

## I. INTRODUCTION

The Minnesota Transportation Regulation Board is currently operating under rules of practice and procedure previously promulgated by the Minnesota Public Utilities Commission. These rules were transferred to the Board by the Legislature when it created the Board in 1983. The Legislature provided that all rules, orders and directives adopted by the public service commission, the public utilities commission and the department of transportation then in force and effect were to be continued under the Board until repealed, modified or superceded by duly authorized rules of the Board.

The Board proposes to repeal a number of rules of practice and procedure to avoid duplication with rules of practice and procedure followed by the Office of Administrative Hearings under Minnesota Rules chapter 1400. The Board also proposes to amend the remaining rules to conform these rules to the Administrative Procedure Act, the Government Data Practices Act and existing practice.

## II. STATEMENT OF BOARD'S STATUTORY AUTHORITY

The Board's statutory authority to adopt these rules is set forth in Minn. Stat. ch. 174A (1988). Specifically, Minn. Stat. §§ 174A.02, 174A.04 and 174A.06 (1988) provide:

The Legislative Commission to  
Review Administrative Rules

APR 11 1991



174A.02 SPECIFIC FUNCTIONS AND POWERS.

Subd. 1. Powers generally. The functions of the transportation regulation board shall be legislative and quasi-judicial in nature. It may make such investigations and determinations, hold such hearings, prescribe such rules and issue such orders with respect to the control and conduct of its business coming within its jurisdiction as the legislature itself might make but only as it shall from time to time authorize.

Subd. 2. Specific functions and powers. The Board shall further hold hearings and issue orders in cases brought before it by either the commissioners or by a third party in the following areas:

(a) Adequacy of services which carriers are providing to the public, including the continuation, termination or modification of services and facilities.

(b) The reasonableness of tariffs of rates, fares and charges, or a part or classification thereof. The Board may authorize common carriers by rail and motor carrier for hire to file tariffs of rates, fares, and charges individually or by group. Carriers participating in group ratemaking have the free and unrestrained right to take independent action either before or after a determination arrived at through such procedure.

(c) The issuing of franchises, permits, or certificates of convenience and necessity.

Subd. 3. Subpoena power. The board shall have subpoena power.

Subd. 4. Hearings; notice. With respect to those matters within its jurisdiction the board shall receive, hear and determine all petitions filed with it in accordance with the procedures established by law and may hold hearings and make determinations upon its own motion to the same extent, and in every instance, in which it may do so upon petition. Upon receiving petitions filed pursuant to sections 221.061, 221.081, 221.121, subdivision 1, 221.151, 221.296, and 221.55, the board shall give notice of the filing of the petition to representatives of associations or other interested groups or persons who have registered their names with the Board for that purpose and to whomever the board deems to be interested in the petition. The Board may grant or deny the request of the petition 30 days after notice of the filing has been fully given. If the Board receives a written objection and notice of intent to appear at a hearing to object to the petition from any person within 20 days of the notice having been fully given, the request of the petition shall be granted or denied only after a contested case hearing has been conducted on the petition, unless objection is withdrawn prior to the hearing. The Board may elect to hold a contested case hearing if no objections to the petition are received. If a timely objection is not received, or if received and withdrawn, and the request for the hearing denied without hearing, the petitioner may request within 30 days of receiving the notice of denial, and shall be granted, a contested case hearing on the petition.

174A.04 HEARINGS.

All hearings required to be conducted by the transportation regulation board shall be conducted pursuant to sections 14.01 to 14.69.

174A.06 CONTINUATION OF RULES.

Orders and directives heretofore in force, issued or promulgated by the public service commission, public utilities commission, or the department of transportation under authority of chapters 216A, 218, 219, and 221 remain and continue in force and effect until repealed, modified or superseded by duly authorized orders and directives of the transportation regulation Board.

Rules adopted by the public service commission, public utilities commission, or the department of transportation under authority of the following sections are transferred to the transportation regulation board and continue in force and effect until repealed, modified, or superseded by duly authorized rules of the transportation regulation board:

(1) section 218.041 except rules related to the form and manner of filing railroad rates, railroad accounting rules, and safety rules;

(2) section 219.40;

(3) rules relating to rates or tariffs, or the granting, limiting, or modifying of permits or certificates of convenience and necessity;

(4) rules relating to the sale, assignment, pledge, or other transfer of a stock interest in a corporation holding authority to operate as a permit carrier as prescribed in section 221.151, subdivision 1, or a local cartage carrier under section 221.296, subdivision 8;

(5) rules relating to rates, charges, and practices under section 221.161, subdivision 4; and

(6) rules relating to rates, tariffs, or the granting of, limiting, or modifying of permits under sections 221.121, 221.151, and 221.296 or certificates of convenience and necessity under section 221.071.

These proposed rules are intended by the board to regulate practice and procedure before it.

### III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1988) requires the Board 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 Board must set forth the reasons for its proposal and the reasons must not be arbitrary and capricious.

However, 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 Board is

appropriate. The need for amending the existing rules is to clarify that the Board is now operating under procedural rules for hearings adopted by the Office of Administrative Hearings and that the Board's practice and procedure rules only apply to matters before it prior to and following contested case procedures before an administrative law judge.

The Office of Administrative Hearings has adopted procedures for contested case hearings in Minnesota Rules Chapter 1400 (1987). By statute, these rules are binding upon agencies and supersede any other agency rules with which they are in conflict. Minn. Stat. § 14.51 (1988). It is necessary for the Board to repeal those rules which are either duplicative of or in conflict with those procedures.

Additionally, it is necessary to amend existing rules to bring them into conformity with existing practice after Findings of Fact, Conclusions of Law and Recommended Decision is reached by the Office of Administrative Hearings. The rules as modified will clarify procedures for taking exceptions and filing post hearing motions with the Board.

#### IV. STATEMENT OF REASONABLENESS

The Board is required by Minn. Stat. ch. 14 (1988) to make an affirmative finding of facts supporting the reasonableness of the proposed rules. Reasonableness means that the rules are rationally related to the need for promulgating the rule.

However, the proposed rules need not be the most reasonable solution to the situation which created the need for rules. The proposed rules are not unreasonable simply because a more reasonable alternative exists or a better job of drafting might have been done.

The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole.

The proposed rules restate existing rules for practice before the Board prior to and after contested case proceedings and conform the Board's practice and procedural rules to administrative law and practice under Minn. Stat. ch. 14 and Minnesota Rules, chapter 1400. The Board's proposed rules incorporate by reference, rules of the Office of Administrative Hearings. The current rules of the Board were adopted prior to revisions to Minn. Stat. ch. 14 and the creation of the Office of Administrative Hearings. The Office of Administrative Hearings hears all contested matters brought before the Board. Contested matters are fully tried before an administrative law judge who renders Findings of Fact, Conclusions of Law and a Recommendation.

