

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair  
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In the Matter of Possible Amendments to  
Commission Rules Governing Energy Utility  
Billing Errors

ISSUE DATE:

DOCKET NO. E,G-999/R-05-444

STATEMENT OF NEED AND  
REASONABLENESS

I.  
**INTRODUCTION**

Since at least 1976 the Minnesota Public Utilities Commission has had rules governing how parties should compensate each other in the event of a billing error for utility service.<sup>1</sup> The number of variances<sup>2</sup> requested and granted regarding these Billing Error Rules have prompted the Commission to propose revising these rules.

The Commission's current rules, codified at Minnesota Rules parts 7820.3700 - .4000, establish similar policies for both electric and natural gas service. Appendix A illustrates the rules' parallel form and content; it sets forth the rules pertaining to electricity and natural gas side by side, and italicizes the few points of difference.

The relevant portions of these rules are summarized below:

- Parts 7820.3800 (pertaining to electricity) and .4000 (pertaining to gas): If a

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<sup>1</sup> In 1976 the Commission adopted rules PSC 314 (pertaining to electricity) and PSC 315 (pertaining to natural gas), now codified as modified at Minnesota Rules parts 7820.3700 and .3800 (pertaining to electricity) and parts 7820.3900 and .4000 (pertaining to natural gas). "PSC" stood for Public Service Commission, precursor to the Public Utilities Commission.

<sup>2</sup> The Commission varies its rules when enforcement would impose an excessive burden, granting the variance would not adversely affect the public interest, and granting the variance would not conflict with standards imposed by law. Minn. Rules part 7829.3200.

billing error – such as an error in meter connection, meter reading, or application of rates, multipliers or constants – results in an overcharge of more than \$1 to an existing customer or \$2 to a former customer, or more than a \$10 undercharge, then the utility *must* provide a refund of up to one year’s worth of overpayments and *may* seek a refund of up to one year’s worth of underpayments.

Commission rules neither require nor prohibit the application of interest to remedies for undercharges or overcharges. If a utility owes a refund to a former customer, the utility must mail a notice of this fact to the customer’s last known address, and must provide the refund if the customer requests it within the next three months.

- Parts 7820.3700 (pertaining to electricity) and .3900 (pertaining to gas): Similarly, if a utility owes a refund to a former customer because the customer’s meter recorded usage above what the customer consumed, the utility must mail a notice of this fact to the customer’s last known address, and must provide the refund if the customer requests it within the next three months.

In brief, the Commission proposes to amend these rules to state that if a billing error causes a customer to pay more than the tariffed rate for utility service, the utility shall refund to the customer the difference between the amount paid and the tariffed rate, plus interest, calculated for a period of up to three years. In addition, if a utility owes a refund to a customer who no longer has a business relationship with the utility, the utility may mail the refund to the customer’s last known address without first mailing a notice and awaiting a reply. The text of these amendments are set forth in Appendix B.

## II. STATEMENT OF NEED

Minnesota’s Administrative Procedure Act, Minnesota Statutes Chapter 14, requires the Commission to establish the need for the proposed rules by an affirmative presentation of facts. Minn. Stat. §§ 14.131, 14.14, subd. 2, and 14. 23.

The proposed amendments are needed to address three issues:

- Since 1991 the Commission has varied parts 7820.3800 and .4000 at least eighteen times. The Commission has granted at least nine new variances since 2004, in addition to the permanent variance granted to Northern States Power Company d/b/a Xcel Energy (Xcel Energy), the utility that serves the majority of

Minnesota's electric ratepayers,<sup>3</sup> and Otter Tail Power Company (Otter Tail).<sup>4</sup> As a result, exceptions have largely swallowed the rule.

- In addition, the rules do not specify whether a utility should pay interest on any amount that it overcharged ratepayers. Sometimes utilities have reimbursed over-billed customers with interest; sometimes they have not. Appendix C lists Commission orders varying its rules, and the terms of the variances. The list illustrates that the Commission has not adopted a uniform policy on the question of whether to award interest payments.
- Finally, during the course of this rulemaking Dakota Electric Association (Dakota Electric) argued that the Commission's Billing Error Rules could also be improved by streamlining remedies for overpayments. In particular, Dakota Electric asked to change the rules to permit a utility to simply mail a refund check to a former customer that had overpaid, skipping the need to send a notice and await a customer response.<sup>5</sup>

Because the Commission's rules no longer provide appropriate guidance to the majority of Minnesota ratepayers, fail to resolve the recurring question whether to require the payment of interest on overcharge remedies, and require a needlessly cumbersome method of reimbursing former customers, the Commission finds it necessary to amend its rules as set forth below.

### III. STATEMENT OF REASONABLENESS

The Administrative Procedure Act also requires the Commission to establish that the proposed rules are a reasonable solution to the problems they are intended to address, that the Commission relied on evidence in choosing the approach adopted in the rules, and that the evidence relied upon rationally relates to the approach the Commission chose to adopt. Minn. Stat. §§ 14.131 and 14.23; Minn. Rules, part 1400.2070, subp. 1.

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<sup>3</sup> *In the Matter of a Request by Northern States Power Company for a Two-Year Variance to Minnesota Rules parts 7820.3800 and 7820.4000 to Allow NSP to Refund Billing Errors Back Three Years*, Docket No. E,G-002/M-98-186 (April 10, 1998).

<sup>4</sup> *In the Matter of Otter Tail Power Company's Petition for Approval of a Waiver of the Customer Service Rules Governing Billing Errors for the Lauris Krogstad Account, and for Approval of a Permanent Waiver of the Customer Service Rules Governing Billing Errors*, Docket No. E-017/M-07-2304 (pending).

<sup>5</sup> Dakota Electric comments (May 13, 2005) at 2.

The proposed amendments are reasonable because A) they are within the scope of the Commission's authority to adopt, B) the Commission solicited and considered the views of all parties before proposing its amendments and C) the amendments resolve the problems identified above in a manner that best provides clarity, avoids undue discrimination and balances the interests of utilities and ratepayers.

### **A. Commission Authority**

The Commission has authority to amend Minnesota Rules parts 7820.3700 through .4000 pursuant to its general legislative and quasi-judicial powers. Minn. Stat. § 216A.05, subd. 1. In addition, Minnesota Statutes § 216B.08 grants the Commission the powers and jurisdiction to regulate public utilities, including the power to adopt rules, and § 216B.09 authorizes the Commission to establish appropriate practices for public utilities, including rules regarding meter accuracy.<sup>6</sup>

But this broad authority is constrained by § 216B.098, subdivision 4, which limits the circumstances under which the Commission may require interest payments:

(a) A utility shall offer a payment agreement to customers who have been undercharged if no culpable conduct by the customer or resident of the customer's household caused the undercharge....

(b) *No interest or delinquency fee may be charged as part of an undercharge agreement under this subdivision.*

(Emphasis added).

Consistent with this statute, the proposed amendments refrain from requiring ratepayers to pay interest or delinquency fees. For the foregoing reasons, the Commission concludes that its proposed amendments are within the scope of its statutory authority to adopt.

