



STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION

June 12, 2015

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

Re: Possible Amendments to Rules Governing Utility Proceeding, Practice, and Procedure, Minnesota Rules Chapter 7829, Excluding Part 7829.2550, Which is Subject to a Separate Pending Rulemaking; Revisor's ID Number R-4159

Dear Librarian:

The Minnesota Public Utilities Commission intends to adopt amendments to eliminate outdated rule language, address statutory changes, articulate and clarify existing Commission procedures, and establish procedural requirements that permit the Commission to more effectively perform its quasi-legislative and quasi-judicial functions. We plan to publish a Dual Notice of Intent to Adopt Rules in the June 15, 2015, *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 an electronic 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 651-201-2223.

Yours very truly,

A handwritten signature in black ink, appearing to read "Christopher Moseng", with a long, sweeping underline.

Christopher Moseng
Staff Attorney

Enclosure: Statement of Need and Reasonableness

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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Commissioner
Commissioner
Commissioner

In the Matter of Possible Amendments to Rules
Governing Proceeding, Practice, and Procedure,
Minnesota Rules, Ch. 7829, excluding
7829.2550

ISSUE DATE: June 3, 2015

DOCKET NO. U-999/R-13-24

STATEMENT OF NEED AND
REASONABLENESS

**I.
INTRODUCTION**

The Minnesota Public Utilities Commission proposes to amend its rules governing Utility Proceeding, Practice, and Procedure. The proposed rule amendments update the rules to eliminate outdated rule language, address statutory changes, articulate and clarify existing Commission procedures, and establish procedural requirements that permit the Commission to more effectively perform its quasi-legislative and quasi-judicial functions.

**II.
THIS MATERIAL IS AVAILABLE IN ALTERNATIVE FORMATS**

This document can be made available in alternative formats (e.g., large print or audio) by calling 651-296-0406 (voice). Persons with hearing loss or speech disabilities may call the Public Utilities Commission through their preferred Telecommunications Relay Service.

**III.
STATUTORY AUTHORITY**

Minnesota Statutes, sections 14.06(a), 216A.05, subdivisions 1 and 5, and 237.10, authorize the Commission to adopt procedural rules pertaining to control and conduct of business coming within the Commission's jurisdiction.

**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.

The proposed rules are necessary to update the Commission's existing rules to accommodate electronic filing, eliminate outdated rule language, address statutory changes, clarify existing Commission procedures, and establish procedural requirements that permit the Commission to more effectively perform its quasi-legislative and quasi-judicial functions. Generally, these changes include amending the rules to reflect electronic filing practice and to incorporate process improvements that will allow the Commission to operate more efficiently while keeping processes consistent with the public interest and the requirements of due process.

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 on is rationally related to the approach the Commission chose to adopt. Minn. Stat. §§ 14.14., subd. 2, and 14.23. Minn. R. 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 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 reviewed the recommendations, revised the draft, and sought additional comments. The Commission incorporated several changes that were reasonable, were responsive to the needs of diverse stakeholders, and that carried out the policy objectives that the Commission set forth at the outset of the rulemaking.

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

The Commission has determined that the proposed rules are the most reasonable way to update the rules to accommodate electronic filing, eliminate outdated rule language, address statutory changes, clarify existing Commission procedures, and establish procedural requirements that permit the Commission to more effectively perform its quasi-legislative and quasi-judicial functions. The reasonableness of each specific provision is addressed below.

VI. ANALYSIS OF INDIVIDUAL RULES

7829.0100 DEFINITIONS.

~~Subp. 5. Cost increase filing.~~

~~"Cost increase filing" means a miscellaneous tariff filing under Minnesota Statutes, section 237.63, proposing a rate increase for a particular telephone service on grounds that the actual costs of providing that particular service have increased. It does not include cost increases that are part of overall cost increases and cost increases that have been discovered as a result of new cost studies.~~

This subpart is proposed for repeal because the Commission no longer receives this type of filing. Section 237.63 expired on December 31, 2004. 2004 Minn. Laws ch. 261, art. 6 § 3.

~~Subp. 10. Language change filing.~~

~~"Language change filing" means a miscellaneous tariff filing under Minnesota Statutes, section 237.63, changing descriptive language in a telephone utility tariff without changing the meaning or operation of the tariff.~~

This subpart is proposed for repeal because the Commission no longer receives this type of filing. Section 237.63 expired on December 31, 2004. 2004 Minn. Laws ch. 261, art. 6 § 3.

Subp. 11. Miscellaneous tariff filing.

"Miscellaneous tariff filing" means any request or notice that does not require determination of the a utility's revenue requirement.

A miscellaneous tariff filing includes a filing involving a new service offering; a change in a utility's rates, services, terms, or conditions of service; a change in a utility's corporate structure, assigned service area, or capital structure, when conducted separately from a general rate proceeding; filings made under the rules governing automatic adjustment of charges; or any related matter. ~~The term also includes a language change filing, cost increase filing, and rate reduction filing.~~ The inclusion of a particular type of filing in this list does not require a filing that would not otherwise be required or confer jurisdiction that would not otherwise be present.

The proposed amendments to this subpart are necessary and reasonable to clarify the nature of filings the Commission intends to treat as Miscellaneous filings. The Commission receives many filings of an otherwise uncategorized nature that are not tariff filings. The amended definition is intended to capture otherwise uncategorized filings, while striking filings no longer commonly received by the Commission because the statutes describing them are no longer in effect.

Subp. 11a. Motion filing.

"Motion filing" means a written request for specific commission action by a party within the context of an ongoing proceeding. This does not include recommendations for action made in comments, or in motions made during a proceeding before an administrative law judge.

This definition is necessary and reasonable to define a filing type that the Commission receives and proposes to govern with a related procedural rule (see part 7829.0410).

~~Subp. 17. Price list filing.~~

~~"Price list filing" means a filing under Minnesota Statutes, section 237.60, pertaining to telephone services claimed to be subject to emerging or effective competition.~~

This subpart is proposed for repeal because the Commission no longer receives this type of filing. Section 237.60 expired on August 1, 1999. 1994 Minn. Laws ch. 534, art. 1 § 3.

Subp. 19a. Protected data.

“Protected data” means data filed with the commission that is either

- a. not public data or private data on individuals under the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13; or
- b. data that is protected from disclosure pursuant to the rules of privilege recognized by law.

This definition is necessary and reasonable to clarify the use of the term “protected data” in this rule chapter.

Subp. 20. Rate reduction filing.

~~“Rate reduction filing” means a miscellaneous tariff filing under Minnesota Statutes, section 237.63, proposing a reduction in a rate for telephone service.~~

This subpart is proposed for repeal because the Commission no longer receives this type of filing. Section 237.63 expired on December 31, 2004. 2004 Minn. Laws ch. 261, art. 6 § 3.

Subp. 20a. Qualified Complainant.

“Qualified Complainant” means a person authorized by law to make a formal complaint to the commission.

This definition is necessary and reasonable to clarify the use of the term “qualified complainant” in this rule chapter (part 7829.1600).

Subp. 23. Utility.

~~“Utility” means an entity subject to the jurisdiction of the commission, including a gas, or electric service provider, or telephone utility under rule 7810.0100, subp. 37. company subject to the jurisdiction of the commission.~~

The proposed amendments to this subpart are necessary and reasonable to clarify the definition of “utility” as used in this chapter. The proposed amendments are not intended to substantively change the operative definition.

