


# Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File 624

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 8/8 DUE DATE 8/28

Resubmitted and Received _____

File complete

a. Returned to Agency w/o Filing w/Secretary of State 8/27
b. Approved _____ Date Sent Back to Agency _____

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1. Rules as Adopted ✓ incorporated with #13 and #15
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable ✓
4. Order for Hearing ✓
5. Notice of Hearing ✓ 4.15.80
   Sufficiency ✓? minor error in statutory citation
6. Secretary of State's List ✓? (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓
10. Publication in State Register ✓
    At least 30 days prior to hearing ✓ 3.10.80
11. Statement of Need and Evidence ✓ incorrect statutory citation p.5.
12. Hearing Examiner's Report A) ✓ 1ST hearing. B) ✓ 2ND hearing
13. Agency's Findings of Fact ✓ incorporated with #1 + #15
14. Certificate of Board's Resolution Adopting Rules, where applicable ✓
15. Order Adopting ✓ incorporated with #1 and #13
16. Report of Chief Hearing Examiner A) ✓ 1ST B) ✓ 2ND
17. Order Approving Incorporation by Reference, where applicable N/A
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓
20. Petition by Public, where applicable N/A

Our File: 624

ADMIN 1000 (Rev. 1-78)
SF-00005-01

STATE OF MINNESOTA

# Office Memorandum

DEPARTMENT: ATTORNEY GENERAL

TO : TED SULLIVAN
Commission Support
Public Utilities Commission

DATE: Sept. 15, 1980

Attn: JAMES E. LACKNER

FROM : H. THEODORE GRINDAL HTG
Special Assistant
Attorney General

PHONE: 297-3471

SUBJECT: Rules as Approved In the Matter of the Proposed Adoption of a Rule of the Minnesota Public Service Commission Governing Gas and Electric Utilities' Access to Customers' Premises, 4 MCAR § 3.0304.

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

HTG/bw
Encl.
cc: Duane Harves
Susan Robertson

Our File #624

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

# Office Memorandum

DEPARTMENT ATTORNEY GENERAL

TO : TED SULLIVAN
Commission Support
Public Utilities Commission

DATE: 8/27/80

Attn: JAMES E. LACKNER

FROM : H. THEODORE GRINDAL HTG
Special Assistant
Attorney General

PHONE: 297-3471

SUBJECT: In the Matter of the Proposed Adoption of a Rule Governing Gas and Electric Utilities' Access to Customers' Premises.

The rules in the above-captioned matter have not been reviewed by this office yet because of the insufficiency of certain documents submitted concerning the rule.

Ruling yours?

1. The Certificate of Commission's Adoption of Rules Resolution does not give specific authority to any one person to sign the Order Adopting the Rule. Also, the Certificate submitted does not include the language of the resolution passed by the Commission. The proper procedure is noted on the attached example of a previous Public Utilities Commission resolution.

2. For the Order Adopting the Rule to be correct, the Commission Resolution mentioned above must indicate that the signature of Mary L. Harty is the appropriate one of the Order.

Please supply our office with the corrected documents as soon as possible. Only one copy of the Certificate of Commission's Adoption of Rules Resolution is necessary. However, this resolution must specifically delegate the authority to someone to sign the Order Adopting the Rule. Traditionally, this authority is given to an administrator and one member of the Commission. Please refer to the attached correct example for guidance.

If you have any further questions about this issue, please feel free to contact me.

Ted Sullivan 6-7105

HTG/bw
Encl.

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OFFICE OF HEARING EXAMINERS

# Office Memorandum

TO : RANDY YOUNG, Director
Public Service Commission

DATE: Nov. 28, 1979

FROM : DUANE R. HARVES
Chief Hearing Examiner

PHONE: 6-8100

SUBJECT: IN THE MATTER OF THE PROPOSED ADOPTION OF A RULE OF THE MINNESOTA PUBLIC SERVICE COMMISSION GOVERNING GAS AND ELECTRIC UTILITIES' ACCESS TO CUSTOMERS' PREMISES, 4 MCAR § 3.0304. OUR FILE PSC-79-144-HC

Enclosed herewith I am returning the two copies of the record in the above-referenced matter to you, along with the original and one copy of the Order of the Chief Hearing Examiner.

You will note that, due to deficiency in the Notice mailed to those persons registered on the Secretary of State's list, I have ordered that the rule be withdrawn and the matter be reconvened.

DRH:sh
Enc.
cc: Lee Sheehy/Joanne Hinderaker

RECEIVED
NOV 29 1979
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

PSC-79-114-HC
A-8117-23

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PROPOSED ADOPTION OF A RULE OF THE MINNESOTA PUBLIC SERVICE COMMISSION GOVERNING GAS AND ELECTRIC UTILITIES' ACCESS TO CUSTOMERS' PREMISES, 4 MCAR § 3.0304.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on June 20, 1979, before Harry Seymour Crump, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of the Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Public Service Commission (hereinafter "PSC") on July 30, 1979; and

WHEREAS, the PSC has now determined to adopt the rule referenced above pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the PSC has submitted said rule to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.110; and

WHEREAS, the Chief Hearing Examiner finds that the final rule proposed for adoption is not substantially different from the plan proposed at the public hearing; and that the PSC has met all of the requirements of Minn. Stat. § 15.0412, subd. 4, with the following exception:

While the Notice of Hearing published in the State Register and initially sent to the Office of Hearing Examiners was entirely proper in form and content, the notice which was sent to the persons listed on the Secretary of State's list is, in all respects, deficient, fails to comply with 9 MCAR § 2.102 C, and Minn. Stat. § 15.0412, subd. 4. (A copy of the notice sent to those registered on the Secretary of State's list is attached hereto as Exhibit A.)

NOW, THEREFORE, upon receipt of this Order, pursuant to 9 MCAR § 2.111, the PSC shall either withdraw the rule or reconvene the rule hearing.

Dated this 28th day
of November, 1979.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA )
) ss
COUNTY OF RAMSEY )

AFFIDAVIT OF SERVICE

Valerie Muska, being first duly sworn, deposes and says:

That on the 11th day of May, 1979, (s)he served the attached Notice of Hearing

Docket No. A 8117-23 / PSC-79

[x] by depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid

[ ] by personal service

to all persons at the addresses indicated below or on the attached list:

SEE ATTACHED LISTS

Hearing Examiner
Harry Crump

RECEIVED
MAY 14 1979
OFFICE OF HEARING EXAMINERS

Valerie Muska

Subscribed and sworn to before me
this 11th day of May, 1979

Mary E. Swanson

MARY E. SWANSON
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES FEB. 5, 1983

EXHIBIT A

# STATE OF MINNESOTA
## DEPARTMENT OF PUBLIC SERVICE

7TH FLOOR AMERICAN CENTER BLDG.
KELLOGG & ROBERT STS.
SAINT PAUL 55101
PHONE:

RECEIVED
MAY 14 1979
OFFICE OF HEARING EXAMINERS

May 11, 1979

NOTICE OF PUBLIC HEARING
EXCERPTED FROM THE DEPARTMENT'S WEEKLY CALENDAR

Notice is hereby given that the Public Service Commission of Minnesota will hold a public hearing on the following matter at the time(s) and place(s) shown:

WED., JUNE 20, 1979, 9:30 a.m., LARGE HEARING ROOM, 7TH FLOOR, AMERICAN CENTER BUILDING, 160 E. KELLOGG BLVD., ST. PAUL: (Hearing Examiner Harry Crump 612/296-8111)

A-8117-23 / PSC-79- UNIFORM ACCESS RULE - GAS AND ELECTRIC UTILITIES: In the matter of the proposed adoption of rules of the Minnesota Public Service Commission governing utilities' access to customers' premises. The rule reads as follows: "4MCAR § 3.034 Uniform Access. A utility may not enter customer's premises if: A. The customer has not consented; B. The utility has not obtained a court order authorizing entry, or; C. An emergency situation involving imminent danger to life or property does not reasonably appear to exist." (5-11-79)

Minn. Stat. § 15.052 (1976) requires that all contested cases be heard by an examiner assigned by and governed by the rules of procedure of the Office of Hearing Examiners (Minn. Rules HE 201-299). Therefore, when a hearing date has been set on a contested case, original pleadings and motions (such as petitions to intervene, prefiled testimony, briefs, requests for postponements) must be served on the hearing examiner at the Office of Hearing Examiners, 1745 University AVenue, St. Paul, MN 55104, with 16 copies simultaneously filed with the Secretary of the Public Service Commission, 790 American Center Building, 160 East Kellogg Boulevard, St. Paul, MN 55101; and a copy of said filings must be served on each party of record. Please contact the hearing examiner, whose name appears in parentheses following the date and location ofhearing, for parties of record.

Leo J. Ambrose
Secretary

vm

AN EQUAL OPPORTUNITY EMPLOYER

HC copy

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

| | |
|---|---|
| Roger L. Hanson | Chairman |
| Leo G. Adams | Commissioner |
| Katherine E. Sasseville | Commissioner |
| Juanita R. Satterlee | Commissioner |
| Lillian Warren-Lazenberry | Commissioner |

| | |
|---|---|
| In the Matter of the Proposed Adoption of a Rule Governing Gas and Electric Utilities' Access to Customers' Premises. | DOCKET NO. A-8117-23<br>AGENCY FINDINGS, RULE IN FINAL FORM AND ORDER ADOPTING RULE. |

## AGENCY FINDINGS

The Public Utilities Commission agrees with and adopts as part of these findings the report of Hearing Examiner Harry S. Crump dealing with the above entitled matter.