The proposed rules also include a new provision which requires parties taking exception to a Recommended Decision of an administrative law judge on the grounds it is not supported by substantial evidence to prepare a written transcript for the Board supporting the claim. The Board has the duty to ensure that findings of fact are supported by substantial evidence. The Board

will presume, in the absence of exceptions supported by reference to a written transcript, that findings of fact and conclusions of law are supported by substantial evidence.

Minn. Stat. § 14.115 Small Business Considerations in Rulemaking (Subd. 1 thru 4)

Minn. Stat. Section 14.115, subd. 2 (1988) requires the Board, when proposing rules which may affect small businesses, to consider certain methods of reducing the impact on small businesses.

Minn. Stat. Section 14.115, subd. 1 (1989 Supp.) defines small business as:

Definition. For purposes of this section, "small business" means a business entity, including farming and other agricultural operations and 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.

Small businesses regulated by the Board are not exempt from this statute.

Minn. Stat. Section 14.115, subd. 7 (1989 Supp.) states:

Applicability. This section does not apply to:

(1) emergency rules adopted under sections 14.29 to 14.36;

- (2) agency rules that do not affect small businesses directly, including, but not limited to, rules relating to county or municipal administration of state and federal programs;
- (3) service businesses regulated by government bodies, for standards and costs, such as nursing homes, long-term care facilities, hospitals, providers of medical care, day care centers, group homes, and residential care facilities, but not including businesses regulated under chapter 216B or 237; and
- (4) agency rules adopted under section 16.085.

Currently, there are some Department of Transportation Motor Bus and Truck Rules which relate to small businesses, such as Minn. Rule 7805.0500 Motor Carrier Accounting Rules. M. S. §221.031 Subd. 1 also relates to an exemption from filing an annual report for carriers with gross revenues of less than \$50,000 per calendar year.

The adoption of these rule amendments by the Board will not require expenditure of public monies by local public bodies nor have a direct impact on agricultural land. Therefore, Minn. Stat. section 14.11 (1988) is inapplicable to this rulemaking proceeding.

Please be advised that Minn. Stat. ch. 10A (1988) requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. section 10A.01, subd. 11 (1988) as any individual:

- (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or
  
- (b) Who spends more than \$250 not including his own travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute contains certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101-2520, telephone (612) 296-5148.

Subd. 2. Statement of Need and Reasonableness.

The Board has considered (a) through (e) of Subd. 2 and has concluded that it cannot regulate effectively if it established less stringent compliance or reporting requirements, schedules or deadlines, consolidation or simplification of compliance or reporting requirements, establishment of different performance standards, or exemptions for small business.

B. Reasonableness of Individual Rules.

8920.0100 Definitions.

Subpart 1. Scope.

This subpart defines the extent and applicability of the definitions.

Subpart 2 through 16 give meaning to the terms within the context of transportation regulation.

8920.0150 Time.

This part gives the time periods specifically.

8920.0200 Scope and Construction.

This part relates the statutory responsibilities of the Board to those within its jurisdiction.

8920.0300 Initiating a Proceeding; Form.

Initiated by Complaint, Petition, or Motion.

This part sums up all the proceedings that come before the Board. The Board considered deleting informal complaints but decided, after internal discussion, to retain them.

8920.0400 Title; References to Parties.

Subp. 1. Form

This spells out the designation of parties.

Subp. 2. Effect of error.

This subpart retains a feature of correcting harmless or clerical errors by giving an opportunity to amend.

Parties, Interested People, Joinder.

8920.0500 Parties in General.

This part defines those who are parties, as opposed to participants. Only parties have certain rights in proceedings before the Board and the A.L.J. It is necessary both to delineate the necessary rights and limit them.

8920.0600 Intervenors.

Any proceeding before the Board has a potential impact on persons other than the petitioner.

Subparts 1. and 2. define intervenor and showing of interest. A recognizes that a statute might deem a person to be an interested party; B reasonably asserts a standing requirement that an intervenor must have more than just the interest that all taxpayers or members of the public would have.

Subp. 3. Department of Transportation.

The TRB has no investigative staff to handle complaints or violations. It is reasonable to have DOT function in that role.

8920.0700 Protestants, Notice.

Subpart 1. This distinguishes a party to a motor carrier proceeding who is protesting rather than supporting the petition.

Subpart 2. Notice of a protest is required by the Board to determine if a hearing is necessary. The petitioner also has a right to notice.

Subpart 3. Timeliness is required to facilitate the process. Notice of a petition is published, and motor carriers that wish to participate need to indicate their interest.

Subpart 4. For the Board to decide whether a person is properly admitted as a protestant, it must have available a statement of interest and the grounds for the protest.

Subpart 5. A party protecting its rights is obligated to appear.

Subpart 6. Intervenors must petition to participate. The petitioner is entitled to know how many supporters or how much opposition exists.

#### 8920.0800 Participants.

This part allows discretion to the A.L.J. to hear views or evidence that might not otherwise be presented if full party status were required.

#### 8920.0900 Joinder of Several Persons in One Pleading.

To conserve resources, persons may avoid repetition by joining in one pleading. The Board retains the ability to order separate hearings where appropriate.

#### 8920.1000 Pleadings.

Types of Pleadings.

These are the pleadings which have been deemed necessary in the past. The Board considered dropping the informal complaint but decided against it.

8920.1100 Form of Informal Complaint.

Subpart 1. Making Informal Complaint. This preserves the ability of the Board to resolve some matters simply and expeditiously.

Subpart 2. Information required. This preserves elementary Due Process. The person making the allegation is identified. The violation is clearly stated and the relief sought is specified.

Subpart 3. Copies, informing respondents. Each person who is the subject of a complaint is entitled to a copy of it so as to be able to answer it.

8920.1200 Response to Informal Complaint.

This part preserves the informality of the process and lessens the potential burden on respondents.

8920.1300 Filing Informal Complaint.

This part preserves informal dispute resolution.

8920.1400 Form of Formal Complaint.

Formal complaints are treated differently from informal complaints.

8920.1500 Formal Complaint Allegations; Joinder of Causes.

It is important that the respondents know the exact nature of the allegations. To determine whether the relief sought is appropriate, the Board must be advised with specificity of the allegations. Repetition should be avoided.

8920.1550 Investigative Data.

Petitioners and carriers are entitled to written notice when investigative data about them is given by the Commissioner of Transportation to the TRB.

8920.1600 Tariff Reference.

To be effective, the Board must know specifically which tariffs are referenced in any complaint.

8920.1700 Preference or Prejudice Alleged.

Both the Respondents against whom allegations have been made and the Board, which is expected to act, are entitled to specificity.

8920.1800 Signature and Verification.

A formal complaint filed with the Board is similar to a complaint filed in District Court.