7829.0250 REPRESENTATIONS TO THE COMMISSION.

Any person who signs a pleading, motion or similar filing or enters an appearance at a commission meeting, by doing so represents that the person is authorized to do so, has a good faith belief that statements of fact made therein are true and correct, and that legal assertions are warranted by existing law or by a nonfrivolous argument for the extension or reversal of existing law or the modification or establishment of rules.

This provision is necessary and reasonable to promote candor and to maximize the reliability of the record upon which the Commission bases its decisions. Not all Commission proceedings rely on sworn or verified testimony, and the Commission has determined it is necessary to hold parties making submissions and arguments to the Commission to a standard that reasonably supports

deliberative decision making. The Commission has considered and adopted recommended changes to the proposed language to ensure reasonable advocacy is not prohibited.

7829.0400 SERVICE AND FILING REQUIREMENTS.

Subpart 1. Filing.

~~Documents are filed with the commission when they are received in the commission offices during regular business hours. Specific documents may be filed by facsimile transmission or filed when mailed, with the consent of the executive secretary. Documents must be directed to the attention of the executive secretary.~~
Filings must be made in a manner consistent with the filing requirements of Minnesota Statutes, section 216.17, subdivision 3, and must be directed to the attention of the executive secretary. If otherwise required to file electronically under Minnesota Statutes, section 216.17, subdivision 3, persons may file by facsimile transmission, by mail, or by personal delivery only with the prior consent of the executive secretary.

The amendments to this subpart are necessary and reasonable to provide procedural requirements suitable for electronic filing. When documents are deemed successfully filed is now addressed in proposed subpart 5a.

Subp. 2. Number of copies.

~~Parties and participants shall file an original and 15 copies of each document filed with the commission, unless otherwise directed by the executive secretary.~~

This subpart is proposed for repeal because the Commission's electronic filing system and internal document processes generally render it unnecessary.

Subp. 4. Format.

Filings must identify the nature of the filing as briefly as possible, for example, "Replies to Exceptions to Report of Administrative Law Judge," and indicate that the matter is before the Minnesota Public Utilities Commission. Filings after the original filing must include the title and commission-assigned docket number of the matter. Paper filings must be on 8-1/2 by 11-inch paper, unless the executive secretary authorizes a nonconforming filing for good cause shown. Electronic filings must be submitted in a text-searchable format and any scanned documents must include optical character recognition data. Filings made pursuant to parts 7810.8620, 7810.8685, and 7825.3900, as well as schedules provided pursuant to Minnesota Statutes, section 216B.16, subdivision 17, paragraph (a) shall also include the required data in an industry standard spreadsheet format supported by the agencies' electronic filing system.

The amendments to this subpart are necessary and reasonable to provide procedural requirements suitable for electronic filing. The requirements for text-searchable or optical character recognition data and for data in an industry-standard spreadsheet format serve the public's interests in transparency and accessibility of documents and information filed with the Commission.

Subp. 5. Service; method

~~A document filed with the commission must be served the same day on the persons listed on the appropriate service list, except when this chapter permits service of a summary of the filing. Service may be accomplished by first class mail or, by delivery in person, or electronically upon recipients who have agreed to electronic service as provided in Minnesota Statutes, section 216.17, subdivision 4, unless otherwise provided by law or commission order. Service may also be accomplished by facsimile transmission, followed by first class mail. Service on the department is complete upon receipt by the department. For all other persons,~~

The amendments to this subpart are necessary and reasonable to provide procedural requirements suitable for electronic filing.

Subp. 5a. Service and Filing; Completion

~~A document filed with the commission must be served the same day on the persons listed on the appropriate service list, except when this chapter permits service of a summary of the filing. Unless the executive secretary directs otherwise for specific documents, electronic service is complete upon receipt of confirmation of submission of the document. Filings are filed with the commission when they are received in the commission offices during regular business hours. ¶Service by mail or facsimile transmission plus mail is complete upon mailing, except service upon the department, which is complete upon receipt by the department. unless the executive secretary directs otherwise for specific documents. When a party or participant is represented by an attorney, service upon the attorney is considered service upon the party or participant.~~

The amendments to this subpart are necessary and reasonable to provide procedural requirements suitable for electronic filing. This provision clarifies when documents are deemed served and filed when served and filed through the Commission’s electronic filing system.

The Commission’s electronic filing system is operated jointly with the Department of Commerce. Electronic filings are completed in two-stages: (1) submission of the filing by a party or participant and (2) acceptance of the filing by the Department of Commerce. After an electronic filing is submitted, a person filing a document receives confirmation of the submission, and a submission number. When a filing is accepted, the person filing the document receives notification of acceptance.

The Commission considered and rejected the possibility of allowing filings to be filed as late as midnight on their due date. However, the Commission was persuaded that the increased burden on parties and participants was not justified by any benefits that would be derived. These burdens include:

- it increases the potential for delay before parties receive filed documents,
- it increases the potential for delay between filing and when a filing becomes available in e-dockets,
- it introduces hardship for strategic or operational reasons that are not imposed upon parties or participants by a 4:30 deadline, and

- electronic filing with the Commission does not function similarly to electronic filing with other bodies that have midnight deadlines because Commission filings are not publicly available until accepted by the Department.

The amended provision retains a regular-business-hours filing deadline.

7829.0410 MOTION FILINGS.

Subpart. 1. Form and content.

A party to a proceeding making a motion filing shall make it in writing, state the grounds for the motion, and set forth the requested commission action. A party shall serve a motion filing on the persons listed on the official service list and file it consistent with the electronic filing requirements of Minnesota Statutes, section 216.17, subdivision 3. A party shall, as a part of a motion filing, advise other parties that if they wish to oppose the motion they must file and serve on the same list of persons a written response within 14 days. The commission will consider only motion filings signed by a party or the party's attorney or authorized representative.

This provision is necessary and reasonable to address a category of filings not previously identified in the Commission's rules of procedure. In the Commission's experience, parties have sought to request Commission action in the course of a proceeding, and the absence of a rule governing those requests has deprived parties and participants of clarity about how those requests are to be handled.

Subp. 2. Responses.

A party responding to a motion filing shall serve a response on the persons listed on the official service list and file it consistent with the electronic filing requirements of Minnesota Statutes, section 216.17, subdivision 3, within 14 days of service of the motion filing.

This provision is necessary and reasonable to address a category of filings not previously identified in the Commission's rules of procedure. In the Commission's experience, parties have sought to request Commission action in the course of a proceeding, and the absence of a rule governing those requests has deprived parties and participants of clarity about how those requests are to be handled.

7829.0430 WITHDRAWAL OF FILINGS

Subpart 1. Uncontested Withdrawal.

The commission delegates to the Executive Secretary authority to approve the withdrawal of a filing, and such approval will be granted, if the following conditions are met:

- A. the party that submitted the filing has requested that the filing be withdrawn;
- B. no person has expressed opposition to withdrawal of the filing; and
- C. no commissioner or commission staff person has identified a reason that the matter should not be withdrawn.

This provision is necessary and reasonable to codify established Commission practice concerning withdrawal of filings. In the Commission's experience, parties have sought to withdraw filings,

and the absence of a rule governing those requests has deprived parties and participants of clarity about how those requests are to be handled.

