



STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION

October 18, 2010

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Rules of the State Public Utilities Commission Regarding Pipeline Notice Requirements, Minnesota Rules, Chapter 7829; Governor's Tracking #AR 257

Dear Librarian:

The Minnesota Public Utilities Commission intends to adopt rules regarding Pipeline Notice Requirements. We plan to publish a Dual Notice Of Intent to Adopt Rules in the October 18, 2010 *State Register*.

The Commission has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Commission is sending the Library a copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-201-2239.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kate Kahlert".

Kate Kahlert
Commission Attorney

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David C. Boyd
J. Dennis O'Brien
Thomas Pugh
Phyllis A. Reha
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Possible Rulemaking to
Set New Notice Requirements for Certificate
of Need Applications for Pipelines,
Minnesota Rules Chapter 7829

ISSUE DATE: October 18, 2010

DOCKET NO. U-999/R-06-212

STATEMENT OF NEED AND
REASONABLENESS

**I.
INTRODUCTION**

The Commission currently has rules that set forth notice requirements for certificate of need applications for high-voltage transmission lines¹. The two main requirements for transmission lines are (1) certificate of need applicants must file a plan for notifying potentially affected persons before filing their certificate of need applications; and (2) these notice plans must include, among other things, direct mail notice to landowners, residents, and local and tribal governments likely to be affected by the proposed facilities.

The Commission has decided to apply these same notice requirements to certificate of need applications for pipelines and has determined that a rulemaking is the best method for extending these requirements to pipelines. The rules will require companies seeking certification of pipelines to file proposed plans for notifying persons reasonably likely to be affected by those lines.

The agency therefore published a Request for Comments, along with a rules draft, in the *State Register* followed by a mass mailing to the rulemaking list that requested comments on extending these requirements to pipeline proceedings.

In September 2009, the Commission established an advisory committee and subsequently issued, and posted on its website, a Notice inviting other interested persons to participate in the advisory

¹ See Minnesota Rules, part 7829.2550.

committee. Everyone who requested to participate was invited to do so. The following persons participated in the advisory committee meeting held on January 5, 2010:

- Darrel Bunge for Enbridge Energy Company, Inc.
- Jerry McCarthy of Austin Utilities
- Todd Jorgenson of Austin Utilities
- Thomas Byers of Magellan Midstream Partners, L.P.
- Susan Medhaug of the Office of Energy Security
- Eric Swanson of Winthrop and Weinstein, P.A. for Koch Pipeline Company
- Joni Zich of Xcel Energy

The committee provided helpful input and feedback on the rules, and the Commission made recommended changes on which the committee had largely reached consensus.

II. THIS MATERIAL IS AVAILABLE IN ALTERNATIVE FORMAT

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III. STATUTORY AUTHORITY

The Commission's statutory authority to adopt these rules is set forth at Minn. Stat. §§ 216A.05 and 216B.08.

IV. STATEMENT OF NEED

The Administrative Procedure Act, Minn. Stat. Ch. 14, requires the Commission to establish the need for the proposed rules by an affirmative presentation of facts. Minn. Stat. §§ 14.14 subd. 2 and 14.23.

In this case, the proposed rules are necessary to ensure adequate notice to persons reasonably likely to be affected by proposed pipelines. The rules are also necessary to enhance public participation in proposed projects and to enable the Commission to receive input from persons reasonably likely to be affected by proposed pipelines.

V.
STATEMENT OF REASONABLENESS

The Minnesota Administrative Procedure Act also requires the Commission to establish that the proposed rules are a reasonable solution to the problems they are intended to address, that the Commission relied on evidence in choosing the approach adopted in the rules, and that the evidence relied upon is rationally related to the approach the Commission chose to adopt. Minn. Stat. §§ 14.14, subd. 2 and 14.23. Minn. Rules, part 1400.2070, subp. 1.

A. The Process Used to Develop the Rules Facilitated Informed Decision-making and was the Most Efficient Method for Establishing Reasonable Rules

The proposed rules are a reasonable means of incorporating notice requirements for pipelines into the rules. The Commission notified all persons that could be identified as potentially interested in or affected by the rules. After issuing a Request for Comments that resulted in recommendations made by stakeholders, the Commission established an advisory committee. The committee recommended, and the Commission incorporated, several changes that were reasonable, that were responsive to the needs of diverse stakeholders, and that carried out the policy objectives the Commission set forth at the outset of this rulemaking.

