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STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Rules Governing Rate Adjustments Due to Tax Reform Act of 1986, Minn. Rules, parts 7827.0100 to 7827.0600

Docket No. U-999/R-87-64

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The proposed rules change, where necessary, the rates charged to consumers by certain gas and electric utilities and telephone companies. Any change in rates will account for changes in a utility or telephone company's cost of service that are caused by the federal Tax Reform Act of 1986, Public Law Number 99-514 (the Act). The Minnesota Public Utilities Commission (Commission) drafted these rules in response to the Act.

The Commission is also proposing legislation in response to the Act. The proposed rules are intended to complement the proposed legislation but, if necessary, can stand alone to account for changes in a company's cost of service caused by the Act.

II. STATEMENT OF COMMISSION'S STATUTORY AUTHORITY

The Commission's statutory authority to adopt these rules is found in Minn. Stat. ch. 216B (1986) governing gas and electric utilities and in Minn. Stat. ch. 237 (1986) governing telephone companies. Specifically, Minn. Stat. §§ 216B.08, 216B.03, 237.10, 237.02 and 237.06 (1986) provide:

> 216B.08 DUTIES OF COMMISSION
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> The commission is hereby vested with the powers, rights, functions, and jurisdiction to regulate in accordance with the provisions of Laws 1974, chapter 429 every public utility as defined herein. The exercise of such power, rights, functions, and jurisdiction is prescribed as a duty of the commission. The commission is authorized to make rules in furtherance of the purposes of Laws 1974, chapter 429.
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> 216B.03 REASONABLE RATE
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> Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, unreasonably prejudicial or discriminatory, but shall be sufficient, equitable and consistent in application to a class of consumers. To the maximum reasonable extent, the commission shall set rates to encourage energy conservation and

renewable energy use and to further the goals of sections 116J.05, 216B.164, and 216B.241. Any doubt as to reasonableness should be resolved in favor of the consumer. For rate making purposes a public utility may treat two or more municipalities served by it as a single class wherever the populations are comparable in size or the conditions of service are similar.

237.10 UNIFORM RULES

It shall be the duty of the commission to prescribe uniform rules and classifications pertaining to the conduct of intrastate telephone business and a system of accounting to be used by telephone companies in transacting this business, and it shall prescribe and furnish blanks and forms for reports, all of which shall conform as nearly as practicable to the rules, classification, accounting systems, and reports prescribed by the Federal Communications Commission for the interstate business of like size companies.

The commission shall by correspondence or conference where necessary use its best endeavors toward establishing uniformity in practice in all matters pertaining to regulation of the business of telephone companies between the federal government and state government of this and adjacent states.

237.02 UNDER DEPARTMENT OF PUBLIC SERVICE AND PUBLIC UTILITIES COMMISSION

The department of public service and the public utilities commission, now existing under the laws of this state, are hereby vested with the same jurisdiction and supervisory power over telephone companies doing business in this state as it now has over railroad and express companies. The definitions set forth in section 216A.02 shall apply also to this chapter.

237.06 RATES TO BE FAIR AND REASONABLE

It shall be the duty of every telephone company to furnish reasonably adequate service and facilities for the accommodation of the public, and its rates, tolls, and charges shall be fair and reasonable for the intrastate use thereof. All unreasonable rates, tolls, and charges are hereby declared to be unlawful. Any telephone company organized after January 1, 1949, may include in its charges a reasonable deposit fee not exceeding $50 for facilities furnished.

Under these statutes, the Commission has the necessary statutory authority to adopt the proposed rules. Minn. Stat. §§ 216B.08, 237.10 and 237.02 (1986) grant the Commission authority to promulgate rules governing certain gas and electric utilities and telephone companies. Minn. Stat. §§ 216B.03 and 237.06 (1986) require that the rates charged by these companies be fair and reasonable. The proposed rules are intended to enable the Commission to carry out its duties under the latter sections.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1986) requires the Commission to make an affirmative presentation of facts establishing the need for and reasonableness of the

rules as proposed. In general terms, this means that the Commission must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. Moreover, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the Commission is appropriate. The need for the rules is discussed below.

The rules are necessary to prevent rates charged to ratepayers from being unjust and unreasonable as a result of the federal Tax Reform Act of 1986, Public Law Number 99-514 (the Act). The rules change rates to account for changes in a utility or telephone company's cost of service that are caused by the Act.