Delegating authority to the Executive Secretary to approve uncontested requests to withdraw a filing is necessary and reasonable to process uncontested requests to withdraw filings in an efficient and timely manner.

Subp. 2. Contested Withdrawal.

If any person opposes a withdrawal request, the commission will allow a filing to be withdrawn at the request of the filing party if the commission determines that the proposed withdrawal:

- A. does not contravene the public interest;
- B. does not prejudice any party; and
- C. does not concern a filing that raises issues requiring commission action.

If the commission determines that withdrawal would contravene the public interest or would prejudice a party, the commission may permit withdrawal only subject to conditions that mitigate the harm identified.

This provision is necessary and reasonable to codify established Commission practice concerning withdrawal of filings. In the Commission’s experience, parties have sought to withdraw filings, and the absence of a rule governing those requests has deprived parties and participants of clarity about how those requests are to be handled.

When a request to withdraw a filing is objected to, it is reasonable to subject the request to a heightened level of scrutiny in order to protect the reasonable expectations of parties to the proceeding, and any public interest that may be involved in the subject of the filing. Before a contested request to withdraw a filing is granted, the Commission must determine that there would be no harm to parties or the public interest, or that any harm could be mitigated by subjecting approval of the request to conditions. These determinations are needed to reasonably ensure the orderly and just conduct of Commission proceedings.

**7829.0500 TRADE SECRET AND PROPRIETARY INFORMATION
PROTECTED DATA.**

Subpart 1. Confidentiality protected.

Nothing in this chapter requires the public disclosure of privileged proprietary information, trade secrets, or other privileged information protected data or any disclosure of privileged data.

The amendments to this subpart are necessary and reasonable to standardize the Commission’s rules with a defined term, “protected data,” and to codify established Commission practice under the Minnesota Data Practices Act.

The Data Practices Act has undergone substantial changes since it was first enacted, and the currently adopted Rule 7829.0500 predates many of the revisions. Additionally, in September 1999, pursuant to a provision of the Data Practices Act (Minn. Stat. § 13.03, subd. 1), the

Commission adopted and published procedures for the handling of trade secret and privileged data.¹

In preparing the proposed rule amendments, the Commission reviewed the existing rule, the present language of the Minnesota Government Data Practices Act, and the Commission's Revised Procedures for Handling Trade Secret and Privileged Data. Amendments are necessary and reasonable to (1) expressly define a class of data as "protected data" so that the term may be used consistently in rules; (2) incorporate aspects of the Commission's Revised Procedures for Handling Trade Secret and Privileged Data in the rule to reflect established Commission practice; and (3) to facilitate practitioners' ability to find Commission requirements.

The Commission also adopted language recommended in stakeholder comments to clarify that Commission rules do not require any disclosure of privileged data.

Subp. 2. Procedure for excision.

~~Persons~~ A person filing documents containing ~~proprietary information, trade secrets, protected data~~ or other privileged information shall file one copy of the document with the protected data redacted. excise this information in all copies but the original and six copies. The first page or cover page of a document from which protected data has been excised must be clearly captioned in bold print "PUBLIC DOCUMENT—NOT PUBLIC (or PRIVILEGED) DATA HAS BEEN EXCISED." The beginning and end of the excised protected data must be identified. One copy of the document without redactions shall be filed, designated as required in subpart 4, and identified as a not public or trade secret document during the electronic submission process.

The amendments to this subpart are necessary and reasonable to standardize the Commission's rules with a defined term, "protected data," to codify established Commission practice under the Minnesota Data Practices Act, and to provide procedural requirements suitable for electronic filing.

Subp. 3. Identification of excised material.

When a person classifies an entire document, or a substantial part of a document, as protected ~~information~~ data, the person shall file a description of the excised material that includes at least the following information: the nature of the material, its authors, its general import, and the date on which it was prepared.

The amendments to this subpart are necessary and reasonable to standardize the Commission's rules with a defined term, "protected data," and to codify established Commission practice under the Minnesota Data Practices Act.

¹ Revised Procedures for Handling Trade Secret and Privileged Data, September 1, 1999, <http://mn.gov/puc/consumers/data-practices/000671.html> (from the Commission home page, click on "Data Practices" and then click on "Trade Secret and other Privileged Data.").

Subp. 4. Document containing protected ~~information data~~.

The first page or cover page of a document containing protected ~~information data~~ must be clearly marked in bold print "~~TRADE SECRET INFORMATION NOT PUBLIC DOCUMENT~~ — NOT FOR PUBLIC DISCLOSURE" or with words of similar import. Every page on which protected ~~information data~~ appears must be similarly marked and the protected ~~information data~~ must be underlined, placed in brackets, or otherwise clearly identified as the ~~information data~~ which is to be protected from disclosure.

The amendments to this subpart are necessary and reasonable to standardize the Commission's rules with a defined term, "protected data," and to codify established Commission practice under the Minnesota Data Practices Act.

Subp. 5. Statement required.

In all cases where a person or entity files data with the commission that is identified as protected data, an accompanying statement justifying the state agencies treating the data as protected data must also be filed. This justification must include an explanation of how the data is classified under the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13, or is privileged under a rule of privilege recognized by law.

The amendments to this subpart are necessary and reasonable to standardize the Commission's rules with a defined term, "protected data," and to ensure that assertions made in support of data protection under the Act are reasonably justified, and can be reviewed by interested parties and the Commission.

7829.0600 GENERAL SERVICE LIST.

Subpart 1. Establishing list.

Persons desiring to receive notice of particular types of filings and who are qualified to intervene under part ~~7829.0800~~ shall file with the utility a written list of the types of filings they wish to receive, their name, address, and an electronic address if they agree to electronic service. The utility shall maintain general service lists of persons who have filed these requests. The utility shall add to each list the persons who intervened in its last general rate case and persons on the official service list for its last filing of the same type.

The amendments to this subpart are necessary and reasonable to provide procedural requirements suitable for electronic filing.

7829.0700 OFFICIAL SERVICE LIST.

Subpart 1. Content.

The official service list for each proceeding consists of the names, addresses, and electronic addresses of the parties, ~~and the names of the~~ participants who have filed a written request for inclusion on the service list with the executive secretary.

The amendments to this subpart are necessary and reasonable to provide procedural requirements suitable for electronic filing.

Subp. 2. Establishment and updating.

The commission shall establish the official service list at the conclusion of the initial comment period, or immediately following an initial filing for which no initial comment period is required, and shall mail a copy of the list to the parties and to participants who have filed written requests for inclusion. A list established before commission action on a petition for intervention must include those persons whose intervention petitions are pending. The commission shall mail an updated official service list to the parties and participants if the official service list is later expanded or reduced. The commission need not mail the official service list in proceedings when the only parties are the department and a petitioner, complainant, or respondent. The commission shall provide the official service list electronically rather than by mail to a party who has agreed to electronic service as provided in Minnesota Statutes, section 216.17, subdivision 4.

The amendments to this subpart are necessary and reasonable to provide procedural requirements suitable for electronic filing, and to clarify when the Commission will create an official service list for initial filings that do not require an initial comment period.

Subp. 4. Name and address change.

