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July 6, 2022

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

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

Commissioners:

I am writing to reply to comments made earlier this year on the above petition to introduce a pilot Tariffed On Bill program with terms proposed by CenterPoint Energy at that time. As the author of the first order by a utility commission to approve a tariff for the Pay As You Save system, I would like to bring to your attention certain unnecessary risks to the adoption of a successful tariffed on-bill program posed by the proceeding at this juncture. I also ask that in deciding whether to approve any proposal as filed by CenterPoint Energy in this docket, you distinguish between the terms of the pilot program proposed and the Pay As You Save® (PAYS®) in order to avoid making findings on elements of the Pay As You Save system itself, to which the petition does not conform.

Petitioners making the filing, and some parties commenting in the record before you, argue that the proposed program constitutes a PAYS program, or at least a program *based on* PAYS. This is not accurate. The conflation of PAYS with the program before you glosses over important elements in PAYS that deal with many of the concerns expressed in the record. If you determine the tariff in the filing should not be approved, I urge you to avoid extending the scope of findings beyond the program as proposed (originally, or in later filings after ongoing negotiation), which could make it difficult for Minnesota utilities to advance a program that meets the minimum requirements and contains the essential elements of a PAYS program.

When I was a Commissioner on the New Hampshire Public Utilities Commission, I brought the Energy Efficiency Institute, based in Vermont, to New Hampshire to introduce us to the Pay As You Save program. PAYS was developed to extend utility energy efficiency to customers who cannot take advantage of incentive, loan and other traditional utility programs. We became the first commission to approve a PAYS tariff, and PAYS continues to be a component of the utility core set of programs.

I have made numerous presentations on PAYS to decision makers. I also served for a time as Board Chair of a non-profit that educated stakeholders on the PAYS program. I am retired now, but have been pleased to see that advocates of equity and accessibility to building energy upgrades have continued the work, and now that there is more field data on the financial value generated these programs produce, there are more PAYS® programs in operation. Some utility commissions have approved PAYS tariffs. Others have approved a utility proposal to offer PAYS and associated tariffs, relying on the merits of the system and the general supervisory and efficiency authority of the Commission.

Field experience has shown that PAYS, properly structured and implemented, can open efficiency opportunities to many customers who cannot participate in the market today, even with the assistance of utility programs. Also, it can clear barriers for customers who are already eligible for existing programs that do not remove the upfront cost to participate. I fear, however, that programs attempting to copy only some of the PAYS essential elements, and failing in their purpose as a result, will PAYS solidify the misconceptions have that lead some low-income advocates to oppose it.

The gentlemen who designed PAYS, Harlan Lachman and Paul Cillo, did so with the express intent of filling gaps left in efficiency access by existing programs.

Existing utility programs leave many customers unable to achieve savings.

- Renters face a dilemma where the landlord does not pay the energy bill – the classic split incentive.
- Education programs cannot help where a customer lacks the resources to make efficiency upgrades or the financial capacity to prioritize them. Many customers either lack liquidity (cash) or personal lines of credit to pay upfront costs or will not choose to dedicate either to an energy efficiency upgrade ahead of all other households financial priorities.
- Many customers (*not limited to low-income customers*) cannot take the risks inherent in paying for a measure that turns out not to provide the claimed benefits.
- Many customers cannot enter into a loan agreement because they lack the credit score required.
- Many customers will not risk taking out a loan or paying cash for efficiency even if they are able to do so because of the chances they will not reside in the location long enough to achieve a break-even payback, much less a financial benefit.
- Many loan programs put the customer at risk by allowing indebtedness for poorly-chosen projects, substandard installation, measure failure, and other problems.
- Customers that use familiar consumer financial products to pay for energy efficiency, like credit cards or home loans or loans from a utility, are unlikely to do so unless they have lower bills made possible by energy efficiency as soon as their first payment.