8920.1900 Supplemental Complaint.

In the interest of economy, at any time before the date set for a hearing, the Board has discretion to grant leave to file supplemental complaints and to consolidate them into one hearing.

8920.2000 Answer to Formal Complaint.

Subp. 1. Service. This subpart provides for a timely processing of the complaint. Lack of a response will not delay the Board's action in making a decision.

Subp. 2. Form and style. Answers must be responsive to the complaint and contain enough denial so that the Board can determine whether the relief demanded has already been granted, which allegations are admitted, and the grounds upon which a denial is based.

Subp. 3. Signature and verification. The formality that is appropriate for the complaint is also appropriate for the answer.

8920.2100 Reply.

This provides for disposal of a problem - if the allegation in the answer is admitted, the problem is resolved; if there is no reply to the answer that the relief has been granted, there is, in effect, a default judgment for the respondent.

#### 8920.2200 Petition Contents.

This provides clear identification of the petitioner and the petitioner's attorney, the basis of the petition and the relief or authority sought, and who may sign the petition.

#### 8920.2300 Petition to Intervene.

Subp. 1. Filed with board. This subpart explains how and when a person may be made a party to a pending proceeding.

Subp. 2. Grounds and interest alleged. The potential intervenor must have a specific, not a general, interest in the proceeding and be concerned with issues that are reasonably related to those raised in the petition.

Subp. 3. Signature and Subp. 4 Service. These subparts describe the procedure.

#### 8920.2400 Answer to Petition to Intervene.

If petitions to intervene are filed and served in a timely fashion, answers to petitions may be filed with the Board. If not, parties may answer on the record. Failure to file an answer or make oral objection is deemed to be consent, but the A.L.J. makes the decision to grant or deny the petition to intervene.

#### 8920.2500 Scope of Intervenor's Participation.

This part gives the A.L.J. discretion, backed up on the record by good cause, to grant an intervenor the right of participation expanded beyond the matters raised in its petition to intervene. To expedite the hearing, the A.L.J. has the power to combine the efforts of intervenors with substantially similar interests and positions.

#### 8920.2600 Amendments.

Subp. 1. Amendments of Pleadings. This tracks the procedure used in court. An early amendment causes no prejudice. After the time for answering or replying has expired, it may still be necessary to amend a petition, but the parties are entitled to notice. Again, minor amendments may be made before a hearing, but after the hearing has begun, they can be made only upon motion and by order of the A.L.J. for good cause shown.

Subp. 2. Answers. The same rules for answers should apply to answers to amended or supplemental complaints or amended petitions to intervene.

8920.2700 Service.

This part sets up consistent rules of service but allows some flexibility if ordered by the A.L.J. or if in conflict with some specific provision of law.

8920.2800 Continuances and Extension of Time.

This part provides for unusual cases where a continuance or extension of time is needed.

8920.2900 Dockets.

This part provides for the filing of information as a public record. (OAH Reports and Minutes of Board Meetings are available at Legislative Research Library but TRB orders are not.)

8920.3000 Trade Secret and Proprietary Information.

This part provides for the A.L.J. having the power to require the submission of trade secret and proprietary information if necessary for a determination on the merits. At the same time, it provides for Protective Orders so that there is no unnecessary disclosure.

8920.3100 Hearings.

Subp. 1. Referral to Office of Administrative Hearings. This subpart determines when the Board shall refer a proceeding to OAH for contested case hearing. It is reasonable where appropriate, to refer a proceeding to the Office of Administrative Hearings.

A. It is reasonable that where a formal complaint has been filed and by answer, denied, that it be referred to the OAH. Under Minn. Stat. § 174.02, Subd. 4, the board may elect to hold a contested case hearing even if no objections to the petition are received.

B. Hearings are required by Minn. Stat. § 174.02 when the Board receives written objections and notices to appear at hearings on petitions pursuant to Minn. Stat. §§ 221.061, 221.081, 221.121, Subd. 1, 221.151, 221.296, and 221.55. Under Minn. Stat. § 174.04, hearings shall be conducted pursuant to §§ 14.01 to 14.70.

C. The board has the power generally and specifically under Minn. Stat. § 174.02 to hold hearings. It is reasonable that the board have discretion to refer matters that it decides should have a contested case hearing to OAH.

Subp. 2. Board determination. It is reasonable that the board have discretion to determine matters within its expertise where a contested case hearing is not required. All of these are situations where the Board can resolve the issues without a contested case proceeding.

A. It is reasonable, since the board is quasi-judicial and legislative, that it be able to determine issues of law or policy when no material facts are in issue. If the request for a contested case hearing does not demonstrate a reasonable basis by which the hearing would aid the agency in making a final determination, it is reasonable to deny the request.

CO-89-1127 In the Matter of Amendment No. 4 to Air Emission Facility Permit No. 2021-85-OT-1 for the Northern States Power Company Wilmarth Generating Plant in Mankato, Blue Earth County, Minnesota. (April 27, 1990)

B. It is reasonable when parties have been provided an opportunity for a hearing that they also have the right to waive that right. If the board is notified in writing that the parties agree to waive the right to hearing, it is reasonable for the board to have that authority to grant a waiver.

C. It is reasonable that when the parties stipulate to the facts that the board has jurisdiction to determine the issues of law.

D. It is reasonable to conserve time and resources by not holding a hearing on what is essentially a default matter.

Subp. 3. Waiver of right to testify. In Northern Messenger, Inc. v. Airport Couriers, Inc., 359 N.W. 2d 302 (1984) at 302, the Court of Appeals of Minnesota stated that a long standing unwritten practice of the agency or

unpromulgated rule that any person with standing to intervene must do so or thereby waive his or her right to testify was not entitled to deference. This rule codifies the practice.

Subp. 4. Contested case procedures incorporated. These rules govern contested case hearings.

Subp. 5. Record of proceeding. It is reasonable for the board to require a written transcript of testimony before the Office of Administrative Hearings to aid in its making a final determination in a contested case. It is within the agency's prerogative to reject an administrative law judge's recommendations, and agencies have been encouraged to employ their expertise to reach independent decisions and not to simply "rubber stamp" the findings of an ALJ. An ALJ takes no power away from the agency. An agency can reject the recommendations of an ALJ if it explains its reasons for doing so. It is reasonable to require a transcript from long hearings or when exceptions are filed so that the board can make a determination to accept or reject an ALJ's recommendation in a manner that is not arbitrary or capricious. Northern Messenger, Inc. v. Airport Couriers, Inc., supra.

8920.3200. Exceptions to Recommended Decisions and Orders

Subp. 1. Decision contents; service. It is reasonable to require this format be followed. Parties can determine if all issues in the case are disposed of, and can specifically call the board's attention to findings, conclusions and recommendations. Parties can address errors of fact or law.