A party or participant who wishes to change the name or address of a person receiving service on behalf of the party or participant shall provide written notice of the change to the executive secretary and to persons on the official service list. The commission may remove a participant from the official service list after two attempts at service are returned as undeliverable.

The amendments to this subpart are necessary and reasonable to permit the Commission to maintain official service lists over sometimes prolonged proceedings. Participants may not inform the Commission of address changes when they are no longer interested in a given proceeding. Maintaining accurate lists of participants interested in each proceeding reduces a burden on agencies, parties, and participants who would otherwise be required to mail documents to people who have not provided current contact information.

7829.0800 PETITION TO INTERVENE.

Subpart 1. Filing and service.

A person who desires to become a party to a proceeding shall file a petition to intervene within the time set in this chapter. The petition must be served on known parties and those persons on the utility's general service list for the matter, if applicable. A petition to intervene must be signed by the person wishing to become a party or the person's attorney or authorized representative.

The amendment to this subpart is necessary and reasonable to ensure that petitions for intervention are filed by, or with the authorization of, a person with an interest in the proceeding. This provision is intended to operate in conjunction with proposed part 7829.0250, which requires candor and responsible advocacy in Commission proceedings.

Subp. 3. Intervention as of right.

The department and the Office of the Attorney General, ~~through its Residential Utilities Division,~~ may intervene as of right in any proceeding before the commission. They become parties upon filing comments under this chapter or upon written notice to the commission of an intent to intervene, and need not file petitions to intervene, except when the rules of the Office of Administrative Hearings require it.

The amendment to this subpart is necessary and reasonable to effectuate the interests of the Department and the Office of the Attorney General in commission proceedings, and to remove the specification of a particular division within the Attorney General’s office which no longer exists.

7829.0850 WITHDRAWAL OF A PARTY

A party wishing to withdraw must file a motion, which the commission will consider promptly in the course of the proceeding.

This provision is necessary and reasonable to address a category of filings not previously identified in the Commission’s rules of procedure. In the Commission’s experience, parties have sought to withdraw as parties in the course of a proceeding, and the absence of a rule governing those requests has deprived parties and participants of clarity about how those requests are to be handled.

7829.1050 UNCONTESTED PROCEEDING SUBCOMMITTEE

Subpart 1. Delegation of uncontested proceedings.

As authorized by Minnesota Statutes, section 216A.03, subdivision 8, the commission may establish by order a subcommittee to act on uncontested proceedings. This subcommittee will act on behalf of the commission only when:

- a) commission staff determines that a proceeding involves no disputed or novel issues, and
- b) no party, participant, or commissioner has requested that the proceeding not be delegated to a subcommittee.

The commission will maintain on its website a list of proceedings delegated under this subpart, and will indicate the subcommittee’s disposition of each proceeding. Electronic filing of an order reflecting disposition by the subcommittee constitutes receipt by parties, participants, and commissioners for purposes of Minn. Stat. § 216A.03, subd. 8(b).

This provision is necessary and reasonable to codify in rules established Commission practice concerning delegation of certain uncontested matters to a subcommittee. In the Commission’s experience, certain uncontroversial matters require Commission action, and can be most efficiently handled through the work of the subcommittee process described in this rule part.

This provision also clarifies a timing issue under Minn. Stat. § 216A.03, subd. 8(b), in relation to the Commission’s rule governing electronic service (7829.4000). Subdivision 8(b) states that “Subcommittee decisions for which no objection is filed with the commission within ten days from the date of receipt of the written decision of the subcommittee are deemed decisions of the full commission.” It is necessary and reasonable to establish an unambiguous date after which

decisions by the subcommittee are deemed decisions of the full commission. Because Commission filings are deemed served upon electronic submission, the provision resolves any ambiguity under the statute in a way consistent with receipt of written decisions by parties.

Subp. 2. Other subcommittees.

This part does not limit the circumstances under which the commission may delegate functions to a subcommittee.

This provision is necessary and reasonable to preserve the Commission’s statutory authority under Minn. Stat. § 216A.03, subd. 8, to delegate functions to a subcommittee not otherwise addressed in rules.

7829.1250 COMMENT PROCEDURE VARIATION.

Subpart 1. When applied.

Unless otherwise provided in statute or rule, this part shall apply to all comment periods established in this chapter.

This provision is necessary and reasonable to consolidate scattered provisions in the Commission’s existing rule chapter 7829 concerning the Commission’s practices concerning additional comment periods.

Subp. 2. Additional comments and comments on supplemental or corrected filings.

If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development. The commission shall provide opportunity for other parties to respond to additional comments, or to a supplemental or corrected filing, when the additional comment, supplement, or correction raises a new issue.

This provision is necessary and reasonable to consolidate scattered provisions in the Commission’s existing rule chapter 7829 concerning the Commission’s practices concerning additional comment periods.

7829.1300 MISCELLANEOUS ~~TARIFF AND PRICE LIST~~ FILINGS.

Subpart 1. Summary.

A miscellaneous ~~tariff filing and price list filing~~ must include, on a separate page, a one-paragraph summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

The proposed amendments to this subpart are necessary and reasonable to clarify the processes that apply to “miscellaneous filings” consistent with the proposed amendments to the relevant defined terms in part 7829.0100.

Subp. 2. Service.

The filing utility shall serve copies of each miscellaneous ~~tariff filing~~ on which commission action is required within 60 days of filing, and ~~each price list filing increasing the price of a competitive service~~, on the persons on the applicable

general service list, on the department, and on the ~~Residential Utilities Division of the Office of the Attorney General~~. For other filings, the utility may serve the summary described in subpart 1 on persons on the applicable general service list. The utility shall serve with the filing or the summary a copy of its general service list for the filing.

The proposed amendments to this subpart are necessary and reasonable to clarify the processes that apply to “miscellaneous filings” consistent with the proposed amendments to the relevant defined terms in part 7829.0100, to remove the specification of a particular division within the Attorney General’s office which no longer exists, and to eliminate a reference to filings the Commission no longer receives.

Subp. 3. Content of filing ~~subject to specific requirements~~.

In addition to complying with specific requirements imposed by statute or rule, miscellaneous ~~tariff and price filings subject to specific filing rules~~ must contain at least the following information:

- A. the name, address, and telephone number of the filing party utility, without abbreviation;
- B. the name, address, electronic address, and telephone number of the attorney for the filing party utility, if the filing party utility is using represented by an attorney;
- C. the date of the filing and the date the proposed rate or service change, if any, will go into effect;
- D. the statute that the utility believes controls the time frame for processing the filing; ~~and~~
- E. the signature, electronic address, and title of the ~~utility~~ employee responsible for the filing; ~~and~~;
- F. if the contents of the filing are not established by statute or another Commission rule, a description of the filing, its impact on rates and services, its impact on the utility and any affected person ratepayers, and the reasons for the filing.

The proposed amendments to this subpart are necessary and reasonable to consolidate this subpart with subpart 4, and to provide procedural requirements suitable for electronic filing.

Subp. 4. Content of filing ~~not subject to specific filing rules~~.