B. The Rules' Approach to Implementing Policy Goals is Reasonable

The Commission has determined that the proposed rules are needed and are the most reasonable way to implement notice requirements for pipelines. Requiring pipeline companies to file notice plans that set forth the process of notification to those reasonably likely to be affected by the proposed pipeline furthers the public policy objective of ensuring that persons likely to be affected by a proposed pipeline are provided important information early on in the certification process about how the lines could affect them. Early notice will enhance the opportunity for valuable public participation. The reasonableness of each rule provision is taken up below.

VI.
ANALYSIS OF INDIVIDUAL RULES

7829.2560 NOTICE PLANS WHEN SEEKING CERTIFICATION OF PIPELINES

Subpart 1. Filings required, service requirements. At least three months before filing a certificate of need application for any pipeline under Minnesota Rules, chapters 7851, 7853, or 7855, the applicant shall file a proposed plan for providing notice to all persons reasonably likely to be affected by the proposed pipeline. Applicants shall serve their proposed plans on the following persons:

A. the Office of Energy Security of the Department of Commerce;

B. the Residential and Small Business Utilities Division of the Office of the Attorney General; and

C. the Army Corps of Engineers

This subpart requires companies seeking certification of pipelines to file proposed plans for notifying persons reasonably likely to be affected by those lines at least three months before filing a certificate of need application. The initial filing must be served on the Office of Energy Security of the Department of Commerce, the Residential and Small Business Utilities Division of the Office of the Attorney General, and on the Army Corps of Engineers.

This subpart is necessary and reasonable because it is likely to produce highly effective notice plans. First, it permits the company to tailor its notice plan to the facts of the case, avoiding the over-inclusiveness or under-inclusiveness likely to result from one-size-fits-all notice requirements. When the line's location is known, for example, the company can restrict notice to those within and along the route. When the line's location is not known, it can design a notice plan to reach those people most likely to be affected, given the topography, population density, and other characteristics of the area.

It is also necessary and reasonable to require service on Minnesota's two other utility regulatory agencies, as well as the Army Corps of Engineers. These are the people with the most experience and expertise in the certification process and are the most promising source of helpful comments on proposed notice plans. And since the Army Corps of Engineers requested initial notice of pipeline projects, it is reasonable to require service on the Corps.

Finally, it is necessary and reasonable to require early filing of proposed notice plans to ensure that the proper persons are notified well in advance of a request for certification of a pipeline.

Subp. 2. Procedural schedule, notice of procedural schedule. Initial comments on proposed notice plans must be filed within 20 days of the date of filing. Reply comments must be filed within 20 days of the expiration of the initial comment period. Applicants shall include with the proposed notice plan a clear and conspicuous notice of these comment periods.

This subpart requires initial comments on proposed notice plans within 20 days of service and reply comments within 20 days of the expiration of the initial comment period. It also requires companies to include with their proposed notice plans clear and conspicuous notice of these comment periods.

The 20-day time lines are necessary and reasonable to ensure that these plans are analyzed and acted upon in time for the utility to give timely notice to potentially affected persons.

The requirement to give clear and conspicuous notice of these time lines is necessary and reasonable because pipeline proceedings often involve persons and parties who do not regularly appear before the Commission and would not be aware of the 20-day time lines. The notice not only facilitates their participation but spares all persons and parties in the case of the delays that result from late entry of interested persons.

Subp. 3. **Types of notice.** Proposed notice plans must include notice to the following persons by the method specified:

This subpart requires different types of notice to different groups of potentially affected persons, as set forth below:

A. direct mail notice, based on county tax assessment rolls, to landowners reasonably likely to be affected by the proposed pipeline;

This requirement is necessary and reasonable to effectuate the participation of interested members of the public in the pipeline proceedings, to apprise landowners that their property might be taken or affected by the construction of a pipeline, and to ensure that the Commission has input from persons directly affected by proposed pipelines.