In order to clarify the proposed rules and effectuate the recommendations of the Hearing Examiner, the Commission, after lengthy consideration has made the following changes in the proposed rule:

1) The Hearing Examiner's Findings of Fact No. 10 is hereby incorporated into the final rule. The Commission finds that all three subdivisions of B are independent conditions and will be more clearly understood as such if the conjunction "or" is inserted at the end of subdivision 2 following the word "utility".

2) In Finding of Fact No. 11, the Hearing Examiner finds merit in MPIRG's suggestion limiting the period of consent and suggests that the Commission consider including such a limitation in the final rule.

The Commission agrees with the intent of the Hearing Examiner's findings and finds that yearly renewal of consent provides a necessary and reasonable protection for the utility customer. The Commission finds that consent should be given on a yearly basis in order to insure that customers have reasonable notice and opportunity to exercise their right to privacy by terminating their consent.

The Commission finds that the suggestion that the customer affirmatively give consent every year may become extremely burdensome on the utility and prove to be an expensive and complicated administrative process.

Therefore, the Commission finds that the rule should not provide that the customers consent automatically expires, but that the customer's consent will continue in force unless the utility is notified to the contrary. The rule requires the utility to give notice to customers, as defined in the rule, on an annual basis, informing the customer that the customer may revoke consent at any time by written notice to the utility. This language protects the customer while at the same time preventing an unnecessary burden upon the utilities.

The Commission finds that this periodic reminder is both a necessary and

reasonable manner in which to inform customers of their right to revoke their previously given consent.

3) In addition to the yearly notice discussed above, the Commission finds that the language recommended in paragraph 12 of the hearing examiner's report is necessary and reasonable to further put the customer on notice of the right to revoke consent at any time by written notice to the utility.

CONCLUSIONS

1) The Public Utilities Commission is authorized to promulgate this rule under Minnesota Statute § 216B.08 (1978).

2) The Commission provided due, timely, and adequate legal notice of the hearings held herein. The hearings were properly conducted by the Hearing Examiner. Sufficient opportunity was given for persons to submit written testimony, statements, and arguments. All substantive and due process requirements of statutes, rules, and constitutions have been complied with.

3) The need for and reasonableness of the Uniform Access Rule have been shown by the testimony at the hearing and as set forth above.

4) 4MCAR § 3.0304 should read as follows:

The Rule As Proposed for Adoption in Final Form

4 MCAR § 3.0304 Uniform Access

A. A utility shall not enter a customer's premises if:

1. The customer has not consented; or
2. The utility has not obtained a court order authorizing entry; or
3. An emergency situation involving imminent danger to life or property does not reasonably appear to exist.

B. A customer shall be deemed to have consented to entry if:

1. The customer has agreed orally or in writing in advance of entry that the utility may enter the customer's premises on a particular occasion; or
2. The customer has agreed in writing that the utility may enter the customer's premises to read its' meter or service utility equipment at reasonable times and occasions if the premises are unlocked, or if the customer has supplied a key. The form of agreement shall state in large easy-to-read print "YOU DO NOT NEED TO SIGN THIS AGREEMENT IN ORDER TO OBTAIN SERVICE. IF YOU DO SIGN THIS AGREEMENT, YOU MAY REVOKE IT AT ANY TIME BY WRITTEN NOTICE TO THE COMPANY." When consent has been given

Underlining denotes new language from Rule as Proposed

in accordance with this subdivision, the utility shall notify the customer, on an annual basis by first class mail, that the consent previously given will continue in force for an additional year, unless the customer revokes the consent by written notice to the utility; or

3. The customer is on a non-residential rate and the portion of that premises entered is open to the general public.

C. For the purpose of this rule "premises" means buildings and structures and land surrounding the buildings which is not accessible except through a locked gate.

D. A utility shall notify the jurisdictional law enforcement agency before entering the customer's premises without the customer's consent unless it would be unreasonable under the facts and circumstances to do so.

ORDER

1. The Findings of the Report of the Hearing Examiner dated May 19, 1980, relating to the proposed rules, are adopted as the Commission's own, except as they are modified by the Commission's Findings as set forth above.

2. The Conclusions of the Report of the Hearing Examiner dated May 19, 1980, relating to the proposed rules, are adopted as the Commission's own, except as they are modified by the Commission's Conclusions as set forth above.

3. The proposed rule is hereby modified to implement the Commission's Findings and Conclusions, and as modified, the rule is hereby adopted by the Commission.

4. This Order shall be effective immediately.

BY ORDER OF THE COMMISSION

ACTING EXECUTIVE SECRETARY

SERVICE DATE: SEP 10 1980

( S E A L )

TS:vm

APPROVED AS TO FORM AND LEGALITY

Sept 15 19 80

WARREN SPANNAUS, ATTORNEY GENERAL

BY H. Theodore Druhl

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 15 1980
Joan Anderson Growe
Secretary of State

1:00 PM

CERTIFICATE OF COMMISSION'S

AUTHORIZING RESOLUTION

I, Randy Young, do hereby certify that I am the Acting Executive Secretary of the Minnesota Public Utilities Commission, a Commission duly authorized under the laws of the State of Minnesota and that at a meeting of the Commission duly and properly called and held on February 4, 1980, the Commission ordered the Executive Secretary, Mary L. Harty to call a hearing for the purpose of promulgating rules governing utilities' access to customer premises, as well as perform any and all acts incidental thereto, including but not limited to signing an Order for Hearing and Notice of Hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 8th day of August, 1980.

RANDY YOUNG, ACTING EXECUTIVE SECRETARY

Juanita R. Callerlee

COMMISSIONER

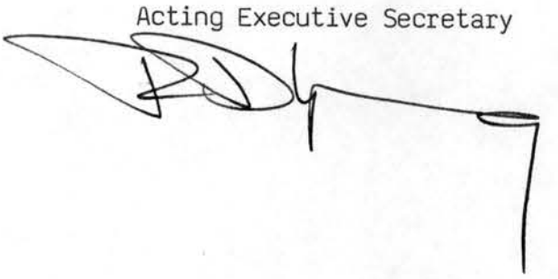
CERTIFICATE OF COMMISSION'S
ADOPTION OF RULES RESOLUTION

I, Randy Young, do hereby certify that I am Acting Executive Secretary to the Public Utilities Commission, a commission duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and accurate copy of a resolution adopted at a meeting of the Public Utilities Commission, duly and properly called and held on the 2nd day of September, 1980; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> Resolved, that the Findings of Fact, Conclusions, and Order Adopting Rule relating to the proposed Uniform Access Rule, 4MCAR Sec. 3.0304, be and they hereby are approved and adopted, pursuant to authority vested in us by M.S. Secs. 216B.23, Subd. 2, and that Randy Young, Acting Executive Secretary to the Commission, be and hereby is authorized to sign an Order adopting this rule.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 27th day of December, 1979.

Acting Executive Secretary



CERTIFICATE OF COMMISSION'S ADOPTION OF RULES RESOLUTION

I, Randy Young, do hereby certify that I am Acting Executive Secretary of the Public Utilities Commission, a Commission duly authorized under the laws of the State of Minnesota, and that at a meeting of the Public Utilities Commission, duly and properly called, and held on the 8th day of August, 1980, that a quorum was present at said meeting and that the Commission voted to adopt the Uniform Access Rule as proposed.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 8th day of August, 1980.

ACTING EXECUTIVE SECRETARY

Juanita D. Fullerlee

COMMISSIONER

ADMIN 1000

STATE OF MINNESOTA

DEPARTMENT Public Utilities Commission

# Office Memorandum

TO : Attorney General Administrative Rule Division DATE: August 8, 1980

FROM : Ted Sullivan TES
Commission Support, Public Utilities Commission PHONE: 296-7105

SUBJECT: Documents pertaining to Uniform Access Rule: Docket No. A-8117-23

A. Findings of Fact, Conclusions Rule in Final Form and Order Adopting Rule. 3 copies

B. Rule as proposed. 2 copies

C. Certificate of Commission's Authorizing Resolution.

D. Order for Second Hearing

E. Notice for Hearing as sent to all persons on Secretary of States list.

F. 2 copies of Affidavit of Mailing and 1 copy of Secretary of States list.

G. Secretary of State's Certification of Delivery of Secretary of State's list to agency. 2 copies

H. Affidavit of Acquisition of Secretary of State's list. 2 copies

I. Rule and Notice as published in State Register. 2 copies

J. Statement of Need. 2 copies

K. Hearing Examiner's Report. 2 copies

L. Certificate of Commission's Adoption of Rules Resolution. 2 copies

M. Order of Chief Hearing Examiner. 2 copies

N. Certificate of Compliance with Rulemaking Procedures. 2 copies.

O. Notice of Intent to Solicit Outside Opinion. 2 copies

P. Order of Chief Hearing Examiner from first Hearing. 2 copies

Q. Report of Hearing Examiner from first Hearing. 2 copies

TS:vm

HE Report A

M.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

July 30, 1979

Appeal up
8-19-79

RECEIVED
Dept. of Public Service
JUL 31 1979
Commission Support

Mr. Randy Young
Director
Minnesota Public Service Commission
Seventh Floor, American Center Bldg.
160 East Kellogg Boulevard
Saint Paul, Minnesota 55101

Re: In the Matter of the Proposed Adoption of Rule of the Minnesota Public Service Commission Governing Gas and Electric Utilities' Access to Customers' Premises, 4 MCAR Sec. 3.0304.
Docket Nos. PSC-79-144-HC; A-8117-23.