The Commission has consistently recognized income tax expense as an appropriate expense when it sets rates. Indeed, income tax expense is a major expense for most gas and electric utilities and telephone companies and represents a substantial portion of the cost of providing service. The likely result of the Act is to reduce the amount of federal income tax expense properly recovered from ratepayers because, among other things, it substantially reduces the maximum corporate tax rate. The corporate tax rate as established in federal tax law is used to determine the federal tax expense for ratemaking. If the rates are not adjusted, the company will receive a windfall, at the expense of its customers, in the form of an overrecovery of federal income tax expense.

The result of the reduction in federal income tax expense for ratemaking means that the current rates charged to the ratepayers will become unjust and unreasonable on July 1, 1987, the effective date of the revised corporate tax rates. Pursuant to Minn. Stat. §§ 216B.03 and 237.06 (1986), the Commission is charged with responsibility for setting just and reasonable rates. In order to meet its statutory duty and fulfill its responsibility, the Commission must adjust rates that are unjust and unreasonable due to the Act and make them just and reasonable.

The utilities and telephone companies may argue that the rules are unnecessary because provisions of the Act other than the reduction in the corporate tax rate will work to increase the amount of federal income tax expense properly recovered from ratepayers. However, the Commission has considered these effects. The adjustment is computed by using all provisions of the Act applicable to the computation of federal income tax expense reflected in the operating income statement for ratemaking.

The utilities and telephone companies may also argue that the proposed rules are not needed because there will be effects on rate base, caused by the Act, that may offset the effects contemplated by the proposed rules. As explained in the discussion on the reasonableness of part 7827.0400, the proposed rules do not adjust for the effects of the Act upon rate base because the effects are expected be minimal. In the Commissions's view, the computations used to calculate the effects upon rate base are too time consuming and complex to justify their use for purposes of carrying out the intent of the rules.

The utilities and telephone companies may argue that the proposed rules are unnecessary because other expenses or rate base changes have occurred which may offset the effects of the Act. The Commission finds that all expenses, including the federal tax expense, were calculated and used for setting rates

in the utility or telephone company's most recent general rate case. If other expenses or rate base items have changed then the appropriate forum to recalculate rates is in a new general rate case. A general rate case is the more appropriate forum in this instance because the other expenses may have increased for unknown reasons in unmeasurable amounts. Since these changing expense levels are uncertain, extensive testimony and exhibits may be needed to prove the amount of change. A general rate case is not necessary to implement the changes required by the proposed rules because the amount of the tax expense change is reasonably known and measurable. Furthermore, the proposed rules recognize that a utility or telephone company may file a general rate case, in lieu of the adjustment contained in the proposed rules, if it determines that changes in other expenses may offset the decrease in the federal income tax expense.

IV. STATEMENT OF REASONABLENESS

The Commission is required by Minn. Stat. ch. 14 (1986) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Commission's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole

The proposed rules solve the problem of unjust and unreasonable rates by adjusting rates for the reduction in federal income tax expense for any utility or telephone company that would experience a windfall recovery under the Act. The amount of the adjustment is based upon recent financial data of the utility or telephone company and the final provisions of the Act.

This approach is reasonable because the provisions of the Act are applicable to all utilities and telephone companies. Furthermore, the change in expense is reasonably known and measurable. In addition, the change in expense is the result of a change in federal law, which is beyond the control of the utilities and telephone companies and the Commission.

The proposed rules do not adjust for any expenses of the utility or telephone company other than the federal income tax expense. This is reasonable because other changes in expense levels may be questioned as to whether they should be allowed for ratemaking purposes and may be contested. Moreover, changing levels in other expenses may not be experienced equally by all utilities or telephone companies. Therefore, the changing levels of other expenses are more appropriately addressed in a general rate case which allows for a thorough investigation and hearing.

The proposed rules do not adjust rates in the event that the Act results in an increase in the federal income tax expense for ratemaking purposes. Minn. Stat. §§ 216B.16 and 237.075 (1986) already provide a mechanism for an increase in rates. By means of the interim rates provisions contained in these statutes, a utility or telephone company can implement increased rates within 60 days of its request for a change in rates.

The statutes contain no comparable provision for a rate decrease. The Commission's authority to initiate an investigation under Minn. Stat. §§ 216B.21, 216B.23 or 237.081 (1986), and thereby reduce rates, would result in an unreasonably lengthy solution to a problem that needs immediate action.

