

Staff Briefing Papers

Meeting Date January 20, 2022 Agenda Item **3

Company Minnesota Power

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

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 Minnesota Power customer for an overcharge beginning in October 2014?

2. Should the Commission approve the Department of Commerce's proposed "30-day negative check-off" process for billing error variance requests to allow for expedited refunds for some Minnesota Power customers in the future?

Staff Tera Dornfeld Tera.dornfeld@state.mn.us (651) 201-2195



Relevant Documents

Date

Initial Filing- Petition, Minnesota Power	November 12, 2021
Comments, Department of Commerce, Division of Energy Resources	November 30, 2021
Reply Comments, Minnesota Power	December 15, 2021

To request this document in another format such as large print or audio, call 651.296.0406 (voice). Persons with a hearing or speech impairment may call using their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.

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 Minnesota Power customer for an overcharge beginning in October 2014?
2. Should the Commission approve the Department of Commerce's proposed "30-day negative check-off" process for billing error variance requests to allow for expedited refunds for some Minnesota Power customers in the future?

II. Background

On November 12, 2021 Minnesota Power (MP) filed a petition to approve a refund for a customer who had been overcharged during the billing period October 2014- May 2021. The overcharge was due to a change to the customer's metering that was not updated on the customer's account. This error resulted in a double billing for service and an overcharge of \$73,282.51.¹

Under Minnesota Billing Error Rules, 7820.3800, utilities are permitted to issue refunds to customers who have been overcharged within the past three years.² Should the overcharge period stretch back further than three years, a utility must petition the Commission for a variance³ 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.

MP 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 (Fig. 1). However, to refund the full and complete amount of the overcharge, dating back to when the error originated, MP sought a one-time rule variance as well as a one-time modification to their Billing Adjustments tariff. MP stated, "[t]he date of the error is known and Minnesota Power is able to calculate the remedy⁴; however, the duration is beyond the three years specified in

¹ Minnesota Rule 7820.3800 subp. 1 establishes criteria for which a refund is due, including incorrect reading of the [customer's] meter.

² 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."

³ 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."

⁴ MN Rule 7820.3800 subp. 4 **Exception if error date known**. "If the date the error occurred can be fixed with reasonable certainty, the remedy shall be calculated on the basis of payments for service rendered after that date,

Minn. Rules. As such, the Company consulted with the Commission’s Consumer Affairs Office and the Department of Commerce regarding applicability of a variance and received positive affirmation that a variance request should be submitted for consideration.⁵ MP believes their request for variance fulfills all requirements specified in MN Rule 7829.3200 subp. 1.

Figure 1. MP’s Refund to Date and Estimated Interest⁶

Time Period	Principal Amount Overbilled	Adjustments	Interest	Total
<i>Within Commission Rules and Tariff period: June 2018 – May 2021</i>	\$39,019.27	(\$447.81) Interim rate refund; tax reform credits (823.64) Amount due – outstanding May 2021 bill	\$113.21	\$37,861.03
<i>Exceeding Rules and Tariff Period: October 2014 – May 2018</i>	\$36,194.78	(660.09) Interim rate refund; tax reform credits	\$243.88 (estimated)	\$35,778.57 (w/estimated interest)

III. Department Proposal

On November 30, 2021, the Minnesota Department of Commerce (Department) recommended MP’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 Minnesota Power customers in the future.

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.

but in no event for a period beginning more than three years before the discovery of an overcharge or one year before the discovery of an undercharge.”

⁵ Minnesota Power initial filing into Docket No. 21-790 made on November 12, 2021 p6.

⁶ MP initial filing, petition filed November 12, 2021 into Docket No. 21-790, p5.

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.

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 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.

⁹ Department reply 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.

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 recommends approval, and no other stakeholder files comments in these dockets.

¹¹ The Department noted, "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."

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

Department comments and corresponding proposal were for MP only. However, the Department wrote, "[i]f the Commission believes it can or should endorse this process for other utilities immediately, the Department recommends the Commission notify all utilities. If not, the Department will continue to recommend an expedited process as utilities file individual billing error dockets."¹³ Staff notes that the Department proposed the same 30-day negative check off process for Dakota Electric Association's request for variance of billing error rules.¹⁴ On December 13, 2021 Dakota Electric replied in support of the Department's proposed negative check off process for future billing error rule filings.¹⁵

D. Minnesota Power Reply

On December 15, 2021 Minnesota Power replied that they fully agreed with the Department's proposal for a 30-day negative check-off process. For the instant refund, MP requested the Commission follow the Department's recommendation and grant approval through the consent calendar process to expedite the customer refund.

IV. Staff Analysis

Minnesota Power 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 MP 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

¹² Department reply p3, footnote #4.

¹³ Department comments filed November 30, 2021 into Docket No. 21-790, p3.

¹⁴ Dakota Electric Initial filing- petition filed November 23, 2021 into Docket No. E-111/M-21-810. Department comments filed into the same docket on December 10, 2021.

¹⁵ Dakota Electric reply comment filed December 13, 2021 into Docket No. E-111/M-21-810.

is simply a new way for the Commission to consider future requests to vary Rule 7820.3800 for MP.