Dear Mr. Young:

Enclosed and served upon you by mail, please find the Report of the Hearing Examiner. I am also enclosing the official record, including the transcript of the proceedings.

Sincerely,

Harry Seymour Crump
by SRO

HARRY SEYMOUR CRUMP
Hearing Examiner

Telephone: 296-8111

HSC:sw
Encs.

distrib. to
Comm., Steve
Jeff, Bob C.
8-1-79

Mr. Randy Young
Director
Minnesota Public Service Commission
Seventh Floor, American Center Bldg.
160 East Kellogg Boulevard
Saint Paul, Minnesota 55101

PSC-79-144-HC
A-8117-23

COMMISSION ORIGINAL

RECEIVED
Dept. of Public Service
JUL 31 1979
Commission Support

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA PUBLIC SERVICE COMMISSION

In the Matter of the Proposed Adoption of Rule of the Minnesota Public Service Commission Governing Gas and Electric Utilities' Access to Customers' Premises, 4 MCAR Sec. 3.0304.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Harry Seymour Crump, Hearing Examiner from the State Office of Hearing Examiners, on June 20, 1979, at 9:30 a.m. in the Large Hearing Room, Seventh Floor, American Center Building, 160 East Kellogg Boulevard, Saint Paul, Minnesota.

This is a rules hearing pursuant to Minn. Stat. Ch. 15, held to determine whether to adopt rules which would regulate circumstances under which utility representatives may enter customers' premises.

Jerome Getz, Assistant Attorney General, and Jeffrey M. Baill, Staff Personnel, represented the Minnesota Public Service Commission (hereinafter the "Commission").

Twenty-four members of the public and utility representatives attended the hearing. The hearing register contains eleven names and four persons spoke at the hearing. The hearing continued until all persons had an opportunity to be heard. The record remained open until July 10, 1979, for the submission of written comments. Nine such comments were received, including three letters from the Commission containing some changes to the rule and responses to various suggestions made during the hearing.

Pursuant to Minn. Stat. Sec. 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

Thereafter, the Commission shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. Sec. 15.052, subd. 4. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Commission on the issues of substantial changes in the rule and compliance with Minn. Stat. Sec. 15.0412 within ten calendar days. The Commission will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On May 3, 1979, the Commission filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rule.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.

2. On May 14, 1979, a Notice of Hearing and a copy of the proposed rule were published at 3 State Register 2030. On May 11, 1979, a Notice of Hearing was published in the Public Service Commission's weekly calendar on page 4, and thereafter until the date of the hearing.

3. On May 11, 1979, the Commission mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On May 11, 1979, the Commission filed the following documents:

(a) The Order for Hearing.
(b) The Affidavit of Receipt of the Secretary of State's list.
(c) The Secretary of State's Certificate.
(d) The Statement of Need and Reasonableness.
(e) All materials received following a Notice of Intent to Solicit Outside Opinion published at 3 State Register 991 on November 6, 1978.

5. On May 14, 1979, the Affidavit of Mailing of the Notice to all persons on the Secretary of State's list was filed.

6. On May 17, 1979, the Commission filed the following documents:

(a) The Notice of Hearing as mailed.
(b) The names of Commission personnel who would represent the Commission at the hearing, together with the names of any other witnesses solicited by the Commission to appear on its behalf.

These documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of hearing and thereafter until the Report of the Hearing Examiner was issued.

7. The record remained open through July 10, 1979, for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

8. The Commission cites as its statutory authority to promulgate the proposed rule, Minn. Stat. Sec. 216B.04; Sec. 216B.05, subd. 2; Sec. 216B.09; and Sec. 216B.23.

Minn. Stat. Sec. 216B.08 authorizes the Commission to make rules to regulate every public utility as defined therein.

4 MCAR Sec. 3.0304 - Uniform Access

9. This proposed rule is an amendment to the gas and electric utilities' customer service rules and standards. It limits these utilities' access to premises of customers except under certain situations. Utilities' access to customers' premises is presently regulated by tariff provisions approved and filed with the Public Service Commission. Under the terms of the tariff provisions, a utility representative is given the right to enter a customer's premises for virtually any reason without permission from customers. The proposed rule will uniformly govern all utilities' access to customers' premises.

At the hearing, the representative of the Commission read into the record the Statement of Need indicating an example of the practices of a utility involving a forced entry into a private residence which resulted in a complaint filed with the Public Service Department. The Commission made reference to similar complaints on file with the Department. Furthermore, in 1978, a utility utilized the services of locksmiths 115 times. (The use of locksmiths averages 100 times each year.) Since 1973, said utility received 38 complaints.

10. Provision C. of this proposed rule provides for access by utilities where consent is obtained from customers. This provision drew considerable comments and proposed changes specifying the nature of and form of consent to be obtained. Marshall R. Whitlock, Executive Secretary, Legislative Commission to Review Administrative Rules (LCRAR), stated at the hearing that this rule does not clearly indicate how consent is measured. Kenneth Peterson, Attorney, Minnesota Public Interested Research Group (MPIRG), endorsed the proposed rule subject to several qualifications. In MPIRG's statement which was read at the hearing, it suggested that permission should be requested and consent should be especially given for each entry. However, at the hearing, MPIRG was agreeable to a blanket consent form where the form clearly indicated the customer's options and that this requirement was not a condition for service. By post-hearing comment, MPIRG stated that the definition of "consent" proposed by this Commission was far too lax and invited abuse. It submitted a recommendation involving a very detailed description of the definition of "consent" including complete and necessary information to be included in a written service voucher to be executed by the customer or utility representative for each entry. Kris Sanda, Director, State of Minnesota, Office of Consumer Services, in a post-hearing comment, suggested that a definition of consent should be included in the rule and that consent should be in writing, updated annually and revocable at any time, and the customers should be informed of their options on a semi-annual basis via bill stuffers. Attached to her comments was a consent form allowing entry to a customer's premises for purposes of meter-reading. The customer was given the following options to check on the consent form:

> 1. I give consent for utility representatives to knock once, walk into my home, announce their presence, read the meter, and leave.
>
> 2. I prefer to have the representatives knock and wait for me to open the door before entering.
>
> 3. I prefer another arrangement (i.e., leaving key with neighbor). Specify: _____.
>
> I do not consent to the utility representatives entering my premises for purposes of reading meters.
>
> 4. I prefer to call in my own meter readings on the specified day each month.
>
> 5. I prefer to receive estimated bills, with one required reading every year.

11. Other positive comments were received concerning this rule. Linda Ojala, Legal Counsel, Minnesota Civil Liberties Union, urged the adoption of this proposed rule to protect the constitutional rights of utility customers. Donald W. Lokken, Staff Attorney, Otter Tail Power Company, Fergus Falls, Minnesota, stated that they do not find the standards set forth in the rule unreasonable. The Company, however, requested that the proposed rules be revised to permit access to customers' premises for the purpose of servicing a special control system to be installed in customers' premises. Fred E. Horton, Jr., Counsel, Interstate Power Company, Dubuque, Iowa, stated that the Company supports the intent of the proposed rule to the extent it states the present legal relationship between the utility and its customers. This utility company provides both gas and electric services to customers in southern Minnesota. The utility company interpreted PSC Rule 298.5 as providing implied consent for access to its equipment located only outside of the building or in a common area, such as a basement or a utility room of a multi-dwelling building. Specific consent is appropriate for entry into private dwelling areas not open to the public. This utility suggested language to clarify the restriction to residential circumstances which place the burden on the customer to deny access or the resident or owner of an unoccupied dwelling to grant access. In addition, he suggested language granting utility access to common areas or buildings containing more than one dwelling unit. In conclusion, the utility suggested that the Commission directs its actions to alleviate specific abuses in the industry to the particular utility rather than by general rulemaking.

12. Kirk O. Kuwitzki, Attorney, Minnesota Power and Light Company (MP&L), recommended at the hearing that the proposed rule not be adopted by the Commission. MP&L firmly believed that this rule, if adopted in its present form, would pose many more problems then it would solve. It suggested that the Commission should attempt to correct specific problems by working with the specific utilities. MP&L noted that there are two acceptable alternatives available to the utility customers where customers do not want meter readers to enter their homes: Under PSC 311 B., it allows customers to read their own meters and forward the reading to the utility. The utility must be allowed to read these meters at least once every 12 months in order to ensure accurate readings. Secondly, under PSC 113, the utility may estimate every other bill, and with customer consent more bills could be estimated. MP&L stated that the proposed rule is so unworkable that there will be little recourse but to increase estimated billings. Furthermore, MP&L suggested that the more appropriate and less drastic means of correcting the problem would be to amend this service regulation to allow reasonable access at reasonable hours. MP&L did raise the question of whether the one-time blanket consent is sufficient or whether the utility must obtain a separate consent every time it is scheduled to read a meter.

In its post-hearing comments, MP&L recommended the following proposed rule:

> A utility shall not forceably enter a customer's premises by employing a locksmith or by damaging a customer's property without first having obtained a court order or upon the occurrence of an emergency reasonably expected to result in imminent danger to life or property.