In addition to complying with any specific requirements imposed by statute, miscellaneous ~~tariff and price list filings not subject to specific filing rules~~ must contain at least the following information:

- A. the name, address, and telephone number of the utility, without abbreviation;
- B. the name, address, electronic address, and telephone number of the attorney for the utility, if the utility is using an attorney;
- C. the date of the filing and the date the proposed rate or service change will go into effect;
- D. the statute that the utility believes controls the time frame for processing the filing;
- E. the signature, electronic address and title of the utility employee responsible for the filing; and

~~F. if the contents of the filing are not established by another Commission rule, a description of the filing, its impact on rates and services, its impact on the utility and affected ratepayers, and the reasons for the filing.~~

This subpart is proposed for repeal because it is consolidated with subpart 3, above.

Subp. 6. Compliance filings.

Unless otherwise ordered by the commission, utilities shall file a compliance filing within ten days of the effective date of a commission order requiring it.

This provision is necessary and reasonable to provide a standard deadline for compliance filings when the Commission does not otherwise specify a deadline.

7829.1400 COMMISSION ACTION ON MISCELLANEOUS TARIFF, PRICE LIST FILING; COMMENTS.

Subpart 1. Initial comments.

In the absence of a commission order or notice establishing a different comment period, ~~a~~ A person wishing to comment on a miscellaneous tariff or price list filing shall do so within 30 days of its filing with the commission. ~~A person wishing to comment on one of the following noncompetitive rate change filings shall do so within 20 days of its filing with the commission: a rate reduction filing, a cost-increase filing, or a request for a significant change in a condition of telephone service.~~ A person wishing to comment on a new telephone service, competitive or noncompetitive, shall do so within ten days of its filing with the commission. Comments must be served on the persons on the utility's general service list for the filing, as well as on the filing utility.

The proposed amendments to this subpart are necessary and reasonable to clarify the processes that apply to “miscellaneous filings” consistent with the proposed amendments to the relevant defined terms in part 7829.0100. The filings proposed for deletion are filings the Commission no longer receives.

Subp. 3. Comments to include procedural recommendation.

A person commenting on a miscellaneous ~~tariff or price list~~ filing and recommending its rejection, denial, or modification shall specify whether the person believes the filing requires a contested case proceeding, informal proceeding, expedited proceeding, or some other procedural treatment, together with the person's reasons for recommending a particular procedural treatment.

The proposed amendments to this subpart are necessary and reasonable to clarify the processes that apply to “miscellaneous filings” consistent with the proposed amendments to the relevant defined terms in part 7829.0100. The filings proposed for deletion are filings the Commission no longer receives.

Subp. 4. Reply comments.

Unless directed otherwise by the commission, ~~the~~ The utility and other persons have ten days from the expiration of the original comment period to file reply comments.

Reply comments must be served on the utility and persons who have filed comments on the miscellaneous ~~tariff~~ filing. Reply comments must be limited in scope to the issues raised in the initial comments.

The proposed amendments to this subpart are necessary and reasonable to clarify the processes that apply to “miscellaneous filings” consistent with the proposed amendments to the relevant defined terms in part 7829.0100, and to reflect the Commission’s authority to modify the time period for reply comments in circumstances where modification is warranted.

~~Subp. 5. Additional comments.~~

~~If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.~~

~~Subp. 6. Comments on supplemental or corrected filings.~~

~~The commission shall provide opportunity for other parties to respond to supplemental or corrected filings when those filings raise new issues.~~

~~Subp. 7. Comment periods varied.~~

~~Except for comment periods set by statute, the commission may vary the comment periods set by this chapter on its own motion or at the request of a person for good cause shown. The commission may delegate the authority to vary time periods to the executive secretary.~~

These subparts are proposed for repeal because they are consolidated into proposed part 7829.1250.

Subp. 9. Requests for contested case proceedings.

Upon receipt of initial comments requesting a contested case proceeding on a miscellaneous ~~tariff filing or price list filing~~, the commission shall immediately set the matter for consideration on a date after the time period for reply comments has run. If the commission finds a contested case proceeding is required, the commission shall refer the matter to the Office of Administrative Hearings pursuant to part 7829.1000, and the utility shall file its direct testimony in question and answer form within 20 days of the commission's notice and order for hearing.

The proposed amendments to this subpart are necessary and reasonable to clarify the processes that apply to “miscellaneous filings” consistent with the proposed amendments to the relevant defined terms in part 7829.0100.

7829.1500 INFORMAL COMPLAINT.

Persons engaged in disputes with utilities may submit informal complaints by letter or other writing, by telephone, electronically, or in person. Commission staff shall accept these complaints and shall prepare a memorandum setting forth the substance of each complaint and identifying the customer, the service address, and the utility.

The amendment to this subpart is necessary and reasonable to add to the methods by which informal complaints can be filed, which increases public access and efficiency.

7829.1700 FORMAL COMPLAINT.

Subp. 2. Mailing and filing.

A formal complaint must be mailed to the respondent, the department, and ~~the Residential Utilities Division~~ of the Office of the Attorney General, as well as filed with the commission. Formal complaints may also be filed in a manner consistent with the electronic filing requirements of Minn. Stat. § 216.17, subdivision 3. If filed electronically, a formal complaint does not need to be mailed to the state agencies.

The amendments to this subpart are necessary and reasonable to provide procedural requirements suitable for electronic filing and to remove the specification of a particular division within the Attorney General’s office which no longer exists.

7829.1800 INITIAL CONSIDERATION OF FORMAL COMPLAINT.

Subp. 2. Answer.

On concluding that it has jurisdiction over the matter and that investigation is warranted, the commission shall serve the complaint on the respondent, together with an order requiring the respondent to file an answer either stating that it has granted the relief the complainant requests, or responding to the allegations of the complaint. The answer must be filed with the commission and served on the complainant, the department, and ~~the Residential Utilities Division~~ of the Office of the Attorney General within 20 days of service of the complaint and order.

Subp. 3. Reply.

Replies are not required unless the answer alleges that respondent has granted the relief sought by complainant. In that case, the complainant shall file a reply within 20 days admitting or denying that relief has been granted. If the complainant fails to file the reply, the commission shall dismiss the complaint. Copies of the reply must be served on respondents, the department, and ~~the Residential Utilities Division~~ of the Office of the Attorney General.

The amendments to these subparts are necessary and reasonable to remove the specification of a particular division within the Attorney General’s office which no longer exists.

7829.1900 COMMISSION ACTION ON FORMAL COMPLAINT; COMMENTS.

Subp. 2. Initial comments.

A person wishing to comment on a formal complaint shall do so within 30 days of the date of a commission order requiring an answer to the complaint. Comments must be served on the complainant, respondent, department, ~~Residential Utilities Division~~ of the Office of the Attorney General, and any other known parties.

Subp. 3. Reply comments.

A commenting party has ten days from the expiration of the original comment period to file reply comments. Reply comments must be limited in scope to the issues raised in the initial comments and must be served on the complainant, respondent, department, ~~Residential Utilities Division~~ Of the Office of the Attorney General, and any other known parties.

The amendments to these subparts are necessary and reasonable to remove the specification of a particular division within the Attorney General's office which no longer exists.

~~Subp. 6. Additional comments.~~

~~If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.~~

~~Subp. 7. Comments on supplemental or corrected filings.~~

~~The commission shall provide opportunity for other parties to respond to supplemental or corrected filings when those filings raise new issues.~~

~~Subp. 8. Comment periods varied.~~

~~Except for time periods set by statute, the commission may vary the comment periods established in this part at the request of a person for good cause shown. The commission may delegate the authority to vary time periods to the executive secretary.~~

These subparts are proposed for repeal because they are consolidated into proposed part 7829.1250.