### **B. Informed Perspective**

The rules were drafted after receiving comment from regulated energy utilities, government agencies and a not-for-profit organization. Commenting utilities included –

- Aquila, Inc. (now Minnesota Energy Resources,
- CenterPoint Energy,
- Dakota Electric Association,

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<sup>6</sup> While Minnesota Statutes § 14.125 requires an agency to adopt rules within 18 months of receiving statutory authority to do so, that limitation does not apply to this rulemaking because, among other reasons, the Commission's statutory authority for its Billing Error Rules predates the January 1, 1996 effective date of § 14.125.

- Minnesota Power,
- Otter Tail Power Company, and
- Northern States Power Company d/b/a Xcel Energy (Xcel).

Government agencies included –

- the Minnesota Department of Commerce (the Department) and
- the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG).

Finally, the Commission received extensive comments from the Legal Services Advocacy Project (LSAP), a not-for-profit agency that engages in legislative and administrative advocacy, conducts research and policy analysis and provides community education and training on behalf of low-income Minnesotans.

The comments revealed few factual disputes but a variety of opinions on the public policy conclusions to be drawn from the facts. The spectrum of opinions represented by these commentors provided the Commission with the appropriate perspective with which to reevaluate its rules.

### **C. Language Tailored to Policy Goals**

Finally, the proposed amendments are designed to fulfill the Commission's policy goals without otherwise constraining any party's discretion. Specifically, they are designed to avoid undue discrimination by ensuring that similarly-situated customers receive similar treatment. They are designed to promote clarity by bringing the rules into conformance with the prevailing industry practice in Minnesota. They are designed to promote the general welfare by bringing the rules into conformance with sound public policy. And they are designed to eliminate needless administrative burden. These points will be expanded below.

In sum, the Commission's proposed amendments are reasonable because they are well tailored to implement the Commission's sound public policy goals based on a well developed record, and because the amendments fall within the Commission's authority to adopt.

### **D. List of Witnesses**

The Commission does not plan to rely on any non-agency witnesses at any rule hearing.

## VI. ANALYSIS OF INDIVIDUAL RULES

As noted above, the Commission proposes to amend Minnesota Rules parts 7820.3700 through .4000. Because the Commission proposes to make the same amendments to both its electric and gas rules, the Commission will address parts 7820.3700 (pertaining to electricity) and .3900 (pertaining to gas) jointly, and parts 7820.3800 (pertaining to electricity) and .4000 (pertaining to gas) jointly.

### **Parts 7820.3700 and .3900 – Inaccurate Meters.**

#### **Titles**

The Commission proposes to amend the titles of these rules to specify which rule pertains to electric service and which pertains to natural gas, as follows:

7820.3700 – Inaccurate **Electric** Meters.

7820.3900 – Inaccurate **Natural Gas** Meters.

Rule titles are intended to aid the reader in finding relevant information. Parts 7820.3700 and .3900 currently have identical titles. Admittedly, the latest (2005) printed and bound version of the rules published by the Revisor of Statutes includes the topic headings “Adjustment of Electric Bills” and “Adjustment of Gas Bills,” to distinguish parts 7820.3700 and .3800 from parts 7820.3900 and .4000.<sup>7</sup> However, these headings do not appear in the version of the rules that appear on the Revisor’s site on the World Wide Web,<sup>8</sup> and generally would not appear whenever a rule was cited in isolation from the rest of the chapter.

It is reasonable to label rules in a manner to help the reader distinguish between similar rules. The only way for the Commission to achieve this end is by rulemaking.

#### **Subpart 3. Recalculation of bill**

The Commission proposes to amend this subpart as follows:

If a refund is due a person no longer a customer of the utility, ~~a notice shall be mailed~~ **the utility shall mail** to the **customer’s last known address**

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<sup>7</sup> In publishing Minnesota Rules the Revisor of Statutes provides “headnotes as catch words to rules and, if appropriate, to paragraphs, clauses, or other parts of a rule. The headnotes are not part of the rule even if included with the rule when adopted.” Minn. Stat. § 14.17, subd. 5(b).

<sup>8</sup> <http://www.leg.state.mn.us/leg/statutes.asp>

~~and the utility, upon demand made within three months thereafter shall refund the amount due~~ either the refund or a notice that the customer has three months in which to request a refund from the utility.

When a utility has overcharged a current customer, the utility is able to provide a refund to the customer because the utility has the customer's current address. But when a utility discovers that it overcharged a customer after the customer has stopped taking service from the utility, the utility may have greater difficulty finding the customer to provide the reimbursement. Parts 7820.3700 and .3900 set forth the steps a utility must take to demonstrate a good-faith effort to reimburse the customer.

Currently subpart 3 requires a utility to mail a notice to the customer's last known address and to provide a refund if the customer requests it within the following three months. The Commission is now persuaded that utilities should be able to use their discretion about whether to follow this course of action or simply to mail the reimbursement to the customer's last known address. The proposed amendment would grant utilities this discretion.

Permitting utilities to use discretion in this matter is reasonable. Where the sums involved are small or the utility has good cause to believe that it knows where to find the former customer, the administrative burden of sending an initial notice may be unwarranted.<sup>9</sup> Granting this discretion is also consistent with the Legislature's regulatory policy favoring greater flexibility. Minn. Stat. § 14.002.

Because the current Billing Error Rules do not provide for utilities to exercise this discretion, the proposed amendment is needed.

### **Parts 7820.3800 and .4000 Billing Errors**

The Commission proposes more extensive revisions to these rules.

#### **Titles and Subparts**

The Commission proposes to amend the titles of these rules to specify which rule pertains to electric service and which pertains to natural gas, as follows:

7820.3800 – **Electric Utility** Billing Errors.

7820.4000 – **Natural Gas Utility** Billing Errors.

Rule titles are intended to aid the reader in finding relevant information. Parts 7820.3800 and .4000 currently have identical titles. As noted above, the latest printed and bound version of the rules published by the Revisor of Statutes includes the topic

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<sup>9</sup> Dakota Electric comments (May 13, 2005) at 2.

headings “Adjustment of Electric Bills” and “Adjustment of Gas Bills,” to distinguish parts 7820.3700 and .3800 from parts 7820.3900 and .4000. However, these headings do not appear in the version of the rules that appear on the Revisor’s site on the World Wide Web, and generally would not appear whenever a rule was cited in isolation from the rest of the chapter.

It is reasonable to label rules in a manner to help the reader distinguish between similar rules. The only way for the Commission to achieve this end is by rulemaking.

Similarly, in the interest of clarity the Commission proposes to divide each of these rules into four subparts as follows:

**Subpart 1. Errors warranting remedy** [listing the types of errors for which the rule provides a remedy].

**Subpart 2. Remedy for overcharge** [stating the remedy for an overcharge when the date the error began is not known].

**Subpart 3. Remedy for undercharge** [stating the remedy for an undercharge when the date the error began is not known].

**Subpart 4. Exception if error date known** [stating how the above-mentioned remedies change if the date the error began is known].

Because the Commission proposes to adopt a policy for remedying overcharges that differs from the policy for remedying undercharges (discussed below), it is reasonable for the Commission to organize its rules to emphasize this distinction. And because the only way for the Commission to achieve these ends is by rulemaking, these amendments are needed.

#### **Subpart 1. Errors warranting remedy.**

In addition to labeling the first sentence of the rule as a separate subpart, the Commission proposes to amend the language as follows.