In discussing the question of potential invasion of a customer's constitutional right of privacy as raised by MPIRG and by the Commission, MP&L stated that when customers subscribe to an electrical or gas service and allow utility property to be placed on or in their premises, they must out of necessity be willing to compromise that right of privacy. In addition, MP&L stated that pursuant to terms of PSC 298 A.5. a customer "must provide the utility reasonable access to its equipment and property". Failure to do so will result in the customer being eligible for disconnection of service. MP&L states although MP&L would never use a consent form as a threat, it would certainly use the power granted by PSC to disconnect a customer who unreasonably refused entry to utility personnel. MP&L assumed that the PDS staff is aware of this prior PSC rule and does not dispute the authority of utilities to disconnect service should reasonable access be prohibited by a customer.

13. A. B. Seran, Attorney, representing Minnesota Gas Company, did not testify at the hearing, but submitted post-hearing comments relative to the proposed adoption of the uniform access rule. Minnesota Gas Company stated that the proposed uniform access rule is not warranted and would impose additional costs to the ratepayer and will increase the utilities' estimated billings. Minnesota Gas Company operates under its tariff provision (8.01) which allows access to customers' premises at all reasonable times for the purpose of reading gas meters and inspecting, installing, repairing or removing all property owned by Minnesota Gas Company. This provision has been in effect and on file with the Public Service Commission since December 31, 1974. The Company also contended that the Commission failed to demonstrate the need for the proposed rule since the record is void of any complaints except reference to one matter in addition to the minimum number of complaints received by the PSC and by the Minnesota Gas Company. The Gas Company estimated that the total additional yearly costs (per customer) will exceed $140. The proposed rule requiring specific authorization will reduce the number of meters that can be read during the working day. One percent of the Gas Company's accounts are recorded as "do not walk in". Twelve thousand accounts have supplied the Gas Company with keys to the customers' premises. Finally, the Gas Company stated that the customers' dissatisfaction with the estimated bills will increase credit department cost and lag time for collection of revenues, thus increasing working capital requirements. These costs are ultimately borne by all customers. In conclusion, the Gas Company recommended an amendment to its tariff provision 8.01 granting the Gas Company representatives a right of access to premises and property of the customer for the purpose of protecting life and/or property, and restoring service following either a scheduled or unscheduled interruption of gas. The recommendation indicated access to a customer's premises may be obtained by:

(1) express customer authority; (2) without customer or judicial authority under certain emergency situations with notification to appropriate police authority prior to undertaking any entry; and (3) judicial authority but without customer authority.

14. By post-hearing comments, the Staff of the Public Service Commission opposed the proposal made by MPIRG to include a written service voucher as part of the consent form because it would create record-keeping burdens for utilities and burdens customers by necessitating a personal signature before any entry may be made. The Commission stated the intent of the uniform access rule is to ensure that customer authority is received before non-emergency entrances are made into homes. In addition, MPIRG's proposal prohibited blanket waivers for any future need by the utility which goes beyond the intent of the proposed rule prohibiting customers from giving permission to utilities by a means which may be preferable to the customer. At the hearing, the Staff of the Commission stated that the need for the uniform access rule stems from the desire to protect the interests and rights of customers who may be injured by utilities' free and unrestricted access to their premises. In its post-hearing comments, the Staff of the Commission amended the proposed rule to conform to some comments and statements made during the hearing by incorporating basic ideas from the Statement of Need and Reasonableness into the rule itself. Part of the amendment reads as follows:

> B. A customer shall be deemed to have consented to entry if:
>
> 1. the customer has agreed orally or in writing in advance of entry that the utility may enter the customer's premises on a particular occasion, or
>
> 2. the customer has agreed in writing that the utility may enter the customer's premises to read its meter or service utility equipment at reasonable times and occasions if the premises are unlocked, or if the customer has supplied a key. The form of agreement shall state in large easy-to-read print "YOU DO NOT NEED TO SIGN THIS AGREEMENT IN ORDER TO OBTAIN SERVICE" and shall further provide that the agreement is revocable at will by the customer.
>
> 3. The customer is on a non-residential rate and the portion of the premises entered is open to the general public.

15. The Hearing Examiner finds that this portion of the rule relative to consent is needed and reasonable as amended. Contrary to the utilities' objections that the Commission should deal with particular abuses on a case-by-case basis, the uniform rule provides for a statewide application of a problem which may reoccur throughout the state as indicated by the Commission in one of its comments. Furthermore, as amended, the proposed rule would not be unduly burdensome on the utilities. Contrary to the Minnesota Gas Company's contention, the Commission's presentation of facts, including other public witnesses' comments, were adequate facts to support this proposed rule and meet the burden of the Commission. From the general comments made at the hearing and in the post-hearing comments, the Hearing Examiner can reasonably discern the basis for the Commission's proposed rule. The Commission need

not provide the same articulation or documentation as required in an evidentiary hearing to meet its burden in a rules proceeding under the circumstances in this particular matter.

16. Contrary to the utilities' contentions relative PSC Rule 298.5 and tariff provision 8.01, the proposed rule, if adopted, would clearly provide for the means of access to customers' premises rather than the interpretation the utilities contrues the prior rules and tariff provision to provide. Furthermore, since rules by law have the force and effect of law, they should be interpreted and construed similar to statutes. Where there is a conflict with a special provision in the same or another rule, the two shall be construed if possible so that the effects may be given to both. If a conflict exists between two rules, the latter rule should prevail. See, Minn. Stat. Ch. 645, and Minn. Stat. Sec. 15.0413, subd. 3 (1978).

The above amendment to the proposed rule appears not to constitute a substantial change.

17. Provision C. of the proposed rule provides for limiting access to a customer's premises unless an emergency situation involving imminent danger to life or property reasonable appears to exist. Examples of emergency situations presented by the Commission were a "gas leak" and "to turn on pilot lights after an unexpected interruption in service where a danger of gas accumulation exists." An "emergency" does not include situations where a utility is tearing up a street or making area improvement and immediate access is necessary only to keep down costs. According to the Commission, those conditions can be adequately dealt with by prior notice, court order or planning. MPIRG commented at the hearing that economic considerations should not be allowed to invade the individual's privacy. MPIRG analogized to this provision the state's Environmental Rights Act where economics are not allowed to justify environmental degradation. MPIRG concluded, however, that a substantial number of homes are broken into by utilities for non-emergency purposes. Furthermore, MPIRG encouraged the Commission to adopt a rule that requests the police to standby as the emergency entrance is made. The Minnesota Gas Company in its post-hearing comments stated that other situations might well be "emergencies" and each situation may be reviewed and considered on its own set of facts. The Minnesota Gas Company concluded that it is impossible to define "emergency" and that each utility should be entitled to make the decision of whether or not an emergency exists (subject to judicial review) without control by the public regulatory body. The North Central Public Service Company suggested the determination of emergency should be made by the utility. The Commission in its post-hearing comments stated that the Public Service Commission would make the determination of whether or not an emergency situation existed, resulting in a violation by the utility of the uniform access rule. At the hearing, the Commission (Staff) stated that allowing the utilities to determine what it means beyond danger to life or property allows them (utilities) so much leeway as to make the rule worthless. The Minnesota Gas Company suggested that the tariff provision 8.01 be

amended to include under emergency situations that the utility will notify appropriate police authority prior to undertaking any entry without customer or judicial authority. The Minnesota Gas Company also suggested in its challenge of the Commission's authority to sanction utility companies for violation of the rule an exculpatory clause making such a determination by the Commission inadmissible as evidence in any trial.

18. The Hearing Examiner finds this provision of the rule allowing emergency entrances to customers' premises to be reasonable and needed. It is, however, suggested that the Commission incorporate into this rule additional language from the Statement of Need and Reasonableness indicating whether or not an emergency situation exists. The Examiner would also urge the Commission to incorporate under "emergency entrances" the statement that the appropriate police authority should be notified by a written notice prior to an emergency entrance made by the utility company. Contrary to the Minnesota Gas Company, the Hearing Examiner finds the Commission to have authority to sanction utilities for violations of provisions of the Public Service rules or laws as provided for in Minn. Stat. Ch. 216B, et seq. Any penalties imposed under these provisions would not hinder other remedies under the law available to customers.

19. Provision B. of the proposed rule provides for utilities to gain access to customer premises by obtaining a court order. This rule drew no specific comments and is reasonable and needed. The Commission's Statement of Need and Reasonableness is hereby adopted as facts by the Hearing Examiner.

20. By post-hearing comments, the Commission amended this proposed rule as the result of comments made at the hearing as follows:

A. A utility shall not enter a customer's premises if:

1. The customer has not consented; or

2. The utility has not obtained a court order authorizing entry; or

3. An emergency situation involving imminent danger to life or property does not reasonably appear to exist.

B. (See Paragraph 14 of this Report.)

C. For the purpose of this rule "premises" means buildings and structures and land surrounding the buildings which is not accessible except through a locked gate.

The Hearing Examiner finds that these technical changes are needed and reasonable to clarify the rules. They appear not to constitute a substantial change. This proper citation of this proposed rule has been correctly cited in this Report by the Examiner.

21. The Examiner finds that it is unnecessary to further define "customer" as the definition is already included under PSC Rule 295 C. At the hearing, the Commission Staff in response to several comments and questions stated that the definition included in its Statement of Need and Reasonableness for "customer" included both business and residential customers; it covers all people who use gas or electric services. The Examiner recommends

that if no conflict exists between the term "customer" as defined in the Commission's Statement of Need and Reasonableness and as presently included in PSC Rule 295 that all reference to the definition of customer as indicated in the Statement of Need and Reasonableness should be stricken as being unnecessary and confusing since it seems to change the meaning of the existing definition.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. The Public Service Commission gave proper notice of the promulgation of the proposed rules.

