

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

Katie Sieben
Joseph K. Sullivan
Hwikwon Ham
John Tuma

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Vice Chair
Commissioner
Commissioner

In the Matter of Otter Tail Power Company's
Proposal for a Residential Time of Day Pilot
Plan

DOCKET NO. E-017/M-23-261

**REPLY COMMENTS OF THE OFFICE
OF THE ATTORNEY GENERAL—
RESIDENTIAL UTILITIES DIVISION**

INTRODUCTION

The Office of the Attorney General—Residential Utilities Division (OAG) respectfully submits the following Reply Comments regarding Otter Tail Power Company's proposed pilot of a residential Time of Day rate (TOD).

OAG responds to the recommendations made by the Citizens Utility Board (CUB) and the Department of Commerce that participants be enrolled in the pilot on an opt-out basis, and the bill protection recommendation by the Citizens Utility Board. Whether the Commission orders an opt-in or opt-out pilot should be informed by the goals of the pilot, the potential for consumer harm, and recognition that OTP's customers lack familiarity with TOD rates. Balancing several factors described below, the OAG continues to prefer that enrollment in the pilot be opt-in, as proposed by Otter Tail. If the Commission orders an opt-out pilot, the OAG recommends a modified version of the bill protection recommended by the Citizens Utility Board.

SUMMARY OF INITIAL COMMENTS

Otter Tail proposed enrolling between 270 and 300 households in its residential TOD pilot on an opt-in basis.¹ It proposed advertising the pilot first to customers who use its online customer

¹ Amended Filing at 13-14.

portal.² If there are not enough participants after advertising to the 15,000 online portal users, it would begin recruiting from its entire Minnesota residential customer base via mail.³ Participants would have to agree to stay on the TOD rate for at least one year.

Both CUB and the Department recommend that Otter Tail use opt-out enrollment rather than opt-in enrollment.⁴ Otter Tail would randomly enroll participants in the pilot who would then be given a chance to opt out if they did not wish to participate. CUB and the Department expressed concern that opt-in enrollment could result in an unrepresentative sample, which could limit the applicability of the learnings.⁵ The Department also noted that households who opted into the pilot may be more likely to benefit from it than the average residential customer. Households that opt in may also be more engaged and more responsive to the price signals.⁶ CUB echoed these concerns and further stated that Otter Tail might have trouble recruiting enough participants using opt-in enrollment.⁷

If the Commission modifies the pilot to use opt-out enrollment, CUB recommended increasing the enrollment target to 500 households and removing the requirement that households commit to one year.⁸ Enrolling the larger number of households would create a buffer for the natural attrition that would occur if enrollees opted out and help ensure statistically significant results.⁹ The Department found that 270-300 participants was reasonable but also noted that opt-

² *Id.* at 14.

³ *Id.*

⁴ Initial Comments of the Citizens Utility Board at 3-5 (Dec. 17, 2024) (CUB Initial Comments); Initial Comments of the Department of Commerce at 5-6 (Dec. 19, 2024) (Department Initial Comments).

⁵ CUB Initial Comments at 4-5; Department Initial Comments at 5-6.

⁶ Department Initial Comments at 5.

⁷ CUB Initial Comments at 4.

⁸ *Id.* at 3.

⁹ *Id.*

out enrollment could require contacting more individuals to keep the pilot at a reasonable size, depending on the number of households opting out.¹⁰

Like the OAG, CUB recommended that the pilot include a bill protection mechanism regardless of whether enrollment is opt in or opt out.¹¹ CUB argued that bill protection can help alleviate customer concerns about participating in a new rate and is necessary given a lack of customer understanding of time-varying rates shown in Xcel's significantly simpler Time of Use pilot.¹² CUB recommended the full bill protection mechanism that had been featured in Xcel's Time of Use pilot.¹³ This included the mechanism that the OAG recommended in initial comments in this docket, but also included a monthly true-up for pilot participants who received low-income energy assistance such as LIHEAP.¹⁴ The LIHEAP true-up would be to what the monthly bill would have been for the LIHEAP customers if their TOD monthly bill was higher. If the Commission orders an opt-out pilot, the OAG supports this low-income bill protection and recommends offering it to customers who self-certify as low income in addition to customers already receiving LIHEAP.

ANALYSIS

I. THE OAG PREFERS OPT-IN ENROLLMENT OVER OPT-OUT.

The OAG recommends opt-in enrollment for Otter Tail's pilot, while acknowledging that opt-out enrollment could also be reasonable. The choice depends on what the Commission hopes to learn from the pilot. If the goal is to identify pros and cons of a novel rate design and optimize customer understanding and acceptance of TOD rates, opt-in enrollment is preferable, as

¹⁰ Department Initial Comments at 6.

¹¹ CUB Initial Comments at 6.

¹² *Id.*

¹³ *Id.* at 7.