Both the Board and parties are entitled to finality. A firm cut off date for Exceptions and requests for Oral Argument expedite the process. It should be clear when Exceptions are untimely, and another party need not have to file a Reply nor request Oral Argument because of the belief that the untimely Exceptions will be considered by the Board. There is a need for parties to be treated equally.

Subp. 2. Filing exceptions. Citation to a written transcript is necessary and will facilitate the board's review of the ALJ's recommendation.

Subp. 3. Contents of exceptions. It is reasonable to give parties the opportunity to respond to each others' exceptions.

Subp. 4. Replies. This gives parties the option of filing replies.

Subp. 5. Supporting arguments required. It is reasonable to require written support for the parties' positions. If there is an alleged error of fact or law, the board needs to know the basis of the parties' exception.

8920.3300. Oral Argument.

It is reasonable to allow the opportunity for oral argument before the board if a party is adversely affected. It is also reasonable to require that the request be made in a timely fashion, that is, within twenty days from service of a recommended decision or within ten days from the date of service

of exceptions. It is also reasonable to limit the scope of the argument to the evidence already presented and disallow new evidence. If a party discovers new evidence, which could not, by due diligence, have been discovered earlier, that party's remedy is a petition for further hearing.

8920.3400. Untimely submission of comments or letters.

Letters or comments submitted after Oral Argument present a due process problem. Parties are entitled to know that Oral Argument is the final part of the process before an Order. The Board will not consider anything when all parties do not have an opportunity to rebut or present their positions.

8920.3500. Petition for Further Hearing.

It would be reasonable to allow further hearing if additional testimony is necessary to facilitate the board's ability to decide a case. It is contemplated that it would be an unusual case where this would be necessary.

8920.3600. Final Decisions and Orders of the Board.

Subp. 1. Contents. It is reasonable to require that the Order be in writing and follow this format so that parties are fully informed of the board's decision and its reasons for the decision. For purposes of appellate review, a court must be able to determine that substantial evidence supports the board's decision. The court, on appeal, must be able to determine if a decision of the board is lawful and reasonable and unaffected by errors of

law, and whether its conclusions are arbitrary and capricious. Brink's, Inc. v. Minn. Transp. Regulation Bd., 373 N. W. 2nd 632 (Minn. App. 1985).  
American Freight Systems, Inc., 380 N. W. 2nd 192 (Minn. App. 1986)

Subp. 2. Filed and mailed. It is reasonable that the decisions and orders be filed so that decisions are available to the public. Due process requires that the parties be notified and provided with a copy of the order. Orders should be mailed by first class mail. Parties also have the option of picking up a copy.

Subp. 3. When effective. It is reasonable to have an effective date that is consistent but allows the board the flexibility to use a different date when that is pragmatic. Orders relating to rates must have definite effective dates so that filing dates for tariffs can be complied with.

8920.3700. Petitions for Further Action.

Subd. 1. Deadline. It is reasonable to allow parties twenty days to petition for rehearing or for amendment or vacation of the findings of fact, decision, or order, or for reconsideration or reargument. If parties can determine errors of fact or law or unjustified rationale for a decision at this point, there should be fewer appeals from the TRB's orders. This would benefit the TRB, and parties and promote judicial economy. The TRB has been operating under the Public Utilities Commission procedural rules which allow petitions for rehearing or for an amendment or vacation of the findings of fact, decision, or order, or for reconsideration or reargument to be filed by

parties. Minn. Stat. § 216B.27, Subd. 1 also allows any party to the proceeding and any other person, aggrieved by the decision and directly affected thereby, to apply to the commission for a rehearing. This does not apply to TRB. This proposed rule limits the ability of persons other than parties to a proceeding to petition the board after it issues an order.

Subd. 2. Contents. This subpart precludes groundless requests.

Subd. 3. Service. All parties are entitled to notice that a petition has been filed. A period of ten days is adequate for a reply. This gives the board sufficient time to discuss and deliberate whether a hearing on the petition is required but does not unduly delay a final decision. The board has continued to use the rules of the Public Utilities Commission until it adopts its own rules which will supercede these rules (§ 174A.06). These time lines have worked effectively in the past.

Subd. 4. Board actions. The board has authority to receive, hear and determine petitions on matters within its jurisdiction under § 174.02, Subd. 4. The board should be able to amend its orders at its discretion without hearing but retain the right in an unusual case to set the matter on for hearing.

Subd. 5. Extending time for appeal. Confusion resulted from a separate period for filing an appeal from a final order or decision which was not affected by the filing of a petition under this part. This subpart clarifies that a timely filed petition under this part will extend the time for filing

an appeal. That is, the thirty day period will not begin to run until service of the order finally disposing of the application for reconsideration.

8920.3800 Amendment of Effective Date.

This part provides the procedure to be followed when a party seeks only to change the effective date when an order or decision take effect. It is reasonable to have a standard procedure and one for emergency situations.

8920.3900 Second petition in Same Ground.

This part lends finality or closure to the matter. It conserves the resources of the agency. Parties seeking further relief must look to the Minnesota Court of Appeals.