2. The Commission has statutory authority to take the action proposed to promulgate the proposed rule.

3. The Commission has fulfilled all relevant substantive and procedural requirements of law or rule.

4. The Commission has demonstrated the need for and the reasonableness of the proposed rule, as amended, by an affirmative presentation of facts in the record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

That the rules be adopted as amended with consideration given to the modifications noted in this Report.

Dated: July 30, 1979.

Harry Seymour Crump

HARRY SEYMOUR CRUMP
Hearing Examiner

PSC-79-144-HC
A-8117-23

RECEIVED
Dept. of Public Service
MAY 23 1980
Commission Support

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA PUBLIC SERVICE COMMISSION

In the Matter of the Proposed Adoption of Rules of the Department of Public Service, Governing Gas and Electric Utilities' Access to Customers' Premises.

REPORT OF THE HEARING EXAMINER

B

The above-entitled matter came on for hearing before Harry Seymour Crump, Hearing Examiner from the State Office of Hearing Examiners, on April 15, 1980, at 9:30 a.m. in the Large Hearing Room, Seventh Floor, American Center Building, St. Paul, Minnesota.

The agency's panel consisted of the following persons: James E. Lackner, Special Assistant Attorney General, representing the Minnesota Department of Public Service and the Public Service Commission (the Commission); Randall D. Young, Commission Support Staff Director; and Ted Sullivan, Department of Public Service Staff.

This is a rules hearing pursuant to Minn. Stat. Chapter 15 held to determine whether to adopt rules which would regulate circumstances under which utility representatives may enter customers' premises. The instant proceeding is a rehearing of the above-entitled matter which was held on Wednesday, June 20, 1979, at the same location. The previous proposed rules were not adopted after the hearing because of a deficient notice.

Ten persons attended the hearing and signed the hearing register. Two persons commented at the hearing.

The Commission submitted seven exhibits of procedural documents including all of the previous hearing materials. One public exhibit was received at the hearing.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), this Report shall be available for review to all affected individuals upon request for at least five days. Thereafter, the Public Service Commission shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4 (1978). The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Public Service Commission on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 (1978) within ten calendar days. The Public Service Commission will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

## FINDINGS OF FACT

### Procedural Requirements

1. On February 22, 1980, the Commission filed the following documents with the Hearing Examiner:

(a) The Order for Hearing as proposed to be issued.
(b) A copy of the proposed rule.
(c) The names of the Commission personnel who will represent the Commission at the hearing.

2. On February 29, the Commission filed a copy of the Notice of Hearing as proposed to be issued.

3. On March 10, 1980, Notice of Hearing and copy of the proposed rule were published at 4 State Register 1459.

4. On March 14, 1980, the Commission mailed the Notice of Hearing to all gas and electric utilities doing business in the state of Minnesota and to all parties on a list attached to an Affidavit of Service. The Examiner finds that that list included the names of all representatives of associations or other interested groups or persons who had registered their name with the Secretary of State for purposes of obtaining notice of the public hearing.

5. On March 20, 1980, the Commission filed the following documents:

(a) The Order for Hearing.
(b) The Notice of Hearing.
(c) A copy of the proposed rule.
(d) The Affidavit of Mailing of Notice of Hearing.
(e) The Secretary of State's Certificate.
(f) Affidavit of Receipt of the Secretary of State's list.
(g) The Statement of Need and Reasonableness.

All the above documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of hearing. During this period no requests for copies of any of the above documents were received by the Examiner.

6. The record remained open through April 22, 1980, for the receipt of written comments. Three posthearing written comments were received by the Examiner.

### Statutory Authority

7. The Commission has the statutory authority to promulgate rules governing every public utility pursuant to Minn. Stat. § 216B.08 (1978).

### 4 MCAR § 3.0304 - Uniform Access Rule

8. At the hearing, the Commission submitted as an exhibit its Statement of Need and Reasonableness as part of its affirmative presentation of facts justifying the need for and the reasonableness of the proposed adoption of the rule provisions. Copies of the Statement of Need and Reasonableness were available at the hearing and the public had an opportunity to review them.

9. The proposed rule is an amendment to the gas and electric utilities' customer service rules and standards. It limits these utilities' access to premises of customers except under certain situations. Utilities' access to customers' premises is presently regulated by tariff provisions approved and filed with the Commission. Under the terms of the tariff provisions a utility

representative is given the right to enter a customers' premises for virtually any reason without permission from customers. The proposed rule will uniformly govern all utilities' access to customers' premises. The proposed rule is stated in the negative; it regulates when the utility companies may not enter the customers' premises.

10. At the hearing the Commission amended a provision of the proposed rule under Section B.2. by striking the period (.) at the end of the paragraph following the word "customer" and inserting a semicolon (;) and conjunction (or).

11. A representative from the Minnesota Public Interest Research Group (MPIRG) endorsed the proposed rule and made the following suggestion relative to Section B.2. of the proposed rule defining consent: "that continuing permission should not be granted for longer than a year or should only be granted for meter reading and not for access to service utility equipment. Alternatively, the utility should be required to explain all the available mechanisms through which it can obtain the data necessary for billing a customer for service." The Hearing Examiner finds merit in MPIRG's suggestion limiting the period of consent and suggests that the Commission consider including such a limitation in the proposed rule for a reasonable period of time, if not one year.

12. At the hearing and by posthearing comment, the Office of Consumer Services (OCS) suggested that Section B.2. provide for an easy-to-read print for the revocation of the consent. The second sentence of Section B.2. should be amended to read as follows:

> The form of agreement should state in large easy-to-read print "YOU DO NOT NEED TO SIGN THIS AGREEMENT IN ORDER TO OBTAIN SERVICE. IF YOU DO SIGN THIS AGREEMENT, YOU MAY REVOKE IT AT ANY TIME BY WRITTEN NOTICE TO THE COMPANY."

OCS stated that this change will ensure a clear description to residential customers of their right to revoke consent, as well as to withhold consent in the first place. The Hearing Examiner urges the Commission to consider OCS's recommendation.

13. The Hearing Examiner finds that the changes suggested in Findings 10 and 12 would not constitute substantial changes.

14. By posthearing comment, Minnegasco Company requested that its previously filed comments in the original hearing on this proposed rule be adopted and made a part of this record. In this record those comments are part of Exhibit F. Minnegasco's comments were considered by the Examiner in the previous Report and the findings in the original Report relative to MPIRG are hereby adopted and incorporated in this Report.

15. By posthearing comments, Montana-Dakota Utility Company opposed the adoption of the proposed rule on uniform access as being unnecessary and inappropriate. Its arguments are similar to arguments of other utility companies that commented at the previous hearing.

16. The Examiner finds that the proposed rule is needed and reasonable based on the Statement of Need and Reasonableness.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

## CONCLUSIONS

1. The Public Service Commission gave proper notice of the promulgation of the proposed rule.

2. The Commission has statutory authority to take the action proposed to promulgate the proposed rule.

3. The Commission has fulfilled all relevant, substantive and procedural requirements of law or rule.

4. The Commission has demonstrated the need for and the reasonableness of the proposed rule, as amended, by an affirmative presentation of facts in the record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

## RECOMMENDATION

That the proposed rule be adopted, as amended, with consideration given to the suggested modifications noted in this Report.

Dated: May 19, 1980.

HARRY SEYMOUR CRUMP
Hearing Examiner

PSC-79-144-HC
A-8117-23

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

| | |
|---|---|
| IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC SERVICE, GOVERNING GAS AND ELECTRIC UTILITIES' ACCESS TO CUSTOMERS' PREMISES) | ORDER OF THE CHIEF HEARING EXAMINER |

B

WHEREAS, a hearing was held on April 15, 1980, before Harry Seymour Crump, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of the Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Public Service Commission (hereinafter "Commission") on May 19, 1980; and

WHEREAS, the Commission has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Commission has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and Rule 9 MCAR § 2.110; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Commission has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Order, the Commission has the responsibility of submitting the complete hearing record and the rules as adopted by the Commission to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 6th day
of August, 1980.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

the hearing officer shall prepare a written decision based on evidence received and introduced into the record at the hearing. Such decision shall address itself to the following:

1. Decisions regarding admission. The hearing officer shall sustain the decision to deny admission of the student to the state residential schools upon a showing by the state residential schools by a preponderance of evidence that an appropriate individual educational program plan cannot be developed by the state residential schools.

2. Decisions regarding assessment or reassessment:

a. the hearing officer shall sustain a proposed assessment or reassessment of the student as set forth in 5 MCAR § 1.0135 B. upon a showing by the state residential schools by a preponderance of the evidence which demonstrates that there are facts, relating to the student's performance in his/her present education placement or presenting handicapping conditions, which indicate reasonable grounds to believe that the educational assessment or reassessment procedures are justified as a step toward the possible initiation of or change in the student's educational placement or program, including special education services, which will provide an educational program appropriately suited to the student's needs;

b. the hearing officer shall sustain the refusal to assess or reassess upon a showing by the state residential schools by a preponderance of evidence which demonstrates that there are facts which indicate reasonable grounds to believe that there has been recent and adequate assessment or reassessment of the student by qualified professionals; and

c. consistent with the standards, requirements, and principles set forth in statute and these rules, the hearing officer shall have the authority, based on all the evidence received at the hearing, to modify the proposed assessment or reassessment procedures in order to insure compliance with the requirement of nondiscrimination.