B. direct mail notice to all mailing addresses within the area reasonably likely to be affected by the proposed pipeline;

This requirement is reasonable and necessary to effectuate the participation of interested members of the public in pipeline proceedings, to apprise residents that their place of residence may be taken or affected by the construction of a pipeline, and to ensure that the Commission has input from persons directly affected by proposed pipelines.

C. direct mail notice to tribal governments and to the governments of towns, statutory cities, home rule charter cities, and counties whose jurisdictions are reasonably likely to be affected by the proposed pipeline; and

This requirement is necessary and reasonable to effectuate the participation of local government officials in pipeline proceedings. It is also necessary and reasonable to ensure that the Commission has the benefit of the knowledge and expertise of these local officials in evaluating lines proposed in their jurisdictions.

D. newspaper notice to members of the public in areas reasonably likely to be affected by the proposed pipeline.

This requirement is necessary and reasonable to effectuate the participation of interested members of the public in pipeline proceedings. It is also necessary and reasonable to ensure that the Commission has the benefit of the knowledge and expertise of the local residents in evaluating proposed pipelines.

Subp. 4. **Notice content.** Proposed notice plans must provide notice recipients with the following information:

This subpart establishes content requirements for notices to persons reasonably likely to be affected by proposed pipelines. The individual requirements are necessary and reasonable for the reasons set forth below:

A. a map showing the end points of the pipeline and existing related pipelines and related facilities in the area;

This requirement is necessary and reasonable to give persons receiving notice a clear picture of the area likely to be affected by the proposed pipeline. Without this information, notice recipients cannot evaluate the likely economic, social, aesthetic, and environmental impact of the line.

B. a description of general right-of-way requirements for a pipeline of the size and type proposed and a statement that the applicant intends to acquire property rights for the right-of-way that the proposed pipeline will require;

This requirement is necessary and reasonable because without this information, notice recipients cannot evaluate the likely economic, social, aesthetic, and environmental impact of the line. Clearly, building new lines along new routes will have different economic, social, aesthetic, and environmental effects than building along existing routes.

C. a notice that the pipeline cannot be constructed unless the commission certifies that it is needed;

This requirement is necessary and reasonable to apprise notice recipients that there is a legal standard the company must meet to build the line and that the Commission is the agency charged with determining whether that standard is met.

D. the commission's mailing address, telephone number, and website;

This requirement is necessary and reasonable to ensure that notice recipients can contact the Commission with questions and comments and to give them ready access to information about the Commission.

E. a brief explanation of how to get on the mailing list for the commission's proceeding;
and

This requirement is necessary and reasonable to protect notice recipients' rights to participate in the Commission's proceeding and to ensure that the Commission has the benefit of their participation.

F. a statement that requests for certification of pipelines are governed by Minnesota law, including specifically chapters 7849, 7851, 7853, and 7855 and Minnesota Statutes, section 216B.243.

This requirement is necessary and reasonable to give notice recipients a basic understanding of the standards the Commission will apply in evaluating the application to build the proposed line.

Subp. 5. **Supplementary notice.** The commission shall require supplementary notice to persons reasonably likely to be affected by route alternatives developed in the course of certification proceedings if it appears that those route alternatives are as likely to be certified as the proposed pipeline.

This subpart provides that the Commission shall require supplementary notice to persons reasonably likely to be affected by route alternatives developed in the course of the certification proceedings if it appears that those route alternatives are as likely to be certified as the proposed pipeline.

In certification proceedings, parties often claim that alternatives to the proposed pipeline or alternative locations for the proposed pipeline would be more appropriate. Sometimes these alternatives are developed in detail and receive as serious consideration as the initial proposal. This subpart is necessary and reasonable to ensure that persons reasonably likely to be affected by such alternatives learn of them in time to give the Commission their input, which benefits notice recipients, the Commission, and the planning process.

Subp. 6. **Notice time frames.** The applicant shall implement the proposed notice plan within 30 days of its approval by the commission.

This subpart requires applicants to implement proposed notice plans within 30 days of Commission approval. The subpart is necessary and reasonable to ensure that potentially affected persons receive notice in time to reflect on the proposed line's probable effects and to make their views known to other parties and to the Commission.