When a customer has been overcharged or undercharged as a result of incorrect reading of the meter, incorrect application of rate schedule, incorrect connection of the meter, application of an incorrect multiplier or constant or other similar reasons, the amount of the overcharge shall be refunded to the customer or the amount of the undercharge may be billed to the customer **as detailed in subparts 2 through 4**. ~~The refund or charge in no event shall exceed one year, unless the date the error occurred can be fixed with reasonable certainty, in which case the refund or charge shall be computed from that date, but in no event for a period longer than one year.~~

This language is added to clarify that the details of subparts 2 through 4 supercede the general language of subpart 1. For example, subpart 3 limits when an undercharge



“may be billed to a customer....”

## **Subpart 2. Remedy for overcharge.**

The Commission proposes to amend this language as follows:

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. Interest must be calculated as prescribed by Minnesota Statutes § 325E.02(b). If the recalculated bills indicate that more than \$1 is due an existing customer or \$2 is due a person no longer a customer of the utility, the full amount of the calculated difference between the amount paid and the recalculated amount shall be refunded to the customer. The refund to an existing customer may be in cash or credit on a bill. Credits shall be shown separately and identified. If a refund is due a person no longer a customer of the utility, ~~a notice shall be mailed~~ the utility shall mail to the customer's last known address and the utility, upon demand made within ~~three months thereafter shall refund the amount due~~ either the refund or a notice that the customer has three months in which to request a refund from the utility.

This amendment reflects many policy choices, addressed below.

### **A. Rules for calculating remedies for overcharges need not match rules for calculating remedies for undercharges.**

In comparing remedies for undercharges and remedies for overcharges, the Commission's existing rules exhibit both parity and disparity. The rules provide for calculating remedies for overcharges and undercharges over the same period, and are uniformly silent with respect to the question of whether to charge interest on the amount of the remedy. On the other hand, the rules apply to an overcharge as small as \$1, but do not apply to an undercharge until the amount exceeds \$10. And where the rules do apply, repayments for overcharges is compulsory whereas remedies for undercharges is discretionary.

On its surface an overcharge seems like the mirror image of an undercharge, making parallel policies seem appealing. But overcharges warrant different remedies than undercharges because customers are not similarly situated to utilities. Utilities are more likely than customers to cause the circumstances that result in the customer being undercharged or overcharged. And utilities, through their expertise and access to data,

are in a better position than customers to detect an undercharge or overcharge.<sup>10</sup>

Many jurisdictions acknowledge the propriety of calculating remedies for overcharges differently than calculating remedies for undercharges. LSAP identified seven states that appear to use the same period for calculating remedies for undercharges and overcharges,<sup>11</sup> but more than a dozen states in which the period for calculating the remedy for overcharges differs from the period for calculating the remedy for undercharges.<sup>12</sup> While the Minnesota Legislature has not adopted a policy on that question, it barred interest charges for certain undercharge remedies without imposing a comparable bar on overcharge remedies. Minn. Stat. § 216B.098, subd. 4. This indicates that the Legislature acknowledges that the two circumstances warrant disparate regulation.

Moreover, Minnesota's utilities have repeatedly sought variances to extend the period for calculating remedies for overcharges but not to extend the period for calculating undercharges. Most significantly, 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.

Consequently the Commission finds it reasonable to adopt rules for calculating remedies for overcharges that differ from its rules for calculating remedies for undercharges.

**B. Utilities should calculate remedies for overcharges on the basis of bills rendered and payments received beginning three years from the date of discovery.**

States have adopted a variety of periods for calculating remedies for billing errors, from three months to six years or longer.

When determining the length of time for calculating remedies for billing errors, the Commission balances competing concerns. On the one hand, the Commission has reason to calculate remedies for billing errors over an unlimited period. To guard against a utility using its monopoly power to impose unwarranted charges on ratepayers or to discriminate unduly among ratepayers, legislatures require utilities to provide

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<sup>10</sup> Department comments (May 9, 2005) at 2; LSAP comments (May 11, 2005) at 3, 6; RUD-OAG comments (May 13, 2005) at 2; Xcel comments (May 11, 2005) at 3.

<sup>11</sup> Iowa, Louisiana, Montana, New Mexico, Oregon, South Dakota, Utah.

<sup>12</sup> California, Connecticut, Florida, Illinois, Indiana, Maine, Maryland, Michigan, Missouri, New York, North Carolina, South Carolina, Texas, Wyoming.

service according to prices established and posted publically in their tariffs. To vindicate this public policy, arguably the Commission would require utilities and ratepayers to repay any deviation from the payments prescribed in tariffs.

On the other hand, practical concerns favor limiting the remedies for billing errors. Both 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.

The current Billing Error Rules provide for calculating remedies for overcharges over a period of one year, or over a shorter period if the parties can determine that the overcharges have lasted for less than a year. The Commission has received multiple requests to extend the period for calculating remedies for overcharges. Most significant among these has been Otter Tail's and Xcel's permanent variance extending the period for calculating overcharge remedies to three years after the date of discovery.

Some commentators support retaining the one-year period because most billing errors are found and corrected within a year. However, this fact has no bearing on the question of whether to extend the period for calculating remedies. Errors that are detected and remedied within a year would receive the same regulatory treatment whether or not the Commission extended the period for calculating remedies. Extending the period for calculating remedies would affect only overcharges that lasted longer than a year, or that lasted for an indefinite period.

Given the number of requests to extend the period for calculating remedies for overcharges, and the Commission's desire to ensure evenhanded application of its rules, the Commission is persuaded of the need to extend the period for calculating remedies for overcharges generally. The Commission considered periods ranging up to six years, based on the range of periods adopted in other states.<sup>13</sup>

The Commission requires utilities to maintain records of customer billing, payments, deposits and complaints for a period not less than three years. Minn Rules part 7820.4800.<sup>14</sup> Moreover, Xcel voluntarily adopted a policy of recalculating overcharge bills "up to a maximum of three years from the date of discovery." This fact lends support to the idea that a three-year period is reasonable, and that most Minnesotans would already be accustomed to this policy.

In the interest of providing more even-handed regulation, the Commission finds it reasonable to require all of Minnesota's electric utilities to calculate remedies for

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<sup>13</sup> LSAP comments (May 11, 2005), Appendix B.

<sup>14</sup> Department comments (May 9, 2005) at 1-2.

overcharges on the basis of payments received for service rendered beginning three years prior to the date the error is discovered.

To avoid rule language that requires the exercise of unguided discretion, the Commission declines to propose Xcel's language providing for calculating remedies for "up to a maximum of" three years. Admittedly, the Commission's existing rules provide for calculating remedies that "in no event shall exceed one year" and are calculated "in no event for a period longer than one year...." The flexibility in this language, however, refers to the fact that if the parties know when an error began, there is no point to calculating remedies regarding bills that contained no errors. As discussed below, the Commission proposes a separate subpart to address circumstances in which the date the error began is known; consequently such ambiguous language is no longer required in the current subpart.

**C. Utilities should return the amount of overcharges with interest.**

Where one party possesses property that belongs to another, interest compensates the owner and deprives the possessor of unjust enrichment. That is, interest is designed to reflect the value of opportunities gained by a party that retains possession, and the opportunity cost borne by a party that is deprived of the use of its assets.<sup>15</sup>

Where a utility charges more than the authorized rate for utility service and a customer pays that charge, the utility takes possession of funds that belong to the customer. To restore the customer to the circumstances the customer would have enjoyed in the absence of the overcharge, it is both necessary and reasonable that the utility return not only the amount of the overcharge but the time value of the funds withheld as well.