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.¹⁶ When establishing a timeframe for customer refunds, balance was sought between the possibility of a) remedying billing errors over an unlimited timeframe, to guard against utility monopoly power to impose unwarranted charges on ratepayers, and b) the possibility of limiting the timeframe for remedying billing errors. In favor of b) limiting remedies, the SONAR reasoned, “[b]oth utilities and ratepayers would suffer from the financial risk that a long-term billing error might cause a large liability to accrue. Over time records become harder to retrieve and memories fade. And when parties are unable to identify when a billing error began, some period of time for calculating remedies must be identified.”¹⁷

The Commission originally allowed refunds for up to one year only. It was thought that most billing errors were found and corrected within a timeframe of one year. However, the Commission received multiple requests to extend the timeframe for calculating remedies for overcharges. The Commission considered timeframes ranging up to six years, based on other states’ policies. Ultimately, it appears to Staff that two factors guided the rule revision that stands currently and allows refunds for up to three years from the time of discovery:

- 1) The Commission requires utilities to maintain records of customer billing, payments, deposits and complaints for a period not less than three years.¹⁸
- 2) “Otter Tail and Xcel each sought and received a permanent variances to calculate remedies for overcharges back three years before the date the error is discovered. Because most Minnesotans receive service from one of these two utilities, this policy is the policy that governs most Minnesotans today.”¹⁹

It appears 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. Potential Procedural Pathway for Billing Error Variances

Staff agrees that processing billing error variances more quickly is in the public interest. If the Commission wishes to adopt the Department’s proposal, staff recommends delegating to the Executive Secretary to issue a Notice approving a refund and memorializing this alternative process for rule variance consideration (**Decision Option 2a**). Alternatively, it may be simpler to

¹⁶ Minnesota Legislative Reference Library Rule 7820.3800 p10-12. [SONAR-03723.pdf \(mn.gov\)](#)

¹⁷ Minnesota Legislative Reference Library Rule 7820.3800 p11.

¹⁸ Minn. Rules part 7820.4800 (Information Available to Customers and Public).

¹⁹ Minnesota Legislative Reference Library Rule 7820.3800 p10. [SONAR-03723.pdf \(mn.gov\)](#)

use the already established process, the Commission's consent calendar with a standard filing by the Department or Commission staff.

Authorized pursuant to Minn. Stat. § 216A.03, subd. 8 and Minn. Rule 7829.1050, the consent calendar is used to quickly and efficiently resolve petitions for which there are no disputed or novel issues. Not unlike the Department's analysis for the negative check off, staff believes that nearly all requests for variances to the billing error rule would qualify for the consent calendar. Using the consent calendar would resolve these issues more quickly than the normal process that involve briefings papers and a Commission hearing. If choosing the consent calendar pathway, as opposed to the Department's proposed negative check-off process, one issue to resolve would be whether the Department files a short form letter, as opposed to a lengthy analysis, or staff submit a form letter to the consent calendar as discussed below. Staff now shows some differences between use of the consent calendar and the Department's proposal:

First, to use the consent calendar, the Commission needs an indication in the record that all issues are resolved. This typically requires a filing by the Department, though in the case of billing error rule variances, Staff believes the Department filing, or in alternative a staff filing, could be very short and acknowledge the rule variance requirements and three criteria outlined by the Department have been met in that docket. Staff appreciates the Department highlighting the three criteria and does not have concerns with these criteria: 1) agreement between the customer and utility; 2) consultation of CAO by utility; and 3) no other novel, disputed, or unusual circumstances exist.

Second, the consent calendar process will result in a short order being issued by the Commission, which typically includes the Department comments as an attachment to demonstrate that all issues are resolved. The process is administrative and happens quickly. The order becomes effective 10 days after it is issued unless there are any objections, pursuant to Minn. Stat. § 216A.03, subd. 8.

Third, the consent calendar might take slightly longer than the Department's recommendation, but Staff believes it would still be substantially faster than the normal process. The Department's recommendation would result in a refund being possible on the 31st day after a petition. The consent calendar usually requires the Commission to wait for the 30-day comment period to close, place the matter on the next consent agenda, and then wait for the 10 day objection period.²⁰ Staff believes that the consent calendar could take around two weeks longer than the Department's recommendation.

Staff appreciates the Department's recommendation to speed up the process for approving variances for customer refunds. Staff notes the Commission uses a similar approach in the annual update of distributed generation rates (Year-9 dockets) by delegating the Executive Secretary to issue a Notice approving the rates under a set of circumstances (e.g. compliance with rules, no objections, and no additional issues or changes). This process was established in a 2017 Order (Docket No. 15-755) and is referenced in each year's annual rates approval notice

²⁰ Staff Note: The consent calendar can be used for expedited dockets, but that requires the Executive Secretary or Commission to vary the comment period under Minn. R. 7829.1275.

to keep track of this alternative approval process. This strategy is used in Staff's **Decision Option 2a** where the Department's proposal would be accompanied by a Notice from the Executive Secretary.

However, if Commissioners are comfortable with the negative check-off process steps, then the Department's recommendation is a reasonable course of action (**Decision Option 2**). Or, if Commissioners would prefer to use an already-established process, it may be more reasonable to use the consent calendar. The Commission can choose this path with **Decision Option 3**.

V. Decision Options

1. Approve MP's request for a billing error variance and authorize the requested refunds. (Department, MP)
2. Establish a 30-day negative check off process for billing error variance requests from MP, and authorize MP to provide refunds if no objections are filed within 30 days of a petition for a billing error variance. (Department, MP)

[AND]

- a) Delegate to the Executive Secretary to issue a Notice affirming the refunds.
3. Direct staff to resolve billing error variance petitions using the existing consent calendar process. To accompany the consent calendar Order: (Staff)
 - a) Request the **Department** file a standard letter demonstrating: 1) rule variance requirements, 2) agreement between the customer and utility, 3) consultation of CAO by utility, and 4) no other novel or unusual circumstances exist.

[OR]

- b) Delegate to the **Executive Secretary** to file a standard letter demonstrating: 1) rule variance requirements, 2) agreement between the customer and utility, 3) consultation of CAO by utility, and 4) no other novel or unusual circumstances exist.