In summary, the Commission does not have express statutory authority to initiate a general rate case under Minn. Stat. §§ 216B.16 or 237.075 (1986). An investigation under Minn. Stat. §§ 216B.21, 216B.23 or 237.081 (1986) can be an unwieldy and lengthly process. If a utility or telephone company underrecovers the federal income tax expense, it can receive relief in 60 days by filing a general rate case.

The proposed rules also provide a means for the utilities and telephone companies to adjust rates for the effects of the Act which avoids the administrative burden and associated costs of a general rate case. Utilities and telephone companies need not develop extensive testimony and exhibits, and need not go through the time and expense of an evidentiary hearing. These savings for the utilities and telephone companies also result in savings for the ratepayers. Finally, the information needed to perform the adjustment to rates under the rules is readily available to the utilities and telephone companies, and can be completed in much less time than a general rate case.

B. Reasonableness of Individual Rules

The following discussion addresses the specific provisions of the proposed rules.

Part 7827.0100 Definitions

Subpart 1 defines the scope of the definitional section of the rules. It is reasonable to state that this part gives the meaning of the terms used in the proposed rules.

Subparts 2 and 3 explain that the Minnesota Public Utilities Commission and the Minnesota Department of Public Service will be referred to as the Commission and the Department, respectively.

Subpart 4 defines public utility as it is commonly used and as set forth in Minn. Stat. § 216B.02, subd. 4 (1986):

> Subd. 4. "Public utility" means persons, corporations or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured or mixed gas or electric service to or for the public or engaged in the production and retail sale thereof but does not include (1) a municipality or a cooperative electric association, organized under the provisions of chapter 308 producing or furnishing natural, manufactured or mixed gas or electric service or (2) a retail seller of compressed natural gas used as a vehicular fuel which purchases the gas from a public utility. Except as otherwise provided, the provisions of this chapter shall not be applicable to any sale of natural, manufactured or mixed gas or electricity by a public utility to another public utility for

resale. In addition, the provisions of this chapter shall not apply to a public utility whose total natural gas business consists of supplying natural, manufactured or mixed gas to not more than 650 customers within a city pursuant to a franchise granted by the city, provided a resolution of the city council requesting exemption from regulation is filed with the commission. The city council may rescind the resolution requesting exemption at any time, and, upon the filing of the rescinding resolution with the commission, the provisions of this chapter shall apply to the public utility. No person shall be deemed to be a public utility if it furnishes its services only to tenants or cooperative or condominium owners in buildings owned, leased or operated by such person. No person shall be deemed to be a public utility if it furnishes service to occupants of a manufactured home or trailer park owned, leased, or operated by such person. No person shall be deemed to be a public utility if it produces or furnishes service to less than 25 persons.

It is reasonable to use the statutory definition of public utility because these utilities are affected by the Act and therefore, their rates may need to be adjusted by the proposed rules.

Subpart 5 defines the tax reform act as the federal Tax Reform Act of 1986, Public Law Number 99-514. It is reasonable to refer to this law as the "tax reform act" throughout the proposed rules so that the intent, scope and effect of the rules is clear.

Subpart 6 defines telephone company as it is commonly used and as set forth in Minn. Stat. § 237.01, subd. 2 (1986):

> Subd. 2. Telephone company. "Telephone company," means and applies to any person, firm, association or any corporation, private or municipal, owning or operating any telephone line or telephone exchange for hire, wholly or partly within this state, or furnishing any telephone service to the public.
>
> A "telephone company" does not include a radio common carrier as defined in subdivision 4. A telephone company which also conforms with the definition of a radio common carrier is subject to regulation as a telephone company. However, none of chapter 237 applies to telephone company activities which conform to the definition of a radio common carrier.

However, the definition used for the proposed rules specifically excludes telephone companies providing service to fewer than 15,000 subscribers because most of these companies are not subject to the ratemaking provisions of Minn. Stat. § 237.075 (1986). It also excludes small toll companies.

The proposed rules are patterned after a distinction created by statute for ratemaking purposes. That distinction is based on size. Only the five largest telephone companies which serve more than 15,000 subscribers are fully rate regulated by the Commission. These five companies serve approximately 89% of the local exchange telephone customers in Minnesota. The statutory scheme is followed in the proposed rules because it is reasonable and not arbitrary. Only five local exchange companies are burdened, while the benefits of just and reasonable rates are provided to the maximum number of ratepayers.