7829.2000 ELECTRIC SERVICE AREA COMPLAINT.

Subp. 2. Service and filing.

A service area complaint must be served on the respondent, department, and ~~Residential Utilities Division of the Office of the Attorney General~~, as well as filed with the commission.

The amendment to this subpart is necessary and reasonable to remove the specification of a particular division within the Attorney General's office which no longer exists.

7829.2100 COMMISSION ACTION ON SERVICE AREA COMPLAINT; COMMENTS.

Subpart 1. Answer.

Within ten days of service of a service area complaint, a respondent shall file an answer with the commission and serve it on the complainant, department, and ~~Residential Utilities Division of the Office of the Attorney General.~~

Subp. 2. Initial comments.

A person wishing to comment on a service area complaint shall do so within ten days of the date the person was served. Comments must be served on the complainant, respondent, department, ~~Residential Utilities Division of the Office of the Attorney General~~, and any other known parties.

The amendments to these subparts are necessary and reasonable to remove the specification of a particular division within the Attorney General's office which no longer exists.

~~Subp. 4. Additional comments.~~

~~If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.~~

~~**Subp. 5. Comments on supplemental or corrected filing.**~~

~~The commission shall provide opportunity for other parties to respond to supplemental or corrected filings when those filings raise new issues.~~

These subparts are proposed for repeal because they are consolidated into proposed part 7829.1250.

7829.2300 CLASSIFICATION PETITION.

Subp. 2. Service.

A utility filing a classification petition shall serve copies of the petition on the department and ~~Residential Utilities Division of the~~ Office of the Attorney General. The utility shall serve the petition or the summary described in subpart 1 on those persons on the applicable general service list and on those persons who were parties to its last general rate case or incentive plan proceeding, if applicable.

Subp. 3. Challenges to form and completeness.

A person wishing to challenge the form or completeness of a classification petition shall do so within ten days of its filing. The filing utility shall reply to the challenge within five days of its filing. Challenges and responses must be served on the department, ~~Residential Utilities Division of the~~ Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 5. Initial comments.

A person wishing to comment on a classification petition shall file initial comments within 20 days of the filing. Initial comments must include a recommendation on whether the filing requires a contested case proceeding, expedited proceeding, or some other procedural treatment, together with reasons for recommending a particular procedural treatment. Initial comments must be served on the utility, department, ~~Residential Utilities Division of the~~ Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

The amendments to these subparts are necessary and reasonable to remove the specification of a particular division within the Attorney General's office which no longer exists.

~~**Subp. 8. Additional comments.**~~

~~If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.~~

~~**Subp. 9. Comments on supplemental or corrected filing.**~~

~~The commission shall provide opportunity for other parties to respond to a supplemental or corrected filing when the filing raises new issues.~~

These subparts are proposed for repeal because they are consolidated into proposed part 7829.1250.

Subp. 13. Extending disposition period.

The commission may extend the eight-month time frame ~~set forth~~ in subpart 12 with the agreement of all parties or upon a finding that the case cannot be completed within the required time and that there is a substantial probability that the public interest would be harmed by enforcing the eight-month time frame.

The amendment to this subpart is necessary and reasonable to remove superfluous language.

7829.2400 FILING REQUIRING DETERMINATION OF GROSS REVENUE.

Subp. 2. Service.

A utility filing a general rate change request shall serve copies of the filing on the department and ~~Residential Utilities Division of the~~ Office of the Attorney General. The utility shall serve the filing or the summary described in subpart 1 on the persons on the applicable general service list and persons who were parties to its last general rate case or incentive plan proceeding.

Subp. 4. Challenge to form and completeness.

A party wishing to challenge the form or completeness of a general rate case filing shall do so within ten days of its filing. The filing utility shall reply to the challenge within five days of its filing. Challenges and responses must be served on the department, ~~Residential Utilities Division of the~~ Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

The amendments to these subparts are necessary and reasonable to remove the specification of a particular division within the Attorney General's office which no longer exists.

Subp. 5. Rejection of filing.

The commission shall reject any filing under this part ~~that is found to be~~ substantially out of compliance with Minnesota Statutes, section 216B.16 or 237.075, or other requirement imposed by rule, statute, or previous commission order. A filing under this part not rejected within 60 days of filing is considered accepted as in substantial compliance with applicable filing requirements.

The amendment to this subpart is necessary and reasonable to remove superfluous language.

Subp. 6. Petition to intervene.

The commission shall entertain a petition to intervene until the matter is referred to the Office of Administrative Hearings for a contested case proceeding or until the commission issues a notice under part 7829.1200, subpart 3, stating its intention to decide the matter on the basis of an informal or expedited proceeding. ~~Once a filing is referred for a contested case proceeding, the rules of the Office of Administrative Hearings control intervention rights.~~

The amendment to this subpart is necessary and reasonable to remove redundant language. Commission rule 7829.0800, subpart 6, provides that “[d]uring the time that a matter is before an administrative law judge, intervention procedures are governed by the rules of the Office of Administrative Hearings and by orders issued under those rules by the administrative law judge.”

7829.2500 CERTIFICATE OF NEED FILING.

Subpart 1. Compliance.

Certificate of need applications must comply with the requirements of Minnesota Statutes, sections 216B.2421 and 216B.243; Minnesota Rules, chapters 7849, 7851, 7853, and 7855, and parts 7849.0010 to 7849.0400; and any other requirements imposed by rule or statute.

The amendment to this subpart is needed and reasonable to remove any implication that certificate of need applications need only comply with some parts of rule chapter 7849.

Subp. 3. Service.

A certificate of need applicant shall serve copies of the filing on the department and ~~Residential Utilities Division of the~~ Office of the Attorney General. The applicant shall serve the filing or the summary described in subpart 2 on those persons on an applicable general service list and on those persons who were parties to its last general rate case or incentive plan proceeding, if applicable.

The amendments to these subparts are necessary and reasonable to remove the specification of a particular division within the Attorney General's office which no longer exists.

~~Subp. 4. Publication in State Register.~~

~~The commission shall publish notice of the certificate of need filing in the State Register and shall solicit public comment on the application.~~

This subpart is proposed for repeal because there is no statutory requirement for publication in the *State Register*, and because the Commission has determined that notice procedures for certificate of need applications under parts 7829.2550 and .2560 reasonably ensure public notice. Removing the requirement to publish in the State Register reduces needless expense and duplicative effort.

Subp. 6. Solicitation of comments on filing compliance.

The commission shall request comments on the filing's compliance with Minnesota Statutes, sections 216B.2421 to 216B.243, and Minnesota Rules, chapters 7849, 7851, 7853, and 7855, and parts 7849.0010 to 7849.0400, when it determines that comments would be helpful in evaluating the filing's substantial compliance with the requirements of those statutes and rules. The commission may delegate the authority to request these comments to the executive secretary.

Subp. 7. Rejection of filing.

The commission shall reject a filing under this part that is found to be substantially out of compliance with Minnesota Statutes, sections 216B.2421 to 216B.243; Minnesota Rules, chapters 7851, 7853, and 7855, and parts 7849.0010 to 7849.0400; and any other requirements imposed by rule or statute. A filing under this section not rejected within 15 days of filing must be considered accepted as in substantial compliance with applicable filing requirements.