To address these concerns in a wholistic manner, Messrs Lachman and Cillo crafted a system that

> enables utilities to invest in cost effective resource efficiency and renewables on the customer side of the meter and recover all of their costs. Participating customers have money-saving, resource-efficient upgrades installed with no up-front payment and no debt obligation. Those who benefit from the savings pay a tariffed charge on their utility bill, but only for as long as they occupy the location where the upgrades are installed. The monthly charge is always lower than the estimated savings and it remains on the bill for that location until the utility recovers its costs. While PAYS allows for payment over time, it does not involve any consumer loan obligation.

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The designers have also set out a list of PAYS essential elements and minimum program requirements, which are set out in the attachment to my letter. I recommend the Commission lay these essential elements and minimum program requirements alongside the corresponding provisions of the instant proposal, to identify the extent to which it does, or does not, meet the requirements for a program to be treated as a PAYS® offering. If the Commission has questions about the fidelity to the PAYS® requirements, it may wish to consult with the designers of PAYS®, the Energy Efficiency Institute of Vermont. The purpose would not be to authorize use of the trademark, so much as to ensure that program elements are accurate, so as to produce the benefits for which the program is designed.

In this letter, I wish to make a number of general comments about these requirements and the proposal before the Commission in this docket.

- I note that on its face, the proposed program filed by the petitioner has at least one if not a number of elements that diverge from the fundamentals of the PAYS system, so the results would likely also diverge.
    - The upfront charges violate an essential provision of PAYS, in that they require out-of-pocket payments from a customer before there can be any savings.
    - There does not seem to be assurance that measures will satisfy the PAYS "80% rule" for estimated savings. This minimum requirement of the PAYS system provides for customers to save money if they allow a PAYS upgrade to be installed. The "80% rule" for estimated savings provides a cushion against uncertainty in implementation so that total customer payments are never greater than bill savings. The customer must never pay more than they save.
    - I am informed that the relationship between gas prices and efficiency costs in Minnesota was such in February that it may not have been possible to identify many upgrades that satisfy the "80% rule." The point should not be to adjust the cost-benefit requirement in order to approve a program and call it PAYS. The entire purpose of PAYS is to allow customers to have installed measures on terms that produce positive cash flow.
- Some of the objections expressed in this docket about elements of the system –

elements essential to provide the beneficial offer to participants – have been permitted in other jurisdictions without needing PAYS-specific legislative authority. I have retired from the practice of law, and have never been admitted to the Minnesota bar, and I make this observation fully recognizing that I cannot interpret Minnesota law. I can only say that:

- New Hampshire's utility commission, for example, grounded its authority to approve PAYS on the general legislative mandate to foster energy efficiency.
- To not unnecessarily foreclose use of the PAYS system in future, if there is any question about the authority to allow the upgrade cost recovery responsibility to apply automatically to the meter, and inclusion of the copay in the amount of the bill subject to disconnection for non-payment, I would hope the Commission in rejecting the pending proposal does not reach those issue, but leaves them for another docket in which an actual PAYS® program is proposed.
- Among commenters in the docket, there are serious misunderstandings among low-income advocates (of whom I was one for many years) about the differences between PAYS and loan programs[1] PAYS does not create a personal indebtedness. Measures are certified to be suitable for the premises and to be estimated to meet the "80% rule." The transactions are under the ultimate purview of the Commission; there should be no customer disappointments if the program is followed, but should there be any, the customer has recourse to the Commission.

- Some commenters have argued that it is never fair to low-income customers to ask them to pay any amount for efficiency, given their straightened circumstances. To the extent there are other programs that provide no-cost upgrades to customers, it makes sense to direct them there, as is stated in the tariff proposed by the petitioner in this docket. However, if there is a waiting list, or the existing programs do not cover the kinds of upgrades covered by a PAYS system, customers should not be denied the opportunity to choose and pay for upgrades that are designed to save them money.
- I am informed that Minnesota's utility commission may not disqualify a utility program solely on the grounds that it fails the non-participant test. Still, PAYS measures and copayment arrangements are such that utility investments under PAYS should typically meet the non-participant test. The customers directly benefiting from the measures pay for them in the end, This provides assurance to non-participants that they will not be unfairly subsidizing another's efficiency (a serious problem with those programs PAYS® customers typically cannot use).

