

April 21, 2021

Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
Saint Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**  
Docket No. E017/M-21-193

Dear Mr. Seuffert:

Attached are the Comments of the Minnesota Department of Commerce, Division of Energy Resources (Department), in the following matter:

In the Matter of Otter Tail Power Company's Petition for Approval of a Variance to the Customer Service Rules Governing Billing Errors.

The Petition was filed on March 22, 2021 by:

Michelle Gunderson  
Otter Tail Power Company  
215 South Cascade Street  
P. O. Box 496  
Fergus Falls, MN 56538-0496  
(218) 739-8049  
[mgunderson@otpc.com](mailto:mgunderson@otpc.com)

The Department recommends that the Minnesota Public Utilities Commission (Commission) **approve Otter Tail Power Company's Petition**. The Department is available to answer any questions that the Commission may have in this matter.

Sincerely,

/s/ GEMMA MILTICH  
Financial Analyst, CPA

GM/ja  
Attachment



## Before the Minnesota Public Utilities Commission

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### Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E017/M-21-193

#### I. INTRODUCTION

On March 22, 2021, Otter Tail Power Company (Otter Tail or the Company) filed a petition (Petition) requesting that the Minnesota Public Utilities Commission (Commission) grant Otter Tail a variance to Minnesota Rule 7820.3800, which governs electric utility billing errors, and a one-time modification to the terms of the Company's Billing Adjustments rate schedule, Section 4.09 of its General Rules and Regulations. By approving Otter Tail's Petition, the Commission would allow the Company to refund a Small General Service customer (Customer) for overcharges extending beyond the three-year refund limit provided for in Minnesota Rule 7820.3800 and Otter Tail's corresponding Billing Adjustments rate schedule.

#### II. DEPARTMENT ANALYSIS

The Minnesota Department of Commerce, Division of Energy Resources (Department) reviewed Otter Tail's Petition to determine whether the Petition complies with applicable rules and evaluate the reasonableness of the Company's proposals. The following is a discussion of the Department's review.

##### A. REFUND TO CUSTOMER & VARIANCE TO MINNESOTA RULE 7820.3800

Otter Tail explained that, due to the Company incorrectly setting the Customer's meter multiplier in Otter Tail's Customer Information System at the time of meter installation (September 2011), the Company erroneously overbilled the Customer from October 2011 through October 2019. The Company billed the Customer at a kWh multiplier of 40, instead of the correct kWh multiplier of 20. A utility's application of an incorrect multiplier is one of the billing errors that warrants a remedy under Minnesota Rule 7820.3800, Subp. 1. According to Otter Tail, the Company's Meter Department discovered this error in May of 2020 when a Company service representative re-energized the Customer's meter after seasonal closing. On May 27, 2020, Otter Tail corrected the metering issue such that billing for the Customer would be accurate going forward. Otter Tail contacted the Commission's Consumer Affairs Office and the Department to inform them of this billing error on March 11, 2021. The Company noted in its Petition that both the Commission's Consumer Affairs Office and the Department agreed that the request to refund the Customer is appropriate under Minnesota Rule 7820.3800 and 7829.3200.<sup>1</sup>

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<sup>1</sup> Petition, pages 4 – 5.

Minnesota Rule 7820.3800 governs utility billing errors and specifies that “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** [emphasis added]. Interest must be calculated as prescribed by Minnesota Statutes, section 325E.02, paragraph (b).”<sup>2</sup> Otter Tail’s Billing Adjustments rate schedule sets the same three-year time limit on billing error refunds.<sup>3</sup> Because the Company overbilled the Customer from October 2011 through October 2019 (eight years), this billing error exceeds the three-year refund limit. In order to refund the Customer for the full amount of overcharges, Otter Tail requests that the Commission grant the Company a one-time variance to the three-year refund limit stipulated by Minnesota Rule 7820.3800 and a one-time modification to Otter Tail’s corresponding refund restrictions provided for in its Billing Adjustments rate schedule, Section 4.09.<sup>4</sup>

Otter Tail explained that it has already refunded the Customer for overcharges during the three year window established in Minnesota Rule 7820.3800 and that the Company calculated interest on the overcharge principal balance in a manner consistent with Minnesota Statutes §325E.02(b).<sup>5</sup> The following table summarizes Otter Tail’s reported amount of overcharges and the corresponding interest due for the periods within and exceeding the three-year refund limit.