¹⁴ *Id.*

ratepayers who opt into a new rate are more likely to understand the rate, shift their load, and have a positive experience. If the goal is to study the impact of TOD rates on a randomized population and model instituting TOD rates as the default residential rate, opt-out enrollment will provide better learnings, as there is a smaller chance of an unrepresentative test population and participant reactions will more closely resemble reactions to a universal residential default opt-out rate. However, opt-out enrollment also poses an increased risk of harm to pilot participants and ratepayer rejection of TOD rates.

In the OAG's view, the goal of this pilot should be to test whether residential load shifting is realistic under the proposed TOD rate design and to introduce Otter Tail's residential ratepayers to the concept of TOD rates. The vast majority of Otter Tail's ratepayers have no experience with TOD rates, given that Otter Tail has not offered a residential one before. It is therefore unclear how difficult it will be for pilot participants to shift their load to avoid an increased bill. As shown by Xcel's Time of Use pilot, even customers who have been on a TOD rate for a long time may still have difficulty identifying the details of their rate.¹⁵ Using opt-in enrollment ensures that participants in the pilot are fully aware that they need to shift their load. It increases the likelihood that they know the relevant TOD periods and have a plan for shifting their electricity use. This in turn lowers the likelihood that a pilot participant experiences an extreme fluctuation in their electricity bill, which will improve ratepayer attitudes regarding TOD rates.

The OAG understands the concern that opt-in enrollment may result in learnings that are less applicable to a general population. It is certainly possible that customers who opt into the pilot will be more successful at shifting load, as these customers will have made an affirmative decision to try the TOD rate, rather than participating as the result of inertia or lack of awareness of the rate

¹⁵ Docket No. E-002/M-17-775, Compliance Filing – Pilot Completion at PDF page 32.

structure change, as may be the case with opt-out enrollment. However, success under the pilot rate is not a bad thing; indeed, it would show the benefits of a TOD rate to customers who might otherwise be more reticent to embrace the change. That said, if the pilot uses opt-in enrollment, the Commission must take that fact into account when reviewing the pilot results and determining the next steps so that expectations of success are not inflated.

If Otter Tail is unable to recruit enough participants, it may end up needing to employ opt-out enrollment. The OAG recommends first pursuing opt-in enrollment to increase the likelihood that participants will be aware of and educated about their new TOD rate. If Otter Tail is unable to find 270 households willing to opt into the rate, then it can randomly select households for opt-out enrollment. In that case, the OAG recommends enrolling a full study cohort¹⁶ of households through opt-out enrollment and analyzing their data separately from the households who opted in.

II. IF THE PILOT USES OPT-OUT ENROLLMENT, LOW-INCOME PARTICIPANTS SHOULD RECEIVE BILL PROTECTION IN THE FORM OF A MONTHLY TRUE UP.

If the Commission prefers that Otter Tail employ opt-out enrollment for its pilot, monthly bill protection for all low-income participants is essential, in addition to the bill protection mechanism for all participants that the OAG proposed in initial comments. That is, all participants should receive the true-up at the end of 12 months as previously proposed,¹⁷ but low-income participants should receive a monthly true-up to what their bill would have been on the regular rate if their TOD bill is higher. This is to ensure that the pilot does not cause sudden, extreme financial hardship for low-income participants who cannot wait for up to a year to be reimbursed.

¹⁶ That is, Otter Tail proposed a maximum of 300 participants, whereas CUB recommended 500 participants if opt-out enrollment is used. OAG does not take a position on the specific number, recommending rather that if opt-in enrollment is insufficient to populate the pilot, there should be sufficient opt-out enrollees to analyze their results separately from the participants who opted in.

¹⁷ Initial Comments of the Office of the Attorney General at 8-10 (Dec. 17, 2024).

Rather than limiting “low-income” to households who receive LIHEAP assistance, the OAG recommends this low-income bill protection mechanism also be offered to households who self-certify as low-income. This is because low-income programs are simply unable to assist all low-income families, as has been well-documented for many years.¹⁸ According to the Department, only 20 to 30 percent of low-income households apply for energy assistance.¹⁹ The problem is so pervasive that utilities and the Commission have been exploring ways of reducing barriers to assistance, including the automatic bill credit pilot²⁰ and self-certification of low-income status for Minnesota Power’s CARE program.²¹ The Minnesota Legislature has also signaled its support for income self-identification to protect struggling ratepayers: from the beginning, the Cold Weather Rule (“CWR”) has permitted a utility to “accept the signed statement of a customer that the customer is income eligible” as a way to verify eligibility for CWR protections.²² Limiting low-income protections in an opt-out TOD pilot to Minnesotans who receive energy assistance may cause financial harm to pilot participants who need but do not receive energy assistance. Income self-certification is an important tool to address this problem, and given the possible disruptions that an unknown opt-out TOD rate could cause, this tool should be used to ensure low-income ratepayers receive proper bill protection.

¹⁸ See, e.g., *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, MPUC Docket No. E-002/GR-15-826, Direct Testimony and Attachments of Pam Marshall at 13 (June 14, 2016) (eDocket No. [20166-122208-01](#))

¹⁹ Minnesota Department of Commerce, *Minnesota Energy Data Dashboard* at 17 (May 2022), available at <https://mn.gov/commerce-stat/pdfs/mn-energy-data-dashboard.pdf>.