The same reasoning applies to companies that provide long distance, toll service to Minnesota customers. Only the largest toll companies will be subject to the proposed rules because these companies provide almost all the long distance service in Minnesota.

Part 7827.0200 Purpose

This part clearly states the intent of the proposed rules. This part emphasizes that the rules result from the impact of the Act on rates charged by telephone companies and public utilities for service within Minnesota. It recognizes that the Act affects rates by reducing federal corporate income tax expense, which in turn reduces corporate operating costs. Since the cost of service will decrease, rates must be adjusted accordingly.

Part 7827.0300 Reasonable Rates

This part recognizes that unless rates are adjusted to reflect the decrease in the federal tax expense, those rates will become unjust and unreasonable as of July 1, 1987 because the utilities and telephone companies will be collecting more federal income tax expense through rates than is necessary under the Act. The necessary adjustment to ensure just and reasonable rates can occur in three ways: through either the proposed rules, a completed general rate case that considered the effects of the Act or an on-going general rate case that will consider the effects of the Act on rates.

Item A explains the first way to ensure just and reasonable rates. Rates that have been adjusted under part 7827.0400 are just and reasonable because the reduction in federal income tax expense has been accounted for in the rates.

Item B recognizes that general rate cases decided or begun in 1987 have considered or will consider the effect of the Act on rates by incorporating the provisions of the Act in determining the revenue requirement of a utility or telephone company. Therefore, rates set in such a manner will not be unjust and unreasonable because adjustments will be made for the effects of the Act.

Item C recognizes that any interim rates in effect on July 1, 1987, as part of a general rate case are subject to refund. If the effect of the Act was not considered in setting interim rates, it will be considered in setting final rates in the general rate case. Since interim rates are subject to refund, any overrecovery during the interim period will be returned to the ratepayers at the conclusion of the general rate case.

Items B and C also work to exempt companies from parts 7827.0400 to 7827.0600 of the proposed rules when their rates have been or will be adjusted to reflect changes in the federal income tax expense. Thus, a company may elect its statutory option and file a general rate case under Minn. Stat. §§ 216B.16 and 237.075 (1986), if it determines that a rate increase is needed or if it determines that an increase in other expenses may offset the decrease in the federal income tax expense.

Part 7827.0400 Computation

This part supplies the calculation of the federal income tax adjustment amount. As explained in part 7827.0500, the federal income tax adjustment amount computed in this part will be used to reduce rates.

The rule does not seek to compute the adjustment necessary to rates by determining a new revenue deficiency for the effects of the Act. A new revenue deficiency would be determined by establishing a new rate base, rate of return, and operating income. The rule instead computes the adjustment necessary to rates by determining the effects of the Act on the utility or telephone company's Minnesota jurisdictional federal income tax expense based upon the revenues and expenses included in its recent income statement.

This approach is reasonable for two reasons. First, it is effective because it captures the majority of the effects, which will be reflected in the change in the federal income tax expense amount. This is because the Act affects the computation of the expense to a much greater degree than it affects amounts in the rate base or possible ramifications to the rate of return. Second, this approach is efficient because the calculation of the effects of the Act based upon the utility or telephone company's income statement is reasonably known and measurable and thus can be computed and reviewed with a minimum amount of cost and effort. Determining the effects of the Act on the utility or telephone company's rate base and rate of return, on the other hand, would be complex, time-consuming, and likely to result in a contested case hearing. Such determinations are more appropriately the subject of a general rate case. The rules provide this option to a utility or telephone company. In summary, the method chosen carries out the intent of the rule by capturing the major elements of the change in federal income tax expense in a reasonable and efficient manner.

The adjustment amount is computed by determining two different amounts of federal income tax expense for the same amount of taxable income. The two different federal income tax expense amounts are the result of applying federal tax rates and provisions in effect before and after implementation of the Act. This is reasonable because it isolates the effect of the Act upon federal income tax expense and thus carries out the intent of the rules to adjust rates for the reduction in the utility or telephone company's operating costs as a result of the Act.

Item A

Item A defines the amount of taxable income to which the two different tax computations are to be applied. The amount of taxable income is to consist of the utility or telephone company's actual 1986 revenues and expenses, adjusted to include only items that are the same in nature and kind as in the currently effective order in the utility's most recent rate proceeding, and normalized to the extent necessary to reflect normal operating conditions.