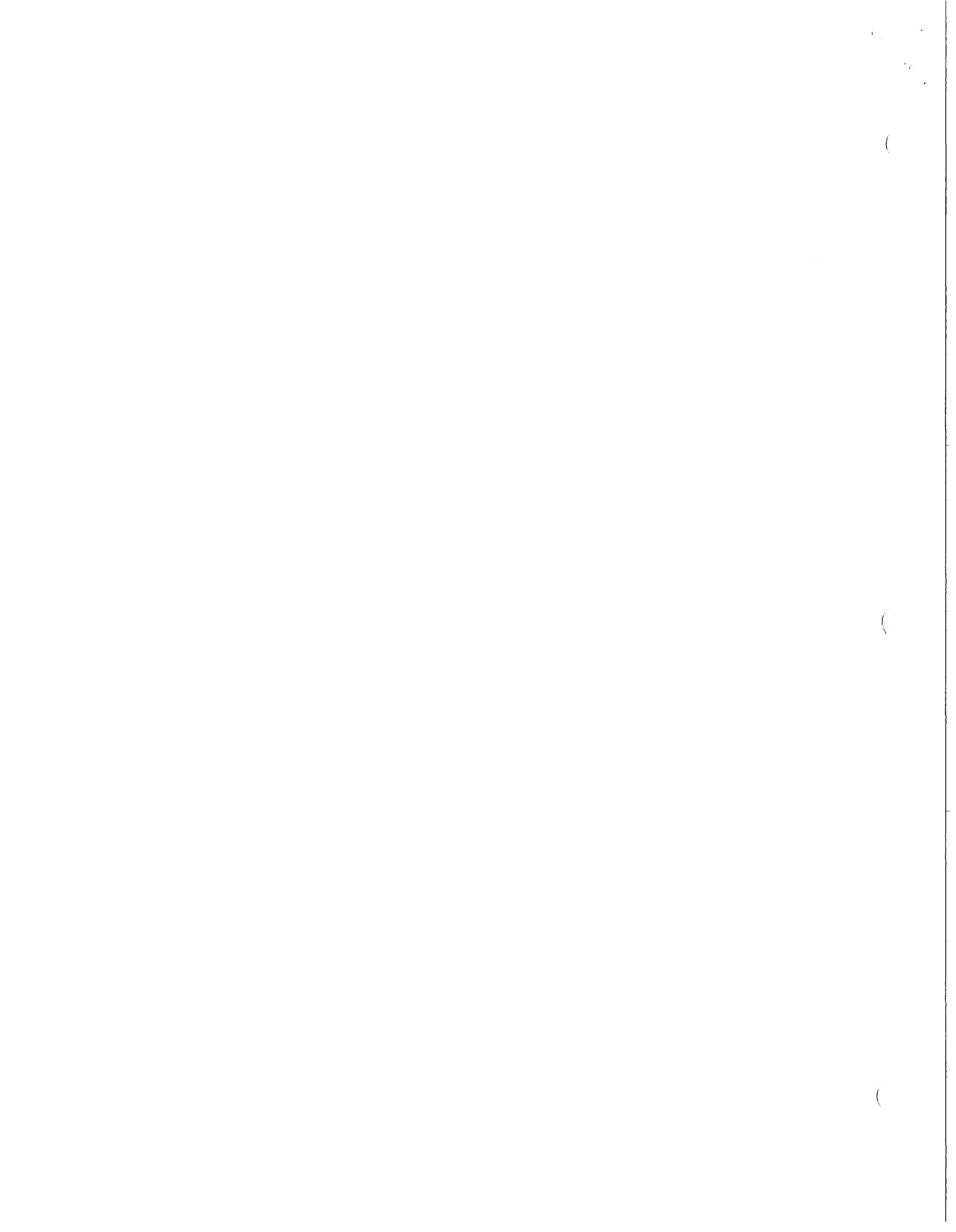
8920.4000 Variance

This provision ensures that the Board retains some flexibility when it determines that equitable interests and concerns are more important than rigidly applying the letter rather than the spirit of the law.

Minn. Stat. § 14.115 Small Business Considerations in Rulemaking (Subd. 1 thru 4)

Subd. 2. Statement of Need and Reasonableness.

The Board has considered (a) through (e) of Subd. 2 and has concluded that it cannot regulate effectively if it established less stringent compliance or reporting requirements, schedules or deadlines, consolidation or simplification of compliance or reporting requirements, establishment of different performance standards, or exemptions for small business.



~~5/21/91~~  
6/24/91



# TRANSPORTATION REGULATION BOARD STATE OF MINNESOTA

254 LIVESTOCK EXCHANGE BUILDING  
100 STOCKYARDS ROAD  
SOUTH ST. PAUL, MINNESOTA 55075

(612) 296-0400

May 7, 1991

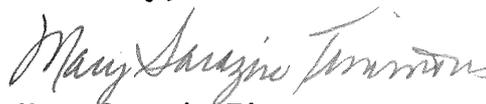
Maryanne Hruby, Director  
LCAR  
55 State Office Bldg.  
100 Constitution  
St. Paul, MN 55155

Dear Ms. Hruby:

Please find enclosed one copy of the Transportation Regulation Board's proposed rules relating to practice and procedure and one copy of the Statement of Need and Reasonableness.

A public hearing will be held on July 25, 1991.

Sincerely,

  
Mary Sarazin Timmons

MST:vm

Enclosures

The Legislative Commission to  
Review Administrative Rules

MAY - 8 1991



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(b) The reasonableness of tariffs of rates, fares and charges, or a part or classification thereof. The Board may authorize common carriers by rail and motor carrier for hire to file tariffs of rates, fares, and charges individually or by group. Carriers participating in group ratemaking have the free and unrestrained right to take independent action either before or after a determination arrived at through such procedure.

(c) The issuing of franchises, permits, or certificates of convenience and necessity.

Subd. 3. Subpoena power. The board shall have subpoena power.

Subd. 4. Hearings; notice. With respect to those matters within its jurisdiction the board shall receive, hear and determine all petitions filed with it in accordance with the procedures established by law and may hold hearings and make determinations upon its own motion to the same extent, and in every instance, in which it may do so upon petition. Upon receiving petitions filed pursuant to sections 221.061, 221.081, 221.121, subdivision 1, 221.151, 221.296, and 221.55, the board shall give notice of the filing of the petition to representatives of associations or other interested groups or persons who have registered their names with the Board for that purpose and to whomever the board deems to be interested in the petition. The Board may grant or deny the request of the petition 30 days after notice of the filing has been fully given. If the Board receives a written objection and notice of intent to appear at a hearing to object to the petition from any person within 20 days of the notice having been fully given, the request of the petition shall be granted or denied only after a contested case hearing has been conducted on the petition, unless objection is withdrawn prior to the hearing. The Board may elect to hold a contested case hearing if no objections to the petition are received. If a timely objection is not received, or if received and withdrawn, and the request for the hearing denied without hearing, the petitioner may request within 30 days of receiving the notice of denial, and shall be granted, a contested case hearing on the petition.

174A.04 HEARINGS.

All hearings required to be conducted by the transportation regulation board shall be conducted pursuant to sections 14.01 to 14.69.

174A.06 CONTINUATION OF RULES.

Orders and directives heretofore in force, issued or promulgated by the public service commission, public utilities commission, or the department of transportation under authority of chapters 216A, 218, 219, and 221 remain and continue in force and effect until repealed, modified or superseded by duly authorized orders and directives of the transportation regulation Board.

Rules adopted by the public service commission, public utilities commission, or the department of transportation under authority of the following sections are transferred to the transportation regulation board and continue in force and effect until repealed, modified, or superseded by duly authorized rules of the transportation regulation board:

(1) section 218.041 except rules related to the form and manner of filing railroad rates, railroad accounting rules, and safety rules;

(2) section 219.40;

(3) rules relating to rates or tariffs, or the granting, limiting, or modifying of permits or certificates of convenience and necessity;

(4) rules relating to the sale, assignment, pledge, or other transfer of a stock interest in a corporation holding authority to operate as a permit carrier as prescribed in section 221.151, subdivision 1, or a local cartage carrier under section 221.296, subdivision 8;

(5) rules relating to rates, charges, and practices under section 221.161, subdivision 4; and

(6) rules relating to rates, tariffs, or the granting of, limiting, or modifying of permits under sections 221.121, 221.151, and 221.296 or certificates of convenience and necessity under section 221.071.