**Department Table 1: Amount Otter Tail Overbilled Customer  
 Within and Outside of Billing Error Rule Time Limit<sup>6</sup>**

<i>Time Period</i>	<i>Principal Amount Overbilled (A)</i>	<i>Interest on Principal Amount Overbilled (B)</i>	<i>Total to be Refunded to Customer (A + B)</i>
Within three-year period permitted by MN Rules and Otter Tail Rate Schedule: 1/25/2018 – 10/24/2019	\$602.47	\$24.31	\$626.78
Exceeding three-year period permitted by MN Rules and Otter Tail Rate Schedule: 10/25/2011 – 12/22/2017	\$26,275.14	\$1,948.58	\$28,223.72
<i>Total</i>	<b>\$26,877.61</b>	<b>\$1,972.89</b>	<b>\$28,850.50</b>

Department Table 1 reflects the overcharges and interest summary provided in Otter Tail’s Petition Table 1. As Department Table 1 shows, Otter Tail indicated in its Petition that overcharges to the Customer between January 25, 2018 and October 24, 2019 fall within the three-year refund period

<sup>2</sup> Minnesota Rule 7820.3800, Subpart 2.

<sup>3</sup> Otter Tail’s Billing Adjustments rate schedule, Section 4.09, states the following in reference to overbilling of customers: “If the Customer was over-billed, the Company shall recalculate bills for service during the period of the error, up to a maximum of three years from the date of discovery. Adjustments of bills will be made in accordance with the rules prescribed by the Commission. Interest will be calculated as prescribed by Minn. Stat. §325E.02b.”

<sup>4</sup> Petition, page 7.

<sup>5</sup> Petition, page 5.

<sup>6</sup> Data in Department Table 1 retrieved from Petition Table 1.

permitted by Minnesota Rule 7820.3800 and the Company's corresponding rate schedule, while overcharges between October 25, 2011 and December 22, 2017 fall outside of that same three-year limit. However, given that Otter Tail discovered this billing error in May of 2020, it would appear that the overcharges billed between May 2017 and May 2020 (the period beginning three years prior to the date of discovery) would fall within the three-year refund limit, not just the overcharges between January 25, 2018 and October 24, 2019 (as Petition Table 1 and Department Table 1 show). The Department notes, however, that the need to correctly identify exactly which overcharges fall within and outside of the three-year refund limit will be irrelevant if the Commission approves Otter Tail's Petition, thereby allowing the Company to refund the Customer for the full amount, plus interest, of all overcharges associated with this billing error. Nonetheless, for the sake of clarity, the Department requests that Otter Tail explain in reply comments why overcharges to the Customer that fall within the permitted three-year period run from January 25, 2018 - October 24, 2019, rather than from May 2017 - May 2020.

Minnesota Rule 7829.3200 provides the Commission with the authority and evaluative criteria for granting rule variances. In its Petition, Otter Tail applied these criteria to its variance request as follows:

- **Enforcement of the rule would impose an excessive burden on customer.**  
The Company stated that “[g]iven the period of time at hand, strict enforcement of the rule would impose an excessive and unreasonable burden on the Customer by limiting the refund for the total over-billed amount.”<sup>7</sup>
- **Granting the variance does not adversely affect the public interest.**  
Otter Tail stated that “[g]ranteeing the waiver as requested does not adversely affect the public interest.”<sup>8</sup>
- **Granting the variance would not conflict with standards imposed by law.**  
Otter Tail indicated that it is not aware of any conflict with any standards imposed by law and noted that the Commission has granted variances to the three-year billing error refund limit in multiple dockets.<sup>9</sup>

The Department agrees that the Company's request for a variance to Minnesota Rule 7820.3800 meets the variance criteria set forth in Minnesota Rule 7829.3200. We conclude that enforcing the Minnesota Rule 7820.3800 three-year refund limit would impose an excessive burden on the Customer, as it would prevent the Customer from recovering \$26,275.14<sup>10</sup> in actual overcharges. Further, the Department sees no reason why granting the requested variance would adversely affect the public

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<sup>7</sup> Petition, page 8.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* For example, the Commission recently approved customer refunds for billing errors extending beyond the three-year refund limit in Docket Nos. E015/M-17-768, E017/M-17-853, E002/M-18-27, and E017/M-18-215.

