcome a utility bill that is less than it otherwise would have been before the home was made more energy efficient. Further, because the savings begin at the very first bill, a homebuyer does not have to stay in the home for any length of time in order for the investment to pay off.

Thus, the Pilot does not encumber real property titles and will not deter homebuyers.

D. Customers are not responsible for TOB charges when they do not live at the residence.

LSAP also asserts that the Pilot holds the original customer liable after they have vacated the premises and the successor customer liable before they have taken possession, pointing to the provision of the Participant Owner Agreement which states: "[i]f there is no customer at the Property for a period of time, the Term of this Agreement will be extended for an equivalent period of time and the Utility will continue to collect Upgrade Service Charges from Current or Future Customers at the Property during that extended term."

LSAP reads this provision as saying that CenterPoint will collect TOB charges from current or future customers while the property is vacant. However, what this provision actually states is that if a property is vacant for a period of time, CenterPoint will extend the length of the repayment period for a period equivalent to the amount of time the property was vacant. TOB charges will resume once the property is occupied again and will continue until the new, extended repayment period is over. Thus, the TOB Pilot does not obligate customers for TOB payments when they do not live at the residence.

E. The TOB Pilot does address the split incentive.

Some commenters believe it is inappropriate to offer TOB to renters because landlords should be responsible to pay for upgrades to their leased premises, or because they do not believe

TOB overcomes the split-incentive issue.[39] It would certainly be preferable if landlords were willing to take responsibility in installing energy efficiency upgrades in their buildings at no cost to their tenants. However, the on-the-ground reality is that it is rarely the case that a landlord will take on this cost responsibility when they do not pay the utility bill. Despite efforts to design existing programs to address the split incentive, a gap remains. This leaves many renters trapped between impossibly high energy bills and landlords that are unwilling to act. Such a scenario was well described by the first-person testimony contained in the Reply Comments of Peer Learning Energy Efficiency Cohort.[40] Renters want a path forward that allows them to take charge of their utility bills. TOB is the only program that gives all renters the power to do something about their utility bill without waiting for the landlord to act, and without having to stay in the same location for a long period of time in order for an investment to pay off. Moreover, one of the key modifications that CEOs suggested in initial comments was that landlords be required to make any co-pay that may be required for a tenant to participate in the Pilot, making the program even more affordable and attractive for renters.

Commenters also argue that it is unlikely that tenants will ever benefit from the program due to the high mobility of renters. LSAP's initial comment stated, "[a]s one study concluded, it is 'unlikely the frequently-moving population would enjoy long-term benefits from the [TOB] investment.'"[41] However, this statement misrepresents the findings of the quoted study. The full quote actually reads, "[i]t is unlikely the frequently-moving population would enjoy long-term benefits from the investment and therefore it is also nearly certain that an obligation that followed

[39] ECC, CEE, LSAP Reply Comment at 6 (Mar. 4, 2022).
[40] Peer Learning Energy Efficiency Cohort Reply Comment at 7-8 (April 6, 2022)
[41] LSAP Initial Comments at 13 (Feb. 4, 2022).

the borrower to a new location would unfairly burden him or her."[42] Reading the quoted material in its entirety, along with the rest of the report, makes clear that the quoted material discusses issues with high mobility in on-bill loan repayment ("OBR") programs, not TOB programs.

OBR programs have several key differences from TOB programs, most importantly that the financial obligation stays with the participant even after they move away from the location with the upgrades. It makes sense then that OBR programs are ill-suited to tenants that move frequently. In contrast to OBR programs, TOB programs *are* especially attractive to renters for the very reason that renters do not have to stay at that location for a certain period of time in order to realize savings. Savings are immediate on the tenant's utility bill, and if the tenant moves, any future charges and savings stay at the property. Thus, LSAP's concerns about the high-mobility of renters in a TOB program are not supported.

F. Tenants with apportioned utility bills still benefit from the TOB Pilot.

Commenter LSAP argues that tenants who do not have individual utility meters in their units, and instead pay an apportioned share of a building's utility bill, will see no benefit from the program. LSAP asserts that those tenants will have to pay the TOB bill charge but will not see any corresponding bill reductions because they are not utility customers. However, this assertion misunderstands the program. First, it assumes that participation in the Pilot increases the utility bill. However, a fundamental component of the Pilot is that utility bills must save more money than they cost, with the TOB bill charge being paid for by the new energy efficiency savings.

