

Staff Briefing Papers

Meeting Date February 17, 2022 Agenda Item *5

Company Dakota Electric Association

Docket No. **E111/M-21-810**

In the Matter of a Dakota Electric Association Petition- Request for Variance- Billing Error Rules

Issues

1. Should the Commission grant a variance to Minnesota Rule 7820.3800 (Electric Utility Billing Errors) in order to approve a refund to a Dakota Electric Association customer for an overcharge beginning in January 2017?
2. By which method should the Commission address uncontested billing error rule variances for Dakota Electric Association?

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 **Relevant Documents**

Date

Initial Filing- Petition, Dakota Electric Association	November 23, 2021
Letter, Dakota Electric Association	December 6, 2021
Comments, Department of Commerce, Division of Energy Resources	December 10, 2021
Reply Comments, Dakota Electric Association	December 13, 2021

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

I. Statement of the Issues

1. Should the Commission grant a variance to Minnesota Rule 7820.3800 (Electric Utility Billing Errors) in order to approve a refund to a Dakota Electric Association customer for an overcharge beginning in January 2017?
2. By which method should the Commission address uncontested billing error rule variances for Dakota Electric Association?

II. Similar Issue Recently Before Commission

On January 20, 2022 the Commission heard Docket No. E015/M-21-790, *in the matter of Minnesota Power's Petition for Approval of a Variance to the Customer Service Rules Governing Billing Errors*. In Docket No. 21-790, as well as in response to the instant Dakota Electric Association petition, the Department of Commerce (Department) proposed a 30-day negative check off process to allow expedited refunds for customers overcharged by their utility for a length of time greater than three years.

Ultimately, the Commission decided to approve a modified version of the Department's proposal. Minnesota Power, and other utilities citing Docket No. 21-790, may submit a petition for a rule variance. A new docket will be opened for each petition. The utility's petition will confirm that the Department's three criteria have been met: agreement between utility and customer; consultation of CAO, and no novel or unusual circumstances. The petition will also cite the January 26, 2022 Order in Docket No. E015/M-21-790. After 30 days, Commission Staff will verify that no comments have been received (i.e., no one contests the refund). If so, the Executive Secretary will issue a Notice that the utility may refund the customer the total amount due, including interest. The Company will later make a compliance filing when the full and complete refund has been issued. See Appendix A for a template that utilities may choose to use for this filing. Should any of the Department's criteria not be met or if comments opposing the refund are received, the matter may come to an agenda meeting.

In the current docket Staff amended the Department's original, proposed decision option to reflect the Order issued on January 26, 2022 in Docket No. E015/M-21-790.

III. Background for Dakota Electric Association Petition

On November 23, 2021 Dakota Electric Association (the Cooperative) filed a petition to approve a refund for a non-residential customer who had been overcharged beginning January 2017, the time at which their on-site solar Distributed Energy Resource (DER) with a capacity >60kW was activated. The overcharge was due to an incorrect application of standby charges as well as minor coding errors. These errors resulted an overcharge of \$9,437.97.¹

¹ Dakota Electric Association's initial filing, petition November 23, 2021 into Docket No. 21-810, PDF.

On December 6, 2021 the Cooperative filed a letter clarifying the amount to be refunded to the customer. With the inclusion of sales tax, a total refund of \$10,423.65 including interest, was due.² Sales tax in the amount of \$457.29 were accrued within the previous three years and thus, were able to be refunded immediately. The remaining \$215.16 in sales tax is associated with a period occurring greater than three years ago and thus, is subject to the billing error rule variance at hand in the present docket.

Under Minnesota Billing Error Rules, 7820.3800, utilities are permitted to issue refunds to customers who have been overcharged within the past three years.³ Should the overcharge period stretch back further than three years, a utility must petition the Commission for a variance⁴ to the billing error rules to allow a refund of the full amount of the overcharge. Once granted, variances automatically expire within one year unless otherwise specified.

The Cooperative has already refunded the maximum amount allowed under Rule, the amount overcharged, plus interest, for the three years prior to the date of discovery of the billing error (Table 1). However, to refund the full and complete amount of the overcharge, dating back to when the error originated, the Cooperative sought a one-time rule variance as well as a one-time modification to their Rate Book. The Cooperative believes their request for variance fulfills all requirements specified in MN Rule 7829.3200 subp. 1.

Table 1. The Cooperative's Amended Refund Calculations⁵

Time Period	Principal	Interest	Tax	Total Refund
Within Commission Rules: 09/18 through 08/21	\$6,418.23	\$275.98	\$457.29	\$7,151.50
Exceeding Commission Rules: 01/17 through 08/18	\$3,019.74	\$37.25	\$215.16	\$3,272.15
Total	\$9,437.97	\$313.23	\$672.45	\$10,423.65

² Dakota Electric Association's letter filed December 6, 2021 into Docket No. 21-810, PDF p2.