While the Commission had occasionally ordered utilities to return overcharges plus 6% interest per year, the Legislature now prescribes a rate of interest for customer funds held by utilities as a deposit. Minn. Stat. § 325E.02(b). The Commission finds it reasonable that utilities would provide the same terms for money held as an overcharge.<sup>16</sup>

**D. The process for refunding overcharges to former customers should be streamlined.**

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<sup>15</sup> *McCormack v. Hanksraft Co.*, 281 Minn. 571, 161 N.W.2d 523 (1968); *Henry v. Metropolitan Waste Control Comm'n*, 401 N.W.2d 401 (Minn. App. 1987), citing *In Re Defenses & Objections to Personal Property Taxes for the 1969 Assessment*, 226 N.W.2d 296, 299 (Minn. 1975) and *Nutt v. Ellerbe*, 56 F.2d 1058, 1062 (E.D.S.C. 1932) (interest is not penalty, but is payment for the loss of use of money that comports with modern financial practice).

<sup>16</sup> See, for example, Minnesota Power comments (May 12, 2005) at 4-5.

As discussed in the context of amending parts 7820.3700 and .3900, above, the proposed amendments to this part would also give utilities the discretion to mail the amount of the overcharge remedy to a former customer's last known address, rather than requiring the utilities to first mail a notice. Permitting utilities to use their own discretion in this matter is reasonable. Where the sums involved are small or the utility has good cause to believe that they know where to find the former customer, the administrative burden of sending an initial notice may be unwarranted. Granting this discretion is also consistent with the Legislature's regulatory policy favoring greater flexibility. Minn. Stat. § 14.002.

#### **E. The language should be clarified.**

The Commission proposes to add language clarifying that the amount of the remedy should be based on the difference between what the utility collected and what the utility should have collected (pursuant to its tariffs, for example). The Commission also borrows language from Xcel's tariff<sup>17</sup> linking the period for which the remedy is calculated to the date the error is discovered.

Finally, in the interest of clarity the Commission proposes to delete some language in this subpart pertaining to the calculation of remedies if the parties can determine the date the billing error began. The Commission proposes to address this policy in Subpart 4, below.

#### **Subpart 3. Remedy for undercharge**

The Commission proposes to amend this language as follows:

**When a utility has undercharged 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, for the period beginning one year before the date of discovery.** If the recalculated bills indicate that the amount due the utility exceeds \$10, the utility may bill the customer for the amount due. **But a utility must not bill for any undercharge incurred after the date of a customer inquiry or complaint if the utility failed to begin investigating the matter within a reasonable time and the inquiry or complaint ultimately resulted in the discovery of the undercharge.** The first billing rendered shall be separated from the regular bill and the charges explained in detail.

This language also reflects a number of policy choices.

#### **A. Utilities should calculate remedies for undercharges over a**

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<sup>17</sup> Xcel comments (May 11, 2005), Attachment A.

**period beginning one year from the date of discovery.**

As noted above, the current Billing Error Rules provide for calculating remedies for undercharges over a period of one year, or over a shorter period if the parties can determine that the undercharges have lasted for less than a year. The Commission has received no requests to vary this rule. Nor has any commentor asked the Commission to change this general policy, although some have asked the Commission to provide exceptions when 1) the date the error began can be determined or 2) the customer caused the error or 3) customer misconduct caused the error or 4) some combination of these factors.

The Commission finds little evidence of dissatisfaction with the current period for calculating remedies regarding undercharges. While commentors suggest situations that might warrant extending the period for calculating a remedy, decades of experience implementing this rule has not demonstrated the need for any general change of policy. Consequently, the Commission will generally retain the period for calculating remedies for undercharges.

However, the Commission proposes to add language clarifying that the amount of the remedy should be based on the difference between what the utility collected and what the utility should have collected (pursuant to its tariffs, for example). The Commission also borrows language from Xcel's tariff<sup>18</sup> linking the period for which the remedy is calculated to the date the error is discovered.

**B. Utilities need not charge interest on recovered undercharges.**

The Commission has no record of ever receiving a variance request to assess interest on any remedy for undercharges. Nor has any commentor asked the Commission to adopt such a policy;<sup>19</sup> to the contrary, some commentors ask the Commission to amend its rules to prohibit such interest payments.<sup>20</sup> The Department argues that customers would find paying interest on undercharges "confusing, and possibly controversial...."<sup>21</sup>

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<sup>18</sup> Xcel comments (May 11, 2005), Attachment A.

<sup>19</sup> Some commentors argue that if the Commission were to require interest payments as part of the remedy for overcharges, the Commission would need to require interest payments for undercharges as well if the Commission desired to maintain parallel remedies. Because the Commission has concluded that it need not maintain parallel remedies, the Commission need not address these arguments further.

<sup>20</sup> See, for example, Dakota Electric comments (May 13, 2005) at 2; LSAP comments (May 11, 2005) at 6.

<sup>21</sup> Department comments (May 9, 2005) at 2.

Undercharged customers will likely be dismayed to learn that, notwithstanding the fact that they have paid the amount requested by their utility, they nevertheless have an additional balance that must be paid; assessing interest might add insult to injury, appearing as a punishment for a problem that was beyond the customer's control.

Moreover, as noted above, the Legislature has limited the Commission's discretion to assess interest on undercharged customers. Minn. Stat. § 216B.098, subd. 4. According to LSAP, no state permits a utility to assess interest for underbilled amounts unless the ratepayer was somehow at fault.<sup>22</sup>

The Commission finds little evidence of dissatisfaction with the fact that the rules for undercharges do not require the payment of interest. Decades of experience implementing this rule has not demonstrated the need for any general change of policy.

**C. Failure to respond to customer concerns about meters may limit utility's right to back-bill for underbilling.**

Historically if a customer called to the utility's attention doubts as to a meter's accuracy and the utility failed to check the meter within a reasonable time, there would be no back billing for the period between the date of the customer's notification and the date the meter is next checked. Minnesota Rules part 7820.3700, subpart 4, and 7820.3900, subpart 4. The Legislature recently extended this policy to apply to billing errors arising beyond the context of inaccurate meters. Laws 2007, Art. 2, § 16, codified at Minnesota Statutes § 216B.098, subdivision 4(c). The Commission's proposed language reflects this policy.

**Subpart 4. Exception if error date known.**

The foregoing discussion addresses the general circumstance wherein the parties do not know when the billing error began; the Commission has separate language addressing the special circumstance when the date the error began is known "with reasonable certainty...." In the interest of clarity, the Commission proposes to delete that language from subpart 2 and restate it in its own subpart as follows:

**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, 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.**

If the date the error began is known, existing rules provide for calculating remedies on the basis of payments received for service rendered since that date, but in no event for

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<sup>22</sup> LSAP comments (May 11, 2005) at 6.

longer than the period prescribed for calculating remedies if the date the error began were unknown. The proposed language is designed generally to maintain this policy. Because the Commission proposes to extend the period for calculating remedies for overcharges, however, it is both necessary and reasonable to make some language changes in this subpart as well.