<sup>10</sup> Petition Table 1.

interest, and we are not aware of any laws that would be violated as a result of granting the variance. Therefore, the Department recommends that the Commission grant Otter Tail's request for a one-time variance to the three-year limit on customer refunds provided for in Minnesota Rule 7820.3800 and the Company's corresponding rate schedule provisions.

### **III. CONCLUSION AND RECOMMENDATIONS**

Based on our review, the Department concludes that Otter Tail's Petition complies with the applicable rules and that the Company's proposals are reasonable. We recommend that the Commission grant Otter Tail's request for a one-time variance to the three-year limit on customer refunds provided for in Minnesota Rule 7820.3800 and the Company's corresponding Billing Adjustments rate schedule, Section 4.09.

Additionally, for the sake of clarity, the Department requests that Otter Tail explain in reply comments why overcharges to the Customer that fall within the permitted three-year refund period run from January 25, 2018 - October 24, 2019, rather than from May 2017 - May 2020 (the period beginning three years prior to the date of the billing error discovery).

/ja

## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce  
Comments**

**Docket No. E017/M-21-193**

**Dated this 21<sup>st</sup> day of April 2021**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Ray	Choquette	rchoquette@agp.com	Ag Processing Inc.	12700 West Dodge Road PO Box 2047 Omaha, NE 68103-2047	Electronic Service	No	OFF_SL_21-193_M-21-193
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400  St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-193_M-21-193
Brooke	Cooper	bcooper@allete.com	Minnesota Power	30 W Superior St  Duluth, MN 558022191	Electronic Service	No	OFF_SL_21-193_M-21-193
James C.	Erickson	jericksonkbc@gmail.com	Kelly Bay Consulting	17 Quechee St  Superior, WI 54880-4421	Electronic Service	No	OFF_SL_21-193_M-21-193
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280  Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_21-193_M-21-193
Jessica	Fyhrie	jfyhrie@otpc.com	Otter Tail Power Company	PO Box 496  Fergus Falls, MN 56538-0496	Electronic Service	Yes	OFF_SL_21-193_M-21-193
Michelle	Gunderson	mgunderson@otpc.com	Otter Tail Power Company	215 S Cascade  Fergus Falls, MN 56537	Electronic Service	No	OFF_SL_21-193_M-21-193
Shane	Henriksen	shane.henriksen@enbridge.com	Enbridge Energy Company, Inc.	1409 Hammond Ave FL 2  Superior, WI 54880	Electronic Service	No	OFF_SL_21-193_M-21-193
Douglas	Larson	dlarson@dakotaelectric.com	Dakota Electric Association	4300 220th St W  Farmington, MN 55024	Electronic Service	No	OFF_SL_21-193_M-21-193
James D.	Larson	james.larson@avantenergy.com	Avant Energy Services	220 S 6th St Ste 1300  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-193_M-21-193

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Kavita	Maini	kmaini@wi.rr.com	KM Energy Consulting, LLC	961 N Lost Woods Rd Oconomowoc, WI 53066	Electronic Service	No	OFF_SL_21-193_M-21-193
Andrew	Moratzka	andrew.moratzka@stoel.com	Stoel Rives LLP	33 South Sixth St Ste 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-193_M-21-193
Matthew	Olsen	molsen@otpc.com	Otter Tail Power Company	215 South Cascade Street Fergus Falls, MN 56537	Electronic Service	No	OFF_SL_21-193_M-21-193
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_21-193_M-21-193
Larry L.	Schedin	Larry@LLSResources.com	LLS Resources, LLC	332 Minnesota St, Ste W1390  St. Paul, MN 55101	Electronic Service	No	OFF_SL_21-193_M-21-193
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th PI E Ste 350  Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-193_M-21-193
Cary	Stephenson	cStephenson@otpc.com	Otter Tail Power Company	215 South Cascade Street Fergus Falls, MN 56537	Electronic Service	Yes	OFF_SL_21-193_M-21-193
Stuart	Tommerdahl	stommerdahl@otpc.com	Otter Tail Power Company	215 S Cascade St PO Box 496 Fergus Falls, MN 56537	Electronic Service	Yes	OFF_SL_21-193_M-21-193