³ MN Rule 7820.3800 Subp. 2, **Remedy for overcharge.** "When a utility has overcharged a customer, the utility shall calculate the difference between the amount collected for service rendered and the amount the utility should have collected for service rendered, plus interest, for the period beginning three years before the date of discovery."

⁴ MN Rule 7829.3200 "Other Variances" subpart 1, **When granted.** "The commission shall grant a variance to its rules when it determines that the following requirements are met:

A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;

B. granting the variance would not adversely affect the public interest; and

C. granting the variance would not conflict with standards imposed by law."

⁵ Dakota Electric Association's letter filed December 6, 2021 into Docket No. 21-810, PDF p2. Updated amounts reflect addition of sales tax to estimated refund amounts.

IV. Department Proposal

On December 10, 2021, the Minnesota Department of Commerce (Department) recommended the Cooperative's billing errors variance be granted. More, the Department proposed a 30-day negative check off process for billing error variance requests to allow for expedited refunds for some Cooperative customers in the future.

This negative check off process is the same filed previously for Minnesota Power.⁶ The Department indicated the Cooperative voiced a preference for this same process to be used in their own billing error dockets. Thus here, the Department proposed the same process, historical review, and justification, as was proposed for Minnesota Power in Docket No. 21-790.

A. Justification- Resources

The Department's proposal recognized the resources required to address customer overcharges dating back further than three years. At present, even if the utility and impacted ratepayer agree to the refund, the process for refunding a ratepayer who had been overcharged for longer than three years would require a utility filing a petition for variance to billing error rules.

The Department observed the following process when such a petition is filed. First, a utility consults the Commission's Consumer Affairs Office (CAO) prior to filing a petition. Then, once a petition is filed, a docket must be opened and the Department must review, analyze, and comment on the filing. Then, Commission Staff must review comments and prepare a briefing paper. For the Commission to decide the matter, the docket must be added to the consent calendar⁷ or brought to an agenda meeting.⁸ Finally, an Order must be written and issued.

B. Justification- Delays for Customers

The Department explained that even when the customer agrees with the refund amount, they must wait for the notice, comment, and agenda meeting process⁹ before receiving their refund. Suggesting that the timeframe required by the current billing error rule variance process is unnecessary, the Department provided evidence that the outcome of billing error dockets is predictable. Thus, requiring a customer wait through the full process may prolong what is often

⁶ See Department comments filed November 30, 2021 in Docket No. 21-790.

⁷ For example, Docket No. E015/M-17-768 was resolved via the Commission's consent calendar process. An Order was issued on January 10, 2018 and was accompanied by a Department letter and five-page analysis.

⁸ For example, Docket No. E-002/M-18-27 was brought before the full Commission at the March 29, 2018 agenda meeting. On April 4, 2018 an Order was issued, accompanied by a Department letter and four-page analysis.

⁹ Department Comment filed December 10, 2021 into Docket No. 21-810, p2. However, Staff notes that it is not Commission practice to issue a notice in billing error dockets. The filing of a petition triggers an automatic 30 day comment / 10 day reply comment period. More, billing error rule variances do not always go to an agenda meeting, as shown in footnoted examples; they may be decided via the consent calendar. However, even when decided via consent calendar, the Department completes and files an analysis.

a certain outcome.¹⁰ More, the Department also showed that billing error dockets that are refunds are almost never disputed.¹¹

C. Proposal Details

The Department developed a two-track pathway that recognizes that many refunds have already been agreed upon by utilities, ratepayers, and the CAO. While all petitions for variance to billing error rules will continue to necessitate the opening of a new docket, two tracks will allow the Commission to:

- A) Track A: reserve the existing process (petition and comments) for novel or unusual circumstances. Track A provides transparency such that as all petitions will trigger the opening of a new docket, interested parties can view and / or comment on the nature of the billing error and petition for variance to billing error rules.
- B) Track B: introduce the 30-day negative check off process for billing errors that have been agreed upon by the utility, customer, and the CAO. The second track requires the refund to pass three checks, representing steps already occurring outside formal PUC processes:
 - 1. The Company has communicated the refund amount to the customer, and the customer is in agreement with the Company regarding the amount and timing of the refund.
 - 2. The Company has consulted with the CAO and the CAO does not object to the refund.
 - 3. No other novel or unusual circumstances exist that would warrant the petition proceeding through the normal notice and comment process.