Under some circumstances, Dakota Electric recommends permitting the calculation of remedies back to the date the error began, if known.<sup>23</sup> As discussed above, however, such a policy would impose a risk of unbounded liability on customers and utilities alike. This policy would also increase the need to cope with fading memories and misplaced records regarding events from many years ago. The Commission will decline to adopt Dakota Electric's proposal at this time.

## VII. REGULATORY ANALYSIS

The Administrative Procedure Act requires the Statement of Need and Reasonableness to address the regulatory issues set forth and addressed below.

### **A. A description of the classes of persons who will probably be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule – Minn. Stat. § 14.131 (1).**

The following persons would probably be affected by the proposed amendments:

- Energy utilities subject to the Commission's Billing Error Rules, which may have to provide larger remedies for billing errors, and will have a more streamlined means of providing remedies to former customers.
- Ratepayers of those utilities, who will have the ability to seek remedies for billing errors lasting more than a year, and who will have an accelerated means of obtaining remedies from their prior energy utility service provider.
- Government agencies with jurisdiction over these utilities, which will have clearer direction for resolving billing error disputes.

The following persons would probably bear the costs of the proposed amendments:

- Energy utilities subject to the Commission's Billing Error Rules.
- Ratepayers of those utilities.
- Government agencies with jurisdiction over these utilities.

The following persons would probably benefit from the proposed amendments:

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<sup>23</sup> Dakota Electric comments (May 13, 2005) at 2.



- Energy utilities subject to the Commission’s Billing Error Rules.
- Ratepayers of those utilities.
- Government agencies with jurisdiction over these utilities.

**B. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues – Minn. Stat. § 14.131 (2).**

Any rule change has the potential to provoke some disputes to determine how the Commission will apply the new language, which could require some resources from the Commission, the Department, and potentially the Residential and Small Business Utilities Division of the Office of the Attorney General. In the long run, however, the Commission anticipates that the rule change should reduce the number of requests to clarify or vary the Commission’s rules, which should reduce the demands on agency resources.

An appendix to the September 20, 2006 edition of the *Minnesota Rulemaking Manual* (David Orren, editor/compiler) estimates the one-time cost to promulgate a “Small Rule” at more than \$30,000.<sup>24</sup> This rule would appear to fall within that category.

The Commission does not expect this rule to have any effect on state revenues.

**C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule – Minn. Stat. § 14.131 (3).**

Generally, this rulemaking seeks to bring the Commission’s rules into conformance with the practices reflected in the variances, and to streamline a practice required by rule. Because the problems arise from the rules, a rulemaking is required to remedy them.

**D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule – Minn. Stat. § 14.131 (4).**

Several parties recommended that the Commission decline to amend its rules and simply maintain the status quo, granting variances when requested. The Commission is not persuaded that this practice is appropriate or that it would achieve the Commission’s public policy goals.

First, the Commission prefers to have rules reflect sound public policy. The

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<sup>24</sup> The *Minnesota Rulemaking Manual* may be found at <http://www.health.state.mn.us/divs/hpsc/dap/rmanintr.htm>.

Commission has reached a substantive conclusion that sound public policy favors, among other things, calculating remedies for overcharges over a period of three years plus interest. The only way to ensure that its rules reflect this policy is to change the rules.

Second, the Commission prefers rules that avoid undue discrimination by prescribing similar treatment for all similarly-situated customers. Under the status quo certain customers receive the benefit of rule variances, but no one can know how many similarly situated customers were deprived of these benefits.

Third, because rules are intended to reflect policies that apply generally, the Commission seeks to reduce the disparity between its rules and the practices that apply generally. Arguably Xcel's tariffs reflect the status quo because a majority of Minnesota's electric customers receive the benefits of Xcel's tariffs. Arguments in favor of the status quo, therefore, provide support for amending the Commission's rules.

**E. The probable costs of complying with the proposed rule, including the costs that will be borne by identifiable categories of affected parties – Minn. Stat. § 14.131 (5).<sup>25</sup>**

Any rule change will entail one-time costs as utilities conform their tariffs and practices to the new rule.

On an ongoing bases, the new rule will require utilities to make larger remedy payments to overcharged customers. The Commission does not anticipate that these added costs will be significant from the utility's perspective. Most of the utilities emphasized that large billing errors are rare. According to Xcel, the vast majority of errors are identified and resolved within a year. In a majority of cases, therefore, the new period for calculating remedies would have no effect, and the interest accrued on any overcharge would be small. To the extent that the rule increases a utility's operating costs, and the utility cannot avoid these costs through prudent management (such as taking additional steps to reduce billing errors), these costs would eventually be reflected in rates paid by ratepayers.

The new payments would be costless from a social perspective; any increase in costs borne by a utility will equal an increase in remedy received by a ratepayer.

Finally, the Commission anticipates that the new streamlined means for refunding overpayments to former customers would tend to reduce utility administrative costs.

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<sup>25</sup> While some agencies must assess the cost of a given rule in its first year, the Legislature exempts the Commission from this requirement. Minn. Stat. § 14.127, subd. 4(d).

**F. The probable costs or consequences of not adopting the proposed rule, including costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals – Minn. Stat. § 14.131 (6).**

This matter is addressed in the discussion of item D., above.

In the absence of a rule change, customers that might otherwise receive the benefits of three years of reimbursements plus interest would receive reimbursements for only one year, and generally without interest. Similarly situated customers might continue to receive disparate treatment depending on whether or not a customer knew to ask the utility to seek a variance. Utilities would continue to bear the cost of mailing notices to former customers that had been overbilled, awaiting responses and mailing follow-up checks. And state agencies and utilities would continue to bear the cost of seeking, considering and granting variances to the existing rules, and customers would continue to bear the cost of delay in resolving billing disputes.

**G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference – Minn. Stat. § 14.131 (7).**

The Commission is not aware of any differences between the proposed amendments and any relevant federal regulation; the amendments are not duplicative of federal law.

**VIII.  
CONSIDERATION OF PERFORMANCE-BASED REGULATORY SYSTEMS**

Minnesota Statutes § 14.002 requires agencies to develop rules and regulatory programs that emphasize superior achievement in meeting regulatory goals while retaining maximum flexibility for agencies and regulated parties in meeting those goals. Minnesota Statutes § 14.131 requires agencies to explain in their Statements of Need and Reasonableness how they have taken this legislative policy into account.

The Commission considered performance-based regulatory principles as it developed these rules, as reflected in the discretion granted in the manner utilities refund overcharges to former customers. Much of the proposed amendments, however, are designed to provide even-handed regulation, ensuring that similarly-situated customers receive similar treatment. Performance-based regulatory systems are less well adapted to achieving such goals.

**IX.  
COST OF RULE COMPLIANCE**

The Commission has consulted with the Commissioner of Finance, as required by Minnesota Statutes § 14.131, regarding the cost of complying with the proposed rule changes.

While Minnesota Statutes § 14.127 directs agencies to evaluate the cost its rules will impose on small businesses or cities, the proposed rules are exempt from this requirement. See Minnesota Statutes § 14.127, subdivision 4(d).