The Commission considered three options for the appropriate time period over which to measure the effects of the Act: the utility or telephone company's most recent general rate case; a projection of 1987 data; or recent actual 1986 data.

The Commission finds that the data approved in a utility or telephone company's most recent general rate case may have changed substantially since the time of the general rate case. Applying provisions of the Act to such outdated information would result in an adjustment that may be inappropriate. The Commission finds that requiring a projection of 1987 data would place an unreasonable burden upon the utility or telephone company because of the substantial amount of work necessary to develop projections. Furthermore, there is an inherent uncertainty in using forecasted numbers. Finally, the Commission finds that the use of 1986 revenues and expenses is reasonable because the information is readily available and has been audited which gives an assurance of accuracy. In addition, it allows the use of current revenue/cost relationships which may have changed since the utility or telephone company's last general rate case. The recent information must be adjusted, however.

Revenues and expenses should include only items the same in nature and kind as allowed in the utility's last general rate case. The company's current operating income may include revenues and expenses that were not allowed in the company's most recent general rate case. Therefore, the rules require an adjustment to the company's current operating income to factor out those revenues and expenses. If the company were to include items not approved by the Commission, the tax expense would be based upon nonratemaking items. Thus, the resulting tax expense and adjustment to rates would be inaccurate for ratemaking.

The 1986 revenues and expenses must be further adjusted to reflect only normal operating conditions. Revenues and expenses actually reported may include items that are unique to 1986 or at levels unusual when compared with long-term averages. For example, an extremely cold winter would result in greater than normal natural gas sales. Normalizing revenues and expenses is reasonable because it is consistent with the method used in general rate cases to determine the allowable revenues and expenses for ratemaking. Furthermore, it will result in a level of taxable income representative of normal past conditions which can reasonably be expected to carry on into the future over the period of time when the adjustment to rates is in effect.

Item B

Item B requires the computation of two different amounts of federal income tax expense for the income determined in Item A. Federal income tax expense is to be calculated using the rates and provisions of federal tax law before and after implementation of the Act. This allows the effects of the Act on federal income tax expense to be identified. Detailed schedules are necessary to enable the Commission and interested parties to understand how the computation was made.

In both cases, the federal income tax expense is to be computed using the same method approved by the Commission in the utility's most recent rate proceeding. This is reasonable because the rules do not attempt to adjust for a change in the method of calculating federal income tax expense. The method to be used was determined by the Commission in the utility's most recent rate proceeding to be appropriate for ratemaking. The component parts of the tax calculations and the detailed schedules of the calculations must be shown to allow for an independent determination of their reasonableness.

Item C

Item C requires the utility to determine the difference between the two amounts of federal income tax expense in Item B. This difference is the basis of the adjustment amount that will be used to reduce rates. The difference must then be multiplied by a gross revenue conversion factor. This is necessary because the difference in federal income tax expense reflects the reduction in operating costs only. The amount of revenue associated with that reduction is greater due to the tax effects of the reduced revenues. Calculation of the gross revenue conversion factor must be submitted to the Commission so it can determine that the appropriate tax rates were used and that the calculation is accurate.

Part 7827.0500 Adjustments of Tariffs, Schedules

Subpart 1 of the rule requires the public utility or telephone company to reduce its rates by the adjustment amount calculated in part 7827.0400. The reduced rates are to take effect on July 1, 1987, the effective date of the Act. On and after that date, rates not adjusted for the change in federal income tax expense are unjust and unreasonable. Before that date, no adjustment is necessary because the new, reduced corporate tax rates found in the Act are not in effect.

Subpart 2 requires that the Commission receive detailed schedules supporting the calculation of the reduced rates. This is a reasonable means of ensuring that the calculation is done accurately. It is also a reasonable means of providing for a timely and efficient agency review of the calculation.

Subparts 3, 4 and 5 ensure that any rate reductions are uniform for all classes of service. This is a reasonable means of ensuring that the benefits of any rate reductions are shared equally among all the ratepayers. To do otherwise would result in a change to the rate design established in the company's most recent general rate case.

Part 7827.0600 Filings; Written Comments

This part states when and where the information required by other parts of the proposed rules must be filed. The Minnesota Department of Public Service (the DPS) is the investigatory arm of the Commission and in that capacity routinely reviews filings and submits reports and recommendations to the Commission. The Office of the Attorney General, Residential Utilities Division (the RUD-AG), represents residential ratepayers in proceedings before the Commission.