Subp. 7. **Good faith sufficient.** The commission shall not deny a request for certification of a pipeline on grounds of defective notice if the applicant acted in good faith, in substantial compliance with the notice requirements of this part, and in substantial compliance with any commission orders issued under this part.

This subpart provides that the Commission shall not deny a request for certification of a pipeline on grounds of defective notice if the company acted in good faith, in substantial compliance with the notice requirements of this subpart, and in substantial compliance with any Commission orders issued under this subpart.

This subpart is necessary and reasonable to protect companies that have acted in good faith and in substantial compliance with notice requirements from the claim that certification should be denied for non-substantial notice defects.

Subp. 8. **Compliance Filing.** The applicant shall submit a compliance filing within 60 days from the date of implementation of the approved notice plan. The filing must include a copy of the notice and a service list that includes the names and addresses of those persons to whom the notice was sent.

This subpart is necessary and reasonable to protect both pipeline companies and notice recipients from claims of defective notice. A compliance filing demonstrating that the pipeline company

has complied with the notice requirements will clarify the record and help to establish that notice was provided in accordance with the approved notice plan.

VII. REGULATORY ANALYSIS

The Administrative Procedure Act requires the statement of need and reasonableness to address the regulatory issues set forth and addressed below.

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

The following persons will probably be affected by the proposed rules:

- All Minnesota energy utilities and pipeline companies that own or operate pipelines, which must make filings under the rule.
- Local and tribal government officials and interested members of the public who will be affected by proposed pipelines.
- Residents and landowners who may be affected by proposed pipelines, who may receive pre-filing notice of requests to certify these lines.
- Members of the public who may be affected by proposed pipelines, who will receive pre-filing notice of requests to certify these lines.
- Government agencies with regulatory responsibilities for pipelines.

The following persons will probably bear the costs of the proposed rules:

- All Minnesota energy utilities and pipeline companies that own or operate pipelines, which must implement the rule's requirements and make filings under the rule.
- Customers of energy utilities and pipeline companies that own or operate pipelines, whose rates will eventually include the costs of compliance and regulatory enforcement.
- Local and tribal governments who will expend time and resources to participate, or to consider participating, in the certificate of need proceedings of which they receive notice.
- Landowners, residents, business owners, and members of the public who receive notice of proposed pipelines, who will expend time and resources to participate, or to consider participating, in the certificate of need proceedings for these lines.
- Government agencies with regulatory responsibilities in regard to pipelines, which will expend resources to examine proposed plans for notifying persons reasonably likely to be affected by proposed pipelines.

The following persons will probably benefit from the proposed rule:

- Minnesota energy utilities and pipeline companies that own or operate pipelines, whose certification processes will benefit from the early involvement of local and tribal government officials and interested members of the public.
- Local and tribal government officials and interested members of the public, who will have new opportunities for early involvement in certification proceedings.
- Residents and landowners who may be affected by proposed pipelines, who will receive earlier notice of utility plans to construct pipelines through or near their property or place of residence and who will have new opportunities for early involvement in certification proceedings.
- Members of the public who may be affected by proposed pipelines, who will receive earlier notice of utility plans to construct pipelines in their vicinities and who will have new opportunities for early involvements in certification proceedings.
- Government agencies with regulatory responsibilities whose mission will be advanced by the early involvement of local and tribal government officials, interested members of the public, and potentially affected residents and landowners in certification proceedings.

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

The proposed rules will make claims on the resources of the Commission and the Office of Energy Security of the Department of Commerce, the agencies with regulatory responsibilities for pipelines – and possibly on the Residential and Small Business Utilities Division of the Office of the Attorney General, which represents the interests of residential and small business ratepayers. It is likely, however, that those resource claims will be lower than those that would result if the Commission did not adopt rules providing guidance on notice plans.

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

C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule. Minn. Stat. § 141.131 (3).

The notice requirements provide persons likely to be affected by proposed pipelines important information, at an early point in the certificate of need process, about how those lines could affect them. Requiring early notice also creates the opportunity for early input. The Commission, as well as the process of developing and establishing pipelines, will benefit from early participation in the certification process because it will enable the Commission to consider useful input before a determination as to approval is made. Only a rulemaking can produce clear, adequate, and legally binding notice requirements for certificate of need applications for pipelines, and therefore the Commission has determined there is no other less costly or less intrusive method for establishing these notice requirements.