For Track B, the 30-day negative check off process, the Department suggested that the Commission could either issue a notice on the 31st day affirming the petition's approval or state that petitions passing the three checks, above, are deemed approved without notice.¹²

D. Dakota Electric Association Reply

On December 13, 2021 the Cooperative confirmed their support for the Department's recommendations and proposed process for future billing error filings. For the instant refund, the Cooperative requested the Commission follow the Department's recommendation to use the fastest means possible to expedite the customer refund.

¹⁰ The Department provided the following examples: Docket Nos. E015/M-17-768, E017/M-17-853, E002/M-18-27, and E017/M-18-215, E017/M21-193. The Department noted that they routinely recommend approval, and no other stakeholder files comments in these dockets.

¹¹ Department Comments p2, "The closest the Department can find to a dispute in a billing error docket was a 2011 Xcel billing error filing. The customer agreed to the refund, but also produced additional records and requested that the Commission approve a larger refund amount, which Xcel agreed to. Arguably, this was not a dispute as Xcel made the billing error filing and agreed to the refund. See Docket E-002/M-11-1031."

¹² Department Comment p3, footnote #4.

V. Staff Analysis

Dakota Electric Association filed a Petition for Approval of a Variance to the Customer Service Rules Governing Billing Errors, and the Department has proposed a new process for resolving billing errors that are longer than three years.

Minn. Rule 7829.3200 allows the Commission to vary its rules when three requirements are met:

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and
- C. granting the variance would not conflict with standards imposed by law.

Staff agrees that a variance to Rule 7820.3800 to approve the refund for the customer at issue is appropriate.

Neither the Department nor the Cooperative have identified any rules that would need to be varied to establish the Department's 30-day negative check-off. In some ways the Department's proposal is simply a new way for the Commission to consider future requests to vary Rule 7820.3800.

A. Basis for the Three-Year Refund Limit

The three-year customer refund limit is based on Rule, and the basis for the rules is explained in the Statement of Need and Reasonableness issued when the rule was first promulgated.¹³ The three-year refund limit was discussed extensively in Docket No. E015/M-21-790. Ultimately, it appeared to Staff that the purpose for the three-year limit was related to familiarity, and not consumer protection. In other words, making it faster to approve refunds for individual customers is not likely to have a negative impact.

B. Procedural Pathway for Billing Error Variances

Staff agrees that processing billing error variances more quickly is in the public interest. Recently, the Commission contemplated how to expedite refunds for Minnesota Power customers who had been overcharged for a time greater than the three most recent years (Docket No. 21-790). Ultimately the Commission decided to adopt an amended version of the Department's proposed 30-day negative check off process. Staff recommends the Commission take the same action with respect to the Cooperative (**Decision Option 2**).

¹³ Minnesota Legislative Reference Library Rule 7820.3800 p10-12. [SONAR-03723.pdf \(mn.gov\)](#)

VI. Decision Options

1. Approve Dakota Electric Association's request for a billing error variance and authorize the requested refunds. (Department, the Cooperative)
 - a) The Cooperative shall make a compliance filing within 14 days of the payment indicating the date of payment, total payment, and interest. (Staff)

2. Establish a 30-day negative check off process for billing error variance requests from Dakota Electric Association, and authorize Dakota Electric Association to provide refunds if no objections are filed within 30 days of a petition for a billing error variance.
 - a) The petition shall include estimated interest to be paid through the date of estimated payment.
 - b) The petition shall also include a citation of the Order issued on January 26, 2022 in Docket No. E015/M-21-790.
 - c) Delegate to the Executive Secretary to issue a Notice affirming the refund can be provided to the customer.
 - d) Dakota Electric Association shall make a compliance filing within 14 days of the payment indicating the date of payment, total payment, and interest. (Staff)

Appendix A- Sample Template for Utility Compliance Filing

In alignment with the Minnesota Public Utilities Commission's January 26, 2022 Order in Docket No. E015/M-21-790, which required Minnesota Power to make a compliance filing within 14 days of the payment indicating the date of payment, total payment, and interest, we, the Utility that petitioned for a rule variance in Docket No. [X###/X-YR-###], provide the following information:

Time Period	Principal Amount Overbilled	Adjustments	Interest	TOTAL
<i>Within</i> the three-year time period allowed under Commission Rules and Tariff period: [DATE RANGE]	[in dollars]	May include but not limited to: -Interim rate refund -Tax reform credits -Sales tax	[in dollars]	[in dollars]
<i>Exceeding</i> Rules and Tariff period: [DATE RANGE]	[in dollars]		[in dollars]	[in dollars]

On [DATE], payment for the approved refund portion exceeding rules was made in the amount of \$_____ (inclusive of interest). The customer in question has confirmed that payment was received. The prior portion of the refund due, \$_____, was previously paid on [DATE].