I appreciate this opportunity to comment on the proposal before the Commission in this docket.

Sincerely,
/s/
Nancy Brockway

Cc: service list

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[1] Including PACE, the property-tax-based **loan** program whose acronym has always sounded suspiciously like PAYS® to my ears, but which should not be confused with PAYS®.

PAYS® PROGRAM ELEMENTS AND REQUIREMENTS

A program based on PAYS® has these essential elements:

1. A fixed monthly tariffed charge assigned to a location, not to an individual customer;
2. Payment on the utility bill with utility cost recovery on the same terms as their other essential utility services; and
3. Independent certification that products are appropriate and savings estimates exceed payments in both the near and long terms.

A program based on PAYS® has these minimum program requirements:

Offer to Customers

a. The offer to customers is not burdened with customer risk, which undermines the offer's attractiveness to customers, results in fewer completed projects, and reduces the program's effectiveness in achieving its goals. PAYS upgrades and the associated monthly charge must not entail new debt or liens for the participant.
b. PAYS offers will not be forced to compete with other utility offers. A utility offering rebates, for example, as well as implementing a program using the PAYS system will offer the same rebates to participants of all their programs. However, a utility cannot use the requirements of other offers to limit PAYS program offers or participation.

Quality of Efficiency Upgrades

a. PAYS upgrades must use properly installed, reliable technologies that are proven to produce savings.
b. Once the utility has recovered all of its investment in upgrades at a location, ownership of the upgrades will transfer to the building owner at that time without any additional financial obligations. Upgrades may not be repossessed.
c. If upgrades stop working, monthly charges must stop until the upgrades are repaired and working again. Charges are also suspended for vacancy if the meter is shut off.
d. The amount of the monthly charge will not change for an upgraded location for the duration of utility cost recovery unless one or more measures in an upgrade package fails for reasons other than the owner, customer (if different), or occupants have removed, damaged or failed to maintain it, and it cannot be repaired or replaced. In this case, the charge will be reduced if the remaining package would have originally qualified for the tariff; if not, the charge will be eliminated completely.
e. Repair costs or the costs associated with deferred collections from vacancy may be recovered by extending the duration of charges at a location for as long as needed, but not beyond when the upgrades are functioning and producing savings.

Cost-effectiveness analyses

a. Cost effectiveness must be based on site- and building-specific analysis at a location, use actual installation costs, and include no inflation rate.

b. When calculating the monthly charge and copay amount for an upgraded location, utilities must use estimates of all significant annual resource savings the participant will receive (e.g., water, sewer, electricity, gas, and oil) from upgrades installed at that location.
c. Utility subsidies and state and federal credits may be included in cost-effectiveness analyses only if they lower the payment to the installing contractor, assuring a fair monthly charge is passed along to successor customers.

On-bill charges

a. The monthly charge for a location must be set so that the amount a residential or commercial participant pays annually is not more than 80 percent of the upgrades' estimated annual savings based on current retail rates and the payment term is not more than 80 percent of the estimated life of the shortest-life measure of an upgrade package or the term of a full parts and labor warranty/insurance policy on the upgrades (80 percent rule).
b. Charges are binding on the participant and all successor customers at the upgraded location until they have fulfilled all their obligations and are no longer a customer at the location or until utility cost recovery is complete.
c. Each month, the utility must pay the capital provider(s) the amount billed to PAYS customers, regardless of the utility's collections, and treat PAYS uncollectibles the same as it treats all other uncollectibles.
d. Pre-payment of unbilled charges is not permitted because the participant will not yet have the savings to cover this payment.
e. Whenever possible, the implementing utility must file notice with the property records for the upgraded location of the benefits and obligations of the upgrades to ensure buyers of the property are notified.

Link to PDF version

Available at http://www.eeivt.com/updated-pays-essential-elements-and-minimum-program-requirements-effective-december-31-2020/, last viewed February 18, 2022.