LSAP's argument is further flawed because it assumes the landlord will pass on the TOB program charge but will not pass on the utility bill savings. However, the total bill for the location

[42] Leah Burcat & Meg Power, *On-Bill Repayment for Home Energy Efficiency: The Benefits and the Risks*, ECONOMIC OPPORTUNITY STUDIES, 17 (2013), https://communityactionpartnership.com/wp-content/uploads/2018/11/On-Bill-Repayment-for-Home-Energy-Efficiency-Benefits-and-Risks.pdf.

will go down as a result of participation in the program, thus the tenants will see savings in their apportioned amount of the bill. The only way tenants will not see savings is if we assume that all landlords are bad actors who would receive a lowered bill but would not pass on utility bill savings. LSAP seems to argue that landlords can get away with gouging their tenants because tenants have no oversight over the billing processes. However, it is worth noting that any ability of a landlord to overcharge their tenants for utilities is not a result of the TOB Pilot, but would exist generally, regardless. Additionally, per statute, when a landlord apportions the monthly utility bill, the landlord has to provide a copy of the actual utility bill for the building, along with each apportioned bill, at the tenant's request.[43] Thus, LSAP's assertion that tenants in buildings where the landlord apportions the monthly utility bill are unfairly subjected to TOB charges from which they do not benefit simply misunderstands the program. Any installed energy efficiency measures would reduce the overall bill, and therefore the amount that is apportioned to the individual units.

G. TOB programs have built-in measures to ensure savings are realized.

Some commenters argue that participants will be harmed by the program because they believe savings estimates will not materialize.[44] LSAP states that, "in evaluations of other TOB programs around the country, this premise that savings always equal or exceed payments has been proven to be false."[45] However, LSAP provides no support for this statement and this assertion is not supported by data from existing programs around the country which show TOB program participants do realize bill savings.[46] As discussed at length in CEOs' Initial Comment, TOB programs have been successful in numerous other states.[47] For example, data shows that the How$mart program in Kentucky has resulted in average net bill savings to participants (i.e. savings

[43] Minn. Stat. § 504B.215, subd. 2a(3).
[44] LSAP Initial Comments at 17 (Feb. 4, 2022).
[45] *Id*.
[46] *See* CEOs' Initial Comment at 14-.
[47] *Id*.

after the monthly program charge is subtracted) of $11.00 per month.[48] Upgrade to $ave in North Carolina had an average net savings of $20.00 per month,[49] and HELP PAYS in Arkansas had average net savings to customers of $14.00 per month.[50]

LSAP further asserts that "energy savings achieved in practice . . . will be lower than those calculated in engineering conservation studies" because of "[c]ustomer behavior and lifestyle changes, among other factors . . . ,"[51] quoting a 1998 study. However, that study was not looking at how savings estimates matched realized savings for TOB Programs. Additionally, TOB programs already address this issue through the 80/20 Rule to leave room for a margin of error while simultaneously preserving net savings. Another unique element of TOB programs and this TOB Pilot is that the energy efficiency savings estimates are based on energy usage data and efficiency data from the actual home that will be enrolled in the program.[52] This makes TOB savings estimates even more accurate and reliable than energy savings that are calculated based on generalized data.

Finally, in TOB programs that utilize the PAYS model, the program operator builds in guarantees on both their modeling work and the work of contractors (in addition to equipment warranties) for the duration of charges. This means that if the estimated savings fail to materialize due to an estimation error, the program simply not functioning as the predictions estimated, or

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[48] *House$mart*, Fleming-Mason Energy, https://www.fme.coop/content/housemart (last visited Feb. 03, 2022); *How$mart Program*, Jackson Energy Coop., https://www.jacksonenergy.com/energy-efficiency-programs (last visited Feb. 03, 2022); Se. Energy Efficiency All., *Update on Inclusive Financing in the South*, On-Bill Financing for EE (Feb. 16, 2017), https://www.gotostage.com/channel/7746552352560182789/recording/a6cf561b1c454f24931faa94b842ed6e/watch?source=CHANNEL.

[49] *Update on Inclusive Financing in the South*, *supra* note 48.

[50] Ouachita Elec. Coop. & EEtility, *Opening Opportunities for Inclusive Financing for Energy Efficiency: Report on the First Year of the HELP PAYS® Program at Ouachita Electric* 12 (2017), available at https://www.oecc.com/pdfs/HELP_PAYS_Report_2016-Ouachita_Electric_20170612V1.pdf.

[51] LSAP Initial Comments at 17 (Feb. 4, 2022).

[52] Petition at 10 (Sept. 2, 2021).

faulty work of the contractor, the customer is held harmless and is not required to pay the TOB charges. CEOs would support incorporating measures into the Pilot that hold customers harmless if modeling estimates fail to result in actual savings. However, CEOs believe this should be accompanied by some limit to ratepayer responsibility for these charge-offs and a compliance filing to create transparency as to this process.

