

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

Katie Sieben
Dan Lipschultz
Valerie Means
Matthew Schuerger
John Tuma

Chair
Vice Chair
Commissioner
Commissioner
Commissioner

In the Matter of a Commission Inquiry into
the Impact of Severe Weather in January and
February 2019 on Utility Operations and
Service.

DOCKET NO. E,G-999/CI-19-160

**RESPONSE COMMENTS OF THE
OFFICE OF THE ATTORNEY GENERAL**

I. INTRODUCTION

The Office of the Attorney General—Residential Utilities and Antitrust Division (“OAG”) respectfully submits the following Response Comments in response to the Public Utilities Commission’s (“Commission”) Notice of Comment Period issued on July 9, 2019. The purpose of these comments is to reiterate the OAG’s position that changes need to be made to address the failure of a large portion of the interruptible natural gas customers of Xcel Energy (“Xcel”)¹, CenterPoint Energy (“CenterPoint”), and Minnesota Energy Resources Corporation (“MERC”) to appropriately curtail their natural gas usage during the severe weather event in January and February of this year.

II. BACKGROUND

A severe cold weather event taking place between January 28 and February 1, 2019, prompted the Commission to open this proceeding to inquire into the impact of that event on utility operations and service.² On May 20, 2019, the OAG and the Department of Commerce (“Department”) filed comments addressing the failure of a large number of natural gas customers

¹ Xcel’s participation in this proceeding relates to both its natural gas and electric utility service. The OAG’s comments address only issues related to natural gas service, so all references to “Xcel” in these comments refer only to Xcel’s natural gas operations.

² Notice of Commission Planning Meeting (Feb. 21, 2019).

to properly curtail their usage when called upon to do so.³ Xcel, CenterPoint, and MERC all filed reply comments responding to the concerns raised by the OAG and the Department.⁴

III. ANALYSIS

In its Comments, the OAG argued that, in addition to new reporting requirements, that the Commission should consider the lack of compliance by interruptible customers when apportioning revenue in future rate proceedings.⁵ While MERC seems willing to consider these changes,⁶ neither Xcel nor CenterPoint agreed with this proposal.⁷

What was most notable with the utilities' responses was a general belief that current penalties are sufficient to deter unauthorized usage during a curtailment and an attempt to minimize the scope of the problem. For example, Xcel stated that "the current tariff language regarding possible removal of non-compliant customers from the service along with the significantly penalty of \$5 per therm for unauthorized gas usage provides reasonable deterrence."⁸ The fact that 39 percent of the curtailed customers failed to fully comply with the requirement demonstrates that the existing policies are inadequate.

CenterPoint seems to similarly believe that the existing mechanisms are sufficient, stating that "we do agree there are steps that can be taken to enhance the curtailment process, not through tariffs, but through education and discussion with [its] customers."⁹ It is difficult to imagine that a 38 percent non-compliance rate can be remedied through "education and discussion" alone.

³ OAG Comments at 2-4; Department Comments at 4-7.

⁴ Xcel Reply Comments at 14-17; CenterPoint Reply Comments at 1-5; MERC Reply Comments at 1-5.

⁵ OAG Comments at 4.

⁶ MERC Reply Comments at 3 ("MERC is already in the process of implementing revenue apportionment changes that appropriately recognize the associated risk and value of interruptible versus firm distribution service.").

⁷ See CenterPoint Reply Comments at 4.

⁸ Xcel Reply Comments at 16.

⁹ CenterPoint Reply Comments at 5.

There is, however, some merit to CenterPoint’s argument that adjusting the class-wide revenue apportionment “would penalize interruptible customers who conform to tariff requirements.”¹⁰ Additionally, the utilities also raised concerns about the impact to customers that partially complied with the curtailment. Specifically, CenterPoint argued that “[e]ach instance of non-compliance would need to be weighed on its own merits,” and pointed out that some of the failures were due to communication delays or only for a portion of the curtailment period.¹¹

If the Commission is persuaded by these concerns, there is another potential solution that would address both the impact on compliant interruptible customers and the proportionality of the penalty with respect to customers who partially complied with the curtailment. The Commission could, when approving interruptible tariffs, require that those tariffs provide for a doubling of the per-therm penalty for every subsequent failure to curtail. Such a policy would make the penalty a more effective deterrent. If a customer is a repeat offender, exponential growth in the penalty will quickly either push that customer into seeking firm service, incent compliance with the interruptible requirements, or result in a penalty that is so high as to inarguably compensate the system for the customer’s repeated non-compliance. As this change would only apply to the penalty for non-compliance, interruptible customers that are living up to their obligations will remain entirely unaffected by the escalating penalties. Furthermore, since it would leave the initial penalty unchanged, so-called “first time offenders” would not be punished any more harshly than they would by the existing penalties. Finally, since the consequences for non-compliance will continue to be assessed on a per-therm basis, the penalty

¹⁰ CenterPoint Reply Comments at 3.

¹¹ CenterPoint Reply Comments at 5.

will be proportional to the violation. In other words, a customer that only partially fails to curtail will only be penalized for the gas that they use while under curtailment.

IV. CONCLUSION

The OAG agrees that “it is unrealistic to expect to eliminate all unauthorized gas usage during all curtailment events.”¹² Assuredly, however, the Commission can expect to achieve a level of compliance substantially greater than the approximately 60 percent that it saw during this year’s severe weather event. The Commission should take steps consistent with the OAG’s recommendations in these Response Comments and its Initial Comments that are reasonably calculated to significantly improve the compliance rate for interruptible customer curtailment practices in Minnesota’s next severe weather event.

Dated: August 9, 2019

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

s/ **Joseph C. Meyer**

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ATTORNEYS FOR OFFICE OF THE
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¹² MERC Reply Comments at 1.



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August 9, 2019

Mr. Daniel Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

Re: *In the Matter of a Commission Inquiry into the Impact of Severe Weather in January and February 2019 on Utility Operations and Service.*
Docket No. E,G-999/CI-19-160

Dear Mr. Wolf:

Enclosed and e-filed in the above-referenced matter please find Response Comments of the Minnesota Office of the Attorney General–Residential Utilities and Antitrust Division.

By copy of this letter all parties have been served. An Affidavit of Service is enclosed.

Sincerely,

s/ **Joseph C. Meyer**

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Enclosures

AFFIDAVIT OF SERVICE

Re: *In the Matter of a Commission Inquiry into the Impact of Severe Weather in January and February 2019 on Utility Operations and Service.*

Docket No. E,G-999/CI-19-160

[illegible]

I, DEANNA DONNELLY hereby states that on the 9th day of August, 2019, I e-filed with eDockets ***Response Comments*** of the Minnesota Office of the Attorney General—Residential Utilities and Antitrust Division, and served the same upon all parties listed on the attached service list by e-mail, and/or United States Mail with postage prepaid, and deposited the same in a U.S. Post Office mail receptacle in the City of St. Paul, Minnesota.

See Attached Service List

s/ Deanna Donnelly
DEANNA DONNELLY

Subscribed and sworn to before me
this 9th day of August, 2019.

s/ Patricia Jotblad
 Notary Public
 My Commission expires: January 31, 2020.

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