These proposed rules are intended by the board to regulate practice and procedure before it.

### III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1988) requires the Board 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 Board must set forth the reasons for its proposal and the reasons must not be arbitrary and capricious.

However, 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 Board is

appropriate. The need for amending the existing rules is to clarify that the Board is now operating under procedural rules for hearings adopted by the Office of Administrative Hearings and that the Board's practice and procedure rules only apply to matters before it prior to and following contested case procedures before an administrative law judge.

The Office of Administrative Hearings has adopted procedures for contested case hearings in Minnesota Rules Chapter 1400 (1987). By statute, these rules are binding upon agencies and supersede any other agency rules with which they are in conflict. Minn. Stat. § 14.51 (1988). It is necessary for the Board to repeal those rules which are either duplicative of or in conflict with those procedures.

Additionally, it is necessary to amend existing rules to bring them into conformity with existing practice after Findings of Fact, Conclusions of Law and Recommended Decision is reached by the Office of Administrative Hearings. The rules as modified will clarify procedures for taking exceptions and filing post hearing motions with the Board.

#### IV. STATEMENT OF REASONABLENESS

The Board is required by Minn. Stat. ch. 14 (1988) to make an affirmative finding of facts supporting the reasonableness of the proposed rules. Reasonableness means that the rules are rationally related to the need for promulgating the rule.

However, the proposed rules need not be the most reasonable solution to the situation which created the need for rules. The proposed rules are not unreasonable simply because a more reasonable alternative exists or a better job of drafting might have been done.

The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole.

The proposed rules restate existing rules for practice before the Board prior to and after contested case proceedings and conform the Board's practice and procedural rules to administrative law and practice under Minn. Stat. ch. 14 and Minnesota Rules, chapter 1400. The Board's proposed rules incorporate by reference, rules of the Office of Administrative Hearings. The current rules of the Board were adopted prior to revisions to Minn. Stat. ch. 14 and the creation of the Office of Administrative Hearings. The Office of Administrative Hearings hears all contested matters brought before the Board. Contested matters are fully tried before an administrative law judge who renders Findings of Fact, Conclusions of Law and a Recommendation.

The proposed rules also include a new provision which requires parties taking exception to a Recommended Decision of an administrative law judge on the grounds it is not supported by substantial evidence to prepare a written transcript for the Board supporting the claim. The Board has the duty to ensure that findings of fact are supported by substantial evidence. The Board

will presume, in the absence of exceptions supported by reference to a written transcript, that findings of fact and conclusions of law are supported by substantial evidence.

Minn. Stat. § 14.115 Small Business Considerations in Rulemaking (Subd. 1 thru 4)

Minn. Stat. Section 14.115, subd. 2 (1988) requires the Board, when proposing rules which may affect small businesses, to consider certain methods of reducing the impact on small businesses.

Minn. Stat. Section 14.115, subd. 1 (1989 Supp.) defines small business as:

Definition. For purposes of this section, "small business" means a business entity, including farming and other agricultural operations and 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.

Small businesses regulated by the Board are not exempt from this statute.

Minn. Stat. Section 14.115, subd. 7 (1989 Supp.) states:

Applicability. This section does not apply to:

(1) emergency rules adopted under sections 14.29 to 14.36;

- (2) agency rules that do not affect small businesses directly, including, but not limited to, rules relating to county or municipal administration of state and federal programs;
- (3) service businesses regulated by government bodies, for standards and costs, such as nursing homes, long-term care facilities, hospitals, providers of medical care, day care centers, group homes, and residential care facilities, but not including businesses regulated under chapter 216B or 237; and
- (4) agency rules adopted under section 16.085.

Currently, there are some Department of Transportation Motor Bus and Truck Rules which relate to small businesses, such as Minn. Rule 7805.0500 Motor Carrier Accounting Rules. M. S. §221.031 Subd. 1 also relates to an exemption from filing an annual report for carriers with gross revenues of less than \$50,000 per calendar year.

The adoption of these rule amendments by the Board will not require expenditure of public monies by local public bodies nor have a direct impact on agricultural land. Therefore, Minn. Stat. section 14.11 (1988) is inapplicable to this rulemaking proceeding.

Please be advised that Minn. Stat. ch. 10A (1988) requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. section 10A.01, subd. 11 (1988) as any individual:

- (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials;  
or
  
- (b) Who spends more than \$250 not including his own travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute contains certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101-2520, telephone (612) 296-5148.

Subd. 2. Statement of Need and Reasonableness.

The Board has considered (a) through (e) of Subd. 2 and has concluded that it cannot regulate effectively if it established less stringent compliance or reporting requirements, schedules or deadlines, consolidation or simplification of compliance or reporting requirements, establishment of different performance standards, or exemptions for small business.

B. Reasonableness of Individual Rules.

9010.0100 Definitions.

Subpart 1. Scope.

This subpart defines the extent and applicability of the definitions.

Subpart 2 through 17 give meaning to the terms within the context of transportation regulation.

9010.0200 Scope and Construction.

This part relates the statutory responsibilities of the Board to those within its jurisdiction.

9010.0300

This part sums up all the proceedings that come before the Board. The Board considered deleting informal complaints but decided, after internal discussion, to retain them.

9010.0400 Title; References to Parties.

Subp. 1. Form

This spells out the designation of parties.

Subp. 2. Effect of error.

This subpart retains a feature of correcting harmless or clerical errors by giving an opportunity to amend.

Parties, Interested People, Joinder.

9010.0500 Parties in General.

This part defines those who are parties, as opposed to participants. Only parties have certain rights in proceedings before the Board and the A.L.J. It is necessary both to delineate the necessary rights and limit them.

9010.0600 Intervenors.

Any proceeding before the Board has a potential impact on persons other than the petitioner.

Subpart A recognizes that a statute might deem a person to be an interested party; Subpart B reasonably asserts a standing requirement that an intervenor must have more than just the interest that all taxpayers or members of the public would have.

The TRB has no investigative staff to handle complaints or violations. It is reasonable to have DOT function in that role.

9010.0700 Protestants, Notice.

Subpart 1. This distinguishes a party to a motor carrier proceeding who is protesting rather than supporting the petition.

Subpart 2. Notice of a protest is required by the Board to determine if a hearing is necessary. The petitioner also has a right to notice.

Subpart 3. Timeliness is required to facilitate the process. Notice of a petition is published, and motor carriers that wish to participate need to indicate their interest.

Subpart 4. For the Board to decide whether a person is properly admitted as a protestant, it must have available a statement of interest and the grounds for the protest.

Subpart 5. A party protecting its rights is obligated to appear.

Subpart 6. Intervenors must petition to participate. The petitioner is entitled to know how many supporters or how much opposition exists.

9010.0800 Participants.

This part allows discretion to the A.L.J. to hear views or evidence that might not otherwise be presented if full party status were required.