3. Decisions regarding individual educational program plan:

a. in deciding if the proposed action is to be sustained, in whole or part, the educational needs of the student shall be determinative. However, there shall be a presumption that among alternative programs of education, that to the maximum extent appropriate, a primary placement in a regular public school class and program with appropriate special education services is preferable to removal from the regular classroom;

b. the hearing officer shall sustain the individual educational program plan of the state residential schools upon a showing by the state residential schools by a preponderance of evidence that the student's individual educational program plan represents educational services appropriate to the student's educational needs in the least restrictive alternative. This decision shall be made in accordance with the principle at least restrictive alternatives; and

4. Decisions regarding transfer: The hearing officer shall sustain the decision to transfer the student from placement at the state residential schools upon a showing by the state residential schools by a preponderance of evidence that the appropriate program for the student in the least restrictive alternative is no longer placement at the state residential schools.

5. All hearing officer decisions shall:

a. contain written findings of fact, and conclusions of law, including a statement of the controlling facts upon which the decision is made in sufficient detail to appraise the parties on the basis and reason for the decision;

b. state the amount and source of any additional state expenditures necessary to implement the decision;

c. be based on the standards and principles set forth in Minn. Stat. § 120.17, subd. 3a., and 5 MCAR § 1.0138 G.; and

d. be binding on all parties.

6. All decisions shall be filed with the Commissioner of Education and shall be sent by mail to the parties.

G. Effective date of the action and appeals.

1. The decision of the hearing officer shall be binding on all parties and shall become effective 30 days after service of the decision unless the decision is appealed in a civil action.

2. The hearing officer may grant specific extensions of time beyond the 45 day period set out in these rules at the request of any party provided that no extension may be granted for the filing of a civil action.

# Department of Public Service

## Proposed Rules Governing Gas and Electric Utilities' Access to Customer Premises

### Notice Of Second Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Large Hearing Room, 7th Floor, American Center Building, 160 East Kellogg Boulevard, St. Paul, on Tuesday, April 15, 1980 commencing at 9:30 AM and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materi-

**KEY: RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

als may be submitted at the hearing. In addition, written material may be submitted by mail to Hearing Examiner Harry Seymour Crump, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-8111 either before the hearing, or within five working days after the close of the hearing unless the hearing examiner orders a longer period not to exceed 20 calendar days.

Copies of the proposed rules are now available and one free copy may be obtained by writing to or calling the Department of Public Service, attention Randall D. Young, 7th Floor, American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101, telephone (612) 296-7526. Copies will also be available at the door on the date of the hearing.

The proposed rule (a copy of which is attached hereto), if adopted, would provide reasonable standards for utilities to follow when entering customer premises. The agency's authority to promulgate the proposed rule is contained in Minn. Stat. §§ 216B.04; 216B.05, subd. 2; 216.09; and 216B.23.

**This will be a rehearing of this matter.** The original hearing was held on Wednesday, June 20, 1979, at the same location. Testimony was given and evidence presented on all sides of the issue. The hearing examiner made his recommendation which the Public Service Commission accepted. However, due to a deficient Notice of Hearing, the proposed rule could not be adopted. This proposed rule is the result of the testimony received at the June 20, 1979 hearing. All of the testimony and evidence received as a result of the original hearing will be entered into the record at this hearing. Thus, you need not appear to repeat testimony offered at the June 20, 1979 hearing. If you wish to review the record of the original hearing, it is available for viewing Monday through Friday from 8:30 a.m. to 4:30 p.m. at:

790 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota
(Contact: Elaine Wachholz)

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Written material may be submitted and recorded in the hearing record for five working days after the public hearing ends or for a longer period not to exceed 20 calendar days if ordered by the hearing examiner.

Please be advised that pursuant to Minn. Stat. § 10A.01, subd. 11 (1978) any individual: (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or (b) Who spends more than $250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials must register with the State Ethical Practices Board as a lobbyist within five days of the commencement of such activity by the individual. The statute provides certain exceptions. Questions should be directed to the State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

The commission anticipates that fifty persons may attend the hearing and that one hour will be necessary for it to present its evidence at the hearing.

Mary L. Harty
Executive Secretary

## Rule as Proposed

**4 MCAR § 3.0304 Uniform access.**

A. A utility shall not enter a customer's premises if:

1. The customer has not consented; or

2. The utility has not obtained a court order authorizing entry; or

3. An emergency situation involving imminent danger to life or property does not reasonably appear to exist.

B. A customer shall be deemed to have consented to entry if:

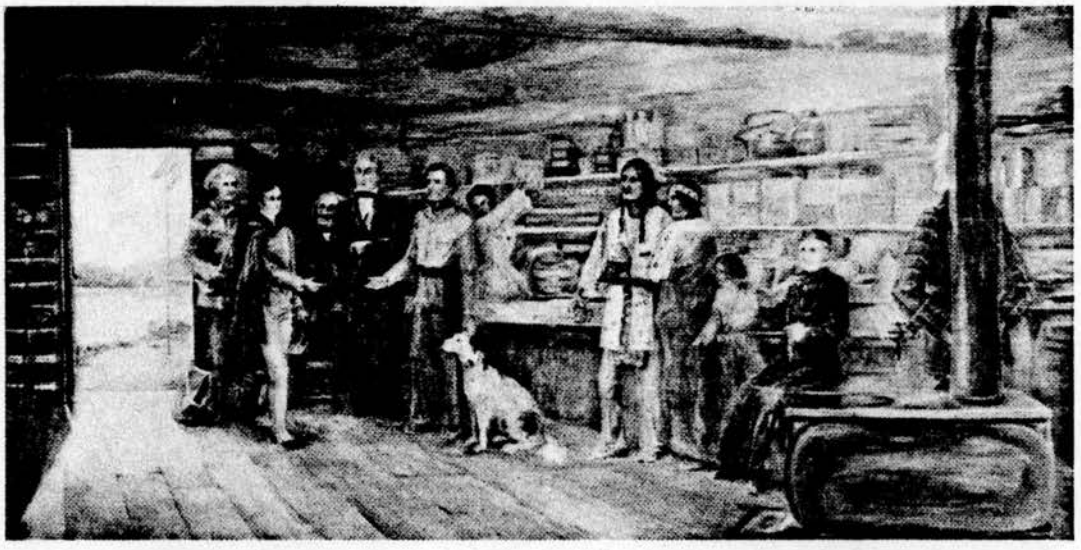
1. The customer has agreed orally or in writing in advance of entry that the utility may enter the customer's premises on a particular occasion; or

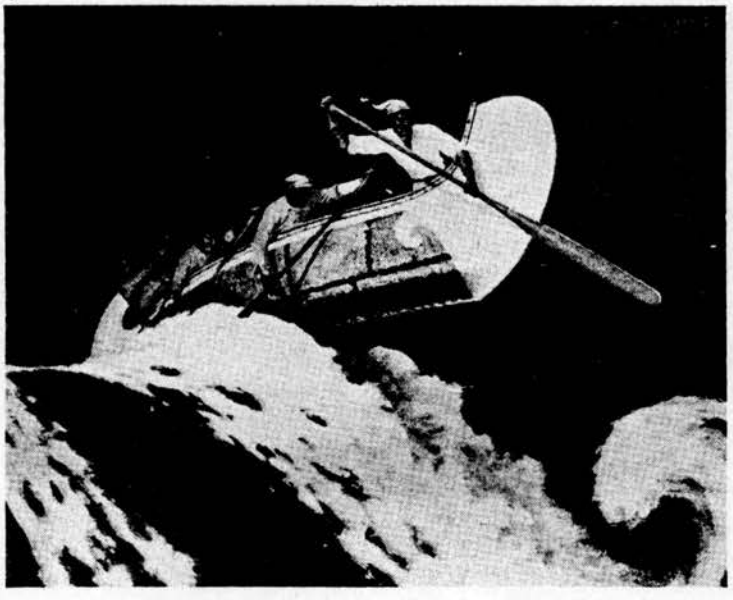
2. The customer has agreed in writing that the utility may enter the customer's premises to read its meter or service utility equipment at reasonable times and occasions if the premises are unlocked, or if the customer has supplied a key. The form of agreement shall state in large easy-to-read print "YOU DO NOT NEED TO SIGN THIS AGREEMENT IN ORDER TO OBTAIN SERVICE" and shall further provide that the agreement is revocable at will by the customer.

3. The customer is on a non-residential rate and the portion of the premises entered is open to the general public.

C. For the purpose of this rule "premises' means buildings and structures and land surrounding the buildings which is not accessible except through a locked gate.

D. A utility shall notify the jurisdictional law enforcement agency before entering the customer's premises without the customer's consent unless it would be unreasonable under the facts and circumstances to do so.





**Fur Trading in Minnesota. It was an enterprise which involved varied entrepreneurs representing varied backgrounds in the early 1800s. Above, Joseph Nicollet stopped at the American Fur Company post at Crow Wing. Below, Afro-Americans were among voyageurs who transported packs of furs and trade goods. (Courtesy Minnesota Historical Society.)**

**KEY: RULES SECTION —** Underlining indicates additions to proposed rule language. ~~Strike-outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION —** Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

A-8117-23



A copy of the determined wage rates may be obtained by ,riting to the Department of Labor and Industry, Prevailing Vage Division, 444 Lafayette Road, St. Paul, Minnesota 5101.

A check or money order for $15.00, payable to the De- )artment of Labor and Industry, must accompany each re- ]uest to cover the cost of copying and mailing.

November 6, 1978

# Minnesota State Agriculture Society

## Meeting Notice

The Board of Managers of the Minnesota State Agricultural Society, governing body for the State Fair, will meet at 10 a.m. on Nov. 17 in the Administration Building on the Fairgrounds, Falcon Heights.