H. TOB Programs have been successful elsewhere and are predicted to succeed in Minnesota.

Lastly, commenters argue that claims of success in other TOB programs are overstated.[53] Specifically, LSAP claims that an outside evaluation of Ouachita Electric Cooperative Corporation's TOB program, a program which the CEOs discuss in their initial comment, "revealed that 17% of participants failed to realize the promised savings."[54] However, LSAP misquotes this study—this finding is not contained anywhere in the document. Instead, the study states that the HELP program is generating savings of about 22% of prior usage per participant, and that the program is *exceeding* the anticipated level of savings.[55] Thus, this study reveals the exact opposite of what LSAP asserts–participants in Ouachita Electric's program are realizing savings. There is no data in this study supporting the contrary.

LSAP also argues that "[f]indings from similar TOB programs in Delaware and Oregon, which showed success rates of only 34% and 47% respectively, also cast doubt on any claim that actual results will meet estimates and predictions with regularity."[56] However, LSAP incorrectly labels these programs from Oregon and Delaware as TOB programs—they are not. Moreover, the presentation LSAP cites to does not discuss the performance of TOB programs at all and instead

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[53] *See* LSAP Initial Comments 18–19 (Feb. 4, 2022).
[54] *Id.*
[55] OptiMiser LLC, *Ouachita HELP PAYS Residential Energy Efficiency Program Evaluation*, 19 (2018), https://mplscleanenergypartnership.org/wp-content/uploads/2018/04/Ouachita_PAYS_Report.pdf.
[56] *See* LSAP Initial Comments at 19 (Feb. 4, 2022).

only looks at the gross savings realization rates for Whole House Retrofit and Home Performance programs from a select few states.[57] Indeed, it does not appear that any of the programs evaluated were TOB programs. Thus, this source tells us nothing about to what degree savings are realized in TOB programs.

Finally, some commenters argue the fact that PAYS programs have been successful across the country, in both co-ops and IOUs, and in warm climates and in Midwestern climates, is irrelevant because the success of efficiency programs depends on many local factors.[58] While local factors are important, the fact that the PAYS model has been successfully implemented for 20 years in multiple different jurisdictions and climates speaks for itself.

Additionally, those local factors were taken into consideration by the CADMUS study when it evaluated the feasibility of a TOB program operated by Minnesota utilities, on Minnesota housing stock, in Minnesota weather conditions. Indeed, the special conditions that the commenters highlight as affecting energy efficiency programs: energy costs, weather, building stock, and investment levels, were all considered in the CADMUS study. The purpose of the study was "to draw on the best available information from prior TOB programs . . . as well as the wealth of energy planning information available and regularly used in Minnesota, to assess the feasibility of TOB in Minnesota."[59] In considering these factors, the CADMUS study found, "[t]he economic opportunities identified in this assessment are broadly consistent with the data from prior TOB programs."[60]

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[57] Mitchell Rosenberg, *The Resource Value of Whole House Retrofit*, 3,5 (2013), https://www.aceee.org/files/pdf/conferences/eer/2013/1A-rosenberg.pdf.
[58] ECC, CEE, LSAP Reply Comment at 3 (Mar. 4, 2022).
[59] Cadmus, *Tariffed On-Bill Financing Feasibility: Assessment of Innovative Financing Structures for Minnesota* 1 (2019) available at http://energytransition.umn.edu/wp-content/uploads/2019/08/Minnesota-TOB-Financing-FINAL_AH-1.pdf.
[60] *Id*. at 68.

Some commenters accuse CEOs of misrepresenting the results of the CADMUS study and the opportunities for TOB to work for a gas utility.[61] However the CADMUS study found:

> In homes heated by electricity or propane, financing for envelope improvements is attractive in a home with standard insulation levels, and dramatically so in a home with poor insulation levels. The low cost of gas heat makes applicability more difficult, but there are still ample opportunities for financing envelope improvements (especially wall insulation in poorly insulated homes).[62]

Finally, it is important to remember that this proposal is a Pilot, the purpose of which is to test the TOB concept here in Minnesota. As a state, we have already done due diligence in investigating this tool by securing a state-specific analysis. The results of that study are that there are good opportunities for TOB in Minnesota, through a program implemented by CenterPoint and otherwise. Given that this tool has been researched and discussed for years by stakeholders, and thoroughly investigated by the University of Minnesota Energy Transition Lab, the next logical step is to try out the tool through a well-designed Pilot.

5. Existing Programs Or Expansions of Existing Programs Are Insufficient To Address Accessibility Barriers To Energy Efficiency Upgrades.