9010.0900 Joinder of Several Persons in One Pleading.

To conserve resources, persons may avoid repetition by joining in one pleading. The Board retains the ability to order separate hearings where appropriate.

9010.1000 Pleadings.

These are the pleadings which have been deemed necessary in the past. The Board considered dropping the informal complaint but decided against it.

9010.1100 Form of Informal Complaint.

Subpart 1. This preserves the ability of the Board to resolve some matters simply and expeditiously.

Subpart 2. This preserves elementary Due Process. The person making the allegation is identified. The violation is clearly stated and the relief sought is specified.

Subpart 3. Each person who is the subject of a complaint is entitled to a copy of it so as to be able to answer it.

9010.1200

This part preserves the informality of the process and lessens the potential burden on respondents.

9010.1300

This part preserves informal dispute resolution.

9010.1400 Form of Formal Complaint.

Formal complaints are treated differently from informal complaints.

9010.1500 Formal Complaint Allegations; Joinder of Causes.

It is important that the respondents know the exact nature of the allegations. To determine whether the relief sought is appropriate, the Board must be advised with specificity of the allegations. Repetition should be avoided.

Petitioners and carriers are entitled to written notice when investigative data about them is given by the Commissioner of Transportation to the TRB.

9010.1600 Tariff Reference.

To be effective, the Board must know specifically which tariffs are referenced in any complaint.

9010.1700 Preference or Prejudice Alleged.

Both the Respondents against whom allegations have been made and the Board, which is expected to act, are entitled to specificity.

9010.1800 Subscription and Verification.

A formal complaint filed with the Board is similar to a complaint filed in District Court.

9010.1900

In the interest of economy, at any time before the date set for a hearing, the Board has discretion to grant leave to file supplemental complaints and to consolidate them into one hearing.

9010.2000 Answer to Formal Complaint.

Subp. 1. This subpart provides for a timely processing of the complaint. Lack of a response will not delay the Board's action in making a decision.

Subp. 2. Answers must be responsive to the complaint and contain enough denial so that the Board can determine whether the relief demanded has already been granted, which allegations are admitted, and the grounds upon which a denial is based.

Subp. 3. The formality that is appropriate for the complaint is also appropriate for the answer.

9010.2100 Reply.

This provides for disposal of a problem - if the allegation in the answer is admitted, the problem is resolved; if there is no reply to the answer that the relief has been granted, there is, in effect, a default judgment for the respondent.

9010.2200 Petition.

This provides clear identification of the petitioner and the petitioner's attorney, the basis of the petition and the relief or authority sought, and who may sign the petition.

9010.2300 Petition to Intervene.

Subp. 1. This subpart explains how and when a person may be made a party to a pending proceeding.

Subp. 2. The potential intervenor must have a specific, not a general, interest in the proceeding and be concerned with issues that are reasonably related to those raised in the petition.

9010.2400 Answer to Petition to Intervene.

If petitions to intervene are filed and served in a timely fashion, answers to petitions may be filed with the Board. If not, parties may answer on the record. Failure to file an answer or make oral objection is deemed to be consent, but the A.L.J. makes the decision to grant or deny the petition to intervene.

9010. 2500 Scope of Intervenor's Participation.

This part gives the A.L.J. discretion, backed up on the record by good cause, to grant an intervenor the right of participation expanded beyond the matters raised in its petition to intervene. To expedite the hearing, the A.L.J. has the power to combine the efforts of intervenors with substantially similar interests and positions.

9010.2600 Amendments.

Subp. 1. This tracks the procedure used in court. An early amendment causes no prejudice. After the time for answering or replying has expired, it may still be necessary to amend a petition, but the parties are

entitled to notice. Again, minor amendments may be made before a hearing, but after the hearing has begun, they can be made only upon motion and by order of the A.L.J. for good cause shown.

Subp. 2. The same rules for answers should apply to answers to amended or supplemental complaints or amended petitions to intervene.

#### 9010.2700 Service.

This part sets up consistent rules of service but allows some flexibility if ordered by the A.L.J. or if in conflict with some specific provision of law.

#### 9010.2800 Continuances and Extension of Time.

This part provides for unusual cases where a continuance or extension of time is needed.

#### 9010.2900 Dockets.

This part provides for the filing of information as a public record. (OAH Reports and Minutes of Board Meetings are available at Legislative Research Library but TRB orders are not.)

#### 9010.3000 Trade Secret and Proprietary Information.

This part provides for the A.L.J. having the power to require the submission of trade secret and proprietary information if necessary for a determination on the merits. At the same time, it provides for Protective Orders so that there is no unnecessary disclosure.

9010.3100 Hearings.

Subp. 1. This subpart determines when the Board shall refer a proceeding to OAH for contested case hearing. It is reasonable where appropriate, to refer a proceeding to the Office of Administrative Hearings.

A. It is reasonable that where a formal complaint has been filed and by answer, denied, that it be referred to the OAH. Under Minn. Stat. § 174.02, Subd. 4, the board may elect to hold a contested case hearing even if no objections to the petition are received. If respondent fails to answer formal complaint, should it go to contested case hearing? (See 9010.2000 Subp.1)

B. Hearings are required by Minn. Stat. § 174.02 when the Board receives written objections and notices to appear at hearings on petitions pursuant to Minn. Stat. §§ 221.061, 221.081, 221.121, Subd. 1, 221.151, 221.296, and 221.55. Under Minn. Stat. § 174.04, hearings shall be conducted pursuant to §§ 14.01 to 14.70.

C. The board has the power generally and specifically under Minn. Stat. § 174.02 to hold hearings. It is reasonable that the board have discretion to refer matters that it decides should have a contested case hearing to OAH.

Subp. 2. It is reasonable that the board have discretion to determine matters within its expertise where a contested case hearing is not required. All of these are situations where the Board can resolve the issues without a contested case proceeding.

A. It is reasonable, since the board is quasi-judicial and legislative, that it be able to determine issues of law or policy when no material facts are in issue. If the request for a contested case hearing does not demonstrate a reasonable basis by which the hearing would aid the agency in making a final determination, it is reasonable to deny the request.

CO-89-1127 In the Matter of Amendment No. 4 to Air Emission Facility Permit No. 2021-85-0T-1 for the Northern States Power Company Wilmarth Generating Plant in Mankato, Blue Earth County, Minnesota. (April 27, 1990)

B. It is reasonable when parties have been provided an opportunity for a hearing that they also have the right, with advice of counsel (practitioners, too? - "representatives" too broad?) to waive that right. If the board is notified in writing that the parties agree to waive the right to hearing, it is reasonable for the board to have that authority to grant a waiver.

C. It is reasonable that when the parties stipulate to the facts that the board has jurisdiction to determine the issues of law.