# Minnesota State Retirement System

## Regular Meeting, Board of Directors

Regular quarterly meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, November 17, 1978, at 9:00 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

# Department of Public Service

# Public Service Commission

## Notice of Intent to Solicit Outside Opinion Concerning a Proposed Rule Relating to Utilities Access to Customer Premises

Notice is hereby given that the Minnesota Public Service Commission is considering adoption of a rule which would regulate circumstances under which utility representatives may enter customer premises.

The proposed rule is authorized by Minn. Stat. § 216B.09 (1976), which allows the commission to establish reasonable standards, regulations, or practices to be observed and followed by public utilities with respect to the service which they furnish. The proposed rule would regulate the conditions under which utility representatives may enter customer premises under three circumstances:

1. Without judicial or customer authority,

2. With judicial but without customer authority,

3. Without judicial authority but with customer authority.

All interested or affected persons or groups may submit information on this subject. Written or oral information and comment should be addressed to:

Mr. Leo J. Ambrose
Secretary, Minnesota Public Service Commission
Seventh Floor, American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

All statements of information and comment must be received by January 15, 1979. Any written material received by this date will become part of the record of any rules hearing held on this subject.

October 26, 1978

By order of the Commission

Leo J. Ambrose
Secretary

## Notice of Intent to Solicit Outside Opinion Concerning the Adoption of Rules Relating to Rate Change Filing Requirements for Telephone Utilities

Notice is hereby given that the Minnesota Public Service Commission is considering the adoption of rules regarding rate change filing requirements for telephone utilities. The rules would include the procedures that telephone utilities must follow when filing a rate change, the information that the department or commission will require for determining reasonableness of the proposed change and finally, the methods and procedures for refunding. An initial draft is available upon written request and receipt of a check payable to "Public Service Commission" in the amount of $2.75.

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General, James Lackaye, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

James Lackaye

Special Assistant Attorney General

Dated: 8/8/80

STATEMENT OF NEED

RECEIVED
MAR 20 1980
OFFICE OF HEARING
EXAMINERS

In the Matter of the Proposed Adoption of Rules of the Public Service Commission Governing Utilities' Access to Customers' Premises.

The above captioned rules are not amendments to existing rules of the Public Service Commission.

The need to adopt this rule arises because of the policies and practices of some utilities. These practices involve utilities' access to customer premises. One example of this practice occurred on August 8, 1978, when the Minnesota Gas Company made a forced entry into a private residence at 3945 Garfield Avenue South in order to improve equipment in that home. The incident is described in detail in a complaint on file in the Public Service Department. The owner of the home, Harley Sorenson, stated that he left Minneapolis for a 15 day vacation on July 31, 1978. On August 7 a notice was left at the house stating the need to gain access to the gas facilities in the home. On August 8, 1978, a locksmith employed by Minnesota Gas Company forcibly opened the front door at the house allowing the gas company employees to enter and do their work. After completing the installation of new equipment, the gas company employees left. Later that day a neighbor of the Sorenson home noticed that the front door of the house was ajar. After further inspection, they discovered a key was jammed into the lock. When Sorenson returned from his vacation on August 15 he learned of the forced entry and filed a complaint with the Public Service Department. Subsequently, similar complaints have been received which are on file in the Public Service Department records.

A common practice of many gas utilities has been the subject of other consumer complaints. This involves the policy of meter readers knocking once on the customer's door and then walking in if the door is open while calling out "gas man" or "meter reader." After advancing to the meter and recording the necessary data the representative will leave. Many problems are foreseeable because of this practice. Customers may be submitted to severe embarrassment. Utility representatives may be accused of theft or negligent destruction of property. A situation where a customer arrives home and hears a stranger in the basement may cause embarrassing or even dangerous occurrences. Even though customers may inform the utility of their preference for permission-only entries, this request will most likely come after a difficult situation has already occurred.

In 1978 Minnegasco used a locksmith 115 times and estimates that it employs locksmiths 100 times each year. They have received 38 complaints since 1973.

Utilities' access to customer premises is presently regulated by tariff provisions approved and filed with the Public Service Commission. Most of these tariffs filed by the individual utilities are similar to Minnesota Gas Company Tariff 8.01 on page 18 of section VI in their tariff book. The provision reads:

> "All properly authorized agents of Minnegasco shall, at all reasonable times, have the right of free access to the premises and property of the customer for the purpose of reading gas meters and inspecting, installing, repairing or removing all property owned by Minnegasco."

This provision and other similar provisions are unreasonably broad and unmanageable. Under the terms of the provision a utility representative is given the right to enter a customer's premises for virtually any reason without permission from customers. This is exactly what happened in the Sorenson incident. The company was completely within the bounds of the tariff provision.

There is no apparent reason for use of tariff provisions instead of a uniform rule to govern all utilities in this matter. A uniform rule would provide a standard which would treat all customers and utilities equally.

The proposed rule states in subdivision A that:

> "A utility shall not enter a customer's premises if: (1) the customer has not consented; or (2) the utility has not obtained a court order authorizing entry; or (3) an emergency situation involving imminent danger to life or property does not reasonably appear to exist."

Under this rule a utility may enter a customer's premises if the customer has consented. Because customer consent may be difficult to ascertain, subdivision B sets forth the circumstances upon which a customer shall be deemed to have consented to entry. It states the following:

> B. A customer shall be deemed to have consented to entry if:
>
> 1. The customer has agreed orally or in writing in advance of entry that the utility may enter the customer's premises on a particular occasion; or
>
> 2. The customer has agreed in writing that the utility may enter the customer's premises to read its meter or service utility equipment at reasonable times and occasions if the premises are unlocked, or if the customer has supplied a key. The form of agreement shall state in large easy-to-read print "YOU DO NOT NEED TO SIGN THIS AGREEMENT IN ORDER TO OBTAIN SERVICE" and shall further provide that the agreement is revocable at will by the customer.
>
> 3. The customer is on a non-residential rate and the portion of the premises entered is open to the general public.

If a utility wishes to enter a customer's premises on a particular occasion, they must first get consent from the customer, either orally or in writing. This applies each time the utility seeks entry. This provision will adequately protect the customer from an uninvited intrusion into their privacy.

There are circumstances, however, where a customer may wish to give the utility more latitude and flexibility. This can be accomplished by providing the utility with a broader consent agreement. Subdivision 2 provides for such an agreement. To prevent possible abuses of this broader consent, the rule requires that the consent be in writing; that the utility only be allowed to enter at reasonable times and occasions if the premises are unlocked; or, if the customer has supplied a key. Another reasonable safeguard is the requirement that the consent form give the customer notice that he need not sign the agreement to obtain service. This clause will prevent situations where consent is given under duress.

The intent of this rule is to protect a customer's right to privacy, and should not unnecessarily impede the utility from access to premises which are open to the public. It is also unnecessary to apply the safeguards of this rule to non-residential customers. The possibility of embarrassing or even dangerous situations are not as likely to occur in a non-residential setting as in a residential one.

Where a utility has received a court order to enter customer premises entry can be made in compliance with the rule. This situation may occur where a customer prohibits a utility representative from entering his premises to read the meter or where utilities need to gain entry into premises because of ongoing street repairs or major overhaul projects. The uniform access rule encourages court authorization for entries when customers do not consent to entry and where an emergency situation doesn't exist.

In emergency situations in which there is not sufficient time to obtain a court order, the uniform access rule does not prohibit entry into customer premises if imminent danger to life or property appears to exist. One situation which would qualify as an emergency situation would be a gas leak, or to turn on pilot lights after an unexpected interruption in service where a danger of gas accumulation exists. A basic provision of the rule is that the utilities are not prevented from entering buildings where danger to life or property is immediately foreseeable.

An "emergency" does not include situations where a utility is tearing up a street or making area improvements and immediate access is necessary only to keep down costs. "Emergency" does not include situations where only convenience is served by gaining immediate access to premises. These conditions can be adequately dealt with by other methods available to utilities; prior notice, court order, or planning far in advance of activities which may require access to customer premises.

Subdivision C states:

> For the purpose of this rule "premises" means buildings and structures and land surrounding the buildings which is not accessible except through a locked gate.

"Premises" means buildings and structures. It does not mean the land surrounding the customer's buildings. Therefore, under the rule a utility would not be restricted from entering upon a customer's land and inspecting or servicing equipment which is outside a customer's building. This definition of premises will not prevent utilities from performing work outside a customer's home but would restrict utilities from entering structures without authority. However, where access to customers' land is restricted by closed-in fences or locked gates or other obvious means of restricting access, then entry may not be made without authority.

"Utility" refers to gas and/or electric utilities. Since there have been no problems with telephone utilities, there is no reason to promulgate a rule regulating them at this time.

Subdivision D provides:

> A utility shall notify the jurisdictional law enforcement agency before entering the customer's premises without the customer's consent or unless it would be unreasonable under the facts and circumstances to do so.

This provision is reasonable because if in fact an emergency does exist the local law enforcement agency should be notified.

The need for the uniform access rule stems from a desire to protect the interests and rights of the customers. As the Sorenson case demonstrates, consumers may suffer damage by utilities' free and unrestricted access to their premises.

No tangible harm apparently occurred to Sorenson, other than minor physical damage to his property. Yet, a basic right of privacy appears to have been violated. It is not clear whether civil damages are available. It also appears that criminal remedies against utilities may not be pursued because city and county attorneys may be hesitant to prosecute a utility which is performing work for the city. The whole problem could be alleviated by enactment of the uniform access rule, which would only allow utilities entry into private premises after authority, customer or judicial, has been received.