## **X. ADDITIONAL NOTICE PLAN**

To ensure the public has sufficient notice to participate in a proposed rulemaking, the Administrative Procedure Act requires agencies to take certain prescribed steps to publicize their rulemakings. In addition, Minnesota Statutes § 14.14, subdivision 1a requires agencies to make unspecified additional efforts to notify persons who might be affected by proposed rules, and § 14.131 requires agencies to describe these efforts in their Statements of Need and Reasonableness.

The Commission plans to publicize its proposed rule changes in the following manner:

- Publishing its Notice of Intent to Adopt Rules, and text of the proposed rule changes, in the *State Register*.
- Mailing a copy of its Notice of Intent to Adopt Rules to everyone who has requested to receive it pursuant to Minnesota Statutes § 14.14, subdivision 1a.
- Giving notice to the Legislature as required by Minnesota Statutes § 14.116.
- Posting on the Commission's website, <http://www.puc.state.mn.us>, 1) its Notice of Intent to Adopt Rules and 2) this Statement of Need and Reasonableness, including the text of the proposed rules.
- Mailing notice to Minnesota energy utilities of the Commission's intent to adopt the proposed rules.
- Issuing a press release to all newspapers of general circulation throughout the state.

## **XI. CONCLUSION**

For the foregoing reasons, the Commission respectfully submits that the proposed rules are both needed and reasonable.

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Burl W. Haar  
Executive Secretary

(S E A L)

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## **APPENDIX A: Current Billing Error Rules**

(Italics denotes differences between the gas and electric rules.)

### **ELECTRIC BILLING ERRORS**

#### **7820.3700 INACCURATE METERS.**

Subpart 1. Meter too fast or too slow.

Whenever any meter is found upon test to have an average error of more than two percent fast, the utility shall refund to the customer the overcharge. Whenever any meter is found upon test to have an average error of more than two percent slow, the utility may charge for *electricity* consumed, but not included in the bills previously rendered. The refund or charge for both *fast and slow meters* shall be based on corrected meter readings for a period equal to one-half the time elapsed since the last previous test but not to exceed six months, unless it can be established that the error was due to some cause, the date of which can be fixed with reasonable certainty, in which case the refund or charge shall be computed *to that date*, but in no event for a period longer than one year.

Subp. 2. Meter fails to register or registers intermittently. When the average error cannot be determined by test because the meter is not found to register or is found to register intermittently, the utility may charge for an estimated amount of *electricity* used, which shall be calculated by averaging the amounts registered over corresponding periods in previous years or in the absence of such information, over similar periods of known accurate measurement preceding or subsequent thereto, but in no event shall such charge be for a period longer than one year.

Subp. 3. Recalculation of bill. If the recalculated bills indicate that more than \$1 is due an existing customer or \$2 is due a person no longer a customer of the utility, the full amount of the calculated difference between the amount paid and the recalculated amount

### **NATURAL GAS BILLING ERRORS**

#### **7820.3900 INACCURATE METERS.**

Subpart 1. Meter too fast or too slow.

Whenever any meter is found upon test to have an average error of more than two percent fast, the utility shall refund to the customer the overcharge. Whenever any meter is found upon test to have an average error of more than two percent slow, the utility may charge for the *gas* consumed but not included in bills previously rendered. The refund or charge for both *the fast and slow meter* shall be based on the corrected meter reading for a period equal to one-half the time elapsed since the last previous test, but not to exceed six months, unless it can be established that the error was due to some cause, the date of which can be fixed with reasonable certainty, in which case the refund or charge shall be computed *from that date*, but in no event for a period longer than one year. *The average error for a meter tested shall be defined as one-half the algebraic sum of the error at full-rated flow plus the error at check flow.*

Subp. 2. Meter fails to register or registers intermittently. When the average error cannot be determined by test because the meter is not found to register or is found to register intermittently, the utility may charge for an estimated amount of *gas* used, which shall be calculated by averaging the amounts registered over corresponding periods in previous years or in the absence of such information, over similar periods of known accurate measurement preceding or subsequent thereto, but in no event shall such charge be for a period longer than one year.

Subp. 3. Recalculation of bill. If the recalculated bills indicate that more than \$1 is due an existing customer or \$2 is due a person no longer a customer of the utility, the full amount of the calculated difference between the amount paid and the recalculated amount

shall be refunded to the customer. The refund to an existing customer may be in cash or as credit on a bill. Credits shall be shown separately and identified. If a refund is due a person no longer a customer of the utility, a notice shall be mailed to the last known address and the utility, upon demand made within three months thereafter shall refund the amount due. If the recalculated bills indicate that the amount due the utility exceeds \$10, the utility may bill the customer for the amount due. The first billing rendered shall be separated from the regular bill and the charges explained in detail.

Subp. 4. Failure to check faulty meter. If a customer has called to the utility's attention doubts as to the meter's accuracy and the utility has failed within a reasonable time to check it, there shall be no back billing for the period between the date of the customer's notification and the date the meter was checked.

#### **7820.3800 BILLING ERRORS.**

When a customer has been overcharged or undercharged as a result of incorrect reading of the meter, incorrect application of rate schedule, incorrect connection of the meter, application of an incorrect multiplier or constant or other similar reasons, the amount of the overcharge shall be refunded to the customer or the amount of the undercharge may be billed to the customer. The refund or charge in no event shall exceed one year, unless the date the error occurred can be fixed with reasonable certainty, in which case the refund or charge shall be computed from that date, but in no event for a period longer than one year. If the recalculated bills indicate that more than \$1 is due an existing customer or \$2 is due a person no longer a customer of the utility, the full amount of the calculated difference between the amount paid and the recalculated amount shall be refunded to the customer. The refund to an existing customer may be in cash or credit on a bill. Credits shall be shown separately and

shall be refunded to the customer. The refund to an existing customer may be in cash or as credit on a bill. Credits shall be shown separately and identified. If a refund is due a person no longer a customer of the utility, a notice shall be mailed to the last known address and the utility, upon demand made within three months thereafter shall refund the amount due. If the recalculated bills indicate that the amount due the utility exceeds \$10, the utility may bill the customer for the amount due. The first billing rendered shall be separated from the regular bill and the charges explained in detail.

Subp. 4. Failure to check faulty meter. If a customer has called to the utility's attention doubts as to the meter's accuracy and the utility has failed within a reasonable time to check it, there shall be no back billing for the period between the date of the customer's notification and the date the meter was checked.

#### **7820.4000 BILLING ERRORS.**

When a customer has been overcharged or undercharged as a result of incorrect reading of the meter, incorrect application of rate schedule, incorrect connection of the meter, application of an incorrect multiplier or constant or other similar reasons, the amount of the overcharge shall be refunded to the customer or the amount of the undercharge may be billed to the customer. The refund or charge in no event shall exceed one year, unless the date the error occurred can be fixed with reasonable certainty, in which case the refund or charge shall be computed from that date, but in no event for a period longer than one year. If the recalculated bills indicate that more than \$1 is due an existing customer or \$2 is due a person no longer a customer of the utility, the full amount of the calculated difference between the amount paid and the recalculated amount shall be refunded to the customer. The refund to an existing customer may be in cash or as credit on a bill. Credits shall be shown separately and

identified. If a refund is due a person no longer a customer of the utility, a notice shall be mailed to the last known address and the utility, upon demand made within three months thereafter shall refund the amount due. If the recalculated bills indicate that the amount due the utility exceeds \$10, the utility may bill the customer for the amount due. The first billing rendered shall be separated from the regular bill and the charges explained in detail.

identified. If a refund is due a person no longer a customer of the utility, a notice shall be mailed to the last known address and the utility, upon demand made within three months thereafter shall refund the amount due. If the recalculated bills indicate that the amount due the utility exceeds \$10, the utility may bill the customer for the amount due. The first billing rendered shall be separated from the regular bill and the charges explained in detail.



