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**RE: Conformity of Pay-As-You-Save Style Inclusive Financing to
Minnesota Utility Statutes and Regulations**

Apparatus was retained to conduct research and analysis as to whether a Pay-As-You-Save (PAYS) approach to inclusive financing offered by public utilities to customers conforms to existing statutory and regulatory laws governing utilities in Minnesota. The request for this analysis was prompted in part by a document developed on July 27, 2018 by CenterPoint Energy to inform the deliberations of the Minneapolis Clean Energy Partnership Board as to whether a PAYS approach to inclusive financing is a legally feasible option without legislative changes to existing public utility laws. CenterPoint's document suggested that there are several statutory and regulatory provisions that preclude them from being able to offer PAYS at the present time. My analysis of these statutes and regulations reaches the opposite conclusion. There is nothing in the existing statutes or regulations that prohibit the regulatory approval of PAYS and, in fact, there is direct statutory authorization for PAYS to be approved through the regular ratemaking and rate change processes applied to public utilities in the status quo.

Definition of PAYS Products

PAYS products are energy efficiency measures and/or solar installations to a home or building that are offered to property-owners as a service upgrade and paid for by the utility as an investment tied to the property's meter (or meters in the case of a multi-unit property). For the customer at the meter, the terms of the service upgrade are that the customer pays a monthly rate that is less than they would have been charged without the efficiency measures and/or solar installations but more than the estimated savings generated by the efficiency measures and/or solar installations until the utility's investment cost is recovered.

PAYS Can Be Approved Through Regular Ratemaking and Rate Change

The MN Legislature has granted the Minnesota Public Utilities Commission ("PUC") broad plenary powers to set rates collected by utilities for furnishing gas or electric service so long as those rates are (A) just and reasonable and (B) set to encourage energy conservation, renewable energy use, and in furtherance of the state's energy planning and energy policy goals to the maximum extent reasonable.¹

¹ Minn. Stat. § 216B.03.

The aforementioned CenterPoint document states that, while PAYS is consistent with encouraging energy conservation and furthering the state's energy savings policy goal in Minn. Stat. § 216B.2401,² ultimately the ability to offer PAYS is subject to the following statutory and regulatory constraints:

- The PUC lacks the statutory authority to regulate PAYS as a utility service because “customer premise efficiency improvements are not equipment or facilities used by a public utility to deliver or measure” gas or electricity.
- The PUC has the statutory authority to approve an on-bill fee for utility financing of customer-owned efficiency improvements that remain with the property as a utility Conservation Improvement Program (“CIP”) but, however, lacks the authority to approve PAYS as a CIP because it is not a loan and the improvements remain with the meter.
- That existing statute and rules prohibits the PUC from allowing utilities to disconnect customers’ service for non-payment of PAYS fees.

The PUC’s broad plenary ratemaking authority is not limited by the statutory definitions for “public utility”³ or “service,”⁴ as suggested by CenterPoint, but rather by the statutory definition for “rate,” which the CenterPoint document omits. Minn. Stat. § 216B.02, Subd. 5 defines rate as:

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 *and any rules, practices, or contracts affecting* any such compensation, charge, fare, toll, rental, tariff, or classification. (emphasis added)

The statute makes clear that the PUC has the broad authority to approve rates not just as the charge for service, but also as any practices or contracts that have a bearing on the charge for service. As such, Minn. Stat. § 216B.05 provides that public utilities must file with PUC “schedules showing all rates, tolls, tariffs, and charges which it has established. . . for any service performed by it” and, that as part of that filing, must also file “any contracts, agreements, or arrangements relating to the service or product or the rates to be charged for any service or product to which the schedule is applicable *as the commission may by general or special order direct.*” (emphasis added)

Furthermore, Minn. Stat. § 216B.16 establishes that the PUC’s authority to set and adjust rates includes as a default the authority to allow for cost recovery at its discretion.⁵ Minn. Stat. 216B.16, Subd. 6 explicitly states that, in determining just and reasonable rates for utilities, the PUC must consider the cost and depreciation of utility property and “other expenses of a capital nature” and allow the utility to charge a rate that earns sufficient revenue “to meet the cost of providing the service” and “a fair and reasonable return” on its capital investments.

² “The legislature finds that energy savings are an energy resource, and that cost-effective energy savings are preferred over all other energy resources. The legislature further finds that cost-effective energy savings should be procured systematically and aggressively in order to reduce utility costs for businesses and residents...”

³ Minn. Stat. § 116B.02, Subd. 4 (defining “public utility” as an entity “operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured, or mixed gas or electric service to or for the public or engaged in the production and retail sale thereof . . .”).

⁴ Minn. Stat. § 116B.02, Subd. 6 (defining “service” as “natural, manufactured, or mixed gas and electricity; the installation, removal, or repair of equipment or facilities for delivering or measuring such gas and electricity.”).

⁵ It is only for particular situations set forth in for in Minn. Stat. §§ 216B.161 – 216B.1696, collectively titled in the Chapter as “Special Rates and Practices,” that the legislature has provided additional statutory provisions that deviate from this default.

Quite specific to the issue of PAYS, Minn. Stat. § 216B.16, Subd. 6b explicitly states that:

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.* (emphasis added)

The statute accordingly defines these “investments and expenses of a public utility” as:

the investments and expenses incurred by a public utility in connection with an energy conservation improvement, including but not limited to:

- (1) the differential in interest cost between the market rate and the rate charged on a no-interest or below-market interest loan made by a public utility to a customer for the purchase or installation of an energy conservation improvement;
- (2) the difference between the utility's cost of purchase or installation of energy conservation improvements and any price charged by a public utility to a customer for such improvements.

With this, the legislature has left no question as to its intent—it is the default for the recovery of investments and expenses for energy conservation measures paid for directly by the utility to be included as part of the reasonable and just rate for the utility’s service approved by the PUC. The statutory and regulatory conditions that apply to energy conservation improvements procured through CIP are entirely irrelevant to PAYS, including the requirement that ownership for CIP improvements remain with the property owner and the prohibition against disconnection of service for failure to pay for CIP improvements.

Conclusion

Minnesota’s public utility statutes and regulations do not present an obstacle to a public utility’s offering of PAYS to Minnesota public utility customers.