This part does not require that other interested persons, such as the Minnesota Public Interest Research Group or large industrial customers, be served a copy of the filings. However, interested persons may review a copy of the filings at the Commission or company offices. This part also provides a written comment period of 20 days to enable voluntary participation by interested persons.

These and other interested persons do not automatically receive a copy of the filings because it would be unnecessary and unreasonably burdensome to serve

copies on all potentially interested persons. This part is also reasonable because the proposed rules provide an established and uniform method of adjusting rates. In this way, the filings made under the proposed rules are similiar in application and effect to a compliance filing for a general rate case. Compliance filings ensure that the utilities and telephone companies have established rates which conform to the Commission's directives. The Commission reviews the compliance filings and the DPS and the RUD-AG are served copies of the filings so that they may submit comments. Other interested persons may receive a copy upon request under normal terms and submit comments, as in the proposed rules.

The filings are due May 1, 1987, or 30 days after the adoption of the proposed rules, whichever is later. This timeframe is intended to ensure that the adjusted rates take effect on or as soon after July 1, 1987, as possible. Time is important because any overrecovery will begin on the effective date of the Act. The filing dates are reasonable because they allow companies sufficient time to prepare their filings. The Act was enacted into law on October 22, 1986. Therefore, affected companies will have had at least six months to determine the impact of the Act on their operations. These dates are also reasonable because they allow for timely review of the filings and will therefore, keep any overrecovery to a minimum.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1986) requires the Commission, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rule.

Minn. Stat. § 14.115, subd. 1 (1986) defines small business as:

> Definition. For purposes of this section, "small business" means a business entity, including its affiliates, that (a) is independently owned and operated; (b) is not dominant in its field; and (c) employs fewer than 50 full-time employees or has gross annual sales of less than $4,000,000. For purposes of a specific rule, an agency may define small business to include more employees if necessary to adapt the rule to the needs and problems of small businesses.

The Commission believes that the gas and electric utilities and telephone companies affected by the proposed rules do not fall within the statutory definition of small business. The utilities and telephone companies affected by the rules are dominant in their service area and generally have gross annual sales in excess of $4,000,000.

Furthermore, the Commission notes that in Minn. Stat. ch. 216B and ch. 237 (1986), it has been authorized by the legislature to regulate gas and electric utilities and telephone companies. Some of the basic tenets of utility and telephone company regulation are: utilities and telephone companies are affected with a deep public interest; utilities and telephone companies are obligated to provide satisfactory service to the entire public on demand; and utilities and telephone companies are obligated to charge fair, non-discriminatory rates. A general freedom from substantial direct competition and the opportunity to make a fair return on investment are among the benefits utilities and telephone companies receive from regulation. Given this regulatory scheme, it is clear that the legislature views utilities and telephone companies differently from other concerns defined as small businesses. The degree of government intervention in the operations of a public utility and telephone company is considerably higher than in other types of businesses.

Even if some small utilities and telephone companies could be viewed as "small businesses" as that term is defined, they, nevertheless, would be excepted from this statute. The Commission finds that Minn. Stat. § 14.115, subd. 7 (1986) establishes exceptions to the general obligations created by the statute and applies to rules promulgated by the Commission. In pertinent part, it states:

> Subd. 7. Applicability. This section does not apply to: (c) service businesses regulated by government bodies, for standards and costs, such as nursing homes, long-term care facilities, hospitals, providers of medical care, daycare centers, group homes and residential care facilities.

The Commission finds that utilities and telephone companies fall within this broad definition. They are certainly service businesses regulated by government bodies for standards and costs. The words following the phrase "such as" merely provide some examples of government regulated businesses and are not exclusive.

While the Commission recognizes that the proposed rules will add to the administrative burden of all regulated utilities and telephone companies, the added burden is not significant when compared to the administrative burden of a general rate case. For the foregoing reasons, the Commission finds that Minn. Stat. § 14.115 (1986) is not applicable to this rulemaking procedure.

VII. CONCLUSION

Based on the foregoing, the proposed Minn. Rules pts. 7827.0100 to 7827.0600 are both needed and reasonable.

Mary Ellen Hennen
Executive Secretary

Dated: MAR 2 0 1987

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