The amendments to these subparts are needed and reasonable to remove any implication that certificate of need applications need only comply with some parts of rule chapter 7849.

Subp. 8. Petition to intervene.

The commission shall entertain a petition to intervene until the matter is referred to the Office of Administrative Hearings for a contested case proceeding or until the commission issues a notice under part 7829.1200, subpart 3, stating its intention to decide the matter on the basis of an informal or expedited proceeding. ~~Once a filing is referred for a contested case proceeding, the rules of the Office of Administrative Hearings shall control intervention rights.~~

The amendment to this subpart is necessary and reasonable to remove redundant language. Commission rule 7829.0800, subpart 6, provides that “[d]uring the time that a matter is before an administrative law judge, intervention procedures are governed by the rules of the Office of Administrative Hearings and by orders issued under those rules by the administrative law judge.”

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 chapter 7849, 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.

The amendment to this subpart is necessary and reasonable to remove the specification of a particular division within the Attorney General’s office which no longer exists.

7829.2700 PROCEDURE AFTER ADMINISTRATIVE LAW JUDGE REPORT.

Subpart 1. Exceptions to administrative law judge's report.

Except in cases subject to statutory deadlines, parties shall file and serve on the other parties any exceptions to an administrative law judge's report within 20 days of its filing unless otherwise specified by the commission. In cases subject to statutory deadlines, exceptions must be filed and served within 15 days of the filing of the report.

The amendment to this subpart is necessary and reasonable to effectuate the Commission’s authority to vary the time period for exceptions on a case-by-case basis, when circumstances warrant.

Subp. 3. ~~Oral~~ Argument.

Parties ~~must~~ will be granted an opportunity for oral argument before the commission as ~~required under Minnesota Statutes, section 14.61~~ prior to its decision.

The amendment to this subpart is necessary and reasonable to omit the implication that the Commission construes Minn. Stat. § 14.61, subd. 2, to require *oral* argument, specifically, but to retain the Commission's commitment to granting opportunity for oral argument as a matter of rule.

7829.2900 DECISION AND ORDER.

The executive secretary shall serve a decision and order of the commission on all parties and participants in the proceeding who are on the official service list.

The amendment to this part is necessary and reasonable to clarify the extent of the Commission's obligation to serve decisions and orders.

7829.3000 PETITION AFTER COMMISSION DECISION.

Subpart 1. Time for request.

A party or a person aggrieved and directly affected by a commission decision or order may file a petition for rehearing, amendment, vacation, reconsideration, or reargument within 20 days of the date the decision or order is served by the executive secretary. This subpart does not affect any statutory limit on the time allowed for a petition for judicial review that may run concurrently.

The amendment to this part is necessary and reasonable to clarify that Commission rules do not affect statutory deadlines for appeal. Although in some circumstances deadlines relating to petitions for rehearing and appeal periods are unambiguous,² in other cases the time period to file an appeal from a Commission decision and the time period to file a petition for rehearing may run concurrently. This amendment is intended to notify parties that appeal periods may run concurrently under the Administrative Procedure Act.

Subp. 3. Service.

A petition for rehearing, amendment, vacation, reconsideration, or reargument, and an answer, reply, or comment, must be served on the parties and participants in the proceeding ~~to which they relate.~~

The amendment to this subpart is necessary and reasonable to remove superfluous language.

7829.3150 UNTIMELY FILINGS.

Subpart 1. When filings may be excluded.

On its own motion or at the request of any party or participant, the commission may exclude a filing from the record:

- a) when the filing was not made within a time period established by rule, notice, or commission order; and
- b) upon a commission determination that the value of the document to the commission's deliberative process is outweighed by prejudice to a party, participant, or the public interest caused by the untimeliness.

² See, e.g., Minn. Stat. § 216B.27 (stating when Commission orders become effective when a petition for rehearing has been filed).

Documents in the agencies' electronic filing system excluded under this part shall remain in the agencies' electronic filing system, but shall be marked as "excluded from record by commission order" in search results.

This provision is necessary and reasonable to address procedural challenges and inequities brought about by untimely filings. In the Commission's experience, parties have sought to offer documents or other information after a deadline, and the absence of a rule governing those requests has deprived parties and participants of clarity about how those requests are to be handled. Historically, the Commission has decided whether to consider untimely submissions on a case-by-case basis.

With this provision, the Commission balances the interest in a complete record with the public's and parties' interests in orderly, efficient proceedings and in having time to consider and, if appropriate, respond to late-filed material. In striking this balance, the Commission determined it does not want to preclude itself from considering possibly relevant untimely information, but that it must weigh the value of the information against the interests that would warrant its exclusion.

Subp. 2. Required statement.

A person filing a document outside a time period established by rule, notice, order, or statute shall clearly mark the document as "late filed" and include a statement explaining why the filing was untimely and why it should not be excluded by the commission.

This provision is necessary and reasonable to address procedural challenges and inequities brought about by untimely filings. The required statement will aid the Commission in determining whether or not to consider an untimely filing.

Subp. 3. Documents offered less than one day before consideration.

A party or participant offering a document less than one full business day prior to, or at, the commission meeting to consider issues relevant to the document, must provide ten paper copies to commission staff and sufficient paper copies for the offering party to distribute to all parties and to be available to members of the public in attendance. The offering party or participant must electronically file the document within one business day following the commission meeting if it was not electronically filed prior to the meeting.

This provision is necessary and reasonable to address procedural challenges and inequities brought about by untimely filings. In order to be reasonably considered, filings offered less than one full day before consideration must be provided in sufficient quantity to be reviewed by the Commission and by interested persons, and must be filed promptly in the Electronic Filing System to ensure that they are available to the public. As written, this provision is consistent with the possibility that the offered document may ultimately be excluded under subpart 1.

7829.4000 EMERGENCY CIRCUMSTANCES

Subpart 1. Declared Emergency or Pandemic.

If the Executive Secretary determines that an in-person meeting of the commission is not practical or prudent because of a health pandemic or an emergency declared

under Minnesota Statutes, chapter 12, commissioners may participate by telephone or other electronic means. If at least one commissioner intends to participate remotely, the commission shall provide the public notice required by Minnesota Statutes, section 13D.021, subd. 4.

This provision is necessary and reasonable to implement emergency preparedness procedures in cases of a health pandemic or other emergency, as provided for by Minn. Stat. 13D.021.

Subp. 2. Remote Participation.

If the required public notice has been given, the commission shall afford any absent commissioner or commissioners an opportunity to participate in a commission meeting by telephone or other electronic means in a manner consistent with Minnesota Statutes, section 13D.021. The commission shall ensure that all commissioners, regardless of their location, can hear all discussion, testimony, and votes. Unless the meeting is closed for reasons authorized by statute, the commission shall ensure that members of the public who are present at the regular meeting location or monitoring remotely can hear all discussion, testimony, and votes. Commission votes shall be conducted via roll call.

This provision is necessary and reasonable to implement emergency preparedness procedures in cases of a health pandemic or other emergency, as provided for by Minn. Stat. 13D.021.