## **APPENDIX B: Proposed Amendments**

(Shaded underlined text denotes new language; strike-outs denote language to be omitted.)

### **ELECTRIC BILLING ERRORS**

#### **7820.3700 INACCURATE METERS.**

Subpart 1. Meter too fast or too slow.

Whenever any meter is found upon test to have an average error of more than two percent fast, the utility shall refund to the customer the overcharge. Whenever any meter is found upon test to have an average error of more than two percent slow, the utility may charge for electricity consumed, but not included in the bills previously rendered. The refund or charge for both fast and slow meters shall be based on corrected meter readings for a period equal to one-half the time elapsed since the last previous test but not to exceed six months, unless it can be established that the error was due to some cause, the date of which can be fixed with reasonable certainty, in which case the refund or charge shall be computed to that date, but in no event for a period longer than one year.

Subp. 2. Meter fails to register or registers intermittently. When the average error cannot be determined by test because the meter is not found to register or is found to register intermittently, the utility may charge for an estimated amount of electricity used, which shall be calculated by averaging the amounts registered over corresponding periods in previous years or in the absence of such information, over similar periods of known accurate measurement preceding or subsequent thereto, but in no event shall such charge be for a period longer than one year.

Subp. 3. Recalculation of bill. If the recalculated bills indicate that more than \$1 is due an existing customer or \$2 is due a person no longer a customer of the utility, the full amount of the calculated difference between the amount paid and the recalculated amount shall be refunded to the customer. The refund

### **NATURAL GAS BILLING ERRORS**

#### **7820.3900 INACCURATE METERS.**

Subpart 1. Meter too fast or too slow.

Whenever any meter is found upon test to have an average error of more than two percent fast, the utility shall refund to the customer the overcharge. Whenever any meter is found upon test to have an average error of more than two percent slow, the utility may charge for the gas consumed but not included in bills previously rendered. The refund or charge for both the fast and slow meter shall be based on the corrected meter reading for a period equal to one-half the time elapsed since the last previous test, but not to exceed six months, unless it can be established that the error was due to some cause, the date of which can be fixed with reasonable certainty, in which case the refund or charge shall be computed from that date, but in no event for a period longer than one year. The average error for a meter tested shall be defined as one-half the algebraic sum of the error at full-rated flow plus the error at check flow.

Subp. 2. Meter fails to register or registers intermittently. When the average error cannot be determined by test because the meter is not found to register or is found to register intermittently, the utility may charge for an estimated amount of gas used, which shall be calculated by averaging the amounts registered over corresponding periods in previous years or in the absence of such information, over similar periods of known accurate measurement preceding or subsequent thereto, but in no event shall such charge be for a period longer than one year.

Subp. 3. Recalculation of bill. If the recalculated bills indicate that more than \$1 is due an existing customer or \$2 is due a person no longer a customer of the utility, the full amount of the calculated difference between the amount paid and the recalculated amount shall be refunded to the customer. The refund

to an existing customer may be in cash or as credit on a bill. Credits shall be shown separately and identified. If a refund is due a person no longer a customer of the utility, a notice shall be mailed **the utility shall mail** to the **customer's** last known address and the utility, upon demand made within three months thereafter shall refund the amount due either the refund or a notice that the customer has three months in which to request a refund from the utility. If the recalculated bills indicate that the amount due the utility exceeds \$10, the utility may bill the customer for the amount due. The first billing rendered shall be separated from the regular bill and the charges explained in detail.

Subp. 4. Failure to check faulty meter. If a customer has called to the utility's attention doubts as to the meter's accuracy and the utility has failed within a reasonable time to check it, there shall be no back billing for the period between the date of the customer's notification and the date the meter was checked.

#### **7820.3800 ELECTRIC UTILITY BILLING ERRORS.**

##### **Subpart 1. Errors warranting remedy.**

When a customer has been overcharged or undercharged as a result of incorrect reading of the meter, incorrect application of rate schedule, incorrect connection of the meter, application of an incorrect multiplier or constant or other similar reasons, the amount of the overcharge shall be refunded to the customer or the amount of the undercharge may be billed to the customer as detailed in subparts 2 through 4. The refund or charge in no event shall exceed one year, unless the date the error occurred can be fixed with reasonable certainty, in which case the refund or charge shall be computed from that date, but in no event for a period longer than one year.

##### **Subp. 2. Remedy for overcharge.**

When a utility has overcharged a customer, the utility shall calculate the difference between

to an existing customer may be in cash or as credit on a bill. Credits shall be shown separately and identified. If a refund is due a person no longer a customer of the utility, a notice shall be mailed **the utility shall mail** to the **customer's** last known address and the utility, upon demand made within three months thereafter shall refund the amount due either the refund or a notice that the customer has three months in which to request a refund from the utility. If the recalculated bills indicate that the amount due the utility exceeds \$10, the utility may bill the customer for the amount due. The first billing rendered shall be separated from the regular bill and the charges explained in detail.

Subp. 4. Failure to check faulty meter. If a customer has called to the utility's attention doubts as to the meter's accuracy and the utility has failed within a reasonable time to check it, there shall be no back billing for the period between the date of the customer's notification and the date the meter was checked.

#### **7820.4000 NATURAL GAS UTILITY BILLING ERRORS.**

##### **Subpart 1. Errors warranting remedy.**

When a customer has been overcharged or undercharged as a result of incorrect reading of the meter, incorrect application of rate schedule, incorrect connection of the meter, application of an incorrect multiplier or constant or other similar reasons, the amount of the overcharge shall be refunded to the customer or the amount of the undercharge may be billed to the customer as detailed in subparts 2 through 4. The refund or charge in no event shall exceed one year, unless the date the error occurred can be fixed with reasonable certainty, in which case the refund or charge shall be computed from that date, but in no event for a period longer than one year.

##### **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. Interest must be calculated as prescribed by Minnesota Statutes

§ 325E.02(b), If the recalculated bills indicate that more than \$1 is due an existing customer or \$2 is due a person no longer a customer of the utility, the full amount of the calculated difference between the amount paid and the recalculated amount shall be refunded to the customer. The refund to an existing customer may be in cash or credit on a bill. Credits shall be shown separately and identified. If a refund is due a person no longer a customer of the utility, a notice shall be mailed the utility shall mail to the customer's last known address and the utility, upon demand made within three months thereafter shall refund the amount due either the refund or a notice that the customer has three months in which to request a refund from the utility.

**Subp. 3. Remedy for undercharge.**

When a utility has undercharged 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, for the period beginning one year before the date of discovery. If the recalculated bills indicate that the amount due the utility exceeds \$10, the utility may bill the customer for the amount due. But a utility must not bill for any undercharge incurred after the date of a customer inquiry or complaint if the utility failed to begin investigating the matter within a reasonable time and the inquiry or complaint ultimately resulted in the discovery of the undercharge. The first billing rendered shall be separated from the regular bill and the charges explained in detail.