D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule. Minn. Stat. § 141.131 (4)

The Commission concluded that the certificate of need process would meaningfully benefit from these rules because early notice of proposed pipelines will enhance the opportunity for valuable public participation and will foster a more thorough and robust evaluation of pipeline proposals. Furthermore, the Commission included recommended changes based on input from commenting parties and the advisory committee.

E. The probable costs of complying with the proposed rules. Minn. Stat. § 14.131. (6)

Most of the costs of complying with the rules are administrative and are sustained by the pipeline companies and by agencies with regulatory responsibilities for pipelines.

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

In the absence of these rules, landowners and residents, as well as local and tribal officials and members of the public residing in areas affected by the pipelines, would be less likely to know about the proposed pipelines, would be less likely to participate early on in the certification process, and would be less likely to identify concerns and offer helpful input and feedback on how to address those concerns. In addition, the Commission and other regulatory agencies would likely sustain substantial costs for responding to challenges to existing notice practices that do not provide for notice to persons reasonably likely to be affected by proposed pipelines.

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

The Commission is not aware of any differences between the proposed rules and any federal regulations.

VIII.

CONSIDERATION OF PERFORMANCE BASED REGULATORY SYSTEMS

Minn. Stat. § 14.002 requires agencies to develop rules and regulatory programs that emphasize superior achievement in meeting regulatory goals while retaining maximum flexibility for agencies and regulated parties in meeting those goals. Minn. Stat. § 14.131 requires agencies to explain in their statements of need and reasonableness how they have taken this legislative policy into account.

The Commission was guided by performance-based regulatory principles as it developed these rules. Since the rules are largely procedural, however, they are necessarily more prescriptive than rules with more heavily substantive content. Yet the proposed rules extend duties and burdens no further than is necessary to fulfill the policy objective of ensuring notice to potentially affected persons and furthering the opportunity for early participation in the certificate of need process.

IX. COST OF RULE COMPLIANCE

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

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

X. EFFECTS ON LOCAL GOVERNMENTS

The Commission has determined, under Minn. Stat. § 14.128, that no local unit of government will be required to adopt or amend an ordinance or other regulation to comply with the notice plan rules for pipelines.

The Commission makes this determination based on its Statement of Need and Reasonableness (SONAR), the review conducted by the Commissioner of Management and Budget, the comments received, and the input and feedback provided by the advisory committee.

On page 8 of the SONAR, the Commission identified persons who would likely be affected by and bear the costs of the rules. These include pipeline companies and agencies with regulatory responsibilities for pipelines. Others will benefit from the notice requirements, including those likely to be affected by the lines, such as residents and landowners, as well as tribal governments and local officials in the area of proposed pipelines. The rules do not impose specific requirements, administrative burdens, or costs on local units of government. And therefore the Commission has determined that local governments will not be required to adopt or amend ordinances or other regulations to comply with the proposed rules.

Furthermore, the Commission consulted with the Commissioner of Management and Budget, as required by Minn. Stat. § 14.131. The Commissioner of Management and Budget determined that the proposed changes will not affect or impose costs on local units of government.

Additionally, neither the comments received from stakeholders nor the feedback from the advisory committee indicated that local governments would be affected by, or required to adopt or amend local regulations to comply with, the proposed rules.

**XI.
LIST OF WITNESSES**

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

**XII.
ADDITIONAL NOTICE PLAN**

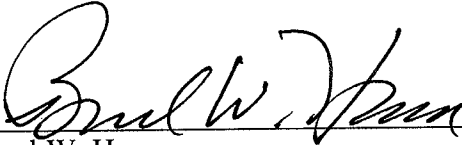
To ensure the public has sufficient notice to participate in a proposed rulemaking, the Administrative Procedure Act requires agencies to take certain prescribed steps to publicize their rulemakings. In addition, Minnesota Statutes § 14.14, subdivision 1a requires agencies to make unspecified additional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

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

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

**XIII.
CONCLUSION**

For all the reasons set forth above, the Commission respectfully submits that the proposed rules are both needed and reasonable.



Burl W. Haar
Executive Secretary