**VII.
REGULATORY ANALYSIS**

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the Statement of Need and Reasonableness. Paragraphs (1) through (8) below quote these factors and then give the agency's response.

A. A description of the classes of persons who probably will 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 utilities, stakeholder groups, and individuals with business before the Commission.
- Local and tribal government officials and interested members of the public who will be affected by, or receive notice of, Commission proceedings.
- Government agencies with regulatory responsibilities related to Commission proceedings.

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

- All Minnesota utilities, stakeholder groups, and individuals with business before the Commission.
- Customers of Minnesota utilities regulated by the Commission, whose rates will eventually include the costs of compliance and regulatory enforcement.

- Local and tribal governments and interested members of the public who will expend time and resources to participate, or to consider participating, in Commission proceedings.
- Government agencies with regulatory responsibilities related to Commission proceedings.

The following persons will probably benefit from the proposed rules:

- All Minnesota utilities, stakeholder groups, and individuals with business before the Commission; customers of Minnesota utilities regulated by the Commission; local and tribal governments; interested members of the public; and government agencies with regulatory responsibilities related to Commission proceedings will benefit from increased clarity and greater Commission efficiency brought about by the proposed amendments.

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).

In relation to the existing rules, the probable costs to the agency to implement and enforce the proposed amendments are negligible.

In relation to the existing rules, the probable costs to any other agency to implement and enforce the proposed amendments are negligible.

The Commission anticipates no effect on state revenues.

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

The purpose of the proposed rules is to establish procedural requirements that permit the Commission to effectively perform its quasi-legislative and quasi-judicial functions.

The Commission has identified no less costly or less intrusive methods to achieve the purpose of the proposed amendments. The Commission reaches this conclusion after thorough consideration of the comments received in the course of this rulemaking, in light of the Commission's need to conduct its proceedings efficiently and in the public interest. Only by amending the Commission's rules can the Commission update its procedural rules.

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

The purpose of the proposed rules is to establish procedural requirements that permit the Commission to effectively perform its quasi-legislative and quasi-judicial functions.

The Commission considered and rejected keeping the existing practice and procedure rules without amendment. The existing rules were last revised before the advent of electronic filing and, since that time, experience has informed the Commission's understanding of how to efficiently and thoroughly handle matters under its jurisdiction. The existing rules therefore no longer serve

the needs of the Commission or the public. In order to fully achieve the purposes of rules of practice and procedure, rule amendments are necessary.

E. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals. Minn. Stat. § 14.131 (5).

In relation to the existing rules, the probable costs to comply with the proposed amendments are negligible. Any costs would be borne by Minnesota utilities, stakeholder groups, and individuals with business before the Commission.

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 the proposed amendments, the Commission's rules would not accommodate appropriate standards for electronic filing, and would perpetuate unnecessary inefficiencies in Commission practice. The costs of these consequences would be borne by Minnesota utilities, stakeholder groups, individuals with business before the Commission, and the greater public, generally in the form of avoidable delay or otherwise diminished efficiency in processing Commission business.

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).

No existing federal regulations concern Commission practice and procedure. Accordingly, there are no differences to assess.

H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . '[C]umulative effect' means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time. Minn. Stat. § 14.131 (8).

The proposed rules cover areas not addressed by federal law or other Minnesota state laws. Therefore, this consideration is not applicable for this rule.

VIII. CONSIDERATION OF PERFORMANCE BASED REGULATORY SYSTEMS

Minn. Stat. §§ 14.002 and 14.131 require the Commission to describe how, in developing the rules, it considered and implemented performance-based standards that emphasize superior

achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

The Commission was guided by performance-based regulatory principles as it developed these proposed amendments. Because the rules are procedural, they are necessarily more prescriptive than rules concerned with substantive regulation. The proposed amendments extend duties and burdens no further than is necessary to fulfill the intended policy objective of advancing the Commission's efforts to more effectively and efficiently perform its quasi-legislative and quasi-judicial functions.

IX. COST OF RULE COMPLIANCE

As required by Minnesota Statutes, section 14.131, the Commission will consult with Minnesota Management and Budget (MMB)). We will do this by sending MMB copies of the documents that we send to the Governor's Office for review and approval on the same day we send them to the Governor's office. We will do this before publishing the Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Commission will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

For some proposed rules, Minnesota Statutes, section 14.127, requires the agency to determine if the cost of complying with proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The proposed rules are exempt from this requirement, however, because the requirement does not apply to rules proposed to be adopted by the Public Utilities Commission. Minnesota Statutes, section 14.127, subdivision 4(d).

X. EFFECTS ON LOCAL GOVERNMENTS

Minnesota Statutes, section 14.128 requires the agency to determine whether a local government will have to adopt or amend an ordinance or other regulation to comply with a proposed agency rule and submit this determination for ALJ approval.

As required by Minnesota Statutes, section 14.128, subdivision 1, the agency has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The agency has determined that they do not based on this Statement of Need and Reasonableness, the review conducted by the Commissioner of Management and Budget, and comments received on possible proposed rule drafts.

The proposed rules do not impose specific requirements, administrative burdens, or costs on local governments. 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 Minnesota Statutes, section 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, no comments from stakeholders indicated that local governments would be affected by, or be required to adopt or amend local regulations, to comply with the proposed rules.

XI. LIST OF WITNESSES

If these rules go to a public hearing, the Commission does not plan to rely on any non-agency witnesses at any rule hearing.

XII. LIST OF EXHIBITS

In support of the need for and reasonableness of the proposed rules, the Commission anticipates that it will enter the following exhibits into the hearing record:

1. Request for Comments (37 S.R. 1219, February 19, 2013).
2. Comments in response to Request for Comments submitted by: Charter Fiberlink COO, LLC and Charter Fiberlink CC VIII, LLC; Minnesota Department of Commerce; Office of the Attorney General – Antitrust and Utilities Division; Xcel Energy; CenturyLink; Otter Tail Power Company; Legalectric, Inc.
3. Comments in response to Notice of Comment Period submitted by: Dakota Electric Association; Minnesota Power; Otter Tail Power Company; CenturyLink; Minnesota Energy Resources Corporation; Minnesota Cable Communications Association; Minnesota Department of Commerce; CenterPoint Energy; NoCapX 2020 and United Citizens Action Network; Kristen Eide-Tollefson Cure; Xcel Energy
4. “Revised Procedures for Handling Trade Secret and Privileged Data,” September 1, 1999.
5. Staff Briefing Papers for Commission Meeting July 10, 2014.

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, Minn. Stat. § 14.14, subd. 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 Statement of Need and Reasonableness.

The Commission plans to publicize its proposed rule changes by:

- Publishing the Notice of Intent to Adopt Rules, and the text of 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 Minn. Stat. § 14.14, subd. 1a.

- Giving notice to the Legislature as required by Minn. Stat. § 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.mn.gov/puc/aboutus/rulemaking-project/>.
- Mailing the Notice of Intent to Adopt Rules to Minnesota’s 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.

The Commission’s Notice Plan includes giving the notice required by statute. We will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the Commission’s rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature as required under Minnesota Statutes, section 14.116.

The Commission’s Notice Plan did not include notifying the Commissioner of Agriculture under Minnesota Statutes, section 14.111 because the rules do not affect farming operations.

XIII. CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

June 3, 2015
Date



Daniel P. Wolf
Executive Secretary