**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, but in no event for a period beginning more than three years before

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. Interest must be calculated as prescribed by Minnesota Statutes

§ 325E.02(b), If the recalculated bills indicate that more than \$1 is due an existing customer or \$2 is due a person no longer a customer of the utility, the full amount of the calculated difference between the amount paid and the recalculated amount shall be refunded to the customer. The refund to an existing customer may be in cash or credit on a bill. Credits shall be shown separately and identified. If a refund is due a person no longer a customer of the utility, a notice shall be mailed the utility shall mail to the customer's last known address and the utility, upon demand made within three months thereafter shall refund the amount due either the refund or a notice that the customer has three months in which to request a refund from the utility.

**Subp. 3. Remedy for undercharge.**

When a utility has undercharged 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, for the period beginning one year before the date of discovery. If the recalculated bills indicate that the amount due the utility exceeds \$10, the utility may bill the customer for the amount due. But a utility must not bill for any undercharge incurred after the date of a customer inquiry or complaint if the utility failed to begin investigating the matter within a reasonable time and the inquiry or complaint ultimately resulted in the discovery of the undercharge. The first billing rendered shall be separated from the regular bill and the charges explained in detail.

**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, 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.

the discovery of an overcharge or one year  
before the discovery of an undercharge.

## **APPENDIX C: Orders Granting Variances to Minn. Rules parts 7820.3800 and .4000**

1. *In the Matter of a Complaint by the Minnesota Department of Public Service Against Interstate Power Company Regarding the Charging of Rates Different from its Tariffed Rates*, Docket No. E,G-001/M-90-875 ORDER DISMISSING DEPARTMENT'S COMPLAINT AND APPROVING COMPANY'S REFUND OF OVERCHARGES WITHOUT INTEREST (November 13, 1991), varying 7820.3800 to permit Interstate to refund \$323,641 to six large power customers, but declining to award interest because customers did not request it.
2. *In the Matter of a Complaint Against the City of Ely by Non-Resident Customers*, Docket No. E-235/C-91-681 ORDER REQUIRING REFUND AND COMPLIANCE FILING (August 21, 1992), varying 7820.3800 to compel municipal utility to refund \$5/month surcharge plus prospective interest to 35 residential customers.
3. *In the Matter of a Request by Minnegasco for a Variance from Minn. Rules, Part 7820.4000, Billing Errors, in Order to Provide a Refund Beyond the Twelve Month Period Allowed in the Rule*, Docket No. G-008/C-93-673 ORDER GRANTING VARIANCE (November 8, 1993), varying 7820.4000 to permit Minnegasco to provide three years of overcharges to Egghens Enterprises; Minnegasco did not seek a variance to recover more than one year of undercharges from neighboring firm.
4. *In the Matter of a Request by Northern States Power Company for a Two-Year Variance to Minnesota Rules parts 7820.3800 and 7820.4000 to Allow NSP to Refund Billing Errors Back Three Years*, Docket No. E,G-002/M-96-36 (February 26, 1996), varying 7820.3800 and .4000.
5. *In the Matter of a Request by Northern States Power Company for a Two-Year Variance to Minnesota Rules parts 7820.3800 and 7820.4000 to Allow NSP to Refund Billing Errors Back Three Years*, Docket No. E,G-002/M-98-186 (April 10, 1998), varying 7820.3800 and .4000.
6. *In the Matter of the Review of the 1997 Annual Automatic Adjustment of Charges for All Gas and Electric Utilities*, Docket No. G,E-999/AA-97-1212 ORDER REVIEWING 1997 ANNUAL AUTOMATIC ADJUSTMENT REPORTS AND TRUE-UP FILINGS (May 28, 1998), varying 7820.4000 to permit Minnegasco to refund \$85,275 to a small volume dual-fuel customer.
7. *In the Matter of a Request by Otter Tail Power Company for Approval of a Waiver of the Customer Service Rules Governing Billing Errors*, Docket No. E-017/M-00-1030 (September 22, 2000), varying 7820.3800 and authorizing refund with 6% interest.
8. *In the Matter of a Request by Minnesota Power for Approval of a Variance to Commission Rules Regarding Billing Errors*, Docket No. E-015/M-01-695 (June 8, 2001), varying 7820.4000 and authorizing refund with 6% interest.
9. *In the Matter of a Request by Otter Tail Power Company for Approval of a Waiver of*

*the Customer Service Rider Governing Billing Errors (McIntosh)*, Docket No. E-017/M-04-449 (May 14, 2004), varying 7820.3800 and providing refunds with 5% interest.

10. *In the Matter of a Request by Otter Tail Power Company for Approval of a Waiver of the Customer Service Rider Governing Billing Errors (Bursch Farms)*, Docket No. E-017/M-04-450 (May 14, 2004), varying 7820.3800.

11. *In the Matter of a Request by Minnesota Power for a Variance to Commission Rules Regarding Billing Errors*, Docket No. E-015/M-04-963 (September 10, 2004), varying 7820.3800, authorizing refund with 6% interest.

12. *In the Matter of a Request by Minnesota Power for a Variance to Commission Rules Regarding Billing Errors*, Docket No. E-015/M-04-1939 (March 14, 2005), varying 7820.3800 to permit \$29,334.15 refund to Viking Electric, without interest.

13. *In the Matter of the Petition of Xcel Energy for Approval of Customer Refund Plan and Variance to Allow Refunds Arising from Programming Errors*, Docket No. G-002/M-04-1072 ORDER GRANTING PETITION (March 16, 2005), varying 7820.4000 to permit refunds dating to the 1990s on behalf of 279 residential customers and approximately six commercial/industrial customers, including a refund of one-half of each month's customer charge in lieu of interest, but refraining from seeking any recovery from undercharged customers.

14. *In the Matter of Otter Tail Power Company's Petition for Approval of a Waiver of the Customer Service Rules Governing Billing Errors*, Docket No. E-017/M-05-81 (April 5, 2005), varying 7820.3800, authorizing refund with interest.

15. *In the Matter of a Request by CenterPoint Energy for Approval of a Variance to Minnesota Rules 7820.4000 (Billing Errors)*, Docket No. G-008/M-05-126 (May 6, 2005), varying 7820.4000.

16. *In the Matter of a Formal Complaint and Petition for Variance to Minnesota Rules, Part 7820.3800, Billing Errors*, Docket No. E-002/C-05-274 (August 5, 2005), varying 7820.3800 to permit \$16,986 additional refund to Shapco Printing.

17. *In the Matter of Otter Tail Power Company's Petition for Approval of a Waiver of the Customer Service Rules Concerning Billing Errors*, Docket No. E-017/M-06-838 (July 25, 2006), varying 7820.3800 to permit refund to extend back more than six years plus interest at the rate established by Minn. Stat. § 325E.02, due to problem arising when customer installed a meter incorrectly.

18. *In the Matter of Otter Tail Power Company's Petition for Approval of a Waiver of the Customer Service Rules Governing Billing Errors for the Lauris Krogstad Account, and for Approval of a Permanent Waiver of the Customer Service Rules Governing Billing Errors*, Docket No. E-017/M-07-2304 (November 19, 2007), varying 7820.3800 to permit refund to extend back more than three years due to problem arising when customer installed a meter incorrectly, and seeking a permanent variance to permit

refunds dating back three years.