D. It is reasonable to conserve time and resources by not holding a hearing on what is essentially a default matter. (seems to include situation where respondent fails to answer formal complaint - Subp. 1A)

E. These rules govern contested case hearings.

F. In Northern Messenger, Inc. v. Airport Couriers, Inc., 359 N.W. 2d 302 (1984) at 302, the Court of Appeals of Minnesota stated that a long standing unwritten practice of the agency or unpromulgated rule that any person with standing to intervene must do so or thereby waive his or her right to testify was not entitled to deference. This rule codifies the practice.

Subp. 3. It is reasonable for the board to require a written transcript of testimony before the Office of Administrative Hearings to aid in its making a final determination in a contested case. It is within the agency's prerogative to reject an administrative law judge's recommendations, and agencies have been encouraged to employ their expertise to reach independent decisions and not to simply "rubber stamp" the findings of an ALJ. An ALJ takes no power away from the agency. An agency can reject the recommendations of an ALJ if it explains its reasons for doing so. It is reasonable to require a transcript from long hearings or when exceptions are filed so that the board can make a determination to accept or reject an ALJ's recommendation in a manner that is not arbitrary or capricious. Northern Messenger, Inc. v. Airport Couriers, Inc., supra.

9010.3200. Exceptions to Recommended Decisions and Orders

Subp. 1. It is reasonable to require this format be followed. Parties can determine if all issues in the case are disposed of, and can specifically call the board's attention to findings, conclusions and recommendations. Parties can address errors of fact or law.

Both the Board and parties are entitled to finality. A firm cut off date for Exceptions and requests for Oral Argument expedite the process. It should be clear when Exceptions are untimely, and another party need not have to file a Reply nor request Oral Argument because of the belief that the untimely Exceptions will be considered by the Board. There is a need for parties to be treated equally.

Subp. 2. Citation to a written transcript is necessary and will facilitate the board's review of the ALJ's recommendation.

Subp. 3. It is reasonable to give parties the opportunity to respond to each others' exceptions.

Subp. 4. It is reasonable to require written support for the parties' positions. If there is an alleged error of fact or law, the board needs to know the basis of the parties' exception.

9010.3300.

It is reasonable to allow the opportunity for oral argument before the board if a party is adversely affected. It is also reasonable to require that the request be made in a timely fashion, that is, within twenty days from service of a recommended decision or within ten days from the date of service of exceptions. It is also reasonable to limit the scope of the argument to the evidence already presented and disallow new evidence. If a party discovers new evidence, which could not, by due diligence, have been discovered earlier, that party's remedy is a petition for further hearing.

9010.3400.

Letters or comments submitted after Oral Argument present a due process problem. Parties are entitled to know that Oral Argument is the final part of the process before an Order. The Board will not consider anything when all parties do not have an opportunity to rebut or present their positions.

9010.3500. Petition for Further Hearing.

It would be reasonable to allow further hearing if additional testimony is necessary to facilitate the board's ability to decide a case. It is contemplated that it would be an unusual case where this would be necessary.

9010.3600. Final Decisions and Orders of the Board.

Subp. 1. It is reasonable to require that the Order be in writing and follow this format so that parties are fully informed of the board's decision and its reasons for the decision. For purposes of appellate review, a court must be able to determine that substantial evidence supports the board's decision. The court, on appeal, must be able to determine if a decision of the board is lawful and reasonable and unaffected by errors of law, and whether its conclusions are arbitrary and capricious. Brink's, Inc. v. Minn. Transp. Regulation Bd., 373 2nd N. W. 632 (Minn. App. 1985). American Freight Systems, Inc., 380 2nd N. W. 192 (Minn. App. 1986)

Subp. 2. It is reasonable that the decisions and orders be filed so that decisions are available to the public. Due process requires that the parties be notified and provided with a copy of the order. Orders should be mailed by first class mail. Parties also have the option of picking up a copy.

Subp. 3. It is reasonable to have an effective date that is consistent but allows the board the flexibility to use a different date when that is pragmatic. Orders relating to rates must have definite effective dates so that filing dates for tariffs can be complied with.

9010.3700. Petition for Rehearing, Amendment, Vacation, Reconsideration, Reargument.

Subd. 1. It is reasonable to allow parties twenty days to petition for rehearing or for amendment or vacation of the findings of fact, decision,

or order, or for reconsideration or reargument. If parties can determine errors of fact or law or unjustified rationale for a decision at this point, there should be fewer appeals from the TRB's orders. This would benefit the TRB, and parties and promote judicial economy. The TRB has been operating under the Public Utilities Commission procedural rules which allow petitions for rehearing or for an amendment or vacation of the findings of fact, decision, or order, or for reconsideration or reargument to be filed by parties. Minn. Stat. § 216B.27, Subd. 1 also allows any party to the proceeding and any other person, aggrieved by the decision and directly affected thereby, to apply to the commission and thus, the board, for a rehearing. This proposed rule limits the ability of persons other than parties to a proceeding to petition the board after it issues an order.

Subd. 2. This subpart precludes groundless requests.

Subd. 3. All parties are entitled to notice that a petition has been filed. A period of ten days is adequate for a reply. This gives the board sufficient time to discuss and deliberate whether a hearing on the petition is required but does not unduly delay a final decision. The board has continued to use the rules of the Public Utilities Commission until it adopts its own rules which will supercede these rules (§ 174A.06). These time lines have worked effectively in the past.

Subd. 4. The board has authority to receive, hear and determine petitions on matters within its jurisdiction under § 174.02, Subd. 4. The board should be able to amend its orders at its discretion without hearing but retain the right in an unusual case to set the matter on for hearing.

Subd. 5. Confusion resulted from a separate period for filing an appeal from a final order or decision which was not affected by the filing of a petition under this part. This subpart clarifies that a timely filed petition under this part will extend the time for filing an appeal. That is, the thirty day period will not begin to run until service of the order finally disposing of the application for reconsideration.

9010.3800

This part provides the procedure to be followed when a party seeks only to change the effective date when an order or decision take effect. It is reasonable to have a standard procedure and one for emergency situations.

9010.3900

This part lends finality or closure to the matter. It conserves the resources of the agency. Parties seeking further relief must look to the Minnesota Court of Appeals.

9010.4000

This provision ensures that the Board retains some flexibility when it determines that equitable interests and concerns are more important than rigidly applying the letter rather than the spirit of the law.

Minn. Stat. § 14.115 Small Business Considerations in Rulemaking (Subd. 1 thru 4)

**Subd. 2. Statement of Need and Reasonableness.**

The Board has considered (a) through (e) of Subd. 2 and has concluded that it cannot regulate effectively if it established less stringent compliance or reporting requirements, schedules or deadlines, consolidation or simplification of compliance or reporting requirements, establishment of different performance standards, or exemptions for small business.