The rule should not create a hardship on utilities. With proper planning and advance notice customer approval should be an easy hurdle to cross. In the Sorenson case a notice of the necessity to enter was left at the home one day before entry was made. Earlier notice could have been given. A court order could have been obtained if consent was not forthcoming. This situation could have been avoided by better planning.

There is ample legal authority for the enactment of the uniform access rule:

> Every public utility shall furnish safe, adequate, efficient and reasonable service . . . Minn. Stat. 216B.04.

> "Service" means natural, manufactured or mixed gas and electricity; the installation, removal, or repair of equipment or facilities for delivering or measuring such gas and electricity. Minn. Stat. 216B.02 subd. 6

Every public utility shall file with, and as a part of, the schedule all rules and regulations that, in the judgment of the commission, in any manner affect the service or product, or the rates charged or to be charged for any service of product, as well as any contracts, agreements or arrangements relating to the service or product or the rates to be charged for any service or product to which the schedule is applicable as the commission may by general or special order direct. Minn. Stat. 216B.05 subd. 2

Minn. Stat. 216.09 STANDARDS: CLASSIFICATIONS: REGULATIONS: PRACTICES. The commission, after hearing upon reasonable notice had upon its own motion or upon complaint, may ascertain and fix just and reasonable standards, classifications, regulations, or practices to be observed and followed by any or all public utilities with respect to the service to be furnished; ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, initial voltage, or other condition pertaining to the supply of the service; prescribe reasonable regulations for the examination and testing of the service and for the measurement thereof; establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments and equipment used for the measurement of any service of any public utility. Any standards, classifications, regulations, or practices now or hereafter observed or followed by an public utility may be filed by it with the commission, and the same shall continue in force until amended by the public utility or until changed by the commission as herein provided.

Minn. Stat. 216B.23 LAWFUL RATES: REASONABLE SERVICE. Subd. 2 Whenever the commission shall find any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise unreasonable or unlawful, or shall find that any service which can be reasonably demanded cannot be obtained, the commission shall determine and by order fix reasonable measurements, regulations, acts, practices or service to be furnished, imposed, observed and followed in the future in lieu of those found to be unreasonable, inadequate or otherwise unlawful, and shall make any other order respecting the measurement, regulation, act, practice or service as shall be just and reasonable.

The statutes quoted above give the Public Service Commission power to regulate utility practices which are unreasonable or unlawful. The commission may fix reasonable standards upon its own motion or upon complaints. Several complaints have been received concerning the current utility practices relating to access to customer premises. The current practices may be unlawful and are definitely unreasonable. Therefore, the commission, in fulfillment of its assigned duties believes that it is appropriate to adopt the uniform access rule in order to secure just, reasonable and lawful service for utility customers.

STATE OF MINNESOTA )
) ss
COUNTY OF RAMSEY )

AFFIDAVIT OF SERVICE

TED E. SULLIVAN, being first duly sworn, deposes and says:

That on the 14th day of MARCH, 1980, (s)he served the attached NOTICE OF HEARING REGARDING PROPOSED UNIFORM ACCESS RULE

Docket No. A-8117-23 4MCAR Sec. 3.0304

[XXX] by depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid.

[ ] by personal service

to all persons at the addresses indicated below or on the attached list:

Notice was sent to all gas and electric utilities doing business in the state of Minnesota, all parties on the attached listing and published in the department calendar.

Ted Sullivan

Subscribed and sworn to before me
this 19th day of March, 1980

Mary E. Swanson

MARY E. SWANSON
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES FEB. 8, 1983

RECEIVED
MAR 20 1980
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA
COUNTY OF RAMSEY

CERTIFICATE

In the matter of the Proposed Adoption
of Rules of Public Service Division
Governing Uniform Classes of Customer Accounts

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I hereby certify that the attached 34 Labels 3 sheets constitute the complete list of persons, associations, and other interested groups who as of 7:45 o'clock A .M, this 12th day of March, 1980, have requested pursuant to M.S. 1976, 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State
Joan Anderson Growe

By Donna M Lett

RECEIVED
MAR 20 1980
OFFICE OF HEARING
EXAMINERS

# AFFIDAVIT

Ted Sullivan, being duly sworn on oath deposes and says:

1) That he is an employee of the Department of Public Service of the State of Minnesota.

2) That on the 12th day of March, he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat. Sec. 15.0412.

3) That on the 12th day of March in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Ted Sullivan

Subscribed and sworn to before me
this 19th day of March 1980.

Elizabeth L. Woodhouse

NOTARY PUBLIC

Elizabeth L. Woodhouse
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My commission expires Mar. 1, 1987

_____ County, Minnesota

My Commission expires _____

Roger L. Hanson — Chairman
Richard J. Parish — Commissioner
Katherine E. Sasseville — Commissioner
Juanita R. Satterlee — Commissioner
Lillian Warren-Lazenberry — Commissioner

RECEIVED
MAR 20 1980
OFFICE OF HEARING EXAMINERS

In The Matter Of The Proposed Adoption Of Rules Of The Department Of Public Service Governing Gas And Electric Utilities' Access To Customer Premises.

**Notice Of Hearing**

NOTICE IS HEREBY given that a public hearing in the above-entitled matter will be held in the Large Hearing Room, 7th Floor, American Center Building, 160 East Kellogg Boulevard, St. Paul, on Tuesday, April 15, 1980 commencing at 9:30 AM and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written material may be submitted by mail to Hearing Examiner Harry Seymour Crump, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-8111 either before the hearing, or within five working days after the close of the hearing unless the hearing examiner orders at the hearing a longer period not to exceed 20 calendar days.

Copies of the proposed rules are now available and one free copy may be obtained by writing to, or calling the Department of Public Service, attention Randall D. Young, 7th Floor, American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101, telephone (612) 296-7526. Copies will also be available at the door on the date of the hearing.

The proposed rule (a copy of which is attached hereto), if adopted, would provide reasonable standards for utilities to follow when entering customer premises. The agency's authority to promulgate the proposed rule is contained in Minn. Stat. § 216B.04; § 216B.05, Subd. 2; § 216.09; and § 216B.23.

This will be a rehearing of this matter. The original hearing was held on Wednesday, June 20, 1979, at the same location. Testimony was given and evidence presented on all sides of the issue. The Hearing Examiner made his recommendation which the Public Service Commission accepted. However, due to a deficient Notice of Hearing, the proposed rule could not be adopted. This proposed rule is the result of the testimony received at the June 20, 1979 hearing. All of the testimony and evidence received as a result of the original hearing will be entered into the record at this hearing. Thus, you need not appear to repeat testimony offered at the June 20, 1979 hearing. If you wish to review the record of the original hearing, it is available for viewing Monday through Friday from 8:30 a.m. to 4:30 p.m. at:

790 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota
(Contact: Elaine Wachholz)

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General). 8

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge. 9

Written material may be submitted and recorded in the hearing record for five working days after the public hearing ends or for a longer period not to exceed 20 calendar days if ordered by the Hearing Examiner at the hearing. 7

Please be advised that pursuant to Minn. Stat. § 10A.01, Subd. 11 (1978) any individual: (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or (b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials must register with the State Ethical Practices Board as a lobbyist within five days of the commencement of such activity by the individual. The statute provides certain exceptions. Questions should be directed to the State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615. 6

The Commission anticipates that fifty persons may attend the hearing and that one hour will be necessary for it to present its evidence at the hearing.

M L Harty

Mary L. Harty
Executive Secretary

Date: FEB 22 1980

The Rule As Proposed for Adoption in Final Form

4 MCAR § 3.0304 Uniform Access

A. A utility shall not enter a customer's premises if:

1. The customer has not consented; or

2. The utility has not obtained a court order authorizing entry; or

3. An emergency situation involving imminent danger to life or property does not reasonably appear to exist.

B. A customer shall be deemed to have consented to entry if:

1. The customer has agreed orally or in writing in advance of entry that the utility may enter the customer's premises on a particular occasion; or

2. The customer has agreed in writing that the utility may enter the customer's premises to read its meter or service utility equipment at reasonable times and occasions if the premises are unlocked, or if the customer has supplied a key. The form of agreement shall state in large easy-to-read print "YOU DO NOT NEED TO SIGN THIS AGREEMENT IN ORDER TO OBTAIN SERVICE" and shall further provide that the agreement is revocable at will by the customer.

3. The customer is on a non-residential rate and the portion of the premises entered is open to the general public.

C. For the purpose of this rule "premises" means buildings and structures and land surrounding the buildings which is not accessible except through a locked gate.

D. A utility shall notify the jurisdictional law enforcement agency before entering the customer's premises without the customer's consent unless it would be unreasonable under the facts and circumstances to do so.

DEPARTMENT OF PUBLIC SERVICE
PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PROPOSED ADOPTION
OF RULES OF THE DEPARTMENT OF PUBLIC
SERVICE, GOVERNING GAS AND ELECTRIC
UTILITIES' ACCESS TO CUSTOMER PREMISES.

## ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the Large Hearing Room, 7th Floor, American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota, on Tuesday, April 15, 1980 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that Notice of Hearing be published in the State Register.

M L Harty

Mary L. Harty
Executive Secretary

DATE: 2/4/80

TS:pb

The Rule As Proposed for Adoption in Final Form

4 MCAR § 3.0304 Uniform Access

A. A utility shall not enter a customer's premises if:

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