Finally, CEOs respond to commenters that assert existing CIP programs will adequately serve the need, or that simply expanding existing programs can overcome accessibility barriers. For the reasons discussed below, accessibility barriers will remain unless a new program, like TOB, that specifically addresses these barriers is approved.

A. Expanding the CIP On-Bill Repayment Program under Minn. Stat. § 216B.241, subd. 5d will not address the accessibility barriers that the Pilot addresses.

The OAG advocates for CenterPoint to scrap the TOB program altogether, and instead offer another on-bill loan repayment program (an OBR program) under Minn. Stat. § 216B.241, subd. 5d with CenterPoint serving as the capital provider.[63] Such a program would be identical to

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[61] ECC, CEE, LSAP Reply Comment at 7 (Mar. 4, 2022).
[62] Cadmus, *supra* note 59, at 51.
[63] OAG Initial Comments at 10-11 (Feb. 4, 2022).

CenterPoint's already-existing EZ Pay program except that CenterPoint would be the lender in lieu of a third party. However, a new iteration of an on-bill loan program that simply uses a different lender would still have the identified shortcomings that necessitated the need for a TOB Pilot in the first place.

For example, under the EZ Pay program (and any new iteration of it), energy efficiency upgrades are paid for through a *loan* tied to the borrower. This means responsibility for all payments will remain with the same customer that originated the loan, even if they move away from the property where the energy efficient equipment was installed. This fundamentally prevents participation from anyone who rents, or who has plans to move in the near future, as the investment would not pay off for them. In comparison, the TOB Pilot is unique in that the debt obligation associated with the energy efficiency improvements run with the meter at the associated property.

Additionally, because the on-bill loan program involves a loan, there are inevitably credit or income criteria that the lender will require in order to approve an individual's loan, and therefore participation in the program. In contrast, the lack of income and credit score thresholds are key accessibility features of TOB programs, and a core reason why a TOB program would fill a participation gap that on-bill loan programs simply cannot.

Lastly, renters are not eligible to participate in the EZ Pay program, further restricting eligible participants.[64] Fortunately, the TOB Pilot allows renters to participate, *increasing* accessibility.

Clearly then, expanding the EZ Pay program to simply include a utility lender will not address the participation gap in existing energy efficiency programs, and is not a substitute for the TOB Pilot.

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[64] *EZ Pay On-Bill Loan (EZPAY)*, CENTERPOINT ENERGY (May 12, 2022, 4:06 PM), https://www.centerpointenergy.com/en-us/residential/save-energy-money/efficiency-programs-rebates/ez-pay-on-bill-loan-(ezpay)?sa=mn.

B. Existing CIP programs do not work for everyone.

Some commenters incorrectly argue that TOB Programs only fill an energy efficiency accessibility gap in southern states that lack any other energy efficiency programs.[65] They assert that the missing middle is sufficiently served by CenterPoint's existing residential CIP programs because CIP provides "energy audits, insulation rebates, and financing programs to middle-income customers." Asserting that existing programs sufficiently serve the need of the "missing middle" or the "donut hole" is simply untrue. Insulation rebates, or any rebates for that matter, do not work for customers that do not have the wealth to cover the remaining cost of the upgrade or the liquidity to pay out of pocket and wait for rebates. And CIP financing programs such as the EZ Pay program discussed above come with all the problems inherent in having to obtain a loan: they do not work for those that do not meet the income or credit requirements for a personal loan.

These commenters argue that instead of TOB, the solution is to expand existing income-eligible programs to middle-income customers by changing the income-eligibility requirements. However, this is not likely to be a sufficient solution as there are many advocates that would view this policy as regressive given that CIP programs are funded by all ratepayers. For this reason, commenters that assert existing program designs are sufficient but need more funding, or that expanding income-eligibility requirements for existing programs will solve the problem, are overlooking key participation barriers, all of which are addressed by a TOB program.

CONCLUSION

CEOs appreciate the healthy debate in this docket, but after considering other parties' comments, CEOs believe the concerns expressed about the Pilot are either (1) misunderstandings of the applicable law, (2) misunderstandings about the Pilot's operation, or (3) issues that can be addressed through thoughtful Pilot design. For these reasons, CEOs continue to support the TOB

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[65] ECC, CEE, LSAP Reply Comment at 4 (Mar. 4, 2022).

Pilot subject to the key modifications identified in our original comment, and believe the Commission has clear authority to adopt the Pilot. The Pilot remains a needed supplement to Minnesota's existing energy efficiency programs and is a program that will serve to reduce energy burdens, improve home living conditions, and reduce greenhouse gas emissions.

Respectfully submitted,

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