²⁰ *In the Matter of Northern States Power Company d/b/a Xcel Energy’s Petition for an Automatic Bill Credit Pilot Program*, MPUC Docket No. E-002/M-24-173.

²¹ Minnesota Power, *Customer Affordability of Residential Electricity*, <https://www.mnpower.com/customerservice/careprogram> (last visited Nov. 14, 2024).

²² Minn. Stat. § 216B.096, subd. 6(a)(1), originally enacted as 2007 Minn. Laws ch. 57 § 13, subd. 6(a)(1).

The risks associated with income self-certification are negligible. A ratepayer receiving low-income bill protection only means that their bills are trued up to what they would have been under the flat rate. This means that low-income bill protection does not allow a participant to pay less than any other non-participating ratepayer – it only protects the participant from paying too much more as a result of agreeing to help develop a new rate.²³

CONCLUSION

The OAG continues to support the recommendations it made in initial comments, and makes two additional recommendations in these Reply Comments:

1. Enrollment for the Pilot should be opt-in rather than opt-out, unless Otter Tail is unable to recruit a minimum of 270 participants through opt-in enrollment. If Otter Tail is unable to recruit at least 270 participants through opt-in enrollment, Otter Tail should enroll a sufficient number of additional households through opt-out enrollment to be able to analyze their data separately from the households who opted in.
2. If enrollment is opt-out, there must be bill protection for all participants as follows:
 - a. All low-income participants whose bills are higher under the pilot rate than they would have been on the standard rate should receive a monthly true-up to the standard rate bill. “Low-income” means all participants receiving any form of energy assistance and participants who self-certify as low-income; and
 - b. All participants whose total bill after 12 months of the pilot is more than ten percent higher than it would have been under the standard residential rate

²³ If the participant successfully shifts load, their monthly bills will be lower, but this is not a function of bill protection – it’s the intended effect of a TOD rate, where a user who shifts load imposes lower costs on the system and therefore pays less.

should receive a true-up that caps their total 12-month bill at a ten percent increase over what it would have been under the standard residential rate.

The OAG also continues to support the below recommendations from initial comments:

3. If enrollment is opt-in, all participants should receive the bill protection stated in Recommendation 2.b, above;
4. The mid-pilot and post-pilot report from Otter Tail should include analysis of the following:
 - a. Participation metrics, including the number of participants who are low-income, identified both by Energy Assistance Program status and by self-identification during participant signup;
 - b. Customer experience, including satisfaction, preferences, attitudes, acceptance, and comprehension, including awareness of the specific on-peak, mid-peak, and off-peak periods. Surveys should be conducted mid-way through the pilot and after the pilot;
 - c. Participant bill impacts compared to historical participant bills and compared to what a participant's bill would have been on the standard residential rate, including minimum, maximum, and average bill increases/decreases, and charts showing the full distribution of bill impacts annually and by season, overall and for low-income participants;
 - d. The number of participants who received bill protection, overall and for low-income participants;
 - e. The number of pilot participants who have their service disconnected, if any;

- f. Participant peak impact (percent reduction in peak usage) and load shifting (percent of load shifted to and from off-peak, peak, and shoulder periods) based on historical participant usage, annually and by season, overall and for low-income participants;
 - g. Load shifting comparison of pilot participants versus residential ratepayers on the traditional rate, annually and by season, overall and for low-income participants; and
 - h. System coincident peak impact of TOD participants compared to pre-pilot coincident peak of participants, annually and by season; and
- 5. Otter Tail should file its recruitment and education plan far enough in advance of beginning recruitment to enable a comment period in which stakeholders can evaluate the sufficiency of its plan. The plan it files should include the following:
 - a. Examples of the messaging that pilot materials will include and a description of the form that they will take (emails, mailers, notices on customer bills, etc.);
 - b. More detailed cost estimates for each feature in Otter Tail's proposed outreach plan;
 - c. Otter Tail's plan for additional training to prepare customer support staff to answer questions about the pilot;
 - d. The timeline of when each step or communication strategy will be implemented; and
 - e. Any other relevant aspects of Otter Tail's proposal for customer outreach and education.

6. Otter Tail should collect load curve, energy usage, and bill information from participants for at least six months prior to beginning the pilot in order to establish a baseline against which it can measure customer response to the TOD price signal.

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Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ **Joey Cherney**

JOEY CHERNEY
Assistant Attorney General
Atty. Reg. No. 0403219

445 Minnesota Street, Suite 600
St. Paul, Minnesota 55101-2131
(651) 300-7569 (Voice)
(651) 296-9663 (Fax)
Joey.Cherney@ag.state.mn.us

ATTORNEYS FOR MINNESOTA OFFICE OF
THE ATTORNEY GENERAL—RESIDENTIAL
UTILITIES DIVISION